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WHEN: Tuesday, May 20, 2008
9:00 a.m.–Noon

WHERE: Office of the Federal Register
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Washington, DC 20002

RESERVATIONS: (202) 741-6008

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FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2429

Changes in Filing Address and Procedures

AGENCY: Federal Labor Relations Authority.

ACTION: Final rule; technical amendments.

SUMMARY: The Federal Labor Relations Authority (Authority) is amending sections of part 2429 of its Regulations. The amendments, described below, make technical changes to the regulations regarding the address to which filings must be sent and the number of copies to be filed.

DATES: *Effective Date:* May 13, 2008.

FOR FURTHER INFORMATION CONTACT: William R. Tobey, Acting Executive Director, (202) 218–7999.

SUPPLEMENTARY INFORMATION: The Federal Labor Relations Authority (Authority) is making two technical changes to part 2429 of the Authority's Regulations, 5 CFR part 2429. First, the filing address located in § 2429.24(a) is changed to reflect the new name of the office with which filings must be made. Second, § 2429.25 is amended to require five legible copies to be provided with the filing of the original, rather than the current requirement of four legible copies.

Publication of this document constitutes final agency action on these changes under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedures are unnecessary because the Authority is making only non-substantive technical changes.

Waiver of Proposed Rulemaking

The Authority for good cause finds that prior notice and opportunity for comment on these changes are unnecessary pursuant to 5 U.S.C. 553(b)(3)(B) because the amendments to the affected sections are merely technical in nature and propose no substantive changes regarding which public comment could be solicited.

Waiver of 30-Day Delayed Effective Date Requirement

This Final Rule is made effective upon publication in the **Federal Register**. The Authority finds that good cause exists for the final rule to be exempt from the 30-day delayed effective date requirement of 5 U.S.C. 553(d) because a delay in implementation of the new filing requirements would be contrary to the public interest.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), I have determined that this regulation, as amended, will not have a significant impact on a substantial number of small entities, because this rule only applies to federal employees, federal agencies, and labor organizations representing federal employees.

Unfunded Mandates Reform Act of 1995

This rule change will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one 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 action 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.

Paperwork Reduction Act of 1995

The amended regulations contain no additional information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

List of Subjects in 5 CFR Part 2429

Administrative practice and procedure, Government employees, Labor management relations.

■ For these reasons, the Authority amends 5 CFR part 2429 as follows:

PART 2429—MISCELLANEOUS AND GENERAL REQUIREMENTS

1. The authority cited for part 2429 continues to read as follows:

Authority: 5 U.S.C. 7134; 2429.18 also issued under 28 U.S.C. 2112(a).

■ 2. Section 2429.24(a) is revised to read as follows:

§ 2429.24 Place and method of filing; acknowledgement.

(a) All documents filed or required to be filed with the Authority pursuant to this subchapter shall be filed with the Chief, Case Intake and Publication, Office of Case Adjudication, Federal Labor Relations Authority, Docket Room, Suite 200, 1400 K Street, NW., Washington, DC 20424–0001 (telephone: (202) 218–7740) between 9 a.m. and 5 p.m., Monday through Friday (except Federal holidays). Documents hand-delivered for filing must be presented in the Docket Room not later than 5 p.m. to be accepted for filing on that day.

* * * * *

■ 3. Section 2429.25 is revised to read as follows:

§ 2429.25 Number of copies and paper size.

Unless otherwise provided by the Authority or the General Counsel, or their designated representatives, as appropriate, or under this subchapter, and with the exception of any prescribed forms, any document or paper filed with the Authority, General Counsel, Administrative Law Judge, Regional Director, or Hearing Officer, as appropriate, under this subchapter, together with any enclosure filed therewith, shall be submitted on 8½ by 11 inch size paper, using normal margins and font sizes, The original and five (5) legible copies of each document or paper must be submitted. Where facsimile filing is permitted pursuant to § 2429.24(e), one (1) legible copy, capable of reproduction, shall be

sufficient. A clean copy capable of being used as an original for purposes such as further reproduction may be substituted for the original.

Dated: May 7, 2008.

William R. Tobey,

Acting Executive Director, Federal Labor Relations Authority.

[FR Doc. E8–10598 Filed 5–12–08; 8:45 am]

BILLING CODE 6727–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2008–0283]

Special Local Regulation: Harvard-Yale Regatta, New London, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the regulation for Regattas and Marine Parades found at 33 CFR 100.101 for the annual Harvard-Yale Regatta, Thames River, New London, CT from 2 p.m. to 5 p.m. on June 14, 2008. This action is necessary to control the anticipated heavy recreational vessel traffic of both event participants and observers, and other waterways users within the immediate vicinity of the event, thus providing for the safety of life and property of the maritime community on the affected navigable waters. During the enforcement period, no person or vessel may enter, transit, or remain in the regulated area within the Thames River, as detailed in 33 CFR 100.101, unless participating in the event or unless authorized by the Coast Guard patrol commander.

DATES: The regulations in 33 CFR 100.101 will be effective from 2 p.m. to 5 p.m. on June 14, 2008.

FOR FURTHER INFORMATION CONTACT: Lieutenant D. Miller, Chief, Waterways Management Division, Coast Guard Sector Long Island Sound at (203) 468–4596.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the permanent special local regulation found in 33 CFR 100.101 concerning the Harvard-Yale Regatta, Thames River, New London, CT from 2 p.m. to 5 p.m. on June 14; 2008. Under the provisions of 33 CFR 100.101, a portion of the navigable waters of the Thames River will be closed during the effective period to all persons and vessel traffic, except for vessels participating in the event and local, state or Coast Guard patrol craft. Further, 33 CFR 100.101 provides regulations for mooring, anchoring and transiting near the event race course. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under the authority of 33 CFR 100.101 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, public notification will be made via the First Coast Guard District Local Notice to Mariners and marine safety broadcasts.

Dated: April 30, 2008.

D.A. Ronan,

Captain, U.S. Coast Guard, Captain of the Port Long Island Sound.

[FR Doc. E8–10535 Filed 5–12–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0338]

RIN 1625–AA00

Safety Zone; Fireworks Displays, Anacostia River, Washington, DC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing a temporary safety zone upon specified waters of the Anacostia River. This action is necessary to provide for the safety of life on navigable waters during scheduled fireworks displays launched along the shoreline near the newly-constructed Washington Nationals Ballpark, in Washington, DC. This action will restrict vessel traffic in a portion of the Anacostia River.

DATES: This rule is effective from April 25, 2008 through September 19, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0338 and are available online at *www.regulations.gov*. They are also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the Commander, Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Baltimore, Maryland 21226–1791, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call Mr. Ronald L. Houck, Coast Guard Sector Baltimore, at (410) 576–2674 or (410) 576–2693. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and (d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this regulation effective less than 30 days after publication in the **Federal Register**. Publishing an NPRM and delaying its effective date would be contrary to public interest, since immediate action is needed to protect mariners on the Anacostia River against potential hazards associated with fireworks displays, such as the accidental discharge of fireworks and falling hot embers or other debris.

Request for Comments

Although we did not publish a notice of proposed rulemaking, we encourage you to participate in this rulemaking by submitting comments and related materials. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–2008–0338), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the effective period. We may change this rule in view of them.

Background and Purpose

Fireworks displays are frequently held from locations on or near the navigable waters of the United States. The accidental discharge of fireworks and falling hot embers or other debris are a safety concern during such events. The Coast Guard has the authority to impose appropriate controls on marine events that may pose a threat to persons, vessels and facilities under its jurisdiction. The purpose of this rule is to promote maritime safety, and to protect mariners transiting the area from the potential hazards associated with a fireworks display. The rule is needed to

control movement in a portion of the waterway that is expected to be populated by spectators seeking to view the fireworks display and mariners operating unknowingly too close to the fireworks discharge site.

Discussion of Rule

During the 2008 Major League Baseball season, the Washington Nationals will sponsor a series of scheduled fireworks displays launched from the shoreline along the Anacostia River near the Washington Nationals Ballpark, in southeast Washington, DC. The planned events include a test launch of the aerial fireworks display during the "seventh inning stretch" and a five-minute aerial fireworks display launched at the conclusion of the baseball game. Due to the need for vessel control during the fireworks display, vessel traffic will be restricted to provide for the safety of spectators and transiting vessels.

The Captain of the Port Baltimore, Maryland is establishing a safety zone that will be enforced during scheduled fireworks displays held over the Anacostia River, near the Washington Nationals Ballpark, in Washington, DC. This rule establishes a safety zone on the waters of the Anacostia River, within a radius of 350 feet around a fireworks discharge site, located at position latitude 38°52′18″ N, longitude 077°00′20″ W. The rule will impact the movement of all vessels operating in a specified area of the Anacostia River, from 7:30 p.m. through 11:30 p.m. on the following dates: April 25, 2008; May 2, 2008; May 9, 2008; May 23, 2008; June 6, 2008; June 20, 2008; June 27, 2008; July 11, 2008; August 1, 2008; August 15, 2008; August 29, 2008; and September 19, 2008.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. There is little commercial vessel traffic during the enforcement periods. Because the safety zone lies entirely outside the federal navigation channel, vessel operators may transit safely around the zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to operate, remain or anchor within certain waters of the Anacostia River, in Washington, DC, from 7:30 p.m. through 11:30 p.m. on April 25, 2008; May 2, 2008; May 9, 2008; May 23, 2008; June 6, 2008; June 20, 2008; June 27, 2008; July 11, 2008; August 1, 2008; August 15, 2008; August 29, 2008; and September 19, 2008. Because the zone is of limited size and duration, it is expected that there will be minimal disruption to the maritime community. Before the effective period, the Coast Guard will issue maritime advisories widely available to users of the river to allow mariners to make alternative plans for transiting the affected area. In addition, smaller vessels not constrained by their draft, which are more likely to be small entities, may transit around the safety zone.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

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

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

List of Subjects in 33 CFR Part 165

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T05–0338 to read as follows:

§ 165.T05–0338 Safety zone; Fireworks Displays, Anacostia River, Washington, DC

(a) Definitions. For the purposes of this section, *Captain of the Port, Baltimore, Maryland* means the Commander, Coast Guard Sector Baltimore or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port, Baltimore, Maryland to act on his or her behalf.

(b) Location. The following area is a safety zone: all waters of the Anacostia River, surface to bottom, within a radius of 350 feet around a fireworks discharge site which will be located at position latitude 38°52′18″ N, longitude 077° 00′20″ W. All coordinates reference North American Datum 1983.

(c) Regulations:

(1) The general regulations governing safety zones, found in Sec. 165.23, apply to the safety zone described in paragraph (b) of this section.

(2) Entry into or remaining in this zone is prohibited, unless authorized by the Captain of the Port, Baltimore, Maryland.

(3) Persons or vessels requiring entry into or passage through the moving safety zone must first request authorization from the Captain of the Port, Baltimore, Maryland to seek permission to transit the area. The Captain of the Port, Baltimore, Maryland can be contacted at telephone number (410) 576–2693. The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF Channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the person or vessel shall proceed as directed. If permission is granted, all persons or vessels must comply with the instructions of the Captain of the Port, Baltimore, Maryland, and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(d) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State and local agencies.

(e) Enforcement periods. This section will be enforced from 7:30 p.m. through 11:30 p.m. on April 25, 2008; May 2, 2008; May 9, 2008; May 23, 2008; June 6, 2008; June 20, 2008; June 27, 2008; July 11, 2008; August 1, 2008; August 15, 2008; August 29, 2008; and September 19, 2008.

Dated: April 25, 2008.

Brian D. Kelley,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. E8–10536 Filed 5–12–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 38

RIN 2900–AM93

Graves Marked With a Private Headstone or Marker

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations regarding the authority to provide a Government-furnished headstone or marker for placement on already marked graves of eligible veterans in private cemeteries. Pursuant to section 203 of the Dr. James Allen Veteran Vision Equity Act of 2007, Congress has authorized VA to make this provision permanent and retroactive to November 1, 1990. This final rule is necessary to incorporate a statutory amendment into VA regulations.

DATES: *Effective Date:* May 13, 2008.

Applicability Date: The amendment to 38 CFR 38.631 applies to eligible veteran deaths occurring on or after November 1, 1990.

FOR FURTHER INFORMATION CONTACT: Lindee Lenox (41A1), Director of Memorial Programs Service (MPS), National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Telephone: (202) 501–3060 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: VA's National Cemetery Administration (NCA) is responsible for administering VA's headstone and marker program. Since the transfer of the program to VA from the Department of the Army in 1973, VA has furnished more than 9.8 million headstones and markers. In fiscal year 2007, NCA furnished 361,115 markers for eligible veterans' graves located around the world. The original purpose of the program, which began during the Civil War, was based on the principle that no veteran should lie in an unmarked grave. From October 18,

1978, until October 31, 1990, VA paid a headstone or marker allowance to those families who purchased a private headstone or marker in lieu of obtaining a Government-furnished headstone or marker for placement on veterans' graves in private cemeteries. Families would typically use this allowance to offset the costs of installation. The allowance was eliminated November 1, 1990, with enactment of the Omnibus Budget and Reconciliation Act of 1990.

Prior to passage of the Veterans Education and Benefits Expansion Act of 2001, Public Law 107–103, VA was restricted by statute from furnishing a marker for an already marked grave. Section 502 of the Act established a 5-year pilot program that directed VA to furnish an appropriate headstone or marker for the graves of eligible veterans buried in private cemeteries, regardless of whether the grave was already-marked with a privately purchased marker. Public Law 107–103 granted this authority for graves of veterans who died on or after the date of the law's enactment, December 27, 2001. Public Law 107–330, the Veterans Benefits Act of 2002, expanded VA authority to issue a second marker for privately marked graves of eligible veterans interred in private cemeteries whose death occurred on or after September 11, 2001.

The second marker authority under Public Law 107–103 expired on December 31, 2006; however, Public Law 109–461 extended this authority through December 31, 2007. Public Law 110–157, the Dr. James Allen Veteran Vision Equity Act of 2007, rescinds the expiration date of December 31, 2007, and makes the authority permanent. It also makes the second marker benefit retroactive to November 1, 1990, and allows VA to provide a headstone or marker for the graves of individuals dying on or after that date, regardless of whether the grave is marked with a privately-purchased headstone or marker.

VA does not pay the cost to install a Government headstone or marker in a private cemetery, nor does VA have jurisdiction over policies established by private cemeteries. Therefore, the applicant must obtain certification on VA Form 40–1330 from a cemetery representative that the type and placement of the Government-furnished headstone or marker requested adheres to the policies and guidelines of the private cemetery where the grave is located.

This final rule amends 38 CFR 38.631 to make it consistent with the amended statute.

Administrative Procedure Act

Because this amendment merely reflects a statutory change, this rule-making is exempt from the prior notice-and-comment and delayed-effective-date requirements of 5 U.S.C. 553.

Paperwork Reduction Act

This document contains no new provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521). The Office of Management and Budget (OMB) previously approved all collections of information referenced in this final rule under control number 2900–0222. We cannot estimate at this time the additional number of claims that would be generated by the retroactive applicability date, but we will consider this based on experience when the control number comes up for renewal on October 31, 2010.

Executive Order 12866

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

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined not to be a significant regulatory action under the Executive Order because it is unlikely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Regulatory Flexibility Act

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

Unfunded Mandates

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

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance program number and title for this final rule is 64.202, Procurement of Headstones and Markers and/or Presidential Memorial Certificates.

List of Subjects in 38 CFR Part 38

Administrative practice and procedure, Cemeteries, Veterans.

Approved: May 2, 2008.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

■ For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 38 as set forth below:

PART 38—NATIONAL CEMETERIES OF THE DEPARTMENT OF VETERANS AFFAIRS

■ 1. The authority citation for part 38 continues to read as follows:

Authority: 38 U.S.C. 107, 501, 512, chapter 24, 7105, and as noted in specific sections.

§ 38.631 [Amended]

■ 2. Amend § 38.631 by:

■ a. In paragraph (b)(1), removing "September 11, 2001" and adding, in its place, "November 1, 1990".
■ b. Removing paragraph (g).

[FR Doc. E8–10635 Filed 5–12–08; 8:45 am]
BILLING CODE 8320–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204 and 252

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 an Internet address and a cross-reference.

DATES: *Effective Date:* May 13, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–0311; facsimile 703–602–7887.

SUPPLEMENTARY INFORMATION: This final rule amends DFARS text as follows:

- *204.7005.* Updates the Internet address for DoD order code assignments.
- *252.211–7003.* Updates a cross-reference.

List of Subjects in 48 CFR Parts 204 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 204 and 252 are amended as follows:
■ 1. The authority citation for 48 CFR parts 204 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 204—ADMINISTRATIVE MATTERS

■ 2. Section 204.7005 is amended by revising paragraph (d) to read as follows:

204.7005 Assignment of order codes.

* * * * *

(d) Order code assignments can be found at *http://www.acq.osd.mil/dpap/dars/order_code_assignments.html.*

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.211–7003 [AMENDED]

■ 3. Section 252.211–7003 is amended in Alternate I, in the introductory text, by removing "211.274–4(c)" and adding in its place "211.274–5(a)(4)".

[FR Doc. E8–10667 Filed 5–12–08; 8:45 am]
BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 215, 231, and 252

RIN 0750–AF67

Defense Federal Acquisition Regulation Supplement; Excessive Pass-Through Charges (DFARS Case 2006–D057)

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 852 of the National Defense Authorization Act for Fiscal Year 2007. Section 852 requires DoD to prescribe regulations to ensure that pass-through charges on contracts or subcontracts that are entered into for or on behalf of DoD are not excessive in relation to the cost of work performed by the relevant contractor or subcontractor.

DATES: *Effective date:* May 13, 2008.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before July 14, 2008, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2006–D057, 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–D057 in the subject line of the message.
- Fax: 703–602–7887.
- Mail: Defense Acquisition Regulations System, Attn: Ms. Sandra Morris, OUSD (AT&L) DPAP (CPF), IMD 3D139, 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. Sandra Morris, 703–602–0296.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 72 FR 20758 on April 26, 2007, to implement Section 852 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364). Section 852 requires DoD to prescribe regulations to ensure that pass-through charges on contracts or subcontracts (or task or delivery orders) that are entered into for or on behalf of DoD are not excessive in relation to the cost of work performed by the relevant contractor or subcontractor. To enable DoD to ensure that pass-through charges are not excessive, the interim rule included a solicitation provision and a contract clause requiring offerors and contractors to identify the percentage of work that will be subcontracted and, when subcontract costs will exceed 70 percent of the total cost of work to be performed, to provide information on indirect costs and profit and value added with regard to the subcontract work.

General Response to Comments: Fourteen sources submitted comments on the interim rule. In general, the public comments expressed concern that the rule discourages use of subcontractors and will lead to inappropriate application or adjustment of indirect costs. The comments also expressed concern that the contract is always open to oversight and opinions on excessive pass-through charges.

DoD points out that the statute requires that DoD not pay excessive pass-through charges, and DoD believes that the rule represents appropriate implementation of the statute. The rule is intended to protect the Government from those situations where there appears to be an agreement with a contractor to perform the contract scope of work, including "managing" subcontractors, then after award, the contractor subcontracts substantially all the effort without providing the required value-added subcontract management functions that were expected. There is no intent in this rule to disrupt the subcontracting process or other arrangements for firms that furnish supplies and services.

The rule is to be applied consistent with existing Cost Accounting Standard (CAS) and Federal Acquisition Regulation (FAR) rules related to subcontract management, indirect cost allocation, and profit analysis.

Adding value to the contract includes contractor performance of subcontract management functions that are consistent with the contractor's subcontract management policies and procedures (these functions are normally described in the contractor's CAS disclosure statement and/or accounting policies). When subcontract management is part of the contractor's proposal and scope of work, indirect costs must be applied consistent with existing CAS and FAR allocation rules. This rule does not discourage other business practices (e.g., distributors, vendors) when the contracting officer determines that these arrangements add value, which will be determined on a case-by-case basis using business judgment (FAR 1.602–2).

To ensure that the Government can make a determination as to whether or not excessive pass-through charges exist, the rule incorporates a reporting threshold that affords the contracting officer the ability to understand what functions the contractor will be performing (e.g., consistent with the contractor's disclosed practice) and will be providing "added value," whether it be before award, or if the contractor subsequently decides to subcontract substantially all of the effort. The rule provides a recovery mechanism for those situations where a contractor subcontracts all or substantially all the performance of the contract and does not perform the subcontract management functions, or other value-added functions, that were charged to the Government through indirect costs and related profit.

The intent of the reporting threshold is for the contracting officer to make a determination that excessive pass-through charges do not exist at the time of award when at least 70 percent of the work will be subcontracted, based on contractor demonstrated functions, and to not re-address this determination during contract performance. To that end, this interim rule includes an Alternate I to the clause at 252.215–7004 to address those instances in which the contracting officer has made a determination prior to contract award. It also incorporates a requirement for the contractor to notify the contracting officer in writing if the contractor decides after award to subcontract more than 70 percent of the total cost of the work to be performed, and to verify in that document that the contractor will add value consistent with the definition in the contract clause. If the contractor does not perform the demonstrated functions or does not add value, the rule makes the excessive pass-through charges unallowable and provides for recoupment of the excessive pass-through charges consistent with the legislation.

DoD recognizes that there are acquisition strategies where substantial subcontracting will exist, and this rule provides for early notification so that the parties have an understanding of the value that will be added by the contractor. DoD also recognizes that there will be business arrangements, such as buying from a distributor, where the contracting activity has determined there is "added value" by the distributor or there is no other method for obtaining the parts. The 70 percent threshold is a reporting mechanism so that the parties have an opportunity to address potential excessive pass-through charges either before award, or before subcontract award if a decision (e.g., make/buy) to subcontract more than 70 percent was made by the contractor after award. Once the contracting officer determines there are no excessive pass-through charges (e.g., the contractor is performing acceptable subcontract management functions or otherwise adds value), there is no subsequent review for excessive pass-through charges unless the contractor did not perform subcontract management functions.

The 70 percent reporting threshold is meant to capture those contracting situations where there is a higher risk that substantially all of the effort could be subcontracted without providing the required subcontract management or other value-added functions. Excessive pass-through charges are unallowable on any subcontracting effort when the contractor or subcontractor does not provide subcontract management consistent with its policies and procedures or does not otherwise provide value to the contract or subcontract.

The following is a discussion of the specific comments received in response to the interim rule published at 72 FR 20758 on April 26, 2007:

1. Impact on Indirect Costs

a. *Comment:* The legislative history accompanying Section 852 (i.e., Section 844 of the Senate Report) is entirely focused on contractors that provide "no value" to the Government. Therefore, the focus of the rule should not be overhead rates, costs, allocation of costs, accounting practices, etc.

DoD Response: The legislation clearly requires that the Government does not pay excessive pass-through charges, and defines excessive pass-through charges as overhead and profit related to contractors or subcontractors that add "* * * no, or negligible, value * * *" This interim rule adds a definition of "added value" to make it clear that subcontract management functions are included in the types of functions that represent "added value."

b. *Comment:* Because indirect costs are handled differently from company to company (or even business unit to business unit), excessive pass-through should focus on excessive profit. The regulations must be conformed to the legislation by deleting the phrase "indirect costs" each place it appears in the contract clause and the solicitation provision and by substituting in each case the word "overhead," consistent with the language used in the legislation.

DoD Response: The legislation explicitly requires a regulation that ensures the Government does not pay overhead and related profit when the contractor adds no or negligible value. This rule is intended to be used consistent with disclosed accounting practices and does not require special treatment of subcontract management costs. DoD believes that the new definition of what is "added value" is needed and has made the appropriate revision, as mentioned in the response to comment 1.a. above. "Indirect cost" is the more appropriate term for the costs DoD does not intend to pay if the scope of work was subcontracted with no "added value" by the contractor; but see the response to comment 1.a. for clarification of what is value-added effort.

c. *Comment:* The application of the cost disallowance for excessive pass-through charges appears to penalize contractors that classify their activities for "managing subcontracts" as indirect, while rewarding contractors that classify those activities as direct. The rule specifies that the charges for "managing subcontracts and applicable indirect costs and profits based on such costs" are excluded from any excessive pass-through disallowance. In other words, if a contractor's accounting practices include subcontract management in an indirect cost pool, rather than direct, all of these costs could become unallowable when allocated to subcontractor work performed, i.e., if and when the excessive pass-through provision—when no or negligible value is added—is triggered. Also, the rule violates FAR

31.203 and 31.204, which state that general and administrative costs are allowable and allocable, while the rule implies they are not allowable costs.

DoD Response: The statutory language prohibits payment of excessive pass-through charges, which includes overhead costs. The rule is consistent with the statute by disallowing the costs, or obtaining a price reduction, for excessive pass-through charges, including indirect costs.

d. *Comment:* The rule may require contractors to submit proposals that are inconsistent with their CAS Disclosure Statements. Under CAS-covered contracts, contractors do not have the option to book costs differently than as stated in their CAS Disclosure Statements.

DoD Response: The rule does not provide any allocation requirements. It only makes excessive pass-through charges unallowable. The rule does not require contractors to submit proposals that are inconsistent with their CAS Disclosure Statements.

2. Pre-Award Determination

a. *Comment:* The rule should focus on whether or not contractors and/or subcontractors "add value" with a disclosure, discussion, resolution, determination, and documentation that should be made up front, pre-award by the contracting officer, who either negotiates appropriate costs or does not award the contract. In DFARS 252.215–7004(b), after "determine," the phrase "prior to the award of a contract" should be added. Also, there is no direction about what the contracting officer does with this information or which contracting officer makes the determination.

DoD Response: DoD expects that, during pre-award discussions, the contractor will disclose its intent to subcontract more than 70 percent of the total cost of the work to be performed and its intent to perform the subcontract management or other functions that provide "added value" per its disclosure statement, accounting polices, or otherwise (e.g., the functions that make up the subcontract management costs being allocated to the effort). DoD expects the contracting officer to make a determination that there is "added value" and that excessive pass-through charges do not exist based on the expectation of performance of the disclosed functions that will add value. Under these conditions, there will be no further challenge to demonstrate "added value." This interim rule includes an Alternate I to the contract clause to address those instances in which the contracting officer has made a determination prior to contract award that there is "added value" and, therefore, there are no excessive pass-through charges based on performance of those functions that will add value.

However, a post-award notification is required when a contractor changes its decision to subcontract (e.g., make/buy) after award from subcontracting less than 70 percent to a subsequent decision to subcontract more than 70 percent. Upon written notification, the contracting officer will rely on the contractor's written notice that the contractor will provide "added value" consistent with the definition in the clause.

Implementation of the statute requires that DoD "not pay" excessive pass-through charges. Post-award adjustments are required in the clause should a contractor decide after contract award to subcontract all the effort without providing "added value" to the contract or subcontract.

b. *Comment:* Should the contracting officer determine that pass-through charges are not excessive (considering the contractor's established and disclosed accounting practices), that assessment should be determinative and the need for post-award audits eliminated.

DoD Response: Post-award audit rights are required and remain to provide the needed audit rights in situations where award was based on the contractor performing more than 30 percent of the effort, but the contractor later subcontracts substantially all of the work (or more than 70 percent), including delivery, and does not provide "added value" (subcontract management functions).

c. *Comment:* The rule should be written solely as direction to the contracting officer. A new subparagraph at DFARS 215.404–1 entitled "Excessive Pass-Through Charges" could be added that includes policy direction that contracts should not be entered into when the contracting officer believes the offeror adds no or negligible value to the proposed acquisition. Alternatively, the entire excessive pass-through cost issue can be better addressed by better acquisition strategies and revised profit policies.

DoD Response: The rule should not be directed solely to the contracting officer. The legislation requires a "regulation" to prevent the Government from paying excessive pass-through charges. DoD plans to monitor implementation and to provide guidance as required. It is not sufficient to address this issue only in acquisition strategies and profit policies, as they will not prevent the Government from paying excessive pass-through charges in situations where contracts are awarded anticipating very little subcontracting, then subsequently the contractor subcontracts all or substantially all of the effort and provides no "added value"—the situations that generated this legislation.

d. *Comment:* The rule should include guidance that permits the contracting officer to enter into an advance agreement with respect to the contracting officer's determination that the requirements of the clause at 252.215–7004 have been complied with and that the contractor (or subcontractor) has not incurred "excessive pass-through charges."

DoD Response: This interim rule includes an Alternate I to the contract clause to address those instances where the contracting officer determines there will be no excessive pass-through charges provided the contractor performs the disclosed value-added functions.

3. Impact on Fixed-Price Contracts

Comment: The rule does not detail how it would be implemented for fixed-price noncompetitive contracts. For example, if at the time the contract was negotiated, the contractor did not exceed the 70 percent threshold, no adjustment would have been considered in negotiating the price of the contract. However, if during the contract performance there were make/buy business decisions or cost fluctuations that resulted in the 70 percent threshold being exceeded, there is no clear way to determine the excessive pass-through charges, as a price was negotiated, not elements of cost.

DoD Response: Similar to CAS noncompliance cost impact situations and defective pricing, a determination of a price adjustment will be made on a case-by-case basis considering the facts and circumstances.

4. Statutory Exclusions and Exception

a. *Comment:* The statute is explicit that the excessive pass-through requirement does not apply to any firm-fixed-price subcontract or task or delivery order awarded based on adequate price competition or when the award is for the acquisition of commercial items. This statutory exclusion has not been properly included in the regulations; its coverage as a flow-down limitation in 252.215–7004(f) is an insufficient implementation of the statute.

DoD Response: The prescription at DFARS 215.408(4) clearly reflects the requirements and exclusions of the legislation. As required by the

legislation, this rule must flow down to subcontracts, and the flow-down requirement at 252.215–7004 appropriately excludes those subcontracts that meet the exclusion in the legislation.

b. *Comment:* An exception should be made for any proposal based on cost data. When the Truth in Negotiations Act (TINA) and Cost Accounting Standards (CAS) apply, there should be every opportunity for the contracting officer (as well as any audit assistance that may be utilized) to understand the value being added by the offeror and to raise any objections at that point to any "excessive" costs.

DoD Response: DoD believes the new definition of "added value" will clear up any misunderstanding of the expected implementation. TINA and CAS do not ensure the Government does not pay excessive pass-through charges, as required by the legislation. For example, at the time of award it may not be known that the contractor will subcontract the effort. Subsequent to award, the contractor may subcontract all effort, including delivery, and not perform its subcontract management functions, or any other "added value" functions, yet the contractor applies its indirect costs and profit to the subcontractor costs when billing the Government for the effort. Without the requirement to notify the contracting officer of the change in the level of subcontracting (e.g., make/buy decision), the Government does not have the ability to discuss/negotiate the value added by the contractor, nor the opportunity to change its procurement strategy and go directly to the subcontractor, since there was no "added value" from the contractor.

c. *Comment:* The rule should have some reasonable parameters with regard to the number of subcontractors to whom this requirement flows down. It seems reasonable that subcontracts that are minimal in value or less than 1–2 percent of the cost of the contract should be exempt.

DoD Response: DoD agrees that a minimum threshold is required and has established a threshold tied to the cost or pricing data threshold.

d. *Comment:* CAS-covered contractors should be excluded from the coverage of the rule. In complying with CAS, contractors allocate indirect costs to final cost objectives on a causal/beneficial basis in accordance with CAS 418 and CAS 410. Based on these standards, final cost objectives would not have excessive pass-through costs applied to them. If the indirect costs have less benefit to a final cost objective than would be achieved through the contractor's normal allocation process, CAS provides for special allocations to achieve the proper allocation of costs, which could be a reduced allocation or no allocation at all.

DoD Response: DoD does not agree that CAS-covered contractors should be excluded. Cost allocation principles in CAS are separate from allowability provisions in this rule. This rule implements the statutory provision to prohibit excessive pass-through charges.

e. *Comment:* The rule should explicitly exclude competitively awarded time-and-materials (T&M) contracts from its applicability; contractors are already prohibited from applying profit to material costs, and the contractor is required to propose separate rate tables for subcontractors. In addition, the exceptions to the rule should include all current regulatory exceptions to the submission of cost or pricing data specified at FAR 15.403–1, as well as those pricing actions below the Truth in Negotiations Act threshold specified at FAR 15.403–4. For example, the exceptions in current regulations to submitting cost or pricing data based on "adequate price competition" and "commercial item" are not limited to fixed-price type contracts as specified in the interim rule.

DoD Response: DoD disagrees with the suggestion to exclude additional contract types for the reasons stated in the response to comment 4.b. above. The same potential risk for T&M contracts exists as for cost-type contracts, if award was made with the intent to subcontract little of the work and subsequently the contractor decides to have a subcontractor perform substantially all the work without providing the value-added subcontract management functions. In addition, while the statute specifically excluded certain contract types, it did not exclude T&M contracts.

f. *Comment:* DoD should consider an exception for small business, as the rule's Regulatory Flexibility Act comments indicate a relatively minor impact on small businesses.

DoD Response: The exclusion would not be appropriate, since the statute did not provide an exclusion. Considering the clarification addressed in the response to comment 1.a. above, DoD does not believe it is burdensome for a contractor or lower-tier subcontractor, whether small business or otherwise, to demonstrate its planned subcontract management functions. Also see the response to comment 6.b above.

g. *Comment:* In the clause at 252.215–7004, paragraph (d), Recovery of Excessive Pass-Through Charges, a retroactive adjustment to previously determined firm-fixed prices based on changes during contract performance has no basis in the law and must be eliminated. Also, the only recovery possible for such a negotiated fixed-price contract would have to have occurred because the contracting officer agreed to a price that included "excessive pass-through charges" and then later changed his/her mind about that price agreement, which is inequitable.

DoD Response: DoD believes the rule is consistent with the statutory requirement prohibiting payment of excessive pass-through charges. However, DoD has revised the rule to include an Alternate I to the clause for use when a contracting officer makes a determination that there is "added value." DoD disagrees that a fixed-price adjustment must be eliminated, and also disagrees with the premise that the contracting officer would have agreed to excessive pass-through charges. If a contractor, after contract award, decides to subcontract all the contract effort and does not perform any subcontract management or any other functions that add value, DoD receives no benefit for the indirect costs and profit added on by the contractor or subcontractor, and DoD expects to re-coup those costs. The rule includes a reporting mechanism (i.e., 70 percent) for circumstances that pose a higher risk of excessive pass-through charges, so that the parties have an opportunity to address potential excessive pass-through charges either before award, or before subcontract award if a decision subsequently changes after contract award.

h. *Comment:* In the clause at 252.215–7004, paragraph (e) adds an access to records provision "to determine whether the contractor proposed, billed, or claimed excessive pass-through charges." This provision introduces new and unnecessary rules on access to records, and there is no need for a special access to records provision for this regulation; audit rights under this provision can and should be based on the existing Audit and Records—Negotiation contract clause at FAR 52.215–2. The Audit and Records clause is already included in the contracts to which the interim rule is applicable.

DoD Response: The Audit and Records clause at FAR 52.215–2 does not provide the Government access to all records that might show excessive pass-through charges. The rule's access to records provision is needed to fully implement Section 852 and to ensure the Government is not paying excessive pass-through charges.

5. Unallowable Costs

a. *Comment:* Requiring these costs to be "unallowable" is too draconian and should be abandoned in favor of requiring the contracting officer to make a preaward determination of reasonableness.

DoD Response: DoD believes making these costs unallowable is required to comply with the statutory requirements. Furthermore, a preaward determination will not prevent potential excessive pass-through charges when a contractor changes its decision to subcontract after contract award.

b. *Comment:* The determination of an excessive pass-through charge should not be defined as a "cost principle." The cost principles generally define various types of costs, and some of those costs are unallowable regardless of the amount of such costs incurred. For the costs addressed in the interim rule, the underlying costs are presumably allowable as to the type of cost, but it is only the amount of such cost that is considered excessive.

DoD Response: This interim rule clarifies the definitions of "excessive pass-though charge" and "added value." If a contractor bills the Government excessive pass-through costs by subcontracting the contract effort without adding value (consistent with its subcontract management function), the entire indirect cost and profit should not be paid. The rule does not provide for questioning only a portion of the indirect costs for subcontract management charged to the Government when it is determined that the costs are excessive pass-through charges.

c. *Comment:* It is questionable to include that excessive pass-through charges are unallowable in a section (DFARS 231.201–2) that deals with "Determining allowability" of all costs. However, the requirements in FAR 31.201–2(a)(2) (Allocability) and (a)(4) (Terms of the contract) already cover this, so adding this language is both unnecessary and redundant.

DoD Response: DoD believes this language is required to ensure implementation of the statute, which prohibits payment of excessive pass-through charges.

d. *Comment:* The language added to DFARS 231.203 appears to be misplaced, i.e., "(d) Excessive pass-through charges, as defined in the clause at 252.215–7004, are unallowable." The added statement is purely an allowability statement and is added to a section of the DoD supplement to FAR 31.203, which deals exclusively with allocability of costs. One wonders whether the intent of this addition to 231.203 is to require those subcontract costs which are not benefited by G&A expenses remain as part of the G&A base. If so, it would be inequitable to eliminate unallocable G&A costs from the G&A pool and leave the costs to which no G&A is allocable in the G&A base.

DoD Response: FAR 31.203 deals with indirect costs. DoD will not pay indirect costs when a contractor does not add value (for example, adding value includes performing subcontract management functions in accordance with a contractor's disclosed accounting practices or policies or other value-added functions as determined by the contracting officer). The intent is to maintain compliance with existing cost allocation laws and regulations. The rule includes a reporting mechanism (i.e., 70 percent) so that the parties have an opportunity to address potential excessive pass-through charges either before award, or before subcontract award if a decision to subcontract subsequently changes after contract award. If it is determined that excessive pass-through charges will occur, the contracting officer has the opportunity to change the procurement strategy or to work with the contractor to ensure proper application of indirect costs in accordance with CAS and/or FAR requirements.

e. *Comment:* The interim rule makes a unique distinction between fixed-priced contracts and all other contracts regarding unallowable costs. The contract clause states that excessive pass-through charges are only considered "unallowable" when associated with non-fixed-price contracts. When associated with a fixed-price contract, they are not considered "unallowable," but instead are an after-the-fact contract price reduction. This is contrary to the FAR provisions applicable to fixed-price contracts (i.e., FAR 31.102). Costs determined to be unallowable in accordance with FAR Subpart 31.2 or DFARS Subpart 231.2 are unallowable whether the contract being priced is a cost-type or flexibly priced contract or a competitively awarded fixed-price contract. If a contract cost is not determined to be unallowable prior to the award of a competitively awarded fixed-priced contract, there is no regulatory basis for making an after-the-fact contract price reduction if the contracting officer determines after award that incurred pass-through costs were excessive.

DoD Response: See response to comment 4.g. above.

f. *Comment:* It is unclear whether an excessive pass-through charge is intended to be "expressly unallowable" (e.g., specifically named and stated to be unallowable as defined in 48 CFR 9904.405–30(a)(2)) or unallowable based on "reasonableness" (e.g., as defined at FAR 31.201–3). It appears that the intent of the legislation is to treat the cost determination on the basis of "reasonableness."

DoD Response: See the "General Response to Comments" and the response to comment 1.a. above. The rule does not make indirect costs that are determined to be excessive pass-through charges expressly unallowable.

g. *Comment:* The rule defines an excessive pass-through charge to be made up of indirect costs and profit. However, DFARS Part 231 or FAR Part 31 does not address profit; they only address costs. Therefore, including statements in the DFARS relative to unallowable profit is inconsistent with the related FAR provision.

DoD Response: DFARS Part 231 simply refers to the definition at 252.215–7004, thereby addressing the indirect costs (DFARS 231.203). DoD has clarified the language to read "Indirect costs related to excessive pass-through charges, as defined in the clause at 252.215–7004, are unallowable."

6. Identification/Threshold of Subcontract Effort

a. *Comment:* The 70 percent supplier content threshold is arbitrary and is not a legislative requirement and is contrary to other FAR thresholds (e.g., that only a small business can only perform 50 percent or more of the work). It is unrealistic for construction activities where the contractor for construction work serves primarily as a project manager. Some contracts require that a certain percentage of work be subcontracted. Use of this 70 percent threshold is causing confusion, and some think the limitation on excessive pass-through charges only pertains to contracts with 70 percent or more subcontracting. Also, teaming is a common practice and 70 percent is too low. The contractor on such teams always adds significant value and should not be required to demonstrate that fact where it is performing 30 percent of the work. If retained, recommend increasing to 80–90 percent.

DoD Response: This rule does not affect subcontracting and teaming arrangements. See the "General Response to Comments" above. The 70 percent threshold is a reporting mechanism so that the parties have an opportunity to address potential excessive pass-through charges either before award, or before subcontract award if a decision changes after award

in those circumstances where there is a higher risk that excessive pass-through charges could exist (e.g., subcontracting all or substantially all of the work). Once the contracting officer determines there is "added value" (e.g., the contractor will perform acceptable subcontract management functions), there is no subsequent review for determining "added value." This rule does not affect subcontracting and teaming arrangements; it simply provides a remedy to the Government when a contractor bills for work that is not "added value" as stipulated in the rule. The rule is intended to provide the Government the means to identify, determine, and seek recovery of charges for non-value-added functions as stipulated in the rule.

b. *Comment:* The final rule should include a contract threshold that triggers the applicability of the rule (e.g., $100,000 for construction contracts and $50 million for major systems acquisition, or $650,000).

DoD Response: This interim rule includes a threshold tied to the cost or pricing data threshold, which provides for periodic inflation adjustment. In addition, the clause also allows for contracting officer discretion below that threshold based on potential risks or other considerations.

c. *Comment:* The regulation should be clarified so as to treat the 70 percent amount as a binary, triggering, condition at the time of contract award. Thus, if the offeror's proposal does not identify 70 percent or more of the total cost of work to be performed, the contracting officer's one time determination—at the time of contract award—must be that there is no excessive pass-through of costs and no further action is required by either the contractor or the contracting officer, absent a change in the amount of subcontract effort (as identified by any one of the three circumstances described in 252.215–7004(c)). The rule does not address situations where the prime contractor underruns its portion of the effort so that the subcontracted value exceeds 70 percent of the final cost, but is not known at award. Also, how do you measure the 70 percent, especially when it happens after initial award?

DoD Response: See the "General Response to Comments" above. This interim rule includes an Alternate I to the contract clause for use when the contracting officer has determined that the contractor's functions are value-added and that excessive pass-through charges do not exist based on the performance of those functions.

d. *Comment:* The use of a fixed percentage factor excludes other potential situations where excessive pass-through costs may exist and, therefore, may not be consistent with the legislative purpose. Contractors and subcontractors should be required to provide pass-through cost detail on all subcontracts regardless of the total percent of subcontract costs in the proposal, e.g. direct/drop shipments.

DoD Response: DoD believes the significant risks for excessive pass-through charges are at the total contract/subcontract level (e.g., subcontracting all effort without providing subcontract management functions), and the use of a reporting threshold for a contracting officer decision on excessive pass-through charges is sufficient. CAS and FAR already address proper allocations when there is not a causal/beneficial relationship between indirect expenses and the allocation base, e.g., a special allocation for significant direct/drop shipments.

e. *Comment:* What does the phrase "percentage of effort the offeror intends to perform" in 252.215–7003(c) mean? Are the percentage measures at cost for both the contractor and subcontractor, price for both, or cost for contractor and price for subcontractor? There is an inconsistency between (c)(1) and (c)(2) of that provision.

DoD Response: The language has been revised to read " * * * total cost of the work to be performed * * * " to be consistent with the remainder of the provision and the corresponding contract clause.

f. *Comment:* If there is a change proposed to the scope of work or the contractor subsequently decides to increase the amount of subcontracting to more than 70 percent, the clause offers no guidance regarding the dollar threshold for launching the pass-through charge analysis. Is the calculation to be based on the change only, or on the entire contract?

DoD Response: At any point the contractor decides to subcontract more than 70 percent of the cost of work to be performed, whether or not the decision results from a change in the scope of work, the contractor must notify the contracting officer and identify the value-added functions (i.e., subcontract management functions) that benefit the Government. DoD believes that 252.215–7004(c)(1) and (2) adequately explain the reporting requirement.

g. *Comment:* It is unclear how the interim rule treats situations in which the definitized contract contains options which could significantly alter contract value when exercised at a later date. Would the contracting officer include the potential value of exercised options in the initial calculation, just rely on the firm business portion of the contract, or need to recalculate later at the time of option execution?

DoD Response: Priced options would be included.

h. *Comment:* All directed subcontractor cost of work should be subtracted from the percentage calculation, because the analysis of whether the prime contractor adds value should be made by the Government at the time the directed subcontract is designated. If there were no added value, the Government would logically procure that item and provide it as Government-furnished equipment.

DoD Response: The statutory provisions prohibit excessive pass-through charges when a contractor or subcontractor is providing no or negligible value. This applies to all subcontracts except those specifically excluded in the statute.

i. *Comment:* The rule does not take into consideration emergency and contingency contracts that might require extensive subcontracting to achieve the desired result, to include the Stafford Act requirement that mandates work be awarded to local companies when possible.

DoD Response: DoD expects contractors to provide "added value" functions under any conditions for which it subcontracts part of the contract effort.

7. Definitions and Contract Clause

a. *Comment:* At DFARS 252.215–7004(a), the definition of each of the following terms should be clarified to provide objective and uniform standards:

(i) No value.

(ii) Negligible value. The definition of this term should be expanded to link it to the specific work to be performed, based on the facts and circumstances of each such contract or subcontract. Thus, the definition would state: "No or negligible value" means the Contractor or subcontractor cannot demonstrate to the Contracting Officer that its effort will add substantive value to accomplishing the work to be performed under the specific contract or subcontract, based on the facts and circumstances of each contract or subcontract (*e.g.*, statement of work)."

(iii) Costs of managing subcontracts.

(iv) Applicable indirect costs or profit.

(v) Demonstrate.

(vi) Substantive value.

(vii) "Value" in "value added."

(viii) Excessive. "Excessive pass-through charge" needs to be more clearly defined, and specific examples

should be added for clarifying the definition of "excessive".

DoD Response: Although public comments did not provide alternative definitions, DoD believes the definition of "added value" in this interim rule clarifies the misunderstandings apparent in public comments and provides sufficient perspective for the terms identified by the respondent. Consistent with the requirements at FAR 1.602–2, the rule is written to allow wide latitude for the contracting officer to exercise business judgment in determining whether the subcontract management provides "added value" consistent with the contractor's practices and the expectations of the contracting officer.

b. *Comment:* In the definition of "no or negligible value," "added" should be changed to "will add," because the determination of DFARS 252.215–7004(b) should be made prior to contract performance and prior to the contractor certifying that it has only submitted allowable costs.

DoD Response: See the response to comment 7.a. above.

c. *Comment:* The phraseology in the solicitation provision at 252.215–7003(b) states: "the offeror's proposal shall exclude excessive pass-through charges." This is not the proper statement of the law or the regulatory intent. Furthermore, the formulation of this subsection unnecessarily and inappropriately differs from the formulation of the related contract clause at 252.215–7004(b) that states: "The Government will not pay excessive pass-through charges." The excessive pass-through charges must be excluded from the negotiated contract prices, not merely from proposals.

DoD Response: Section 852 states that the Government will not pay excessive pass-through charges. DoD believes that Section 852 is best implemented by making excessive pass-through charges unallowable. By requiring these unallowable costs to be excluded from proposals, DoD is ensuring that the Government will not pay excessive pass-through charges.

d. *Comment:* Paragraph (c) of the clause at 252.215–7004 improperly formulates a set of rules applicable to lower-tier subcontracting, without adopting the limitations on flow-down provided for at 252.215–7004(f); it also retains the coverage for "indirect costs" rather than for "overhead" costs as provided in the statute. Finally, it discusses the requirement for "value added" but improperly ignores the statutory test of "no or negligible value" expressly provided for in the statute and properly addressed in the definition in paragraph (a) of the clause at 252.215–7004.

DoD Response: Relative to paragraph (c) of the clause at 252.215–7004, the prescription for the clause at 215.408(4) properly accounts for all exceptions for use of the clause, and 252.215–7004(f) provides the exceptions for flowdown of the clause. "Indirect costs" is the more appropriate term for the costs DoD will not pay if the scope of work was subcontracted with no "added value" by the contractor. See the response to comment 1.a. above for a clarification of what is "added value."

e. *Comment:* To avoid further inconsistencies, errors, and confusion, the provision at 252.215–7003 should be deleted in its entirety as well as the cross-reference to this provision at 215.408(3).

DoD Response: DoD believes the changes in this interim rule address the confusion expressed in public comments and has retained the solicitation provision.

f. *Comment:* A better definition of what is considered a "subcontract" for the purposes of the rule's analysis is needed in order to establish the base upon which the currently proposed 70 percent will be evaluated. FAR defines "subcontract" in two places, in FAR 44.101 and FAR 15.401.

DoD Response: The rule is revised to incorporate definitions of "subcontract" and "subcontractor" consistent with the definitions at FAR 44.101.

g. *Comment:* There are a number of commercial and Government practices which should be clarified with regard to the determination of subcontract. The following are some examples:

(i) Inter-organizational transfers, while considered a subcontract with regard to pricing, should not be considered a subcontract for the purpose of pass-through charges, as they are not considered subcontracts within a company.

(ii) Many firms employ contract labor to supplement their own staff. These subcontract laborers are integrated into the contractor's work staff and report directly to and are supervised by company managers in much the same manner as its own employees. Accordingly, it is our belief that these categories of employees should be excluded from the subcontracting base.

(iii) Will the analysis of subcontract labor hours be made on the basis of the number of labor hours involved or the cost of those labor hours? In general, there is a tendency to subcontract work which involves routine labor categories while retaining more highly skilled and highly paid labor categories in-house. There are different types of material and supply purchases. Formerly Government-furnished property has been shifted to contractor-acquired; the rule may result in contractors being unwilling to continue this process.

DoD Response: The rule is intended to protect the Government from those situations where there appeared to be an agreement with a contractor to perform the contract scope of work, including "managing" subcontractors, then after award, the contractor subcontracts substantially all the effort without providing "added value." There is no intent in this rule to disrupt the subcontracting process or other arrangements for firms that furnish supplies and services. The definitions of "subcontract" and "subcontractor" at FAR 44.101 apply and have been incorporated into the rule.

h. *Comment:* The definition at 252.215–7004(a) fails to adopt the "70 percent standard" as one of the key regulatory triggers for determining whether there is an "excessive pass-through charge." The definition in 252.215–7004(a) should be modified to add, before the period at the end thereof, the phrase "if the contractor intends to subcontract more than 70 percent of the total cost of work to be performed by each subcontractor, under the contract, task order or delivery order".

DoD Response: The 70 percent threshold is just a reporting mechanism. See the "General Responses to Comments" and the response to comment 1.a. above.

8. Impact on Business Strategy, Spares Contracting, and Indefinite-Delivery Indefinite-Quantity or Delivery Order Contracts

a. *Comment:* A possible outcome of an overly broad application of the interim rule may be a reduction in the number of opportunities for lower-tier contractors to provide a best value solution, as prime contractors are encouraged to keep work in house to avoid the possibility of encountering arbitrary cost disallowance and price reductions. Make-or-buy decisions will be skewed in favor of "Make" as a way to reduce risk. Additionally, many small businesses that manage large subcontractors may simply decline to do business with a customer that is arguably hostile to their business model.

DoD Response: The rule implements the statutory requirement to prohibit excessive pass-through charges. The rule should have no impact on teaming, subcontracting, and other business arrangements (e.g., distributors, vendors) when the contractor demonstrates "added value."

b. *Comment:* The rule may impact team assembly and formation decisions, due to emphasis on excessive pass-through charges on the amount of work subcontracted out, and is inconsistent with the July 12, 2004, DoD Acquisition, Technology, and Logistics (AT&L) memorandum entitled, "Selection of Contractors for Subsystems and Components," which provides a reason to look outward and add non-affiliated subcontractors.

DoD Response: The rule is not inconsistent with the AT&L memorandum or other subcontracting or teaming initiatives. The rule is intended to protect the Government from those situations where there appeared to be an agreement with a contractor to perform the contract scope of work, including "managing" subcontractors, then after award, the contractor subcontracts substantially all the effort without providing the required "added value." There is no intent in this rule to disrupt the subcontracting process.

c. *Comment:* For spares contracting, the Government will be required to contract directly with component and subsystems suppliers if the Government possesses sufficient data rights to do so. Prime contractors most likely will not pursue spares contracting if they receive virtually no profit for doing so. In addition, the rule will significantly increase administrative burden on indefinite-delivery indefinite-quantity (IDIQ) and requirements-type contracts. If a business cannot capture its allowable costs, why should it manage subcontracts for the Government?

DoD Response: This rule in no way changes the indirect costs or profit a contractor receives for subcontract effort. See the "General Responses to Comments" above. On IDIQ and other contracts, once the contractor demonstrates the "added value" of the subcontract management functions it will perform, and the contracting officer determines that the Government derives a benefit from the "added value" functions, there should be no issue related to excessive pass-through charges. DoD recognizes that, as part of performing IDIQ and requirements contracts, a contractor must perform subcontract management functions consistent with its disclosed accounting practices and policies, and in some cases may award more than 70 percent of a particular effort to a subcontractor. This rule is intended to ensure that any payments for indirect costs and profit to the contractor (or subcontractor) are consistent with "added value" of subcontract management functions performed.

d. *Comment:* Implementation of the rule may be extremely problematic when IDIQ task order/delivery order contracts are involved. These contract types for services routinely involve a general statement of work with a large proportion of subcontractors to fulfill a wide variety of requirements for the customer. It is very unlikely that the contractor or the Government will be able to clearly define the required tasks such that the actual usage of subcontractors in terms of work performed or overall percentage of the contract can be defined in advance of performance.

DoD Response: See response to comment 8.c. above.

e. *Comment:* If a firm-fixed-price IDIQ contract is awarded based on adequate price competition, must the clauses be incorporated into delivery and task orders? What if the IDIQ contract contains fixed labor rates for a prime and subcontractors? Most likely, the fixed subcontractor rates contain prime indirects and profit. If the contracting officer negotiates a task order consisting mostly of subcontract labor but concludes that the prime adds no or negligible value (since the subcontractor is doing most of the work), is the contracting officer expected to remove all costs and profit not related to subcontract management?

DoD Response: See the "General Responses to Comments" and the response to comment 8.c. above. Unless a contract meets the exclusions in the rule, the clause is required. Also see the response to comment 4.e. above. When the contracting officer determines that the contractor is providing subcontract management functions necessary to complete the contract requirements and consistent with its subcontract management functions, there are no excessive pass-through charges.

9. Planning and Guidance

Comment: This rule is no substitute for adequate contract planning and administration on the part of the Government. Without adequate guidance, the potential for mischief could become an issue.

DoD Response: DoD will monitor implementation and will provide guidance when necessary.

10. Profit

Comment: Contractor's assumption of risk is not discussed. Eliminating all profit on a subcontract is not equitable; profit should largely be a function of the risk assumed by the contractor.

DoD Response: DoD has added a definition of "added value" to clarify misunderstandings of the rule. The rule in no way prohibits or inhibits contracting officers from considering contractor risks when negotiating profit under existing regulations. Profit would only be eliminated (or possibly an award not made) if the scope of work was being subcontracted and the contractor or subcontractor did not perform any "added value" functions.

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 DoD does not expect a significant number of entities to propose excessive pass-through charges under DoD contracts or subcontracts, and the information required from offerors and contractors regarding pass-through charges is minimal. 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–D057.

C. Paperwork Reduction Act

This interim rule contains an information collection requirement. The Office of Management and Budget (OMB) has approved the information collection requirement for use through October 31, 2008, under OMB Control Number 0704–0443. DoD proposes that OMB extend its approval for use for three additional years and invites comments on the following: (a) Whether the 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 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 following is a summary of the information collection requirement:

Title: Defense Federal Acquisition Regulation Supplement (DFARS); Excessive Pass-Through Charges.

Type of Request: Extension of a currently approved collection.

Number of Respondents: 12,650.

Responses Per Respondent: Approximately 1.

Annual Responses: 12,800.

Average Burden Per Response: .51 hour.

Annual Burden Hours: 6,550.

Needs and Uses: DoD needs this information to ensure that pass-through charges under DoD contracts and subcontracts are not excessive, in accordance with Section 852 of Public Law 109–364. DoD contracting officers will use the information to assess the value added by a contractor or subcontractor in relation to proposed, billed, or claimed indirect costs or profit on work performed by a subcontractor.

Affected Public: Businesses or other for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Written comments and recommendations on the information collection should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503, with a copy to the Defense Acquisition Regulations System, Attn: Ms. Sandra Morris, OUSD (AT&L) DPAP (CPF), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Comments can be received from 30 to 60 days after the date of this notice, but comments to OMB will be most useful if received by OMB within 30 days after the date of this notice.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Acquisition Regulations System, Attn: Ms. Sandra Morris, OUSD (AT&L) DPAP (CPF), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

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 852 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364). Section 852 requires DoD to prescribe regulations to ensure that pass-through charges on contracts or subcontracts (or task or delivery orders) that are entered into for or on behalf of DoD are not excessive in relation to the cost of work performed by the relevant contractor or subcontractor. Public comments received on the previous interim rule indicate that there is an immediate need to amend DFARS policy on this subject, to eliminate significant misunderstandings that could cause serious contracting problems. 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 215, 231, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 215, 231, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 215, 231, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 215—CONTRACTING BY NEGOTIATION

■ 2. Section 215.408 is amended by revising paragraph (3) and adding paragraph (4) to read as follows:

215.408 Solicitation provisions and contract clauses.

* * * * *

(3) Use the provision at 252.215–7003, Excessive Pass-Through Charges—Identification of Subcontract Effort, in solicitations (including task or delivery orders)—

(i) With a total value that exceeds the threshold for obtaining cost or pricing data in accordance with FAR 15.403–4, except when the resulting contract is expected to be—

(A) A firm-fixed-price contract awarded on the basis of adequate price competition;

(B) A fixed-price contract with economic price adjustment, awarded on the basis of adequate price competition;

(C) A firm-fixed-price contract for the acquisition of a commercial item; or

(D) A fixed-price contract with economic price adjustment, for the acquisition of a commercial item; or

(ii) With a total value at or below the threshold for obtaining cost or pricing data in accordance with FAR 15.403–4, when the contracting officer determines that inclusion of the provision is appropriate.

(4)(i) Use the clause at 252.215–7004, Excessive Pass-Through Charges, in solicitations and contracts (including task or delivery orders)—

(A) With a total value that exceeds the threshold for obtaining cost or pricing data in accordance with FAR 15.403–4, except for—

(1) Firm-fixed-price contracts awarded on the basis of adequate price competition;

(2) Fixed-price contracts with economic price adjustment, awarded on the basis of adequate price competition;

(3) Firm-fixed-price contracts for the acquisition of a commercial item; or

(4) Fixed-price contracts with economic price adjustment, for the acquisition of a commercial item; or

(B) With a total value at or below the threshold for obtaining cost or pricing data in accordance with FAR 15.403–4, when the contracting officer determines that inclusion of the clause is appropriate.

(ii) Use the clause with its Alternate I when the contracting officer determines that the prospective contractor has demonstrated that its functions provide added value to the contracting effort and there are no excessive pass-through charges.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 3. Section 231.203 is revised to read as follows:

231.203 Indirect costs.

(d) Indirect costs related to excessive pass-through charges, as defined in the clause at 252.215–7004, are unallowable.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Sections 252.215–7003 and 252.215–7004 are revised to read as follows:

252.215–7003 Excessive pass-through charges—identification of subcontract effort.

As prescribed in 215.408(3), use the following provision:

EXCESSIVE PASS-THROUGH CHARGES—IDENTIFICATION OF SUBCONTRACT EFFORT (MAY 2008)

(a) *Definitions. Added value, excessive pass-through charge, subcontract,* and *subcontractor,* as used in this provision, are defined in the clause of this solicitation entitled "Excessive Pass-Through Charges" (DFARS 252.215–7004).

(b) *General.* The offeror's proposal shall exclude excessive pass-through charges.

(c) *Performance of work by the Contractor or a subcontractor.*

(1) The offeror shall identify in its proposal the total cost of the work to be performed by the offeror, and the total cost of the work to be performed by each subcontractor, under the contract, task order, or delivery order.

(2) If the offeror intends to subcontract more than 70 percent of the total cost of work

to be performed under the contract, task order, or delivery order, the offeror shall identify in its proposal—

(i) The amount of the offeror's indirect costs and profit applicable to the work to be performed by the subcontractor(s); and

(ii) A description of the added value provided by the offeror as related to the work to be performed by the subcontractor(s).

(3) If any subcontractor proposed under the contract, task order, or delivery order intends to subcontract to a lower-tier subcontractor more than 70 percent of the total cost of work to be performed under its subcontract, the offeror shall identify in its proposal—

(i) The amount of the subcontractor's indirect costs and profit applicable to the work to be performed by the lower-tier subcontractor(s); and

(ii) A description of the added value provided by the subcontractor as related to the work to be performed by the lower-tier subcontractor(s).

(End of provision)

252.215–7004 Excessive pass-through charges.

As prescribed in 215.408(4), use the following clause:

EXCESSIVE PASS-THROUGH CHARGES (MAY 2008)

(a) *Definitions.* As used in this clause—

Added value means that the Contractor performs subcontract management functions that the Contracting Officer determines are a benefit to the Government (e.g., processing orders of parts or services, maintaining inventory, reducing delivery lead times, managing multiple sources for contract requirements, coordinating deliveries, performing quality assurance functions).

Excessive pass-through charge, with respect to a Contractor or subcontractor that adds no or negligible value to a contract or subcontract, means a charge to the Government by the Contractor or subcontractor that is for indirect costs or profit on work performed by a subcontractor (other than charges for the costs of managing subcontracts and applicable indirect costs and profit based on such costs).

No or negligible value means the Contractor or subcontractor cannot demonstrate to the Contracting Officer that its effort added value to the contract or subcontract in accomplishing the work performed under the contract (including task or delivery orders).

Subcontract means any contract, as defined in section 2.101 of the Federal Acquisition Regulation, entered into by a subcontractor to furnish supplies or services for performance of the contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for the Contractor or another subcontractor.

(b) *General.* The Government will not pay excessive pass-through charges. The Contracting Officer shall determine if excessive pass-through charges exist.

(c) *Required reporting of performance of work by the Contractor or a subcontractor.* The Contractor shall notify the Contracting Officer in writing if—

(1) The Contractor changes the amount of subcontract effort after award such that it exceeds 70 percent of the total cost of work to be performed under the contract, task order, or delivery order. The notification shall identify the revised cost of the subcontract effort and shall include verification that the Contractor will provide added value; or

(2) Any subcontractor changes the amount of lower-tier subcontractor effort after award such ' .at it exceeds 70 percent of the total cost of the work to be performed under its subcontract. The notification shall identify the revised cost of the subcontract effort and shall include verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s).

(d) *Recovery of excessive pass-through charges.* If the Contracting Officer determines that excessive pass-through charges exist—

(1) For fixed-price contracts, the Government shall be entitled to a price reduction for the amount of excessive pass-through charges included in the contract price; and

(2) For other than fixed-price contracts, the excessive pass-through charges are unallowable in accordance with the provisions in Subpart 31.2 of the Federal Acquisition Regulation (FAR) and Subpart 231.2 of the Defense FAR Supplement.

(e) *Access to records.* (1) The Contracting Officer, or authorized representative, shall have the right to examine and audit all the Contractor's records (as defined at FAR 52.215–2(a)) necessary to determine whether the Contractor proposed, billed, or claimed excessive pass-through charges.

(2) For those subcontracts to which paragraph (f) of this clause applies, the Contracting Officer, or authorized representative, shall have the right to examine and audit all the subcontractor's records (as defined at FAR 52.215–2(a)) necessary to determine whether the subcontractor proposed, billed, or claimed excessive pass-through charges.

(f) *Flowdown.* The Contractor shall insert the substance of this clause, including this paragraph (f), in all subcontracts under this contract, except for—

(1) Firm-fixed-price subcontracts awarded on the basis of adequate price competition;

(2) Fixed-price subcontracts with economic price adjustment, awarded on the basis of adequate price competition;

(3) Firm-fixed-price subcontracts for the acquisition of a commercial item; or

(4) Fixed-price subcontracts with economic price adjustment, for the acquisition of a commercial item.

(End of clause)

Alternate I (MAY 2008). As prescribed in 215.408(4)(ii), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) *General.* The Government will not pay excessive pass-through charges. The Contracting Officer has determined that there will be no excessive pass-through charges, provided the Contractor performs the disclosed value-added functions.

[FR Doc. E8–10666 Filed 5–12–08; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106673–8011–02]

RIN 0648–XH84

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch for Vessels in the Bering Sea and Aleutian Islands Trawl Limited Access Fishery In the Central Aleutian District of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch for vessels participating in the Bering Sea and Aleutian Islands (BSAI) trawl limited access fishery in the Central Aleutian District of the BSAI. This action is necessary to prevent exceeding the 2008 Pacific ocean perch total allowable catch (TAC) specified for vessels participating in the BSAI trawl limited access fishery in the Central Aleutian District of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 8, 2008, through 1200 hrs, A.l.t., September 1, 2008.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

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

The 2008 Pacific ocean perch TAC allocated as a directed fishing allowance to vessels participating in the BSAI trawl limited access fishery in the Central Aleutian District of the BSAI is

222 metric tons (mt) as established by the 2008 and 2009 final harvest specifications for groundfish in the BSAI (73 FR 10160, February 26, 2008).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2008 Pacific ocean perch TAC allocated to vessels participating in the BSAI trawl limited access fishery in the Central Aleutian District of the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch by vessels participating in the BSAI trawl limited access fishery in the Central Aleutian District of the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific ocean perch by vessels participating in the BSAI trawl limited access fishery in the Central Aleutian District of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of May 7, 2008.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and § 679.91 and is exempt from review under Executive Order 12866.

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

Dated: May 7, 2008.

James P. Burgess,

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

[FR Doc. 08–1251 Filed 5–8–08; 1:24 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 73, No. 93
Tuesday, May 13, 2008

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0540; Directorate Identifier 2008–NM–031–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

Bombardier Aerospace has completed a system safety review of the CL–600–2C10/CL–600–2D24 aircraft fuel system against new fuel tank safety standards, introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002–043. The identified non-compliances were assessed using Transport Canada Policy Letter No. 525–001 to determine if mandatory corrective action is required.

This assessment showed that rupture of the fuel tank climb vent loop pipe or leakage from pipe couplings could result in fuel coming in contact with hot anti-ice ducts, creating potential fire on top of the centre fuel tank.

* * * * *

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

DATES: We must receive comments on this proposed AD by June 12, 2008.

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Richard Fiesel, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7304; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2008–0540; Directorate Identifier 2008–NM–031–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2008–01, dated January 3, 2008 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

Bombardier Aerospace has completed a system safety review of the CL–600–2C10/CL–600–2D24 aircraft fuel system against new fuel tank safety standards, introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002–043. The identified non-compliances were assessed using Transport Canada Policy Letter No. 525–001 to determine if mandatory corrective action is required.

This assessment showed that rupture of the fuel tank climb vent loop pipe or leakage from pipe couplings could result in fuel coming in contact with hot anti-ice ducts, creating potential fire on top of the centre fuel tank. To correct the unsafe condition, this directive mandates the modification of the fuel tank climb vent loop by installing shrouding boots that direct leaked fuel safely overboard.

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

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

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered

transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

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

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

Relevant Service Information

Bombardier has issued Service Bulletin 670BA–28–011, Revision B, dated July 4, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 297 products of U.S. registry. We also estimate that it would take about 22 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $13,768 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $4,611,816, or $15,528 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc. (Formerly Canadair): Docket No. FAA–2008–0540; Directorate Identifier 2008–NM–031–AD.

Comments Due Date

(a) We must receive comments by June 12, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, serial numbers 10003 through 10169; and Model CL–600–2D24 (Regional Jet Series 900) airplanes, serial numbers 15001 though 15025; certificated in any category.

Subject

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

Reason

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

Bombardier Aerospace has completed a system safety review of the CL–600–2C10/CL–600–2D24 aircraft fuel system against new fuel tank safety standards, introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002–043. The identified non-

compliances were assessed using Transport Canada Policy Letter No. 525–001 to determine if mandatory corrective action is required.

This assessment showed that rupture of the fuel tank climb vent loop pipe or leakage from pipe couplings could result in fuel coming in contact with hot anti-ice ducts, creating potential fire on top of the centre fuel tank.

To correct the unsafe condition, this directive mandates the modification of the fuel tank climb vent loop by installing shrouding boots that direct leaked fuel safely overboard.

Actions and Compliance

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

(1) Within 4,500 flight hours after the effective date of this AD, modify the fuel tank climb vent loop pipes by installing shrouding boots according to the Accomplishment Instructions of Bombardier Service Bulletin 670BA–28–011, Revision B, dated July 4, 2007.

(2) Modification of the climb vent pipe prior to the effective date of this AD according to Bombardier Service Bulletin 670BA–28–011, dated November 7, 2005; or Revision A, dated January 22, 2007; is acceptable for compliance with the corresponding requirements of this AD.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Richard Fiesel, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7304; fax (516) 794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI Canadian Airworthiness Directive CF–2008–01, dated January 3, 2008, and Bombardier Service Bulletin 670BA–28–011, Revision B, dated July 4, 2007, for related information.

Issued in Renton, Washington, on May 5, 2008.

Michael J. Kaszycki,

Acting Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–10647 Filed 5–12–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0541; Directorate Identifier 2008–NM–063–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

Resulting from the assessment of fuel tank wiring installations required by SFAR 88 (Special Federal Aviation Regulation 88) and equivalent JAA/EASA (Joint Aviation Authorities/European Aviation Safety Agency) policy, BAE Systems identified two features in the Jetstream 4100 where the need for design changes was apparent. * * *

Insufficient or defective bonding in the fuel tank area, if not corrected, could lead to ignition of fuel vapours and subsequent fuel tank explosion.

* * * * *

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

DATES: We must receive comments on this proposed AD by June 12, 2008.

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

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

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2008–0541; Directorate Identifier 2008–NM–063–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2008–0040, dated February 27, 2008 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

Resulting from the assessment of fuel tank wiring installations required by SFAR 88 (Special Federal Aviation Regulation 88) and equivalent JAA/EASA (Joint Aviation Authorities/European Aviation Safety Agency) policy, BAE Systems identified two features in the Jetstream 4100 where the need for design changes was apparent. One of these is addressed by Service Bulletin (SB) J41–28–013 which introduces additional bonding leads between pipes, structure and various components to improve the electrical bond paths within the fuel tank areas. This design change is identified by modification number JM41659. Additionally, SB J41–28–013 provides instructions to inspect the existing bonding leads, to replace any defective leads and to examine all fuel system pipe runs in the wings to ensure appropriate clearances are maintained.

Insufficient or defective bonding in the fuel tank area, if not corrected, could lead to ignition of fuel vapours and subsequent fuel tank explosion.

For the reason stated above, this EASA Airworthiness Directive (AD) requires the installation of additional bonding leads, inspection [for defects] of existing bonding leads and [for clearance of] all fuel system pipe runs in the wings and follow-on corrective actions, as necessary.

Corrective actions include replacing any defective bonding leads and adjusting clearances of the fuel system pipe runs. You may obtain further information by examining the MCAI in the AD docket.

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

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

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

The Joint Aviation Authorities (JAA) has issued a regulation that is similar to SFAR 88. (The JAA is an associated body of the European Civil Aviation Conference (ECAC) representing the civil aviation regulatory authorities of a number of European States who have agreed to co-operate in developing and implementing common safety regulatory standards and procedures.) Under this regulation, the JAA stated that all members of the ECAC that hold type certificates for transport category airplanes are required to conduct a design review against explosion risks.

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

Relevant Service Information

BAE Systems (Operations) Limited has issued Service Bulletin J41–28–013, Revision 1, dated January 10, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 7 products of U.S. registry. We also estimate that it would take about 80 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $1,700 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $56,700, or $8,100 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket No. FAA–2008–0541; Directorate Identifier 2008–NM–063–AD.

Comments Due Date

(a) We must receive comments by June 12, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all BAE Systems (Operations) Limited Model Jetstream 4101 airplanes, certificated in any category, all serial numbers.

Subject

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

Reason

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

Resulting from the assessment of fuel tank wiring installations required by SFAR 88 (Special Federal Aviation Regulation 88) and equivalent JAA/EASA (Joint Aviation Authorities/European Aviation Safety Agency) policy, BAE Systems identified two features in the Jetstream 4100 where the need for design changes was apparent. One of these is addressed by Service Bulletin (SB) J41–28–013 which introduces additional bonding leads between pipes, structures and various components to improve the electrical bond paths within the fuel tank areas. This design change is identified by modification number JM41659. Additionally, SB J41–28–013 provides instructions to inspect the existing bonding leads, to replace any defective leads and to examine all fuel system pipe runs in the wings to ensure appropriate clearances are maintained.

Insufficient or defective bonding in the fuel tank area, if not corrected, could lead to ignition of fuel vapours and subsequent fuel tank explosion.

For the reason stated above, this EASA Airworthiness Directive (AD) requires the installation of additional bonding leads, inspection [for defects] of existing bonding leads and [for clearance of] all fuel system pipe runs in the wings and follow-on corrective actions, as necessary.

Corrective actions include replacing any defective bonding leads and adjusting clearances of the fuel system pipe runs.

Actions and Compliance

(f) Within 24 months after the effective date of this AD, unless already done, do the following actions.

(1) Inspect the bonding leads between ribs 1 and 9, and between ribs 16 and 19, in the left-hand (LH) and right-hand (RH) wings in accordance with paragraph 2.B.(2) of the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–28–013, Revision 1, dated January 10, 2008; and, before next flight, replace all defective bonding leads with airworthy parts in accordance with the service bulletin.

(2) Inspect all fuel system pipe runs inside the LH and RH wings in accordance with paragraph 2.B.(3) of the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–28–013, Revision 1, dated January 10, 2008; and, if incorrect clearances are found, before next flight, adjust clearances in accordance with the service bulletin.

(3) Install additional electrical bonding of components within the LH and RH wings in accordance with paragraphs 2.B.(4) to 2.B.(15) of the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–28–013, Revision 1, dated January 10, 2008.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: 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. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2008–0040, dated February 27, 2008, and BAE Systems (Operations) Limited Service Bulletin J41–28–013, Revision 1, dated January 10, 2008, for related information.

Issued in Renton, Washington, on May 6, 2008.

Michael J. Kaszycki,

Acting Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–10648 Filed 5–12–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0543; Directorate Identifier 2007–CE–092–AD]

RIN 2120–AA64

Airworthiness Directives; Pacific Aerospace Limited Model FU–24 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

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

> To prevent the possible in-flight failure of the vertical fin, leading to loss of control of the aircraft * * *

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

DATES: We must receive comments on this proposed AD by June 12, 2008.

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2008–0543; Directorate Identifier 2007–CE–092–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The Civil Aviation Authority of New Zealand, which is the aviation authority for New Zealand, has issued AD DCA/FU24/176C, dated September 27, 2007 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> To prevent the possible in-flight failure of the vertical fin, leading to loss of control of the aircraft * * *

The MCAI requires inspections of the vertical fin for cracking, corrosion, scratches, dents, creases or buckling and the repair of any damaged area. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

The Civil Aviation Authority of New Zealand, which is the aviation authority for New Zealand, makes reference to Pacific Aerospace Limited Chapter 05, page 25 of the FU–24–950 Series Maintenance Manual, issued December 1978. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

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

Differences Between This Proposed AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this proposed AD will affect 2 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $160, or $80 per product.

In addition, we estimate that any necessary follow-on actions would take about 24 work-hours and require parts costing $1,000, for a cost of $2,920 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Pacific Aerospace Limited: Docket No. FAA–2008–0543; Directorate Identifier 2007–CE–092–AD.

Comments Due Date

(a) We must receive comments by June 12, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to FU–24 airplanes, all serial numbers, certificated in any category.

Subject

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

Reason

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

To prevent the possible in-flight failure of the vertical fin, leading to loss of control of the aircraft * * *

The MCAI requires inspections of the vertical fin for cracking, corrosion, scratches, dents, creases or buckling, and the repair of any damaged area.

Actions and Compliance

(f) Unless already done, after the effective date of this AD, do the following actions following Chapter 05, page 25 of the FU–24–950 Series Maintenance Manual:

(1) Before the first flight of the day, visually inspect the vertical stabilizer leading edge skin and fin for any cracking, corrosion, scratches, dents, creases or buckling, and repair as necessary. All non-transparent protective coatings and their adhesive must be removed for this inspection.

(2) Within 100 hours time-in-service (TIS) after the effective date of this AD and repetitively thereafter at intervals not to exceed 100 hours TIS, perform a detailed inspection of the vertical stabilizer leading edge skin, leading edge, fin skin, and the fin forward attachment point for any cracking, corrosion, scratches, dents, creases, or buckling to include:

(i) Inspection of the entire leading edge down to the forward attach fitting; and removal of dorsal fin extensions if installed in order to inspect the obscured areas of the fin.

(ii) Inspection of the fin skin for corrosion and cracks, paying particular attention to the center rib rivet holes and the skin joint at the fin base.

(iii) Inspection of the fin forward attachment point for corrosion, removal of the fin tip, and inspection of the top rib for cracks at the skin stiffener cut outs.

(3) If any damage is found during any inspection required in paragraph (f)(1) or (f)(2) of this AD, before further flight, obtain an FAA-approved repair scheme from the manufacturer and incorporate that repair.

(4) The following transparent polyurethane protective tapes have been assessed as suitable for use to re-protect the leading edge and may remain in situ for subsequent inspections, provided they are sound and in a condition to permit visual inspection of the skin beneath them:

Manufacturer	Product
(i) 3M	8591, or 8671, 8672 and 8681HS (aeronautical grade).
(ii) Scapa	Aeroshield P2604 (transparent).

Note 1: You may apply for an alternative method of compliance (AMOC) for an alternative to the transparent polyurethane protective tapes listed above.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows:

(1) The inspections required in this AD must be performed by a person authorized under 14 CFR part 43 to perform inspections, as opposed to the MCAI, which allows the holder of a pilot license to perform the inspections.

(2) The 50-hour inspection required in the MCAI goes away because the "before each flight" inspection captures the intent.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Civil Aviation Authority of New Zealand AD DCA/FU24/176C, dated September 27, 2007, for related information.

Issued in Kansas City, Missouri, on May 6, 2008.

Margaret Kline,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–10649 Filed 5–12–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0417; Airspace Docket No. 08–AEA–20]

Modification of Class E Airspace; Roanoke, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class E Airspace at Roanoke, VA. Additional airspace is necessary to allow for a lower vectoring altitude known as the Minimum Vectoring Altitude (MVA) for vectoring of both Visual Flight Rule (VFR) and Instrument Flight Rule (IFR) aircraft for spacing within 20 miles of Roanoke, VA. This action would enhance the safety and airspace management around the Roanoke Regional/Woodrum Field Airport area.

DATES: Comments must be received on or before June 27, 2008.

ADDRESSES: Send comments on this rule to: U. S. Department of Transportation,

Docket Operations, West Building Ground Floor, Room W12 140, 1200 New Jersey, SE., Washington, DC 20590–0001; Telephone: 1–800 647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA 2008–0417; Airspace Docket No. 08–AEA–20, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov*.

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Daryl Daniels, Airspace Specialist, System Support Group, Eastern Service Center, Air Traffic Organization, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Those wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2008–0417; Airspace Docket No. 08–AEA–20." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Federal Register's web page at *http://www.gpoaccess.gov/fr/index.html*. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Code of Federal Regulations (14 CFR Part 71) to modify Class E airspace at Roanoke, VA. Analysis of operations has determined that there is a need for additional Class E5 airspace extending upward from 700 feet above the surface of the Earth to enhance the management, safety, and efficiency of air traffic services in the area. Higher Minimum Vectoring Altitudes (MVAs) were established due to a change in FAA Order 8260.64, Criteria and Guidance for Radar Operations. That change recommends the FAA "provide a 300 foot buffer above the floor of controlled airspace". This Class E airspace modification would allow the FAA at Roanoke to satisfy that requirement and lower the MVA to a point to facilitate a better operation for intercepting the glide slopes and enhance the visual approach operation at the Roanoke Airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the Earth are published in Paragraph 6005 of FAA Order 7400.9R, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it proposes to modify Class E airspace at Roanoke, VA.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for part 71 will continue to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, signed August 15, 2007, effective September 15, 2007, is proposed to be amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 Feet or More Above the Surface of the Earth.

* * * * *

AEA VA E5 Roanoke, VA [Revised]

Roanoke Regional/Woodrum Field Airport, Roanoke, VA

(Lat. 37°19′32″ N., long. 79°58′32″ W.)

That airspace extending upward from 700 feet above the surface of the Earth within a 15-mile radius of Roanoke Regional/ Woodrum Field Airport beginning at the 036 bearing from the airport, thence clockwise until the 128 bearing thence, within a 20-mile radius from the 128 bearing clockwise until the 273 bearing, thence direct to the point of beginning.

* * * * *

Issued in College Park, Georgia, on April 25, 2008.

Kathy Swann,

Acting Manager, System Support Group, Eastern Service Center. Air Traffic Organization.

[FR Doc. E8–10414 Filed 5–12–08; 8:45 am]

BILLING CODE 4910–13–M

LEGAL SERVICES CORPORATION

45 CFR Parts 1606 and 1623

Termination, Limited Reductions in Funding, and Debarment Procedures; Recompetition; Suspension Procedures

AGENCY: Legal Services Corporation.

ACTION: Notice of Rulemaking Workshop and Request for Expressions of Interest in Participation in Workshop.

SUMMARY: LSC is conducting a Rulemaking Workshop in connection with its rulemaking to consider revisions to its regulations on termination and suspension. LSC hereby solicits expressions of interest in participation in the Workshop from the regulated community, its clients, advocates, the organized bar and other interested parties.

DATES: Expressions of interest must be received by May 23, 2008.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, Vice President & General Counsel, Legal Services Corporation, 3333 K St., NW., Washington, DC 20007; (202) 295–1620 (phone); 202–337–6831 (fax) or *vfortuno@lsc.gov*.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation ("LSC") has initiated a rulemaking to consider revisions to 45 CFR Part 1606, Termination and Debarment Procedures; Recompetition, and 45 CFR Part 1623, Suspension. As part of this rulemaking proceeding, LSC is convening a Rulemaking Workshop on June 17, 2008 from 9 a.m.–5 p.m, EDT. The Rulemaking Workshop will be held in LSC's Conference Center, on the 3rd floor of 3333 K St., NW., Washington, DC 20007.

Under the LSC Rulemaking Protocol: Rulemaking Workshops [enable LSC staff to meet with stakeholders] to discuss, but not negotiate, LSC rules and regulations. * * * The Workshop will be a meeting at which the participants hold open discussions designed to elicit information about problems or concerns with the regulation (or certain aspects thereof) and provide an opportunity for sharing ideas regarding how to address those issues. The Workshop is not intended [to] develop detailed alternatives or to obtain consensus on regulatory proposals.

67 FR 69762, 69763 (November 19, 2002).

With this notice, LSC is inviting expressions of interest from the interested stakeholder community to participate in the Rulemaking Workshop. Expressions of interest should be forwarded in writing to Victor M. Fortuno, Vice President & General Counsel, Legal Services Corporation, via e-mail to *vfortuno@lsc.gov* or via fax to 202–337–6831. Such expressions of interest may be alternatively by sent via hard copy to 3333 K Street, NW., Washington, DC 20007. All expressions of interest must be received by 5:30 p.m. E.D.T. on May 23, 2008. LSC will select participants shortly thereafter and will inform all those who expressed interest of whether or not they have been selected.

The Workshops will be open to public observation but only persons selected will be allowed to participate. Participants are expected to cover their own expenses (travel, lodging, etc.). LSC may consider providing financial assistance to participants for whom travel costs would represent a significant hardship and barrier to participation. Any such person should so note in his/her expression of interest for LSC's consideration.

Victor M. Fortuno,

Vice President & General Counsel.

[FR Doc. E8–10563 Filed 5–12–08; 8:45 am]

BILLING CODE 7050–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R8–ES–2007–0007; 92210–1117–0000–B4]

RIN 1018–AU86

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Acanthomintha ilicifolia (San Diego thornmint)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment period and revisions to proposed critical habitat boundaries.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on the proposed designation of critical habitat for *Acanthomintha ilicifolia* (San Diego thornmint) under the Endangered Species Act of 1973, as amended (Act). We are reopening the comment period because of new information we received following the close of the last public comment period on this proposed action. This new information leads us to propose revised boundaries for Subunit 1A and to update the areas we are proposing for exclusion from the final designation. The reopened comment period will provide the public; Federal, State, and local agencies; and Tribes with an additional opportunity to submit comments on the original proposed rule and the revisions proposed in this document. Comments previously submitted on the proposed critical habitat designation for *A. ilicifolia* need not be resubmitted as they have already been incorporated into the public record and will be fully considered in any final decision.

DATES: We will consider comments and information received or postmarked on or before June 12, 2008.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: RIN 1018–AU86; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the "Public Comments" section below for more information).

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011; telephone 760–431–9440; facsimile 760–431–5901. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened

comment period on our proposed critical habitat designation for *Acanthomintha ilicifolia* published in the **Federal Register** on March 14, 2007 (72 FR 11945), the corrections to the proposed designation published in the **Federal Register** on November 27, 2007 (72 FR 66122), and the new information provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as critical habitat under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether the benefit of designation would outweigh threats to the species caused by the designation, such that the designation of critical habitat is prudent.

(2) Specific information on:

- The amount and distribution of *Acanthomintha ilicifolia* habitat,
- What areas within the geographical area occupied at the time of listing that contain features essential for the conservation of the species we should include in the designation and why, and
- What areas not occupied at the time of listing are essential to the conservation of the species and why.

(3) Any proposed critical habitat areas covered by conservation or management plans that we should consider for exclusion from the designation under section 4(b)(2) of the Act. We specifically request information on any operative or draft habitat conservation plans that include *Acanthomintha ilicifolia* as a covered species that have been prepared under section 10(a)(1)(B) of the Act, or any other management plan, conservation plan, or agreement that benefits the species or its physical and biological features.

(4) Land use designations and current or planned activities in the proposed critical habitat areas and their possible impacts on proposed critical habitat for the species.

(5) Specific information concerning whether the benefits of excluding areas proposed for critical habitat within the City of San Diego subarea plan and the County of San Diego subarea plan under the San Diego Multiple Species Conservation Program (MSCP), the Carlsbad and Encinitas subarea plans under the San Diego Multiple Habitat Conservation Program (MHCP), and the Manchester Avenue Mitigation Bank under section 4(b)(2) of the Act outweigh the benefits of their inclusion in designated critical habitat.

(6) Additional scientific or commercial information that will help us to better delineate areas that contain the primary constituent elements laid out in the appropriate quantity and spatial arrangement essential for the conservation of the species, specifically, information pertaining to the amount and distribution of the primary constituent elements in Subunit 1A.

(7) Information about potential impacts that the designation of critical habitat in Subunit 1A may have on the operation of McClellan-Palomar Airport, specifically, whether the benefits of excluding this area would outweigh the benefits of including this area under section 4(b)(2) of the Act.

(8) Any foreseeable economic, national security, or other relevant impacts resulting from the proposed designation and, in particular, any impacts on small entities.

(9) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

Comments and information submitted on the proposed rule (72 FR 11945) during the initial comment period from March 14, 2007, to May 14, 2007, or the second comment period (72 FR 66122) from November 27, 2007, to December 27, 2007, do not need to be resubmitted as they have already been incorporated into the public record. Our final determination concerning the designation of critical habitat will take into consideration all written comments and any additional information we receive during all comment periods. On the basis of information provided during the public comment periods on the critical habitat proposal and the associated draft economic analysis (DEA), we may, during the development of our final determination, find that areas proposed do not meet the definition of "critical habitat" under section 3(5)(A) of the Act, or are appropriate for exclusion under section 4(b)(2) of the Act.

You may submit your comments and materials concerning our proposed rule by one of the methods listed in the **ADDRESSES** section. We will not consider comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov*, your entire comment—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov*.

Comments and materials we receive, as well as supporting documentation we used in preparing this notice, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

You may obtain copies of the proposed rule and DEA by mail from the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**) or by visiting the Federal eRulemaking Portal at *http://www.regulations.gov*.

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this notice. For more information on the taxonomy and biology of *Acanthomintha ilicifolia*, refer to the final listing rule published in the **Federal Register** on October 13, 1998 (63 FR 54938) and the proposed critical habitat rule published on March 14, 2007 (72 FR 11945).

On August 10, 2004, the Center for Biological Diversity and California Native Plant Society challenged our failure to designate critical habitat for *Acanthomintha ilicifolia* as well as four other plant species (*Center for Biological Diversity, et al.* v. *Norton*, C–04–3240 JL (N. D. Cal.)). In settlement of the lawsuit, the Service agreed to submit to the **Federal Register** a proposed rule to designate critical habitat, if prudent, on or before February 28, 2007, and a final designation by February 28, 2008. On March 14, 2007, we published a proposed rule to designate critical habitat for *A. ilicifolia* (72 FR 11945), identifying a total of approximately 1,936 acres (ac) (783 hectares (ha)) of land in San Diego County, California. We proposed 1,302 ac (527 ha) of land for exclusion from the final designation of critical habitat under section 4(b)(2) of the Act. On November 27, 2007, we reopened the comment period on the proposed rule, announced the availability of the draft economic analysis for the proposed rule, and made several corrections to the proposed rule (72 FR 66122). As a result of the corrections, the proposed critical habitat (1,936 acres (ac) (783 hectares (ha))) was reduced by approximately 69 ac (27 ha) and the area being proposed for exclusion (1,302 ac (527 ha)) was reduced by 168 ac (68 ha). Therefore, the total amount of land proposed as critical habitat was 1,867 ac (756 ha). Of

the total amount of land proposed as critical habitat, we proposed to exclude 1,134 ac (459 ha) from the final designation. Due to the substantive nature of the comments and new information received on this proposed rule, we requested an extension of the February 28, 2008, court-ordered date for the completion of the final designation. An extension was granted on April 15, 2008, which now requires us to submit to the **Federal Register** the final critical habitat designation by August 14, 2008.

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act.

New Information Relating to the Proposed Critical Habitat, Revisions to Proposed Critical Habitat Boundaries, and Updated Areas Proposed for Exclusion

On March 14, 2007, we proposed to designate critical habitat in four units comprising a total of 1,936 ac (783 ha) (72 FR 11945). At that time we proposed to exclude 1,302 ac (527 ha) under section 4(b)(2) of the Act (72 FR 11945, March 14, 2007). In the notice of availability for the draft economic analysis (DEA) published on November 27, 2007 (72 FR 66122), we announced corrections to the proposed designation that reduced the size of several subunits. As a result of those corrections, the total identified proposed critical habitat area was reduced from 1,936 ac (783 ha) to 1,867 ac (756 ha). Of the total amount of land proposed as critical habitat, the total area proposed for exclusion from the final designation was reduced from 1,302 ac (527 ha) to 1,134 ac (459 ha). Following publication of the November 27, 2007, document, we received new information for Subunit 1A that leads us to reduce the proposed critical habitat by an additional 17 ac (7 ha). Therefore, at this time we are proposing a total of 1,850 ac (749 ha) as critical habitat for *Acanthomintha ilicifolia*. Additionally, we have become aware of information indicating that excluding Subunits 1A, 1B, and 1C within the MHCP may not be appropriate. Of the 1,850 ac (749 ha) we are proposing as critical habitat, we are intending to exclude 964 ac (390 ha) from the final designation. The information we received that led to these intended changes is presented below. We are opening this comment period to provide the public the opportunity to comment on these items.

We received two comments indicating some areas in Subunit 1A are developed as agricultural land and some areas are actively used for maintenance and navigation purposes for McClellan-Palomar Airport. Further, the Federal Aviation Administration (FAA) requested the Service to consider impacts associated with the designation of critical habitat in Subunit 1A (Palomar Airport) on the operation of McClellan-Palomar Airport. Specifically, the FAA requested that we not designate critical habitat in areas of Subunit 1A that encompass a series of navigational devices (i.e., Medium Intensity Approach Lighting System with Runway Alignment Indicator Lights (MALSRs)) and an associated dirt maintenance road. We met with the County of San Diego and the FAA at Subunit 1A on January 9, 2008, and we mapped agricultural fields and areas that are actively used for maintenance and navigation purposes at McClellan-Palomar Airport. We found that portions of the agricultural fields immediately adjacent to known occurrences of *Acanthomintha ilicifolia* do contain the primary constituent element (PCE) (PCE subparts 1b and 1c; clay lenses on gently sloping terrain and derived from gabbro and soft calcareous sandstone substrates) laid out in the appropriate quantity and spatial arrangement for the conservation of the species and contribute to the stability and function of the habitat in Subunit 1A. However, the developed agricultural areas farther than approximately 100 feet (ft) (30 meters (m)) from known occurrences of *A. ilicifolia*, and the entirety of the dirt maintenance road within Subunit 1A, no longer appear to contain the features essential to the conservation of *A. ilicifolia*. While the agricultural fields have the same clay soil that supports *A. ilicifolia*, these areas no longer support the species because the soil structure has been altered by discing and other agricultural practices, and the soil no longer has the crumbly texture and deep fissures that are indicative of this species' habitat (PCE subpart 1c). Additionally, the area is infested with nonnative plants, and open areas no longer exist to support *A. ilicifolia* (PCE subpart 1d). We have determined that the developed areas of Subunit 1A have been altered to a point where these areas no longer contain the features essential for the conservation of *A. ilicifolia*. Therefore, the developed areas in Subunit 1A greater than 100 ft (30 m) from known occurrences of *A. ilicifolia* and the entirety of the dirt maintenance road do not meet the definition of critical habitat. A total of 17 ac (7 ha) have been removed from the area proposed as Subunit 1A; the resulting area now identified as critical habitat in this unit is 71 ac (29 ha). As noted above, we are requesting additional information from the public pertaining to the proposed designation of critical habitat encompassing the MALSRs and whether the benefits of excluding this area would outweigh the benefits of including this area under section 4(b)(2) of the Act.

In the March 14, 2007, proposed rule (72 FR 11945), we proposed the exclusion of and requested public comment on lands in Subunits 1A and 1B covered by the Carlsbad Habitat Management Plan (HMP; i.e., the Carlsbad Subarea Plan) under the MHCP from the designation of critical habitat under section 4(b)(2) of the Act. Upon further analysis of the Carlsbad HMP, we found that coverage of *Acanthomintha ilicifolia* under this habitat conservation plan (HCP) is contingent on a funded management plan being in place for this species and the completion of the San Marcos subarea plan under the MHCP. In the time that has elapsed since the development and publication of the proposed rule (March 14, 2007, 72 FR 11945), the City of San Marcos has not completed its subarea plan. Therefore, we believe that excluding land covered by the Carlsbad HMP in Subunits 1A and 1B is inappropriate. With the information we have at this time, we intend to designate the lands covered by the Carlsbad HMP in Subunits 1A and 1B as critical habitat. While we have received one comment indicating that some land in Subunit 1A is conserved and managed, we do not believe this meets the requirements for *A. ilicifolia* to be covered under the Carlsbad HMP. We are requesting additional information from the public on the appropriateness of excluding lands covered by the Carlsbad HMP.

In the March 14, 2007, proposed rule (72 FR 11945), we proposed the exclusion of, and requested public

comment on, the lands in Subunit 1C covered by the pending Encinitas subarea plan under the MHCP from the designation of critical habitat under section 4(b)(2) of the Act. At this time, the Encinitas subarea plan has not been completed and we believe excluding land based solely on its inclusion within the boundaries of this incomplete subarea plan would be inappropriate. Conversely, the majority of Subunit 1C (72 ac (29 ha)) is part of the Manchester Avenue Mitigation Bank and is actively managed for *Acanthomintha ilicifolia* (Spiegelberg 2005, pp. 1–33). We believe the benefits of exclusion may outweigh the benefits of including these lands in a critical habitat designation and that this exclusion would not result in extinction of the species. Therefore, we are considering the possibility of excluding 72 ac (29 ha) of Subunit 1C under section 4(b)(2) of the Act and designating the remaining 20 ac (8 ha) of private lands outside the Manchester Avenue Mitigation Bank as critical habitat. We are requesting public comment on benefits of including and benefits of excluding lands from critical habitat designation that are: (1) Covered by the Manchester Avenue Mitigation Bank; and (2) outside of the Manchester Avenue Mitigation Bank, but within the pending Encinitas subarea plan.

We hereby notify the public that the final designation of critical habitat may differ from the proposed rule published on March 14, 2007 (72 FR 11945), as corrected on November 27, 2007 (72 FR 66122). We intend to use the best available scientific and commercial data available to delineate the specific geographic areas that contain the physical and biological features essential to the conservation of *Acanthomintha ilicifolia* (i.e., the PCE laid out in the appropriate quantity and spatial arrangement) or that are otherwise essential for the conservation of the species and in making decisions regarding exclusions under 4(b)(2) of the Act. Therefore, we are requesting any additional information that may be useful in reassessing the proposed boundaries of critical habitat. Additionally, we request any information that may be useful in determining whether or not the benefits of excluding areas from critical habitat under section 4(b)(2) of the Act outweigh the benefits of including areas in critical habitat, specifically regarding the exclusion of areas covered by the MHCP as discussed in the proposed rule (72 FR 11945, March 14, 2007) (i.e., the areas within the cities of Carlsbad and Encinitas, California), considering the new information summarized above. Additional comments and information on these issues will help make the final rule as accurate as possible.

Table 1 contains the corrected area values based on revisions to proposed critical habitat Subunits 1A and 1C. The revisions to Subunit 1A change the boundary description published in the March 14, 2007, proposed rule. This document publishes the boundary description for Subunit 1A, incorporating the revisions described in this document, along with a map depicting the revised location of proposed critical habitat for *Acanthomintha ilicifolia*.

TABLE 1.—AREAS PROPOSED AS CRITICAL HABITAT FOR ACANTHOMINTHA ILICIFOLIA AFTER THE CORRECTIONS AND AMENDMENTS TO THE AREAS PROPOSED AS CRITICAL HABITAT ON MARCH 14, 2007 (72 FR 11945), AS DESCRIBED IN THIS DOCUMENT AND THE DOCUMENT PUBLISHED ON NOVEMBER 27, 2007 (72 FR 66122), AND AREAS BEING PROPOSED AND CONSIDERED FOR EXCLUSION FROM THE FINAL CRITICAL HABITAT DESIGNATION UNDER SECTION 4(B)(2) OF THE ACT (ACRES (AC), HECTARES (HA), CNDDB ELEMENT OCCURRENCES (EO))

Critical habitat unit	Land ownership	Area proposed as critical habitat in March 14, 2007, proposed rule	Area proposed as critical habitat after corrections and amendments	Area proposed for exclusion from final critical habitat	Area being considered for exclusion from final critical habitat
Unit 1: Northern San Diego County					
1A. Palomar Airport (EO 70)	Private	7 ac (3 ha)	7 ac (3 ha)	0 ac (0 ha)	0 ac (0 ha).
	State/Local	81 ac (33 ha)	64 ac (26 ha)	0 ac (0 ha)	0 ac (0 ha).
1B. Southeast Carlsbad (EO 47)	Private	73 ac (29 ha)	73 ac (29 ha)	0 ac (0 ha)	0 ac (0 ha).
1C. Manchester (EO 28, EO 42 and EO 54).	Private	92 ac (37 ha)	92 ac (37 ha)	0 ac (0 ha)	72 ac (29 ha).
Unit 2: Central San Diego County					
2A. Los Peñasquitos Canyon (EO 19)	State/Local	63 ac (25 ha)	63 ac (25 ha)	63 ac (25 ha)	0 ac (0 ha).
2B. Sabre Springs (EO 36)	Private	1 ac (<1 ha)	1 ac (<1 ha)	1 ac (<1 ha)	0 ac (0 ha).
	State/Local	51 ac (21 ha)	51 ac (21 ha)	51 ac (21 ha)	0 ac (0 ha).
2C. Sycamore Canyon (EO 32)	Private	30 ac (12 ha)	30 ac (12 ha)	30 ac (12 ha)	0 ac (0 ha).
	State/Local	276 ac (112 ha)	276 ac (112 ha)	276 ac (112 ha)	0 ac (0 ha).
2D. Slaughterhouse Canyon (EO 64)	Private	77 ac (31 ha)	77 ac (31 ha)	77 ac (31 ha)	0 ac (0 ha).
Unit 3: Viejas Mountain and Poser Mountain					
3A. Viejas Mountain (EO 73)	Private	33 ac (13 ha)	33 ac (13 ha)	33 ac (13 ha)	0 ac (0 ha).
3B. Viejas Mountain (EO 50)	Private	156 ac (63 ha)	156 ac (63 ha)	156 ac (63 ha)	0 ac (0 ha).
	Federal	52 ac (21 ha)	52 ac (21 ha)	0 ac (0 ha)	0 ac (0 ha).
3C. Viejas Mountain (EO 51)	Private	38 ac (15 ha)	38 ac (15 ha)	0 ac (0 ha)	0 ac (0 ha).
	Federal	280 ac (113 ha)	280 ac (113 ha)	0 ac (0 ha)	0 ac (0 ha).
3D. Viejas Mountain (EO 62)	Private	50 ac (20 ha)	50 ac (20 ha)	0 ac (0 ha)	0 ac (0 ha).
	Federal	32 ac (13 ha)	32 ac (13 ha)	0 ac (0 ha)	0 ac (0 ha).
3E. Poser Mountain (EO 74)	Federal	34 ac (14 ha)	34 ac (14 ha)	0 ac (0 ha)	0 ac (0 ha).
3F. Poser Mountain (EO 12)	Private	7 ac (3 ha)	7 ac (3 ha)	0 ac (0 ha)	0 ac (0 ha).
	Federal	156 ac (63 ha)	156 ac (63 ha)	0 ac (0 ha)	0 ac (0 ha).

TABLE 1.—AREAS PROPOSED AS CRITICAL HABITAT FOR ACANTHOMINTHA ILICIFOLIA AFTER THE CORRECTIONS AND AMENDMENTS TO THE AREAS PROPOSED AS CRITICAL HABITAT ON MARCH 14, 2007 (72 FR 11945), AS DESCRIBED IN THIS DOCUMENT AND THE DOCUMENT PUBLISHED ON NOVEMBER 27, 2007 (72 FR 66122), AND AREAS BEING PROPOSED AND CONSIDERED FOR EXCLUSION FROM THE FINAL CRITICAL HABITAT DESIGNATION UNDER SECTION 4(B)(2) OF THE ACT (ACRES (AC), HECTARES (HA), CNDDB ELEMENT OCCURRENCES (EO))—Continued

Critical habitat unit	Land ownership	Area proposed as critical habitat in March 14, 2007, proposed rule	Area proposed as critical habitat after corrections and amendments	Area proposed for exclusion from final critical habitat	Area being considered for exclusion from final critical habitat
Unit 4: Southern San Diego County					
4A. McGinty Mountain (EO 21)	Private	18 ac (7 ha)	18 ac (7 ha)	18 ac (7 ha)	0 ac (0 ha).
	Federal	0 ac (0 ha)	2 ac (1 ha)	0 ac (0 ha)	0 ac (0 ha).
4B. McGinty Mountain (EO 22)	Private	210 ac (85 ha)	141 ac (57 ha)	141 ac (57 ha)	0 ac (0 ha).
	State/Local	10 ac (4 ha)	7 ac (3 ha)	7 ac (3 ha)	0 ac (0 ha).
4C. McGinty Mountain (EO 30)	Private	27 ac (11 ha)	27 ac (11 ha)	27 ac (11 ha)	0 ac (0 ha).
	Federal	0 ac (0 ha)	1 ac (<1 ha)	0 ac (0 ha)	0 ac (0 ha).
4D. Hollenbeck Canyon (EO L)	Private	23 ac (9 ha)	23 ac (9 ha)	23 ac (9 ha)	0 ac (0 ha).
	State/Local	61 ac (25 ha)	61 ac (25 ha)	61 ac (25 ha)	0 ac (0 ha).
Total*		1,936 ac (783 ha)	1,850 ac (749 ha)	964 ac (390 ha)	72 ac (429 ha).

*Some columns may not sum exactly due to rounding of values.

Below, we present brief descriptions of the revised proposed subunits and reasons why they meet the definition of critical habitat for *Acanthomintha ilicifolia*. These revised subunit descriptions replace those provided in the March 14, 2007, proposed rule (72 FR 11945). California Natural Diversity Database (CNDDB) element occurrences are identified as EO in the subunit descriptions below.

Unit Descriptions

Subunit 1A, Palomar Airport (EO 70)

Subunit 1A was occupied by *Acanthomintha ilicifolia* at the time of listing. Subunit 1A contains several habitat patches known to support *A. ilicifolia* and contains the features essential for the conservation of the species. Subunit 1A is located in Carlsbad, California, northeast of the intersection of Palomar Airport Road and El Camino Real. Subunit 1A consists of 64 ac (26 ha) of land owned by the County of San Diego and 7 ac (3 ha) of private land. Subunit 1A meets our selection criteria because it supports a population on a unique soil type (criterion 1). This is the only area where *A. ilicifolia* is still known to occupy calcareous clay soils. The features essential to the conservation of the species may require special management considerations or protection in this subunit to address threats from exotic plant species and unauthorized recreational activities.

Subunit 1C, Manchester (EO 42, EO 28, and EO 54)

Subunit 1C was occupied by *Acanthomintha ilicifolia* at the time of listing. Subunit 1C contains several habitat patches known to support *A. ilicifolia* and contains the features essential for the conservation of the species. Subunit 1C is located in Encinitas, California, northeast of the intersection of Manchester Avenue and South El Camino Real. Subunit 1C consists of 92 ac (37 ha) of private land. Subunit 1C meets our selection criteria because it supports one of the most stable populations of *A. ilicifolia* (criterion 3). The features essential to the conservation of the species may require special management considerations or protection in this subunit to address threats from exotic plant species and unauthorized recreational activities.

The majority of the land that meets the definition of critical habitat in this area (72 ac (29 ha)) is in the Manchester Avenue Mitigation Bank. The Manchester Avenue Mitigation Bank is owned and managed by the Center for Natural Lands Management (CNLM). There is long-term management in place on this site to conserve several sensitive species, including *Acanthomintha ilicifolia* (Spiegelberg 2005, p. 1). The Manchester Avenue Mitigation Bank is covered by the Manchester Habitat Conservation Area Management Plan (Spiegelberg 2005). This plan provides for the management and monitoring of the portion of Subunit 1C owned by CNLM. Additionally, there is funding in place to provide for the long-term management of this area in a manner that will conserve *A. ilicifolia*. Therefore, we are considering the possibility of excluding 72 ac (29 ha) of Subunit 1C under section 4(b)(2) of the Act and soliciting public comment based on this consideration (see "Public Comments" section).

References Cited

A complete list of all references we cite in the proposed rule and this document is available on *http://www.regulations.gov*.

Author

The primary author of this notice is the staff of the Carlsbad Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as proposed to be amended at 72 FR 11945, March 14, 2007, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Critical habitat for *Acanthomintha ilicifolia* (San Diego thornmint) in § 17.96(a), which was proposed to be added on March 14, 2007, at 72 FR 11945, is proposed to be amended by revising paragraph (6)(i) and by revising paragraph (6)(iv), as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Lamiaceae: *Acanthomintha ilicifolia* (San Diego thornmint)

* * * * *

(6) * * *

(i) Subunit 1A. Land bounded by the following UTM NAD27 coordinates (E,N): 475760, 3666013; 475747, 3665994; 475724, 3665985; 475692, 3665974; 475699, 3665944; 475697, 3665944; 475678, 3665937; 475677, 3665937; 475667, 3665934; 475657, 3665931; 475655, 3665931; 475629, 3665949; 475547, 3665912; 475552, 3665862; 475586, 3665824; 475639, 3665823; 475697, 3665853; 475706, 3665850; 475706, 3665850; 475707, 3665847; 475709, 3665845; 475710, 3665842; 475711, 3665840; 475713, 3665837; 475714, 3665834; 475715, 3665832; 475716, 3665829; 475717, 3665826; 475718, 3665823; 475719, 3665821; 475720, 3665818; 475721, 3665815; 475721, 3665812; 475722, 3665809; 475723, 3665807; 475723, 3665804; 475724, 3665801; 475724, 3665798; 475725, 3665795; 475725, 3665792; 475726, 3665789; 475726, 3665787; 475726, 3665784; 475726, 3665781; 475726, 3665778; 475726, 3665775; 475726, 3665772; 475726, 3665769; 475726, 3665766; 475726, 3665763; 475726, 3665760; 475726, 3665758; 475725, 3665755; 475725, 3665752; 475725, 3665751; 475690, 3665758; 475660, 3665748; 475563, 3665702; 475501, 3665704; 475399, 3665720; 475354, 3665731; 475352, 3665670; 475356, 3665635; 475364, 3665617; 475351, 3665612; 475329, 3665607; 475298, 3665608; 475276, 3665597; 475267, 3665596; 475257, 3665597; 475244, 3665599; 475234, 3665595; 475221, 3665587; 475164, 3665590; 475133, 3665640; 475096, 3665684; 475097, 3665687; 475098, 3665697; 475100, 3665707; 475103, 3665716; 475107, 3665725; 475111, 3665735; 475114, 3665741; 475123, 3665756; 475124, 3665759; 475129, 3665767; 475135, 3665775; 475142, 3665783; 475148, 3665790; 475156, 3665797; 475161, 3665801; 475175, 3665813; 475178, 3665815; 475186, 3665821; 475195, 3665826; 475203, 3665831; 475212, 3665835; 475215, 3665836; 475216, 3665844; 475216, 3665854; 475218, 3665864; 475220, 3665873; 475223, 3665883; 475227, 3665892; 475231, 3665901; 475236, 3665910; 475241, 3665919; 475247, 3665927; 475253, 3665934; 475260, 3665942; 475267, 3665948; 475286, 3665965; 475286, 3665965; 475294, 3665972; 475302, 3665977; 475310, 3665983; 475319, 3665987; 475328, 3665991; 475337, 3665995; 475338, 3665995; 475372, 3666006; 475381, 3666009; 475390, 3666011; 475400, 3666013; 475410, 3666014; 475420, 3666014; 475430, 3666014; 475440, 3666013; 475450, 3666011; 475452, 3666011; 475478, 3666005; 475474, 3666011; 475472, 3666014; 475466, 3666022; 475461, 3666030; 475456, 3666039; 475452, 3666048; 475448, 3666057; 475445, 3666067; 475443, 3666077; 475441, 3666087; 475440, 3666096; 475440, 3666106; 475440, 3666116; 475441, 3666126; 475443, 3666134; 475446, 3666150; 475446, 3666152; 475448, 3666162; 475451, 3666171; 475455, 3666181; 475459, 3666190; 475464, 3666199; 475468, 3666205; 475479, 3666223; 475480, 3666225; 475486, 3666233; 475492, 3666241; 475496, 3666245; 475511, 3666260; 475514, 3666263; 475518, 3666267; 475517, 3666269; 475517, 3666272; 475517, 3666275; 475516, 3666278; 475516, 3666281; 475516, 3666284; 475516, 3666287; 475516, 3666289; 475516, 3666292; 475516, 3666295; 475516, 3666298; 475517, 3666301; 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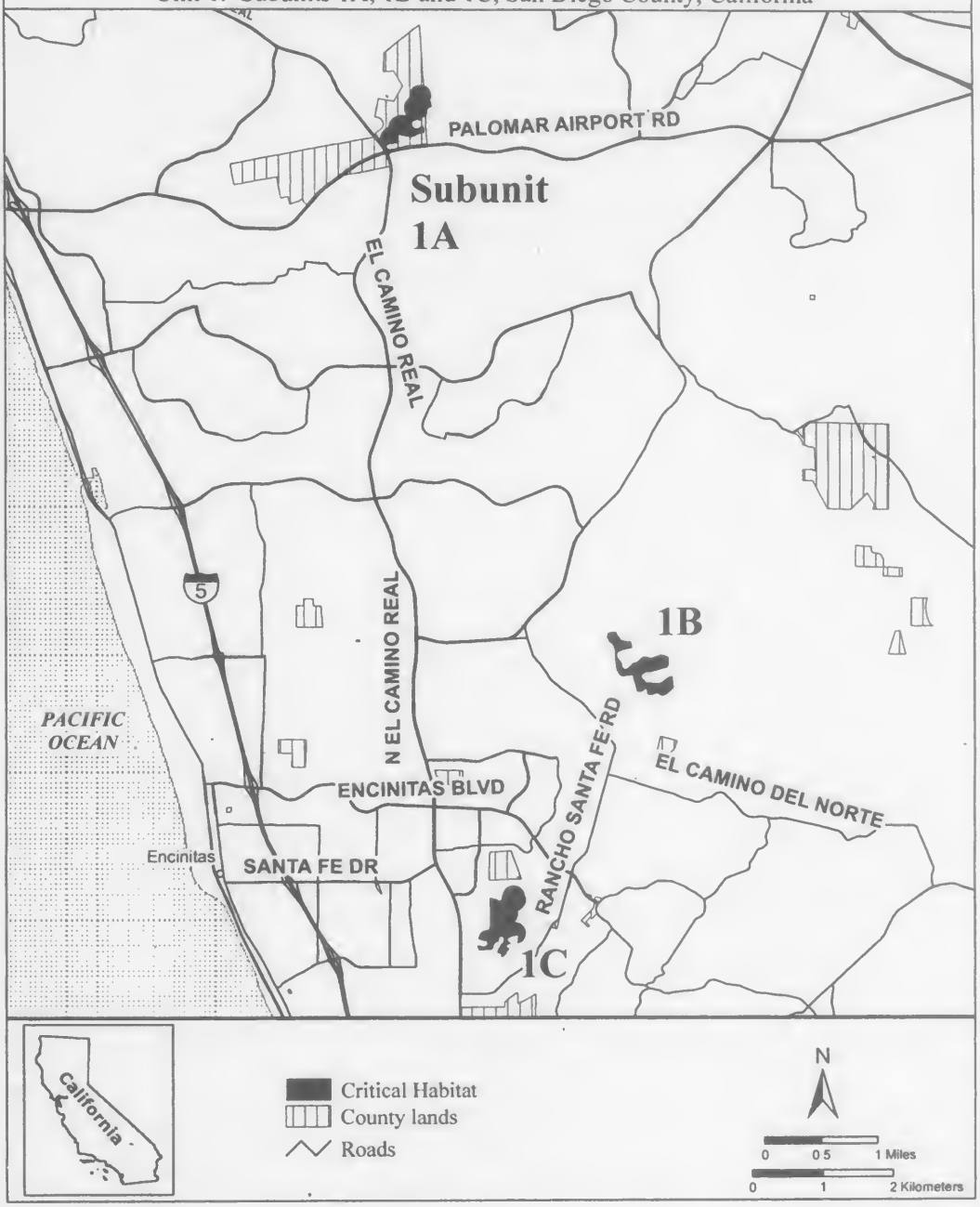
475814, 3666241; 475813, 3666238; 475812, 3666235; 475811, 3666233; 475810, 3666230; 475808, 3666227; 475807, 3666225; 475806, 3666222; 475806, 3666222; 475810, 3666213; 475814, 3666204; 475818, 3666195; 475821, 3666185; 475823, 3666176; 475825, 3666166; 475825, 3666166; 475828, 3666141; 475829, 3666132; 475829, 3666122; 475829, 3666118; 475791, 3666114; 475770, 3666086; 475762, 3666044.

* * * * *

(iv) Note: Map of Unit 1, subunits 1A, 1B, and 1C (Map 2), follows:

BILLING CODE 4310–55–P

Map 2
Critical Habitat for Acanthomintha ilicifolia (San Diego thornmint)
Unit 1: Subunits 1A, 1B and 1C, San Diego County, California



* * * * *

Dated: May 1, 2008.

Lyle Laverty,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E8–10499 Filed 5–12–08; 8:45 am]

BILLING CODE 4310–55–C

Notices

Federal Register
Vol. 73, No. 93
Tuesday, May 13, 2008

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Idaho Panhandle/Kootenai/Lolo National Forests; Lincoln and Sanders Counties, MT; Boundary and Bonner Counties, ID; and Pend Oreille County, WA; Forest Plan Amendments for Motorized Access Management within the Selkirk and Cabinet-Yaak Grizzly Bear Recovery Zones

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplemental environmental impact statement to amend land and resource management plans for the Idaho Panhandle, Kootenai and Lolo National Forests.

SUMMARY: The Forest Service will prepare a Supplemental Environmental Impact Statement (SETS) for Motorized Access Management within the Selkirk and Cabinet-Yaak Grizzly Bear Recovery Zones to present additional information on grizzly bear mortality and population trends and account for uncertainty in relevant grizzly bear research. The SEIS will include a detailed analysis of Alternative D Modified and Alternative E that reflect the current condition of habitat security for grizzly bears. The Notice of Availability of the Draft EIS was published in the **Federal Register** (66 FR 57717) on November 16, 2001 and notice of the Final EIS (67 FR 11692) was published on March 15, 2002. On March 24, 2004, the Record of Decision (ROD) was signed that amended the Forest Plans for the Kootenai, Lolo and Idaho Panhandle National Forests. The ROD amended the objectives, standards, and guidelines that address grizzly bear management within the Selkirk and Cabinet-Yaak Grizzly Bear Recovery Zones.

Alternative E was selected for implementation, with the incorporation of terms and conditions of the U.S. Fish and Wildlife Service's (USFWS) Biological Opinion.

On December 13, 2006, U.S. District Court Judge Donald Molloy ruled against the U.S. Forest Service and the U.S. Fish and Wildlife Service in a lawsuit brought by the Cabinet Resource Group, Great Bear Foundation, Idaho Conservation League, Natural Resources Defense Council, and Selkirk Conservation Alliance. Judge Molloy ordered that the 2002 Final Environmental Impact Statement and 2004 Record of Decision be set aside as contrary to law and that the matter be remanded to the Forest Service for preparation of a new environmental analysis that complies with 40 CFR 1502.22 (a) and (b). As a result of an action considered no longer valid, on May 17, 2007, the USFWS withdrew its Biological Opinion for the Forest Service's proposed action.

DATES: Scoping is not required for supplements to environmental impact statements (40 CFR 1 502.9(c)(4)). There was extensive public involvement in the development of the proposed action, the 2001 Draft ETS and the 2002 Final EIS, and the Forest Service is not inviting comments at this time. The agency expects to file a Draft SETS with the Environmental Protection Agency (EPA) and make it available for public, agency and tribal government comment in July 2008. A Final SETS is expected to be filed in April 2009.

ADDRESSES: Send written comments to Paul Bradford, Forest Supervisor, Kootenai National Forest, 31374 U.S. Hwy 2 West, Libby, MT 59923–3022.

FOR FURTHER INFORMATION CONTACT: Kirsten Kaiser, Grizzly Bear Access Amendment Interdisciplinary Team Leader (406) 283–7659.

Responsible Officials: Ranotta McNair, Idaho Panhandle National Forests-Forest Supervisor; Paul Bradford, Kootenai National Forest-Forest Supervisor; and Deborah Austin, Lob National Forest-Forest Supervisor.

SUPPLEMENTARY INFORMATION: The Forest Service will supplement the Final EIS for Motorized Access Management within the Selkirk and Cabinet-Yaak Grizzly Bear Recovery Zones to respond to the December 2006 court order. The SEIS will incorporate best and current scientific information available on grizzly bear mortality and population trends and account for the Wakkinen study's authors' uncertainty for bears' studied habitat. The SEIS will include a detailed analysis of Alternative D Modified and Alternative E that reflect the current condition of habitat security for grizzly bears. The analysis will result in a new decision that amends the Forest Plans of the Kootenai, Lolo and Idaho Panhandle National Forests; and the values that address grizzly bear management within the Selkirk and Cabinet-Yaak Recovery Zones.

The SEIS and the supporting environmental documents will be programmatic and will examine the effects of setting predetermined levels of human (motorized) access within grizzly bear recovery zones. Site-specific decisions on individual roads or trails will be addressed in project-level planning.

Purpose and Need for Action

The purpose and need for action is to amend the three Forest Plans to include a set of motorized access and security guidelines that meet the agency's responsibilities under the Endangered Species Act to conserve and contribute to recovery of grizzly bears.

More specifically, there were needs to comply with: (1) The 1994 Interagency Grizzly Bear Committee (IGBC) Task Force Report; (2) the 1995 Amended Biological Opinion and Incidental Take Statements on the Kootenai and Lob National Forest Land and Resource Management Plans; (3) the 1995 decision by the Chief of the Forest Service on the Appeal of the Kootenai Forest Plan; and (4) the Stipulations of a 2001 Settlement Agreement in a Lawsuit Challenging Implementation of the Interim Rule Set developed by the Selkirk/Cabinet-Yaak Grizzly Bear Subcommittee of the IGBC.

The Forest Supervisors are proposing to amend their respective Forest Plans regarding Forest Plan standards and monitoring requirements that respond to the recommendations of the Interim Access Management Strategy and Interim Access Management Rule Set developed by the Selkirk/Cabinet-Yaak Subcommittee of the IGBC. The decision to be made is whether to adopt the preferred alternative as designed and identified as Alterative E in the 2004 Record of Decision (ROD), or with different requirements, or to select another alternative.

This amendment would result in a new appendix to the Idaho Panhandle and Lolo National Forest Land and

Resource Management Plans (Forest Plans). It would result in an addendum to the Kootenai National Forest, Forest Plan, Appendix 8.

Copies of the environmental documents and 2004 ROD are available on the Kootenai National Forest internet Web site at: *http://www.fs.fed.us/r1/kootenai/projects/planning/documents/forest_plan/amendments/index.shtml.* Documents may also be requested by contacting Kirsten Kaiser, Team Leader, at 406–283–7659.

Preliminary Issues and Alternatives

Issues raised during the comment period on the DEIS centered around three main topics: (1) grizzly bear and best available science, specifically the science that was used in the environmental analysis and by the IGBC including the biological defensibility of the 55 percent Core, 33 percent OMRD and 26 percent TMRD standards; (2) reductions in motorized public access; and (3) impacts to employment and income.

Early Notice of Environmental Review

The Forest Supervisors are giving notice that the Idaho Panhandle, Kootenai, and Lolo National Forests are supplementing an existing environmental analysis for this proposed action so that interested or affected people can participate in the analysis and contribute to the final decision. The Forest Service is seeking comments from individuals, organizations, tribal governments, and Federal, State, and local agencies that are interested or may be affected by the proposed action. The draft SETS is intended to provide additional evaluation of current information on grizzly bears, and provide that information to the public. The public is invited to help identify issues and concerns related to the preferred alternative and the supplemental analysis documented in the draft SEIS.

Estimated Dates for Filing

The draft SEIS is expected to be filed with the EPA and to be available for public review in July 2008. The comment period on the draft SEIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**. The draft SEIS will be distributed to all parties that received the 2002 FEIS and Record of Decision as well as to those who expressed interest.

The final SEIS is scheduled to be completed by April 2009. In the final SEIS, the Forest Service is required to respond to comments received during the comment period that pertain to the environmental consequences discussed in the draft SEIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

The Reviewer's Obligation To Comment

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions [*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978)]. Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts [*Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)]. Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 90-day comment period so that comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the preferred alternative and the supplemental analysis, comments on the draft SEIS should be as specific as possible. It is also helpful if comments refer to specific pages or sections of the draft SEIS. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: May 1, 2008.

Paul Bradford,

Kootenai National Forest Supervisor

[FR Doc. E8–10408 Filed 5–12–08; 8:45 am]

BILLING CODE 3410–11–M

BROADCASTING BOARD OF GOVERNORS

Meeting

Date and Time: Tuesday, May 13, 2008, 2 p.m.–3 p.m.

Place: Radio Free Europe/Radio Liberty, Conference Room, 1201 Connecticut Ave., NW., Washington, DC 20036.

Closed Meeting: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded nonmilitary international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b(c) (2) and (6))

Contact Person for More Information: Persons interested in obtaining more information should contact Timi Nickerson Kenealy at (202) 203–4545.

Dated: May 6, 2008.

Timi Nickerson Kenealy,

Acting Legal Counsel.

[FR Doc. E8–10409 Filed 5–12–08; 8:45 am]

BILLING CODE 8610–01–M

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 29–2008]

Foreign–Trade Zone 234 - Gregg County, Texas, Application for Expansion

An application has been submitted to the Foreign–Trade Zones Board (the Board) by Gregg County, Texas, grantee of Foreign–Trade Zone 234, requesting authority to expand its zone to include a site in Kilgore, Texas, adjacent to the Shreveport–Bossier Customs and Border Protection port of entry. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on May 5, 2008.

FTZ 234 was approved on November 4, 1998 (Board Order 1003, 63 FR 63671, 11/16/98). On December 15, 2006, a minor boundary modification was approved to include an additional site in Longview, Gregg County, Texas. The zone project currently consists of two sites: *Site 1*: (239 acres) located at the Gregg County Airport; and, *Site 2*: (60 acres) located at 1320 East Harrison Road, Longview.

The applicant is now requesting authority to expand the general-

purpose zone to include the Synergy Park at Elder Lake (217 acres) located at 1000 Synergy Boulevard, Kilgore, Texas. The site is primarily owned by Kilgore Economic Development Corporation and will be designated as Site 3.

No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case–by-case basis.

In accordance with the Board's regulations, Claudia Hausler of the FTZ Staff is designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 14, 2008. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 28, 2008.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Gregg County Courthouse, 101 East Methvin Street, Suite 300, Longview, Texas 75601

Office of the Executive Secretary), Foreign–Trade Zones Board, U.S. Department of Commerce, Room 2111, 1401 Constitution Avenue, NW, Washington, DC 20230

For further information contact Claudia Hausler at *Claudia_Hausler@ita.doc.gov* or (202) 482–1379.

Dated: May 6, 2008.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–10657 Filed 5–12–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket T–2–2008]

Foreign–Trade Zone 26 Atlanta, GA, Application for Temporary/Interim Manufacturing Authority, Kia Motors Manufacturing Georgia, Inc. (Motor Vehicles), West Point, GA

An application has been submitted to the Executive Secretary of the Foreign–Trade Zones Board (the Board) by the Georgia Foreign–Trade Zone, Inc., grantee of FTZ 26, requesting temporary/interim manufacturing (T/IM) authority within FTZ 26 at the Kia Motors Manufacturing Georgia, Inc. (KMMG) facility in West Point, Georgia. The application was filed on May 7, 2008.

The KMMG facility (about 2,500 employees) is located at 700 Kia Parkway in West Point (Troup County), Georgia (Site 1 T1). Under T/IM procedures, KMMG would produce up to 350,000 light–duty passenger vehicles (sedans, sport utility vehicles, minivans) (HTSUS 8703.23, 8703.24) annually for the U.S. market and export. Foreign components that would be used in production (representing about 25% of total material inputs) include: oils (HTSUS 2710.11), paints (3208.10, 3209.90), plastic tubes/pipes/hoses (3917.31, 3917.40), plastic sheets/strips/plates (3919.90, 3921.90), rubber tubes/hoses (4009.11, 4009.31), rubber belts (4010.31, 4010.33), tires (4011.20), gaskets/washers/o–rings (4016.93, 4016.99), carpet sets (5703.20), safety glass (7007.11, 7007.21), mirrors (7009.10), tube fittings (7307.22, 7307.99), fasteners (7318.14), locks/keys (8301.20, 8301.40), engines (8407.34), engine parts (8409.91), pumps (8413.30), valves (8481.80), and bumpers (8708.10) (duty rates: free - 8.6%).

FTZ procedures could exempt KMMG from customs duty payments on foreign components used in export production (estimated to be 10% of plant shipments). On its domestic sales, KMMG would be able to choose the duty rate that applies to finished passenger vehicles (2.5%) for the foreign inputs noted above that have higher rates. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following address: Office of the Executive Secretary, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002. For further information, contact Pierre Duy at *pierre_duy@ita.doc.gov*, or (202) 482–1378. The closing period for receipt of comments is June 12, 2008.

A copy of the application will be available for public inspection at the Office of the Foreign–Trade Zones Board's Executive Secretary at the address listed above.

Dated: May 7, 2008.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–10653 Filed 5–12–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–853, A–570–937]

Citric Acid and Certain Citrate Salts from Canada and the People's Republic of China: Initiation of Antidumping Duty Investigations

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

DATES: *Effective Date:* May 13, 2008.

FOR FURTHER INFORMATION CONTACT: Terre Keaton Stefanova (Canada) or Hallie Zink (People's Republic of China), AD/CVD Operations, Office 2 and China/NME Group, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1280 or (202) 482–6907, respectively.

SUPPLEMENTARY INFORMATION:

The Petitions

On April 14, 2008, the Department of Commerce (the Department) received petitions concerning imports of citric acid and certain citrate salts from Canada (Canada petition) and the People's Republic of China (PRC) (PRC petition) filed in proper form by Archer Daniels Midland Company, Cargill, Incorporated, and Tate & Lyle Americas, Inc. (collectively, the petitioners). *See* the Petitions on Citric Acid and Certain Citrate Salts from Canada and the PRC filed on April 14, 2008. On April 17, 2008, the Department issued a request for additional information and clarification of certain areas of the petitions. Based on the Department's request, the petitioners filed supplements to the petitions for both countries on April 22, 2008 (Supplement to the Petition). The Department requested further clarifications from the petitioners by phone. *See* Memorandum to the File: Conference Call Regarding Scope Language, Petition for the Imposition of Antidumping and Countervailing Duties: Citric Acid and Certain Citrate Salts from Canada and the PRC, dated April 28, 2008. On May 1, 2008, the petitioners filed a revised scope. *See Citric Acid and Certain Citrate Salts from Canada and the People's Republic of China; Revision of Scope Definition*, dated May 1, 2008.

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that imports of citric acid and certain citrate salts from Canada and the PRC are being, or

are likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Act, and that such imports materially injure, or threaten material injury to, an industry in the United States.

The Department finds that the petitioners filed these petitions on behalf of the domestic industry because the petitioners are interested parties as defined in section 771(9)(C) of the Act, and they have demonstrated sufficient industry support with respect to the investigations that they are requesting the Department to initiate (*see* "Determination of Industry Support for the Petitions" below).

Scope of Investigations

The scope of these investigations includes all grades and granulation sizes of citric acid, sodium citrate, and potassium citrate in their unblended forms, whether dry or in solution, and regardless of packaging type. The scope also includes blends of citric acid, sodium citrate, and potassium citrate; as well as blends with other ingredients, such as sugar, where the unblended form(s) of citric acid, sodium citrate, and potassium citrate constitute 40 percent or more, by weight, of the blend. The scope of these investigations also includes all forms of unrefined calcium citrate, including dicalcium citrate monohydrate, and tricalcium citrate tetrahydrate, which are intermediate products in the production of citric acid, sodium citrate, and potassium citrate. The scope of these investigations includes the hydrous and anhydrous forms of citric acid, the dihydrate and anhydrous forms of sodium citrate, otherwise known as citric acid sodium salt, and the monohydrate and monopotassium forms of potassium citrate. Sodium citrate also includes both trisodium citrate and monosodium citrate, which are also known as citric acid trisodium salt and citric acid monosodium salt, respectively. Citric acid and sodium citrate are classifiable under 2918.14.0000 and 2918.15.1000 of the Harmonized Tariff Schedule of the United States (HTSUS), respectively. Potassium citrate and calcium citrate are classifiable under 2918.15.5000 of the HTSUS. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under 3824.90.9290 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Comments on Scope of Investigations

During our review of the petitions, we discussed the scope with the petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments by May 27, 2008, the next business day after 20 calendar days from the date of signature of this notice. Comments should be addressed to Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determinations.

Comments on Product Characteristics for Antidumping Duty Questionnaires

We are requesting comments from interested parties regarding the appropriate physical characteristics of citric acid and certain citrate salts to be reported in response to the Department's antidumping questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to more accurately report the relevant factors and costs of production, as well as to develop appropriate product comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate listing of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as (1) general product characteristics and (2) the product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, while there may be some physical product characteristics utilized by manufacturers to describe citric acid and certain citrate salts, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in product matching. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the antidumping duty questionnaires, we must receive comments at the above-referenced address by May 27, 2008. Additionally, rebuttal comments must be received by June 3, 2008.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc.* v. *United States*, 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp. Ltd.* v.

United States, 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioners do not offer a definition of domestic like product distinct from the scope of the investigations. Based on our analysis of the information submitted on the record, we have determined that citric acid and certain citrate salts (unrefined calcium citrate, sodium citrate, and potassium citrate) constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, *see* Antidumping Duty Investigation Initiation Checklist: Citric Acid and Certain Citrate Salts from Canada (Canada Initiation Checklist), and Antidumping Duty Investigation Initiation Checklist: Citric Acid and Certain Citrate Salts from the PRC (PRC Initiation Checklist) at Attachment II (Industry Support), on file in the Central Records Unit (CRU), Room 1117 of the main Department of Commerce building.

Our review of the data provided in the petitions, supplemental submissions, and other information readily available to the Department indicates that the petitioners have established industry support. First, the petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling). *See* Section 732(c)(4)(D) of the Act. Second, the domestic producers have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the petitions account for at least 25 percent of the total production of the domestic like product. Finally, the domestic producers have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petitions. Accordingly, the Department determines that the petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See* Canada Initiation Checklist and PRC Initiation Checklist at Attachment II (Industry Support).

The Department finds that the petitioners filed the petitions on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and they have demonstrated sufficient industry support with respect to the antidumping investigations that they are requesting the Department initiate. *See* Canada Initiation Checklist and PRC Initiation Checklist at Attachment II (Industry Support).

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured by reason of the imports of the subject merchandise sold at less than normal value (NV). The petitioners contend that the industry's injured condition is illustrated by the reduced market share, reduced production and capacity utilization, reduced employment, underselling and price depressing and suppressing effects, lost revenue and sales, a decline in financial performance, and an increase in import penetration. The Department has assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and the Department determines that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* Canada Initiation Checklist and PRC Initiation Checklist at Attachment III.

Period of Investigations

In accordance with 19 CFR 351.204(b), because these petitions were filed on April 14, 2008, the anticipated period of investigation (POI) is April 1, 2007, through March 31, 2008, for Canada, and October 1, 2007, through March 31, 2008, for the PRC.

Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value upon which the Department has based its decision to initiate investigations with respect to Canada and the PRC. The sources of data for the deductions and adjustments relating to U.S. price and NV are discussed in greater detail in the Canada Initiation Checklist and the PRC Initiation Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act, we may reexamine the information and revise the margin calculations, if appropriate.

Canada

Export Price

The petitioners calculated export price (EP) based on a POI price quote for subject merchandise produced by Jungbunzlauer Canada Inc. (JBL Canada), a potential Canadian respondent. The petitioners made adjustments for U.S. inland freight and brokerage and handling expenses. To calculate the transportation charges, the petitioners obtained freight estimates for transporting the subject merchandise by truck from the location of JBL Canada to the location of JBL Canada's U.S. customer. The petitioners obtained an estimate for brokerage fees related to crossing the border, by truck, from Canada to the United States. See Petition, Volume II at pages 10 through 13, and Exhibits II–6 and II–7; and Supplement to the Petition.

Normal Value

The petitioners calculated NV based on: (1) A published POI list price for citric acid in eastern Canada from a Canadian chemical industry publication; and (2) a POI price quote from a Canadian purchaser of subject merchandise, adjusted for a distributor mark-up amount. The petitioners adjusted both starting prices for freight expenses, calculated using a rate obtained from a trucking company that operates in Canada. The petitioners made a circumstance-of-sale (COS) adjustment to the home market prices for differences in imputed credit expenses between the Canadian and U.S. markets. The petitioners' calculated home market and U.S. imputed credit expenses using prime rates from the Bank of Canada and the U.S. Federal Reserve, respectively. We revised the petitioners' margin calculations to correct certain errors in the application of the COS adjustment for credit expenses. See Petition, Volume II, Supplement to the Petition, Volume II and Canada Initiation Checklist and Checklist Attachment V: Revised Margin Calculations.

Sales-Below-Cost Allegation

The petitioners provided information demonstrating reasonable grounds to believe or suspect that sales of citric acid in the Canadian market were made at prices below the fully absorbed cost

of production (COP), within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation. The Department's practice is to consider allegations of below-cost sales in the aggregate for a foreign country. *See Sodium Metal from France: Notice of Initiation of an Antidumping Duty Investigation*, 72 FR 65295, 65297 (November 20, 2007).

Cost of Production

Pursuant to section 773(b)(3) of the Act, COP consists of the cost of manufacturing (COM), selling, general and administrative (SG&A) expenses, and packing. The petitioners calculated COM and packing based on a U.S. producer's cost experience, adjusted for known differences to manufacture citric acid in Canada using publicly available data since actual Canadian cost information was not reasonably available to the petitioners. To calculate an SG&A rate, including financial expenses, the petitioners relied on cost data for a U.S. producer of citric acid. We recalculated SG&A and interest expenses using the 2007 financial statements for Corn Products International (CPI), a company with substantial operations in Canada and in the same general industry as JBL Canada. Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Constructed Value (CV)

Pursuant to section 773(e) of the Act, CV consists of the COM, SG&A expenses, financial expenses, packing expenses and profit.

Consistent with their calculation of COP above, the petitioners calculated COM and packing based on a U.S. producer's cost experience, adjusted for known differences to manufacture citric acid in Canada using publicly available data. See Canada Initiation Checklist for details of the calculation of COM. To calculate an SG&A rate, including financial expenses, the petitioners relied on cost data for a U.S. producer of citric acid. To calculate profit, the petitioners relied on the financial statements of CPI because it has substantial operations in Canada and is in the same general industry as JBL Canada. See Volume II of the Petition at pages 9 and 10, and Exhibit II–18, dated April 14, 2008. To be consistent with the calculation of CV profit, we recalculated SG&A and financial expenses using CPI's financial statements. See Canada Initiation Checklist.

PRC

Export Price

The petitioners calculated the EP based on official U.S. import unit values for citric acid from the PRC during October 2007–February 2008, imported under the HTS subheading 2918.14.0000 (citric acid).[1] *See* Petition, Volume III, at page 12, Supplement to the Petition, at Revised Exhibit III–22, and PRC Initiation Checklist. Official U.S. import unit values for subject merchandise imported under HTS 2918.14.0000 do not differentiate between anhydrous and monohydrate forms of citric acid. Using PIERS data for the same time period, the petitioners were able to determine that the majority of citric acid imported under HTS 2918.14.0000, entered in the form of anhydrous citric acid. Because, however, some of the subject merchandise entered as citric acid monohydrate, the petitioners explain that it is necessary to adjust the unit vale to reflect that citric acid monohydrate is relatively cheaper than the anhydrous form of the merchandise. *See* Petition, Volume III, at page 12, and PRC Initiation Checklist. Therefore, the petitioners converted the official U.S. import unit values for citric acid, imported under HTS 2918.14.0000, from the monohydrate form of citric acid to the anhydrous equivalent and used that figure to calculate an average unit, free on board ("FOB"), value. *See* Supplement to the Petition, at Revised Exhibit III–17, and PRC Initiation Checklist.

The petitioners calculated foreign brokerage and handling using Indian data because Indonesian data was not readily available. See Petition, Volume III, at page 14, and Supplement to the Petition, at Revised Exhibit III–18, and PRC Initiation Checklist. The petitioners inflated their calculated foreign brokerage and handling rate to the POI using the Wholesale Price Index (WPI) for India from the International Financial Statistics (IFS) of the International Monetary Fund (IMF) and converted imports valued in Rupees/kilogram (Rs/Kg) to U.S. Dollars/kilogram (US$/Kg) using the exchange rates on the Department's Web site at: *http://ia.ita.doc.gov/exchange/index.html*. *See* Supplement to the Petition, Volume III, at pages 2–3, and Revised Exhibits III–18–21, and PRC Initiation Checklist. The petitioners then deducted the foreign brokerage and handling charge from the anhydrous equivalent average unit value. *See* Supplement to the Petition, Volume III, at Revised Exhibit III–21, and PRC Initiation Checklist. The petitioners did not adjust EP for inland freight charges in China. *See* Petition, Volume III, at page 14, and PRC Initiation Checklist.

Normal Value

The petitioners note that the Department's long-standing treatment of the PRC as a non-market economy (NME) country remains in effect until revoked by the Department, and notes that no such revocation determination has been made to date. *See* Volume III of the Petition, at page 1, and PRC Initiation Checklist. The Department has previously examined the PRC's market status and determined that NME status should continue for the PRC. *See* Memorandum from the Office of Policy to David M. Spooner, Assistant Secretary for Import Administration, regarding The People's Republic of China Status as a Non-Market Economy, dated May 15, 2006.[2] In addition, in recent investigations, the Department has continued to determine that the PRC is an NME country. *See Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007); *Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China*, 72 FR 9508 (March 2, 2007).

In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended (Act), the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product is appropriately based on factors of production valued in a surrogate market economy country, in accordance with section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the PRC's NME status and

[1] As reflected in the official U.S. import unit values, the bulk of U.S. imports of citric acid from the PRC (*i.e.*, citric acid (HTS 2918.14.0000), sodium citrate (HTS 2818.15.1000), and other salts and esters of citric acid (2918.15.5000)), entered under HTS subheading 2918.14.0000 (citric acid). *See* Petition, Volume I, at Exhibit I–10.

[2] This document is available online at *http://ia.ita.doc.gov/download/prc-nme-status/prc-nme-status-memo.pdf*.

the granting of separate rates to individual exporters.

The petitioners assert that of the five countries normally considered as alternative surrogate market economies for the PRC, *i.e.*, India, Egypt, Indonesia, the Philippines and Sri Lanka, only Indonesia appears to have production of subject merchandise. *See* Petition, Volume I, at Exhibit I–2, and Volume III, at page 2, and PRC Initiation Checklist. The petitioners note that although the Department has regularly used India as its preferred surrogate country for determining the NV of merchandise from the PRC, they were unable to identify any current producers of subject merchandise in India. *See* Petition, Volume III, at page 2, Supplement to the Petition, Volume III, at pages 3–4, and Revised Exhibit III–22, and PRC Initiation Checklist.

According to the petitioners, however, Indonesia is a significant producer of subject merchandise. Further, a significant producer of subject merchandise in Indonesia, Budi Acid Jaya PT (Budi Jaya), employs similar manufacturing techniques, equipment and economics to that of a large Chinese producer of subject merchandise. *See* Petition, Volume III, at page 4, Supplement to the Petition, Volume III, at pages 4–6, and PRC Initiation Checklist. In addition, the petitioners contend that Indonesia is a regular importer of corn (which, the petitioners state, is the principal input of the subject merchandise in China), and information on raw materials, energy inputs and import data for additional bulk chemicals are readily available for Indonesia. *See* Petition, Volume III, at pages 4–5, and PRC Initiation Checklist. Thus, the petitioners have used Indonesia as the surrogate country for China. However, after initiation of the investigation, interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value factors of production within 40 days after the date of publication of the preliminary determination.

The petitioners provided dumping margin calculations using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. *See* Petition, Volume III, at page 5, and PRC Initiation Checklist. The petitioners calculated NV, with adjustments made for known differences, based on their own experience and knowledge, which the petitioners state, reflects the experience of a large Chinese producer of subject merchandise. *See* Petition, Volume III, pages at 5–7, and PRC Initiation Checklist. As noted above, the petitioners made adjustments in their calculation of NV to take into account known differences in the PRC production process, which included adjustments related to corn usage, labor hours and usage factors for calcium carbonate and sulphuric acid. *See* Petition, Volume III, at page 6, Supplement to the Petition, Volume III, at page 12 and Revised Exhibits III–6 and III–7, and PRC Initiation Checklist.

The petitioners valued the factors of production based on reasonably available, public surrogate country data, including Indonesian government import statistics. *See* Petition, Volume III, at page 8, and PRC Initiation Checklist. The petitioners sourced the Global Trade Atlas for the latest available six-month period, *i.e.*, July 2007–December 2007, excluding values from countries previously determined by the Department to be NME countries, as well as imports into Indonesia from India, the Republic of Korea, and Thailand because they maintain broadly available, non-industry specific, export subsidies. Where the petitioners were unable to find imports into Indonesia for a particular input during that time period, they used imports during the next most recent time period. *See* Supplement to the Petition. Volume III, at Revised Exhibit III–8, and PRC Initiation Checklist.

The petitioners also relied on Global Trade Atlas data to value packing inputs. *See* Petition, Volume III, at page 11 and Exhibit III–16, Supplement to the Petition, Volume III, at page 10, and Revised Exhibit III–8, and PRC Initiation Checklist. The petitioners valued electricity using a World Bank publication, *Electricity for All: Options for Increasing Access in Indonesia*. Specifically, the petitioners used the Batam and Tarakan average electricity tariffs from 2004, the most recent time period for which data is available. *See* Petition, Volume III, at pages 9–10, and Exhibit III–12, Supplement to the Petition, at Revised Exhibit III–12, and PRC Initiation Checklist. The petitioners valued steam using a methodology developed in *Hot-Rolled Steel from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 66 FR 22183 (May 3, 2001), and accompanying Factors of Production Memorandum at Exhibit 7, and used in *Tissue Paper from the PRC*. [3] *See* Petition, Volume III, at page 10, Supplement to the Petition, at Revised Exhibit III–13, and PRC Initiation Checklist. The petitioners valued water based on information contained in a United Nations Report from 2006 which discusses the average water tariff in Jakarta for large factories. *See* Petition, Volume III, at page10, Supplement to the Petition, at Revised Exhibit III–14, and PRC Initiation Checklist.

The petitioners valued labor using US$ 0.83/hour labor rate for the PRC currently available for 2004 on the Department's Web site. *See* Supplement to the Petition, Volume III, at pages 8–9, and Revised Exhibit III–11, and PRC Initiation Checklist. For the surrogate financial expenses for factory overhead, SG&A, and profit, the petitioners relied on the financial ratios of Budi Jaya, a significant producer of subject merchandise in Indonesia. *See* Petition, Volume I, at Exhibit I–2, Volume III, at page 4, and Exhibit III–3 at 30, 41, 42, and PRC Initiation Checklist.

Where the petitioners were unable to find input prices contemporaneous with the POI, they adjusted for inflation using the WPI for Indonesia, as published in IFS by the IMF. *See* Supplement to the Petition, at page 11, and Revised Exhibit III–9, and PRC Initiation Checklist. For exchange rates to convert Indonesian rupiah to U.S. dollars, the petitioners averaged the foreign currency exchanges rates, as provided on the Department's Web site, for each day of the POI. Monetary conversions were applied only after having first applied a rupiah-based inflator to the original source rupiah value, as necessary. *Id.*, at 11 and Revised Exhibit III–10, and PRC Initiation Checklist.

Fair-Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of citric acid and certain citrate salts from Canada and the PRC are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of EP to NV that we revised as discussed above, the estimated dumping margins for Canada are 22.91 percent (EP-to-NV comparison where NV is based on a home market price quote), 111.83 percent (EP-to-NV comparison where NV is based on a published list price), and 57.06 percent (EP-to-CV comparison). Based on a comparison of EP to NV, the estimated

[3] *Certain Tissue Paper Products and Certain Crepe Paper Products From the People's Republic of China: Notice of Preliminary Determinations of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination for Certain Tissue Paper Products*, 69 FR 56407 (September 21, 2004) ("*Tissue Paper from the PRC*").

dumping margin for the PRC is 156.87 percent.

Initiation of Antidumping Investigations

Based upon the examination of the petitions on citric acid and certain citrate salts from Canada and the PRC and other information reasonably available to the Department, the Department finds that these petitions meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of citric acid and certain citrate salts from Canada and the PRC are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act, unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Respondent Selection

Canada

For Canada, the Department intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. import during the POI. We intend to release the CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO within five days of publication of this **Federal Register** notice, and make our decision regarding respondent selection within 20 days of publication of this notice. The Department invites comments regarding the CBP data and respondent selection within 10 days of publication of this **Federal Register** notice.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Department's Web site at *http://ia.ita.doc.gov/apo*.

PRC

For the PRC, the Department will request quantity and value information from all known exporters and producers identified, with complete contact information, in the petition. The quantity and value data received from NME exporters/producers will be used as the basis to select the mandatory respondents.

The Department requires that the respondents submit a response to both the quantity and value questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. *See Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 73 FR 10221, 10225 (February 26, 2008); and *Initiation of Antidumping Duty Investigation: Certain Artist Canvas From the People's Republic of China*, 70 FR 21996, 21999 (April 28, 2005). Appendix I of this notice contains the quantity and value questionnaire that must be submitted by all NME exporters/producers no later than May 27, 2008. In addition, the Department will post the quantity and value questionnaire along with the filing instructions on the Import Administration Web site, at *http://ia.ita.doc.gov/ia-highlights-and-news.html*. The Department will send the quantity and value questionnaire to those PRC companies identified in the petition, Volume I, at Exhibit I–8.

Separate Rates

In order to obtain separate-rate status in NME investigations, exporters and producers must submit a separate-rate status application. *See Certain Circular Welded Carbon Quality Steel Line Pipe from the Republic of Korea and the People's Republic of China: Initiation of Antidumping Duty Investigations*, 73 FR 23188, 23193 (April 29, 2008) (*Certain Circular Welded Carbon Quality Steel Line Pipe from the PRC*). The specific requirements for submitting the separate-rate application in this investigation are outlined in detail in the application itself, available on the Department's Web site at *http://ia.ita.doc.gov/ia-highlights-and-news.html* on the date of publication of this initiation notice in the **Federal Register**. The separate-rate application will be due sixty (60) days from the date of publication of this initiation notice in the **Federal Register**.

Use of Combination Rates in an NME Investigation

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. The Separate Rates/Combination Rates Bulletin states:

> [w]hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of combination rates because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.

See Certain Circular Welded Carbon Quality Steel Line Pipe from the PRC.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the petitions have been provided to the representatives of the Governments of Canada and the PRC. Because of the particularly large number of producers/exporters identified in the petitions, the Department considers the service of the public version of the petitions to the foreign producers/exporters satisfied by the delivery of the public version to the Governments of Canada and the PRC, consistent with 19 CFR 351.203(c)(2).

International Trade Commission (ITC) Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the International Trade Commission

The ITC will preliminarily determine, no later than May 27, 2008, whether there is a reasonable indication that imports of citric acid and certain citrate salts from Canada and the PRC materially injure, or threaten material injury to, a U.S. industry. A negative ITC determination covering all classes or kinds of merchandise covered by the petitions would result in the investigations being terminated. Otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: May 5, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix I

Where it is not practicable to examine all known exporters/producers of subject merchandise, section 777A(c)(2) of the Tariff Act of 1930, as amended, permits us to investigate (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume and value of the subject

merchandise that can reasonably be examined.

In the chart below, please provide the total quantity and total value of all your sales of merchandise covered by the scope of this investigation (see "Scope of Investigation" section of this notice), produced in the PRC, and exported/ shipped to the United States during the period October 1, 2007, through March 31, 2007.

Market	Total quantity in metric tons	Terms of sale	Total value
United States			
1. Export Price Sales			
2. a. Exporter Name			
b. Address			
c. Contact			
d. Phone No.			
e. Fax No.			
3. Constructed Export Price Sales			
4. Further Manufactured			
Total Sales			

Total Quantity:

• Please report quantity on a metric ton basis. If any conversions were used, please provide the conversion formula and source.

Terms of Sales:

• Please report all sales on the same terms (e.g., free on board at port of export).

Total Value:

• All sales values should be reported in U.S. dollars. Please indicate any exchange rates used and their respective dates and sources.

Export Price Sales:

• Generally, a U.S. sale is classified as an export price sale when the first sale to an unaffiliated customer occurs before importation into the United States.

• Please include any sales exported by your company directly to the United States.

• Please include any sales exported by your company to a third-country market economy reseller where you had knowledge that the merchandise was destined to be resold to the United States.

• If you are a producer of subject merchandise, please include any sales manufactured by your company that were subsequently exported by an affiliated exporter to the United States.

• Please do not include any sales of subject merchandise manufactured in Hong Kong in your figures.

Constructed Export Price Sales:

• Generally, a U.S. sale is classified as a constructed export price sale when the first sale to an unaffiliated customer occurs after importation. However, if the first sale to the unaffiliated customer is made by a person in the United States affiliated with the foreign exporter, constructed export price applies even if the sale occurs prior to importation.

• Please include any sales exported by your company directly to the United States;

• Please include any sales exported by your company to a third-country market economy reseller where you had knowledge that the merchandise was destined to be resold to the United States.

• If you are a producer of subject merchandise, please include any sales manufactured by your company that were subsequently exported by an affiliated exporter to the United States.

• Please do not include any sales of subject merchandise manufactured in Hong Kong in your figures.

Further Manufactured:

• Sales of further manufactured or assembled (including re-packaged) merchandise is merchandise that undergoes further manufacture or assembly in the United States before being sold to the first unaffiliated customer.

• Further manufacture or assembly costs include amounts incurred for direct materials, labor and overhead, plus amounts for general and administrative expense, interest expense, and additional packing expense incurred in the country of further manufacture, as well as all costs involved in moving the product from the U.S. port of entry to the further manufacturer.

[FR Doc. E8–10515 Filed 5–9–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–840]

Lightweight Thermal Paper from Germany: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

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

SUMMARY: The U.S. Department of Commerce (the Department) preliminarily determines that lightweight thermal paper (LWTP) from Germany is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are listed in the "Suspension of Liquidation" section of this notice. Interested parties are invited to comment on this preliminary determination. Pursuant to requests from interested parties, we are postponing for 60 days the final determination and extending the provisional measures from a four–month period to not more than six months. Accordingly, we will make our final determination not later than 135 days after publication of the preliminary determination.

EFFECTIVE DATE: May 13, 2008.

FOR FURTHER INFORMATION CONTACT: Cindy Robinson or George McMahon, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3797 or (202) 482–1167, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 29, 2007, the Department initiated the antidumping duty investigations of LWTP from Germany, the Republic of Korea, and the People's Republic of China (PRC). *See Notice of Initiation of Antidumping Duty Investigations: Lightweight Thermal Paper from Germany, the Republic of Korea, and the People's Republic of China*, 72 FR 62430 (November 5, 2007) (*Initiation Notice*). The petitioner in this investigation is Appleton Papers, Inc.

The Department set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*. *See Initiation Notice*, 72 FR at 62431; *see also Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997). On November 19, 2007, the petitioner submitted scope comments in which it requested that the Department add several additional categories from the Harmonized Tariff Schedule of the United States (HTSUS) to the scope of the investigations. In response, on December 18, 2007, the Department requested comments from interested parties regarding the petitioner's proposed scope modification. However, no reply comments were received in any of the aforementioned respective cases. *See Scope Comments* section, below.

On November 14, 2007, the petitioner submitted comments on the proposed model–matching criteria. The Department requested comments on model–matching criteria in its letter to the interested parties, dated November 16, 2007. In response, the Department received several comments on model–matching criteria from certain interested parties. See Model Match section, below.

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. The Department identified a large number of producers and exporters of LWTP in Germany and determined that it was not practicable to examine each known exporter/producer of the subject merchandise, as provided in section 777A(c)(1) of the Act. Thus, we selected for examination Papierfabrik August Koehler AG and Koehler America, Inc. (collectively, Koehler). This particular exporter/producer accounts for the largest volume of subject merchandise exported to the United States from Germany during the period of investigation (POI). *See* section 777A(c)(2)(B) of the Act; *See* Memorandum from Melissa Skinner, Director, Office 3, to Deputy Assistant Secretary Stephen J. Claeys, entitled "Selection of Respondent(s) for Individual Review," dated December 4, 2007, on file in the Central Records Unit (CRU), Room 1117 of the main Department building. We subsequently issued the antidumping duty questionnaire[1] to Koehler on December 7, 2007.

On November 16, 2007, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of certain lightweight thermal paper from Germany and the PRC that are alleged to be sold in the United States at LTFV. The ITC also determined that imports of LTWP from the Republic of Korea were negligible, and therefore, terminated the investigation with regard to the Republic of Korea. *See Certain Lightweight Thermal Paper from China, Germany, and Korea, Investigation Nos. 701–TA–451 and 731–TA–1126–1128 (Preliminary)*, 72 FR 70343 (December 11, 2007). The ITC notified the Department of these findings.

In the petition filed on September 19, 2007, the petitioner provided information demonstrating reasonable grounds to believe or suspect that sales of LWTP in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a sales–below-cost investigation. *See* September 19, 2007, Petition, Volume III: Germany Dumping Allegation, at page 8. We found that the petitioner provided a reasonable basis to believe or suspect that German producers were selling LWTP in Germany at prices below the COP. *See* section 773(b)(2)(A)(i) of the Act. Accordingly, the Department initiated a country–wide sales–below-cost investigation and requested that Koehler respond to section D of the Department's questionnaire. *See Initiation Notice*; *see also*, the Department's questionnaire issued to Koehler on December 7, 2007.

[1] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales or, if the home market is not viable, of sales in the most appropriate third-country market. Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under investigation. Section E requests information on further manufacturing.

On January 14, 2008, the Department received the Section A questionnaire response from Koehler. On January 30, 2008, the Department received the Sections B, C and D responses from Koehler. On February 11, 2008, the Department received comments from the petitioner on the Sections A through D responses for Koehler. After reviewing the Sections A through D responses from Koehler, the Department issued supplemental questionnaires to Koehler. On March 27, 2008, the petitioner submitted additional comments on Koehler's questionnaire and supplemental questionnaire responses. The Department issued additional supplemental questions, after reviewing Koehler's supplemental questionnaire response.

On February 6, 2008, the petitioner requested that the Department postpone the preliminary determination by 50 days and requested that the Department extend the deadline for filing a targeted dumping allegation for Germany. On February 25, 2008, the Department advised the petitioner that the deadline to file a targeted dumping allegation would be 30 days from any revised deadline for the preliminary determination. *See* Memorandum from George McMahon to the File, entitled "Extension of the Deadline to File a Targeted Dumping Allegation in the Antidumping Duty Investigations on Lightweight Thermal Paper from Germany and the People's Republic of China," dated February 25, 2008. On February 25, 2008, the Department postponed the preliminary determination by 50 days. *See Lightweight Thermal Paper from Germany and the People's Republic of China: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 73 FR 9997 (February 25, 2008).

Targeted Dumping Allegation

The petitioner submitted an allegation of targeted dumping with respect to Koehler on March 27, 2008. *See* section 777A(d)(1)(B) of the Act. In its allegation, the petitioner asserts that there are patterns of export prices (EPs), or constructed export prices (CEPs) for comparable merchandise that differ significantly among purchasers, regions, and time periods. Specifically, the petitioner based its allegation on four targeted purchasers, the west region as defined by the Census Bureau, and the last four months of the POI. The Department requested more information from the petitioner with respect to its targeted dumping allegation. See Letter from James Terpstra to the petitioner, dated April 8, 2008. On April 14, 2008,

the petitioner provided its response to the Department's request for additional information regarding its targeted dumping allegation.

On April 16, 2008, the Department received comments from Koehler objecting to the targeted dumping allegation on the basis that it does not meet the statutory standard for targeted dumping. Specifically, Koehler argues that the petitioner failed to: 1) explain any statistical tests that should be applied, 2) demonstrate a pattern exists within the context of market conditions, 3) explain why a two–percent threshold is significant for all three types of alleged targeting, 4) explain why differences cannot be taken into account using the average–to-average analysis, 5) explain why the Department should ignore the statutory application of the term "or" (instead filing allegations based on purchasers, regions, *and* time periods), and 6) justify the counterintuitive conclusion that, when all three targeting allegations are considered together, over half of Koehler's sales are allegedly targeted. On April 23, 2008, the Department also received comments from Mitsubishi HiTec Paper Flensburg GmbH and Mitsubishi HiTec Paper Bielefeld GmbH, and Mitsubishi International Corporation (collectively, Mitsubishi) objecting to the targeted dumping allegation. First, Mitsubishi objects to the use of zeroing to calculate dumping margins in any situation. Second, Mitsubishi asserts that the threshold requirements advocated by the petitioner are unworkable. Finally, Mitsubishi argues that, should the Department find that Koehler targeted sales of LWTP during the POI, the Department may not apply any weighted–average margins calculated for sales within the targeted subset to Mitsubishi.

New Targeted Dumping Test applied in Steel Nails

The statute allows the Department to employ the average–to-transaction methodology in its margin calculations if: 1) there is a pattern of EPs that differ significantly among purchasers, regions, or periods of time; and 2) the Department explains why such differences cannot be taken into account using the average–to-average or transaction–to-transaction methodology. *See* section 777A(d)(1)(B) of the Act. The Department has developed a new test to determine whether targeted dumping has occurred. This new test is a two–stage test: the first test to address the pattern requirement and the second test to address the significant difference requirement. For additional detail, *see* the memorandum entitled "Antidumping Duty Investigations of Certain Steel Nails from the Peoples Republic of China (PRC) and the United Arab Emirates (UAE): Post–Preliminary Determinations on Targeted Dumping (Steel Nails Targeted Dumping Determination), dated April 21, 2008, and placed on the record of this investigation on April 30, 2008.

Results of the Application of the New Targeted Dumping Test

For purposes of this preliminary determination on targeted dumping, we have applied the above test to the U.S. sales data reported by the respondent, Koehler. In applying the Steel Nails test, we clarified various aspects of the test, applied the Steel Nails methodology to multiple allegations in this investigation (customer, region, and time period), and made certain corrections to the underlying programming applied in Steel Nails. We clarified the price gap test described in Steel Nails as involving only average prices to non–targets that are *above* the average price charged to the alleged target. That is, the price gap test only "looks up" when calculating price gaps for non–targets. We also made corrections to the SAS code underlying the price gap test. Our observations and results are discussed in more detail in a separate memorandum placed on the record of this investigation. *See* "Calculation Memorandum for the Preliminary Determination – Koehler," dated May 6, 2008, on file in the CRU.

As outlined in the separate memorandum, we did not find a pattern of EPs for comparable merchandise that differ significantly among customers, regions or by time period. As a result, we applied the average–to-average methodology to the EPs of all of Koehler's sales to the United States during the POI.

Comments by Interested Parties

Although the Department has not yet established explicit criteria or standards for defining "region" in the targeted dumping context, we have accepted the petitioner's use of U.S. Census–based regions for purposes of our targeted dumping analysis for the preliminary determination in this investigation. As we did in the investigations covering Steel Nails, the Department invites comments on standards and criteria for definitions of "region" that are reflective of the industry and commercial market in the United States. *See* Steel Nails Targeted Dumping Determination at 9.

Parties may also comment on the Department's overall preliminary determination application of the new targeted dumping test in this proceeding. Consistent with 19 CFR 351.309(c)(2), all comments should be filed in the context of the case and rebuttal briefs. *See* the "Public Comment" section below for details regarding the briefing schedule for this investigation.

Period of Investigation

The POI is July 1, 2006, to June 30, 2007. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition.

Scope of the Investigation

The merchandise covered by this investigation includes certain lightweight thermal paper, which is thermal paper with a basis weight of 70 grams per square meter (g/m^2) (with a tolerance of ± 4.0 g/m^2) or less; irrespective of dimensions;[2] with or without a base coat[3] on one or both sides; with thermal active coating(s)[4] on one or both sides that is a mixture of the dye and the developer that react and form an image when heat is applied; with or without a top coat;[5] and without an adhesive backing. Certain lightweight thermal paper is typically (but not exclusively) used in point–of-sale applications such as ATM receipts, credit card receipts, gas pump receipts, and retail store receipts. The merchandise subject to this investigation may be classified in the HTSUS under subheadings 4811.90.8040 and 4811.90.9090.[6] As discussed below, we added to the scope of the investigation the following HTSUS subheadings: 3703.10.60, 4811.59.20, 4820.10.20, and 4823.40.00.

[2] LWTP is typically produced in jumbo rolls that are slit to the specifications of the converting equipment and then converted into finished slit rolls. Both jumbo rolls and converted rolls (as well as LWTP in any other forms, presentations, or dimensions) are covered by the scope of these investigations.

[3] A base coat, when applied, is typically made of clay and/or latex and like materials and is intended to cover the rough surface of the paper substrate and to provide insulating value.

[4] A thermal active coating is typically made of sensitizer, dye, and co-reactant.

[5] A top coat, when applied, is typically made of polyvinyl acetone, polyvinyl alcohol, and/or like materials and is intended to provide environmental protection, an improved surface for press printing, and/or wear protection for the thermal print head.

[6] HTSUS subheading 4811.90.8000 was a classification used for LWTP until January 1, 2007. Effective that date, subheading 4811.90.8000 was replaced with 4811.90.8020 (for gift wrap, a non-subject product) and 4811.90.8040 (for "other," including LWTP). HTSUS subheading 4811.90.9000 was a classification for LWTP until July 1, 2005. Effective that date, subheading 4811.90.9000 was replaced with 4811.90.9010 (for tissue paper, a non-subject product) and 4811.90.9090 (for "other," including LWTP).

Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Scope Comments

In our *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*.

On November 19, 2007, the petitioner submitted scope comments in which it requested that the Department add the following additional HTSUS subheadings to the scope of the investigations: HTSUS subheading 3703.10.60, 4811.59, 4820.10, and 4823.40 based on the claim that subject merchandise may also enter under these HTSUS subheadings. On December 18, 2007, the Department requested comments from interested parties regarding the petitioner's proposed scope modification. However, no reply comments were received in this, or any of the aforementioned simultaneous investigations. On April 11, 2008, and April 16, 2008, the Department received letters from the National Import Specialists at U.S. Customs and Border Protection (CBP) requesting that HTSUS subheadings 3703.10.60, 4811.59.20, 4820.10.20, and 4823.40.00 be added to the scope of the antidumping duty investigations of LWTP from Germany and the PRC, and the countervailing duty investigation of LWTP from the PRC on the basis that entries of subject merchandise could be classified therein. *See* Memorandum to the File from the Team to the File through James Terpstra, entitled "Request from Customs and Border Protection to update AD /CVD Module," dated April 17, 2008. The Department has added these additional subheadings to the scope of this investigation.

Model Match

In accordance with section 771(16) of the Act, all products produced by the respondent covered by the description in the *Scope of the Investigation* section, above, and sold in Germany during the POI are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on 12 criteria to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: 1) form, 2) thermal active coating, 3) top coating, 4) basis weight, 5) maximum optical density units, 6) static sensitivity, 7) dynamic sensitivity, 8) coating color, 9) printing, 10) width, 11) length, and 12) core material. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed above.

On November 14, 2007, and November 21, 2007, the petitioner filed proposed model–matching criteria to use in the Department's questionnaire. On November 23, 2007, and November 28, 2007, Koehler submitted comments on the proposed model–matching criteria. On November 26, 2007, and November 28, 2007, Mitsubishi also submitted comments on the proposed model–matching criteria. On December 3, 2007, the petitioner filed comments in response to the model–matching criteria comments submitted by Koehler and Mitsubishi. On December 4, 2007, Koehler submitted additional comments challenging the petitioner's proposed ranges of the dynamic sensitivity model–match criterion as overly broad. On December 7, 2007, the Department issued the questionnaire containing the criteria identified above. *See* the Department's antidumping duty questionnaire issued to Koehler on December 7, 2007, at pages B–8 through B–14.

Date of Sale

Section 351.401(i) of the Department's regulations states that the Department normally will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. The regulations further provide that the Department may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established. The Department has a long–standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established. *See* 19 CFR 351.401(i); *see also Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; and *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2. Therefore, we used the earlier of shipment date or invoice date as the date of sale in accordance with our practice.

Fair Value Comparisons

To determine whether sales of LWTP from Germany were made in the United States at less than normal value (NV), we compared the EP or CEP to the NV, as described in the *Export Price and Constructed Export Price* and *Normal Value* sections below. In accordance with section 777A(d)(1) of the Act, we calculated the weighted–average prices for NV and compared these to the weighted average of EP (and CEP).

Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP, in accordance with sections 772(a) and (b) of the Act. Pursuant to section 772(a) of the Act, we used the EP methodology when the merchandise was first sold by the producer or exporter outside the United States directly to the unaffiliated purchaser in the United States prior to importation and when CEP was not otherwise warranted based on the facts on the record. We calculated CEP for those sales where a person in the United States, affiliated with the foreign exporter or acting for the account of the exporter, made the first sale to the unaffiliated purchaser in the United States of the subject merchandise. *See* section 772(b) of the Act. We based EP and CEP on the packed prices charged to the first unaffiliated customer in the United States and the applicable terms of sale. When appropriate, we adjusted prices to reflect billing adjustments, rebates, and early payment discounts, and commissions.

In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including U.S. warehouse expense, inland freight, inland insurance, brokerage & handling, international freight, marine insurance, and U.S. customs duties.

For CEP, in accordance with section 772(d)(1) of the Act, when appropriate, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (cost of credit, warranty, and other direct selling expenses). These expenses include certain indirect selling expenses incurred by affiliated U.S. distributors. *See* "Calculation Memorandum for the Preliminary Determination – Koehler." We also deducted from CEP an amount for profit in accordance with sections 772(d)(3) and (f) of the Act. We made additions, where appropriate, for freight rebate revenue and other transportation revenue.

Normal Value

A. Home Market Viability and Comparison Market Selection

To determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the respondents' volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to section 773(a)(1)(B)(i) of the Act, because Koehler had an aggregate volume of home market sales of the foreign like product that was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable.

B. Arm's–Length Test

Koehler reported that its sales of the foreign like product were made to unaffiliated customers. Therefore, the arm's–length test is not applicable to Koehler's sales of the foreign like product.

C. Cost of Production Analysis

Based on our analysis of the petitioner's allegation stated in the petition, we initiated a sales–below-cost investigation to determine whether Koehler had sales that were made at prices below their COP pursuant to section 773(b) of the Act. *See* Petition at page 8. *See also*; *Initiation Notice* at page 62432.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated Koehler's COP based on the sum of its costs of materials and conversion for the foreign like product, plus amounts for general and administrative (G&A) expenses and interest expenses (*see* the *Test of Comparison Market Sales Prices* section below for the treatment of home market selling expenses).

The Department relied on the COP data submitted by Koehler and its supplemental section D questionnaire responses for the COP calculation, except for the following instances where the information was not appropriately quantified or valued:

a. We adjusted the denominator of Koehler's reported G&A expense ratio to reflect Koehler's 2006 cost of goods sold.
b. We adjusted Koehler's reported financial expense ratio to include the total foreign exchange gains and losses reported in Koehler Holding's 2006 consolidated financial statements. We adjusted the denominator of the financial expense ratio to reflect Koehler Holding's 2006 consolidated cost of goods sold.

Our revisions to Koehler's COP data are discussed in the Memorandum from Robert Greger, Senior Accountant, to Neal Halper, Director, Office of Accounting, entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination - Koehler," dated May 6, 2008.

2. Test of Comparison Market Sales Prices

On a product–specific basis, we compared the adjusted weighted–average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sales prices were below the COP. For purposes of this comparison, we used the COP exclusive of selling and packing expenses. The prices were exclusive of any applicable movement charges, direct and indirect selling expenses, and packing expenses. In addition, we included an amount for freight rebate revenue and other transportation revenue.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of the respondent's 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 the respondent's sales of a given product during the POI were at prices less than COP, we determined that such sales have been made in "substantial quantities." *See* section 773(b)(2)(C) of the Act. Further, 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 POI. In such cases, because we compared prices to POI–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.

Our preliminary findings show that we did not find that more than 20 percent of Koehler's sales were at prices less than the COP. The Department excluded certain sales transactions reported as samples by Koehler. However, we did not exclude any additional sales as a result of the COP test. Therefore, we used all of Koehler's home market sales as the basis for determining NV.

D. Calculation of Normal Value Based on Comparison Market Prices

We based home market prices on packed prices to unaffiliated purchasers in Germany. We adjusted the starting price for billing adjustments, early payment discounts, rebates, warehouse expense, and inland freight where appropriate, pursuant to section 773(a)(6)(B)(ii) of the Act. In addition, for comparisons made to EP sales, we made adjustments for differences in circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Act. We made COS adjustments by deducting direct selling expenses incurred for home market sales (credit expense, warranty directly linked to sales transactions, and other direct selling expenses) and adding U.S. direct selling expenses (credit, commissions, warranty directly linked to sales transactions, and other direct selling expenses), where appropriate. *See* 19 CFR 351.410.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise. *See* 19 CFR 351.411(b).

E. Level of Trade/Constructed Export Price Offset

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. In identifying LOTs for EP and comparison market sales (*i.e.*, NV based on home market), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314 (Fed. Cir. 2001).

To determine whether NV sales are at a different LOT than EP or CEP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison

market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP–offset provision).

Koehler reported its sales in the home market and the U.S. market at the same single LOT. In the home market, Koehler reported that its sales were made through two channels of distribution: (1) direct sales and (2) consignment sales. In the U.S. market, Koehler reported that its sales were made through four channels of distribution: (1) direct sales through its U.S. affiliate (*i.e.*, CEP sales) (2) consignment sales, (3) warehouse sales, and (4) direct sales from Koehler AG (*i.e.*, EP sales). Based on our analysis, we found that Koehler's sales to the U.S. and home market were made at the same LOT, and as a result, no LOT adjustment was warranted. Furthermore, our analysis shows that Koehler's home market sales were not made at a more advanced LOT than Koehler's U.S. sales. Accordingly, we have not made a CEP offset to NV. *See* 773(a)(7)(B) of the Act.

For a detailed description of our LOT methodology and a summary of company–specific LOT findings for these preliminary results, see our analysis contained in the "Calculation Memorandum for the Preliminary Determination – Koehler."

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

All–Others Rate

Pursuant to section 735(c)(5)(A) of the Act, the all–others rate is equal to the weighted average of the estimated weighted–average dumping margins of all respondents investigated, excluding zero or *de minimis* margins or margins determined entirely using facts available. Koehler is the only respondent in this investigation for which the Department has calculated a company–specific rate and it is not zero, *de minimis* or based entirely upon facts available. Therefore, for purposes of determining the all–others rate and pursuant to section 735(c)(5)(A) of the Act, we are using the weighted–average dumping margin calculated for Koehler for the all- others rate, as referenced in the *Suspension of Liquidation* section, below.

Verification

As provided in section 782(i) of the Act, we intend to verify all information upon which we will rely in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing CBP to suspend liquidation of all entries of LWTP from Germany that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also instructing CBP to require a cash deposit or the posting of a bond equal to the weighted–average dumping margin, as indicated in the chart below. These suspension–of–liquidation instructions will remain in effect until further notice.

The weighted–average dumping margins are as follows:

Manufacturer/Exporter	Weighted–Average Margin (percent)
Papierfabrik August Koehler AG and Koehler America, Inc.	6.49
All Others	6.49

Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the Department's preliminary affirmative determination. If the Department's final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of LWTP from Germany are materially injuring, or threaten material injury to, a U.S. industry. Because we have postponed the deadline for our final determination to 135 days from the date of the publication of this preliminary determination, the ITC will make its final determination within 45 days of our final determination.

Public Comment

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs to the Department no later than seven days after the date of the issuance of the final verification report in this proceeding. *See* 19 CFR 351.309(c)(1)(i). Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs. *See* 19 CFR 351.309(d)(1) and (2). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette. In accordance with section 774 of the Act, the Department will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone, the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. See 19 CFR 351.310(c). At the hearing, oral presentations will be limited to issues raised in the briefs.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on February 19, 2008, Koehler, which accounts for a significant proportion of exports of LWTP from Germany, requested that in the event of an affirmative preliminary determination in this investigation, the Department fully extend the final determination (*i.e.*, postpone its final determination by 60 days). In its February 19, 2008, letter, Koehler also requested, pursuant to section 733(d) of the Act, that in the event of an affirmative preliminary determination in this investigation, the Department extend the maximum duration of provisional measures from four months

to six months from the date of implementation. *See* section 735(a)(2) of the Act and 19 CFR 351.210(e)(2). In accordance with section 733(d) of the Act and 19 CFR 351.210(b)(2)(ii), because (1) our preliminary determination is affirmative, (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting its request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: May 6, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–10659 Filed 5–12–08; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–920]

Lightweight Thermal Paper From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

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

DATES: *Effective Date:* May 13, 2008.

SUMMARY: We preliminarily determine that lightweight thermal paper ("LWTP") from the People's Republic of China ("PRC") is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins of sales at LTFV are shown in the "Preliminary Determination" section of this notice. Pursuant to requests from interested parties, we are postponing the final determination and extending the provisional measures from a four-month period to not more than six months. Accordingly, we will make our final determination not later than 135 days after publication of the preliminary determination. *See* the "Postponement of the Final Determination" section below.

FOR FURTHER INFORMATION CONTACT: Frances Veith or Marin Weaver, 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) 482–4295 or (202) 482–2336, respectively.

SUPPLEMENTARY INFORMATION:

Initiation

On September 19, 2007, Appleton Papers, Inc. ("petitioner" or "Appleton"), filed an antidumping petition in proper form on behalf of the domestic industry and workers producing LWTP, concerning imports of LWTP from Germany, the Republic of Korea ("Korea"), and the PRC, in addition to a countervailing duty petition on LWTP from the PRC. See Antidumping Duty Petition on Lightweight Thermal Paper from Germany, the Republic of Korea, and the People's Republic of China and Countervailing Duty Petition on Lightweight Thermal Paper from the People's Republic of China, dated September 19, 2007 (the "*Petition*").

On October 16, 2007, the Department of Commerce ("the Department"), pursuant to section 732(c)(1)(B) of the Act, extended the deadline for the initiation determination in order to determine the adequacy of the petition.[1]

The Department initiated this investigation on October 29, 2007.[2] In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate-rate status in non-market economy ("NME") investigations. The process requires exporters and producers to submit a separate-rate status application ("SRA").[3] However, the standard for eligibility for a separate rate (which is whether a firm can demonstrate an absence of both *de jure* and *de facto* government control over its export activities) has not changed. The SRA for this investigation was posted on the Department's Web site *http://ia.ita.doc.gov/ia-highlights-and-news.html* on November 5, 2007. The due date for filing an SRA was December 28, 2007. No party filed an SRA in this investigation.

On December 5, 2007, the International Trade Commission ("ITC") determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of LWTP from the PRC.[4]

Period of Investigation

The period of investigation ("POI") is January 1, 2007, through June 30, 2007. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was September 2007. *See* 19 CFR 351.204(b)(1).

Postponement of Preliminary Determination

On February 6, 2008, petitioner made a timely request pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(b)(2) and (e) for a 50-day postponement of the preliminary determination. On February 25, 2008, the Department published a postponement of the preliminary antidumping duty determination on LWTP from the PRC.[5]

Postponement of Final Determination

On April 14, 2008, and May 2, 2008, Hanhong International Limited, Shanghai Hanhong Paper Co., Ltd., and Hong Kong Hanhong Ltd. (collectively ("Hanhong")) and Guangdong Guanhao High-Tech Co., Ltd. ("Guanhao"), respectively, made a timely request pursuant to section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) that the Department extend the final determination by the full amount of time allowed by law. On May 6, 2008, Hanhong and Guanhao supplemented their requests to extend the final determination to include requests to extend provisional measures pursuant to section 735(a)(2)(A) of the Act and 19 CFR 351.210(e)(2).

Scope of the Investigation

The merchandise covered by this investigation includes certain lightweight thermal paper, which is thermal paper with a basis weight of 70 grams per square meter (g/m^2) (with a tolerance of $\pm$ 4.0 g/m^2) or less;

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[1] *See Notice of Extension of the Deadline for Determining the Adequacy of the Antidumping Duty Petitions: Lightweight Thermal Paper from Germany, the Republic of Korea, and the People's Republic of China; and the Countervailing Duty Petition: Lightweight Thermal Paper from the People's Republic of China*, 72 FR 58639 (October 16, 2007).

[2] *See Notice of Initiation of Antidumping Duty Investigations: Lightweight Thermal Paper from Germany, the Republic of Korea, and the People's Republic of China*, 72 FR 62430 (November 5, 2007) ("Initiation Notice").

[3] *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries (April 5, 2005) ("*Policy Bulletin 05.1*"), available at <*http://ia.ito.doc.gov/policy/bulletin05-1.pdf*>.

[4] *See Investigation Nos. 701–TA–451 and 731–TA–1126–1128 (Preliminary): Certain Lightweight Thermal Paper from China, Germany, and Korea*, 72 FR 70343 (December 11, 2007).

[5] *See Lightweight Thermal Paper From Germany and the People's Republic of China: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 73 FR 9997 (February 25, 2008).

irrespective of dimensions;[6] with or without a base coat[7] on one or both sides; with thermal active coating(s)[8] on one or both sides that is a mixture of the dye and the developer that react and form an image when heat is applied; with or without a top coat;[9] and without an adhesive backing. Certain lightweight thermal paper is typically (but not exclusively) used in point-of-sale applications such as ATM receipts, credit card receipts, gas pump receipts, and retail store receipts. The merchandise subject to this investigation may be classified in the Harmonized Tariff Schedule of the United States ("HTSUS") under subheadings 4811.90.8040, 4811.90.9090, 3703.10.60, 4811.59.20, 4820.10.20, and 4823.40.00.[10] Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Scope Comments

We set aside a period for interested parties to raise issues regarding product coverage. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997). The Department encouraged all interested parties to submit such comments within 20 calendar days of signature of the *Initiation Notice*, 72 FR at 62431. We only received comments on the scope from petitioner. *See* petitioner's letter to the Department regarding, "Lightweight Thermal Paper From China, Germany, And Korea," dated November 19, 2007.

[6] LWTP is typically produced in jumbo rolls that are slit to the specifications of the converting equipment and then converted into finished slit rolls. Both jumbo and converted rolls (as well as LWTP in any other form, presentation, or dimension) are covered by the scope of these investigations.

[7] A base coat, when applied, is typically made of clay and/or latex and like materials and is intended to cover the rough surface of the paper substrate and to provide insulating value.

[8] A thermal active coating is typically made of sensitizer, dye, and co-reactant.

[9] A top coat, when applied, is typically made of polyvinyl acetone, polyvinyl alcohol, and/or like materials and is intended to provide environmental protection, an improved surface for press printing, and/or wear protection for the thermal print head.

[10] HTSUS subheading 4811.90.8000 was a classification used for LWTP until January 1, 2007. Effective that date, subheading 4811.90.8000 was replaced with 4811.90.8020 (for gift wrap, a nonsubject product) and 4811.90.8040 (for "other" including LWTP). HTSUS subheading 4811.90.9000 was a classification for LWTP until July 1, 2005. Effective that date, subheading 4811.90.9000 was replaced with 4811.90.9010 (for tissue paper, a nonsubject product) and 4811.90.9090 (for "other," including LWTP). Petitioner indicated that, from time to time, LWTP also may have been entered under HTSUS subheading 3703.90, HTSUS heading 4805, and perhaps other subheadings of the HTSUS, including HTSUS subheadings: 3703.10.60, 4811.59.20, 4820.10.20, and 4823.40.00.

Petitioner requested that the Department include in LWTP's scope language the HTSUS subheadings 3703.10.60,[11] 4811.59,[12] 4820.10,[13] and 4823.40[14] because LWTP may enter the United States under one of these HTSUS subheadings. Specifically, the petitioner contends that HTSUS subheading 3703.1060 should be included because LWTP is sensitive to heat radiation; LWTP with certain latex topcoats could enter as paper coated with plastic under HTSUS subheading 4811.59; HTSUS subheading 4820.10's description may encompass products converted from thermal paper; and HTSUS subheading 4823.40's description appears to encompass LWTP not elsewhere specified within the HTSUS.

In the *Petition* we stated that merchandise subject to this investigation may be classified in the HTSUS under subheadings 4811.90.8040 and 4811.90.9090. On April 11, 2008 and April 16, 2008, the Department received a request from U.S. Customs and Border Protection ("CBP") to update the antidumping and countervailing duty ("AD/CVD") module for LWTP from the PRC. Specifically, CBP requested that the Department add HTSUS subheadings 3703.10.60, 4811.59.20, 4820.10.20, and 4823.40.00 to the AD/CVD module. *See* the Department's memorandum to the file entitled, "Request from Customs and Border Protection to update AD/CVD Module," dated April 17, 2008. We have reviewed petitioner's and CBP's request and have updated the AD/CVD module accordingly.

Non-Market Economy Country

For purposes of initiation, petitioner submitted an LTFV analysis for the PRC as an NME.[15] Recently, the Department examined the PRC's market status and determined that NME status should continue for the PRC.[16] Additionally, in two recent investigations, the Department also determined that the PRC is an NME country.[17] In accordance with section 771(18)(C)(i) of the Act, the NME status remains in effect until revoked by the Department. The presumption of the NME status of the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of this investigation.

Selection of Respondents

In accordance with section 777A(c)(2) of the Act, the Department selected the two largest exporters of LWTP (*i.e.*, Hanhong and Kosoku Business Paper Ltd. ("Kosoku")) by volume as the mandatory respondents in this investigation based on CBP entry data listed in the data under the HTSUS subheadings 4811.9080.00, 4811.9080.40, 4811.9090.90, 4811.9090.00.[18] These two companies appeared to cover a significant share of the total U.S. imports by volume, and both had been identified in the public realm.[19]

The Department issued its antidumping questionnaire to Hanhong and Kosoku on December 3, 2007.[20] In its questionnaire, the Department requested that the two firms provide a response to section A of the Department's questionnaire on December 24, 2007, and to sections C and D of the questionnaire on January 8, 2008. Additionally we asked Hanhong and Kosoku to notify the official in charge if they did not export/ship any merchandise falling within the scope of the investigation that entered the United States during the POI. On December 11, 2007, Kosoku contacted the Department and stated that it did not export or ship any merchandise falling under investigation that entered the United States during the POI.[21]

[11] *See* ITC Web site located at *http://usitc.gov/*, which describes 3703.1060 as "photographic paper, paperboard, and textiles, sensitized: other."

[12] *See id.*, which describes HTSUS subheading 4859.10 as "other: In strips or rolls of a width exceeding 15 cm or in rectangular (including square) sheets with one side exceeding 36 cm and the other side exceeding 15 cm in the unfolded state."

[13] *See id.*, which describes HTSUS subheading 4820.10 as "Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles."

[14] *See id.*, which describes HTSUS subheading 4823.40 as "Rolls, sheets and dials, printed for self-recording apparatus."

[15] *Initiation Notice*, 72 FR at 62433.

[16] *See* the Department's memorandum entitled, "Antidumping Duty Investigation of Certain Lined Paper Products from the People's Republic of China ("China")—China's status as a non-market economy ("NME")," dated August 30, 2006. This document is available online at: *http://ia.ita.doc.gov/download/prc-nmestatus/prc-lined-paper-memo-08302006.pdf*.

[17] *See Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China*, 72 FR 9508 (March 2, 2007), and *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007).

[18] *See* the Department's memorandum entitled, "Antidumping Duty Investigation on Lightweight Thermal Paper from the People's Republic of China: Selection of Respondents," dated November 29, 2007 ("*Respondent Selection Memo*").

[19] *See* the Department's memorandum regarding "Release of Customs Entry data from U.S. Customs and Border Security," dated November 5, 2007.

[20] *See, e.g.*, the Department's letter to Hanhong entitled, "Antidumping Investigation of Lightweight Thermal Paper from the People's Republic of China: Questionnaire," dated December 3, 2007.

[21] *See* the Department's memorandum to the file entitled, "Lightweight Thermal Paper from the

Continued

Because our *Respondent Selection Memo* stated that we had resources to investigate two firms with the largest export volume during the POI, and one of the two firms selected (*i.e.*, Kosoku) reported that it did not export or ship merchandise under investigation during the POI, we looked to the next four companies listed in the CBP data to identify and select the next largest exporter by volume as a mandatory respondent. On December 17, 2007, the Department sent Ampress Enterprises Ltd. ("Ampress"), Arting Stationery Products Factory Ltd. ("Arting"), Xiamen Anne Paper Co., Ltd. ("Anne Paper"), and Yalong Paper Product (Kunshan) Co., Ltd. ("Yalong") a shipment questionnaire asking each whether the company exported merchandise under investigation that entered the United States during the POI. Responses were due by close of business on December 27, 2007.[22] The Department did not receive any responses from any of the four parties as of that deadline. The Department sent a second letter to each of the four parties noted above on December 28, 2007, again requesting information on shipments of merchandise under investigation. Responses were due to the Department no later than January 11, 2008.[23]

On January 2, 2008, Ampress submitted a response to the Department stating that it did not have any shipments of LWTP during the POI.[24] On January 11, 2008, Arting submitted a response to the Department stating that it did not have any shipments of LWTP during the POI.[25] Anne Paper and Yalong did not respond to the Department's first or second requests for information.[26] *See* "Facts Available and the PRC-wide Entity" section below for further information on Anne Paper and Yalong.

Section 782(a) of the Act states that the Department shall examine voluntary respondents: (1) if they submit information within the deadlines established by the Department, and (2) if the number of voluntary respondents is not so large as to be unduly burdensome and inhibit the Department's timely completion of the review.

In the *Respondent Selection Memo*, we noted that, in the event a mandatory respondent failed to participate, we might, at our discretion, accept a voluntary respondent for review, provided that the voluntary respondent had met the two criteria outlined above. As noted above, one of the two firms selected for investigation, Kosoku, did not ship the merchandise under investigation during the POI. Also, as noted above, the Department was unsuccessful in its attempts to select a second mandatory firm for investigation from the next four firms listed in the CBP data. Because of our statutory deadlines, we determined that we could not expend additional resources in attempting to identify the next largest exporter by volume of merchandise subject to this investigation during the POI to serve as the second firm to be investigated.[27]

On December 4, 2007, Guanhao reported that it had shipped merchandise under consideration during the POI, and requested that it be treated as a voluntary respondent in this investigation. Further, Guanhao submitted sections A, C, and D questionnaire responses on December 21, 2007, January 9, 2008, and January 16, 2008, respectively, within the Department's deadlines established in this investigation. Therefore, on January 18, 2008, we determined to accept the voluntary respondent (*i.e.*, Guanhao), pursuant to section 782(a) of the Act.[28] Thus, the Department is examining two firms (*i.e.*, Hanhong and Guanhao) in this investigation.

We noted, however, that as explained in our *Respondent Selection Memorandum*, the Department will exclude any individually calculated rate for voluntary respondents (*i.e.*, Guanhao) from the calculation of the rate to be applied to exporters/producers which qualify for a separate rate but were not selected for examination as mandatory respondents. As stated in the "Initiation" section above, no party filed an SRA in this investigation. Thus, it is not necessary to calculate a weighted-average margin for exporters/producers that were not selected for examination as mandatory respondents in this investigation.

Surrogate Value Comments

Surrogate factor valuation comments and surrogate value information with which to value the factors of production ("FOPs") in this proceeding were filed on February 28, 2008, by Guanhao and on February 29, 2008, by petitioner and Hanhong. On March 12, 2008, petitioner and Hanhong filed rebuttal comments on surrogate factor valuation comments and surrogate value information. For a detailed discussion of the surrogate values used in this LTFV proceeding, *see* the "Factor Valuation" section below and the Department's memorandum to the file entitled, "Antidumping Investigation of Lightweight Thermal Paper from the People's Republic of China: Factor Valuations for the Preliminary Determination," dated concurrently with this notice ("*Surrogate Value Memorandum*").

Surrogate Country

Section 773(c)(1) of the Act directs the Department to base normal value ("NV") on the NME producer's FOPs, valued in a surrogate market economy ("ME") country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall use, to the extent possible, the prices or costs of the FOPs in one or more ME countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the "Factor Valuations" section below. *See also Surrogate Value Memorandum.*

On December 20, 2007, the Department determined that India, Indonesia, Thailand, the Philippines, and Colombia are countries comparable to the PRC in terms of economic development.[29] On January 15, 2008, the Department requested comments on the selection of a surrogate country from the interested parties in this investigation. Petitioner submitted comments on February 12, 2008, and

People's Republic of China: No Shipments," dated December 12, 2007.

[22] *See, e.g.*, the Department's letter to Ampress entitled, "Antidumping Investigation of Lightweight Thermal Paper from the People's Republic of China: Shipment Questionnaire," dated December 17, 2007.

[23] *See, e.g.*, the Department's letter to Ampress entitled, "Antidumping Investigation of Lightweight Thermal Paper from the People's Republic of China: Shipment Questionnaire," dated December 28, 2007.

[24] *See* the Department's memorandum to the file entitled, "Investigation of Lightweight Thermal Paper from the People's Republic of China: Ampress Enterprises Ltd. Shipment Questionnaire Response," dated January 3, 2008.

[25] *See* the Department's memorandum to the file entitled, "Investigation of Lightweight Thermal Paper from the People's Republic of China: Arting Stationery Products Factory Ltd. Shipment Questionnaire Response," dated January 11, 2008.

[26] *See id.*

[27] *See Respondent Selection Memorandum.*

[28] *See* the Department's memorandum regarding, "Lightweight Thermal Paper from the People's Republic of China: Antidumping Duty Investigation: Selection of Voluntary Respondent: Guangdong Guanhao High-Tech co., Ltd.," dated January 18, 2008.

[29] *See* the Department's Office of Policy memorandum entitled, "Antidumping Duty Investigation of Lightweight Thermal Paper from the People's Republic of China (PRC): Request for a List of Surrogate Countries," dated December 20, 2007 ("*Policy Memorandum*").

Hanhong submitted comments on February 13, 2008.

Customarily, we select an appropriate surrogate country from the *Policy Memorandum* based on the availability and reliability of data from the countries that are significant producers of comparable merchandise. In this case, we found that India is at a level of economic development comparable to that of the PRC; is a significant producer of comparable merchandise (*i.e.*, LWTP); and has publicly available and reliable data.[30] Accordingly, we selected India as the primary surrogate country for purposes of valuing the FOPs in the calculation of NV because it meets the Department's criteria for surrogate country selection.[31] We obtained and relied upon publicly available information wherever possible.

In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in antidumping investigations, interested parties may submit publicly available information to value FOPs under 19 CFR 351.408(c) within 40 days after the date of publication of this preliminary determination.[32]

Separate Rates

In the *Initiation Notice*, the Department notified parties of the recent application process by which exporters and producers may obtain separate-rate status in NME investigations. *See Initiation Notice* at 62434. The process requires exporters and producers to submit an SRA. *See also Policy Bulletin 05.1*.[33] However, the standard for eligibility for a separate rate (which is whether a firm can demonstrate an absence of both *de jure* and *de facto* government control over its export activities) has not changed.

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to this investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* government control over export activities. The Department analyzes each entity exporting the merchandise subject to this investigation under a test arising from the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). However, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a separate-rate analysis is not necessary to determine whether it is independent from government control.

A. Separate-Rate Recipients

No company reported that it is wholly owned by individuals or companies located in a market economy or that it is located outside the PRC in this investigation. Therefore, we are not addressing these ownership structures in this preliminary determination.

1. Joint Ventures between Chinese and Foreign Companies or Wholly Chinese-Owned Companies

In this investigation no company reported that its ownership structure is a joint venture between Chinese and Foreign companies. However, both respondents examined (*i.e.*, Hanhong and Guanhao) reported that they are wholly Chinese-owned companies. Therefore, the Department must analyze whether Hanhong and Guanhao can demonstrate the absence of both *de jure* and *de facto* government control over their export activities.

a. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589.

The evidence provided by Hanhong and Guanhao supports a preliminary finding of *de jure* absence of government control based on the following: (1) An absence of restrictive stipulations associated with the individual exporters' business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of companies. *See, e.g.*, Hanhong's and Guanhao's section A submissions dated January 4, 2008, and December 21, 2007, respectively.

b. Absence of *De Facto* Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide*, 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995). The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would

[30] *See* the Department's memorandum to the file entitled, "Antidumping Investigation of Lightweight Thermal Paper from the People's Republic of China: Selection of a Surrogate Country," dated April 21, 2008 ("*Surrogate Country Memorandum*")

[31] *See id.*

[32] In accordance with 19 CFR 351.301(c)(1), for the final determination of this investigation, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally cannot accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007) and accompanying *Issues and Decision Memorandum* at Comment 2.

[33] *Policy Bulletin 05.1* states: "while continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applied both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation." *See Policy Bulletin 05.1* at 6.

preclude the Department from assigning separate rates.

In this case petitioner alleged that Guanhao should not receive a separate rate because there is *de facto* control over Guanhao by the PRC government. *See* petitioner's March 20, 2008, submission regarding its comments on the Second Supplemental A Questionnaire Response of Guanhao. Among other things, petitioner alleged that Guanhao's chairman of the board of directors ("BoD") and general manager ("GM") are PRC government officials. We solicited additional information from Guanhao regarding petitioner's allegations as they relate to the Department's criteria in determining whether there is *de facto* control by the PRC government over a company's export activities. *See, e.g.*, Guanhao's April 4, 2008, and April 18, 2008, supplemental questionnaire responses. In response, Guanhao reported that in addition to its chairman of the BoD and GM, there are several company officials (*e.g.* directors, managers) that have authority to sign and negotiate sales contracts. Guanhao further reported descriptions of the roles and duties that the BoD and GM assume in their respective non-Guanhao positions in various associations and government-owned entities. The mere fact that Guanhao's chairman of the BoD is a board member of a government-owned entity does not in itself demonstrate that he is a government official or is controlled by the PRC central government, nor does membership in various associations, committees, *etc.* mean that the chairman of the BoD or the GM are controlled by the central PRC government. Instead, we examine whether their roles, duties, *etc.* in these outside entities and at Guanhao, may potentially or effectively allow these officials to exercise control over certain activities at Guanhao. We do not believe that the roles and duties undertaken by these company officials outside of Guanhao confer government control over the day-to-day activities and decisions regarding its export activities. Furthermore, neither of these company officials have majority control over the disposition of Guanhao's profits. Guanhao reported that the BoD determined the plan for Guanhao's disposition of profits, which is then presented to the general shareholders for a vote of approval. Based on the information on the record, there is no evidence that would lead us to conclude that Guanhao's export prices, sales negotiations or management decisions are controlled by the PRC government.

The evidence placed on the record of this investigation by Hanhong and Guanhao demonstrate an absence of *de jure* and *de facto* government control with respect to their respective exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*.

B. Companies Not Receiving a Separate Rate

The Department has determined that all parties applying for a separate rate in this segment of the proceeding have demonstrated an absence of government control both in law and in fact (see discussion above), and is, therefore, not denying separate-rate status to any respondent (*i.e.*, Hanhong and Guanhao).

Facts Available and the PRC-Wide Entity

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available" if, *inter alia*, necessary information is not on the record or an interested party: (A) Withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

On December 17, 2007, and December 28, 2007, the Department sent Anne Paper and Yalong a questionnaire asking each whether the company exported merchandise under investigation that entered the United States during the POI.[34] We have confirmed that the questionnaires were delivered to Anne Paper and Yalong.[35] Responses were due by close of business on December 27, 2007 and January 11, 2008, respectively.[36] The Department did not receive any responses from Anne Paper and Yalong.

Because Anne Paper and Yalong did not provide any information, we determine that sections 782(d) and (e) of the Act are not relevant to our analysis. We further find that the Anne Paper and Yalong failed to respond to the Department's requests for information and, therefore, failed to demonstrate that they operate free of government control and that they are entitled to a separate rate. Based on the above facts, the Department preliminarily determines that there were exports of the merchandise subject to this investigation from PRC exporters/producers that did not respond to the Department's shipment questionnaire, and we are treating these PRC exporters/producers as part of the PRC-wide entity. Moreover, because the PRC-wide entity did not cooperate to the best of its ability when it did not respond to our questionnaire asking whether it exported merchandise under investigation that entered the United States during the POI, use of facts available pursuant to section 776(a)(2)(A) and (B) of the Act is warranted for the PRC entity, which includes Anne Paper and Yalong.[37]

Section 776(b) of the Act provides that if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may employ adverse inferences.[38] We find that, because the PRC-wide entity did not respond to our request for information, it has failed to cooperate to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

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[34] *See Respondent Selection Memorandum.*

[35] *See* the Department's memorandum regarding, "Lightweight Thermal Paper from the People's Republic of China: Delivery of Shipment Questionnaires," dated March 12, 2008.

[36] *See, e.g.*, the Department's letter to Ampress entitled, "Antidumping Investigation of Lightweight Thermal Paper from the People's Republic of China: Shipment Questionnaire," dated December 17, 2007.

[37] *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China*, 71 FR 16116 (March 30, 2006) ("Artist Canvas").

[38] *See, e.g., Artist Canvas*, 71 FR 16116, 16118 (March 30, 2006). *See also*, Statement of Administrative Action accompanying the URAA, H.R. Rep No. 103–316 ("SAA") at 870.

Selection of the Adverse Facts Available Rate

In deciding which facts to use as adverse facts available ("AFA"), section 776(b) of the Act and 19 CFR 351.308(c)(1) provide that the Department may rely on information derived from (1) The petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."[39] It is also the Department's practice to select a rate that ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[40]

Generally, the Department finds selecting the highest rate in any segment of the proceeding as AFA to be appropriate.[41] It is the Department's practice to select, as AFA, the higher of the (a) highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation.[42] In the instant investigation, as AFA, we have preliminarily assigned to the PRC-wide entity, including Anne Paper and Yalong, the highest calculated rate on the record of this proceeding, which in this case is the calculated margin for Hanhong. The Department preliminarily determines that this information is the most appropriate from the available sources to effectuate the purposes of AFA.

The Department will consider all margins on the record at the time of the final determination for the purpose of determining the most appropriate AFA rate for the PRC-wide entity including Anne Paper and Yalong.[43]

Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described as "information derived from the petition that gave rise to the investigation or review, the final determination concerning merchandise subject to this investigation, or any previous review under section 751 concerning the merchandise subject to this investigation."[44] To "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value.[45] Independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.[46] To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.[47]

As we did not rely upon secondary information, no corroboration was required under section 776(c) of the Act; rather we used the highest margin rate calculated for any respondent in this investigation as the AFA rate for this investigation.[48] *See* the "Preliminary Determination" section of this notice below.

Consequently, we are applying a single antidumping rate—the PRC-wide rate—to producers/exporters that failed to respond to the Department's antidumping questionnaires, or requests for shipment information, or did not apply for a separate rate, as applicable. The PRC-wide rate applies to all entries of the merchandise under investigation except for entries from respondents, Hanhong and Guanhao. These companies and their corresponding antidumping duty cash deposit rates are listed below in the "Preliminary Determination" section of this notice.

Fair Value Comparisons

To determine whether sales of LWTP to the United States by the respondents were made at LTFV, we compared export price ("EP") to NV, as described in the "Export Price" and "Normal Value" sections of this notice.

Export Price

In accordance with section 772(a) of the Act, EP is the price at which the merchandise subject to this investigation is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the merchandise subject to this investigation outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under section 772(c) of the Act. In accordance with section 772(a) of the Act, we used EP for Hanhong's and Guanhao's U.S. sales because the merchandise subject to this investigation was sold directly to the unaffiliated customers in the United States prior to importation and because constructed export price ("CEP") was not otherwise indicated.

In response to questions raised by the Petitioner, we reviewed Hanhong's relationship with its U.S. customer and find that Hanhong and its U.S. customer were not affiliated during the POI under the meaning of section 771(33) of the Act. Our determination in this regard is based on Hanhong's response that: (1) Its U.S. customer controls the price at which it resells the merchandise under consideration to its U.S. customers; (2) Hanhong's U.S. customer takes title to the merchandise and thus bears the risk of loss; and (3) the written agreement between Hanhong and its U.S. customer allows Hanhong to sell to other U.S. customers and does not restrict its U.S. customer from purchasing thermal paper from other U.S. domestic or foreign suppliers. Accordingly, we treated Hanhong's reported sales to the

[39] *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

[40] *See Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review*, 70 FR 69937, 69939 (November 18, 2005); *see also*, SAA at 870.

[41] *See, e.g., Certain Cased Pencils from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind in Part*, 70 FR 76755, 76761 (December 28, 2005) Unchanged in *Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 38366, (July 6, 2006), and accompanying *Issues and Decision Memorandum* at Comment 10.

[42] *See Final Determination of Sales at Less Than Fair Value: Certain Cald-Rolled Carbon Quality Steel Products from the People's Republic of China*, 65 FR 34660 (May 21, 2000), and accompanying *Issues and Decision Memorandum* at "Facts Available."

[43] *See Natice of Preliminary Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China*, 67 FR 79049, 79053–54 (December 27, 2002), unchanged in *Natice of Final Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China*, 68 FR 27530 (May 20, 2003).

[44] *See Final Determination of Sales at Less Than Fair Value: Sodium Hexametaphasphate From the People's Republic of China*, 73 FR 6479, 6481 (February 4, 2008); *see also*, SAA at 870.

[45] *See id.*

[46] *See id.*

[47] *See Tapered Raller Bearings and Parts Thereaf, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results af Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

[48] *See Final Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate From the People's Republic of China*, 73 FR 6479 (February 4, 2008).

United States as EP transactions for the preliminary determination.

We calculated EP based on the packed FOB delivered prices to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for any movement expenses (*e.g.*, foreign inland freight from the plant to the port of exportation, domestic brokerage) in accordance with section 772(c)(2)(A) of the Act.[49] Where foreign inland freight or foreign brokerage and handling fees were provided by PRC service providers or paid for in renminbi, we based those charges on surrogate value rates from India. *See* "Factor Valuation" section below for further discussion of surrogate value rates.

In determining the most appropriate surrogate values to use in a given case, the Department's stated practice is to use period-wide price averages, prices specific to the input in question, prices that are net of taxes and import duties, prices that are contemporaneous with the POI, and publicly available data.[50] The data we used for brokerage and handling expenses fulfill all of the foregoing criteria except that they are not specific to the merchandise subject to this investigation. There is no information of that type on the record of this investigation. The Department used two sources to calculate a surrogate value for domestic brokerage expenses: (1) data from the January 9, 2006, public version of the Section C questionnaire response from Kejriwal Paper Ltd. ("Kejriwal") in the investigation of certain lined paper products from India;[51] and (2) data from Agro Dutch Industries Ltd. in the administrative review of certain preserved mushrooms from India.[52] Because these values were not concurrent with the POI of this investigation, we adjusted these rates for inflation using the Wholesale Price Indices ("WPI") for India as published in the International Monetary Fund's ("IMF's") *International Financial Statistics*, available at *http://ifs.apdi.net/imf*, and then calculated a simple average of the two companies' brokerage expense data.[53]

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies. *See, e.g., CLPP*, 71 FR at 19703 (unchanged in final determination).

Guanhao has not provided a complete cost reconciliation to the Department nor has it shown that Guanhao's reported FOPs tie to its accounting system. However, the Department is using Guanhao's reported FOPs to calculate its margin for the preliminary determination and is providing Guanhao with a final opportunity to provide a complete cost reconciliation as requested by the Department in the original questionnaire issued on December 3, 2008, and in the two supplemental questionnaires, issued to Guanhao on February 5, 2008, and March 25, 2008.

A complete cost reconciliation, including all requested support documentation, is hereby due to the Department no later than 14 days after its receipt of our supplemental questionnaire requesting Guanhao to provide its complete cost reconciliation, which we soon intend to issue to Guanhao. Given the fact that Guanhao was first instructed to provide this cost reconciliation on December 3, 2008, the fact that the Department has granted numerous extensions to Guanhao in which to provide its complete cost reconciliation, and in light of the impending verification, which is currently scheduled for early June 2008, and statutorily prescribed deadlines, it is unlikely that the Department will be able to grant Guanhao any additional time to provide a complete cost reconciliation in accordance with the Department's instructions and questions. If Guanhao does not provide a complete cost reconciliation in accordance with the Department's instructions, we may not conduct verification or consider this company's data usable for the final determination and may resort to the use of facts available or AFA for all of Guanhao's data pursuant to sections 776(a) and (b) of the Act. We may revisit this issue for the final determination pending receipt of the data.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by respondents for the POI. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available Indian surrogate values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory of production or the distance from the nearest seaport to the factory of production, where appropriate. This adjustment is in accordance with the U.S. Court of Appeals for the Federal Circuit decision in *Sigma Corp.* v. *United States*, 117 F. 3d 1401, 1407–1408 (Fed. Cir. 1997).

Guanhao reported that certain of its reported raw material inputs were sourced from a ME country and paid for in ME currencies. Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier in meaningful quantities (*i.e.*, not insignificant quantities), we use the actual price paid by respondents for those inputs, except when prices may have been distorted by findings of dumping by the PRC and/or subsidies.[54] Guanhao's reported information demonstrates that it has both significant and insignificant quantities of certain raw materials purchased from ME suppliers. Where we found ME

[49] For a detailed description of all adjustments, *see* the Department's Memorandum to the File entitled, "Lightweight Thermal Paper from the People's Republic of China: Analysis of the Preliminary Determination Margin Calculation for Hanhong" dated May 6, 2008 (*"Hanhang Preliminary Analysis Memorandum"*); and the Department's Memorandum to the File entitled, "Lightweight Thermal Paper from the People's Republic of China: Analysis of the Preliminary Determination Margin Calculation for Guangdong Guanhao High-Tech Co., Ltd." dated May 6, 2008 (*"Guanhao Preliminary Analysis Memorandum"*).

[50] *See, e.g., Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 38366 (July 6, 2006), and accompanying *Issues and Decision Memorandum* at Comment 1.

[51] Kejriwal was a respondent in the certain lined paper products from India investigation for which the POI was July 1, 2004, to June 30, 2005. *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances in Part: Certain Lined Paper Products From India*, 71 FR 19706 (April 17, 2006) (*"CLPP"*) (unchanged in final determination).

[52] *See Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 70 FR 37757 (June 30, 2005) (unchanged in final results).

[53] *See, e.g., Helical Spring Lock Washers From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 52073, 52076 (September 12, 2007) (unchanged in final results).

[54] *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997).

purchases to be of significant quantities, in accordance with our statement of policy as outlined in *Antidumping Methodologies: Market Economy Inputs*,[55] we used the actual purchases of these inputs to value the inputs. Accordingly, we valued Guanhao's inputs using the ME prices paid for in ME currencies for the inputs where the total volume of the input purchased from all ME sources during the POI exceeded 33 percent of the total volume of the input purchased from all sources during the period.[56] Where the quantity of the reported input purchased from ME suppliers was below 33 percent of the total volume of the input purchased from all sources during the POI, and were otherwise valid, we weight averaged the ME input's purchase price with the appropriate surrogate value for the input according to their respective shares of the reported total volume of purchases.[57] Where appropriate, we added freight to the ME prices of inputs. For a detailed description of the actual values used for the ME inputs reported, *see Guanhao Preliminary*.

Analysis Memorandum.

For this preliminary determination, in accordance with past practice, we used import values from the World Trade Atlas online ("Indian Import Statistics"), published by the Directorate General of Commercial Intelligence and Statistics, Ministry of Commerce of India, which were reported in rupees and are contemporaneous with the POI to calculate surrogate values for the respondents' reported material inputs.[58] In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, surrogate values which are non-export average values, most contemporaneous with the POI, product-specific, and tax-exclusive.[59]

Where we could not obtain publicly available information contemporaneous with the POI with which to value FOPs, we adjusted the surrogate values using, where appropriate, the Indian WPI as published in the IMF's.

Furthermore, with regard to the Indian import-based surrogate values, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.[60] We are also directed by the legislative history not to conduct a formal investigation to ensure that such prices are not subsidized.[61] Rather, Congress directed the Department to base its decision on information that is available to it at the time it makes its determination. Therefore, we have not used prices from these countries in calculating the Indian import-based surrogate values. In instances where an ME input was obtained solely from suppliers located in these countries, we used Indian import-based surrogate values to value the input. In addition, we excluded Indian import data from NME and undesignated countries from our surrogate value calculations.[62]

In this case, parties have debated which surrogate value is the best available information for valuing coated jumbo rolls of thermal paper ("CJRs"). Hanhong argues in favor of using the average of three Indonesian HTS categories contending that these data account for much larger import quantities than Indian imports of CJRs and represent average unit prices that are more comparative to the "normal value" German benchmark which it calculated from publicly available data from the companion German investigation. Hanhong also asserts that Indian import values for CJRs during the POI are aberrational because of small quantities and specialized imports.[63]

Petitioner argues that the single Indian HTS category is more appropriate as a surrogate value because it is the only value that is specific to CJRs. Additionally, petitioner asserts that these Indian data are not aberrational as evidenced by the pattern of the WTA yearly data for the category showing average prices remaining constant over a three-year period. Petitioner claims that two of the three Indonesian HTS categories submitted by Hanhong do not exist, and the third is incorrect.

All the HTS data, including the Indian and Indonesian values that parties have proposed that the Department use to value the CJRs in this preliminary determination are contemporaneous with the POI and are tax-exclusive values. However, the Indonesian HTS categories submitted by Hanhong are broad basket categories. Where a category is more specific to an input it is the Department's preference to use that category rather than a basket category. *See Amended Final Results of Antidumping Duty Administrative Review and New Shipper Reviews: Wooden Bedroom Furniture From the People's Republic of China*, 72 FR 46957 (August 22, 2007), and accompanying *Issues and Decision Memorandum* at Comment 13; *See also Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079, (September 8, 2006), and accompanying *Issues and Decision Memorandum* at Comment 3 (where the Department declined to use a broad basket category because it was not as specific to the input being valued as other potential sources on the record of the proceeding). Furthermore, we have not considered using the German value as a benchmark (provided by Hanhong) because Germany is not on the list of possible surrogate countries due to its advanced level of economic development, and we have a value on the record from India, a country deemed in this proceeding to be economically comparable to the PRC, which is specific to CJRs. Therefore, the Department has valued CJRs with Indian imports from HTS 4811.90.94 for this preliminary determination because this Indian HTS category is more specific to CJRs reported by the respondent, and as

[55] *See Antidumping Methadalagies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717 (October 19, 2006) ("*Antidumping Methodologies: Market Economy Inputs*").

[56] *See* Guanhao's December 21, 2007 section D submission at Exhibit 10. *See also* Guanhao's March 20, 2008, supplemental D submission at Exhibit 3.

[57] *See Antidumping Methadalagies: Market Economy Inputs* at 71 FR 61718.

[58] *See Surrogate Value Memorandum*.

[59] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Sociolist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Wormwater Shrimp from the Sociolist Republic of Vietnam*, 69 FR 71005 (December 8, 2004).

[60] *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004), and accompanying *Issues and Decision Memorandum* at Comment 7.

[61] *See Omnibus Trade and Competitiveness Act of 1988, Conference Report to Accompanying H.R. 3*, H.R. Rep. 100–576 at 590 (1988).

[62] *See Surrogate Value Memorandum*.

[63] *See, e.g.*, Hanhong's submission regarding, "Lightweight Thermal Paper from the People's Republic of China: Rebuttal regarding Surrogate Values," dated March 12, 2008, at pages 3 and 4.

such, is the best available information currently on the record. Pursuant to 19 CFR 351.301(c)(3)(i), we encourage interested parties to submit additional publicly available information for consideration in valuing CJRs within 40 days after the date of publication of this determination.

We used Indian transport information to value the inland truck, rail, and waterway freight cost of the raw materials. The Department valued truck freight using Indian freight rates published by Indian Freight Exchange available at *http://www.infreight.com*. This source provided daily rates from six major points of origin to six destinations in India for the period April 2005, through October 2005. We averaged the monthly rates for each rate observation to obtain a surrogate value. The Department determined the best available information for valuing rail freight to be from *http://www.indianrailways.gov.in*. To value waterway freight, we used an Indian domestic ship rate from Indian Waterways Authority. For data that were not contemporaneous with the POI, we adjusted the rates for inflation using WPI, where applicable.

For direct, indirect, and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rate as reported on Import Administration's web page, Import Library, Expected Wages of Selected NME Countries, revised in January 2007, available at *http://ia.ita.doc.gov/wages/index.html*. Because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by the respondent. If the NME wage rates are updated by the Department prior to issuance of the final determination, we will use the updated wage rate in the final LTFV determination. The Department is currently in the process of updating its regression-based wage rate for the PRC for 2007. The deadline for submitting comments on the 2007 expected wages of selected NME countries' calculation was May 1, 2008 and the Department intends to finalize its calculations based on 2005 GNI within one month thereafter. *See http://www.trade.gov/ia/*. Therefore, for the final determination of this investigation we intend to update our PRC Expected Hourly Wage Rate with the finalized 2007 expected wages calculation.

To value electricity, we used data from the International Energy Agency Key World Energy Statistics (2003 edition). Because the value was not contemporaneous with the POI, we adjusted the value for inflation.

The Department valued water using data from the Maharashtra Industrial Development Corporation *http://www.midcindia.org* because it includes a wide range of industrial water tariffs. This source provides 386 industrial water rates within the Maharashtra province from June 2003: 193 for the "inside industrial areas" usage category and 193 for the "outside industrial areas" usage category. Because the value was not contemporaneous with the POI, we adjusted the rate for inflation.

To value factory overhead, selling, general, and administrative expenses, and profit, we used audited financial statements for the year ending March 31, 2006, of two Indian producers of identical and comparable merchandise, Parag Copigraph Pvt. Ltd. ("Parag") and Alpha Carbonless Paper Ltd. ("Alpha").[64] The Department may consider other publicly available financial statements for the final determination, as appropriate.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information from Hanhong and Guanhao upon which we will rely in making our final determination. However, as noted in the "Normal Value" section above, should Guanhao fail to provide a complete cost reconciliation, the Department may determine that there is insufficient cost reconciliation information to warrant verification of any of Guanhao's information on the record.

Combination Rates

In the Initiation Notice, the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation.[65] This practice is described in the *Separate Rate Policy Bulletin*.

Preliminary Determination

The weighted-average dumping margin percentages are as follows:

Exporter/producer combination	Customs ID No.	Percent margin
Exporter: Shanghai Hanhong Paper Co., Ltd., also known as, Hanhong International Limited; Producer: Shanghai Hanhong Paper Co. Ltd	A–570–920–001	132.95
Exporter: Guangdong Guanhao High-Tech Co., Ltd.; Producer: Guangdong Guanhao High-Tech Co., Ltd	A–570–920–002	2.30
PRC–Wide Entity*	A–570–920–000	132.95

* Includes Anne Paper and Yalong.

Disclosure

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

Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct CBP to suspend liquidation of all entries of merchandise subject to this investigation, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Department has determined in its *Lightweight Thermal Paper from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 13850 (March 14, 2008) (*"CVD LWTP Prelim"*), that the product under investigation, exported and produced by Guanhao, benefitted from an export subsidy. Normally, where the product under investigation is also subject to a concurrent countervailing duty investigation, we instruct CBP to require an antidumping cash deposit or posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated above, minus the amount determined to constitute an

[64] *See* petitioner's submission entitled, "Lightweight Thermal Paper From China," dated March 19, 2008, and *Surrogate Value Memorandum*.

[65] *See Initiation Notice*, 7 . FR at 62435.

export subsidy. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 From India*, 69 FR 67306, 67307 (November 17, 2007). Therefore, for merchandise under consideration entered, or withdrawn from warehouse, for consumption on or after publication date of this preliminary determination exported and produced by Guanhao, we will instruct CBP to require an antidumping cash deposit or the posting of a bond for each entry equal to the weighted-average margin indicated above, adjusted for the export subsidy rate determined in *CVD LWTP Prelim*.

For the remaining exporter/producer combinations listed in the chart above, the following cash deposit requirements will be effective upon publication of the preliminary determination for all shipments of merchandise under consideration entered or withdrawn from warehouse, for consumption on or after publication date: (1) The rate for the exporter/producer combinations listed in the chart above will be the rate we have determined in this preliminary determination, except as noted above for Guanhao; (2) for all PRC exporters of merchandise subject to this investigation that have not received their own rate, the cash-deposit rate will be the PRC-wide rate; (3) for all non-PRC exporters of merchandise subject to this investigation that have not received their own rate, the cash-deposit rate will be the rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter. These suspension-of-liquidation instructions will remain in effect until further notice. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds U.S. price, as indicated above. The suspension of liquidation will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of LWTP, or sales (or the likelihood of sales) for importation, of the merchandise under consideration within 45 days of our final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date on which the final verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs. *See* 19 CFR 351.309. A table of contents, list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. The Department also requests that parties provide an electronic copy of its case and rebuttal brief submissions in either a "Microsoft Word" or a "pdf" format.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Interested parties, who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice.[66] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we intend to hold the hearing three days after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, at a time and location to be determined. *See* 19 CFR 351.310. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

We will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: May 6, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–10663 Filed 5–12–08; 8:45 am]

BILLING CODE 3510–DS–P

[66] *See* 19 CFR 351.310(c).

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Construction and Architect-Engineer Contracts (OMB Control Number 0704–0255)

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 requirement for use through May 31, 2008. DoD proposes that OMB extend its approval for use for three additional years.

DATES: DoD will consider all comments received by July 14, 2008.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0255, 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 0704–0255 in the subject line of the message.
- Fax: 703–602–7887.
- Mail: Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD(AT&L) DPAP (DARS), IMD 3D139, 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. The information collection requirements addressed in this notice are available on the World Wide Web at: *http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.* Paper copies are available from Ms. Amy Williams, OUSD(AT&L)DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION: *Title and OMB Number:* Defense Federal Acquisition Regulation Supplement (DFARS) Part 236, Construction and Architect-Engineer Contracts, and related clauses at DFARS 252.236; OMB Control Number 0704–0255.

Needs and Uses: DoD contracting officers need this information to evaluate contractor proposals for contract modifications; to determine that a contractor has removed obstructions to navigation; to review contractor requests for payment for mobilization and preparatory work; to determine reasonableness of costs allocated to mobilization and demobilization; and to determine eligibility for the 20 percent evaluation preference for United States firms in the award of some overseas construction contracts.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 263,281.

Number of Respondents: 2,595.

Responses Per Respondent: Approximately 1.

Annual Responses: 2,630.

Average Burden Per Response: Approximately 100 hours.

Frequency: On occasion.

Summary of Information Collection

DFARS 236.570(a) prescribes use of the clause at DFARS 252.236–7000, Modification Proposals—Price Breakdown, in all fixed-price construction contracts. The clause requires the contractor to submit a price breakdown with any proposal for a contract modification.

DFARS 236.570(b) prescribes use of the following clauses in fixed-price construction contracts as applicable:

(1) The clause at DFARS 252.236–7002, Obstruction of Navigable Waterways, requires the contractor to notify the contracting officer of obstructions in navigable waterways.

(2) The clause at DFARS 252.236–7003, Payment for Mobilization and Preparatory Work, requires the contractor to provide supporting documentation when submitting requests for payment for mobilization and preparatory work.

(3) The clause at DFARS 252.236–7004, Payment for Mobilization and Demobilization, permits the contracting officer to require the contractor to furnish cost data justifying the percentage of the cost split between mobilization and demobilization, if the contracting officer believes that the proposed percentages do not bear a reasonable relation to the cost of the work.

DFARS 236.570(c) prescribes use of the following provisions in solicitations for military construction contracts that are funded with military construction appropriations and are estimated to exceed $1,000,000:

(1) The provision at DFARS 252.236–7010, Overseas Military Construction—Preference for United States Firms, requires an offeror to specify whether or not it is a United States firm.

(2) The provision at DFARS 252.236–7012, Military Construction on Kwajalein Atoll—Evaluation Preference, requires an offeror to specify whether it is a United States firm, a Marshallese firm, or other firm.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

[FR Doc. E8–10668 Filed 5–12–08; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

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: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by May 14, 2008.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Bridget Dooling, Desk Officer, Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (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 this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. 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. ED 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 respondents, including through the use of information technology.

Dated: May 8, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: New.

Title: Teacher Education Assistance for College and Higher Education (TEACH) Grant Program Agreement to Serve.

Abstract: The TEACH Grant Program Agreement to Serve must be signed by a student each year before receiving a

TEACH Grant. By signing the Agreement to Serve, the student promises to meet the teaching service requirements of the TEACH Grant program as described in the Agreement, and to repay with interest the full amount of any TEACH Grant as a Direct Unsubsidized Loan if the student does not complete the required teaching service or otherwise fails to meet the requirements of the TEACH Grant Program.

Additional Information: The U.S. Department of Education requests that OMB grant an emergency clearance of the Agreement to Serve to be used in the TEACH Grant Program. Section 420N(b) of the Higher Education Act of 1965, as amended, requires an applicant for a TEACH Grant to complete an Agreement to Serve before receiving a TEACH Grant. The TEACH Grant Program was established under the HEA by the College Cost Reduction and Access Act of 1007 (the CCRAA). In accordance with section 4200 of the CCRAA, the effective date for the TEACH Grant Program is July 1, 2008. The Department is requesting an emergency clearance because the regular clearance process would not enable us to make an OMB-approved Agreement to Serve available to TEACH Grant applicants by the statutory effective date for the TEACH Grant Program. The Department requests emergency clearance of the Agreement to Serve by May 14, 2008, to ensure that systems work and testing necessary to implement the electronic Agreement to Serve can be completed by July 1, 2008. Upon receiving emergency clearance of the Agreement to Serve, the Department will submit the Agreement to Serve for the regular information clearance process, including notice of a 60-day public comment period.

Frequency: On occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 55,800.

Burden Hours: 27,900.

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 3685. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements, should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–10632 Filed 5–12–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Underground Railroad Educational and Cultural Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2008

Catalog of Federal Domestic Assistance (CFDA) Number: 84.345A.

DATES: Applications Available: May 13, 2008.

Deadline for Transmittal of Applications: June 12, 2008.

Deadline for Intergovernmental Review: August 11, 2008.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Underground Railroad Educational and Cultural Program (URR) makes grants to nonprofit educational organizations that are established to research, display, interpret, and collect artifacts relating to the history of the Underground Railroad.

Authority: 20 U.S.C. 1153.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 84, 85, 86, 97, 98 and 99.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $1,943,510

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2009 from the list of unfunded applicants from this competition.

Estimated Average Size of Awards: $500,000–$1,000,000 total for up to three years.

Estimated Number of Awards: 2.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* Nonprofit educational organizations that are established to research, display, interpret, and collect artifacts relating to the history of the Underground Railroad.

2. *Cost Sharing or Matching:* The Federal Government may provide no more than 20 percent of the total funds for any project funded under this competition. See 20 U.S.C. 1153(b)(2). Applicants must provide the remaining 80 percent funding from private entities. As part of the application process, applicants will be required to demonstrate their ability to meet the cost sharing requirement.

3. *Other:* Each nonprofit educational organization awarded a grant under this competition must create an endowment to fund any and all shortfalls in the costs of the on-going operations of the facility. Grantees must establish a network of satellite centers throughout the United States to help disseminate information regarding the Underground Railroad. These satellite centers must raise 80 percent of the funds required to establish the satellite centers from non-Federal public and private sources. In addition, grantees must establish the capability to electronically link the facility with other local and regional facilities that have collections and programs that interpret the history of the Underground Railroad. As part of the application process, applicants will be required to document their ability to create an endowment, establish satellite centers, and establish the electronic capability described above. For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

IV. Application and Submission Information

1. *Address to Request Application Package:* Claire D. Cornell, Underground Railroad Program, Fund for the Improvement of Postsecondary Education (FIPSE), Office of Postsecondary Education (OPE), U.S. Department of Education, 1990 K Street, NW., room 6145, Washington, DC 20006–8544. Telephone: (202) 502–7609 or by e-mail: *claire.cornell@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer

diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to the equivalent of no more than 30 pages, using the following standards:

- A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides. Page numbers and an identifier may be outside of the 1" margin.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.
- The page limit does not apply to Part I, the Application for Federal Assistance Form (SF–424); Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the Table of Contents, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: May 13, 2008.

Deadline for Transmittal of Applications: June 12, 2008.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice.

Deadline for Intergovernmental Review: August 11, 2008.

We will not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We specify unallowable costs in 34 CFR 74.27. We reference additional regulations outlining funding restriction in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Underground Railroad Educational and Cultural Program, CFDA Number 84.345A, must be submitted electronically using the Government wide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for The Underground Railroad Educational and Cultural Program at *http://www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.345, not 84.345A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the application requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) Registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/GrantsgovRegistrationBrochure.pdf).* You also must provide on your application the same D–U–N–S Number used with this registration. Please note

that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).

• You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; and

• No later than two weeks before the application deadline date (14 calendar days; or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Claire D. Cornell, U.S. Department of Education, 1990 K Street, NW., room 6145, Washington, DC 20006–8544. FAX: (202) 502–7877.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:
U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.345A), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier:
U.S. Department of Education, Application Control Center, Stop 4260, Attention: (CFDA Number 84.345A), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.345A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria. The selection criteria for this program are from 34 CFR 75.210 and include: Project significance (10 points); quality of the project design (40 points); adequacy of project resources (20 points); quality of project personnel (10 points); and quality of the project evaluation (20 points). Additional information regarding these criteria is in the application package for this competition.

In making grant awards for this program, the Department will consider information concerning the applicant's performance and use of funds from a prior grant in this program or in any other Department program and will consider the applicant's failure to submit an acceptable performance report for a grant in this program or in any other Department program. 34 CFR 75.217(d)(3).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary and as outlined in the text below.

For each fiscal year for which an organization receives funding under this program, those organizations must submit to the Department a report that contains: (a) A description and evaluation of the programs and activities supported by the funding; (b) the audited financial statement of the organization for the preceding fiscal year; and (c) a plan for the programs and activities to be supported by the funding. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to: *http://www.ed.gov/fund/grant/apply/appforms/appforms/appforms.html* and review a more detailed explanation in the application package.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the following measure will be used by the Department in assessing the performance of the Underground Railroad Educational and Cultural Program:

- The extent to which funded projects have been institutionalized and continued after URR funding ends.

VII. Agency Contact

For Further Information Contact: Claire D. Cornell, Underground Railroad Educational and Cultural Program, FIPSE, OPE, U.S. Department of Education, 1990 K Street, NW., room 6145, Washington, DC 20006–8544. Telephone: (202) 502–7609 or by e-mail: *claire.cornell@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: May 8, 2008.

Diane Auer Jones,

Assistant Secretary for Postsecondary Education.

[FR Doc. E8–10669 Filed 5–12–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; College Cost Reduction and Access Act Hispanic-Serving Institutions (CCRAA–HSI) Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2008

Catalog of Federal Domestic Assistance (CFDA) Number: 84.031C.

DATES: Applications Available: May 13, 2008.

Deadline for Transmittal of Applications: June 27, 2008.

Deadline for Intergovernmental Review: August 26, 2008.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The College Cost Reduction and Access Act Hispanic-Serving Institutions (CCRAA–HSI) Program provides grants to assist Hispanic-serving institutions (HSIs) to develop and carry out activities to improve and expand the HSI's capacity to serve Hispanic and other low-income students.

Priorities: In accordance with 34 CFR 75.105(b)(2)(iv) and section 437(d)(1) of the General Education Provisions Act, these priorities are from section 499A(b)(2)(B) of the Higher Education Act of 1965 (HEA), as amended by the

College Cost Reduction and Access Act of 2007.

Competitive Preference Priorities: For FY 2008, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award an additional ten points to an application that meets both priorities. Applicants must address both priorities to receive the additional points. Applicants that do not address both priorities will not receive any competitive preference priority points.

These priorities are:

Competitive Preference Priority 1

In accordance with Section 499A(b)(2)(B)(i) of the HEA, Individual Development or Cooperative Arrangement Development Grants that propose to increase the number of Hispanic and other low income students attaining degrees in the fields of science, technology, engineering, or mathematics; and

Competitive Preference Priority 2

In accordance with Section 499A(b)(2)(B)(ii) of the HEA, Individual Development or Cooperative Arrangement Development Grants that propose to develop model transfer and articulation agreements between two-year HSIs and four-year institutions in such fields.

Program Authority: 20 U.S.C. 1101–1101d, 1103–1103g.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 84, 85, 86, 97, 98, and 99. (b) The applicable regulations for this program in 34 CFR 606.2(a) and (b), 606.3, 606.4, 606.5, 606.6, 606.7, 606.10(b)(c)(d), and 606.30.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $100,000,000.

Estimated Range of Awards: $850,000–2,500,000.

Estimated Average Size of Awards: Individual Development Grant: $862,000. Cooperative Arrangement Development Grant: $1,200,000.

Maximum Awards: Individual Development Grant: $2,500,000. Cooperative Arrangement Development Grant: $2,500,000. The Department of Education (Department) will not fund any application at an amount exceeding these maximum amounts for a single budget period of 12 months. During our initial review, we may choose not to further consider or review an application with a budget that exceeds the applicable maximum amount. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: Individual Development Grants: 58. Cooperative Arrangement Development Grants: 42.

Note: The Department is not bound by any estimates in this notice. Applicants should periodically check the CCRAA–HSI Program Web site for further information. The address is: *http://www.ed.gov/programs/hsiccraa/index.html.*

Project Period: Up to 24 months.

III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education (IHEs) that qualify as eligible HSIs are eligible to apply for new Individual Development Grants and Cooperative Arrangement Development Grants under the CCRAA–HSI Program. To be an eligible HSI, an IHE must—

(1) Be accredited or preaccredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered;

(2) Be legally authorized by the State in which it is located to be a junior college or community college or to provide an educational program for which it awards a bachelor's degree;

(3) Be designated as an "eligible institution" by demonstrating that it: (a) Has an enrollment of needy students as described in 34 CFR 606.3; and (b) has low average educational and general expenditures per full-time equivalent (FTE) undergraduate student as described in 34 CFR 606.4;

(4) Have an enrollment of undergraduate FTE students that is at least 25 percent Hispanic students at the end of the award year immediately preceding the date of application.

Note: The Third Higher Education Extension Act of 2006 amended section 502(a) of the HEA (20 U.S.C. 1101a(a)(5)(B)) to require that institutions have an enrollment of undergraduate FTE students that is at least 25 percent Hispanic students at the end of the award year immediately preceding the date of application. Funds for the CCRAA–HSI Program are awarded each fiscal year, thus, for this program, the end of the award year refers to the end of the fiscal year prior to the application due date. The end of the fiscal year occurs on September 30 for any given year. Therefore, for purposes of making the determination described in paragraph (4) IHEs must report their undergraduate Hispanic FTE percent based on the student enrollment count closest to, but not after, September 30, 2007.

The Third Higher Education Extension Act of 2006 also amended section 502(a) of the HEA to eliminate the previous statutory requirement in the HSI Program that an IHE applying for a grant provide an assurance that not less than 50 percent of the institution's Hispanic students are low-income individuals.

The Notice Inviting Applications for Designation as Eligible Institutions for FY 2008 was published in the **Federal Register** on March 10, 2008 (73 FR 12721). The CCRAA–HSI Program eligibility requirements are in 34 CFR 606.2 through 606.5 and can be accessed from the following Web site: *http://www.access.gpo.gov/nara/cfr/waisidx_01/34cfr606_01.html.* These regulations do not reflect the changes made to the HSI Program requirements by the Third Higher Education Extension Act of 2006.

Note 1: An eligible HSI that submits more than one application may be awarded both an Individual Development Grant and a Cooperative Arrangement Development Grant, for the CCRAA–HSI Program only, as long as the proposed activities are different for each grant application and are different from the activities funded by the institution's current Title V, HSI grant.

Note 2: In considering applications for grants under this program, the Department will verify data reported by the institution on its application with the information reported by the institution to the Department's Integrated Postsecondary Education Data System (IPEDS), the IHE's State-reported enrollment data, and the institutional annual report. If there are any differences in the percentages reported in the IPEDS and the percentages reported in the CCRAA–HSI grant application, the IHE should explain the differences as a part of its eligibility documentation.

Note 3: If you are a four-year HSI institution planning to submit a CCRAA–HSI application supporting the competitive preference priorities, the two-year HSI will be required to submit its assurance of 25 percent enrollment of undergraduate FTE Hispanic students.

2. *Cost Sharing or Matching:* There are no cost sharing or matching requirements unless the grantee uses a portion of its grant for establishing or improving an endowment fund. If a grantee proposes to use a portion of its grant for endowment fund purposes, it must match those grant funds with an equivalent amount of non-Federal funds. (20 U.S.C. 1101b(c)(2)).

IV. Application and Submission Information

1. *Address to Request Application Package:* Carnisia M. Proctor, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006–8513. Telephone: (202) 502–7606 or by e-mail: *Carnisia.Proctor@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the

Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative (Part III) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We have established mandatory page limits for both the Individual Development Grant and the Cooperative Arrangement Development Grant applications. You must limit the section of the narrative that addresses the selection criteria to no more than 35 pages for the Individual Development Grant application and 55 pages for the Cooperative Arrangement Development Grant application, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications, or the one-page abstract.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: May 13, 2008.

Deadline for Transmittal of Applications: June 27, 2008.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: August 26, 2008.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

Applicability of Executive Order 13202

Applicants that apply for construction funds under the CCRAA–HSI Program must comply with Executive Order 13202 signed by President Bush on February 17, 2001, and amended on April 6, 2001. This Executive order provides that recipients of Federal construction funds may not "require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other construction project(s)" or "otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise adhere to agreements with one or more labor organizations, on the same or other construction project(s)." However, the Executive order does not prohibit contractors or subcontractors from voluntarily entering into these agreements. Projects funded under this program that include construction activity will be provided a copy of this Executive order and will be asked to certify that they will adhere to it.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the CCRAA–HSI Program, CFDA Number 84.031C, must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the CCRAA–HSI Program at *http://www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.031, not 84.031C).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*

• To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) Registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition, you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).

• You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date. *Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:* If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and the problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Carnisia M. Proctor, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006–8513. FAX: (202) 502–7861. Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:

U.S. Department of Education,

Application Control Center, Attention: (CFDA Number 84.031C), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier:

U.S. Department of Education, Application Control Center, Stop 4260, Attention: (CFDA Number 84.031C), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.031C), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.209(a) and 75.210, and are as follows:

Need for the project (20 points).

Quality of the project design (15 points).

Quality of project services (15 points).

Quality of project personnel (10 points).

Adequacy of resources (5 points);

Quality of the management plan (20 points); and

Quality of project evaluation (15 points).

Additional information regarding these criteria is in the application package for this competition.

2. *Review and Selection Process:* Applicants must provide, as an attachment to the application, the documentation the institution relied upon in determining that at least 25 percent of the institution's undergraduate FTE students are Hispanic.

Note: The 25 percent requirement applies only to undergraduate Hispanic students and is calculated based upon FTE students. Instructions for formatting and submitting the verification documentation to Grants.gov are in the application package for this competition.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary in 34 CFR 75.118, 34 CFR 75.720 and in 34 CFR 606.31.

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the CCRAA–HSI Program: (1) The percentage change, over the five-year grant period, of the number of full-time degree-seeking undergraduates enrolled at HSIs. (2) The percentage of first-time, full-time degree-seeking undergraduate students who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same institution. (3) The percentage of first-time, full-time degree-seeking undergraduate students enrolled at four-year HSIs graduating within six years of enrollment. (4) The percentage of first-time, full-time degree-seeking undergraduate students enrolled at two-year HSIs graduating within three years of enrollment. (5) Federal cost for undergraduate and graduate degrees at institutions in the CCRAA HSI program.

5. *CCRAA Special Analyses:* The HSI Program created under the CCRAA includes two priorities: (1) To increase the number of Hispanic and other low-income students attaining degrees in the fields of science, technology, engineering, or mathematics (STEM); and (2) To develop model transfer and articulation agreements between two-year HSIs and four-year institutions in such fields. To assess the impact of the adoption of these priorities on program outcomes, the Department will conduct special analyses to determine the changes that occur during the course of the grant period in: (1) The percentage of students receiving STEM-related degrees from grantee institutions that select this priority; and (2) The percentage of students transferring from two-year grantee institutions that select this priority to other institutions.

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Carnisia M. Proctor, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006–8513. Telephone: (202) 502–7606 or by e-mail: *Carnisia.Proctor@ed.gov*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact

person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: May 8, 2008.

Diane Auer Jones,

Assistant Secretary for Postsecondary Education.

[FR Doc. E8–10681 Filed 5–12–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information Predominantly Black Institutions Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2008

Catalog of Federal Domestic Assistance (CFDA) Number: 84.382A.

DATES: Applications Available: May 13, 2008.

Deadline for Transmittal of Applications: June 27, 2008.

Deadline for Intergovernmental Review: August 26, 2008.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Predominantly Black Institutions (PBI) Program is to strengthen predominantly Black institutions to carry out programs in the following areas: Science, technology, engineering, or mathematics (STEM); health education; internationalization or globalization; teacher preparation; or improving educational outcomes of African-American males.

Program Authority: Title IV, Part J, Section 499A of the Higher Education Act of 1965 (HEA), as amended by the College Cost Reduction and Access Act (CCRAA) of 2007.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $15,000,000.

Estimated Size of Awards: $600,000 per year.

Estimated Number of Awards: 25.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

III. Eligibility Information

1. *Eligible Applicants:* An institution of higher education that—

(A) Has an enrollment of needy students as defined by the CCRAA of 2007. The term *enrollment of needy students* means the enrollment at an institution of higher education with respect to which not less than 50 percent of the undergraduate students enrolled in an academic program leading to a degree—

(a) In the second fiscal year preceding the fiscal year for which the determination is made, were Federal Pell Grant recipients for such year;

(b) Come from families that receive benefits under a means-tested Federal benefit program (as defined in paragraph (5));

(c) Attended a public or nonprofit private secondary school—

(i) That is in the school district of a local educational agency that was eligible for assistance under part A of title I of the Elementary and Secondary Education Act of 1965 for any year during which the student attended such secondary school; and

(ii) Which for the purpose of this paragraph and for that year was determined by the Secretary (pursuant to regulations and after consultation with the State educational agency of the State in which the school is located) to be a school in which the enrollment of children counted under a measure of poverty described in section 1113(a)(5) of such Act exceeds 30 percent of the total enrollment of such school; or

(d) Are first-generation college students (as that term is defined in section 402A(g)), and a majority of such first-generation college students are low-income individuals. The term low-income individual has the meaning given such term in section 402A(g).

(B) Has an average educational and general expenditure which is low, per full-time equivalent undergraduate student in comparison with the average educational and general expenditure per full-time equivalent undergraduate student of institutions of higher education that offer similar instruction. The Secretary may waive this requirement, in accordance with section 392(b) of the HEA in the same manner as the Secretary applies the waiver requirements to grant applicants under section 312(b)(1)(B) of the HEA;

(C) Has an enrollment of undergraduate students—

i. That is at least 40 percent Black American students;

ii. That is at least 1,000 undergraduate students;

iii. Of which not less than 50 percent of the undergraduate students enrolled at the institution are low-income individuals or first-generation college students (as that term is defined in section 402A(g); The term *first generation college student* means—(A) an individual both of whose parents did not complete a baccalaureate degree; or (B) in the case of any individual who regularly resided with and received support from only one parent, an individual whose only such parent did not complete a baccalaureate degree; and

iv. Of which not less than 50 percent of the undergraduate students are enrolled in an educational program leading to a bachelor's or associate's degree that the institution is licensed to award by the State in which the institution is located;

(D) Is legally authorized to provide, and provides within the State, an educational program for which the institution of higher education awards bachelor's degree, or in the case of a junior or community college, an associate's degree;

(E) Is accredited by a nationally recognized accrediting agency or association determined by the Secretary to be a reliable authority as to the quality of training offered, or is, according to such an agency or association, making reasonable progress toward accreditation; and

(F) Is not receiving assistance under Part B of Title III of the HEA, as amended by the CCRAA of 2007.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Karen W. Johnson, U.S. Department of Education, 1990 K Street, NW., room 6032, Washington, DC 20006–8515. Telephone: (202) 502–7777 or by e-mail: *karen.johnson@ed.gov* or Bernadette Miles, U.S. Department of

Education, 1990 K Street, NW., room 6047, Washington, DC 20006–8515. Telephone: (202) 502–7616 or by e-mail: *bernadette.miles@ed.gov*.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package and instructions for this program. Page Limit: The program narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the section of the narrative that addresses the selection criteria to the equivalent of no more than 30 pages, using the following standards:

• A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides. Page numbers and an identifier may be outside of the 1″ margin.

• Double space (no more than three lines per vertical inch) all text in the application narrative, except titles, headings, footnotes, quotations, references, and captions. Charts, tables, figures, and graphs in the application narrative may be single spaced and will count toward the page limit.

• Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch). However, you may use a 10-point font in charts, tables, figures, and graphs.

• Use one of the following fonts: Times New Roman, Courier, Courier New or Arial. Applications submitted in any other font (including Times Roman and Arial Narrow) will be rejected.

• The page limit does not apply to Part I, the Department of Education Supplemental Information for SF–424 form (SF–424); Part II, the Budget Information Non-Construction Programs form (ED 524); and Part IV, the Assurances and Certifications. The page limit also does not apply to a table of contents. If you include any attachments or appendices not specifically requested, these items will be counted as part of the program narrative (Part III) for purposes of the page limit requirement. You must include your complete response to the selection criteria in the program narrative.

We will reject your application if you exceed the page limit or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: May 13, 2008.

Deadline for Transmittal of Applications: June 27, 2008.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: August 26, 2008.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Predominantly Black Institutions Program, CFDA Number 84.382A, must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

You may access the electronic grant application for the Predominantly Black Institutions program at *http://www.Grants.gov*. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.382, not 84.382A).

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application

in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*

• To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) Registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF–424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).

• You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an Ed-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact either of the persons listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Karen W. Johnson, U.S. Department of Education, 1990 K Street, NW., room 6032, Washington, DC 20006–8515, FAX: (202) 502–7861.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.382A), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier:

U.S. Department of Education, Application Control Center, Stop 4260, Attention: (CFDA Number 84.382A), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.382A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.209(a) and 75.210, and are as follows—

Need for the project (20 points);
Quality of the project design (15 points);
Quality of project services (15 points);
Quality of project personnel (10 points);
Adequacy of resources (5 points);
Quality of the management plan (20 points);
Quality of project evaluation (15 points).

Additional information regarding these criteria is in the application package for this competition.

2. *Review and Selection Process:* Applicants must provide, as an attachment to the application, the documentation the institution relied upon to determine that at least 40 percent of the institution's undergraduate full-time equivalent (FTE) students are Black American students.

Note: The 40 percent requirement applies only to *undergraduate* Black American students and is calculated based upon FTE students. Instructions for formatting and submitting the verification documentation to Grants.gov are in the application package for this competition.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we will notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. Grantees are required to use the electronic data instrument *Caliber Annual Performance Reporting System* to complete the final report. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the Predominantly Black Institutions program:

(1) The number of full-time degree-seeking undergraduates enrolling at Predominantly Black Institutions (PBI).

(2) The increase in the persistence rate for students enrolled at PBIs.

VII. Agency Contact

For Further Information Contact: Karen W. Johnson, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 1990 K Street, NW., room 6032, Washington, DC 20006–8515. Telephone: (202) 502–7777 or by e-mail: *karen.johnson@ed.gov* or Bernadette D. Miles, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 1990 K Street, NW., room 6047, Washington, DC 20006–8515. Telephone: (202) 502–7616 or by e-mail: *bernadette.miles@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: May 8, 2008.

Diane Auer Jones,

Assistant Secretary for Postsecondary Education.

[FR Doc. E8–10680 Filed 5–12–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC08–521–001, FERC–521]

Commission Information Collection Activities, Proposed Collection; Comment Request; Submitted For OMB Review

May 6, 2008.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review of this information collection requirement. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of February 19, 2008 (73 FR 9108–09) and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by June 9, 2008.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include the OMB Control No. as a point of reference. The Desk Officer may be reached by telephone at 202–395–4650. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–34, Attention: Michael Miller, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC08–521–001.

Documents filed electronically via the Internet must be prepared in the acceptable filing format and in compliance with the Federal Energy Regulatory Commission's submission guidelines. Complete filing instructions and acceptable filing formats are available at (*http://www.ferc.gov/help/submission-guide/electronic-media.asp*). To file the document electronically, access the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp*), and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the eLibrary link. For user assistance, contact *ferconlinesupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Description

The information collection submitted for OMB review contains the following:

1. *Collection of Information:* FERC–521 "Payments for Benefits from Headwater Improvements".

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* 1902–0087.

The Commission is now requesting that OMB approve with a three-year extension of the expiration date, with no changes to the existing collection. The information filed with the Commission is mandatory.

4. *Necessity of the Collection of Information:* The information is used by the Commission to implement the statutory provisions of section 10(f) of the Federal Power Act (FPA). The FPA authorizes the Commission to determine headwater benefits received by downstream hydropower project owners. Headwater benefits are the additional energy production possible at a downstream hydropower project resulting from the regulation of river flows by an upstream storage reservoir.

When the Commission completes a study of a river basin, it determines headwater benefits charges that will be apportioned among the various downstream beneficiaries. A headwater benefits charge, and the cost incurred by the Commission to complete an evaluation are paid by downstream hydropower project owners. In essence, the owners of non-federal hydropower power projects that directly benefit from a headwater(s) improvement must pay an equitable portion of the annual charges for interest, maintenance, and depreciation of the headwater project to the U.S. Treasury. The regulations provide for the apportionment of these costs between the headwater project and downstream projects based on a downstream energy gains and propose equitable apportionment methodology that can be applied to all river basins in which headwater improvements are built. The data the Commission requires owners of non-federal hydropower projects to file for determining annual charges is specified in 18 Code of Federal Regulations (CFR) Part 11.

5. *Respondent Description:* The Commission estimates that it will receive annually on average 3 filings per year.

6. *Estimated Burden:* 120 total hours, 3 respondents (average per year), 1 response per respondent, and .40 hours per response (average).

7. *Estimated Cost Burden to respondents:* The estimated total cost to respondents is $7,291. (120 hours ÷ 2080 × $126,384.)

Statutory Authority: Section 10(f) of the Federal Power Act, 16 U.S.C. 803.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10611 Filed 5–12–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–466–001; Docket No. CP06–467–001]

Columbia Gas Transmission Corp.; Somerset Gas Gathering of Pennsylvania, LLC; Notice of Application

May 6, 2008.

Take notice that on March 31, 2008, Columbia Gas Transmission Corporation (Columbia) and Somerset Gas Gathering of Pennsylvania, LLC (Somerset), filed in Docket Nos. CP06–466–001 and CP06–467–001, to amend the pending applications filed in Docket Nos. CP06–466–000 and CP06–467–000 to modify Somerset's plan for future operations of the facilities to be acquired and to provide additional technical and factual details regarding the 1818/1862 System. Specifically, Somerset clarifies that it plans to cut and cap certain portions of 1818/1862 System in order to better facilitate the functionalization of the facilities as gathering lines while ensuring the limited nature of the

transportation service provided to Columbia as described in Columbia and Somerset applications. Specifically, Columbia proposes to operate two sections of the system independently—one offering limited transportation service as described in the Columbia and Somerset Applications and the other operating as part of a gathering system—while two other sections will remain inactive, all as more fully set forth in the application which is on file with the Commission and open to public inspection. 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 (202) 502–8659 or TTY, (202) 208–3676.

Any questions regarding this application should be directed to Gregory D. Russell, Vorys, Sater, Seymour and Pease, LLP, 52 East Gay Street, P.O. Box 1008, Columbus, Ohio 43216–1008; telephone (614) 464–5468, fax (614) 719–4935, and/or Fredric J. George, Lead Counsel, Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, West Virginia 25325–1273; telephone (304) 357–2359, fax (304) 357–3206.

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: May 27, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10616 Filed 5–12–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–207–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

May 6, 2008.

Take notice that on April 29, 2008, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP08–207–000, an application, pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA), for an order authorizing Transco to: (1) Abandon its Hester Storage Field and a portion of the connecting pipeline (Hester Lateral), located in St. James Parish, Louisiana; and (2) install temporary compression to facilitate the withdrawal of recoverable injected base gas from the Hester Storage Field, all as more fully set forth in the application which is on file with the Commission and open to public inspection. 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.

Transco states that the abandonment of the Hester Storage Field is necessary because of continuing gas losses from the reservoir. Transco estimates that the complete abandonment of the storage field will take approximately three years (2009–2011) with the first two years devoted to withdrawing the recoverable

injected base gas from the reservoir. During the final year of the abandonment process Transco will remove all above ground facilities, plug all wells, and remove gathering lines. In addition, Transco will abandon in place 4.75 miles of the 8.66 mile Hester Lateral. The remaining part of the Hester Lateral will continue to be used to provide service to a chemical plant owned by Occidental Chemical Corporation. Transco intends to sell the recovered injected base gas and, in accordance with Article V, Section A, Subsection 1 of the Stipulation and Agreement filed with the Commission on November 28, 2007 in Docket Nos. RP06–569–000, *et. al.*, share the proceeds from the sale with its customers.

Any questions regarding this application should be directed to Ingrid Germany, Transcontinental Gas Pipe Line Corporation, Post Office Box 1396, Houston, Texas 77251 at (713) 215–4015.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: May 28, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10608 Filed 5–12–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13112–000]

Hydro Green Energy, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

May 6, 2008.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–13112–000.

c. *Date Filed:* February 8, 2008.

d. *Applicant:* Hydro Green Energy, LLC.

e. *Name of the Project:* New York 1 Project.

f. *Location:* The project would be located on the Niagara River in Niagara County, New York. The project uses no dam or impoundment.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Wayne F. Krouse, Chairman & CEO, Hydro Green Energy, LLC, 5090 Richmond Avenue #390, Houston, TX 77056, (877) 556–6566, Fax (713) 339–9537.

i. *FERC Contact:* Patricia W. Gillis, (202) 502–8735.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, 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–13112–000) 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. *Description of Project:* The proposed project would consist of: (1)

36 proposed Hydro Green Energy, LLC generating units having a total installed capacity of 7-megawatts, (2) a proposed 2,000 to 5,000-foot-long 6.7–kV transmission line, and (4) appurtenant facilities. The project would have an average annual generation of 550-gigawatt-hours and be sold to a local utility.

l. *Location 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 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 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 at *http://www.ferc.gov* under the "e-Filing" link.

s. *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", and "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.

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.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10613 Filed 5–12–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13113–000]

Hydro Green Energy, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

May 6, 2008.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–13113–000.

c. *Date Filed:* February 8, 2008.

d. *Applicant:* Hydro Green Energy, LLC.

e. *Name of the Project:* New York 2 Project.

f. *Location:* The project would be located on the Niagara River in Niagara County, New York. The project uses no dam or impoundment.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Wayne F. Krouse, Chairman & CEO, Hydro Green Energy, LLC, 5090 Richmond Avenue #390, Houston, TX 77056, (877) 556–6566, Fax (713) 339–9537.

i. *FERC Contact:* Patricia W. Gillis, (202) 502–8735.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 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–13113–000) 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. *Description of Project:* The proposed project would consist of: (1) 54 proposed Hydro Green Energy, LLC generating units having a total installed capacity of 7-megawatts, (2) a proposed 2,000 to 5,000-foot-long 6.7-kV transmission line, and (3) appurtenant facilities. The project would have an average annual generation of 552.7-gigawatt-hours and be sold to a local utility.

l. *Location 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 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 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 at *http://www.ferc.gov* under the "e-Filing" link.

s. *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", and "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.

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.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10614 Filed 5–12–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

April 30, 2008.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC08–81–000.

Applicants: PPM Wind Energy LLC; Dillon Wind LLC; Providence Heights Wind, LLC; Winnebago Windpower LLC; IBERDROLA RENEWABLES, Inc.; Aeolus Wind Power V LLC; Iberdrola Renewable Energies USA, Ltd.; GE Energy Financial Services, Inc.; Wachovia Investment Holdings, LLC.

Description: Joint Application for Section 203 Authorization for Disposition of Jurisdictional Facilities and Request for Confidential Treatment,

Waiver of Filing Requirements and 21-Day Comment Period of Iberdrola Renewable Energies USA, Ltd., *et. al.*

Filed Date: 04/29/2008.

Accession Number: 20080429–5191

Comment Date: 5 p.m. Eastern Time on Tuesday, May 20, 2008.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG08–69–000.

Applicants: Silver Star I Power Partners, LLC.

Description: Notice of Self-Certification of Silver Star I Power Partners, LLC as an Exempt Wholesale Generator.

Filed Date: 04/29/2008.

Accession Number: 20080429–5139.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 20, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER05–1511–002.

Applicants: Noble Thumb Windpark I, LLC.

Description: Noble Thumb Windpark I, LLC submits a Substitute First Revised Sheet 1 in both clean and redline formats in compliance with Order 697.

Filed Date: 04/28/2008.

Accession Number: 20080429–0208.

Comment Date: 5 p.m. Eastern Time on Friday, May 9, 2008.

Docket Numbers: ER07–1372–007.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits proposed clarifications and revisions to the Midwest ISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff to comply with the 60-day compliance etc.

Filed Date: 04/25/2008.

Accession Number: 20080429–0105.

Comment Date: 5 p.m. Eastern Time on Friday, May 16, 2008.

Docket Numbers: ER08–680–000.

Applicants: Arizona Public Service Company.

Description: Withdrawal of proposed changes to its FERC Electric Tariff, Volume 5 of Arizona Public Service Company.

Filed Date: 04/16/2008.

Accession Number: 20080417–5034.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 7, 2008.

Docket Numbers: ER08–687–000.

Applicants: Stockton CoGen Company.

Description: Motion of Stockton CoGen Company to withdraw application for blanket authorizations, certain waivers and order approving market-based rate tariff.

Filed Date: 04/22/2008.

Accession Number: 20080424–0206.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 13, 2008.

Docket Numbers: ER08–873–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits three executed interconnection service agreements with Indiana Michigan Power Co et. al.

Filed Date: 04/25/2008.

Accession Number: 20080429–0001.

Comment Date: 5 p.m. Eastern Time on Friday, May 16, 2008.

Docket Numbers: ER08–875–000.

Applicants: Virginia Electric and Power Company.

Description: Virginia Electric and Power Company et. al submits a revised Generator Interconnection and Operating Agreement with Southernwestern Public Service Authority of Virginia.

Filed Date: 04/25/2008.

Accession Number: 20080429–0107.

Comment Date: 5 p.m. Eastern Time on Friday, May 16, 2008.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES08–48–000.

Applicants: PHI Service Company.

Description: PHI Service Company Form 523 Joint Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities.

Filed Date: 04/29/2008.

Accession Number: 20080429–5130.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 20, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07–82–001.

Applicants: Duke Energy Carolinas, LLC.

Description: Duke Energy Carolinas, LLC submits Substitute Original Sheet 184 et al., to FERC Electric Tariff, Sixth Revised Volume 1 in compliance with the Commission's 3/27/08 Order.

Filed Date: 04/25/2008.

Accession Number: 20080429–0101.

Comment Date: 5 p.m. Eastern Time on Friday, May 16, 2008.

Docket Numbers: OA07–87–001.

Applicants: Tampa Electric Company.

Description: Tampa Electric Company submits Substitute First Revised Sheet 94 et al., in its open access transmission tariff.

Filed Date: 04/25/2008.

Accession Number: 20080429–0104.

Comment Date: 5 p.m. Eastern Time on Friday, May 16, 2008.

Docket Numbers: OA07–92–001.

Applicants: Southern Company Services, Inc.

Description: Order No. 890 OATT Attachment C compliance Filing of Southern Company Services, Inc.

Filed Date: 04/29/2008.

Accession Number: 20080429–5068.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 20, 2008.

Docket Numbers: OA07–93–001.

Applicants: E.ON U.S. LLC.

Description: EON U.S. LLC et al., submits revised Open Access Transmission Tariff sheets for Attachment C, incorporating the changes required by the Commission in the Letter Order.

Filed Date: 04/25/2008.

Accession Number: 20080429–0103.

Comment Date: 5 p.m. Eastern Time on Friday, May 16, 2008.

Docket Numbers: OA07–110–001.

Applicants: NorthWestern Corporation (South Dakota).

Description: Northwestern Corporation submits Revised Attachments C and K to their South Dakota Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume 2.

Filed Date: 04/10/2008.

Accession Number: 20080416–0054.

Comment Date: 5 p.m. Eastern Time on Thursday, May 1, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and § 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling

link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10606 Filed 5–12–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

May 6, 2008.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: ER08–649–001.

Applicants: EFS Parlin Holdings LLC.

Description: EFS Parlin Holdings, LLC submits Market-Based rate Authority and Request for Waivers and Pre-Approvals revisions to Attachment 1 to its March 10th filing.

Filed Date: 04/25/2008.

Accession Number: 20080429–0106.

Comment Date: 5 p.m. Eastern Time on Friday, May 16, 2008.

Docket Numbers: ER08–831–000.

Applicants: Progress Energy, Inc.

Description: Carolina Power & Light Co submit proposed modifications to the Joint OATT effective 6/10/08.

Filed Date: 04/14/2008.

Accession Number: 20080417–0197.

Comment Date: 5 p.m. Eastern Time on Monday, May 05, 2008.

Docket Numbers: ER08–865–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Co submits the agreements for load interconnection facilities with the City and County of San Francisco under ER08–865.

Filed Date: 04/25/2008.

Accession Number: 20080501–0152.

Comment Date: 5 p.m. Eastern Time on Friday, May 16, 2008.

Docket Numbers: ER08–879–000.

Applicants: Entergy Services, Inc.

Description: Entergy Services, Inc submits an amended Interconnection and Operating Agreement between Sabine Cogen L.P. and EGS and a corrected copy of the Service Agreement designation page.

Filed Date: 04/29/2008.

Accession Number: 20080501–0063.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 20, 2008.

Docket Numbers: ER08–880–000.

Applicants: Arizona Public Service Company.

Description: Arizona Public Service Company submits certain additional exhibits to a 1991 Operation, Maintenance, and Replacement of Facilities Agreement with Western Area Power Administration.

Filed Date: 04/29/2008.

Accession Number: 20080501–0055.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 20, 2008.

Docket Numbers: ER08–881–000.

Applicants: Wisconsin Power and Light Company.

Description: Wisconsin Power and Light Company submits proposed changes to their book depreciation rates related to all depreciable assets including non-nuclear production plant.

Filed Date: 04/29/2008.

Accession Number: 20080501–0062.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 20, 2008.

Docket Numbers: ER08–882–000.

Applicants: California Power Exchange Corporation.

Description: California Power Exchange Corporation submits proposed amendments to its Rate Schedule 1 in order to recover projected expenses for the period July 1, 2008 through December 31, 2008.

Filed Date: 04/29/2008.

Accession Number: 20080501–0061.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 20, 2008.

Docket Numbers: ER08–883–000.

Applicants: Xcel Energy Services Inc.

Description: On behalf of Northern States Power Company submits Notice of Cancellation for 113 legacy transmission service agreements etc.

Filed Date: 04/28/2008.

Accession Number: 20080501–0065.

Comment Date: 5 p.m. Eastern Time on Monday, May 19, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–10644 Filed 5–12–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IN07–26–000]

Amaranth Advisors L.L.C., Amaranth LLC, Amaranth Management Limited Partnership, Amaranth International Limited, Amaranth Partners LLC, Amaranth Capital Partners LLC, Amaranth Group Inc., Amaranth Advisors (Calgary) ULC, Brian Hunter, Matthew Donohoe; Supplemental Notice of Designation of Commission Staff

May 6, 2008.

On February 1, 2008, a notice was issued designating the staff of the Office of Enforcement as non-decisional in deliberations by the Commission in this docket, with certain limited exceptions. Exceptions to this designation are the Director of the Office of Enforcement and the Directors of the Divisions of Investigations, Energy Market Oversight, Audits, and Financial Regulation in the Office of Enforcement. This supplemental notice designates Shauna Coleman, an attorney in the Division of Investigations, Office of Enforcement, as an exception to the designation of the staff of the Office of Enforcement as non-decisional. Ms. Coleman joined the Commission after the February 1, 2008 notice was issued and did not participate in the investigation at issue in this proceeding.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10612 Filed 5–12–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2479–010]

Pacific Gas and Electric Company; Errata Notice

May 6, 2008.

On March 25, 2008, the Commission issued a "Notice of Intent to File License Application, Filing of Pre-Application Document, Commencement of Licensing Proceeding, Scoping, Solicitation of Comments on the PAD and Scoping Document, and Identification of Issues and Associated Study Requests" in the above-referenced proceeding. Paragraph (o) of the notice stated an incorrect due date and should read as follows:

o. With this notice, we are soliciting comments on the PAD and Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph (h). In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application (an original and eight copies) must be filed with the Commission at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All filings with the Commission must include on the first page, the project name (French Meadows Transmission Line Project) and number (P–2479–010), and bear the heading "Comments on Pre-Application Document," "Study Requests," "Comments on Scoping Document 1," "Request for Cooperating Agency Status," or "Communications to and from Commission Staff." Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by May 27, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10615 Filed 5–12–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER08–631–000; ER08–631–001]

Raider Dog, LLC; Notice of Issuance of Order

May 6, 2008.

Raider Dog, LLC (Raider Dog) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy and capacity at market-based rates. Raider Dog also requested waivers of various Commission regulations. In particular, Raider Dog requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Raider Dog.

On May 6, 2008, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the requests for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Raider Dog, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004). The Commission encourages the electronic submission of protests using the FERC Online link at *http://www.ferc.gov.*

Notice is hereby given that the deadline for filing protests is June 5, 2008.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Raider Dog is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Raider Dog, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Raider Dog's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order 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 filed to access the document. 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10610 Filed 5–12–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER08–537–000; ER08–537–001]

Safe Harbor Water Power Corporation; Notice of Issuance of Order

May 6, 2008.

Safe Harbor Water Power Corporation (Safe Harbor) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy and capacity at market-based rates. Safe Harbor also requested waivers of various Commission regulations. In particular, Safe Harbor requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Safe Harbor.

On May 6, 2008, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the requests for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Safe Harbor, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004). The Commission encourages the electronic submission of protests using the FERC Online link at *http://www.ferc.gov*.

Notice is hereby given that the deadline for filing protests is June 5, 2008. Absent a request to be heard in opposition to such blanket approvals by the deadline above, Safe Harbor is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Safe Harbor, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

Docket Nos. ER08–537–000 and ER08–537–001

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Safe Harbor's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order 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 filed to access the document. 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10609 Filed 5–12–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR08–21–000]

Regency Intrastate Gas LLC; Notice of Petition for Rate Approval

May 6, 2008.

Take notice that on April 29, 2008, Regency Intrastate Gas LLC filed a petition for rate approval for NGPA section 311 maximum interruptible transportation rate equal to $0.2000 per MMBtu, a monthly firm demand charge of $4.5625 per MMBtu ($0.1500 per MMBtu daily), and a firm usage rate of $0.0500 per MMBtu pursuant to section 284.123(b)(2) of the Commission's regulations, with a proposed effective date of May 1, 2008.

Any person desiring to participate in this rate proceeding must file a motion 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 on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time Tuesday, May 20, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10607 Filed 5–12–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8564–9]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Rick Westlund (202) 566–1682, or e-mail at *westlund.rick@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR Number 2156.02; Populations, Usage and Emissions of Diesel Nonroad Equipment (Renewal); was approved 04/08/2008; OMB Number 2060–0553; expires 04/30/2010.

EPA ICR Number 0661.09; NSPS for Asphalt Processing and Roofing Manufacturing (Renewal); in 40 CFR part 60, subpart UU; was approved 04/08/2008; OMB Number 2060–0002; expires 04/30/2011.

EPA ICR Number 1741.05; Correction of Misreported Chemical Substances on the Toxic Substances Control Act (TSCA) Chemical Substances Inventory; was approved 04/09/2008; OMB Number 2070–0145; expires 04/30/2011.

EPA ICR Number 2268.02; NESHAP for Paint Stripping and Miscellaneous Surface Coating at Area Sources (Final Rule): in 40 CFR part 63, subpart HHHHHH; was approved 04/10/2008; OMB Number 2060–0607; expires 04/30/2011.

EPA ICR Number 1767.05; NESHAP for Primary Aluminum Reduction Plants (Renewal); in 40 CFR part 63, subpart LL; was approved 04/14/2008; OMB Number 2060–0360; expires 04/30/2011.

EPA ICR Number 1626.10; National Recycling and Emissions Reduction Program (Renewal); in 40 CFR part 82, subpart F; was approved 04/25/2008; OMB Number 2060–0256; expires 04/30/2011.

EPA ICR Number 1975.05; NESHAP for Stationary Reciprocating Internal Combustion Engines (Final Rule); in 40 CFR part 63, subpart ZZZZ; was approved 05/01/2008; OMB Number 2060–0548; expires 04/30/2011.

EPA ICR Number 2047.02; Participation by Disadvantaged Business Enterprises in Procurement under Environmental Protection Agency (EPA) Financial Assistance Agreements (Final Rule); was approved 05/01/2008; OMB Number 2090–0030; expires 01/31/2011.

Dated: May 7, 2008.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E8–10658 Filed 5–12–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0986; FRL–8365–6]

Pesticide Program Dialogue Committee; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, EPA gives notice of a public meeting of the Pesticide Program Dialogue Committee (PPDC) on May 21 and 22, 2008. A draft agenda has been developed that includes web-based labeling; toxicity testing; harmonization and global registration activities; endangered species; pesticide program resources; updates on spray drift, cause marketing, volatilization, endocrine disruptors, and inerts; and reports from the PPDC PRIA Process Improvements Work Group.

DATES: The PPDC meeting will be held on Wednesday, May 21, 2008, from 9 a.m. to 5:15 p.m., and Thursday, May 22, 2008, from 9 a.m. to noon.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 5 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held in the Conference Center on the lobby level at the U.S. Environmental Protection Agency's location at One Potomac Yard South, 2777 Crystal Drive, Arlington, VA. This location is approximately a half mile from the Crystal City Metro Station.

FOR FURTHER INFORMATION CONTACT: Margie Fehrenbach, Office of Pesticide Programs (7501P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–4775; fax number: (703) 308–4776; e-mail address:*fehrenbach.margie@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 persons who work in agricultural settings or persons who are concerned about implementation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Federal Food, Drug, and Cosmetic Act (FFDCA) and the amendments to both of these major pesticide laws by the Food Quality Protection Act (FQPA) of 1996; and the Pesticide Registration Improvement Act. Potentially affected entities may include, but are not limited to: Agricultural workers and farmers; pesticide industry and trade associations; environmental, consumer, and farmworker groups; pesticide users and growers; pest consultants; State, local and Tribal governments; academia; public health organizations; food processors; and the public. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0986. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. 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 Office of Pesticide Programs (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.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select search, then key in the appropriate docket ID number.

A draft agenda has been developed and is posted on EPA's web site at: *http://www.epa.gov/pesticides/ppdc/.*

II. Background

OPP is entrusted with the responsibility to help ensure the safety of the American food supply, the education and protection from unreasonable risk of those who apply or are exposed to pesticides occupationally or through use of products, and general protection of the environment and special ecosystems from potential risks posed by pesticides.

The Charter for the Environmental Protection Agency's Pesticide Program Dialogue Committee (PPDC) was established under the Federal Advisory Committee Act (FACA), Public Law 92–463, in September 1995, and has been renewed every 2 years since that time. PPDC's Charter was renewed November 2, 2007, for another 2–year period. The purpose of PPDC is to provide advice and recommendations to the EPA Administrator on issues associated with pesticide regulatory development and reform initiatives, evolving public policy and program implementation issues, and science issues associated with evaluating and reducing risks from use of pesticides. It is determined that PPDC is in the public interest in connection with the performance of duties imposed on the Agency by law. The following sectors are represented on the PPDC: Pesticide industry and trade associations; environmental/public interest, consumer, and animal rights groups; farm worker organizations; pesticide user, grower, and commodity groups; Federal and State/local/Tribal governments; the general public; academia; and public health organizations.

Copies of the PPDC Charter are filed with appropriate committees of Congress and the Library of Congress and are available upon request.

III. How Can I Request to Participate in this Meeting?

PPDC meetings are open to the public and seating is available on a first-come basis. Persons interested in attending do not need to register in advance of the meeting.

List of Subjects

Environmental protection, Agricultural workers, Agriculture, Chemicals, Foods, Pesticides and pests, Public health.

Dated: May 7, 2008.

Steven Bradbury,

Acting Director, Office of Pesticide Programs.

[FR Doc. E8–10678 Filed 5–12–08; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting Notice; Announcing a Partially Open Meeting of the Board of Directors

TIME AND DATE: The open meeting of the Board of Directors is scheduled to begin at 10 a.m. on Wednesday, May 14, 2008. The closed portion of the meeting will follow immediately the open portion of the meeting.

PLACE: Board Room, First Floor, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006.

STATUS: The first portion of the meeting will be open to the public. The final portion of the meeting will be closed to the public.

MATTER TO BE CONSIDERED AT THE OPEN PORTION: *2008 Designation of Directorships.*

MATTER TO BE CONSIDERED AT THE CLOSED PORTION: *Periodic Update of Examination Program Development and Supervisory Findings.*

FOR MORE INFORMATION CONTACT: Shelia Willis, Paralegal Specialist, Office of General Counsel, at 202–408–2876 or *williss@fhfb.gov.*

Dated: May 7, 2008.

By the Federal Housing Finance Board.

Christopher T. Curtis,

General Counsel.

[FR Doc. 08–1254 Filed 5–8–08; 4:00 pm]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Maritime Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, the Federal Maritime Commission invites comments on the continuing information collections (extensions with no changes) listed below in this notice.

DATES: Comments must be submitted on or before July 14, 2008.

ADDRESSES: You may send comments to: Anthony Haywood, Chief Information Officer, Office of Administration, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (Telephone: (202) 523–5800), *administration@fmc.gov.* Please send separate comments for each specific information collection listed below. You must reference the information collection's title and OMB number in your comment.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, copies of the information collections and their instructions, or copies of any comments received, contact Jane Gregory, Management Analyst, Office of Administration, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (Telephone: (202) 523–5800), *jgregory@fmc.gov.*

SUPPLEMENTARY INFORMATION:

Request for Comments

The Federal Maritime Commission, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing information collections listed in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please do not include any confidential or inappropriate material in your comments. We invite comments on: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Information Collections Open for Comment

Title: 46 CFR part 540—Application for Certificate of Financial Responsibility/Form FMC–131.

OMB Approval Number: 3072–0012 (Expires September 30, 2008).

Abstract: Sections 2 and 3 of Public Law 89–777 (46 U.S.C. app. 817(d) and (e)) require owners or charterers of passenger vessels with 50 or more passenger berths or stateroom accommodations and embarking passengers at United Stated ports and territories to establish their financial responsibility to meet liability incurred for death or injury to passengers and other persons, and to indemnify passengers in the event of nonperformance of transportation. The Commission's Rules at 46 CFR part 540 implement Public Law 89–777 and specify financial responsibility coverage requirements for such owners and charterers.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The information will be used by the Commission's staff to

ensure that passenger vessel owners and charterers have evidenced financial responsibility to indemnify passengers and others in the event of nonperformance or casualty.

Frequency: This information is collected when applicants apply for a certificate or when existing certificants change any information in their application forms.

Type of Respondents: The types of respondents are owners, charterers and operators of passenger vessels with 50 or more passenger berths that embark passengers from U.S. ports or territories.

Number of Annual Respondents: The Commission estimates an annual respondent universe of 50.

Estimated Time per Response: The time per response ranges from .5 to 8 person-hours for reporting and recordkeeping requirements contained in the rules, and 8 person-hours for completing Application Form FMC–131.

Total Annual Burden: The Commission estimates the total person-hour burden at 1,478 person-hours.

Title: 46 CFR part 565—Controlled Carriers.

OMB Approval Number: 3072–0060 (Expires September 30, 2008).

Abstract: Section 9 of the Shipping Act of 1984 requires that the Federal Maritime Commission monitor the practices of controlled carriers to ensure that they do not maintain rates or charges in their tariffs and service contracts that are below a level that is just and reasonable; nor establish, maintain or enforce unjust or unreasonable classifications, rules or regulations in those tariffs or service contracts which result or are likely to result in the carriage or handling of cargo at rates or charges that are below a just and reasonable level. 46 CFR part 565 establishes the method by which the Commission determines whether a particular ocean common carrier is a controlled carrier subject to section 9 of the Shipping Act of 1984. When a government acquires a controlling interest in an ocean common carrier, or when a controlled carrier newly enters a United States trade, the Commission's rules require that such a carrier notify the Commission of these events.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The Commission uses these notifications in order to effectively discharge its statutory duty to determine whether a particular ocean common carrier is a controlled carrier and therefore subject to the requirements of section 9 of the Shipping Act of 1984.

Frequency: The submission of notifications from controlled carriers is not assigned to a specific time frame by the Commission; they are submitted as circumstances warrant. The Commission only requires notification when a majority portion of an ocean common carrier becomes owned or controlled by a government, or when a controlled carrier newly begins operation in any United States trade.

Type of Respondents: Controlled carriers are ocean common carriers which are owned or controlled by a government.

Number of Annual Respondents: Although it is estimated that only 5 of the 8 currently classified controlled carriers may respond in any given year, because this is a rule of general applicability, the Commission considers the number of annual respondents to be 8. Classifications are reviewed periodically to determine current status of respondents and to increase or decrease the number of controlled carriers based on new circumstances. The Federal Maritime Commission cannot anticipate when a new carrier may enter the United States trade; therefore, the number of annual respondents may fluctuate from year to year and could increase to 10 or more at any time.

Estimated Time per Response: The estimated time for compliance is 7 person-hours per year.

Total Annual Burden: The Commission estimates the person-hour burden required to make such notifications at 56 person-hours per year.

Title: 46 CFR part 525—Marine Terminal Operator Schedules and Related Form FMC–1.

OMB Approval Number: 3072–0061 (Expires September 30, 2008).

Abstract: Section 8(f) of the Shipping Act of 1984, 46 U.S.C. app. 1707(f), provides that a marine terminal operator (MTO) may make available to the public a schedule of its rates, regulations, and practices, including limitations of liability for cargo loss or damage, pertaining to receiving, delivering, handling, or storing property at its marine terminal, subject to section 10(d)(1), 46 U.S.C. app. 1709(d)(1) of the Act. The Commission's rules governing MTO schedules are set forth at 46 CFR part 525.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The Commission uses information obtained from Form FMC–1 to determine the organization name, organization number, home office address, name and telephone number of the firm's representatives and the location of MTO schedules of rates, regulations and practices, and publisher, should the MTOs determine to make their schedules available to the public, as set forth in section 8(f) of the Shipping Act.

Frequency: This information is collected prior to an MTO's commencement of its marine terminal operations.

Type of Respondents: Persons operating as MTOs.

Number of Annual Respondents: The Commission estimates the respondent universe at 258, of which 153 opt to make their schedules available to the public.

Estimated Time per Response: The time per response for completing Form FMC–1 averages .5 person hours, and approximately 5 person-hours for related MTO schedules.

Total Annual Burden: The Commission estimates the total person-hour burden at 894 person-hours.

Title: 46 CFR part 520—Carrier Automated Tariffs and Related Form FMC–1.

OMB Approval Number: 3072–0064 (Expires September 30, 2008).

Abstract: Except with respect to certain specified commodities, section 8(a) of the Shipping Act of 1984, 46 U.S.C. app. 1707(a), requires that each common carrier and conference shall keep open to public inspection, in an automated tariff system, tariffs showing its rates, charges, classifications, rules, and practices between all ports and points on its own route and on any through transportation route that has been established. In addition, individual carriers or agreements among carriers are required to make available in tariff format certain enumerated essential terms of their service contracts. 46 U.S.C. app. 1707(c). The Commission is responsible for reviewing the accessibility and accuracy of automated tariff systems, in accordance with its regulations set forth at 46 CFR part 520.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The Commission uses information obtained from Form FMC–1 to ascertain the location of common carrier and conference tariff publications, and to access their provisions regarding rules, rates, charges and practices.

Frequency: This information is collected when common carriers or conferences publish tariffs.

Type of Respondents: Persons desiring to operate as common carriers or conferences.

Number of Annual Respondents: The Commission estimates an annual respondent universe of 4,200.

Estimated Time per Response: The time per response ranges from .5 to 2 person-hours for reporting and recordkeeping requirements contained in the rules, and .5 person-hours for completing Form FMC–1.

Total Annual Burden: The Commission estimates the total person-hour burden at 436,500 person-hours.

Title: 46 CFR Part 530—Service Contracts and Related Form FMC–83.

OMB Approval Number: 3072–0065 (Expires September 30, 2008).

Abstract: The Shipping Act of 1984, 46 U.S.C. app. 1707, requires service contracts, except those dealing with bulk cargo, forest products, recycled metal scrap, new assembled motor vehicles, waste paper or paper waste, and their related amendments and notices to be filed confidentially with the Commission.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The Commission monitors service contract filings for acts prohibited by the Shipping Act of 1984.

Frequency: The Commission has no control over how frequently service contracts are entered into; this is solely a matter between the negotiating parties. When parties enter into a service contract, it must be filed with the Commission.

Type of Respondents: Parties that enter into service contracts are ocean common carriers and agreements among ocean common carriers on the one hand, and shippers or shipper's associations on the other.

Number of Annual Respondents: The Commission estimates an annual respondent universe of 143.

Estimated Time per Response: The time per response ranges from .5 to 16 person-hours for reporting and recordkeeping requirements contained in the rules, and .5 person-hours for completing Form FMC–83.

Total Annual Burden: The Commission estimates the total person-hour burden at 617,015 person-hours.

Title: 46 CFR part 531—NVOCC Service Arrangements and Related Form FMC–78.

OMB Approval Number: 3072–0070 (Expires September 30, 2008).

Abstract: The Shipping Act of 1984, 46 U.S.C. app. 1715, authorizes the FMC to exempt by rule "any class of agreements between persons subject to the Act or any specified activity of those persons from any requirement of this Act if it finds that the exemption will not result in substantial reduction in competition or be detrimental to commerce. The Commission may attach conditions to any exemption and may, by order, revoke any exemption." 46 CFR part 531 allows non-vessel-operating common carriers (NVOCCs) and shippers' associations with NVOCC members to act as shipper parties in NVOCC Service Arrangements (NSAs), and to be exempt from certain tariff publication requirements of the Shipping Act provided the carriage in question is done pursuant to an NSA filed with the Commission and the essential terms are published in the NVOCC's tariff.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The Commission uses filed NSAs and associated data for monitoring and investigatory purposes and, in its proceedings, to adjudicate related issues raised by private parties.

Frequency: The filing of NSAs is not assigned a specific time by the Commission; NSAs are filed as they may be entered into by private parties. When parties enter into an NSA, it must be filed with the Commission.

Type of Respondents: Parties that enter into NSAs are NVOCCs and shippers' associations with NVOCC members.

Number of Annual Respondents: The Commission estimates an annual respondent universe of 533.

Estimated Time per Response: The time per response ranges from .5 to 4 person-hours for reporting and recordkeeping requirements contained in the rules, and 1 person-hour for completing Form FMC–78.

Total Annual Burden: The Commission estimates the total person-hour burden at 13,082 person-hours.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E8–10602 Filed 5–12–08; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 28, 2008.

A. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. J. Robert Young, Carbondale, Colorado, individually and as a voting trustee of the Alpine Banks of Colorado Employee Stock Ownership Plan and 401K (ESOP) to acquire control of; and by J. Robert Young, Margo L. Young–Gardey and Lindsay D. Nash, both of Glenwood Springs, Colorado, as members of a family group acting in concert, to acquire control of Alpine Banks of Colorado, parent of Alpine Bank, both in Glenwood Springs, Colorado, through the retention of voting shares.

Board of Governors of the Federal Reserve System, May 8, 2008.

Margaret McCloskey Shanks,

Associate Secretary of the Board.

[FR Doc. E8–10638 Filed 5–12–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies

owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

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 June 6, 2008.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. Landmark Bancorp Inc.; to become a bank holding company by acquiring 100 percent of the voting shares of Landmark Community Bank, both of Pittston, Pennsylvania.

B. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. The Southern Banc Company, Inc.; to become a bank holding company and thereby retain control of The Southern Bank Company, both of Gadsden, Alabama (Bank), upon the Bank's conversion from a federal savings bank to an Alabama state–chartered commercial bank.

Board of Governors of the Federal Reserve System, May 8, 2008.

Margaret McCloskey Shanks,

Associate Secretary of the Board.

[FR Doc.E8–10639 Filed 5–12–08; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FMR G–01]

Federal Management Regulation; Conversion to Commercial Payment Processes for Postage

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice of a bulletin.

SUMMARY: The attached bulletin provides updated information to Federal agencies regarding the initiative to convert to commercial payment processes for postage. GSA Bulletin FMR G–01 may also be found at *www.gsa.gov/fmrbulletin*.

DATES: This bulletin announced is effective from April 11, 2008 until April 13, 2009.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Derrick Miliner, Program Director, Mail Management Policy, Office of Governmentwide Policy, General Services Administration, Washington, DC 20405, at (202) 273–3564 or *derrick.miliner@gsa.gov*. Please cite Bulletin FMR G–01.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102–192.50(c) of the Federal Management Regulation (FMR) (41 CFR 102–192.50(c)) states that "beginning December 31, 2003, all payments to the United States Postal Service must be made using commercial payment processes, not OMAS" (Official Mail Accounting System). If agencies did not convert by that date, they were required to submit a deviation request for an extension. If granted, the deviations could last for no longer than a two-year period, at which time agencies had to request another deviation.

Dated: April 11, 2008.

KEVIN MESSNER,

Acting Associate Administrator, Office of Governmentwide Policy.

GENERAL SERVICES ADMINISTRATION

GSA BULLETIN FMR G–01

MAIL MANAGEMENT

TO: Heads of Federal agencies

SUBJECT: Conversion to Commercial Payment Processes for Postage

1. *What is the purpose of this bulletin*? This bulletin provides updated information to Federal agencies regarding the initiative to convert to commercial payment processes for postage.

2. *What is the effective date of this bulletin*? April 11, 2008.

3. *When does this bulletin expire*? This bulletin will expire April 13, 2009.

4. *What is the background of this bulletin*? Section 102–192.50(c) of the Federal Management Regulation (FMR) (41 CFR 102–192.50(c)) states that "beginning December 31, 2003, all payments to the United States Postal Service must be made using commercial payment processes, not OMAS" (Official Mail Accounting System). If agencies did not convert by that date, they were required to submit a deviation request for an extension. If granted, the deviations could last for no longer than a two-year period, at which time agencies had to request another deviation.

5. *What is the current status of agencies in regards to conversion to commercial payment*?

While many agencies have successfully converted to commercial payment, several have not yet done so, or have only partially done so.

Some agencies state that they can show accountability for postage using OMAS and have asked the General Services Administration (GSA) to review the goals of the commercial payment initiative. GSA has agreed to do so.

6. *What should agencies do if they need to submit an updated deviation request while GSA reviews the goals of the commercial payment initiative*?

Agencies that have outstanding deviation requests, or that need to submit a deviation request soon, do not need to submit a formal updated deviation request during the time period covered by this bulletin. GSA is granting these agencies an automatic 12-month deviation. Agencies that have current unexpired deviations on file that last beyond the 12-month period do not need to take any additional action.

7. *When should agencies expect to hear the results of the review*?

Before the 12-month period is complete, GSA will issue additional guidance if in fact there are new options for showing accountability for postage costs besides converting to commercial payment. If, after review, GSA determines there are no additional options, agencies will be expected to proceed toward conversion.

8. *Whom should I contact for further information*? Derrick Miliner, Program Manager, Mail Management Policy, Office of Governmentwide Policy, General Services Administration, Washington, DC 20405,

derrick.miliner@gsa.gov, (202) 273–3564.

[FR Doc. E8–10654 Filed 5?–12–08; 8:45 am]

BILLING CODE 6820–14–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Multicolored Fluorescent Cell Lines for High-Throughput Angiogenesis and Cytotoxicity Screening

Description of Technology: Understanding the biological processes that underlie cellular organization and communication has become a vital element in the discovery of new therapeutics, and in evaluating the efficiency of existing therapeutic approaches. One frequently-studied example of a system in which multiple cell types function together and influence each other is angiogenesis, which is fundamentally important in tissue development, vascular disease, and cancer. The availability of high-throughput, simple assays for the study of multiple-cell biological processes, such as angiogenesis, is essential for the development of therapeutics and diagnostics for disorders governed by these complex processes.

The inventors have developed a series of immortalized cell lines, selected to represent the different cell types found in angiogenesis *in vivo*, that constitutively express different fluorescent proteins. Based on these cell lines, the inventors have developed several *in vitro* angiogenesis assays and a software application that can be used to investigate the relationships between different cells involved in angiogenesis, to develop new combinatorial approaches to boost the efficiency of existing therapeutics, and to facilitate the discovery of new potential single or combination drugs. These assays have several advantages over currently-available kits, such as the capability for real-time monitoring of cellular interaction and activity, shortened and simplified protocols, and no added detection reagents to disrupt assay results. The inventors have also developed a cytotoxicity assay using these cells that would be suitable for screening libraries of potential new drugs.

Applications: This technology could potentially be used to develop a high-throughput screening assay for angiogenesis or anti-angiogenesis drugs, or to screen compounds for cytotoxicity. A diagnostic test based on this technology could be used to monitor levels of angiogenic factors in the blood, to aid in personalized therapies for cancer and other angiogenesis-dependent diseases.

Development Status: The inventors have already demonstrated proof of concept for this technology by developing a high-throughput screen for potential angiogenic drugs, and they have also recently developed a cytotoxicity assay. They are in the process of identifying further uses for this technology, and have also developed a software application for analysis of tube formation assays.

Inventors: Enrique Zudaire and Frank Cuttitta (NCI).

Patent Status: U.S. Patent Application No. 12/060,752 filed 01 Apr 2008 (HHS Reference No. E–281–2007/0–US–02)

Licensing Status: Available for non-exclusive licensing.

Licensing Contact: Tara L. Kirby, PhD; 301–435–4426; *tarak@mail.nih.gov*.

Collaborative Research Opportunity: The National Cancer Institute Angiogenesis Core Facility is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize multicolored fluorescent cell lines for high-throughput angiogenesis and cytotoxicity screening. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

A Novel Growth Factor and Anti-Apoptotic Agent for Promoting Lung Development and Treating Lung Disease

Description of Technology: This invention discloses the novel use of the uteroglobin-related protein 1 (UGRP1), also known as secretoglobin family 3A member 2 (SCGB3A2), as a cell proliferative and anti-apoptotic agent that can be used to promote lung development and treat lung disease. SCGB3A2 is a member of the uteroglobin/Clara cell secretory protein or Secretoglobin gene superfamily of secretory proteins that is normally expressed in the epithelial cells of the trachea, bronchus, and bronchioles, and is known for its anti-inflammatory activity. NIH scientists have, however, recently discovered the surprising growth factor and anti-apoptotic activities of SCGB3A2. These activities allow SCGB3A2 to be used to prevent the development of neonatal respiratory distress, promote lung development, and inhibit the lung damage that results from treatment with certain anti-cancer agents such as bleomycin.

SCGB3A2 administration *ex vivo* and *in vivo* was shown to enhance cell proliferation and branching morphogenesis. SCGB3A2 was also shown to suppress or repair bleomycin induced DNA damage/fibrosis when given before, or together with bleomycin treatment in *in vitro* organ culture, and in an *in vivo* mouse model of pulmonary fibrosis. These cell proliferative and morphogenic effects of SCGB3A2 make it an attractive candidate for therapeutic use in the treatment of several lung diseases that involve tissue injury or inflammation, such as, pulmonary fibrosis, interstitial pneumonia, emphysema and cancer. SCGB3A2 therapy is also envisioned for use as a lung development agent in premature newborn infants born with underdeveloped lungs.

Applications: Repair of damaged lung tissue; Lung development in premature newborn infants.

Development Status: Ex vivo and *in vivo* mouse studies conducted.

Inventors: Shioko Kimura and Reiko Kurotani (NCI).

Publication: Y Chiba, R Kurotani, T Kusakabe, T Miura, BW Link, M Misawa, S Kimura. Uteroglobin-related protein 1 expression suppresses allergic airway inflammation in mice. Am J Respir Crit Care Med. 2006 May 1;173(9):958–964.

Patent Status: U.S. Provisional Application No. 60/847,747 filed 27 Sep 2006 (HHS Reference No. E–286–2006/0–US–01); PCT Application No. PCT/

US2007/079771 filed 27 Sep 2007 (HHS Reference No. E–286–2006/2–PCT–01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Jasbir (Jesse) S. Kindra, J.D., M.S.; 301–435–5170; *kindraj@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute, Laboratory of Metabolism is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize SCGB3A2 as a clinical tool to treat and/or prevent lung diseases and/or damage caused by various insults including use of the chemotherapeutic agent bleomycin. Lung diseases include pulmonary fibrosis, interstitial pneumonia, emphysema and cancer. We would like to evaluate the effect of SCGB3A2 on the development of emphysema in a smoking model mouse, and as a means to attenuate the severity of all aforementioned diseases in larger animals such as lamb, goat and monkey. We also would like to evaluate the effect of SCGB3A2 on lung maturation using pregnant larger animals. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Dated: May 8, 2008.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E8–10682 Filed 5–12–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the President's Cancer Panel.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended, because the premature disclosure of information and the discussions would be likely to significantly frustrate implementation of recommendations.

Name of Committee: President's Cancer Panel.

Date: May 28, 2008.

Time: 11 a.m. to 1 p.m.

Agenda: The Panel will discuss the report format and recommendations for the 2007–2008 meeting series.

Place: National Cancer Institute, Office of the Director, National Institutes of Health, 6116 Executive Blvd., Suite 220, Bethesda, MD 20892 (Teleconference).

Contact Person: Abby Sandler, PhD, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd., Suite 220, Bethesda, MD 20892, (301) 451–9399.

Any interested person may file written comments with the committee by forwarding the comments to the Contact Person listed on this notice. The comments should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/pcp/pcp.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 7, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–10679 Filed 5–12–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Targeted Resequencing RFA.

Date: June 17, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Lombardy, 2019 Pennsylvania Avenue, NW., Washington, DC 20006.

Contact Person: Ken D. Nakamura, PhD, Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, 301–402–0838, *nakamurk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: May 5, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–10491 Filed 5–12–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; ACE Network Supplement.

Date: June 3, 2008.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Norman Chang, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5b01, Bethesda, MD 20892, (301) 496–1485, *changn@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children;

93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 5, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–10490 Filed 5–12–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Translational Research Grant Review.

Date: June 10, 2008.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sheo Singh, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683, *singhs@nidcd.nih.gov.*

Name of Committee: Communication Disorders Review Committee.

Date: June 18–19, 2008.

Time: June 18, 2008, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Washington, DC, 1400 M Street, NW., Washington, DC 20005.

Time: June 19, 2008, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Washington, DC, 1400 M Street, NW., Washington, DC 20005.

Contact Person: Shiguang Yang, DVM, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, NIDCD, NIH, 6120 Executive Blvd., Suite 400C, Bethesda, MD 20892, 301–435–1425, *yangshi@nidcd.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Chemical Senses Review Panel.

Date: June 23, 2008.

Time: 11 a.m to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Christine A. Livingston, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institutes of Health/ NIDCD, 6120 Executive Blvd.—MSC 7180, Bethesda, MD 20892, (301) 496–8683, *livingsc@mail.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, R03 Hearing and Balance Small Grants Review.

Date: June 25, 2008.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Christopher Moore, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institutes of Health/NIDCD, 6120 Executive Blvd, Rm. 400C, Bethesda, MD 20892–7180, 301–402–3587, *moorechristopher@nidcd.nih.gov.*

Name of Committee: National Instiute on Deafness and Other Communication Disorders Special Emphasis Panel, Voice, Speech and Language Small Grant Review.

Date: June 26, 2008.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sheo Singh, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683, *singhs@nidcd.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: May 7, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–10677 Filed 5–12–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; Extension of a currently approved collection; OMB Number 1660–0103, FEMA Form 81–112.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Title: Property Acquisition and Relocation for Open Space.

OMB Number: 1660–0103.

Abstract: FEMA and State and local recipients of FEMA mitigation grant programs will use the information collected to meet the Property Acquisition requirements to implement acquisition activities under the terms of grant agreements for acquisition and relocation activities.

Affected Public: State, local, or Indian Tribal Government; Individuals and Households.

Number of Respondents: 56.

Estimated Time per Respondent: 9 hours.

Estimated Total Annual Burden Hours: 11,424.

Frequency of Response: On Occasion.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Nathan Lesser, Desk Officer, Department of Homeland Security/FEMA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974. Comments must be submitted on or before June 12, 2008.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records

Management Division, 500 C Street, SW., Washington, DC 20472, Mail Drop Room 301, 1800 S. Bell Street, Arlington, VA 22202, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

Dated: April 28, 2008.

John A. Sharetts-Sullivan,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E8–10578 Filed 5–12–08; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; Revision of a currently approved collection, OMB 1600–0062, No Forms.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Title: State/Local/Tribal Hazard Mitigation Plans.

OMB Number: 1660–0062.

Abstract: The purpose of the State/Local/Tribal Hazard Mitigation Plan requirements is to outline the strategy by which State, tribal and local governments use to demonstrate the goals, priorities, and commitment to reduce risks from natural hazards and serves as a guide for State and local decision makers as they commit resources to reducing the effects of natural hazards.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 56.

Estimated Time per Respondent: 13,720.

Estimated Total Annual Burden Hours: 768,320.

Frequency of Response: On Occasion.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management Budget, Attention: Nathan Lesser, Desk Officer, Department of Homeland Security/FEMA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974. Comments must be submitted on or before June 12, 2008.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 500 C Street, SW., Washington, DC 20472, Mail Drop Room 301, 1800 S. Bell Street, Arlington, VA 22202, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

Dated: April 28, 2008.

John A. Sharetts-Sullivan,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E8–10579 Filed 5–12–08; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; Extension of a currently approved collection 1660–0025, Standard Forms: SF–LLL, SF–424, SF–270, FEMA Forms: 20–10, 20–15, 20–16A, 20–16B, 20–16C, 20–17, 20–18, 20–19, 20–20, and 76–10A.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Title: FEMA Grant Administration Forms.

OMB Number: 1660–0025.

Abstract: This collection of information focuses on the standardization and consistent use of standard and FEMA forms associated with grantees requests for disaster and non-disaster Federal assistance, submission of financial and administrative reporting and record keeping. The use of the forms will minimize burden on the respondent and enable FEMA to continue to improve in its grants administration practices. The forms are used to administer the following FEMA grant programs.

National Urban Search and Rescue (US&R) Response System—To develop an immediately deployable, national response capability to locate and extricate, and medically stabilize victims of structural collapse during a disaster, while simultaneously enhancing the US&R response capabilities of State and local governments.

Community Assistance Program—State Support Services Element (CAP–SSSE)—To ensure that communities participating in the National Flood Insurance Program (NFIP) are achieving flood loss reduction measures consistent with program direction. The CAP–SSSE is intended to identify, prevent and resolve floodplain management issues in participating communities before they develop into problems requiring enforcement action.

Chemical Stockpile Emergency Preparedness Program (CSEPP)—To enhance emergency preparedness capabilities of the States and local communities at each of the eight chemical agent stockpile storage facilities. The purpose of the program is to assist States and local communities in efforts to improve their capacity to plan for and respond to accidents associated with the storage and ultimate disposal of chemical warfare materials.

National Dam Safety Program (NDSP)—To encourage the establishment and maintenance of effective State programs intended to ensure dam safety, to protect human life and property, and to improve State dam safety programs.

Interoperable Communications Equipment (ICE)—To provide funding to jurisdictions across the nation for demonstration projects on uses of equipment and technologies to increase communications interoperability among the fire service, law enforcement, and emergency medical service communities. These projects will illustrate and encourage the acceptance of new technologies and operating methods to assist communities in achieving interoperability.

Earthquake Consortium (EqC)—To operate a program of grants and assistance to enable States to develop mitigation, preparedness and response plans prepare inventories and conduct seismic safety inspection of critical structures and lifelines, update building and zoning codes and ordinances to enhance seismic safety, increase earthquake awareness and education, and encourage the development of multi-State groups for such purposes.

Disaster Donations Management Program (AIDMATRIX)—To distribute technology solutions to State and local government and voluntary agencies throughout the country prior, to a major event, through the Aidmatrix Foundation/FEMA partnership. This will allow end-users to incorporate technology solutions into their planning, increasing their capacity to respond quickly and effectively once a disaster occurs.

Alternative Housing Pilot Program (AHPP)—Evaluate the efficacy of non-traditional short and intermediate-term housing alternatives for potential future use in a catastrophic disaster environment. Identify, develop and evaluate alternatives to and alternative forms of FEMA Disaster Housing to assist victims of the 2005 hurricanes in the Gulf Coast.

Cooperating Technical Partners (CTP)—To increase local involvement in, and ownership of, the development and maintenance of flood hazard maps produced for the National Flood Insurance Program (NFIP).

Map Modernization Management Support (MMMS)—To increase local involvement in, and ownership of, management of the development and maintenance of flood hazard maps produced for the National Flood Insurance.

New Repetitive Flood Claims (RFC)—The Repetitive Flood Claims (RFC) Program was authorized in 2004 under Public Law 108–264, funds were not appropriated until FY 2006. The RFC program is authorized under the NFIA to award grants for actions that reduce flood damages to individual properties for which one or more claim payments for losses have been made. FEMA is not required to publish regulations; however, FEMA will provide notice to eligible applicants, post notice on OMB's Grants.gov Web site, and post the RFC program guidance on its Web site at *http://www.fema.gov.*

Flood Mitigation Assistance (FMA)—To assist States and communities in implementing measures to reduce or eliminate the long-term risk of flood damage to buildings, manufactured homes, and other structures insurable under the National Flood Insurance Program (NFIP).

Pre-Disaster Mitigation (PDM)—To provide States and communities with a much needed source of pre-disaster mitigation funding for cost-effective hazard mitigation activities that are part of a comprehensive mitigation program, and that reduce injuries, loss of life, and damage and destruction of property. Competitive grants are part of this program including grants to universities.

Assistance to Firefighters Grant (AFG)—To provide direct assistance, on a competitive basis, to fire departments of a State or tribal nation for the purpose of protecting the health and safety of the public and firefighting personnel against fire and fire-related hazards.

Staffing for Adequate Fire and Emergency Response (SAFER)—To increase the number of firefighters in local communities and to help them meet industry minimum standards and attain 24/7 staffing for adequate protection against fire and fire-related hazards, and fulfill related roles associated with fire departments.

Disaster Programs

Public Assistance Grants (PA)—To provide supplemental assistance to States, local governments, and political subdivisions to the State, Indian Tribes, Alaskan Native Villages, and certain nonprofit organizations in alleviating suffering and hardship resulting from major disasters or emergencies declared by the President.

Crisis Counseling (SCC)—To provide immediate crisis counseling services, when required, to victims of a major Federally-declared disaster for the purpose of relieving mental health problems caused or aggravated by a major disaster or its aftermath.

Presidential Declared Disaster Assistance to Individuals and Households—Other Needs (ONA)—To provide assistance to individuals and households affected by a disaster or emergency declared by the President, and enable them to address necessary expenses and serious needs, which cannot be met through other forms of disaster assistance or through other means such as insurance.

Hazard Mitigation Grant Program (HMGP)—To provide States and local governments' financial assistance to implement measures that will permanently reduce or eliminate future damages and losses from natural hazards through safer building practices and improving existing structures and supporting infrastructure.

Fire Management Assistance Grant (FMAGP)—To provide grants to States, Indian tribal government and local governments for the mitigation, management and control of any fire burning on publicly (nonfederal) or privately owned forest or grassland that threatens such destruction as would constitute a major disaster.

Affected Public: State, local, and tribal government.

Number of Respondents: 56.

Estimated Time per Respondent: 38,408.66.

Estimated Total Annual Burden Hours: 2,150,885.

Frequency of Response: On Occasion.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Nathan Lesser, Desk Officer, Department of Homeland Security/FEMA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974. Comments must be submitted on or before June 12, 2008.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 500 C Street, SW., Washington, DC 20472, Mail Drop Room 301, 1800 S. Bell Street, Arlington, VA 22202, facsimile number (202) 646–3347, or e-mail address *FEMA–Information-Collections@dhs.gov.*

Dated: April 28, 2008.

John A. Sharetts-Sullivan,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security,

[FR Doc. E8–10580 Filed 5–12–08; 8:45 am]

BILLING CODE 9110–49–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; Extension, without change, of a currently approved collection, OMB Number 1660–0020; No Forms.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork

and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning Write Your Own Companies requirements to submit financial data to FEMA on a monthly basis.

SUPPLEMENTARY INFORMATION: Under the Write Your Own (WYO) Program, FEMA regulation 44 CFR 62.3 authorizes the Federal Insurance Administrator to enter into arrangements with individual private sector insurance companies that are licensed to engage in the business of property insurance. To insure that any policyholder money is accounted for and appropriately expended, the Federal Insurance and Mitigation Administration (FIMA) and WYO companies implemented a Financial Control Plan under FEMA regulation 44 CFR Part 62, Appendix B. This plan requires that each WYO company submit financial data on a monthly basis.

Collection of Information

Title: Write Your Own (WYO) Program.

Type of Information Collection: Extension, without change, of a currently approved collection.

OMB Number: 1660–0020.

Form Numbers: None.

Abstract: Under the Write Your Own (WYO) Program, private sector insurance companies may offer flood insurance to eligible property owners. The Federal Government is guarantor of flood insurance coverage for WYO companies, issued under the WYO arrangements.

Affected Public: Business or other for-profit.

Estimated Total Annual Burden Hours: 687 hours.

ANNUAL HOUR BURDEN

Data collection activity/instrument	Number of respondents (A)	Frequency of responses (B)	Hour burden per response (C)	Annual responses (D) = (A × B)	Total annual burden hours (C × D)
Financial Report (WYO)	97	12	.59	1,164	687
Total	97	12	.59	1,164	687

Estimated Cost: The estimated annualized cost to respondents based on wage rate categories is $18,782.00. The estimated annual cost to the Federal Government is $168,907.00.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments must be submitted on or before July 14, 2008.

ADDRESSES: Interested persons should submit written comments to Office of Management, Records Management Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, Mail Drop Room 301, 1800 S. Bell Street, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Contact Kevin Montgomery, Financial Management Specialist, Federal Insurance and Mitigation Administration, (301) 918–1453 for additional information. You may contact the Records Management Section for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov.*

Dated: April 28, 2008.

John A. Sharetts-Sullivan,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E8–10593 Filed 5–12–08; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; Extension, without change, of a currently approved collection, OMB Number 1660–0017, FEMA Form 90–49; FEMA Form 90–91; FEMA Form 90–91A; FEMA Form 90–91B; FEMA Form 90–91C; FEMA Form 90–91D; FEMA Form 90–120; FEMA Form 90–121; FEMA Form 90–123; FEMA Form 90–124; FEMA Form 90–125; FEMA Form 90–126; FEMA Form 90–127; FEMA Form 90–128.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the Public Assistance progress report and related forms used to administer the Public Assistance Program.

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended, authorizes the President to provide assistance to state and local government to help them to respond to and recover from a disaster.

Collection of Information

Title: Public Assistance Progress Report and Program Forms.

Type of Information Collection: Extension, without change, of a currently approved collection.

OMB Number: 1660–0017.

Form Numbers: FEMA Form 90–49, Request for Public Assistance (RPA); FEMA Form 90–91, Project Worksheet (PW); FEMA Form 90–91A, PW-Damage Description and Scope of Work Continuation Sheet; FEMA Form 90–91B, PW Cost Estimate Continuation Sheet; FEMA Form 90–91C, PW Maps and Sketches Sheets; FEMA Form 90–

91D, PW Photo Sheet; FEMA Form 90–120, Special Considerations Questions; FEMA Form 90–121, PNP Facility Questionnaire; FEMA Form 90–123, Force Account Labor Summary; FEMA Form 90–124, Material Summary Record; FEMA Form 90–125, Rented Equipment Summary Record; FEMA Form 90–126, Contract Work Summary Record; FEMA Form 90–127, Force Account Equipment Summary Record; FEMA Form 90–128, Applicants Benefits Calculation Worksheet.

Abstract: This collection serves as the mechanism to administer the Public Assistance (PA) Program. The report describes the status of project completion, dates, and circumstances that could delay a project. The Progress Report and related forms ensure that FEMA and the State have up-to-date information on PA program grants. The application process contains record-keeping and reporting requirements via mandatory and optional completion of several forms and time-frames. The date of the report is determined jointly by the State and the Disaster Recovery Manager.

Affected Public: State, Local or Tribal Government.

Estimated Total Annual Burden Hours: 134,562 hours.

ANNUAL HOUR BURDEN

Project/activity (survey, form(s), focus group, etc.)	No. of respondents (A)	Frequency of responses (B)	Burden hours per respondent (C)	Annual responses D=(AxB)	Total annual burden hours (CxD)
Mandatory Forms:					
FF 90–49, Request for Public Assistance (RPA)	148	53	0.16667	7,844	1,333
FF 90–91, Project Worksheet (PW), FF 90–91A, PW-Damage Description and Scope of Work Continuation Sheet, FF 90–91B, PW Cost Estimate Continuation Sheet, FF 90–91C PW Maps and Sketches Sheets, and FF 90–91D, PW Photo Sheet. [1]	694	53	1.5	36,782	55,173
FF 90–120, Special Considerations Questions	658	53	0.16667	34,874	5,929
FF 90–128, Applicants Benefits Calculation Worksheet	148	53	0.5	7,844	3,922
FF 91–121, PNP Facility Questionnaire	20	53	0.5	1,060	530
Progress Report (All State/Local PA projects) [2]	56	4	100	224	22,400
Audit of States, Local Governments and Non-Profit Organizations	56	1	30	56	1,680
Total-Mandatory	1780			88,684	90,967
Optional Forms:					
FF 90–123, Force Account Labor Summary	658	53	0.25	34,874	8,719
FF 90–124, Material Summary Record	658	53	0.25	34,874	8,719
FF 90–125, Rented Equipment Summary Record	658	53	0.25	34,874	8,719
FF 90–126, Contract Work Summary Record	658	53	0.25	34,874	8,719
FF 90–127, Force Account Equipment Summary Record	658	53	0.25	34,874	8,719
Total-Optional	3,290			174,370	43,595
Total Annual Burden	5,070	535	134.25	263,054	134,562

Estimated Cost: The estimated annualized cost to respondents based on wage rate categories is $3,759,663.00. The estimated annual cost to the Federal Government is $1,510,430.00.

Comments: Written comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information will have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments must be submitted on or before July 14, 2008.

ADDRESSES: Interested persons should submit written comments to Office of Management, Records Management Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, Mail Drop Room 301, 1800 S. Bell Street, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Contact Clifford Brown, Program Specialist, Public Assistance Grant Program at (202) 646–4136 for additional information. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646–3347 or email address: *FEMA-Information-Collections@dhs.gov.*

Dated: April 28, 2008.

John A. Sharetts-Sullivan,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E8–10596 Filed 5–12–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; Extension of a currently approved collection; OMB Number 1660–0104, No Forms.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Title: Severe Repetitive Loss (SRL) Appeals Process.

OMB Number: 1660–0104.

Abstract: The SRL program provides property owners with the ability to appeal an increase in their flood insurance premium rate if they refuse an offer of mitigation under this program. The property owner must submit information to FEMA to support their appeal.

Affected Public: Individuals or households.

Number of Respondents: 10.

Estimated Time per Respondent: 10 hours.

Estimated Total Annual Burden Hours: 100 hours.

Frequency of Response: On Occasion.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management Budget, Attention: Nathan Lesser, Desk Officer, Department of Homeland Security/FEMA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974. Comments must be submitted on or before June 12, 2008.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 500 C Street, SW., Washington, DC 20472, Mail Drop Room 301, 1800 S. Bell Street, Arlington, VA 22202, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

Dated: April 28, 2008.

John A. Sharetts-Sullivan,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E8–10597 Filed 5–12–08; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: From I–602; Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form I–602; Application by Refugee for Waiver of Grounds of Excludability; OMB No. 1615–0069.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS), has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until July 14, 2008.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, NW., 3rd Floor, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail, please add the OMB Control Number 1615–0069 in the subject box.

During this 60-day period USCIS will be evaluating whether to revise the Form I–602. Should USCIS decide to revise the Form I–602 it will advise the public when it publishes the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30-days to comment on any revisions to the Form I–602.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application by Refugee for Waiver of Grounds of Excludability.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–602. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. This form is necessary to establish eligibility for waiver of excludability based on humanitarian, family unity, or public interest.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 2,500 responses at 15 minutes (.25) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 625 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit: *http://www.regulations.gov/search/index.jsp.*

We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529, telephone number 202–272–8377.

Dated: May 7, 2008.

Stephen Tarragon,

Acting Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E8–10543 Filed 5–12–08; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–817; Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Form I–817, Application for Family Unity Benefits; OMB Control No. 1615–0005.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until July 14, 2008.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Officer, 111 Massachusetts Avenue, 3rd Floor, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by e-mail, please make sure to add OMB Control No. 1615–0005 in the subject box.

During this 60-day period USCIS will be evaluating whether to revise the Form I–817. Should USCIS decide to revise the Form I–817 it will advise the public when it publishes the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30-days to comment on any revisions to the Form I–817.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Application for Family Unity Benefits.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–817; U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The information collected will be used to determine whether the applicant meets the eligibility requirements for benefits under 8 CFR part 245A, Subpart C.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 6,000 responses at 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 12,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit: *http://www.regulations.gov/search/index.jsp*.

We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529, telephone number 202–272–8377.

Dated: May 7, 2008.

Stephen Tarragon,

Acting Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E8–10545 Filed 5–12–08; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5187–N–30]

Application and Reporting for Hospital Project Mortgage Insurance/Section 242

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information in the 92013 form is necessary (a) to determine the viability of a hospital applicant's proposal for mortgage insurance: basic eligibility criteria; underwriting standards; feasibility study; and adequacy of state and/or local certifications, approvals, or waivers and (b) to regulate and monitor hospitals with insured mortgage loans. The 93305 form is needed to insure proper recordation of project costs, identify and monitor identify of interests between the Mortgagor and General Contractor, subcontractors, suppliers, or equipment lessors and agree upon procedures when such identity of interests arise, and to insure conformity with the National Housing Act and its Regulations.

DATES: *Comments Due Date: June 12, 2008.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0518) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer. .

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of

the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Application and Reporting for Hospital Project Mortgage Insurance/Section 242.

OMB Approval Number: 2502–0518.

Form Numbers: HUD–92013–HOSP, HUD–93305–M–H.

Description of the Need for the Information and its Proposed Use: This information in the 92013 form is necessary (a) to determine the viability of a hospital applicant's proposal for mortgage insurance: basic eligibility criteria; underwriting standards; feasibility study; and adequacy of state and/or local certifications, approvals, or waivers and (b) to regulate and monitor hospitals with insured mortgage loans. The 93305 form is needed to insure proper recordation of project costs, identify and monitor identify of interests between the Mortgagor and General Contractor, subcontractors, suppliers, or equipment lessors and agree upon procedures when such identity of interests arise, and to insure conformity with the National Housing Act and its Regulations.

Frequency of Submission: On occasion, quarterly, annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	18	2		487		17,566

Total Estimated Burden Hours: 17,566.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 6, 2008.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E8–10532 Filed 5–12–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. 5161–N–04]

Credit Watch Termination Initiative

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice advises of the cause and effect of termination of Origination Approval Agreements taken by HUD's Federal Housing Administration (FHA) against HUD-approved mortgagees through the FHA Credit Watch Termination Initiative. This notice includes a list of mortgagees which have had their Origination Approval Agreements terminated.

FOR FURTHER INFORMATION CONTACT: The Quality Assurance Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410–8000; telephone (202) 708–2830 (this is not a toll free number). Persons with hearing or speech impairments may access that number through TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: HUD has the authority to address deficiencies in the performance of lenders' loans as provided in HUD's mortgagee approval regulations at 24 CFR 202.3. On May 17, 1999 HUD published a notice (64 FR 26769), on its procedures for terminating Origination Approval Agreements with FHA lenders and placement of FHA lenders on Credit Watch status (an evaluation period). In the May 17, 1999 notice, HUD advised that it would publish in the **Federal Register** a list of mortgagees, which have had their Origination Approval Agreements terminated.

Termination of Origination Approval Agreement: Approval of a mortgagee by HUD/FHA to participate in FHA mortgage insurance programs includes an Origination Approval Agreement (Agreement) between HUD and the mortgagee. Under the Agreement, the mortgagee is authorized to originate single-family mortgage loans and submit them to FHA for insurance endorsement. The Agreement may be terminated on the basis of poor performance of FHA-insured mortgage loans originated by the mortgagee. The termination of a mortgagee's Agreement is separate and apart from any action taken by HUD's Mortgagee Review Board under HUD's regulations at 24 CFR part 25.

Cause: HUD's regulations permit HUD to terminate the Agreement with any mortgagee having a default and claim rate for loans endorsed within the preceding 24 months that exceeds 200 percent of the default and claim rate within the geographic area served by a HUD field office, and also exceeds the national default and claim rate. For the 34th review period, HUD is terminating the Agreement of mortgagees whose default and claim rate exceeds both the national rate and 200 percent of the field office rate.

Effect: Termination of the Agreement precludes that branch(s) of the mortgagee from originating FHA-insured single-family mortgages within the area of the HUD field office(s) listed in this notice. Mortgagees authorized to purchase, hold, or service FHA insured mortgages may continue to do so.

Loans that closed or were approved before the termination became effective may be submitted for insurance endorsement. Approved loans are (1) those already underwritten and approved by a Direct Endorsement (DE) underwriter employed by an unconditionally approved DE lender and (2) cases covered by a firm commitment issued by HUD. Cases at earlier stages of processing cannot be submitted for insurance by the terminated branch; however, they may be transferred for completion of processing and underwriting to another mortgagee or branch authorized to originate FHA insured mortgages in that area. Mortgagees are obligated to continue to pay existing insurance premiums and meet all other obligations associated with insured mortgages.

A terminated mortgagee may apply for a new Origination Approval Agreement if the mortgagee continues to be an approved mortgagee meeting the requirements of 24 CFR 202.5, 202.6, 202.7, 202.8 or 202.10 and 202.12, if

there has been no Origination Approval Agreement for at least six months, and if the Secretary determines that the underlying causes for termination have been remedied. To enable the Secretary to ascertain whether the underlying causes for termination have been remedied, a mortgagee applying for a new Origination Approval Agreement must obtain an independent review of the terminated office's operations as well as its mortgage production, specifically including the FHA-insured mortgages cited in its termination notice. This independent analysis shall identify the underlying cause for the mortgagee's high default and claim rate. The review must be conducted and issued by an independent Certified Public Accountant (CPA) qualified to perform audits under Government Auditing Standards as provided by the Government Accountability Office. The mortgagee must also submit a written corrective action plan to address each of the issues identified in the CPA's report, along with evidence that the plan has been implemented. The application for a new Agreement should be in the form of a letter, accompanied by the CPA's report and corrective action plan. The request should be sent to the Director, Office of Lender Activities and Program Compliance, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410–8000 or by courier to 490 L'Enfant Plaza, East, SW., Suite 3214, Washington, DC 20024–8000.

Action: The following mortgagees have had their Agreements terminated by HUD:

Mortgagee name	Mortgagee branch address	HUD office jurisdictions	Termination effective date	Homeownership centers
Assurity Financial Services LLC.	6025 S Quebec St Ste 220 Englewood, CO 80111 ..	Denver, CO	3/27/2008	Denver.
Benchmark Lending Inc. ...	105 S Wheeler Street Ste 200 Plant City, FL 33563	Jacksonville, FL	3/27/2008	Atlanta.
Heartland Funding Corp. ...	1442 East Primrose Springfield, MO 65804	Springfield, MO	3/27/2008	Denver.
Owens Premier Mortgage, LTD.	4545 Fuller Drive Suite 350 Irving, TX 75038	Fort Worth, TX	3/27/2008	Denver.
Orchid Island Treasures LLC.	115 West Century Road Paramus, NJ 07652	Atlanta, GA	1/31/2008	Philadelphia.
Orchid Island Treasures LLC.	115 West Century Road Paramus, NJ 07652	Atlanta, GA	1/31/2008	Philadelphia.
Gatewood Mortgage Corp	2646 Southloop West Suite 108 Houston, TX 77054	Houston, TX	3/27/2008	Denver.
Citizens Bank	31155 Northwestern Highway Farmington Hills, MI 48334.	Indianapolis, IN	3/27/2008	Atlanta.

Dated: May 5, 2008.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E8–10533 Filed 5–12–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5187–N–31]

Self-Help Homeownership Opportunity Program (SHOP) Grant Monitoring

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

SHOP provides for funds to purchase home sites and develop/improve infrastructure to support sweat equity and volunteer-based homeownership programs for low-income persons and families. This information collection is to measure performance goals and demonstrate the success of the program.

DATES: *Comments Due Date: June 12, 2008.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2506–0157) should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. This notice also lists the following information:

Title of Proposal: Self-Help Homeownership Opportunity Program (SHOP) Grant Monitoring.

OMB Approval Number: 2506–0157.

Form Numbers: HUD–40215, HUD–40216, HUD–40217, HUD–40218, HUD–40219, and HUD–40220.

Description of the Need for the Information and its Proposed Use:

SHOP provides for funds to purchase home sites and develop/improve infrastructure to support sweat equity and volunteer-based homeownership programs for low-income persons and families. This information collection is to measure performance goals and demonstrate the success of the program.

Frequency of Submission: On occasion, quarterly, annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	933	4.13		2.24		8,675

Total Estimated Burden Hours: 8,675.
Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 6, 2008.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E8–10534 Filed 5–12–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Tribal Energy Policy Advisory Committee

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Nomination of Tribal Representatives to a Department of the Interior Advisory Committee on Tribal Energy Policy.

SUMMARY: The Department of the Interior's Assistant Secretary—Indian Affairs (AS–IA) is forming a Tribal Energy Policy Advisory Committee (Committee) of tribal officials and Federal representatives to provide advice on implementing regulations promulgated under the Indian Tribal Energy Development and Self-Determination Act of 2005 (Act) and other Indian energy resource development matters. The AS–IA is requesting nominations to the Committee for tribal representatives of federally recognized Indian tribes from all of the Bureau of Indian Affairs regions except Alaska (the Act does not include Alaska).

DATES: Submit nominations by June 27, 2008. We will not consider nominations received after this date.

ADDRESSES: You must submit the nominations for the Tribal Energy Policy Advisory Committee by mail or hand-carry to the Department of the Interior, Office of Indian Energy and Economic Development, Attention: Nominations—Tribal Energy Policy Advisory Committee, Room 20, South Interior Building, 1951 Constitution Avenue, NW., Washington, DC 20245.

FOR FURTHER INFORMATION CONTACT: Darryl Francois, Office of Indian Energy and Economic Development, Division of Indian Energy Policy, Room 20, South Interior Building, 1951 Constitution Avenue, NW., Washington, DC 20245, Telephone (202) 219–0740 or Fax (202) 208–4564.

SUPPLEMENTARY INFORMATION: On March 10, 2008, the Secretary published final regulations at 25 CFR part 224, which provide that Indian tribes may enter into Tribal Energy Resource Agreements (TERAs) with the Secretary. Under approved TERAs, at their discretion, tribes may enter into leases, business agreements, and rights-of-way for energy resource development without Secretarial review or approval. The purpose of the Committee is to advise the Secretary and the Assistant Secretary—Indian Affairs on Indian energy policy matters.

The Committee will meet twice yearly. All Committee representatives are expected to attend each meeting. If selected for Committee membership, tribal representatives must agree that they are able and will inform other interested tribes in their regions of advisory committee activities and bring to the attention of the advisory committee energy resource development concerns of other tribes in their regions.

Tribal representative nominees must be elected officials of tribal governments or designated employees of elected tribal officials with authority to act on their behalf. Nominees must have demonstrable background and experience in energy resource development including, but not limited to, technical, administrative, managerial, or financial, aspects of energy resource development. Energy resource development includes resources identified in 25 CFR 224.103.

Nominations must be made by tribal leaders on official letterhead. Nominations for each tribal representative must state the nominee's official status with the tribal government (elected official or designated employee with authority to act on an elected official's behalf). Nominations must include relevant background and experience in energy resource development and must include a current resume. Nominations must be accompanied by a tribal resolution that recommends that the nominee be appointed to the Tribal Energy Policy Advisory Committee.

The AS–IA will name up to 11 tribal representatives who will be notified in writing of their selection. Tribal representatives' travel expenses to the Committee meetings will be paid in accordance with current General Services Administration regulations.

Dated: May 2, 2008.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

[FR Doc. E8–10626 Filed 5–12–08; 8:45 am]

BILLING CODE 4310–04–P

DEPARTMENT OF THE INTERIOR

National Park Service

30-Day Notice of Submission to the Office of Management and Budget (OMB); Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice and request for comments.

SUMMARY: Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320. Reporting and Recordkeeping Requirements, the National Park Service (NPS) invites public comments on a proposed new collection of information (OMB # 1024–XXXX).

DATES: Public comments on this Information Collection Request (ICR) will be accepted on or before June 12, 2008.

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of the Interior (OMB #1024–XXXX), Office of Information and Regulatory Affairs, OMB, by fax at 202/395–6566, or by electronic mail at *oira_docket@omb.eop.gov*. Please also send a copy of your comments to Angela Walters, Appalachian National Scenic Trail, NPS, P.O. Box 50, Harpers Ferry, WV 25425; Phone: 304/535–6278; Fax: 304/535–6270; E-mail: *angela_walters@nps.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. James Gramann, NPS Social Science Program, 1201 "Eye" St., Washington, DC 20005; or via phone at 202/513–7189; or via e-mail at *James_Gramann@partner.nps.gov*. You are entitled to a copy of the entire ICR package free-of-charge. You may access

this ICR at *http://www.reginfo.gov/public/*.

Comments Received on the 60-Day Federal Register Notice

The NPS published a 60-Day Notice to solicit public comments on this ICR entitled "Appalachian Trail Management Partner Survey" in the **Federal Register** on January 30, 2008 (73 FR 5588 5589). The comment period closed on March 31, 2008. After multiple notifications to stakeholders requesting comments, the NPS received one comment as a result of the publication of this 60-Day **Federal Register** Notice.

One public comment was received on the proposed Appalachian Trail Management Partner Survey (ATMPS). The comment expressed concern over tax dollars being spent on this study. A response was sent to the individual, explaining the necessity of the survey for the NPS to work with its partners to better manage the Appalachian Trail lands. No further comment has been received.

SUPPLEMENTARY INFORMATION:

Title: Appalachian Trail Management Partner Survey.

Survey Bureau Form Number(s): None.

OMB Number: To Be requested.

Expiration Date: To Be requested.

Type of Request: New collection.

Description of Need: The NPS Act of 1916, 38 Stat 535, 16 U.S.C. 1, *et seq.*, requires that the NPS preserve national parks for the use and enjoyment of present and future generations. The Appalachian National Scenic Trail is an unusual unit of the national park system, managed through a decentralized volunteer-based cooperative management system involving eight national forests, six other national park units, agencies in fourteen states, the Appalachian Trail Conservancy and citizen volunteers in 30 affiliated trail club organizations. The Government Performance and Results Act (GPRA) of 1993 (Pub. L. 103–62) requires that the NPS develop goals and measure performance related to these goals. The Appalachian Trail Management Partner Survey (ATMPS) measures performance toward those goals through a partner satisfaction survey. The project is an element of the NPS Strategic Plan and the Department of the Interior (DOI) Strategic Plan.

The purpose of the ATMPS is to track the satisfaction of federal, state, and not-for-profit partner organizations and agencies receiving support from the Appalachian Trail Park Office (ATPO) to protect trail resources and provide for the public enjoyment and visitor experience of the Appalachian National Scenic Trail. The ATPO provides support to state and federal agencies, and not-for-profit organizations to assist them in fulfilling shared and delegated management activities in the management of the Appalachian National Scenic Trail. Achievement of on-the-ground results depends on the actions of these partner agencies and organizations. Progress towards management goals is measured by a satisfaction survey where key partners evaluate quality of support provided by ATPO. This effort is required by GPRA and other NPS and DOT strategic planning efforts. Data from the proposed survey is needed to assess performance regarding NPS GPRA goal IIbO. NPS performance on all goals measured in this study will contribute to DOI Department-wide performance reports.

Automated data collections: This information will be collected via electronic mail surveys.

Description of respondents: Respondents include representatives from partner groups, including non-profit organizations and State and Federal agencies.

Estimated average number of respondents: 150 respondents (100 respondents and 50 non-respondents).

Estimated average number of responses: 150 responses (100 responses and 50 non-responses).

Estimated average burden hours per response: 10 minutes for respondents and 1 minute for non-respondents.

Frequency of Response: 1 time per respondent.

Estimated total annual reporting burden: 26 hours.

Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information being gathered; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: April 15, 2008.

Leonard E. Stowe,

NPS, Information Collection Clearance Officer.

[FR Doc. E8–10410 Filed 5–12–08; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Record Keeping Requirements, the National Park Service (NPS) invites public comments on a reinstatement, with change, of a previously approved collection for which approval has expired (OMB# 1024–0216).

DATES: Public comments on this Information Collection Request (ICR) will be accepted on or before July 14, 2008.

ADDRESSES: Send Comments To: Jennifer Hoger Russell, Park Studies Unit, College of Natural Resources, University of Idaho, P.O. Box 44139, Moscow, ID 83844–1139; Phone: (208) 885–4806; Fax (208) 885–4261, e-mail: *jhoger@uidaho.edu*. Also, you may send comments to Leonard Stowe, NPS Information Collection Clearance Officer, 1849 C St., NW., (2605), Washington, DC 20240, or by e-mail at *Leonard_stowe@nps.gov*. All responses to this notice will be summarized and included in the request for the Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

To Request a Draft of Proposed Collection of Information Contact: Jennifer Hoger Russell, Park Studies Unit, College of Natural Resources, University of Idaho, P.O. Box 44139, Moscow, ID 83844–1139; Phone: 208/885–4806; Fax: 208/885–4261, e-mail: *jhoger@uidaho.edu.*.

FOR FURTHER INFORMATION CONTACT: Dr. James Gramann, NPS Social Science Program, 1201 "Eye" St., Washington, D.C. 20005; or via phone 202/513–7189; or via e-mail at *James_Gramann@partner.nps.gov*. You are entitled to a copy of the entire ICR package free of charge.

SUPPLEMENTARY INFORMATION: *Title:* National Park Service Visitor Survey Card.

Bureau Form Number: None.

OMB Number: 1024–0216.

Expiration Date: To be requested.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Description of Need: The National Park Service Act of 1916, 38 Stat 535, 16 U.S.C. 1, *et seq.*, requires that the NPS preserve national parks for the use and enjoyment of present and future generations. At the field level, this means resource preservation, public education, facility maintenance and operation, and physical developments as are necessary for public use, health, and safety. Other Federal rules (National Environmental Policy Act, 1969 and NPS Management Policies) require visitor use data in the impact assessment of development on users and resources as part of each park's general management plan. The Government Performance and Results Act (GPRA) of 1993 (Pub. L. 103–62) requires that the NPS develop goals to improve program effectiveness and public accountability and to measure performance related to these goals. The Visitor Survey Card (VSC) Project measures performance toward those goals through a short visitor survey card. The project is an element of the NPS Strategic Plan and the Department of the Interior (DOT) Strategic Plan.

The NPS has used the VSC to conduct surveys at approximately 330 National Park System units annually since 1998. The purpose of the VSC is to measure visitors' opinions about park facilities, services, and recreational opportunities in each park unit and Systemwide. This effort is required by GPRA and other NPS and DOT strategic planning efforts. Data from the proposed survey is needed to assess performance regarding NPS GPRA goals IIa1 and IIb1. The relevant NPS GPRA goals state:

> II. Provide for the public enjoyment and visitor experience of parks; IIa1. 95% of park visitors are satisfied with appropriate park facilities, services, and recreational opportunities; IIb1. 86% of park visitors understand and appreciate the significance of the park they are visiting.

In addition, the survey collects data to support the DOI Strategic Plan goal on visitor satisfaction with the value for entrance fees paid to access public lands managed by the DOI. NPS performance on all goals measured in this study will contribute to DOI Department-wide performance reports. Results of the VSC will also be used by park managers to improve visitor services at the approximately 330 units of the National Park System where the survey is administered.

The VSC is a component of the Visitors Services Project, which is funded by the NPS through a cooperative agreement with the Park Studies Unit at the University of Idaho. In 1998, the NPS received clearance for the Visitor Survey Card (OMB# 1024–0216). When that three-year clearance expired on May 31, 2001, a new clearance was acquired under the Programmatic Approval for NPS-Sponsored Public Surveys (1024–0224, NPS #01–003). Clearance was again acquired in 2005 under the Programmatic Approval for NPS-Sponsored Public Surveys (10240224, NPS #05–004). This request is another extension of the on-going study.

Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Automated data collection: This information will be collected via mail-back surveys and on-site drop-off surveys using locked collection boxes. No automated data collection will take place.

Description of respondents: Visitors to approximately 330 NPS units.

Estimated average number of respondents: 132,000 respondents (95,000 non-respondents and 37,000 respondents).

Estimated average number of responses: 132,000 responses (95,000 non-responses and 37,000 responses).

Estimated average time burden per respondent: 1 minute for non-respondents and 3 minutes for respondents.

Frequency of Response: 1 time per respondent.

Estimated total annual reporting burden: 3,433 hours.

Dated: May 5, 2008.

Leonard E. Stowe,

NPS, Information Collection Clearance Officer.

[FR Doc. E8–10411 Filed 5–12–08; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware Water Gap National Recreation Area Citizen Advisory Commission Meeting

AGENCY: National Park Service; Interior.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the Delaware Water Gap National Recreation Area Citizen Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2).

DATES: Saturday, June 14, 2008, 10 a.m.

ADDRESSES: Bushkill Meeting Center, 209 Road (just south of the blinking light at Bushkill Falls Rd.), Bushkill, PA 18324.

The agenda will include reports from Citizen Advisory Commission members including committees such as Cultural and Historical Resources, and Natural Resources. Superintendent John J. Donahue will give a report on various park issues, including cultural resources, natural resources, construction projects, and partnership ventures. The agenda is set up to invite the public to bring issues of interest before the Commission.

FOR FURTHER INFORMATION CONTACT: Superintendent John J. Donahue, 570–426–2418.

SUPPLEMENTARY INFORMATION: The Delaware Water Gap National Recreation Area Citizen Advisory Commission was established by Public Law 100–573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the recreation area and its surrounding communities.

Dated: March 21, 2008.

John J. Donahue,

Superintendent.

[FR Doc. E8–10486 Filed 5–12–08; 8:45 am]

BILLING CODE 4312–J6–M

INTERNATIONAL TRADE COMMISSION

[USITC SE–08–011]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: May 28, 2008 at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

Matters To Be Considered

1. *Agenda for future meetings:* none.
2. Minutes.
3. Ratification list.
4. Inv. Nos. 701–TA–456 and 731–TA–1151 and 1152 (Preliminary) (Citric Acid and Certain Citric Salts from Canada and China)—briefing and vote. (The Commission is currently scheduled to transmit its determinations to the Secretary of Commerce on or before May 29, 2008; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before June 5, 2008.)
5. *Outstanding action jackets:* none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: May 7, 2008.

By order of the Commission.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. E8–10601 Filed 5–12–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–08–012]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: May 29, 2008 at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

Matters To Be Considered

1. *Agenda for future meetings:* None.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–744 (Second Review) (Brake Rotors from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before June 11, 2008).
5. *Outstanding action jackets:* None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: May 7, 2008.

By order of the Commission.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. E8–10604 Filed 5–12–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–08–013]

Government In the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: June 3, 2008 at 2 p.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

Matters To Be Considered

1. *Agenda for future meetings:* None.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–417 and 731–TA–953, 954, 957–959, 961, and 962 (Review) (Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before June 16, 2008) .
5. *Outstanding action jackets:* None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: May 7, 2008.

By order of the Commission.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. E8–10605 Filed 5–12–08; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice Of Proposed Agreement Regarding Alleged Non-Compliance with Consent Decree in United States v. Mack Trucks, Inc.

Notice is hereby given of a proposed Agreement Regarding Alleged Non-Compliance with Consent Decree ("Agreement") in the case of *United States* v. *Mack Trucks, Inc.*, Civil Action No. 98–01495, in the United States District Court for the District of Columbia. The agreement was filed on May 7, 2008.

The Agreement resolves a matter involving Mack's alleged failure to comply with a 1999 Consent Decree settling claims under Title II of the Clean Air Act, 42 U.S.C. 7521 *et seq.* (the "Act"), regarding the alleged use of illegal emission-control "defeat devices" on Mack's 1998 and prior heavy-duty diesel engines ("HDDEs"). Specifically at issue is Mack's omission of 5786 engines from its Low NO_X Rebuild Program.

This violation is addressed through Mack's payment of an agreed penalty in the amount of $300,000, to be shared between the United States and the California Air Resources Board. Mack will also conduct a campaign to install 1200 additional Low NO_X reflashes on eligible engines.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Agreement. 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, or e-mailed to *pubcomment-ees.enrd@usdoj.gov* and should refer to *United States* v. *Mack Trucks, Inc.*, D.J. Ref. 90–5–2–1–2251.

During the public comment period, the Agreement may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.*

A copy of the Agreement 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 of the Decree from the Consent Decree Library, please enclose a check in the amount of $2.50 (25 cents per page reproduction cost for 10 pages) 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.

Karen Dworkin,

Assistant Chief, Environmental Enforcement Section.

[FR Doc. E8–10621 Filed 5–12–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Residential Lead-Based Paint Hazard Reduction Act

Notice is hereby given that on April 29, 2008, a proposed Consent Decree in *United States* v. *A & M Properties, Inc.*, Civil Action No.2:08–cv–11814, was lodged with the United States District Court for the Eastern District of Michigan. The consent decree settles claims against the owner and management company of two residential properties containing approximately five units located in the area of Detroit, Michigan. The claims were brought on behalf of the Environmental Protection Agency ("U.S. EPA") and the Department of Housing and Urban Development ("HUD") under the Residential Lead-Based Paint Hazard Reduction Act, 42 U.S.C. 4851 *et seq.* ("Lead Hazard Reduction Act"). The United States alleged in the complaint that the defendant failed to make one or more of the disclosures or to complete one or more of the disclosure activities required by the Lead Hazard Reduction Act.

Under the Consent Decree, the Defendant will certify that it is complying with residential lead paint notification requirements. The Defendant will submit an on-going operations and maintenance plan and will complete abating lead-based paint hazards identified in all residential properties owned by A & M Properties, Inc. that are not certified lead-based paint free. In addition, Defendant will pay an administrative penalty of $42,500.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to U.S. Department of Justice, Washington, DC 20044–7611 P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *A & M Properties, Inc.*, D.J. Ref. #90–5–2–1–08345.

The Proposed Consent Decree may be examined at the Department of Housing and Urban Development, Office of General Counsel, 451 7th St., NW., Room 9262, Washington, DC 20410; at the office of the United States Attorney for the Eastern District of Michigan, 211 Fort Street, Suite 2001, Detroit, Michigan, 48226 (Attn. Assistant United States Attorney Carolyn Bell-Harbin); and at U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax 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 $9.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Karen Dworkin,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–10624 Filed 5–12–08; 8:45 am]

BILLING CODE 4410–CW–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on May 7, 2008, a proposed Third Partial Consent Decree ("Consent Decree") in *United States* v. *Valley Wood Preserving, Inc. et al.*, Civil Action No. 94–CV–05984 REC(SMS), was lodged with the United States District Court for the Eastern District of California.

In this action, the United States sought reimbursement of response costs incurred and to be incurred in connection with the Valley Wood Preserving, Inc. Superfund Site in Turlock, California, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9607. Under the Consent Decree, Valley Wood Preserving, Inc. and Joyce Logsdon will pay twenty thousand three hundred dollars of response ($20,300) costs that have been incurred by the United States.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Valley Wood Preserving, Inc. et al.*, D.J. Ref. No. 90–11–3–835.

During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the Consent Decree from the Consent Decree Library, please enclose a check in the amount of $4.50 (25 cents per page reproduction cost) payable to the U.S. Treasury, or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–10665 Filed 5–12–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Termination of Final Decrees

Notice is hereby given that True Temper Sports, Inc. ("True Temper"), successor in interest to defendant True Temper Corporation, has filed a motion to terminate the Final Judgment entered in *United States* v. *True Temper Corporation*, Civil No. 58–C–I 158, 1959 Trade Cas. (CCI–1) & 69,441 (ND. Ill. 1959), on August 20, 1959 ("1959 Final Judgment") and the Final Judgment entered in *United States* v. *True Temper Corporation, et al.*, Civil No. 5 8–C 1159, 1961 Trade Cas. (CCH) & 70,090 (N.D. Ill. 1961), on August 1, 1961 ("1961 Final Judgment"). Notice is also hereby given that the Antitrust Division of the United States Department of Justice ("the Department"), in a stipulation also

filed with the Court, tentatively has consented to termination of the 1959 Final Judgment and the 1961 Final Judgment, but has reserved the right to withdraw its consent pending receipt of public comments.

On June 30, 1958 the United States filed a complaint against sole defendant True Temper alleging that True Temper and several co-conspirators conspired to restrain and monopolize the manufacture and sale of steel golf club shafts. Prior to trial True Temper settled the charges by accepting entry of the 1959 Final Judgment on August 20, 1959.

Also on June 30, 1958 the United States filed a complaint against True Temper and four golf club manufacturers alleging that they conspired to restrain and monopolize markets for golfclubs and steel shafts. Prior to trial the defendants settled the charges by accepting entry of the 1961 Final Judgment on August 1, 1961.

The Department has filed with the Court a memorandum setting forth the reasons why the United States believes that the termination of the 1959 Final Judgment and the 1961 Final Judgment would serve the public interest. Copies of the motion to terminate, the stipulation containing the United States' tentative consent, the United States' memorandum, and all further papers filed with the Court in connection with the motion to terminate will be available for inspection at the Antitrust Documents Group, Antitrust Division, Suite 1010, 450 Fifth Street, NW., Washington, DC 20530, on the Web site at *http://www.usdoj.gov/atr*, and at the Office of the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the 1959 Final Judgment and the 1961 Final Judgment to the United States. Such comments must be received by the Antitrust Division within sixty (60) days and will be filed with the Court by the United States. Comments should be addressed to Marvin N. Price, Chief, Chicago Field Office, Antitrust Division, U.S. Department of Justice, 209 South LaSalle Street, Chicago, Illinois, 312/353–7530.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–10416 Filed 5–12–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Parole Commission

[6P04091]

Public Announcement; Sunshine Act Meeting

Pursuant to the Government in the Sunshine Act (Pub. L. 94–409) [5 U.S.C. Section 552b].

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

TIME AND DATE: 10 a.m., Tuesday, May 13, 2008.

PLACE: 5550 Friendship Boulevard, Fourth Floor, Chevy Chase, Maryland 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of Minutes of January, February and March 2008 Quarterly Business Meeting.
2. Reports from the Chairman, Commissioners, Chief of Staff, and Section Administrators.
3. YRA Misdemeanor Offenders—Use of Misconduct Reports to Issue Set Aside Certificates.

AGENCY CONTACT: Thomas W. Hutchison, Chief of Staff, United States Parole Commission, (301) 492–5990.

Dated: May 5, 2008.

Rockne J. Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. E8–10406 Filed 5–12–08; 8:45 am]

BILLING CODE 4410–31–M

DEPARTMENT OF JUSTICE

Parole Commission

[6P04091]

Public Announcement; Sunshine Act Meeting

Pursuant To The Government In the Sunshine Act (Pub. L. 94–409) [5 U.S.C. Section 552b].

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

DATE AND TIME: 12 p.m., Tuesday, May 13, 2008.

PLACE: U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815.

STATUS: Closed.

MATTERS CONSIDERED: The following matter will be considered during the closed portion of the Commission's Business Meeting:

Petition for reconsideration involving four original jurisdiction cases pursuant to 28 CFR 2.27.

AGENCY CONTACT: Thomas W. Hutchison, Chief of Staff, United States Parole Commission, (301) 492–5990.

Dated: May 5, 2008.

Rockne J. Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. E8–10407 Filed 5–12–08; 8:45 am]

BILLING CODE 4410–31–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,945]

Delphi Corporation, Automotive Holding Group, Chassis Business Support Functions, including On-Site Leased Workers From Kforce Staffing, Kettering, Ohio; 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 20, 2007, applicable to workers of Delphi Corporation, Automotive Holding Group, Chassis Business Support Functions, Kettering, Ohio. The notice was published in the **Federal Register** on October 3, 2007 (72 FR 56384).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers provide a variety of business services for an automotive brake parts manufacturing facility.

New information shows that leased workers of Kforce Staffing were employed on-site at the Kettering, Ohio location of Delphi Corporation, Automotive Holding Group, Chassis Business Support Functions. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include leased workers of Kforce Staffing working on-site at the Kettering, Ohio location of the subject firm.

The intent of the Department's certification is to include all workers

employed at Delphi Corporation, Automotive Holding Group, Chassis Business Support Functions, Kettering, Ohio, who were adversely affected by increased imports.

The amended notice applicable to TA–W–61,945 is hereby issued as follows:

"All workers of Delphi Corporation, Automotive Holdings Group, Chassis Business Support Functions, including on-site leased workers from Kforce Staffing, Kettering, Ohio, (excluding workers of Delphi at other Kettering, Ohio Locations: Delphi Corporation, Automotive Holdings Group, Formerly Delphi Energy Chassis Systems Division, Kettering, Ohio (TA–W–57,754) and Delphi Corporation, Automotive Holdings Group, Chassis Division, Kettering, Ohio (TA–W–61,950)), who became totally or partially separated from employment on or after August 3, 2006, through September 20, 2009, 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 30th day of April 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–10586 Filed 5–12–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,038]

Delphi Corporation, Automotive Holdings Group, Including On-Site Leased Workers from Bartech, Msx, Inc., Production Design Services, Troy Design and Setech, Inc., Moraine, OH; 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 March 16, 2007, applicable to workers of Delphi Corporation, Automotive Holdings Group, including on-site leased workers from Bartech, MSX, Inc., Production Design Services and Troy Design, Moraine, Ohio. The notice was published in the **Federal Register** on March 30, 2007 (72 FR 15167).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of automotive compressors and pistons.

New information shows that leased workers of Setech, Inc. were employed on-site at the Moraine, Ohio location of Delphi Corporation, Automotive Holdings Group. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include leased workers of Setech, Inc. working on-site at the Moraine, Ohio location of the subject firm.

The intent of the Department's certification is to include all workers employed at Delphi Corporation, Automotive Holdings Group, Moraine, Ohio, who were adversely affected by a shift in production of automotive compressors and pistons to Mexico.

The amended notice applicable to TA–W–61,038 is hereby issued as follows:

"All workers of Delphi Corporation, Automotive Holdings Group, including on-site leased workers of Bartech, MSX, Inc., Production Design Services, Troy Design and Setech, Inc., Moraine, Ohio, who became totally or partially separated from employment on or after February 26, 2006 through March 16, 2009, 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 1st day of May 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–10585 Filed 5–12–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than May 23, 2008.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than May 23, 2008.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 25th day of April 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 4/21/08 and 4/25/08]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
63218	Weyerhaeuser Company I Level Veneer Technologies (Comp).	Junction City, OR	04/21/08	04/09/08
63219	OCV Fabrics, Inc. (Comp)	Ridgeway, SC	04/21/08	04/17/08

APPENDIX—Continued

[TAA petitions instituted between 4/21/08 and 4/25/08]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
63220	Starbrook Industries, Inc. (Comp)	Covington, OH	04/21/08	04/14/08
63221	IAC Corporation (Comp)	Dayton, TN	04/21/08	04/16/08
63222	Brockway Mould, Inc. (USW)	Brockport, PA	04/21/08	04/08/08
63223	San Diego Union-Tribune (Wkrs)	San Diego, CA	04/21/08	04/10/08
63224	Intermedia Marketing Solutions (Wkrs)	Indiana, PA	04/21/08	04/17/08
63225	Chicago Pneumatic Tool Company, LLC (Wkrs)	Charlotte, NC	04/21/08	04/15/08
63226	Semperian, GMAC, LLC (Wkrs)	Eugene, OR	04/21/08	04/12/08
63227	Mohawk (a divison of Bolden Wire and Cable) (Wkrs)	Leominster, MA	04/21/08	04/14/08
63228	Galey & Lord, LLC (Comp)	Columbus, GA	04/22/08	04/21/08
63229	Krohne, Inc. (State)	Peabody, MA	04/22/08	04/22/08
63230	Value City Department Store #152 (Wkrs)	Uniontown, PA	04/22/08	04/21/08
63231	Steelcase, Inc. (Comp)	Grand Rapids, MI	04/22/08	04/18/08
63232	GAE Warren, LLC (Comp)	Warren, OH	04/22/08	04/21/08
63233	MPC Computers, LLC (Comp)	La Vergne, TN	04/23/08	04/22/08
63234	Consoltex International, Inc. (Comp)	New York, NY	04/23/08	04/22/08
63235	South Print, Inc. (Wkrs)	Reidsville, NC	04/23/08	04/22/08
63236	Avaya, Inc. (State)	Westminster, CO	04/23/08	04/22/08
63237	Ven Ply, Inc. (State)	High Point, NC	04/23/08	04/23/08
63238	Alliance Industries, Inc. (Comp)	Troy, IN	04/23/08	04/22/08
63239	The Hertz Corporation (Wkrs)	Oklahoma City, OK	04/24/08	04/21/08
63240	Bartlett Corporation (Comp)	Muncie, IN	04/24/08	04/23/08
63241	Kataddin Precision Components (Comp)	Bangor, ME	04/24/08	04/18/08
63242	Perry Marketing Corporation (Comp)	Miami, FL	04/24/08	04/23/08
63243	Leiner Health Products (Wkrs)	Wilson, NC	04/24/08	04/24/08
63244	RFMD (Wkrs)	Greensboro, NC	04/25/08	04/24/08
63245	Alchem Aluminum Shelbyville, Inc. (Comp)	Shelbyville, TN	04/25/08	04/24/08
63246	I.H.S. Warehousing, Inc. (Comp)	Midland, MI	04/25/08	04/18/08
63247	AGC Flat Glass North America, Inc. (AFLCIO)	Church Hill, TN	04/25/08	04/23/08
63248	Polytech Coating Labs of USA, Inc. (Comp)	Reading, PA	04/25/08	04/24/08
63249	Starkey Northwest (Wkrs)	Portland, OR	04/25/08	04/23/08
63250	Ripley Complex (Comp)	Ripley, MS	04/25/08	04/22/08
63251	Culp Woven Velvets (Comp)	Anderson, SC	04/25/08	04/23/08
63252	LSI Corporation (Comp)	Wichita, KS	04/25/08	04/24/08

[FR Doc. E8–10582 Filed 5–12–08; 8:45 am]
BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of April 21 through April 25, 2008.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. *Section (a)(2)(A) all of the following must be satisfied:*

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. *Section (a)(2)(B) both of the following must be satisfied:*

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. *One of the following must be satisfied:*

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) the workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm (or subdivision) described in paragraph (2) Contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W–63,071; Rohm and Haas Company, Electronic Materials Division, Marlborough, MA: March 26, 2007

TA–W–63,071A; Rohm and Haas Company, Electronic Materials Division, Dallas, OR: March 26, 2007

TA–W–63,071B; Rohm and Haas Company, Electronic Materials Division, Portland, OR: March 26, 2007

TA–W–63,071C; Rohm and Haas Company, Electronic Materials Division, Sebastopol, CA: March 26, 2007

TA–W–63,071D; Rohm and Haas Company, Electronic Materials Division, Corona, CA: March 26, 2007

TA–W–63,071E; Rohm and Haas Company, Electronic Materials Division, Saratoga, CA: March 26, 2007

TA–W–63,071F; Rohm and Haas Company, Electronic Materials Division, Canton, TX: March 26, 2007

TA–W–63,071G; Rohm and Haas Company, Electronic Materials Division, Gardner, MA: March 26, 2007

TA–W–63,071H; Rohm and Haas Company, Electronic Materials Division, Lock Haven, PA: March 26, 2007

TA–W–63,039; Yanni's Design, Development and Supplies, Inc., Appleton, WI: March 19, 2007

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–62,965; K–Ply, Inc., A Subsidiary of Klukwan, Inc., Port Angeles, WA: March 3, 2007

TA–W–63,001; Arrmaz Product, L.P., Lobeco Division, Seabrook, SC: March 6, 2007

TA–W–63,093; Saint-Gobain Vetrotex America, Wichita Falls, TX: March 19, 2007

TA–W–63,147; The Cutting Company, Inc., Bath, PA: April 4, 2007

TA–W–63,161; Elrae Industries, Inc., On-Site Leased Wkrs From WGW, Alden, NY: March 17, 2007

TA–W–63,188; Emerson Motor Company, Industrial Motor Division, Princeton, IN: April 14, 2007

TA–W–63,148; Rosy Production, Inc., Brooklyn, NY: March 3, 2007

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–62,896; Ingersoll-Rand Company, Security Technologies Division, On-Site Workers of Adecco, Colorado Springs, CO: February 21, 2007

TA–W–63,015; CNI-Owosso, LLC, A Subsidiary of NICA, Inc., Owosso, MI: March 14, 2007

TA–W–63,018; Unique Balance, Inc., Alderson, WV: March 17, 2007

TA–W–63,025; Sanmina-SCI Corporation, Regional Finance Center, Guntersville, AL: March 12, 2007

TA–W–63,085; Trimtex Company, Inc., Williamsport, PA: March 24, 2007

TA–W–63,110; Hanesbrands, Inc., Advance, NC: February 18, 2007

TA–W–63,110A; Hanesbrands, Inc., Asheboro, NC: February 18, 2007

TA–W–63,160; Vesuvius USA, Foundry Division, Buffalo, NY: April 3, 2007

TA–W–63,163; Saint-Gobain Performance Plastics, Polymer Products Division, Bristol, RI: April 8, 2007

TA–W–63,167; Russell Corporation, Russell Athletic Focused Factory, Alexander City, AL: April 2, 2007

TA–W–63,189; Imation Corporation, Wahpeton, ND: June 14, 2008

TA–W–63,057; Cytec Industries, Willow Island, WV: March 20, 2007

TA–W–63,124; Berkline/Benchcraft LLC, Plant 8, Lenoir City, TN: April 1, 2007

TA–W–63,145; Alltrista Plastics, LLC, dba Jarden Plastic Solutions, Tupper Lake Division, Tupper Lake, NY: April 4, 2007

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–62,273B; Delphi Corporation, Brake Hose Division, On-Site Leased Wkrs From Bartech, Dayton, OH: October 8, 2006

TA–W–62,990; Airline Manufacturing Co., Inc., Columbus, MS: March 4, 2001

TA–W–63,026; Pioneer Manufacturing Company, Inc., Colorado Springs, CO: March 18, 2007

TA–W–63,037; Webb Furniture Enterprises, Inc., American Mirror Division, Leased Wkrs from Manpower, Galax, VA: March 14, 2007

TA–W–63,090; Bright Wood Corporation, Bend, OR: March 27, 2007

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. The firm does not have a significant number of workers 50 years of age or older.

None.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–63,071; Rohm and Haas Company, Electronic Materials Division, Marlborough, MA.

TA–W–63,071A; Rohm and Haas Company, Electronic Materials Division, Dallas, OR.

TA–W–63,071B; Rohm and Haas Company, Electronic Materials Division, Portland, OR.

TA–W–63,071C; Rohm and Haas Company, Electronic Materials Division, Sebastopol, CA.

TA–W–63,071D; Rohm and Haas Company, Electronic Materials Division, Corona, CA.

TA–W–63,071E; Rohm and Haas Company, Electronic Materials Division, Saratoga, CA.

TA–W–63,071F; Rohm and Haas Company, Electronic Materials Division, Canton, TX.

TA–W–63,071G; Rohm and Haas Company, Electronic Materials Division, Gardner, MA.

TA–W–63,071H; Rohm and Haas Company, Electronic Materials Division, Lock Haven, PA.

TA–W–63,039; Yanni's Design, Development and Supplies, Inc., Appleton, WI.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA–W–63,017; Quantum Corporation, Irvine, CA.

TA–W–63,159; Ametek, Inc., Floorcare and Specialty Motors Division, Kent, OH.

TA–W–63,170; General Electric Company, Consumer and Electrical Division, Plainville, CT.

TA–W–63,234; Consoltex International, Inc., New York Sales Office, New York, NY.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

None.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–62,862; Liz Claiborne, Inc., Dana Buchman Division, Sample Room, New York, NY.

TA–W–62,899; Profilia Corporation, City of Commerce, CA.

TA–W–63,109; Evergy, Inc., A Subsidiary of Tecumseh Products Co., Paris, TN.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–62,646; Pfizer Global Manufacturing—Unit 40749, Pfizer Global Manufacturing Division, Portage, MI.

TA–W–63,060; KB Pacific LLC, dba Keith Brown Building Materials, Madras, OR.

TA–W–63,082; Nortel, Software Data and Configuration Services, Research Triangle Park, NC.

TA–W–63,195; Roadway Express, A Subsidiary of YRC Worldwire, Rockingham, NC.

TA–W–63,198; Dakota Imaging, LLC, A Division of Emdeon Business Services, LLC, El Paso, TX.

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued during the period of April 21 through April 25, 2008. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 5, 2008.

Erin Fitzgerald,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E8–10584 Filed 5–12–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,821]

Ameridrives International, Llc, Erie, PA; Notice of Negative Determination Regarding Application for Reconsideration

By application dated April 3, 2008, petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA). The denial notice was signed on March 11, 2008 and published in the **Federal Register** on March 26, 2008 (73 FR 16064).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake

in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, which was filed on behalf of workers at Ameridrives International, LLC, Erie, Pennsylvania engaged in the production of industrial couplings, was denied based on the findings that during the relevant time period, sales and production of industrial couplings at the subject firm did not decrease and no shift in production to a foreign country occurred.

In the request for reconsideration, the petitioners provided the same reasons, as in the initial petition, why workers of the subject firm should be eligible for TAA. In particular, the petitioners alleged that a 202.5 Spacer (Part# 079507–001) "at one time was machined complete at Ameridrives and is now being manufactured at Great Taiwan Gear in Taiwan."

The company official was contacted to address this allegation. The official indicated that production of 202.5 Spacer (Part# 079507–001) ceased at the subject firm in 2005.

When assessing eligibility for TAA, the Department exclusively considers production during the relevant time period (one year prior to the date of the petition). Therefore, events occurring in 2005 are outside of the relevant time period and are not relevant in this investigation.

The petitioners also stated that "large universal joint components such as yokes, crosses and roller bearings are now all purchased from China".

The company official stated that yokes, crosses and roller bearings are "raw state materials" used in the production of industrial couplings. The official also stated that since 1999 manufacturing of these parts have been outsourced to other companies as they were no longer produced at the subject firm.

The petitioners attached two documents showing Ameridrives foreign sister facilities, where "products formerly made in Erie could be possibly now be manufactured."

According to the company official, none of the Ameridrives foreign facilities manufacture like or directly competitive products with industrial couplings manufactured by the subject facility in Erie, Pennsylvania.

The petitioner did not supply facts not previously considered; nor provide additional documentation indicating that there was either (1) a mistake in the determination of facts not previously considered or (2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination.

After careful review of the request for reconsideration, the Department determines that 29 CFR 90.18(c) has not been met.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 7th day of May, 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–10591 Filed 5–12–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,661]

Agilent Technologies, Measurement Systems Division, Loveland, CO; Notice of Revised Determination on Reconsideration

On April 17, 2008, the Department issued an Affirmative Determination Regarding Application on Reconsideration applicable to workers and former workers of the subject firm. The notice was published in the **Federal Register** on April 25, 2008 (73 FR 22433–22434).

The previous investigation was initiated on January 11, 2008 and resulted in a negative determination issued on March 13, 2008. The finding revealed that the worker separations at the subject firm were attributed to a shift in production of automated X-ray inspection system prototypes (including software code and hardware design functions) to Malaysia, a country that is not a party to a free trade agreement nor a beneficiary country with the United States. The subject firm did not import automated X-ray inspection system prototypes (including software code and hardware design functions) following the shift in production to a foreign source. The denial notice was published in the **Federal Register** on February 29, 2008 (73 FR 11153).

The request for reconsideration alleges that Agilent Technologies may be in fact an importer of X-ray inspection systems and software.

Upon further contact with company official, it was revealed that the subject firm manufactured only software products during the relevant period. Based on new information it has been determined that the subject firm workers were impacted by a shift in production of software to Malaysia during the relevant period. The investigation also revealed that the firm recently increased their imports of software from Malaysia.

In accordance with Section 246 of 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 there was a shift in production from the workers' firm or subdivision to Malaysia of articles that are like or directly competitive with those produced by the subject firm or subdivision, and there has been or is likely to be an increase in imports of like or directly competitive articles. In accordance with the provisions of the Act, I make the following certification:

"All workers of Agilent Technologies, Measurement Systems Division, Loveland, Colorado, who became totally or partially separated from employment on or after January 10, 2007, through two years from the date of this 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 6th day of May 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–10589 Filed 5–12–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,791]

Jaquart Fabric Products Incorporated, Ironwood, MI; Notice of Revised Determination on Reconsideration

On March 31, 2008, the Department of Labor (Department) received a request for administrative reconsideration of the Department's notice of determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Adjustment Assistance (ATAA) applicable to workers and former workers of Jacquart Fabric Products Incorporated, Ironwood, Michigan (the subject firm). The Department's Notice of negative determination was published in the **Federal Register** on March 7, 2008 (73 FR 12466). Workers are engaged in activity related to the production of motorcycle seats.

The determination was based on the Department's findings that subject firm sales and production increased in 2007 as compared to 2006; the subject firm did not import motorcycle seats; and the subject firm did not shift production abroad. The determination did not indicate whether the subject firm supplied component parts for articles produced by a firm with a currently TAA-certified worker group or assembled or finished articles provided by a firm with a currently TAA-certified worker group.

In the request for reconsideration, a representative of the State of Michigan Department of Labor and Economic Growth asserted that the subject firm produces motorcycle seats for a TAA-certified company (primary firm) and that the subject workers are eligible to apply for TAA as secondarily-affected workers.

In order to receive a secondary certification, a significant number or proportion of workers in the subject firm have been, or are threatened to become, totally or partially separated and that the subject firm is a supplier or downstream producer (finisher or assembler) to a firm that employed a group of workers who received a TAA certification, and such supply or production is related to the article that was the basis for such certification.

In addition, if the subject firm is a supplier to a TAA-certified company, either the component parts supplied to that company must account for at least 20 percent of the subject firm's sales or production, or a loss of business by the subject firm with the TAA-certified firm contributed importantly to the petitioning workers' separations or threat of separation; and, if the subject firm is a downstream producer, the TAA certification of the primary firm must be based on a shift of production to Canada or Mexico or import impact from Canada or Mexico and a loss of business by the subject firm with the TAA-certified firm contributed importantly to the petitioning workers' separations or threat of separation.

On reconsideration, the Department confirmed that a significant number or proportion of the workers in the subject firm has become totally separated or partially separated.

Based on new and additional information provided by the subject firm and the primary firm during the reconsideration investigation, the Department determines that the subject workers produced upholstered seat cushions; that the subject firm supplied these articles to MILSCO Manufacturing Company, A Unit of Jason Incorporation, Milwaukee, Wisconsin (TAA certified on November 27, 2007; TA–W–62,382); that the supply of upholstered seat cushions is related to the motorcycle seats that are the basis for the primary firm workers' certification; and the component part it supplied to the firm (or subdivision) accounted for at least 20 percent of the production or sales of the workers firm.

Based on the afore-mentioned information, the Department determines that the petitioning worker group has satisfied the requirements for secondary TAA certification.

In accordance with Section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department herein presents the results of its investigation regarding certification of eligibility to apply for ATAA. The Department has determined in this case that the group eligibility 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 information obtained in the reconsideration investigation, I determine that workers and former workers of Jacquart Fabric Products Incorporated, Ironwood, Michigan, 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 Jacquart Fabric Products Incorporated, Ironwood, Michigan, who became totally or partially separated from employment on or after January 31, 2007, through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974."

Signed at Washington, DC this 7th day of May 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–10590 Filed 5–12–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,240]

Bartlett Corporation, Muncie, IN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 24, 2008 in response to a worker petition filed by a company official on behalf of workers at Bartlett Corporation, Muncie, Indiana.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 2nd day of May 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–10587 Filed 5–12–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,300]

Fisher & Company, Inc., Fisher Dynamics Division, St. Clair Shores, Michigan; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 2, 2008 in response to a petition filed by a company official on behalf of workers of Fisher and Company, Fisher Dynamics Division, and Fisher and Company, Corporate Offices, St. Claire Shores, Michigan.

The workers are covered by active certifications (TA–W–59,597 and TA–

W–60,421) which expire on July 12, 2008 and December 18, 2008 respectively. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 2nd day of May 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–10581 Filed 5–12–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,136]

Netra Systems USA, Inc., Fayetteville, GA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 4, 2008 in response to a worker petition filed by a company official on behalf of workers at Netra Systems USA, Inc., Fayetteville, Georgia.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 6th day of May 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–10592 Filed 5–12–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,184]

Parat Automotive USA, Duncan, SC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 14, 2008 in response to a petition filed by a company official on behalf of workers at Parat Automotive USA, Duncan, South Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 6th day of May 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–10588 Filed 5–12–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Exemption Application No. D–11369, D–11434 & D–11446]

Prohibited Transaction Exemption 2008–06; Grant of Individual Exemptions involving D–11369, The Swedish Health Services Pension Plan; D–11434, Credit Suisse (CS) and Its Current and Future Affiliates; and D–11446, Amendment to Prohibited Transaction Exemption (PTE) 93–31, PTE 97–34, PTE 2002–41, PTE 2007–05, involving Bank of America, N.A., the Successor of NationsBank Corporation

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This document contains an exemption issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, Section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

The Swedish Health Services Pension Plan (the Plan), Located in Seattle, Washington

[Prohibited Transaction Exemption 2008–06; Exemption Application No. D–11369].

Exemption

The restrictions of sections 406(a)(1)(A), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of Section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply effective April 14, 2005, to two contributions in-kind (the Contribution(s)) to the Plan of securities (the Securities) made on April 14th and 15th 2005 by Swedish Health Services (the Applicant), the Plan sponsor, a party in interest with respect to the Plan, provided that the following conditions were satisfied:

(a) The Securities were valued at their fair market value at the time of each Contribution;

(b) The Contributions represented no more than 20% of the total assets of the Plan;

(c) The Plan has not paid any commissions, costs or other expenses in connection with the Contributions;

(d) The Contributions represented a contribution in lieu of cash to the Plan to meet ERISA filing requirements;

(e) The Contributions were based on publicly traded closing prices of the Securities on the date of the transfer; and

(f) The terms of the Contributions between the Plan and the Applicant were no less favorable to the Plan than terms negotiated at arm's length under similar circumstances between unrelated third parties.

DATES: *Effective Date:* This exemption is effective as of April 14, 2005.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption (the Notice) published on June 1, 2007, at 72 FR 30634.

Written Comments: Subsequent to the publication of the Notice, the Service Employees International Union District 1199 NW (SEIU) transmitted a letter to the Applicant on July 25, 2007. Certain participants in the Plan are represented by SEIU. The collective bargaining agreement between the Applicant and SEIU requires the Applicant to maintain the Plan for certain employees represented by SEIU. In this letter, SEIU requested that the Applicant obtain a statement from each of the Plan's investment managers who had selected certain securities that were transferred from the Applicant's business account to the Plan's trust account in connection with the transaction for which relief has been requested. The requested statements involved responses to the following questions: (1) A description of each of the securities; (2) a statement from the investment manager that all these securities meet the investment policy and guidelines under which it manages assets for the Plan; (3) a statement from the investment manager that in its capacity as a fiduciary to the Plan, it would have purchased these same securities in the open market had the opportunity to acquire them from Swedish's business account not presented itself and that the terms of each transaction were equivalent or more favorable than those available in the open market; (4) a statement that none of the securities included collateralized debt obligations, collateralized loan obligations, other asset backed securities, such as sub-prime mortgages, or other derivatives that are backed by below-investment grade securities; (5) a statement that conditions (a), (c) and (e) in the Notice were met.

Stoel Rives LLP (Stoel Rives), the law firm that represents the Plan and the Applicant in this matter, hired AON Consulting (AON) in order to assist in gathering responses from the investment managers to the foregoing questions. Pursuant to the direction of Stoel Rives, AON sent a report to the Department dated October 24, 2007, which contained responses from the investment managers to the aforementioned questions. Based upon the responses to the questions, the Department has determined to finalize the exemption as proposed.

The Department also received numerous telephone calls and a number of written comments from interested persons concerning the Notice. All of the telephone calls and comments requested additional information regarding the possible effect the Contributions would have on benefits payable to the appropriate Plan participants. The Department responded to each inquiry by telephone and attempted to answer all questions directly relating to the transaction at issue. None of the commenters offered any information regarding the substance of the subject transactions.

Based on the entire record the Department has determined to grant the exemption as proposed.

FOR FURTHER INFORMATION CONTACT: Brian Buyniski of the Department, telephone (202) 693–8545 (this is not a toll-free number).

Credit Suisse (CS) and Its Current and Future Affiliates (Collectively, the Applicant) Located in Zurich, Switzerland, With Offices Around the World

[Prohibited Transaction Exemption 2008–07; Exemption Application No. D–11434]

Exemption

Section I—Transactions

The restrictions of section 406 of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to the purchase of certain securities (the Securities), as defined, below in Section III(h), by an asset management affiliate of CS, as "affiliate" is defined, below, in Section III(c), from any person other than such asset management affiliate of CS or any affiliate thereof, during the existence of an underwriting or selling syndicate with respect to such Securities, where a broker-dealer affiliated with CS (the Affiliated Broker-Dealer), as defined, below, in Section III(b), is a manager or member of such syndicate and the asset management affiliate of CS purchases such Securities, as a fiduciary:

(a) On behalf of an employee benefit plan or employee benefit plans (Client Plan(s)), as defined, below, in Section III(e); or

(b) On behalf of Client Plans, and/or In-House Plans, as defined, below, in Section III(l), which are invested in a pooled fund or in pooled funds (Pooled Fund(s)), as defined, below, in Section III(f); provided that the conditions as set forth, below, in Section II, are satisfied (an affiliated underwriter transaction (AUT)).[1]

Section II—Conditions

The exemption is conditioned upon adherence to the material facts and representations described herein and upon satisfaction of the following requirements:

(a)(1) The Securities to be purchased are either—

(i) Part of an issue registered under the Securities Act of 1933 (the 1933 Act) (15 U.S.C. 77a *et seq.*). If the Securities to be purchased are part of an issue that is exempt from such registration requirement, such Securities:

(A) Are issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States,

(B) Are issued by a bank,

(C) Are exempt from such registration requirement pursuant to a federal statute other than the 1933 Act, or

(D) Are the subject of a distribution and are of a class which is required to be registered under section 12 of the Securities Exchange Act of 1934 (the 1934 Act) (15 U.S.C. 781), and are issued by an issuer that has been subject to the reporting requirements of section 13 of the 1934 Act (15 U.S.C. 78m) for a period of at least ninety (90) days immediately preceding the sale of such Securities and that has filed all reports required to be filed thereunder with the Securities and Exchange Commission (SEC) during the preceding twelve (12) months; or

(ii) Part of an issue that is an Eligible Rule 144A Offering, as defined in SEC Rule 10f–3 (17 CFR 270.10f–3(a)(4)). Where the Eligible Rule 144A Offering of the Securities is of equity securities, the offering syndicate shall obtain a legal opinion regarding the adequacy of the disclosure in the offering memorandum;

(2) The Securities to be purchased are purchased prior to the end of the first day on which any sales are made, pursuant to that offering, at a price that is not more than the price paid by each other purchaser of the Securities in that offering or in any concurrent offering of the Securities, except that—

(i) If such Securities are offered for subscription upon exercise of rights, they may be purchased on or before the fourth day preceding the day on which the rights offering terminates; or

(ii) If such Securities are debt securities, they may be purchased at a

[1] For purposes of this exemption an In-House Plan may engage in AUTs only through investment in a Pooled Fund.

price that is not more than the price paid by each other purchaser of the Securities in that offering or in any concurrent offering of the Securities and may be purchased on a day subsequent to the end of the first day on which any sales are made, pursuant to that offering, provided that the interest rates, as of the date of such purchase, on comparable debt securities offered to the public subsequent to the end of the first day on which any sales are made and prior to the purchase date are less than the interest rate of the debt Securities being purchased; and

(3) The Securities to be purchased are offered pursuant to an underwriting or selling agreement under which the members of the syndicate are committed to purchase all of the Securities being offered, except if—

(i) Such Securities are purchased by others pursuant to a rights offering; or

(ii) Such Securities are offered pursuant to an over-allotment option.

(b) The issuer of the Securities to be purchased pursuant to this exemption must have been in continuous operation for not less than three years, including the operation of any predecessors, unless the Securities to be purchased are—

(1) Non-convertible debt securities rated in one of the four highest rating categories by Standard & Poor's Rating Services, Moody's Investors Service, Inc., FitchRatings, Inc., Dominion Bond Rating Service Limited, Dominion Bond Rating Service, Inc., or any successors thereto (collectively, the Rating Organizations), provided that none of the Rating Organizations rates such Securities in a category lower than the fourth highest rating category; or

(2) Debt securities issued or fully guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States; or

(3) Debt securities which are fully guaranteed by a person (the Guarantor) that has been in continuous operation for not less than three years, including the operation of any predecessors, provided that such Guarantor has issued other securities registered under the 1933 Act; or if such Guarantor has issued other securities which are exempt from such registration requirement, such Guarantor has been in continuous operation for not less than three years, including the operation of any predecessors, and such Guarantor is:

(a) A bank; or

(b) An issuer of securities which are exempt from such registration requirement, pursuant to a Federal statute other than the 1933 Act; or

(c) An issuer of securities that are the subject of a distribution and are of a class which is required to be registered under section 12 of the 1934 Act (15 U.S.C. 781), and are issued by an issuer that has been subject to the reporting requirements of section 13 of the 1934 Act (15 U.S.C. 78m) for a period of at least ninety (90) days immediately preceding the sale of such securities and that has filed all reports required to be filed thereunder with the SEC during the preceding twelve (12) months.

(c) The aggregate amount of Securities of an issue purchased, pursuant to this exemption, by the asset management affiliate of CS with: (i) The assets of all Client Plans; and (ii) The assets, calculated on a *pro-rata* basis, of all Client Plans and In-House Plans investing in Pooled Funds managed by the asset management affiliate of CS; and (iii) The assets of plans to which the asset management affiliate of CS renders investment advice within the meaning of 29 CFR 2510.3–21(c) does not exceed:

(1) Ten percent (10%) of the total amount of the Securities being offered in an issue, if such Securities are equity securities;

(2) Thirty-five percent (35%) of the total amount of the Securities being offered in an issue, if such Securities are debt securities rated in one of the four highest rating categories by at least one of the Rating Organizations, provided that none of the Rating Organizations rates such Securities in a category lower than the fourth highest rating category; or

(3) Twenty-five percent (25%) of the total amount of the Securities being offered in an issue, if such Securities are debt securities rated in the fifth or sixth highest rating categories by at least one of the Rating Organizations; provided that none of the Rating Organizations rates such Securities in a category lower than the sixth highest rating category; and

(4) The assets of any single Client Plan (and the assets of any Client Plans and any In-House Plans investing in Pooled Funds) may not be used to purchase any Securities being offered, if such Securities are debt securities rated lower than the sixth highest rating category by any of the Rating Organizations;

(5) Notwithstanding the percentage of Securities of an issue permitted to be acquired, as set forth in Section II(c) (1), (2), and (3), above, of this exemption, the amount of Securities in any issue (whether equity or debt securities) purchased, pursuant to this exemption, by the asset management affiliate of CS on behalf of any single Client Plan, either individually or through investment, calculated on a *pro-rata* basis, in a Pooled Fund may not exceed three percent (3%) of the total amount of such Securities being offered in such issue, and;

(6) If purchased in an Eligible Rule 144A Offering, the total amount of the Securities being offered for purposes of determining the percentages, described, above, in Section II(c)(1)–(3) and (5), is the total of:

(i) The principal amount of the offering of such class of Securities sold by underwriters or members of the selling syndicate to "qualified institutional buyers" (QIBs), as defined in SEC Rule 144A (17 CFR 230.144A(a)(1)); plus

(ii) The principal amount of the offering of such class of Securities in any concurrent public offering.

(d) The aggregate amount to be paid by any single Client Plan in purchasing any Securities which are the subject of this exemption, including any amounts paid by any Client Plan or In-House Plan in purchasing such Securities through a Pooled Fund, calculated on a *pro-rata* basis, does not exceed three percent (3%) of the fair market value of the net assets of such Client Plan or In-House Plan, as of the last day of the most recent fiscal quarter of such Client Plan or In-House Plan prior to such transaction.

(e) The covered transactions are not part of an agreement, arrangement, or understanding designed to benefit the asset management affiliate of CS or an affiliate.

(f) The Affiliated Broker-Dealer does not receive, either directly, indirectly, or through designation, any selling concession, or other compensation or consideration that is based upon the amount of Securities purchased by any single Client Plan, or that is based on the amount of Securities purchased by Client Plans or In-House Plans through Pooled Funds, pursuant to this exemption. In this regard, the Affiliated Broker-Dealer may not receive, either directly or indirectly, any compensation or consideration that is attributable to the fixed designations generated by purchases of the Securities by the asset management affiliate of CS on behalf of any single Client Plan or any Client Plan or In-House Plan in Pooled Funds.

(g)(1) The amount the Affiliated Broker-Dealer receives in management, underwriting, or other compensation or consideration is not increased through an agreement, arrangement, or understanding for the purpose of compensating the Affiliated Broker-Dealer for foregoing any selling

concessions for those Securities sold pursuant to this exemption. Except as described above, nothing in this Section II(g)(1) shall be construed as precluding the Affiliated Broker-Dealer from receiving management fees for serving as manager of the underwriting or selling syndicate, underwriting fees for assuming the responsibilities of an underwriter in the underwriting or selling syndicate, or other compensation or consideration that is not based upon the amount of Securities purchased by the asset management affiliate of CS on behalf of any single Client Plan, or on behalf of any Client Plan or In-House Plan participating in Pooled Funds, pursuant to this exemption; and

(2) The Affiliated Broker-Dealer shall provide to the asset management affiliate of CS a written certification, dated and signed by an officer of the Affiliated Broker-Dealer, stating the amount that the Affiliated Broker-Dealer received in compensation or consideration during the past quarter, in connection with any offerings covered by this exemption, was not adjusted in a manner inconsistent with Section II (e), (f), or (g) of this exemption.

(h) The covered transactions are performed under a written authorization executed in advance by an independent fiduciary of each single Client Plan (the Independent Fiduciary), as defined, below, in Section III(g).

(i) Prior to the execution by an Independent Fiduciary of a single Client Plan of the written authorization described, above, in Section II(h), the following information and materials (which may be provided electronically) must be provided by the asset management affiliate of CS to such Independent Fiduciary:

(1) A copy of the Notice of Proposed Exemption (the Notice) and a copy of the final exemption (the Grant) as published in the **Federal Register**, provided that the Notice and the Grant are supplied simultaneously; and

(2) Any other reasonably available information regarding the covered transactions that such Independent Fiduciary requests the asset management affiliate of CS to provide.

(j) Subsequent to the initial authorization by an Independent Fiduciary of a single Client Plan permitting the asset management affiliate of CS to engage in the covered transactions on behalf of such single Client Plan, the asset management affiliate of CS will continue to be subject to the requirement to provide within a reasonable period of time any reasonably available information regarding the covered transactions that the Independent Fiduciary requests the asset management affiliate of CS to provide.

(k)(1) In the case of an existing employee benefit plan investor (or existing In-House Plan investor, as the case may be) in a Pooled Fund, such Pooled Fund may not engage in any covered transactions pursuant to this exemption, unless the asset management affiliate of CS provides the written information, as described, below, and within the time period described, below, in this Section II(k)(2), to the Independent Fiduciary of each such plan participating in such Pooled Fund (and to the fiduciary of each such In-House Plan participating in such Pooled Fund).

(2) The following information and materials (which may be provided electronically) shall be provided by the asset management affiliate of CS not less than 45 days prior to such asset management affiliate of CS engaging in the covered transactions on behalf of a Pooled Fund, pursuant to this exemption, and provided further that the information described below, in this Section II(k)(2)(i) and (iii) is supplied simultaneously:

(i) A notice of the intent of such Pooled Fund to purchase Securities pursuant to this exemption, a copy of the Notice, and a copy of the Grant, as published in the **Federal Register**;

(ii) Any other reasonably available information regarding the covered transactions that the Independent Fiduciary of a plan (or fiduciary of an In-House Plan) participating in a Pooled Fund requests the asset management affiliate of CS to provide; and

(iii) A termination form expressly providing an election for the Independent Fiduciary of a plan (or fiduciary of an In-House Plan) participating in a Pooled Fund to terminate such plan's (or In-House Plan's) investment in such Pooled Fund without penalty to such plan (or In-House Plan). Such form shall include instructions specifying how to use the form. Specifically, the instructions will explain that such plan (or such In-House Plan) has an opportunity to withdraw its assets from a Pooled Fund for a period of no more than 30 days after such plan's (or such In-House Plan's) receipt of the initial notice of intent, described, above, in Section II(k)(2)(i), and that the failure of the Independent Fiduciary of such plan (or fiduciary of such In-House Plan) to return the termination form to the asset management affiliate of CS in the case of a plan (or In-House Plan) participating in a Pooled Fund by the specified date shall be deemed to be an approval by such plan (or such In-House Plan) of its participation in the covered transactions as an investor in such Pooled Fund.

Further, the instructions will identify CS, the asset management affiliate of CS, and the Affiliated Broker-Dealer and will provide the address of the asset management affiliate of CS. The instructions will state that this exemption may be unavailable, unless the fiduciary of each plan participating in the covered transactions as an investor in a Pooled Fund is, in fact, independent of CS, the asset management affiliate of CS, and the Affiliated Broker-Dealer. The instructions will also state that the fiduciary of each such plan must advise the asset management affiliate of CS, in writing, if it is not an "Independent Fiduciary," as that term is defined, below, in Section III(g).

For purposes of this Section II(k), the requirement that the fiduciary responsible for the decision to authorize the transactions described, above, in Section I of this exemption for each plan be independent of the asset management affiliate of CS shall not apply in the case of an In-House Plan.

(l)(1) In the case of each plan (and in the case of each In-House Plan) whose assets are proposed to be invested in a Pooled Fund after such Pooled Fund has satisfied the conditions set forth in this exemption to engage in the covered transactions, the investment by such plan (or by such In-House Plan) in the Pooled Fund is subject to the prior written authorization of an Independent Fiduciary representing such plan (or the prior written authorization by the fiduciary of such In-House Plan, as the case may be), following the receipt by such Independent Fiduciary of such plan (or by the fiduciary of such In-House Plan, as the case may be) of the written information described, above, in Section II(k)(2)(i) and (ii); provided that the Notice and the Grant, described above in Section II(k)(2)(i), are provided simultaneously.

(2) For purposes of this Section II(l), the requirement that the fiduciary responsible for the decision to authorize the transactions described, above, in Section I of this exemption for each plan proposing to invest in a Pooled Fund be independent of CS and its affiliates shall not apply in the case of an In-House Plan.

(m) Subsequent to the initial authorization by an Independent Fiduciary of a plan (or by a fiduciary of an In-House Plan) to invest in a Pooled Fund that engages in the covered transactions, the asset management affiliate of CS will continue to be subject to the requirement to provide within a

reasonable period of time any reasonably available information regarding the covered transactions that the Independent Fiduciary of such plan (or the fiduciary of such In-House Plan, as the case may be) requests the asset management affiliate of CS to provide.

(n) At least once every three months, and not later than 45 days following the period to which such information relates, the asset management affiliate of CS shall furnish:

(1) In the case of each single Client Plan that engages in the covered transactions, the information described, below, in this Section II(n)(3)–(7), to the Independent Fiduciary of each such single Client Plan.

(2) In the case of each Pooled Fund in which a Client Plan (or in which an In-House Plan) invests, the information described, below, in this Section II(n)(3)–(6) and (8), to the Independent Fiduciary of each such Client Plan (and to the fiduciary of each such In-House Plan) invested in such Pooled Fund.

(3) A quarterly report (the Quarterly Report) (which may be provided electronically) which discloses all the Securities purchased pursuant to this exemption during the period to which such report relates on behalf of the Client Plan, In-House Plan, or Pooled Fund to which such report relates, and which discloses the terms of each of the transactions described in such report, including:

(i) The type of Securities (including the rating of any Securities which are debt securities) involved in each transaction;

(ii) The price at which the Securities were purchased in each transaction;

(iii) The first day on which any sale was made during the offering of the Securities;

(iv) The size of the issue of the Securities involved in each transaction;

(v) The number of Securities purchased by the asset management affiliate of CS for the Client Plan, In-House Plan, or Pooled Fund to which the transaction relates;

(vi) The identity of the underwriter from whom the Securities were purchased for each transaction;

(vii) The underwriting spread in each transaction (*i.e.*, the difference, between the price at which the underwriter purchases the Securities from the issuer and the price at which the Securities are sold to the public);

(viii) The price at which any of the Securities purchased during the period to which such report relates were sold; and

(ix) The market value at the end of the period to which such report relates of the Securities purchased during such period and not sold;

(4) The Quarterly Report contains:

(i) A representation that the asset management affiliate of CS has received a written certification signed by an officer of the Affiliated Broker-Dealer, as described, above, in Section II(g)(2), affirming that, as to each AUT covered by this exemption during the past quarter, the Affiliated Broker-Dealer acted in compliance with Section II(e), (f), and (g) of this exemption, and

(ii) A representation that copies of such certifications will be provided upon request;

(5) A disclosure in the Quarterly Report that states that any other reasonably available information regarding a covered transaction that an Independent Fiduciary (or fiduciary of an In-House Plan) requests will be provided, including, but not limited to:

(i) The date on which the Securities were purchased on behalf of the Client Plan (or the In-House Plan) to which the disclosure relates (including Securities purchased by Pooled Funds in which such Client Plan (or such In-House Plan) invests);

(ii) The percentage of the offering purchased on behalf of all Client Plans (and the *pro-rata* percentage purchased on behalf of Client Plans and In-House Plans investing in Pooled Funds); and

(iii) The identity of all members of the underwriting syndicate;

(6) The Quarterly Report discloses any instance during the past quarter where the asset management affiliate of CS was precluded for any period of time from selling Securities purchased under this exemption in that quarter because of its status as an affiliate of an Affiliated Broker-Dealer and the reason for this restriction;

(7) Explicit notification, prominently displayed in each Quarterly Report sent to the Independent Fiduciary of each single Client Plan that engages in the covered transactions that the authorization to engage in such covered transactions may be terminated, without penalty to such single Client Plan, within five (5) days after the date that the Independent Fiduciary of such single Client Plan informs the person identified in such notification that the authorization to engage in the covered transactions is terminated; and

(8) Explicit notification, prominently displayed in each Quarterly Report sent to the Independent Fiduciary of each Client Plan (and to the fiduciary of each In-House Plan) that engages in the covered transactions through a Pooled Fund that the investment in such Pooled Fund may be terminated, without penalty to such Client Plan (or such In-House Plan), within such time as may be necessary to effect the withdrawal in an orderly manner that is equitable to all withdrawing plans and to the non-withdrawing plans, after the date that the Independent Fiduciary of such Client Plan (or the fiduciary of such In-House Plan, as the case may be) informs the person identified in such notification that the investment in such Pooled Fund is terminated.

(o) For purposes of engaging in covered transactions, each Client Plan (and each In-House Plan) shall have total net assets with a value of at least $50 million (the $50 Million Net Asset Requirement). For purposes of engaging in covered transactions involving an Eligible Rule 144A Offering,[2] each Client Plan (and each In-House Plan) shall have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or such In-House Plan, as the case may be) (the $100 Million Net Asset Requirement).

For purposes of a Pooled Fund engaging in covered transactions, each Client Plan (and each In-House Plan) in such Pooled Fund shall have total net assets with a value of at least $50 million. Notwithstanding the foregoing, if each such Client Plan (and each such In-House Plan) in such Pooled Fund does not have total net assets with a value of at least $50 million, the $50 Million Net Asset Requirement will be met if 50 percent (50%) or more of the units of beneficial interest in such Pooled Fund are held by Client Plans (or by In-House Plans) each of which has total net assets with a value of at least $50 million. For purposes of a Pooled Fund engaging in covered transactions involving an Eligible Rule 144A Offering, each Client Plan (and each In-House Plan) in such Pooled Fund shall have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or such In-House Plan, as the case may be). Notwithstanding the foregoing, if each

[2] SEC Rule 10f–3(a)(4), 17 FR 270.10f–3(a)(4), states that the term "Eligible Rule 144A Offering" means an offering of securities that meets the following conditions:

(i) The securities are offered or sold in transactions exempt from registration under section 4(2) of the Securities Act of 1933 [15 U.S.C. 77d(d)], rule 144A thereunder [§ 230.144A of this chapter], or rules 501–508 thereunder [§§ 230.501–230.508 if this chapter];

(ii) The securities are sold to persons that the seller and any person acting on behalf of the seller reasonably believe to include qualified institutional buyers, as defined in § 230.144A(a)(1) of this chapter; and

(iii) The seller and any person acting on behalf of the seller reasonably believe that the securities are eligible for resale to other qualified institutional buyers pursuant to § 230.144A of this chapter.

such Client Plan (and each such In-House Plan) in such Pooled Fund does not have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or In-House Plan, as the case may be), the $100 Million Net Asset Requirement will be met if 50 percent (50%) or more of the units of beneficial interest in such Pooled Fund are held by Client Plans (or by In-House Plans) each of which have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or such In-House Plan, as the case may be), and the Pooled Fund itself qualifies as a QIB, as determined pursuant to SEC Rule 144A (17 CFR 230.144A(a)(F)).

For purposes of the net asset requirements described above, in this Section II(o), where a group of Client Plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the $50 Million Net Asset Requirement (or in the case of an Eligible Rule 144A Offering, the $100 Million Net Asset Requirement) may be met by aggregating the assets of such Client Plans, if the assets of such Client Plans are pooled for investment purposes in a single master trust.

(p) The asset management affiliate of CS qualifies as a "qualified professional asset manager" (QPAM), as that term is defined under Section V(a) of PTE 84–14. In addition to satisfying the requirements for a QPAM under Section V(a) of PTE 84–14, the asset management affiliate of CS must also have total client assets under its management and control in excess of $5 billion, as of the last day of its most recent fiscal year and shareholders' or partners' equity in excess of $1 million.

(q) No more than 20 percent of the assets of a Pooled Fund at the time of a covered transaction, are comprised of assets of In-House Plans for which CS, the asset management affiliate of CS, the Affiliated Broker-Dealer, or an affiliate exercises investment discretion.

(r) The asset management affiliate of CS, and the Affiliated Broker-Dealer, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of any covered transaction such records as are necessary to enable the persons, described, below, in Section II(s), to determine whether the conditions of this exemption have been met, except that—

(1) No party in interest with respect to a plan which engages in the covered transactions, other than CS, the asset management affiliate of CS, and the Affiliated Broker-Dealer, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by Section II(s); and

(2) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of the asset management affiliate of CS, or the Affiliated Broker-Dealer, as applicable, such records are lost or destroyed prior to the end of the six-year period.

(s)(1) Except as provided, below, in Section II(s)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to above, in Section II(r), are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the SEC; or

(ii) Any fiduciary of any plan that engages in the covered transactions, or any duly authorized employee or representative of such fiduciary; or

(iii) Any employer of participants and beneficiaries and any employee organization whose members are covered by a plan that engages in the covered transactions, or any authorized employee or representative of these entities; or

(iv) Any participant or beneficiary of a plan that engages in the covered transactions, or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described above, in Section II(s)(1)(ii)—(iv), shall be authorized to examine trade secrets of the asset management affiliate of CS, or the Affiliated Broker-Dealer, or commercial or financial information which is privileged or confidential; and

(3) Should the asset management affiliate of CS, or the Affiliated Broker-Dealer refuse to disclose information on the basis that such information is exempt from disclosure, pursuant to Section II(s)(2) above, the asset management affiliate of CS shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Section III—Definitions

(a) The term, "the Applicant," means CS and its current and future affiliates.

(b) The term, "Affiliated Broker-Dealer," means any broker-dealer affiliate, as "affiliate" is defined, below, in Section III(c), of the Applicant, as "Applicant" is defined, above, in Section III(a), that meets the requirements of this exemption. Such Affiliated Broker-Dealer may participate in an underwriting or selling syndicate as a manager or member. The term, "manager," means any member of an underwriting or selling syndicate who, either alone or together with other members of the syndicate, is authorized to act on behalf of the members of the syndicate in connection with the sale and distribution of the Securities, as defined below, in Section III(h), being offered or who receives compensation from the members of the syndicate for its services as a manager of the syndicate.

(c) The term "affiliate" of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such person;

(2) Any officer, director, partner, employee, or relative, as defined in section 3(15) of the Act, of such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(d) The term, "control," means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) The term, "Client Plan(s)," means an employee benefit plan(s) that is subject to the Act and/or the Code, and for which plan(s) an asset management affiliate of CS exercises discretionary authority or discretionary control respecting management or disposition of some or all of the assets of such plan(s), but excludes In-House Plans, as defined, below, in Section III(l).

(f) The term, "Pooled Fund(s)," means a common or collective trust fund(s) or a pooled investment fund(s):

(1) In which employee benefit plan(s) subject to the Act and/or Code invest,

(2) Which is maintained by an asset management affiliate of CS, (as the term, "affiliate" is defined, above, in Section III(c)), and

(3) For which such asset management affiliate of CS exercises discretionary authority or discretionary control respecting the management or disposition of the assets of such fund(s).

(g)(1) The term, "Independent Fiduciary," means a fiduciary of a plan who is unrelated to, and independent of CS, the asset management affiliate of CS, and the Affiliated Broker-Dealer. For purposes of this exemption, a fiduciary of a plan will be deemed to be unrelated to, and independent of CS, the asset management affiliate of CS, and the Affiliated Broker-Dealer, if such

fiduciary represents in writing that neither such fiduciary, nor any individual responsible for the decision to authorize or terminate authorization for the transactions described above, in Section I of this exemption, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of CS, the asset management affiliate of CS, or the Affiliated Broker-Dealer, and represents that such fiduciary shall advise the asset management affiliate of CS within a reasonable period of time after any change in such facts occur.

(2) Notwithstanding anything to the contrary in this Section III(g), a fiduciary of a plan is not independent:

(i) If such fiduciary directly or indirectly controls, is controlled by, or is under common control with CS, the asset management affiliate of CS, or the Affiliated Broker-Dealer;

(ii) If such fiduciary directly or indirectly receives any compensation or other consideration from CS, the asset management affiliate of CS, or the Affiliated Broker-Dealer for his or her own personal account in connection with any transaction described in this exemption;

(iii) If any officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the asset management affiliate of CS responsible for the transactions described above, in Section I of this exemption, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the sponsor of the plan or of the fiduciary responsible for the decision to authorize or terminate authorization for the transactions described above, in Section I. However, if such individual is a director of the sponsor of the plan or of the responsible fiduciary, and if he or she abstains from participation in: (A) The choice of the plan's investment manager/adviser; and (B) the decision to authorize or terminate authorization for transactions described above, in Section I, then this Section III(g)(2)(iii) shall not apply.

(3) The term, "officer," means a president, any vice president in charge of a principal business unit, division, or function (such as sales, administration, or finance), or any other officer who performs a policy-making function for CS or any affiliate thereof.

(h) The term, "Securities," shall have the same meaning as defined in section 2(36) of the Investment Company Act of 1940 (the 1940 Act), as amended (15 U.S.C. 80a–2(36)(2000)). For purposes of this exemption, mortgage-backed or other asset-backed securities rated by one of the Rating Organizations, as defined, below, in Section III(k), will be treated as debt securities.

(i) The term, "Eligible Rule 144A Offering," shall have the same meaning as defined in SEC Rule 10f–3(a)(4) (17 CFR 270.10f–3(a)(4)) under the 1940 Act).

(j) The term, "qualified institutional buyer," or the term, "QIB," shall have the same meaning as defined in SEC Rule 144A (17 CFR 230.144A(a)(1)) under the 1933 Act.

(k) The term, "Rating Organizations," means Standard & Poor's Rating Services, Moody's Investors Service, Inc., FitchRatings, Inc., Dominion Bond Rating Service Limited, and Dominion Bond Rating Service, Inc., or any successors thereto.

(l) The term, "In-House Plan(s)," means an employee benefit plan(s) that is subject to the Act and/or the Code, and that is sponsored by the Applicant, as defined, above, in Section III(a) for its own employees.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice published on January 17, 2008 at 73 FR 3282.

FOR FURTHER INFORMATION CONTACT: Mr. Gary H. Lefkowitz of the Department, telephone (202) 693–8546. (This is not a toll-free number.)

Amendment to Prohibited Transaction Exemption (PTE) 93–31, 58 FR 28620 (May 14, 1993), as amended by PTE 97–34, 62 FR 39021 (July 21, 1997), PTE 2000–58, 65 FR 67765 (November 13, 2000), PTE 2002–41, 67 FR 54487 (August 22, 2002) and PTE 2007–05, 72 FR 13130 (March 20, 2007), Technical Correction at 72 FR 16385 (April 4, 2007)(PTE 93–31), Involving Bank of America, N.A., the Successor of NationsBank Corporation

[Prohibited Transaction Exemption 2008–08; Exemption Application No. D–11446]

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990) and based upon the entire record, the Department amends Prohibited Transaction Exemption (PTE) 93–31, 58 FR 28620 (May 5, 1993); as subsequently amended by PTE 97–34, 62 FR 39021 (July 21, 1997), PTE 2000–58, 65 FR 67765 (November 13, 2000), PTE 2002–41, 67 FR 54487 (August 22, 2002) and PTE 2007–05, 72 FR 13130 (March 20, 2007), Technical Correction at 72 FR 16385 (April 4, 2007) (PTE 93–31).

I. Transactions

A. Effective October 1, 2007, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving Issuers and Securities evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of Securities in the initial issuance of Securities between the Sponsor or Underwriter and an employee benefit plan when the Sponsor, Servicer, Trustee or Insurer of an Issuer, the Underwriter of the Securities representing an interest in the Issuer, or an Obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of Securities by a plan in the secondary market for such Securities; and

(3) The continued holding of Securities acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for the acquisition or holding of a Security on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[3]

B. Effective October 1, 2007, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to:

(1) The direct or indirect sale, exchange or transfer of Securities in the initial issuance of Securities between the Sponsor or Underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the Securities is (a) an Obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the Issuer, or (b) an Affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of Securities in connection with the initial issuance of the Securities, at least 50 percent of each class of Securities in which plans have invested is acquired

[3] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) of the Act, and regulation 29 CFR 2510.3–21(c).

by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the Issuer is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of Securities does not exceed 25 percent of all of the Securities of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the Securities, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in Securities representing an interest in an Issuer containing assets sold or serviced by the same entity.[4] For purposes of this paragraph (iv) only, an entity will not be considered to service assets contained in an Issuer if it is merely a Subservicer of that Issuer;

(2) The direct or indirect acquisition or disposition of Securities by a plan in the secondary market for such Securities, provided that the conditions set forth in paragraphs (i), (iii) and (iv) of subsection I.B.(1) are met; and

(3) The continued holding of Securities acquired by a plan pursuant to subsection I.B.(1) or (2).

C. Effective October 1, 2007, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of an Issuer, including the use of any Eligible Swap transaction; or the defeasance of a mortgage obligation held as an asset of the Issuer through the substitution of a new mortgage obligation in a commercial mortgage-backed Designated Transaction, provided:

(1) Such transactions are carried out in accordance with the terms of a binding Pooling and Servicing Agreement;

(2) The Pooling and Servicing Agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase Securities issued by the Issuer; [5] and

(3) The defeasance of a mortgage obligation and the substitution of a new mortgage obligation in a commercial mortgage-backed Designated Transaction meet the terms and conditions for such defeasance and substitution as are described in the prospectus or private placement memorandum for such Securities, which terms and conditions have been approved by a Rating Agency and does not result in the Securities receiving a lower credit rating from the Rating Agency than the current rating of the Securities.

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a Servicer of the Issuer from a person other than the Trustee or Sponsor, unless such fee constitutes a Qualified Administrative Fee.

D. Effective October 1, 2007, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of Securities.

II. General Conditions

A. The relief provided under section I. is available only if the following conditions are met:

(1) The acquisition of Securities by a plan is on terms (including the Security price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the Securities are not subordinated to the rights and interests evidenced by other Securities of the same Issuer, unless the Securities are issued in a Designated Transaction;

(3) The Securities acquired by the plan have received a rating from a Rating Agency at the time of such acquisition that is in one of the three (or in the case of Designated Transactions, four) highest generic rating categories;

(4) The Trustee is not an Affiliate of any member of the Restricted Group, other than an Underwriter. For purposes of this requirement:

(a) The Trustee shall not be considered to be an Affiliate of a Servicer solely because the Trustee has succeeded to the rights and responsibilities of the Servicer pursuant to the terms of a Pooling and Servicing Agreement providing for such succession upon the occurrence of one or more events of default by the Servicer; and

(b) Subsection II.A.(4) will be deemed satisfied notwithstanding a Servicer becoming an Affiliate of the Trustee as the result of a merger or acquisition involving the Trustee, such Servicer and/or their Affiliates which occurs after the initial issuance of the Securities, provided that:

(i) Such Servicer ceases to be an Affiliate of the Trustee no later than six months after the date such Servicer became an Affiliate of the Trustee; and

(ii) Such Servicer did not breach any of its obligations under the Pooling and Servicing Agreement, unless such breach was immaterial and timely cured in accordance with the terms of such agreement, during the period from the closing date of such merger or acquisition transaction through the date the Servicer ceased to be an Affiliate of the Trustee;

(c) Effective October 1, 2007 through April 1, 2008, LaSalle Bank, N.A., the Trustee, shall not be considered to be an Affiliate of any member of the Restricted Group solely as the result of the acquisition of ABN Amro North America Holding Company, the holding company of LaSalle Bank Corporation and its subsidiary, LaSalle Bank, N.A. (LaSalle) by Bank of America Corporation and its subsidiaries (Bank of America) (the Acquisition), which occurred after the initial issuance of the Securities, provided that:

(i) The Trustee, LaSalle, ceases to be an Affiliate of any member of the Restricted Group no later than April 1, 2008;

(ii) Any member of the Restricted Group that is an Affiliate of the Trustee, LaSalle, did not breach any of its obligations under the Pooling and Servicing Agreement, unless such breach was immaterial and timely cured in accordance with the terms of such

[4] For purposes of this Underwriter Exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[5] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the securities were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions. For purposes of this exemption, references to "prospectus" include any related prospectus supplement thereto, pursuant to which Securities are offered to investors.

agreement, during the period from October 1, 2007 through the date the member of the Restricted Group ceased to be an Affiliate of the Trustee, LaSalle; and

(iii) In accordance with each Pooling and Servicing Agreement, the Trustee, LaSalle, appoints a co-trustee, which is not an Affiliate of Bank of America, no later than the earlier of (A) January 2, 2008 or (B) five business days after LaSalle becomes aware of a conflict between the Trustee and any member of the Restricted Group that is an Affiliate of the Trustee. The co-trustee will be responsible for resolving any conflict between the Trustee and any member of the Restricted Group that has become an Affiliate of the Trustee as a result of the Acquisition; provided that if the Trustee has resigned on or prior to January 2, 2008 and no event described in clause (B) has occurred, no co-trustee shall be required.

(iv) For purposes of this subsection II.A.(4)(c), a conflict arises whenever (A) Bank of America, as a member of the Restricted Group, fails to perform in accordance with the timeframes contained in the relevant Pooling and Servicing Agreement following a request for performance from LaSalle, as Trustee, or (B) LaSalle, as Trustee, fails to perform in accordance with the timeframes contained in the relevant Pooling and Servicing Agreement following a request for performance from Bank of America, a member of the Restricted Group.

The time as of which a conflict occurs is the earlier of: The day immediately following the last day on which compliance is required under the relevant Pooling and Servicing Agreement; or the day on which a party affirmatively responds that it will not comply with a request for performance.

For purposes of this subsection II.A.(4)(c), the term "conflict" includes but is not limited to, the following: (1) Bank of America's failure, as Sponsor, to repurchase a loan for breach of representation within the time period prescribed in the relevant Pooling and Servicing Agreement, following LaSalle's request, as Trustee, for performance; (2) Bank of America, as Sponsor, notifies LaSalle, as Trustee, that it will not repurchase a loan for breach of representation, following LaSalle's request that Bank of America repurchase such loan within the time period prescribed in the relevant Pooling and Servicing Agreement (the notification occurs prior to the expiration of the prescribed time period for the repurchase); and (3) Bank of America, as Swap Counterparty, makes or requests a payment based on a value of the London Interbank Offered Rate (LIBOR) that LaSalle, as Trustee, considers erroneous.

(5) The sum of all payments made to and retained by the Underwriters in connection with the distribution or placement of Securities represents not more than Reasonable Compensation for underwriting or placing the Securities; the sum of all payments made to and retained by the Sponsor pursuant to the assignment of obligations (or interests therein) to the Issuer represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the Servicer represents not more than Reasonable Compensation for the Servicer's services under the Pooling and Servicing Agreement and reimbursement of the Servicer's reasonable expenses in connection therewith;

(6) The plan investing in such Securities is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933; and

(7) In the event that the obligations used to fund a Issuer have not all been transferred to the Issuer on the Closing Date, additional obligations of the types specified in subsection III.B.(1) may be transferred to the Issuer during the Pre-Funding Period in exchange for amounts credited to the Pre-Funding Account, provided that:

(a) The Pre-Funding Limit is not exceeded;

(b) All such additional obligations meet the same terms and conditions for determining the eligibility of the original obligations used to create the Issuer (as described in the prospectus or private placement memorandum and/or Pooling and Servicing Agreement for such Securities), which terms and conditions have been approved by a Rating Agency.

Notwithstanding the foregoing, the terms and conditions for determining the eligibility of an obligation may be changed if such changes receive prior approval either by a majority vote of the outstanding securityholders or by a Rating Agency;

(c) The transfer of such additional obligations to the Issuer during the Pre-Funding Period does not result in the Securities receiving a lower credit rating from a Rating Agency upon termination of the Pre-Funding Period than the rating that was obtained at the time of the initial issuance of the Securities by the Issuer;

(d) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations held by the Issuer at the end of the Pre-Funding Period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the Issuer on the Closing Date;

(e) In order to ensure that the characteristics of the receivables actually acquired during the Pre-Funding Period are substantially similar to those which were acquired as of the Closing Date, the characteristics of the additional obligations will either be monitored by a credit support provider or other insurance provider which is independent of the Sponsor or an independent accountant retained by the Sponsor will provide the Sponsor with a letter (with copies provided to the Rating Agency, the Underwriter and the Trustee) stating whether or not the characteristics of the additional obligations conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or Pooling and Servicing Agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the Closing Date;

(f) The Pre-Funding Period shall be described in the prospectus or private placement memorandum provided to investing plans; and

(g) The Trustee of the Trust (or any agent with which the Trustee contracts to provide Trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities and liabilities as a fiduciary under the Act. The Trustee, as the legal owner of the obligations in the Trust or the holder of a security interest in the obligations held by the Issuer, will enforce all the rights created in favor of securityholders of the Issuer, including employee benefit plans subject to the Act;

(8) In order to insure that the assets of the Issuer may not be reached by creditors of the Sponsor in the event of bankruptcy or other insolvency of the Sponsor:

(a) The legal documents establishing the Issuer will contain:

(i) Restrictions on the Issuer's ability to borrow money or issue debt other than in connection with the securitization;

(ii) Restrictions on the Issuer merging with another entity, reorganizing, liquidating or selling assets (other than in connection with the securitization);

(iii) Restrictions limiting the authorized activities of the Issuer to activities relating to the securitization;

(iv) If the Issuer is not a Trust, provisions for the election of at least one independent director/partner/member whose affirmative consent is required before a voluntary bankruptcy petition can be filed by the Issuer; and

(v) If the Issuer is not a Trust, requirements that each independent director/partner/member must be an individual that does not have a significant interest in, or other relationships with, the Sponsor or any of its Affiliates; and

(b) The Pooling and Servicing Agreement and/or other agreements establishing the contractual relationships between the parties to the securitization transaction will contain covenants prohibiting all parties thereto from filing an involuntary bankruptcy petition against the Issuer or initiating any other form of insolvency proceeding until after the Securities have been paid; and

(c) Prior to the issuance by the Issuer of any Securities, a legal opinion is received which states that either:

(i) A "true sale" of the assets being transferred to the Issuer by the Sponsor has occurred and that such transfer is not being made pursuant to a financing of the assets by the Sponsor; or

(ii) In the event of insolvency or receivership of the Sponsor, the assets transferred to the Issuer will not be part of the estate of the Sponsor;

(9) If a particular class of Securities held by any plan involves a Ratings Dependent or Non-Ratings Dependent Swap entered into by the Issuer, then each particular swap transaction relating to such Securities:

(a) Shall be an Eligible Swap;

(b) Shall be with an Eligible Swap Counterparty;

(c) In the case of a Ratings Dependent Swap, shall provide that if the credit rating of the counterparty is withdrawn or reduced by any Rating Agency below a level specified by the Rating Agency, the Servicer (as agent for the Trustee) shall, within the period specified under the Pooling and Servicing Agreement:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty which is acceptable to the Rating Agency and the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to establish any collateralization or other arrangement satisfactory to the Rating Agency such that the then current rating by the Rating Agency of the particular class of Securities will not be withdrawn or reduced.

In the event that the Servicer fails to meet its obligations under this subsection II.A.(9)(c), plan securityholders will be notified in the immediately following Trustee's periodic report which is provided to securityholders, and sixty days after the receipt of such report, the exemptive relief provided under section I.C. will prospectively cease to be applicable to any class of Securities held by a plan which involves such Ratings Dependent Swap; provided that in no event will such plan securityholders be notified any later than the end of the second month that begins after the date on which such failure occurs.

(d) In the case of a Non-Ratings Dependent Swap, shall provide that, if the credit rating of the counterparty is withdrawn or reduced below the lowest level specified in section III.GG., the Servicer (as agent for the Trustee) shall within a specified period after such rating withdrawal or reduction:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty, the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to post collateral with the Trustee in an amount equal to all payments owed by the counterparty if the swap transaction were terminated; or

(iii) Terminate the swap agreement in accordance with its terms; and

(e) Shall not require the Issuer to make any termination payments to the counterparty (other than a currently scheduled payment under the swap agreement) except from Excess Spread or other amounts that would otherwise be payable to the Servicer or the Sponsor;

(10) Any class of Securities, to which one or more swap agreements entered into by the Issuer applies, may be acquired or held in reliance upon this Underwriter Exemption only by Qualified Plan Investors; and

(11) Prior to the issuance of any debt securities, a legal opinion is received which states that the debt holders have a perfected security interest in the Issuer's assets.

B. Neither any Underwriter, Sponsor, Trustee, Servicer, Insurer or any Obligor, unless it or any of its Affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire Securities, shall be denied the relief provided under section I., if the provision of subsection II.A.(6) is not satisfied with respect to acquisition or holding by a plan of such Securities, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of Securities, the Trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's Securities) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6).

III. Definitions

For purposes of this exemption:

A. "Security" means:

(1) A pass-through certificate or trust certificate that represents a beneficial ownership interest in the assets of an Issuer which is a Trust and which entitles the holder to payments of principal, interest and/or other payments made with respect to the assets of such Trust; or

(2) A security which is denominated as a debt instrument that is issued by, and is an obligation of, an Issuer; with respect to which the Underwriter is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

B. "Issuer" means an investment pool, the corpus or assets of which are held in trust (including a grantor or owner Trust) or whose assets are held by a partnership, special purpose corporation or limited liability company (which Issuer may be a Real Estate Mortgage Investment Conduit (REMIC) or a Financial Asset Securitization Investment Trust (FASIT) within the meaning of section 860D(a) or section 860L, respectively, of the Code); and the corpus or assets of which consist solely of:

(1) (a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association); and/or

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, Qualified Equipment Notes Secured by Leases); and/or

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and/or

commercial real property (including obligations secured by leasehold interests on residential or commercial real property); and/or

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or Qualified Motor Vehicle Leases; and/or

(e) Guaranteed governmental mortgage pool certificates, as defined in 29 CFR 2510.3–101(i)(2);[6] and/or

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this subsection B.(1).[7]

Notwithstanding the foregoing, residential and home equity loan receivables issued in Designated Transactions may be less than fully secured, provided that: (i) The rights and interests evidenced by the Securities issued in such Designated Transactions (as defined in section III.DD.) are not subordinated to the rights and interests evidenced by Securities of the same Issuer; (ii) such Securities acquired by the plan have received a rating from a Rating Agency at the time of such acquisition that is in one of the two highest generic rating categories; and (iii) any obligation included in the corpus or assets of the Issuer must be secured by collateral whose fair market value on the Closing Date of the Designated Transaction is at least equal to 80% of the sum of: (I) The outstanding principal balance due under the obligation which is held by the Issuer and (II) the outstanding principal balance(s) of any other obligation(s) of higher priority (whether or not held by the Issuer) which are secured by the same collateral.

(2) Property which had secured any of the obligations described in subsection III.B.(1);

(3) (a) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are made to securityholders; and/or

(b) Cash or investments made therewith which are credited to an account to provide payments to securityholders pursuant to any Eligible Swap Agreement meeting the conditions of subsection II.A.(9) or pursuant to any Eligible Yield Supplement Agreement; and/or

(c) Cash transferred to the Issuer on the Closing Date and permitted investments made therewith which:

(i) Are credited to a Pre-Funding Account established to purchase additional obligations with respect to which the conditions set forth in paragraphs (a)–(g) of subsection II.A.(7) are met; and/or

(ii) Are credited to a Capitalized Interest Account; and

(iii) Are held by the Issuer for a period ending no later than the first distribution date to securityholders occurring after the end of the Pre-Funding Period.

For purposes of this paragraph (c) of subsection III.B.(3), the term "permitted investments" means investments which: (i) Are either: (x) Direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (y) have been rated (or the Obligor has been rated) in one of the three highest generic rating categories by a Rating Agency; (ii) are described in the Pooling and Servicing Agreement; and (iii) are permitted by the Rating Agency.

(4) Rights of the Trustee under the Pooling and Servicing Agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship, Eligible Yield Supplement Agreements, Eligible Swap Agreements meeting the conditions of subsection II.A.(9) or other credit support arrangements with respect to any obligations described in subsection III.B.(1).

Notwithstanding the foregoing, the term "Issuer" does not include any investment pool unless: (i) The assets of the type described in paragraphs (a)–(f) of subsection III.B.(1) which are contained in the investment pool have been included in other investment pools, (ii) Securities evidencing interests in such other investment pools have been rated in one of the three (or in the case of Designated Transactions, four) highest generic rating categories by a Rating Agency for at least one year prior to the plan's acquisition of Securities pursuant to this Underwriter Exemption, and (iii) Securities evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of Securities pursuant to this Underwriter Exemption.

C. "Underwriter" means:

(1) An entity defined as an Underwriter in subsection III.C.(1) of each of the Underwriter Exemptions that are being amended by this exemption. In addition, the term Underwriter includes Deutsche Bank AG, New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc, Credit Lyonnais Securities (USA) Inc., ABN AMRO Inc., Ironwood Capital Partners Ltd., William J. Mayer Securities LLC, Raymond James & Associates Inc. & Raymond James Financial Inc., WAMU Capital Corporation, and Terwin Capital LLC (which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96–62);

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such entity; or

(3) Any member of an underwriting syndicate or selling group of which a person described in subsections III.C.(1) or (2) is a manager or co-manager with respect to the Securities.

Effective October 1, 2007 through April 1, 2008, "Underwriter" means:

(1) Banc of America Securities LLC, or an entity identified as an underwriter on the Securitization List at section III.KK. (*i.e.*, Citigroup Global Market, Inc., Deutsche Bank Securities, and Goldman, Sachs & Co.);

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such entities; or

(3) Any member of an underwriting syndicate or selling group of which such firm or person described in subsections III.C.(1) or (2) is a manager or co-manager with respect to the Securities.

D. "Sponsor" means:

(1) The entity that organizes an Issuer by depositing obligations therein in exchange for Securities; or

(2) Effective October 1, 2007 through April 1, 2008, for those transactions listed on the Securitization List at section III.KK., Bank of America.

E. "Master Servicer" means the entity that is a party to the Pooling and Servicing Agreement relating to assets of the Issuer and is fully responsible for servicing, directly or through Subservicers, the assets of the Issuer.

F. "Subservicer" means an entity which, under the supervision of and on

[6] In ERISA Advisory Opinion 99–05A (Feb. 22, 1999), the Department expressed its view that mortgage pool certificates guaranteed and issued by the Federal Agricultural Mortgage Corporation ("Farmer Mac") meet the definition of a guaranteed governmental mortgage pool certificate as defined in 29 CFR 2510.3–101(i)(2).

[7] It is the Department's view that the definition of Issuer contained in subsection III.B. includes a two-tier structure under which Securities issued by the first Issuer, which contains a pool of receivables described above, are transferred to a second Issuer which issues Securities that are sold to plans. However, the Department is of the further view that, since the Underwriter Exemption generally provides relief only for the direct or indirect acquisition or disposition of Securities that are not subordinated, no relief would be available if the Securities held by the second Issuer were subordinated to the rights and interests evidenced by other Securities issued by the first Issuer, unless such Securities were issued in a Designated Transaction.

behalf of the Master Servicer, services loans contained in the Issuer, but is not a party to the Pooling and Servicing Agreement.

G. "Servicer" means any entity which services loans contained in the Issuer, including the Master Servicer and any Subservicer.

H. "Trust" means an Issuer which is a trust (including an owner trust, grantor trust or a REMIC or FASIT which is organized as a Trust).

I. "Trustee" means the Trustee of any Trust which issues Securities and also includes an Indenture Trustee. "Indenture Trustee" means the Trustee appointed under the indenture pursuant to which the subject Securities are issued, the rights of holders of the Securities are set forth and a security interest in the Trust assets in favor of the holders of the Securities is created. The Trustee or the Indenture Trustee is also a party to or beneficiary of all the documents and instruments transferred to the Issuer, and as such, has both the authority to, and the responsibility for, enforcing all the rights created thereby in favor of holders of the Securities, including those rights arising in the event of default by the Servicer.

J. "Insurer" means the insurer or guarantor of, or provider of other credit support for, an Issuer. Notwithstanding the foregoing, a person is not an insurer solely because it holds Securities representing an interest in an Issuer which are of a class subordinated to Securities representing an interest in the same Issuer.

K. "Obligor" means any person, other than the Insurer, that is obligated to make payments with respect to any obligation or receivable included in the Issuer. Where an Issuer contains Qualified Motor Vehicle Leases or Qualified Equipment Notes Secured by Leases, "Obligor" shall also include any owner of property subject to any lease included in the Issuer, or subject to any lease securing an obligation included in the Issuer.

L. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

M. "Restricted Group" with respect to a class of Securities means:

(1) Each Underwriter;

(2) Each Insurer;

(3) The Sponsor;

(4) The Trustee;

(5) Each Servicer;

(6) Any Obligor with respect to obligations or receivables included in the Issuer constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the Issuer, determined on the date of the initial issuance of Securities by the Issuer;

(7) Each counterparty in an Eligible Swap Agreement; or

(8) Any Affiliate of a person described in subsections III.M.(1)–(7).

N. "Affiliate" of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

O. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

P. A person will be "independent" of another person only if:

(1) Such person is not an Affiliate of that other person; and

(2) The other person, or an Affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

Q. "Sale" includes the entrance into a Forward Delivery Commitment, provided:

(1) The terms of the Forward Delivery Commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the Forward Delivery Commitment; and

(3) At the time of the delivery, all conditions of this Underwriter Exemption applicable to sales are met.

R. "Forward Delivery Commitment" means a contract for the purchase or sale of one or more Securities to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the Securities) and optional contracts (which give one party the right but not the obligation to deliver Securities to, or demand delivery of Securities from, the other party).

S. "Reasonable Compensation" has the same meaning as that term is defined in 29 CFR 2550.408c–2.

T. "Qualified Administrative Fee" means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the Obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The Servicer may not charge the fee absent the act or failure to act referred to in subsection III.T.(1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the Pooling and Servicing Agreement; and

(4) The amount paid to investors in the Issuer will not be reduced by the amount of any such fee waived by the Servicer.

U. "Qualified Equipment Note Secured By A Lease" means an equipment note:

(1) Which is secured by equipment which is leased;

(2) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) With respect to which the Issuer's security interest in the equipment is at least as protective of the rights of the Issuer as the Issuer would have if the equipment note were secured only by the equipment and not the lease.

V. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:

(1) The Issuer owns or holds a security interest in the lease;

(2) The Issuer owns or holds a security interest in the leased motor vehicle; and

(3) The Issuer's security interest in the leased motor vehicle is at least as protective of the Issuer's rights as the Issuer would receive under a motor vehicle installment loan contract.

W. "Pooling and Servicing Agreement" means the agreement or agreements among a Sponsor, a Servicer and the Trustee establishing a Trust. "Pooling and Servicing Agreement" also includes the indenture entered into by the Issuer and the Indenture Trustee.

X. "Rating Agency" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.; Moody's Investors Service, Inc.; FitchRatings, Inc.; DBRS Limited, or DBRS, Inc.; or any successors thereto.

Y. "Capitalized Interest Account" means an Issuer account: (i) Which is established to compensate securityholders for shortfalls, if any, between investment earnings on the Pre-Funding Account and the interest rate payable under the Securities; and (ii) which meets the requirements of paragraph (c) of subsection III.B.(3).

Z. "Closing Date" means the date the Issuer is formed, the Securities are first issued and the Issuer's assets (other than those additional obligations which are to be funded from the Pre-Funding

Account pursuant to subsection II.A.(7)) are transferred to the Issuer.

AA. "Pre-Funding Account" means an Issuer account: (i) Which is established to purchase additional obligations, which obligations meet the conditions set forth in paragraphs (a)–(g) of subsection II.A.(7); and (ii) which meets the requirements of paragraph (c) of subsection III.B.(3).

BB. "Pre-Funding Limit" means a percentage or ratio of the amount allocated to the Pre-Funding Account, as compared to the total principal amount of the Securities being offered, which is less than or equal to 25 percent.

CC. "Pre-Funding Period" means the period commencing on the Closing Date and ending no later than the earliest to occur of: (i) The date the amount on deposit in the Pre-Funding Account is less than the minimum dollar amount specified in the Pooling and Servicing Agreement; (ii) the date on which an event of default occurs under the Pooling and Servicing Agreement; or (iii) the date which is the later of three months or ninety days after the Closing Date.

DD. "Designated Transaction" means a securitization transaction in which the assets of the Issuer consist of secured consumer receivables, secured credit instruments or secured obligations that bear interest or are purchased at a discount and are: (i) Motor vehicle, home equity and/or manufactured housing consumer receivables; and/or (ii) motor vehicle credit instruments in transactions by or between business entities; and/or (iii) single-family residential, multi-family residential, home equity, manufactured housing and/or commercial mortgage obligations that are secured by single-family residential, multi-family residential, commercial real property or leasehold interests therein. For purposes of this section III.DD., the collateral securing motor vehicle consumer receivables or motor vehicle credit instruments may include motor vehicles and/or Qualified Motor Vehicle Leases.

EE. "Ratings Dependent Swap" means an interest rate swap, or (if purchased by or on behalf of the Issuer) an interest rate cap contract, that is part of the structure of a class of Securities where the rating assigned by the Rating Agency to any class of Securities held by any plan is dependent on the terms and conditions of the swap and the rating of the counterparty, and if such Security rating is not dependent on the existence of the swap and rating of the counterparty, such swap or cap shall be referred to as a "Non-Ratings Dependent Swap". With respect to a Non-Ratings Dependent Swap, each Rating Agency rating the Securities must confirm, as of the date of issuance of the Securities by the Issuer, that entering into an Eligible Swap with such counterparty will not affect the rating of the Securities.

FF. "Eligible Swap" means a Ratings Dependent or Non-Ratings Dependent Swap:

(1) Which is denominated in U.S. dollars;

(2) Pursuant to which the Issuer pays or receives, on or immediately prior to the respective payment or distribution date for the class of Securities to which the swap relates, a fixed rate of interest, or a floating rate of interest based on a publicly available index (e.g., LIBOR or the U.S. Federal Reserve's Cost of Funds Index (COFI)), with the Issuer receiving such payments on at least a quarterly basis and obligated to make separate payments no more frequently than the counterparty, with all simultaneous payments being netted;

(3) Which has a notional amount that does not exceed either: (i) The principal balance of the class of Securities to which the swap relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3);

(4) Which is not leveraged (i.e., payments are based on the applicable notional amount, the day count fractions, the fixed or floating rates designated in subsection III.FF.(2), and the difference between the products thereof, calculated on a one to one ratio and not on a multiplier of such difference);

(5) Which has a final termination date that is either the earlier of the date on which the Issuer terminates or the related class of Securities is fully repaid; and

(6) Which does not incorporate any provision which could cause a unilateral alteration in any provision described in subsections III.FF.(1) through (4) without the consent of the Trustee.

GG. "Eligible Swap Counterparty" means a bank or other financial institution which has a rating, at the date of issuance of the Securities by the Issuer, which is in one of the three highest long-term credit rating categories, or one of the two highest short-term credit rating categories, utilized by at least one of the Rating Agencies rating the Securities; provided that, if a swap counterparty is relying on its short-term rating to establish eligibility under the Underwriter Exemption, such swap counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating Agency, and provided further that if the class of Securities with which the swap is associated has a final maturity date of more than one year from the date of issuance of the Securities, and such swap is a Ratings Dependent Swap, the swap counterparty is required by the terms of the swap agreement to establish any collateralization or other arrangement satisfactory to the Rating Agencies in the event of a ratings downgrade of the swap counterparty.

HH. "Qualified Plan Investor" means a plan investor or group of plan investors on whose behalf the decision to purchase Securities is made by an appropriate independent fiduciary that is qualified to analyze and understand the terms and conditions of any swap transaction used by the Issuer and the effect such swap would have upon the credit ratings of the Securities. For purposes of the Underwriter Exemption, such a fiduciary is either:

(1) A "qualified professional asset manager" (QPAM),[8] as defined under Part V(a) of PTE 84–14, 49 FR 9494, 9506 (March 13, 1984), as amended by 70 FR 49305 (August 23, 2005);

(2) An "in-house asset manager" (INHAM),[9] as defined under Part IV(a) of PTE 96–23, 61 FR 15975, 15982 (April 10, 1996); or

(3) A plan fiduciary with total assets under management of at least $100 million at the time of the acquisition of such Securities.

II. "Excess Spread" means, as of any day funds are distributed from the Issuer, the amount by which the interest allocated to Securities exceeds the amount necessary to pay interest to securityholders, servicing fees and expenses.

JJ. "Eligible Yield Supplement Agreement" means any yield supplement agreement, similar yield maintenance arrangement or, if purchased by or on behalf of the Issuer,

[8] PTE 84–14 provides a class exemption for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including either a single customer or pooled separate account) in which the plan has an interest, and which is managed by a QPAM, provided certain conditions are met. QPAMs (e.g., banks, insurance companies, registered investment advisers with total client assets under management in excess of $85 million) are considered to be experienced investment managers for plan investors that are aware of their fiduciary duties under ERISA.

[9] PTE 96–23 permits various transactions involving employee benefit plans whose assets are managed by an INHAM, an entity which is generally a subsidiary of an employer sponsoring the plan which is a registered investment adviser with management and control of total assets attributable to plans maintained by the employer and its affiliates which are in excess of $50 million.

an interest rate cap contract to supplement the interest rates otherwise payable on obligations described in subsection III.B.(1). Such an agreement or arrangement may involve a notional principal contract provided that:

(1) It is denominated in U.S. dollars;

(2) The Issuer receives on, or immediately prior to the respective payment date for the Securities covered by such agreement or arrangement, a fixed rate of interest or a floating rate of interest based on a publicly available index (e.g., LIBOR or COFI), with the Issuer receiving such payments on at least a quarterly basis;

(3) It is not "leveraged" as described in subsection III.FF.(4);

(4) It does not incorporate any provision which would cause a unilateral alteration in any provision described in subsections III.JJ.(1)–(3) without the consent of the Trustee;

(5) It is entered into by the Issuer with an Eligible Swap Counterparty; and

(6) It has a notional amount that does not exceed either: (i) The principal balance of the class of Securities to which such agreement or arrangement relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3).

KK. Effective October 1, 2007 through April 1, 2008, "Securitization List" means:

Name & Exemption	Issuance Type	BofA Role
Banc of America Comm. Mtge. 2001–PB1 93–31	C	U, S, SC, SER
Banc of America Comm. Mtge. 2004–2 93–31	C	U, S, SER
Banc of America Comm. Mtge. 2004–4 93–31	C	U, S, SER
Banc of America Comm. Mtge. 2004–6 93–31	C	U, S, SER
Banc of America Comm. Mtge. 2005–2 93–31	C	U, S, SER
Banc of America Comm. Mtge. 2005–3 93–31	C	U, S, SER
Banc of America Comm. Mtge. 2005–5 93–31	C	U, S, SER
Banc of America Comm. Mtge. 2005–6 93–31	C	U, S, SER
Banc of America Comm. Mtge. 2006–2 93–31	C	U, S, SER
Banc of America Comm. Mtge. 2006–5 93–31	C	U, S, SER
Banc of America Comm. Mtge. 2007–1 93–31	C	U, S, SER
Banc of America Large Loan 2006–BIX1 93–31	C	U, S, SER
Banc of America Large Loan 2004–BBA4 93–31	C	U, S, SER
Banc of America Large Loan 2005–BBA6 93–31	C	U, S
Bank of America Struct. Notes 2002–X1 93–31	C	U, S, SC, SER
Bear Stearns Series 2004–BBA3 93–31	C	U, S, SER
Bear Stearns Series 2007–BBA8 93–31	C	U, S, SER
Citigroup Commercial Mtg. 2006–FL2 89–89 (Citigroup Global)	C	S, SER
COMM Series 2006–FL12 97–03E (Deutsche Bank)	C	S, SER
COMM Series 2007–FL14 97–03E (Deutsche Bank)	C	S, SER
COMM Series 2001–J2 93–31	C	U, S, SC, SER
COMM 2006–C8 97–03E (Deutsche Bank)	C	U, S, SER
GE Capital Comm Mtge. Corp. 2002–2 93–31	C	U, S, SER
GE Capital Comm Mtge. Corp. 2003–C2 93–31	C	U, S, SER
GE Capital Comm Mtge. Corp. 2004–C2 93–31	C	U, S, SER
GE Capital Comm Mtge. Corp. 2005–C1 93–31	C	U, S, SER
GE Capital Comm Mtge. Corp. 2005–C3 93–31	C	U, S, SER
GE Capital Comm Mtge. Corp. 2006–C1 93–31	C	U, S, SER
GS Mortgage Sec. 2004–GG2 89–88 (Goldman, Sachs)	C	S
Merrill Lynch Series 2004–BPC1 93–31	C	U, S, SER
Merrill Lynch Series 2005–MKB2 93–31	C	U, S, SER
Mortgage Cap. Funding 1996–MC2 93–31	C	U, S
Mortgage Cap. Funding 1997–MC2 93–31	C	U, S
NationsLink Funding Corp. 1999–LTL–1 93–31	C	U, S, SER
NationsLink Funding Corp. 1999–SL 93–31	C	U, S, SER
Asset Backed Funding Corp. 2002–SB1 93–31	R	U, S
C–BASS 2007–CBS 93–31	R	U, S

Legend: C = Commercial mortgage-backed securitizations; R = Residential mortgage-backed securitizations; U = Underwriter; S = Sponsor; SC = Swap Counterparty; SER = Servicer.

Effective Date: This amendment was effective October 1, 2007.

For a more complete statement of the facts and representations supporting the Department's decision to amend PTE 93–31, refer to the notice of proposed exemption that was published on March 13, 2008 in the **Federal Register** at 73 FR 13576.

FOR FURTHER INFORMATION CONTACT: Wendy M. McColough of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under Section 408(a) of the Act and/or Section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of Section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with Section 404(a)(1)(B) of the Act; nor does it affect the requirement of Section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 29th day of April 2008.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. E8–10631 Filed 5–12–08; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before June 12, 2008. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.
E-mail: requestschedule@nara.gov.
Fax: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1539. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1228.24(b)(3).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Agricultural Marketing Service (N1–136–06–6, 9 items, 7 temporary items). Databases and case files associated with the Plant Variety Protection Office (PVPO). Scheduled for temporary retention are accounting and tracking databases; reference databases; individual plant examiner files; name files; financial files; and case files for which PVPO certificates were not issued. Proposed for permanent retention are crop species databases and case files for which PVPO certificates were issued.

2. Department of Agriculture, Agricultural Research Service (N1–310–08–1, 9 items, 9 temporary items). Inputs and master files relating to an electronic information system that manages, tracks, documents, provides access to, and reports on research conducted primarily within the USDA/state agricultural research system. All significant information about the research itself as well as project outcomes is captured in the Current Research Information System, which has been scheduled as permanent. The proposed disposition instructions for master files are limited to electronic records.

3. Department of Defense, Defense Commissary Agency (N1–506–07–13, 2 items, 2 temporary items). Records relating to presentations by the agency head and business unit reports of activities. Reports and presentations having historical value were previously approved for permanent retention.

4. Department of Defense, Defense Commissary Agency (N1–506–08–1, 5 items, 5 temporary items). Records relating to ordering and pricing produce. Included are such records as pricing and availability information from suppliers, orders, shipping lists, stock levels, reports, pricing changes and inventories.

5. Department of Defense, Defense Logistics Agency (N1–361–06–1, 3 items, 3 temporary items). Master data file and outputs associated with an electronic information system used to supply clothing for military recruits and other military related personnel.

6. Department of Health and Human Services, Food and Drug Administration (N1–88–07–1, 44 items, 41 temporary items). Records of the National Center for Toxicological Research, including research project management records, research data, experiment protocols, and employee and materials safety records regarding radioactive and biological hazards. Proposed for permanent retention are program planning and policy records, annual research accomplishments and plans, and technical reports and manuscripts on research findings. The proposed disposition instructions are limited to paper records for technical reports and manuscripts on research findings.

7. Department of Homeland Security, Federal Emergency Management Agency (N1–311–08–1, 2 items, 2 temporary items). Recordings of telephone calls received from individuals seeking disaster assistance and associated records used to evaluate employee performance during the calls.

8. Department of Homeland Security, Federal Emergency Management Agency (N1–311–08–2, 1 item, 1 temporary item). National Emergency Training Center admission applications and course completion records, including competency scores and transcripts.

9. Department of Homeland Security, Management Directorate (N1–563–08–15, 1 item, 1 temporary item). Master file for an electronic information system used to track and evaluate performance of mail processing operations.

10. Department of Homeland Security, U.S. Citizenship and Immigration Services (N1–566–08–10, 1 item, 1 temporary item). Master file associated with an electronic information system containing biometric and biographical data on individuals applying for immigration benefits and used to produce identification cards. More complete information on an individual can be found in the Alien Files and will be scheduled for permanent retention.

11. Department of the Interior, National Business Center (N1–48–08–3, 6 items, 6 temporary items). Records relating to the Federal Personnel and Payroll System that include the master data files, software application requests, retirement records, and predict files. The proposed disposition instructions for the master data files and predict documentation are limited to electronic records.

12. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (N1–436–07–5, 2 items, 2 temporary items). Master file of a financial information system that captures work flow data and images of financial records.

13. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (N1–436–08–7, 2 items, 2 temporary items). Inputs and master file of the Giglio data system which stores potential witness impeachment data for employees.

14. Department of Justice, Executive Office for U.S. Attorneys (N1–60–08–5, 4 items, 4 temporary items). Inputs, outputs, and master file for the Victim Notification System, which tracks and provides notification of significant case events and activity to victims of federal crimes.

15. Department of the Navy, Agency-wide (N1–NU–08–2, 1 item, 1 temporary item). Unsolicited communications of information related to security of agency personnel or property determined to warrant no further investigation.

16. Department of the Navy, United States Marine Corps (N1–NU–07–12, 1 item, 1 temporary item). Master file associated with an electronic information system that tracks progression of military justice cases to ensure a speedy trial. The proposed disposition instructions are limited to electronic records.

17. Environmental Protection Agency, Office of the Chief Financial Officer (N1–412–07–69, 8 items, 6 temporary items). This schedule authorizes the agency to apply existing disposition instructions to records regardless of the recordkeeping medium. The records include time and attendance records used for payroll processing, payroll support and payroll control records, pay folders, external accounting reports required by Government-wide regulations, and administrative documentation relating to audit resolution. Paper recordkeeping copies of these files, with the exception of administrative documentation relating to audit resolution, were previously authorized for disposal. Also included are audit resolution board case files, for which paper recordkeeping copies previously were approved as permanent.

18. Environmental Protection Agency, Office of Water (N1–412–08–1, 4 items, 4 temporary items). Input, electronic data, system documentation, and implementation files for the Safe Drinking Water Accession and Review System, which supports the management of laboratory data collected under the unregulated contaminant monitoring rule.

19. Environmental Protection Agency, Office of Water (N1–412–08–2, 2 items, 2 temporary items). Input and electronic data for the National Contaminant Occurrence database, which contains occurrence data from public water systems and other sources on physical, chemical, microbial and radiological contaminants for both detections and non-detects.

20. Federal Maritime Commission, Bureau of Trade Analysis (N1–358–08–05, 2 items, 2 temporary items). Master file and outputs supporting an automated tariff registration system that provides tariff publication locations for shippers and the public.

21. National Archives and Records Administration, Office of Administration (N1–64–08–8, 4 items, 4 temporary items). Master file and related records for a legacy automated property management system used to track agency accountable personal property.

Dated: May 8, 2008.

Sharon Thibodeau,

Deputy Assistant Archivist for Records Services—Washington, DC.

[FR Doc. E8–10700 Filed 5–12–08; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Social, Behavioral, and Economic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Social, Behavioral, and Economic Sciences (#1171).

Date/Time: June 5, 2008; 8:30 a.m. to 5 p.m.; June 6, 2008; 8:30 a.m. to 1 p.m.

Place: Hilton Arlington, 950 North Stafford Street, Second Floor—Master's Ball Room, Arlington, Virginia 22230.

Type of Meeting: Open.

Contact Person: Ms. Lisa L. Jones, Office of the Assistant Director, Directorate for Social, Behavioral, and Economic Sciences, National Science Foundation, 4201 Wilson Boulevard, Room 905, Arlington, Virginia 22230, 703–292–8700.

Summary Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation on major goals and policies pertaining to Social, Behavioral and Economic Sciences Directorate programs and activities.

Agenda:

Thursday

Updates and Discussion on Continuing Activities

- Budget process and status.
- Human and Social Dynamics—COV discussion and plans for the future.
- SBE participation in NSF initiatives for FY 2009.
- Sustainability workshop report.
- SBE infrastructure.
- Linkages with DOD.

Friday

Updates and Discussion on Continuing Activities.

- International activities.
- Questions from the National Science Board: Limitations on proposal submission; cost sharing.
- Broadening participation.
- Human capital and succession planning in SBE.

Discussion with the NSF Director.

Planning for FY 2010 and Beyond.

Dated: May 8, 2008.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E8–10629 Filed 5–12–08; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of May 12, 19, 26, June 2, 9, 16, 2008.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of May 12, 2008

Wednesday, May 14, 2008

11 a.m. Discussion of Security Issues (Closed—Ex. 1).

Friday, May 16, 2008

8:55 a.m.

Affirmation Session (Public Meeting) (Tentative).

a. AmerGen Energy Company, LLC (Oyster Creek Nuclear Generating Station), Docket No. 50–219–LR, Citizens' Petition for Review of LBP–07–17 and Other Interlocutory Decisions in the Oyster Creek Proceeding (Tentative).

b. Oyster Creek, Indian Point, Pilgrim, and Vermont Yankee License Renewals, Docket Nos. 50–219–LR, 50–247–LR, 50–286–LR, 50–293–LR, 50–271–LR, Petition to Suspend Proceedings (Tentative).

c. Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), Docket No. 50–293–LR—Entergy's Request for Guidance on the First Circuit's Administrative Stay (Tentative).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

9 a.m.

Briefing on NRC Infrastructure (Public Meeting), (Contact: Peter Rabideau, 301 415–7323).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of May 19, 2008—Tentative

There are no meetings scheduled for the Week of May 19, 2008.

Week of May 26, 2008—Tentative

Tuesday, May 27, 2008

1:30 p.m.

NRC All Hands Meeting (Public Meeting), Marriott Bethesda North Hotel, 5701 Marinelli Road, Rockville, MD 20852.

Wednesday, May 28, 2008

9:30 a.m.

Briefing on Equal Employment Opportunity (EEO) and Workforce Planning (Public Meeting) (Contact: Kristin Davis, 301 492–2266).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of June 2, 2008—Tentative

Wednesday, June 4, 2008

9:30 a.m.

Briefing on Results of the Agency Action Review Meeting (AARM) (Public Meeting) (Contact: Shaun Anderson, 301 415–2039).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Thursday, June 5, 2008

1:30 p.m.

Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: Tanny Santos, 301 415–7270).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of June 9, 2008—Tentative

There are no meetings scheduled for the Week of June 9, 2008.

Week of June 16, 2008—Tentative

There are no meetings scheduled for the Week of June 16, 2008.

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* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *REB3@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: May 8, 2008.

Rochelle C. Bavol,

Office of the Secretary.

[FR Doc. 08–1255 Filed 5–9–08; 10:35 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Extension: Rule 17d–1, SEC File No. 270–505, OMB Control No. 3235–0562]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor

Education and Advocacy, Washington, DC 20549–0213.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information discussed below.

Section 17(d) (15 U.S.C. 80a–17(d)) of the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) (the "Act") prohibits first and second-tier affiliates of a fund, the fund's principal underwriters, and affiliated persons of the fund's principal underwriters, acting as principal, to effect any transaction in which the fund or a company controlled by the fund is a joint or a joint and several participant in contravention of the Commission's rules. Rule 17d–1 (17 CFR 270.17d–1) prohibits an affiliated person of or principal underwriter for any fund (a "first-tier affiliate"), or any affiliated person of such person or underwriter (a "second-tier affiliate"), acting as principal, from participating in or effecting any transaction in connection with a joint enterprise or other joint arrangement in which the fund is a participant, unless prior to entering into the enterprise or arrangement "an application regarding (the transaction) has been filed with the Commission and has been granted by an order." In reviewing the proposed affiliated transaction, the rule provides that the Commission will consider whether the proposal is (i) consistent with the provisions, policies, and purposes of the Act, and (ii) on a basis different from or less advantageous than that of other participants in determining whether to grant an exemptive application for a proposed joint enterprise, joint arrangement, or profit-sharing plan.

Rule 17d–1 also contains a number of exceptions to the requirement that a fund must obtain Commission approval prior to entering into joint transactions or arrangements with affiliates. For example, funds do not have to obtain Commission approval for certain employee compensation plans, certain tax-deferred employee benefit plans, certain transactions involving small business investment companies, the receipt of securities or cash by certain affiliates pursuant to a plan of reorganization, and arrangements regarding liability insurance policies. The Commission amended rule 17d–1 most recently in 2003 to expand the current exemptions from the Commission approval process to permit funds to engage in transactions with "portfolio affiliates"—companies that are affiliated with the fund solely as a result of the fund (or an affiliated fund) controlling them or owning more than five percent of their voting securities. This amendment was designed to permit funds' transactions with portfolio affiliates without seeking Commission approval, as long as certain other affiliated persons of the fund (*e.g.*, the fund's adviser, persons controlling the fund, and persons under common control with the fund) ("prohibited participants") are not parties to the transaction and do not have a "financial interest" in a party to the transaction. The rule excludes from the definition of "financial interest" any interest that the fund's board of directors (including a majority of the directors who are not interested persons of the fund) finds to be not material, as long as the board records the basis for its finding in their meeting minutes.

Thus, the rule contains two filing and recordkeeping requirements that constitute collections of information. First, rule 17d–1 requires funds that wish to engage in a joint transaction or arrangement with affiliates to meet the procedural requirements for obtaining exemptive relief from the rule's prohibition on joint transactions or arrangements involving first-or second-tier affiliates. Second, rule 17d–1 permits a portfolio affiliate to enter into a joint transaction or arrangement with the fund if a prohibited participant has a financial interest that the fund's board determines is not material and records the basis for this finding in their meeting minutes. These requirements of rule 17d–1 are designed to prevent fund insiders from managing funds for their own benefit, rather than for the benefit of the funds' shareholders.

Based on an analysis of past filings, Commission staff estimates that 4 funds file applications under section 17(d) and rule 17d–1 per year. Based on a limited survey of persons in the mutual fund industry, the Commission staff estimates that each applicant will spend an average of 154 hours to comply with the Commission's applications process. The Commission staff therefore estimates the annual burden hours per year for all funds under rule 17d–1's application process to be 616 hours.

Based on analysis of past filings, the Commission's staff estimates that 148 funds are affiliated persons of 668 issuers as a result of the fund's ownership or control of the issuer's voting securities, and that there are approximately 1,000 such affiliate relationships. Staff discussions with mutual fund representatives have suggested that no funds are currently relying on rule 17d–1 exemptions. We do not know definitively the reasons for this transactional behavior, but differing market conditions from year to year may offer some explanation for the current lack of fund interest in the exemptions under rule 17d–1. Accordingly, we estimate that annually there will be no joint transactions under rule 17d–1 that will result in a collection of information. The Commission, therefore, requests authorization to maintain an inventory of total burden hours per year for all funds under rule 17d–1 of 616 hours.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Complying with these collections of information requirement is necessary to obtain the benefit of relying on rule 17d–1. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *Alexander_T._Hunt@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: May 5, 2008.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–10573 Filed 5–12–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Extension: Rule 18f–1 and Form N–18F–1, SEC File No. 270–187, OMB Control No. 3235–0211]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 18f–1 (17 CFR 270.18f–1) enables a registered open-end management investment company ("fund") that may redeem its securities in-kind, by making a one-time election, to commit to make cash redemptions pursuant to certain requirements without violating section 18(f) of the Investment Company Act of 1940 (15 U.S.C. 80a–18(f)). A fund relying on the rule must file Form N–18F–1 (17 CFR 274.51) to notify the Commission of this election. The Commission staff estimates that approximately 39 funds file Form N–18F–1 annually, and that each response takes approximately one hour. Based on these estimates, the total annual burden hours associated with the rule is estimated to be 39 hours.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. The collection of information required by rule 18f–1 is necessary to obtain the benefits of the rule. Responses to the collection of information will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *Alexander_T._Hunt@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: May 5, 2008.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–10575 Filed 5–12–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: US Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17f–2(e); SEC File No. 270–37; OMB Control No. 3235–0031.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for approval of extension on the following rule: Rule 17f–2(e) (17 CFR 240.17f–2(e)).

Rule 17f–2(e) requires members of national securities exchanges, brokers, dealers, registered transfer agents, and registered clearing agencies claiming exemption from the fingerprinting requirements of Rule 17f–2 to prepare and maintain a statement supporting their claim exemption. This requirement assists the Commission and other regulatory agencies with ensuring compliance with Rule 17f–2 (17 CFR 240.17f–2).

Notices prepared pursuant to Rule 17f–2(e) must be maintained for as long as the covered entity claims an exemption from the fingerprinting requirements of Rule 17f–2. The recordkeeping requirement under Rule 17f–2(e) is mandatory to assist the Commission and other regulatory agencies with ensuring compliance with Rule 17f–2. This rule does not involve the collection of confidential information.

It is estimated that approximately 75 respondents will incur an average burden of 30 minutes per year to comply with this rule, for a total approximate burden of 38 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Alexander_T.Hunt@omb.eop.gov*; and (ii) R. Corey Booth, Director, Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted within 30 days of this notice.

Dated: May 7, 2008.

Nancy M. Morris,

Secretary.

[FR Doc. E8–10623 Filed 5–12–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 73 FR 21165, April 18, 2008 and 73 FR 22184, dated April 24, 2008.

Status: Open Meeting.

Place: 100 F Street, NE., Washington, DC.

Date and Time of Previously Announced Meeting: May 14, 2008 at 10 a.m.

Change in the Meeting: Additional Item.

The following matter will also be considered during the 10 a.m. Open Meeting scheduled for Wednesday, May 14, 2008, at 10 a.m., in the Auditorium, Room L–002:

Item 2: The Commission will consider whether to propose amendments to provide for mutual fund risk/return summary information to be filed with the Commission in interactive data format.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: May 7, 2008.

Nancy M. Morris,

Secretary.

[FR Doc. E8–10617 Filed 5–12–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57794; File No. SR–Amex–2008–34]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving a Proposed Rule Change To Give Retroactive Effect to Its Revenue Sharing Program for ETF Quoting Participants

May 7, 2007.

On March 27, 2008, the American Stock Exchange LLC ("Amex" 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 retroactively apply its revenue sharing program ("RSP") for Designated Amex Remote Traders ("DARTs"), ETF specialists, and registered traders (collectively, "ETF quoting participants"). The proposal was published for comment in the **Federal Register** on April 4, 2008.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

The RSP was first put in place by the Exchange for ETF specialists and registered traders, effective July 1, 2007, and was to last through December 31, 2007 unless otherwise extended.[4] The Exchange inadvertently failed to file to extend the RSP at the expiration of that time period, but, upon realizing the error, promptly filed to reinstate the RSP for all ETF quoting participants, effective March 18, 2008.[5] The RSP is now in effect through the end of September 2008.

The Exchange now seeks to retroactively apply the RSP for the time period January 1, 2008 through March 17, 2008 (the "retroactive period") in order to provide continuity in the RSP for all ETF quoting participants on the Exchange, who continued to quote aggressively during the retroactive period in the expectation of receiving RSP payments. RSP payments for the retroactive period will be made pursuant to the same terms established in the RSP Release.[6]

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)(4) of the Act,[8] which requires the equitable allocation of reasonable dues, fees, and other charges among Exchange members and other persons using Exchange facilities. In approving this proposal, the Commission notes the Exchange's statements that ETF quoting participants have relied on the expectation of RSP payments during the retroactive period, and that the Exchange does not believe it fair to withhold RSP payments from ETF quoting participants for the retroactive period solely because of the Exchange's inadvertent failure to extend the RSP.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (File No. SR–Amex–2008–34) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Nancy M. Morris,

Secretary.

[FR Doc. E8–10562 Filed 5–12–08; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57578 (March 28, 2008), 73 FR 18592.

[4] *See* Securities Exchange Act Release No. 55893 (June 29, 2007), 72 FR 37059 (July 6, 2007) (SR–Amex–2007–68) ("RSP Release").

[5] *See* Securities Exchange Act Release No. 57541 (March 20, 2008) (SR–Amex–2008–25), 73 FR 16400 (March 27, 2008) (reinstating RSP for all ETF quoting participants); *see also* Securities Exchange Act Release No. 57540 (March 20, 2008), 73 FR 16399 (March 27, 2008) (SR–Amex–2008–23) (expanding RSP to DARTs).

[6] *See supra* note 4.

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57782; File No. SR–BSECC–2008–01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange Clearing Corporation Relating to Amendment of Its Articles of Organization and By-Laws in Connection With the Planned Acquisition by The NASDAQ OMX Group, Inc.

May 6, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 24, 2008, the Boston Stock Exchange Clearing Corporation ("BSECC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

BSECC proposes to amend its Articles of Organization and its By-Laws to reflect the planned acquisition of BSECC by The NASDAQ OMX Group, Inc. ("NASDAQ OMX") and to update the By-Laws in certain other respects.[3] The text of the proposed rule change is available from the principal office of BSECC, at *http://www.bostonstock.com/BSECC/Pending/BSECC-2008-01.pdf*, 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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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

The Merger

On October 2, 2007, Boston Stock Exchange, Inc. ("BSE"), announced that it had entered into an agreement with The Nasdaq Stock Market, Inc. (now NASDAQ OMX) pursuant to which NASDAQ OMX would acquire all of the outstanding membership interests in BSE and BSE would be merged with and into Yellow Merger Corporation, a Delaware corporation and wholly owned subsidiary of NASDAQ OMX, with BSE surviving the merger. As a result of the merger, BSE would become a Delaware stock corporation with 100% of its outstanding stock owned by NASDAQ OMX. BSECC is now and following the merger will continue to be a wholly owned subsidiary of BSE. BSECC proposes to adopt (1) Articles of Amendment to its Articles of Organization, and (2) amendments to its By-Laws for the purpose of reflecting its acquisition by NASDAQ OMX and of modernizing its governance documents.

[3] BSECC is currently organized under the laws of the Commonwealth of Massachusetts. The Articles of Organization of a Massachusetts corporation are comparable to the Certificate of Incorporation of a Delaware corporation.

BSECC's Articles of Organization

In order to amend its Articles of Organization, BSECC would adopt Articles of Amendment that would amend its existing Articles of Organization as follows:

1. Amend Article III to provide that the total number of shares of each class of stock that BSECC is authorized to issue is 150 shares of common stock. This amendment reflects a reduction in the total authorized share capital of BSECC from 1000 shares of common stock to the 150 shares of Common Stock currently held by BSE. Thus, following the amendment, all of the authorized shares of common stock of BSECC would be outstanding and would be owned by BSE;

2. Amend Article V to provide that BSE may not transfer or assign any shares of stock of BSECC unless such transfer or assignment has been filed with and approved by the Commission under Section 19 of the Act;[4] and

3. Adopt new Article VI to provide that in accordance with modern practice for Massachusetts corporations, directors of BSECC are not personally liable to it for breaches of fiduciary duty except for breaches involving (i) a breach of the duty of loyalty, (ii) acts or omissions not in good faith or that involve intentional misconduct or knowing violation of law, (iii) distributions of assets that would render BSECC insolvent, or (iv) any transaction from which the director derived an improper personal benefit.

BSECC's By-Laws

BSECC proposes several changes to its By-Laws, which are primarily for the purpose of updating the By-Laws in accordance with modern corporate practice for Massachusetts corporations. The amendments proposed are:

1. Eliminate the offices of "clerk" and "vice-chairman" from BSECC and delete references to those offices from the By-Laws;

2. Clarify the time periods allowed or required for notice to stockholders of meetings, the permissible duration of stockholder proxies, and the setting of a record date in accordance with modern Massachusetts law and remove a provision allowing close of the transfer books of BSECC that is no longer consistent with Massachusetts law;[5]

3. Provide that stockholders, as well as directors, may fill vacancies on the Board, in accordance with Massachusetts law;

4. Clarify that directors of BSECC who also serve on BSE's Board of Directors must tender resignations from BSECC's Board if they cease to be directors of BSE;

5. Clarify the requirements for action by the Board of Directors and the stockholders to be taken without a meeting;

6. Establish that the officers of BSECC are all appointed by and subject to removal by its Board of Directors;

7. Adopt modern provisions stipulating the conditions under which BSECC may indemnify its officers and directors and the scope of such indemnification;

8. Stipulate that the By-Laws may be amended only upon approval by the Commission and in accordance with the rules of BSECC;[6] and

9. Clarify the meaning of several provisions in accordance with modern Massachusetts law and correct several typographical errors.

BSECC believes that the proposed rule change is consistent with the provisions of Section 17A of the Act[7] in general and with Section 17A(b)(3)(A) and (C) of the Act[8] in particular in that it is designed to ensure that BSECC is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and to assure a fair representation of BSECC's members in the selection of its directors and the administration of its affairs.

B. Self-Regulatory Organization's Statement on Burden on Competition

BSECC does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

BSECC has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which BSECC consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules.sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BSECC–2008–01 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–BSECC–2008–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of BSECC. 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

[4] 15 U.S.C. 78s.

[5] This change would not limit the effectiveness of the change to the Articles of Organization requiring Commission approval of transfers of BSECC's stock.

[6] Rule XII of BSECC, required notice to clearing members of amendments to the By-Laws.

[7] 15 U.S.C. 78q–1.

[8] 15 U.S.C. 78q–1(b)(3)(A) and (C).

Number SR–BSECC–2008–01 and should be submitted on or before June 3, 2008.

For the Commission by the Division of Trading and Markets pursuant to delegated authority.[9]

Nancy M. Morris,

Secretary.

[FR Doc. E8–10595 Filed 5–12–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57793; File No. SR–CBOE–2008–52]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Temporary Membership Status Access Fee

May 7, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 30, 2008, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A),[3] and Rule 19b–4(f)(2) 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 parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to adjust the monthly access fee for persons granted temporary CBOE membership status ("Temporary Members") pursuant to Interpretation and Policy .02 under CBOE Rule 3.19 ("Rule 3.19.02"). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[9] 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)(2).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE 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. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The current access fee for Temporary Members under Rule 3.19.02 [5] is $8,260 per month and took effect on April 1, 2008. The Exchange proposes to revise the access fee to be $10,079 per month commencing on May 1, 2008.

The Exchange used the following process to set the proposed access fee: The Exchange polled each of the clearing firms that assists in facilitating at least 10% of the transferable CBOE membership leases and obtained the Clearing Firm Floating Monthly Rate [6] designated by each of these clearing firms for the month of May 2008. The Exchange then set the proposed access fee at an amount equal to the highest of these Clearing Firm Floating Monthly Rates.

The Exchange used the same process to set the proposed access fee that it used to set the current access fee. The only difference is that the Exchange used Clearing Firm Floating Monthly Rate information for the month of May 2008 to set the proposed access fee (instead of Clearing Firm Floating Monthly Rate information for the month of April 2008 as was used to set the current access fee) in order to take into account changes in Clearing Firm Floating Monthly Rates for the month of May 2008.

The Exchange believes that the process used to set the proposed access fee and the proposed access fee itself are appropriate for the same reasons set forth in CBOE rule filing SR–CBOE–2008–12 in support of that process and the original access fee for Temporary Members under Rule 3.19.02.[7]

The proposed access fee will remain in effect until such time either that the Exchange submits a further rule filing pursuant to Section 19(b)(3)(A)(ii) of the Act [8] to modify the proposed access fee or the Temporary Membership status under Rule 3.19.02 is terminated. Accordingly, the Exchange may further adjust the proposed access fee in the future if the Exchange determines that it would be appropriate to do so taking into consideration lease rates for transferable CBOE memberships prevailing at that time.

The procedural provisions of the CBOE Fee Schedule related to the assessment of the proposed access fee are not proposed to be changed and will remain the same as the current procedural provisions regarding the assessment of the current access fee. However, the Exchange is proposing to delete the current reference in the Fee Schedule which notes that the first month for which an access fee will be assessed to Temporary Members under Rule 3.19.02 is February 2008 because the commencement of the assessment of this access fee is now past.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(4) of the Act,[10] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

[5] *See* Securities Exchange Act Release No. 56458 (September 18, 2007), 72 FR 54309 (September 24, 2007) (SR-CBOE–2007–107) for a description of the Temporary Membership status under Rule 3.19.02.

[6] The term "Clearing Firm Floating Monthly Rate" refers to the floating monthly rate that a clearing firm designates, in connection with transferable membership leases that the clearing firm assisted in facilitating, for leases that utilize that floating monthly rate.

[7] *See* Securities Exchange Act Release No. 57293 (February 8, 2008), 73 FR 8729 (February 14, 2008) (SR-CBOE–2008–12), which established the original access fee for Temporary Members under Rule 3.19.02, for detail regarding the rationale in support of the original access fee and the process used to set that fee, which is also applicable to this proposed rule change as well.

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and subparagraph (f)(2) of Rule 19b–4 [12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR-CBOE–2008–52 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-CBOE–2008–52. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 am and 3 pm. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-CBOE–2008–52 and should be submitted on or before June 3, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Nancy M. Morris,

Secretary.

[FR Doc. E8–10620 Filed 5–12–08; 8:45 am]

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[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57765; File No. SR–FINRA–2007–041]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Amend NASD Rule 7001B To Increase the Percentage of Market Data Revenue Shared With NASD/Nasdaq TRF Participants

May 1, 2008.

I. Introduction

On December 21, 2007, Financial Industry Regulatory Authority, Inc. ("FINRA"), 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 adjust the percentage of market data revenue shared with participants in the NASD/Nasdaq Trade Reporting Facility ("NASD/Nasdaq TRF"). The proposed rule change was published for comment in the **Federal Register** on January 24, 2008.[3] The Commission received one comment letter regarding the proposal.[4] On March 27, 2008, FINRA submitted its response to the comment letter.[5] This order approves the proposed rule change.

II. Description of the Proposed Rule Change

FINRA proposes to amend NASD Rule 7001B (Securities Transaction Credit) to modify the percentage of market data revenue that is shared with FINRA members that report trades to the NASD/Nasdaq TRF for transactions on the New York Stock Exchange ("Tape A"), American Stock Exchange and regional exchanges ("Tape B"), and Nasdaq Exchange ("Tape C"). At present, FINRA members that report trades in Tape A, Tape B, and Tape C securities to the NASD/Nasdaq TRF receive a 50% *pro rata* credit on market data revenue that is earned by the NASD/Nasdaq TRF.[6]

The proposed rule change establishes a tiered rebate schedule whereby a participant in the NASD/Nasdaq TRF will receive from 0% to 100% of attributable market data revenue, depending upon the tape and the participant's market share. For example, a participant will receive 100% of the attributable market data revenue for trades in Tape A-listed stocks if its trade reports for those stocks are greater than or equal to 0.25% of the total consolidated volume of those stocks. In contrast, a participant will receive 100% of the attributable market data revenue for trades in Tape C-listed stocks if its trade reports for those stocks are greater than or equal to 0.75% of the total consolidated volume of those stocks. Similarly, a participant will receive 80% of the attributable market data revenue for trades in Tape A-listed stocks if its trade reports for those stocks are less than 0.25%, but greater than or equal to 0.15%, of the total consolidated volume of those stocks. A participant will receive 80% of the attributable market data revenue for trades in Tape C-listed stocks if its trade reports for those stocks are less than 0.75%, but greater than or equal to 0.25% of the total consolidated volume of those stocks.

In its filing with the Commission, FINRA stated that according to Nasdaq, it based the percentage of revenue that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57164 (January 17, 2008), 73 FR 4295.

[4] *See* letter from Christopher Gilkerson and Gregory Babyak, Co-Chairs, Market Data Subcommittee of the SIFMA Technology and Regulation Committee, to Nancy M. Morris, Secretary, Commission, dated February 14, 2008 ("SIFMA letter").

[5] *See* letter from Lisa C. Horrigan, Associate General Counsel, FINRA, to Nancy M. Morris, Secretary, Commission, dated March 27, 2008 ("FINRA letter").

[6] The market data revenue consists of the revenue received by the NASD/Nasdaq TRF from the Consolidated Tape Association or the Nasdaq Securities Information Processor minus any charge for capacity usage. The proposed rule eliminates the deduction for capacity usage.

it would share on different levels of market share because of the extent to which members use the NASD/Nasdaq TRF to report trades in different stocks. For example, FINRA stated that members report higher volumes of trades in Tape C stocks than in Tape A or Tape B stocks, justifying a higher level of market share for Tape C transactions.

FINRA will calculate a participant's market share separately for each tape. To calculate a participant's market share, FINRA will divide the total number of shares represented by trades reported by members to the NASD/Nasdaq TRF during a calendar quarter by the total number of shares represented by all trades reported to the Consolidated Tape Association or Securities Information Processor during that quarter.

III. Summary of Comments

The Commission received one comment letter in response to the proposed rule change.[7] The commenter stated that the proposed rebate demonstrated that market data fees are excessive, and do not have a fair and reasonable basis.[8] The commenter noted that, in its capacity as the "SRO Member," FINRA allocates and deducts costs before passing market data revenue to each TRF. According to the commenter, this ability to allocate costs in the context of a TRF rebuts earlier arguments, made by the exchanges, that costs of collection and distribution of market data cannot be allocated, and should thus not be a basis for determining the reasonableness of market data fees.[9] The commenter also asserted that the proposed rule change did not address the competitive impact of the filing, and that any short-term benefits from the market data revenue rebates could be diminished by the long-term impact of less competition.[10] Finally, the commenter said that the proposal addresses issues that are also present in the NetCoalition Petition.[11]

FINRA responded that the arguments made by the commenter were not germane to the proposed rule change. For example, FINRA stated that the issue of the reasonableness of market data fees and the purported lack of transparency regarding the cost of collecting market data are at issue in the NetCoalition Petition and need not be resolved in connection with this filing.[12] FINRA also stated that the costs of collecting and distributing market data are not necessarily determinative of the reasonableness of the proposed rebate.[13] Finally, FINRA stated that the proposed rebate does not constitute an undue burden on competition that is not in furtherance of the Act.[14]

IV. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change, the comment letter, and FINRA's response to the comment letter, and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[15] and, in particular, the requirements of Section 15A(b)(5) of the Act,[16] which requires that FINRA rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

The Commission believes that it is reasonable for FINRA to amend Rule 7001B to adjust the percentage of market data revenue shared with NASD/Nasdaq TRF participants, effective retroactively to January 1, 2008. FINRA seeks to modify the rebate of market data revenue to NASD/Nasdaq TRF participants. Neither the costs incurred in collecting that market data, nor the calculation of market data fees is directly at issue in this filing. The fact that Nasdaq, as the Business Member, has determined to adjust its rebate schedule such that participants may receive a greater percentage of market data revenue does not establish that the fees are excessive. The SIFMA letter does not raise any other issue that would preclude approval of the FINRA proposal.

V. Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and, in particular, Section 15A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–FINRA–2007–041) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–10569 Filed 5–12–08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57784; File No. SR–FINRA–2007–039]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change as Modified by Amendment Nos. 1 and 2 Thereto To Establish an Exemption for Certain Regulation NMS-Compliant Intermarket Sweep Orders from the Requirements in IM–2110–2 (Trading Ahead of Customer Limit Order) and Rule 2111 (Trading Ahead of Customer Market Orders)

May 6, 2008.

I. Introduction

On December 21, 2007, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")), 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 establish an exemption for certain Regulation NMS-compliant Intermarket Sweep Orders ("ISOs") from the requirements governing trading ahead of customer limit orders and customer market orders. On February 11, 2008, FINRA filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on March 5, 2008.[3] The Commission received one comment letter regarding the proposal.[4] FINRA responded to the comment letter on March 26, 2008.[5] On April 30, 2008, FINRA filed Amendment No. 2 to the proposed rule change.[6]

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[7] *Supra* note 4.

[8] SIFMA letter at 1.

[9] *Id.* at 2.

[10] *Id.* at 3.

[11] SIFMA letter at 1. *See* Securities Exchange Act Release No. 55011 (December 27, 2006) (order granting petition for review of SR–NYSEArca–2006–21).

[12] *See* FINRA letter at 2.

[13] *Id.*

[14] *Id.*

[15] 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).

[16] 15 U.S.C. 78o-3(b)(5).

[17] 15 U.S.C. 78s(b)(2).

[18] 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. 57388 (February 27, 2008), 73 FR 11963.

[4] *See* submission via SEC WebForm from Craig Carlino, Monroe Securities, dated March 13, 2008.

[5] *See* letter from Andrea D. Orr, Assistant General Counsel, FINRA, to Nancy M. Morris, Secretary, Commission, dated March 26, 2008 ("FINRA letter")

[6] In Amendment No. 2, FINRA deleted definitions that were either unnecessary or duplicative from

Continued

This order approves the proposed rule change, as modified by Amendment Nos. 1 and 2.

II. Description of the Proposed Rule Change

FINRA is proposing to establish an exemption for certain Regulation NMS-compliant ISOs [7] from the Rule and the Interpretive Material ("IM") that govern trading ahead of customer limit orders and customer market orders. Under the proposed rule, a member will be exempt from its obligations with respect to trading for its own account if an ISO is routed in compliance with Rule 600(b)(30)(ii) of Regulation NMS, and the customer limit order or market order is received after the member routed the ISO. The exemption will also apply if the member executes an ISO to facilitate a customer limit order or market order, and the customer has consented to not receiving the better prices obtained by the ISO.

In its filing with the Commission, FINRA stated that the proposed exemption is similar to an exemption adopted by the New York Stock Exchange LLC to its Rule 92 (Limitations on Members' Trading Because of Customers' Orders). The ISO exemption to Rule 92 was approved by the Commission on July 5, 2007.[8]

III. Summary of Comments

The Commission received one comment letter in response to the proposed rule change.[9] The commenter stated that the implementation of IM–2110–2 will reduce liquidity and result in inferior executions for public investors who own non-penny stock OTC securities.[10] The commenter also objected to the change to the definition of the size of the order on which terms and conditions may be negotiated.[11]

FINRA responded to the comment letter on March 26, 2008.[12] FINRA stated that the comment letter was not germane to the proposed rule change, as it did not pertain to the proposed ISO exemption.[13] According to FINRA, the comments related to a rule change, previously approved by the Commission,[14] which expanded IM–2110–2 to apply to OTC equity securities.[15]

IV. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change, the comment letter, and FINRA's response to the comment letter, and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association [16] and, in particular, Section 15A(b)(6) of the Act,[17] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes that it is reasonable for FINRA to amend IM–2110–2 and Rule 2111 to exempt members when routing certain Regulation NMS-compliant ISOs. The proposed rule change should enable members to comply with the ISO routing requirements of Rule 611 of Regulation NMS without violating IM–2110–2 and Rule 2111 and, given the ISO routing exemption that currently exists under NYSE Rule 92, will subject ISO routing to consistent standards.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–FINRA–2007–039), as modified by Amendment Nos. 1 and 2, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Nancy M. Morris,

Secretary.

[FR Doc. E8–10594 Filed 5–12–08; 8:45 am]

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the proposed rule text. Because the Amendment is technical in nature, it is not subject to notice and comment.

[7] Regulation NMS defines an ISO as a limit order for an NMS stock that meets the following requirements: (i) When routed to a trading center, the limit order is identified as an intermarket sweep order; and (ii) simultaneously with the routing of the limit order identified as an intermarket sweep order, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the NMS stock with a price that is superior to the limit price of the limit order identified as an intermarket sweep order. These additional routed orders also must be marked as intermarket sweep orders. *See* 17 CFR 242.600(b)(30).

[8] *See* Securities Exchange Release No. 56017 (July 5, 2007), 72 FR 38110 (July 12, 2007) (SR–NYSE–2007–21).

[9] *Supra* note 4.

[10] *Id.* at 1–2.

[11] *Id.* at 2.

[12] *Supra* note 5.

[13] *Id.* at 1.

[14] *See* Securities Exchange Act Release No. 55351 (February 26, 2007), 72 FR 09810 (March 5, 2007) (SR–NASD–2005–146).

[15] FINRA letter at 2.

[16] 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).

[17] 15 U.S.C. 78o–3(b)(6).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57790; File No. SR–ISE–2008–33]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Block, Facilitation and Solicited Order Mechanisms

May 6, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 30, 2008, the International Securities Exchange, LLC ("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 substantially by ISE. ISE filed the proposed rule change as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it 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

ISE proposes to amend Supplementary Material .07 to ISE Rule 716 to make it consistent with the definition of a Block Trade under the Exchange's Intermarket Option Linkage ("options linkage") rules. The text of the proposed rule amendment is as follows, with deletions in [brackets] and additions *italicized:*

Rule 716. Block Trades

(a) through (e) no change.

Supplementary Material to Rule 716

.01 through .06 no change.

.07 Away Market Prices. Orders of 50 to 499 contracts *and orders with a premium value below $150,000* executed through the Block, [and] Facilitation *and Solicited Order* Mechanisms will not be executed at a price inferior to the national best bid or offer at the time of execution. Orders of 500 or more contracts *with a premium value of at least $150,000* executed through the Block, Facilitation and

[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).

Solicited Order Mechanisms will be executed without consideration of any prices that might be available on other exchanges trading the same options contract.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ISE included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. 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

The Exchange's Block and Facilitation Mechanisms under ISE Rule 716 provide a way for members to execute block-sized orders, defined as orders of at least 50 contracts. The Solicited Order Mechanism also allows for the execution of block-sized solicited orders, but is limited to orders of at least 500 contracts. The Exchange's rule for the Block and Facilitation Mechanisms specify that orders under 500 contracts may not be executed at prices that would trade through the national best bid or offer ("NBBO") and that orders of 500 contracts or more may be executed in the Block, Facilitation and Solicited Order Mechanisms without consideration of any prices that might be available on other exchanges trading the same options contract.

Under the options linkage rules, Block Trades, which may be executed at prices that are inferior to the NBBO,[5] are defined as orders of at least 500 contracts and a premium value of at least $150,000.[6] Accordingly, the Exchange proposes to amend Supplementary Material .07 to ISE Rule 716 so that it is consistent with the definition of a Block Trade under the options linkage rules by adding a minimum premium requirement of $150,000 for orders that may be traded at prices inferior to the NBBO.[7]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the requirement of Section 6(b)(5) of the Act[9] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposal will assure that the execution of orders through the Block, Facilitation and Solicited Order Mechanism is consistent with the requirements of the options linkage rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

ISE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b-4(f)(6) under the Act normally may not become operative prior to 30 days after the date of filing.[12] However, Rule 19b–4(f)(6)(iii)[13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change seeks to conform the definition of Block Trades to the Exchange's existing options linkage rules.[14] The Commission hereby grants the Exchange's request and designates the proposal as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–ISE–2008–33 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–ISE–2008–33. This file number should be included on the subject line if e-mail is used. To help the

[5] ISE Rule 1902(d)(2) provides that th eExchange will not consider there to have been a trade-through if a member executes a block Trade at a price inferior to the NBBO if such member satisfies all aggrived parties following the execution of the Block Trade.

[6] ISe Rule 1900(2).

[7] The Solicited Order Mechanism will continue to be limited to orders of at least 500 contracts. Reference to the Solicited Order Mechanism is being added to the first sentence of Supplementary Material .07 because such orders could have a premium value that is less than $150,000.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] In addition, Rule 19b–4(f)(6)(iii) under the Act requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission. ISE has complied with this requirement.

[13] *Id.*

[14] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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–2008–33 and should be submitted on or before June 3, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Nancy M. Morris,

Secretary.

[FR Doc. E8–10619 Filed 5–12–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57795; File No. SR–NASDAQ–2008–037]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Modify Nasdaq's Continued Listing Requirements To Replace Round Lot Shareholders

May 7, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 25, 2008, The NASDAQ Stock Market LLC ("Exchange" or "Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Nasdaq. 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

Nasdaq proposes to change the shareholder requirements for continued listing. Nasdaq will implement the proposed rule immediately upon approval.

The text of the proposed rule change is below. Proposed new language is *italicized;* proposed deletions are in brackets.[3]

4200. Definitions

(a) For purposes of the Rule 4000 Series, unless the context requires otherwise:

(1)–(31) No change.

(32) *"Public holders" of a security include both beneficial holders and holders of record, but does not include any holder who is, either directly or indirectly, an executive officer, director, or the beneficial holder of more than 10% of the total shares outstanding.* ["Reported Security" means an equity security for which quotations are entered into the Consolidate Quotations Service.]

(33) "Round lot holder" means a holder of a normal unit of trading. *The number of beneficial holders will be considered in addition to holders of record.*

(34)–(37) No change.

(38) *"Total holders" of a security include both beneficial holders and holders of record.*

(*39*) "Transaction costs" means costs incurred in connection with a limited partnership rollup transaction, including printing and mailing the proxy, prospectus or other documents; legal fees not related to the solicitation of votes or tenders; financial advisory fees; investment banking fees; appraisal fees; accounting fees; independent committee expenses; travel expenses; and all other fees related to the preparatory work of the transaction, but not including costs that would have otherwise been incurred by the subject limited partnerships in the ordinary course of business or solicitation expenses.

[(39)] (*40*) "Underwriting Activity Report" is a report provided by the Corporate Financing Department of NASD Regulation, Inc. in connection with a distribution of securities subject to SEC Rule 101 pursuant to NASD Rule 2710(b)(11) and includes forms that are submitted by members to comply with their notification obligations under Rules 4614, 4619, and 4623.

(b)–(c) No change.

* * * * *

4310. Listing Requirements for Domestic and Canadian Securities

To qualify for listing in Nasdaq, a security of a domestic or Canadian issuer shall satisfy all applicable requirements contained in paragraphs (a), (b), and (c) hereof. Issuers that meet these requirements, but that are not listed on the Nasdaq Global Market, are listed on the Nasdaq Capital Market.

(a)–(b) No change.

(c) In addition to the requirements contained in paragraph (a) and (b) above, and unless otherwise indicated, a security shall satisfy the following criteria for listing on Nasdaq:

(1)–(5) No change.

(6) (A) In the case of common stock, for initial [and continued] listing[,] there shall be at least 300 round lot holders of the security *and for continued listing there shall be at least 300 public holders of the security.*

(B) In the case of preferred stock and secondary classes of common stock, for initial [and continued] listing[,] there shall be at least 100 round lot holders of the security *and for continued listing there shall be at least 100 public holders of the security,* provided in each case that the issuer's common stock or common stock equivalent equity security must be listed on Nasdaq or be a covered security. In the event the issuer's common stock or common stock equivalent security either is not listed on Nasdaq or is not a covered security, the preferred stock and/or secondary class of common stock may be listed on Nasdaq so long as the security satisfies the listing criteria for common stock.

(C) No change.

(7)–(30) No change.

(d) No change.

4320. Listing Requirements for Non-Canadian Foreign Securities and American Depositary Receipts

To qualify for listing on Nasdaq, a security of a non-Canadian foreign issuer, an American Depositary Receipt (ADR) or similar security issued in respect of a security of a foreign issuer shall satisfy the requirements of paragraphs (a), (b), and (e) of this Rule. Issuers that meet these requirements, but that are not listed on the Nasdaq Global Market, are listed on the Nasdaq Capital Market.

(a)–(d) No change.

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at *http://nasdaq.complinet.com.*

(e) In addition to the requirements contained in paragraphs (a) and (b), the security shall satisfy the criteria set out in this subsection for listing on Nasdaq. In the case of ADRs, the underlying security will be considered when determining the ADR's qualification for initial or continued listing on Nasdaq.

(1)–(3) No change.

(4)(A) In the case of common stock, for initial [and continued] listing[,] there shall be at least 300 round lot holders of the security *and for continued listing there shall be at least 300 public holders of the security.*

(B) In the case of preferred stock and secondary classes of common stock, for initial [and continued] listing[,] there shall be at least 100 round lot holders of the security *and for continued listing there shall be at least 100 public holders of the security,* provided in each case that the issuer's common stock or common stock equivalent equity security must be listed on Nasdaq or be a covered security. In the event the issuer's common stock or common stock equivalent security either is not listed on Nasdaq or is not a covered security, the preferred stock and/or secondary class of common stock may be listed on Nasdaq so long as the security satisfies the listing criteria for common stock.

(C) No change.

(5)–(26) No change.

(f) No change.

* * * * *

4426. Nasdaq Global Select Market Listing Requirements

(a) No change.

(b) Liquidity Requirements

(1) The security must demonstrate either:

(A)(i) a minimum of 550 [beneficial] *total* shareholders, and (ii) an average monthly trading volume over the prior 12 months of at least 1,100,000 shares per month; or

(B) a minimum of 2,200 [beneficial] *total* shareholders; or

(C) a minimum of 450 [beneficial] round lot shareholders

(2)–(3) No change.

(c)–(f) No change.

* * * * *

4450. Quantitative Maintenance Criteria

After listing as a Nasdaq Global Market security, a security must substantially meet the criteria set forth in paragraphs (a) or (b), and (c), (d), (e) (f), (g), (h) or (i) below to continue to remain listed on the Nasdaq Global Market. A security maintaining its listing under paragraph (b) need not also be in compliance with the quantitative maintenance criteria in the Rule 4300 series.

(a) *Maintenance Standard 1*—First Class of Common Stock, Shares or Certificates of Beneficial Interest of Trusts, Limited Partnership Interests in Foreign or Domestic Issues and American Depositary Receipts.

(1)–(3) No change.

(4) 400 *total* shareholders [of round lots]; and

(5)–(6) No change.

(b) *Maintenance Standard 2*—First Class of Common Stock, Shares or Certificates of Beneficial Interest of Trusts, Limited Partnership Interests in Foreign or Domestic Issues and American Depositary Receipts.

(1)–(4) No change.

(5) 400 *total* shareholders [of round lots]; and

(6) No change.

(c)–(g) No change.

(h) Quantitative Maintenance Criteria—Preferred Stock and Secondary Classes of Common Stock.

For continued listing, if the common stock or common stock equity equivalent security of the issuer is listed on Nasdaq or another national securities exchange, the issue shall have:

(1)–(3) No change.

(4) A minimum of 100 [round lot] *public* shareholders;

(5) No change.

Alternatively, in the event the issuer's common stock or common stock equivalent security is not listed on either Nasdaq or another national securities exchange, the preferred stock and/or secondary class of common stock may be listed on Nasdaq so long as the security satisfies the listing criteria for common stock.

(i) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change 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. Nasdaq 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

Nasdaq rules require a company to maintain a certain minimum number of round lot holders for continued listing.[4] However, for a variety of reasons, it is often difficult for Nasdaq and the listed company to determine compliance with these requirements. First, the Commission only requires companies to annually disclose the number of record holders, not round lot holders, in their proxy. Companies often don't know how many round lot holders they have since that group includes "objecting beneficial holders" who wish their identity to remain confidential from the company.

It also can be difficult to obtain the number of shares held by beneficial owners from record holders, such as broker-dealers.

In order to determine compliance with the round lot requirement, Nasdaq reviews a number of factors, including whether the company has a number of record holders well in excess of the round lot holder requirement and shareholder data provided by the company's transfer agent and Broadridge Financial Solutions, Inc. (formerly, Automatic Data Processing, Inc.). While this process is effective, it is very time-consuming for Nasdaq and can be frustrating to the company, which has to spend considerable time and may be charged a fee to obtain this information.

In contrast, the number of total holders is more easily determined. For example, the number of proxies that a company mails is a very good approximation of the number of its total holders. In fact, many companies disclose the number of beneficial holders in their public filings, either instead of, or in addition to, the number of record holders. Further, the number of public holders generally can be easily determined by subtracting from the total shareholders the number of executive officers, directors, and 10% shareholders that are disclosed in the company's proxy statement.

When the round lot holder requirement was originally adopted it was difficult and costly to trade in increments of less than 100 shares. Thus odd lot holders (that is, holders of fewer

[4] The minimum requirement for continued listing of the first class of common stock or its equivalent on both the NASDAQ Global and Global Select Markets is 400 round lot shareholders and on the NASDAQ Capital Market is 300 round lot shareholders.

than 100 shares) added little to the distribution and potential liquidity of a security. These impediments no longer exist, given the current state of online trading and competitive commission structures. As such, Nasdaq believes that today all holders, not just holders of round lots, can potentially contribute to a security's liquidity.

In addition, in Nasdaq's experience, companies do not typically see a decrease in the number of round lot holders following their listing, absent a transaction such as a reverse stock split or major stock buy-back.

Given these difficulties and changed circumstances, Nasdaq proposes that the shareholder requirements for continued listing be changed so that it no longer considers only round lot holders. As revised, Nasdaq would generally require 300 public shareholders[5] for continued listing on the Capital Market, and 400 total shareholders for continued listing on the Global and Global Select Markets.[6] In the case of preferred stock and secondary classes of common stock, 100 public shareholders would be required for continued listing on the Capital, Global and Global Select Markets. As proposed, a public holder would exclude any holder who is, either directly or indirectly, an executive officer, director, or the beneficial holder of more than 10% of the total shares outstanding.

Under this definition, Nasdaq would consider immediate family members of an executive officer, director, or 10% holder to not be public holders to the extent the shares held by such individuals are considered beneficially owned by the executive officer, director or 10% holder under Rule 16a–1 under the Act.[7]

Nasdaq also proposes to modify the rules relating to the Nasdaq Global Select Market to use the newly defined term "total shareholders" in those rules; however, no substantive change is being made to the requirements for the Global Select Market. In addition, no change is proposed to the initial listing requirements because the majority of initial listings are initial public offerings, where the number of round lot shareholders can be easily determined by the underwriter when distributing the offering, and because SEC rules require that markets have a minimum of 300 round lot holders for initial listing to avoid having listed securities be subject to the penny stock rules.[8] Nasdaq does propose, however, to clarify that the definition of round lot holders includes beneficial holders in addition to holders of record, consistent with current practice.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[9] in general, and with Sections 6(b)(5) of the Act,[10] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating 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 proposed rule change is consistent with these requirements in that modifying the requirement will facilitate consistent application of the rules by Nasdaq and ease the burden of compliance on listed companies, without increasing the risk to investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Nasdaq–2008–037 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–Nasdaq–2008–037. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days

[5] The definition of "public holders" would appear in proposed Rule 4200(a)(32) and replace the definition of "Reported Security" because that term is now defined in Regulation NMS and is not used within the Nasdaq rules.

[6] Nasdaq proposes to require public shareholders, instead of total shareholders, on the Capital Market so that Nasdaq's rules remain substantially similar to the rules of the American Stock Exchange ("Amex"), which require 300 public shareholders. *See* Section 1003(b)(i)(B) of the Amex Company Guide. Nasdaq does not believe it necessary to limit the shareholders on the Global and Global Select Markets to public shareholders given the higher number of total holders required. In addition, Nasdaq notes that the New York Stock Exchange ("NYSE") requires 400 total shareholders for continued listing. *See* Section 802.01A of the NYSE Listed Company Manual.

[7] *See* 17 CFR 240.16a–1(a)(2). Nasdaq will determine "public holders" based on the information disclosed in public filings about the company, including ownership statements and proxy statements.

[8] *See* 17 CFR 240.3a51–1(a)(2)(i)(D).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Nasdaq–2008–037 and should be submitted on or before June 3, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

[FR Doc. E8–10622 Filed 5–12–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57763; File No. SR-NASD–2007–031]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority, Inc.); Order Approving Proposed Rule Change as Modified by Amendment Nos. 1, 2 and 3 Thereto To Amend NASD Rule 7001E To Increase the Percentage of Market Data Revenue Shared With NASD/NYSE TRF Participants

May 1, 2008.

I. Introduction

On April 24, 2007, the National Association of Securities Dealers, Inc. ("NASD") (n/k/a Financial Industry Regulatory Authority, Inc.), 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 adjust the percentage of market data revenue shared with NASD/NYSE TRF participants.[3] On June 1, 2007, NASD filed Amendment No. 1 to the proposed rule change. On October 29, 2007, FINRA filed Amendment No. 2 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on November 14, 2007.[4] The Commission received one comment letter regarding the proposal.[5] On February 4, 2008, FINRA filed Amendment No. 3 to respond to the comment letter and to propose a technical change to the original rule filing.[6] This order approves the proposed rule change, as modified by Amendment Nos. 1, 2, and 3.

II. Description of the Proposed Rule Change

FINRA proposes to amend NASD Rule 7001E to increase the market data revenue that is shared with FINRA members that report trades in Tape A, Tape B, and Tape C stocks to the NASD/NYSE Trade Reporting Facility (the "NASD/NYSE TRF").[7] Currently, FINRA members that report trades in Tape A, Tape B, and Tape C stocks to the NASD/NYSE TRF receive a 50% *pro rata* credit on the gross market data revenue earned by the NASD/NYSE TRF.[8]

The proposed rule change increases from 50% to 100% the percentage of gross market data revenue that is shared with members. FINRA members that report trades in Tape A, Tape B and Tape C stocks to the NASD/NYSE TRF will thus receive a 100% *pro rata* credit on gross market data revenue earned by the NASD/NYSE TRF.

III. Summary of Comments

The Commission received one comment letter in response to the proposed rule change.[9] The commenter stated that the proposed rebate demonstrated that market data fees are excessive, and do not have a fair and reasonable basis.[10] The commenter noted that, in its capacity as the "SRO Member," FINRA allocates and deducts costs before passing market data revenue to each TRF. The commenter asserted that this ability to allocate costs in the context of a TRF rebuts earlier arguments, made by the exchanges, that costs of collection and distribution of market data cannot be allocated, and should thus not be a basis for determining the reasonableness of market data fees.[11] The commenter also said that the filing did not address the competitive impact of the proposed rebates, and that any short-term benefits from the rebates could be diminished by the long-term impact of less competition.[12] Finally, the commenter stated that the issue of transparency regarding market data costs and revenues, which constitutes part of the NetCoalition Petition,[13] is also present in this filing.[14]

FINRA responded that the arguments made by the commenter were not germane to the proposed rule change. For example, FINRA said that the issue of the reasonableness of market data fees and the purported lack of transparency regarding the cost of collecting market data are at issue in the NetCoalition Petition and need not be resolved in connection with this filing.[15] According to FINRA, the costs of collecting and distributing market data are not necessarily determinative of the reasonableness of the proposed rebate.[16] Finally, FINRA stated that the proposed rebate does not constitute an undue burden on competition that is not in furtherance of the purposes of the Act.[17]

IV. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change, the comment letter, and FINRA's response to the comment letter, and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[18] and, in particular, the

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[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Effective July 30, 2007, Financial Industry Regulatory Authority, Inc. ("FINRA") was formed through the consolidation of NASD and the member regulatory functions of NYSE Regulation, Inc.

[4] *See* Securities Exchange Act Release No. 56754 (November 6, 2007), 72 FR 64101.

[5] *See* letter from Christopher Gilkerson and Gregory Babyak, Co-Chairs, Market Data Subcommittee of the SIFMA Technology and Regulation Committee, to Nancy M. Morris, Secretary, Commission, dated December 5, 2007 ("SIFMA letter").

[6] Amendment No. 3 clarifies that the Tape B revenue sharing program includes both the American Stock Exchange LLC and regional exchanges. Because it is technical in nature, it is not subject to notice and comment ("Amendment No. 3").

[7] In establishing the NASD/NYSE TRF, NASD and NYSE Market, Inc. ("NYSE") entered into the Limited Liability Company Agreement of NASD/NYSE Trade Reporting Facility LLC. Under that agreement, NASD, as the "SRO Member," has the sole regulatory responsibility for the NASD/NYSE TRF. As the "Business Member," NYSE is responsible for the management of the business affairs of the NASD/NYSE TRF, to the extent those activities are not inconsistent with FINRA's regulatory functions.

[8] "Gross revenue" is defined as the revenue received by the NASD/NYSE TRF from the three tape associations after the tape associations deduct allocated support costs and unincorporated business costs.

[9] *Supra* note 5.

[10] SIFMA letter at 2.

[11] *Id.*

[12] *Id.* at 3.

[13] *See* Securities Exchange Act Release No. 55011 (December 27, 2006) (order granting petition for review of SR–NYSEArca–2006–21).

[14] SIFMA letter at 3.

[15] *See* Amendment No. 3, at 4.

[16] *Id.*

[17] *Id.*

[18] 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).

requirements of Section 15A(b)(5) of the Act,[19] which requires that FINRA rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

The Commission believes that it is reasonable for FINRA to amend Rule 7001E to adjust the percentage of market data revenue shared with NASD/NYSE TRF participants, effective retroactively to April 18, 2007, the date the NASD/NYSE TRF began operation. FINRA seeks to increase the rebate of market data revenue to NASD/NYSE TRF participants. Neither the costs incurred in collecting that market data, nor the calculation of market data fees is directly at issue in this filing. The fact that NYSE, as the Business Member, has determined to rebate a greater percentage of market data revenue does not establish that the underlying fees are excessive. The SIFMA letter does not raise any other issue that would preclude approval of the FINRA proposal.

V. Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and, in particular, Section 15A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–NASD–2007–031), as modified by Amendment Nos. 1, 2, and 3, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–10566 Filed 5–12–08; 8:45 am]

BILLING CODE 8010–01–P

[19] 15 U.S.C. 78o–3(b)(5).

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57764; File No. SR–NASD–2007–043]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority, Inc.); Order Approving Proposed Rule Change as Modified by Amendment No. 1 Thereto To Amend NASD Rule 7001C To Increase the Percentage of Market Data Revenue Shared With NASD/NSX TRF Participants

May 1, 2008.

I. Introduction

On June 29, 2007, the National Association of Securities Dealers, Inc. ("NASD") (n/k/a Financial Industry Regulatory Authority, Inc.), 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 adjust the percentage of market data revenue shared with NASD/NSX TRF participants.[3] On October 29, 2007, NASD filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on November 14, 2007.[4] The Commission received one comment letter regarding the proposal.[5] FINRA responded to the comment letter on March 27, 2008.[6] National Stock Exchange, Inc. ("NSX") subsequently submitted a response to the comment letter.[7] This order approves the proposed rule change, as modified by Amendment No. 1.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Effective July 30, 2007, Financial Industry Regulatory Authority, Inc. ("FINRA") was formed through the consolidation of NASD and the member regulatory functions of NYSE Regulation, Inc.

[4] *See* Securities Exchange Act Release No. 56752 (November 6, 2007), 72 FR 64099.

[5] *See* letter from Christopher Gilkerson and Gregory Babyak, Co-Chairs, Market Data Subcommittee of the SIFMA Technology and Regulation Committee, to Nancy M. Morris, Secretary, Commission, dated December 5, 2007 ("SIFMA letter"). This comment letter also addressed the proposal, filed by NASD, to increase the percentage of market data revenue shared with participants in the NASD/NYSE TRF. *See* Securities Exchange Act Release No. 56754 (November 6, 2007), 72 FR 64101 (November 14, 2007) (SR–NASD–2007–031).

[6] *See* letter from Lisa C. Horrigan, Associate General Counsel, FINRA, to Nancy M. Morris, Secretary, Commission, dated March 27, 2008 ("FINRA letter").

[7] *See* letter from Philip M. Pinc, Vice President, Counsel, National Stock Exchange, Inc., to Nancy M. Morris, Secretary, Commission, dated April 2, 2008 ("NSX letter").

II. Description of the Proposed Rule Change

FINRA proposes to amend NASD Rule 7001C to increase the percentage of market data revenue that is shared with FINRA members that report trades in New York Stock Exchange ("Tape A"), American Stock Exchange ("Tape B"), and Nasdaq Exchange ("Tape C") stocks to the NASD/NSX Trade Reporting Facility (the "NASD/NSX TRF").[8] Currently, FINRA members that report trades in Tape A, Tape B, and Tape C stocks to the NASD/NSX TRF receive a 50% *pro rata* credit on the gross market data revenue earned by the NASD/NSX TRF.[9]

The proposed rule change increases from 50% to 75% the percentage of market data revenue that is shared with members. FINRA members that report trades in Tape A, Tape B and Tape C stocks to the NASD/NSX TRF will thus receive a 75% *pro rata* credit on gross market data revenue earned by the NASD/NSX TRF.

III. Summary of Comments

The Commission received one comment letter in response to the proposed rule change.[10] The commenter stated that the proposed rebate demonstrated that market data fees are excessive, and do not have a fair and reasonable basis.[11] The commenter noted that, in its capacity as "SRO Member," FINRA allocates and deducts costs before passing market data revenue to each TRF. According to the commenter, this ability to allocate costs in the context of a TRF rebuts earlier arguments made by the exchanges that costs of collection and distribution of market data could not be allocated, and should thus not be a basis for determining the reasonableness of market data fees.[12] Finally, the commenter asserted that the issue of transparency regarding market data costs and revenues, which constitutes

[8] In establishing the NASD/NSX TRF, NASD and NSX entered into the Limited Liability Company Agreement of NASD/NSX Trade Reporting Facility LLC. Under that agreement, NASD, as the "SRO Member," has the sole regulatory responsibility for the NASD/NSX TRF. As the "Business Member," NSX is responsible for the management of the business affairs of the NASD/NSX TRF, to the extent those activities are not inconsistent with FINRA's regulatory functions.

[9] "Gross revenue" is defined as the revenue received by the NASD/NSX TRF from the three tape associations after the tape associations deduct allocated support costs and unincorporated business costs.

[10] SIFMA letter, *supra* note 5.

[11] SIFMA letter at 2.

[12] *Id.*

part of the NetCoalition Petition,[13] is also present in this filing.[14]

FINRA responded that none of the arguments made by the commenter was germane to the proposed rule change.[15] For example, FINRA stated that the issue of the reasonableness of market data fees and the purported lack of transparency regarding the cost of collecting market data are at issue in the NetCoalition Petition and need not be resolved in connection with this filing.[16] FINRA also asserted that the costs of collecting and distributing market data are not necessarily determinative of the reasonableness of the proposed rebate.[17]

In its response, NSX stated that it generally agreed with the SIFMA letter.[18] In particular, NSX agreed with SIFMA's assertion that the proposal to rebate 100% of market data revenue for participants of the NASD/NYSE TFF[19] might drive smaller TRFs, such as the NASD/NSX TRF, out of business.[20] NSX requested that the Commission approve the proposed rebate of market data revenue to participants in the NASD/NSX TRF, as it was consistent with NSX's policy of rebating market data revenues to investors.[21]

IV. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change, the comment letter, and the responses of both FINRA and NSX to the comment letter, and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[22] and, in particular, the requirements of Section 15A(b)(5) of the Act,[23] which requires that FINRA rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

The Commission believes that it is reasonable for FINRA to amend Rule 7001C to adjust the percentage of market data revenue shared with NASD/NSX TRF participants, effective retroactively to April 1, 2007. FINRA seeks to increase the rebate of market data revenue to NASD/NSX TRF participants. Neither the costs incurred in collecting that market data, nor the calculation of market data fees are directly at issue in this filing. The fact that NSX, as the Business Member, has determined to rebate a greater percentage of market data revenue does not establish that the underlying fees are excessive. The SIFMA letter does not raise any other issue that would preclude approval of the FINRA proposal.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NASD–2007–043), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–10567 Filed 5–12–08; 8:45 am]

BILLING CODE 8010–01–P

[13] *See* Securities Exchange Act Release No. 55011 (December 27, 2006) (order granting petition for review of SR–NYSEArca–2006–21).

[14] SIFMA letter at 3.

[15] FINRA letter at 1.

[16] *Id.* at 2.

[17] *Id.*

[18] NSX letter at 2.

[19] *See* Securities Exchange Act Release No. 56754 (November 6, 2007), 72 FR 64101 (November 14, 2007) (SR–NASD–2007–031).

[20] NSX letter at 2.

[21] *Id.*

[22] 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).

[23] 15 U.S.C. 78o–3(b)(5).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57786; File No. SR–NASD–2007–052]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority, Inc.); Order Approving Proposed Rule Change as Modified by Amendment No. 1, Relating to Amendments to the NASD Rule 9700 Series To Streamline the Procedural Rules Applicable to General Grievances Related to FINRA Automated Systems

May 6, 2008.

I. Introduction

On July 23, 2007, the National Association of Securities Dealers, Inc. ("NASD") (n/k/a Financial Industry Regulatory Authority, Inc. ("FINRA")) [1] filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[2] and Rule 19b–4 thereunder,[3] a proposed rule change to amend the NASD Rule 9700 Series ("Rule 9700 Series") to streamline the existing procedural rules applicable to general grievances related to FINRA automated systems; to provide discretionary review by the National Adjudicatory Council ("NAC"), acting through the NAC's Review Subcommittee;[4] and to delete certain text that is no longer necessary. On February 7, 2008, FINRA filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on March 21, 2008.[5] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change

The proposed rule change seeks to amend the NASD Rule 9700 Series to streamline the existing procedural rules applicable to general grievances related to FINRA automated systems, to provide discretionary review by NAC, acting through the NAC's Review Subcommittee, and to delete certain text that is no longer necessary.

The NASD Rule 9700 Series, Procedures on Grievances Concerning the Automated Systems, provides redress, where justified, for persons aggrieved by the operations of any automated quotation, execution or communication system owned or operated by FINRA that is not otherwise provided for under the Code of Procedure ("Rule 9000 Series") or the Uniform Practice Code ("Rule 11000 Series"). The Rule 9700 Series was established to ensure adequate procedural protections to users of FINRA systems.[6] Although by its terms the Rule 9700 Series has potentially broader application, it historically has been used only for appeals of Over-the-Counter Bulletin Board ("OTCBB") eligibility determinations made by FINRA staff pursuant to Rule 6530.[7]

[1] On July 26, 2007, the Commission approved a proposed rule change filed by the NASD to amend the NASD's Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority, Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. *See* Securities Exchange Act Release No. 56146 (July 26, 2007), 72 FR 42190 (August 1, 2007) (SR–NASD–2007–053).

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] For purposes of the proposed rule change, the term "Review Subcommittee" will have the meaning set forth in NASD Rule 9120(aa).

[5] *See* Securities Exchange Act Release No. 57504 (March 14, 2008), 73 FR 15239 (March 21, 2008).

[6] *See* Securities Exchange Act Release No. 27867 (April 2, 1990), 55 FR 12978 (April 6, 1990) (order approving SR–NASD–90–006).

[7] The OTCBB is a facility for the publication of quotations in eligible over-the-counter equity securities of issuers that are subject to the filing of financial reports with the Commission (or other

Continued

Currently under the Rule 9700 Series, a party that is aggrieved by the operation of a FINRA automated system may request a review by a hearing panel. In accordance with the Rule 9700 Series, the aggrieved party may also request a review of the hearing panel's decision by a Committee designated by FINRA's Board of Governors ("Board").[8] With respect to OTCBB eligibility reviews, both of these reviews pursuant to the Rule 9700 Series are solely to determine whether the issuer filed a complete report by the applicable due date and, thus, whether the security of the issuer is eligible for continued quotation. The Rule 9700 Series does not provide discretion to grant extensions of time for ineligible securities to become eligible or any other form of relief.

Given that these reviews focus on one narrow issue, FINRA proposes to amend the Rule 9700 Series to streamline the review process. Specifically, reviews of staff determinations under the Rule 9700 Series would be adjudicated by a Hearing Officer[9] appointed by FINRA's Office of Hearing Officers, subject to discretionary review by the NAC, acting through the NAC's Review Subcommittee.[10]

After the review hearing, the Hearing Officer would prepare a written decision and provide it to the NAC's Review Subcommittee, which would have the ability to call the decision for review during certain specified timeframes.[11] As is currently the case with most expedited actions under the Rule 9550 Series, aggrieved parties would not have the right to appeal the decision to the NAC's Review Subcommittee.[12] The Hearing Officer's decision, if not called for review by the NAC's Review Subcommittee, would constitute final FINRA action on the matter.[13]

If a decision is called for review by the NAC's Review Subcommittee, the NAC or NAC's Review Subcommittee would appoint a Subcommittee[14] of the NAC to conduct a review.[15] Based on its review, the Subcommittee would make a recommendation to the NAC and the NAC, in turn, would issue a decision on the matter. The decision of the NAC would constitute final FINRA action.

An aggrieved party also would continue to have the right to appeal the Hearing Officer's decision, or the NAC decision, as the case may be, to the Commission.

FINRA also proposes to make conforming and non-substantive changes to Rules 6530 and 9120 to reflect the amended review process contained in the Rule 9700 Series. There are no proposed changes to other aspects of the review process relating to OTCBB eligibility determinations under Rule 6530 (*e.g.*, notifications and time periods for requesting review, the scope of review and the applicable fees for such review).[16]

In addition, FINRA proposes to make a technical change to the text of Rule 9710. to clarify that the scope of the Rule 9700 Series is to address general grievances not otherwise provided for by any other FINRA Rules.

Finally, FINRA proposes to delete language in Rule 6530(e), relating to an October 1, 2005 timeframe, that is no longer necessary.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be the date of publication of the *Regulatory Notice* announcing Commission approval.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.[17] Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act[18] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and in general, to protect investors and the public interest. In particular, the Commission finds that the revisions to the Rule 9700 Series governing the review process for OTCBB eligibility determinations under Rule 6530 strike a reasonable balance between the need to ensure fairness to aggrieved parties and the need for expedited action, and appropriately seek to clarify that the scope of the Rule 9700 Series is to address general grievances not otherwise provided for by any other FINRA Rules.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NASD–2007–052), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Nancy M. Morris,

Secretary.

[FR Doc. E8–10618 Filed 5–12–08; 8:45 am]

BILLING CODE 8010–01–P

appropriate regulator) and are current in their reporting. FINRA staff monitors the submission of such periodic reports to determine an issuer's initial and continued eligibility for quotation on the OTCBB and, pursuant to Rule 6530, restricts the quoting of securities of issuers that are late or delinquent in filing periodic reports.

[8] Currently, the Nasdaq Listing and Hearing Review Council ("NLHRC") has authority to review hearing panel decisions and has only ever conducted one such review, which upheld the decision of the hearing panel. NLHRC decisions have been subject to further review by FINRA's Board solely upon the request of one or more Governors. The proposed rule change would eliminate the NLHRC's role.

[9] For purposes of the proposed rule change, the term "Hearing Officer" will have the meaning set forth in Rule 9120(p).

[10] Subject to the NAC's discretionary review (acting through the NAC's Review Subcommittee), a Hearing Officer currently acts as the adjudicator in expedited actions involving (1) a failure to pay FINRA dues, fees or other charges and (2) a failure to pay an arbitration award or related settlement, pursuant to Rules 9553 and 9554, respectively.

[11] The NAC's Review Subcommittee would have the right to call the Hearing Officer's decision for review within 21 days after receipt of such decision, which is consistent with the timeframe for the Review Subcommittee's call right involving expedited actions under the Rule 9550 Series.

[12] Under many of the existing rules with expedited components, respondents may not appeal the matter to a FINRA appellate body, such as the NAC. For example, the decision of the Hearing Officer under Rule 9553 (Failure to Pay Dues, Fees and Other Charges) is not appealable, at the request of a party, to the NAC or any other internal FINRA appellate body under the existing system.

[13] Currently under Rule 9780, FINRA's Board has a right to review NLHRC decisions issued pursuant to Rule 9770. The proposed rule change would provide the NAC (rather than the Board) with a call right, which is consistent with other expedited actions under the Rule 9550 Series.

[14] For purposes of the proposed rule change, the term "Subcommittee" has the meaning set forth in Rule 9120(cc). The Subcommittee would be comprised as set forth in Rule 9331(a)(1).

[15] If the NAC's Review Subcommittee calls a matter for review, the timelines for such review would be as set forth in proposed Rule 9760.

[16] In accordance with Rule 6530, an aggrieved party requesting a review of an OTCBB eligibility determination by a Hearing Officer would continue to be required to pay a $4,000 fee for such review. Given that aggrieved parties would only have the right to appeal to the Office of Hearing Officers and any further level of review would be at the discretion of the NAC's Review Subcommittee, the additional $4,000 fee currently provided for in Rule 6530(f)(3) would be eliminated.

Also in accordance with Rule 6530, a request for review would stay the OTCBB security's removal until the Hearing Officer issues a decision. If the NAC's Review Subcommittee calls a matter for review, the OTCBB security's removal will be stayed until the NAC issues a decision.

[17] 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).

[18] 15 U.S.C. 78o–3(b)(6).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57785; File No. SR–NYSE–2008–17]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change To Adopt New Initial and Continued Listing Standards To List Securities of Special Purpose Acquisition Companies

May 6, 2008.

I. Introduction

On March 6, 2008, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new initial and continued listing standards to list securities of special purpose acquisition companies ("SPACs"). The proposed rule change was published in the **Federal Register** on March 21, 2008.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange has proposed to amend its Listed Company Manual ("Manual") to adopt new initial and continued listing standards to list securities of SPACs. In its proposal, NYSE generally described the structure of SPACs.[4] NYSE notes that SPACs raise capital in an initial public offering ("IPO") to enter into future undetermined business combinations through mergers, capital stock exchanges, asset acquisitions, stock purchases, reorganizations or other similar business combinations with one or more operating businesses or assets. In the IPO, SPACs typically sell units consisting of one share of common stock and one or more warrants (or a fraction of a warrant) to purchase common stock, that are separable at some point after the IPO. Further, NYSE notes that the management of the SPAC generally receives a percentage of the equity and may be required to purchase additional shares in a private placement at the time of the IPO. Because of the structure of SPACs, they do not have any prior financial history, unlike operating companies.

The Exchange proposes to adopt new Section 102.06 of the Manual for the initial listing standards for securities of SPACs. NYSE's existing listing rules require all listed companies to have some operating history prior to listing. The proposed standards, as described below, would allow the listing of securities of SPACs with no prior operating history, a departure from NYSE's current listing requirements.

The Exchange also proposes to amend the Manual to require that: (1) Any equity security listing on the Exchange must have a closing price or, if listing in connection with an IPO, an IPO price per share of at least $4 at the time of initial listing; and (2) convertible debt issuances listed on the Exchange must have an aggregate market value or principal amount of no less than $10,000,000.

A. Initial Listing Standards for Securities of SPACs

As proposed, SPACs would have to meet the same distribution criteria as all other IPOs–400 holders of round lots and 1,100,000 publicly held shares.[5] In addition, SPACs would have to meet all of the Exchange's corporate governance requirements applicable to operating companies. Under the proposal, SPACs would also need to demonstrate an aggregate market value of $250,000,000 and a market value of publicly held shares of $200,000,000, as well as meet the new $4 price requirement applicable to all equity securities listing on the Exchange.[6] Further, SPACs would be required under the proposed rules to keep at least 90% of the proceeds, together with the proceeds of any other concurrent sales of the SPACs' equity securities, in a trust account. An independent custodian would be required to control the trust account until consummation of a business combination in the form of a merger, capital stock exchange, asset acquisition, stock purchase, reorganization, or similar business combination, with one or more operating businesses or assets with a fair market value equal to at least 80% of the net assets in the trust (minus working capital and deferred underwriting discount) ("Business Combination").

The proposal would also require that under the terms of the SPAC's constitutive documents or by contract, any SPAC deemed suitable for listing would be subject to the following minimum requirements.

- The Business Combination must be approved by a majority vote of the votes cast by public shareholders at a duly held shareholders meeting.
- Each public shareholder voting against the Business Combination will have the right ("Conversion Right") to convert its shares of common stock into a pro rata share of the aggregate amount then on deposit in the trust account (net of taxes payable and amounts disbursed to management for working capital purposes), provided that the Business Combination is approved and consummated. SPACs may establish a limit (set no lower than 10% of the shares sold in the IPO) as to the maximum number of shares with respect to which any public shareholder, together with any affiliate of such shareholder or any person with whom such shareholder is acting as a "group" (as such term is used in Sections 13(d)[7] and 14(d)[8] of the Act), may exercise Conversion Rights.[9]
- The SPAC cannot consummate its Business Combination if public shareholders owning in excess of a threshold amount (to be set no higher than 40% by the SPAC) of the shares of common stock issued in the IPO exercise their Conversion Rights in connection with such Business Combination.
- The SPAC would be liquidated if a Business Combination has not been consummated within a specified time period, not to exceed three years. Under the proposal, NYSE must promptly commence delisting procedures with respect to the securities of any SPAC that fails to consummate a Business Combination within (i) the time period specified by its constitutive documents or by contract, or (ii) three years, whichever is shorter.
- The SPAC's founding shareholders must waive their rights to participate in any liquidation distribution with respect to all shares of common stock owned by each of them prior to the IPO or purchased in any private placement occurring in conjunction with the IPO, including the common stock underlying any founders' warrants. In addition, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57499 (March 14, 2008), 73 FR 15246.

[4] *See id.*

[5] *See* Manual Section 102.01A.

[6] NYSE would exclude shares held by directors, officers, or their immediate families and other concentrated holdings of 10% or more in calculating the number of publicly held shares. For SPACs that list securities at the time of their IPOs, if necessary, the Exchange would rely on a written commitment from the underwriter to represent the anticipated value of the offering in order to determine compliance.

[7] 15 U.S.C. 78m(d).

[8] 15 U.S.C. 78n(d).

[9] For example, a SPAC which sells 10,000,000 shares in its IPO could limit the exercise of Conversion Rights by any one holder to 10% of that amount, or a maximum of 1,000,000 shares.

underwriters of the IPO must agree to waive their rights to any deferred underwriting discount deposited in the trust account in the event the SPAC liquidates prior to the completion of a Business Combination.[10]

If the securities of the SPAC are listed as units, the components of the units (other than common stock) would be required to meet the applicable initial listing standards for the security types represented by the components.[11]

Under the proposal, the Exchange has discretion to consider these listings on a case-by-case basis, and would consider the following factors in its decision:

- The experience and track record of management;
- the amount of time permitted for the completion of the Business Combination prior to the mandatory dissolution of the SPAC;
- the nature and extent of management compensation;
- the extent of management's equity ownership in the SPAC and any restrictions on management's ability to sell SPAC stock;
- the percentage of the contents of the trust account that must be represented by the fair market value of the Business Combination;
- the percentage of voting publicly held shares whose votes are needed to approve the Business Combination;
- the percentage of the proceeds of sales of the SPAC's securities that is placed in the trust account; and
- such other factors as the Exchange believes are consistent with the goals of investor protection and the public interest.

B. Continued Listing Standard of SPACs

The Exchange also proposes to amend Section 802.01B of the Manual for the continued listing standards for securities of SPACs.

1. Prior to a Business Combination

Prior to the consummation of a Business Combination, NYSE would promptly initiate suspension and delisting procedures if:

- The SPAC's average aggregate global market capitalization is below $125,000,000 or the average aggregate global market capitalization attributable to its publicly held shares is below $100,000,000, in each case over 30 consecutive trading days;[12]
- the SPAC's securities initially listed (either common stock or units) fall below the following distribution criteria:

(1) The number of total stockholders[13] is less than 400; or

(2) the number of total stockholders[14] is less than 1,200 and average monthly trading volume is less than 100,000 shares (for the most recent 12 months); or

(3) the number of publicly held shares[15] is less than 600,000;[16] or

- the SPAC fails to consummate a Business Combination within the time period specified by its constitutive documents or required by contract, or three years, whichever is shorter.

The continued listing standards set forth in Sections 801 ("Policy"), 802.01C ("Price Criteria for Capital or Common Stock"), 802.01D ("Other Criteria") and 802.01E ("SEC Annual Report Timely Filing Criteria") of the Manual would also apply to SPACs, in the same way those provisions apply to other equity securities.

2. At the Time of the Business Combination

After shareholders approve a Business Combination, but prior to its consummation, the Exchange would consider whether the continued listing of the securities of the SPAC, after the consummation of the Business Combination, would be in the best interests of the Exchange and the public interest. NYSE would have the discretion to delist securities of the SPAC prior to consummation of the Business Combination. A SPAC would not be eligible to follow the procedures to cure the deficiencies outlined in Sections 802.02 and 802.03 of the Manual, and would be subject to delisting procedures as set forth in Section 804 of the Manual.

3. Continued Listing Standard Applicable to SPACs After Business Combination

After consummation of a Business Combination, the SPAC would be subject to Sections 801 and 802.01[17] of the Manual in their entirety and would be considered to be below compliance if it does not meet the continued listing standards applicable to operating companies listed under the Exchange's Earnings Test in Section 802.01B of the Manual—if average global market capitalization over a consecutive 30-day period is less than $75,000,000, and stockholders' equity is less than $75,000,000.[18]

4. Application of "Back Door Listing" Rule to SPACs Upon Consummation of Business Combination

When a SPAC consummates a Business Combination, the Exchange would consider whether the Business Combination gives rise to a "back door

[10] In the event of liquidation, the pro rata share of the trust account to be paid to the holder of each publicly held share would be calculated in accordance with the law of the SPAC's state of incorporation. However, the actual amount paid to the public shareholders could vary depending on a variety of factors as disclosed in the IPO prospectus, such as liquidation expenses, or indemnification obligations.

[11] For example, a component that is a warrant will be subject to the initial listing standards for warrants set forth in Section 703.12 of the Manual.

[12] The Exchange would notify the SPAC if the average aggregate global market capitalization falls below $150,000,000 or the average aggregate global market capitalization of publicly held shares falls below $125,000,000, and would advise the SPAC of the delisting standard. A SPAC would not be eligible to follow the procedures outlined in Sections 802.02 and 802.03 of the Manual with respect to this criterion (allowing the issuer to establish a plan to cure any deficiencies), and the SPAC would be subject to the delisting procedures in Section 804 of the Manual.

[13] The number of beneficial holders of stock held in the name of Exchange member organizations will be considered in addition to holders of record.

[14] *See id.*

[15] Shares held by directors, officers, or their immediate families and other concentrated holdings of 10% or more are excluded in calculating the number of publicly held shares.

[16] If the unit of trading is less than 100 shares, the requirement relating to the number of publicly held shares would be reduced proportionately. Securities of SPACs trading as a unit would be subject to suspension and delisting if any of the component parts does not meet the applicable listing standards. If one or more of the components is otherwise qualified for listing, such component(s) may remain listed. To determine whether an individual component satisfies the applicable distribution criteria, the units that are intact and freely separable into their component parts would be counted toward the total numbers required for continued listing of the component. If a component is a warrant, it would be subject to the continued listing standards for warrants set forth in Section 802.01D of the Manual, including a continued distribution requirement of 100 holders. Nevertheless, under the proposal NYSE has broad discretion to consider the delisting of any individual component or unit if the Exchange believes the extent of public distribution or the aggregate market value of such component or unit has become so reduced as to make continued listing on the Exchange inadvisable. The Exchange would consider the trading characteristics of such component or unit and whether it would be in the public interest for trading to continue, in reviewing the advisability of the continued listing of an individual component or unit.

[17] Section 802.01 of the Manual contains minimum holder, trading volume, and/or number of publicly held shares requirements.

[18] Section 802.01B of the Manual establishes separate continued listing standards for companies that qualified to list under each of the Exchange's four separate initial listing standards for operating companies: (1) The Earnings Test; (2) the Valuation/Revenue with Cash Flow Test; (3) the Pure Valuation/Revenue Test; and (4) the Affiliated Company Test. NYSE noted that since it cannot predict the standard that would be most appropriate to a SPAC after a Business Combination, the Exchange would apply the Earnings Test to all post-Business Combination SPACs. In the event that the post-Business Combination SPAC could not meet the Earnings Test continued listing standards, under Section 802.02 of the Manual, if the SPAC could qualify under another original listing standard, its securities would remain listed on NYSE.

listing" as described in Section 703.08(E) of the Manual (*i.e.*, whether NYSE believes the transaction constitutes an acquisition of the SPAC by an unlisted company). Under this provision, when a transaction is deemed a backdoor listing, Section 703.08(E) of the Manual would require the resulting company to meet the standards for original listing. If the resulting company could not qualify for original listing, NYSE will refuse to list additional shares of the listed SPAC for the transaction and the SPAC would be delisted.[19]

C. Minimum Closing Price Requirement for New Listings

The Exchange also proposes to adopt a requirement that any equity security listing on the Exchange must have a closing price or, if listing in connection with an IPO, an IPO price per share of at least $4 at the time of initial listing.[20]

D. Minimum Value of New Listings of Convertible Debt

The Exchange also proposes to adopt a requirement that any convertible debt issuance listed on the Exchange must at the time of listing have an aggregate market value or principal amount of no less than $10,000,000.[21]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[22] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest, and to not permit unfair discrimination between customers, issuers, brokers, or dealers.[23]

The development and enforcement of adequate standards governing the initial and continued listing of securities on an exchange is an activity of critical importance to financial markets and the investing public. Listing standards, among other things, serve as a means for an exchange to screen issuers and to provide listed status only to bona fide companies that have or, in the case of an IPO, will have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets. Adequate standards are especially important given the expectations of investors regarding exchange trading and the imprimatur of listing on a particular market. Once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained.

As stated at the outset, SPACs are essentially shell companies that raise capital in IPOs, with the purpose of purchasing operating companies or assets within a certain time frame. The proceeds of the IPOs are placed in an escrow account during this period. SPACs usually require a majority of shareholders to approve any Business Combination. If shareholders do not approve a deal within the relevant time frame, shareholders have the option to demand their investment be returned from the escrow account. Management of the SPAC typically invests its own money in the SPAC—generally 2% to 4%—which generally is forfeited if a Business Combination is not consummated. If a Business Combination is consummated, management typically receives up to a 20% interest in the resulting company. The securities sold in the IPO generally consist of a unit made up of one share of common stock and a warrant (or fraction of a warrant) to purchase common stock. The common stock and warrants may be traded separately after the IPO.

As discussed in more detail below, the proposed standards would permit NYSE to list securities of SPACs that meet specified criteria, including market value, distribution, and price requirements, which should help to ensure that the securities have sufficient public float, investor base, and liquidity to promote fair and orderly markets. In addition, SPACs would have to meet other investor protection criteria, such as the escrow account requirement, public shareholder approval requirement, public shareholder redemption rights, and public shareholder liquidation preferences, which should further the ability of investors to protect and monitor their investment pending a Business Combination. Finally, SPACs that list securities on NYSE would have to comply with all NYSE corporate governance requirements and distribution criteria applicable to operating companies.

A. Initial Listing Standards for SPACs

The Commission believes that the Exchange's proposed initial listing standards to list SPAC securities are consistent with the requirements of the Act, including the protection of investors and the promotion of fair and orderly markets. SPACs that list securities on the NYSE would need to deposit at least 90% of the IPO proceeds in a trust account controlled by an independent custodian. Under the listing standards, the proceeds would be under control of the independent custodian until consummation of a Business Combination with one or more operating companies that, among other things, have a fair market value equal to at least 80% of the net assets held in trust.[24] Public shareholders must vote to approve the Business Combination, and the listing standards contain, for those public shareholders voting against the Business Combination, certain Conversion Rights for the return of their initial investment on a pro rata basis (net of certain expenses). Some of the NYSE's proposed requirements, such as the Conversion Rights, are similar in some respects to the investor protection measures contained in Rule 419 under the Securities Act of 1933 with respect to blank check companies.[25] SPACs that list securities on NYSE would also need to demonstrate sufficient market value and liquidity of the securities. The Commission believes that these standards should help to ensure that a sufficient market, with adequate depth

[19] *Section 703.08(E) of the Manual also states:* "In applying the above policy, consideration will be given to all factors including changes in ownership of the listed company, changes in management, whether the size of the company being 'acquired' is larger than the listed company and whether the two businesses are related on a horizontal or a vertical basis. All circumstances will be considered collectively and weight may be given to compensating factors."

[20] *See infra* note 30.

[21] *See infra* note 31.

[22] 15 U.S.C. 78f(b)(5).

[23] In approving this proposed rule change, the Commission notes that it has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] This amount is net of amounts disbursed to management for working capital purposes and excludes the amount of any deferred underwriting discount held in trust.

[25] *See* 17 CFR 230.419. Rule 419 applies to blank check companies issuing penny stock as defined under Rule 3a51–1(a)(2) of the Act. *See* 17 CFR 240.3a51–1(a)(2). Rule 419 is not applicable to securities traded on the NYSE.

and liquidity, would exist for listed SPAC securities.

Further, the proposed initial listing standards require additional protections for public shareholders. The Commission believes that these protections, such as requiring a majority of public shareholders to approve a Business Combination, the right of public shareholders voting against a Business Combination to exercise Conversion Rights to redeem their investment, a prohibition on the consummation of a Business Combination if a certain percentage of public shares are voted against a Business Combination, and the right of shareholders to receive liquidation rights if no Business Combination is consummated within a specified period of time not to exceed three years, would help to ensure that public shareholders approve management's decision with respect to a Business Combination, and have remedies if they disagree.

Moreover, the proposed initial listing standards impose requirements on management of the SPAC. First, management of a SPAC would have to consummate a Business Combination within three years or less, or else investors would be entitled to liquidation rights, and NYSE would delist the securities of the SPAC. Second, the founding shareholders of the SPAC (including but not limited to management) must waive their liquidation rights. Third, NYSE will consider the management's experience, record, compensation, equity ownership, and restriction on sales, when considering whether to list the securities.[26] The Commission believes that these requirements should help to ensure that management of the SPAC, among other things, is incented to actively seek out a Business Combination and has requisite experience.

The Commission believes that these safeguards should help to ensure that SPACs that list securities on NYSE will have taken certain additional steps to address investor protection and other matters. In this regard, the Commission expects NYSE to thoroughly review potential listings of SPAC securities to ensure that its listing standards have been met. Based on the foregoing, the Commission finds the proposed initial listing standards are consistent with the requirements of the Act.

[26] Under its rules, NYSE has the discretion to consider the listing of the securities of SPACS on a case-by-case basis. The NYSE stated in its filing that it will not necessarily list the securities of every SPAC that meets the proposed minimum listing requirements.

B. Continued Listing Standard of SPACs

The Commission believes that the Exchange's proposed continued listing standards for SPACs are consistent with the requirements of the Act and the protection of investors. Due to its nature, a SPAC's financial condition will vary depending on where it is in the acquisition process. For example, immediately after listing, a SPAC would essentially be a shell company with funds to seek an acquisition of an operating business. Once the SPAC has announced a proposed acquisition, the SPAC would be in the midst of a potential Business Combination. Finally, if the Business Combination is consummated, the SPAC would begin operating a new business. NYSE is proposing continued listing standards for all three situations.

Prior to a Business Combination, a SPAC would need to maintain average aggregate global market capitalization of at least $125,000,000 or average aggregate global market capitalization of publicly held shares of at least $100,000,000, in each case over 30 consecutive trading days. NYSE would delist securities of SPACs that fall below such requirements immediately and the SPACs could not use the time period to cure deficiencies afforded to other operating companies.[27] In addition, the continued listing standards would require SPACs to maintain certain distribution criteria and would require a Business Combination within three years or less.

Immediately prior to consummation of a Business Combination, NYSE would consider whether listing of the combined entity would be in the best interest of the Exchange and the public interest. Under this provision, NYSE would have broad discretion to delist the securities of the SPAC prior to the consummation of a Business Combination that would not be in the interest of investors or the public. In addition, NYSE would consider whether a Business Combination could result in a back door listing, and if so, would delist securities of the SPAC. The Commission believes that this requirement will help to ensure that companies that would not otherwise qualify for original listing could not list on NYSE through a backdoor listing in violation of Section 703.08 of the Manual.

After consummation of a Business Combination, NYSE would require the SPAC to meet the continued listing distribution criteria for common stock[28] and the continued listing Earnings Test numerical criteria.[29] For continued listing, the Earnings Test requires average global market capitalization over a consecutive 30 trading-day period of at least $75,000,000 and total stockholders' equity of at least $75,000,000. After consummation of a Business Combination, SPACs would be treated by NYSE as other operating companies.

Taken as a whole, the Commission believes that the proposed continued listing standards are consistent with the requirements of the Act. SPACs would be subject to different continued listing standards, depending on whether a Business Combination has been consummated, that are designed to, among other things, protect investors and promote fair and orderly markets. The Commission expects NYSE to actively monitor compliance by listed SPACs with these listing standards.

C. Minimum Closing Price Requirement for New Listings

The Commission notes that the proposed change to require a company to have a closing price or an IPO price of at least $4 per share meets the criteria from the definition of penny stock contained in Rule 3a51–1 under the Act.[30] The Commission finds that this proposal is consistent with the requirements of the Act.

D. Minimum Value of New Listings of Convertible Debt

The Commission notes that the proposed change to require convertible debt issue to have an aggregate market value or principal amount of no less than $10,000,000 meets the criteria from the definition of penny stock contained

[27] *See* Section 802.02 of the Manual.

[28] *See* Section 802.01A of the Manual.

[29] *See* Section 802.01B of the Manual. *See also* note 18 *supra*.

[30] *See* 17 CFR 240.3a51–1(a)(2)(i)(C). The Commission notes that the NYSE is adopting a minimum bid price so that securities listed on the NYSE meet the exception from the definition of penny stock in Rule 3a51–1(a)(2). Securities currently listed on the NYSE are included in the "grandfather" exception to the definition of penny stock in Rule 3a51–1(a)(1) for securities registered or listed "on a national securities exchange that has been continuously registered as a national securities exchange since April 20, 1992 * * * and * * * has maintained quantitative listing standards that are substantially similar to or stricter than those listing standards that were in place on that exchange on January 8, 2004." By adopting a listing standard for SPACs, NYSE's listing standards would no longer be included in the "grandfather" exception. Further, the Commission notes that for existing companies, other national securities exchanges generally require those companies to meet the minimum bid price for certain consecutive trading days prior to listing. *See, e.g.*, Nasdaq Rule 4310(c)(2) and NYSE Arca Rule 5.2(c)(ii). The Commission still generally believes that for companies transferring from another marketplace, to assess suitability for trading, it is important and useful to ensure the bid test is sustainable based on some period of time prior to listing.

in Rule 3a51–1 under the Act.[31] The Commission finds that this proposal is consistent with the requirements of the Act.

E. Conclusion

Based on the above, the Commission believes the proposed rule change is reasonable and should provide for the listing of SPACs with baseline investor protection and other standards.[32] The Commission believes that, as discussed above, NYSE has developed sufficient standards to allow the listing of SPACs on the NYSE, consistent with the requirements set forth under the Act and in particular, Section 6(b)(5).[33]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[34] that the proposed rule change (SR–NYSE–2008–17) is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Nancy M. Morris,

Secretary.

[FR Doc. E8–10537 Filed 5–12–08; 8:45 am]

BILLING CODE 8010–01–P

[31] *See* 17 CFR 240.3a51–1(a)(2)(i)(F). The Commission notes that the NYSE is adopting a minimum value for convertible debt so that securities listed on the NYSE meet the exception from the definition of penny stock in Rule 3a51–1(a)(2). As noted in footnote 30, *supra*, securities listed on the NYSE are included in the "grandfather" exception to the definition of penny stock in Rule 3a51–1(a)(1) for securities registered or listed "on a national securities exchange that has been continuously registered as a national securities exchange since April 20, 1992...and...has maintained quantitative listing standards that are substantially similar to or stricter than those listing standards that were in place on that exchange on January 8, 2004." By adopting a listing standard for SPACs, NYSE's listing standards would no longer be included in the "grandfather" exception.

[32] The Commission notes that under the proposal, the Exchange has the discretion to consider initial listing of securities of SPACs that otherwise meet NYSE's listing standards, on a case-by-case basis, and the Exchange has broad discretion to delist the securities of SPACs at the time of the Business Combination if the Exchange believes it is not in the best interest of the Exchange and the public interest.

[33] 15 U.S.C. 78s(b)(5). The staff of the Division of Trading and Markets would not recommend enforcement action to the Commission under Rules 15g–2 through 15g–9 under the Act if broker-dealers treat equity securities listed pursuant to the initial listing requirements set forth in the Manual as meeting the exclusion from the definition of penny stock contained in Rule 3a51–1 under the Act pursuant to paragraph (a)(2) thereof.

[34] 15 U.S.C. 78s(b)(2).

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57792; File No. SR–NYSE–2008–36]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Expand the Reserve Order Pilot Program Currently Operating in 100 Securities Traded on the Exchange To Include All Equity Securities Traded on the Exchange

May 7, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 6, 2008, the New York Stock Exchange LLC ("NYSE" 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 substantially prepared by the Exchange. The Exchange has designated the proposed rule change as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change 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 expand the Reserve Order pilot program currently operating in 100 securities traded on the NYSE[5] to include all equity securities traded on the Exchange. The text of the proposed rule change is available at *http://www.nyse.com*, the Exchange, and 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, NYSE 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. NYSE 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

Through this proposed rule change, the Exchange seeks to expand the Reserve Order pilot program currently operating pursuant to Exchange Rule 13. On April 23, 2008, the Exchange implemented a new order type that allows off-Floor participants the ability to enter reserve interest into Exchange systems ("Reserve Order").[6]

The Reserve Order is a limit order for which a portion of the order is to be displayed and a portion of the order, at the same price, is not displayed (*i.e.*, is held in "reserve").[7] Market participants that choose to enter Reserve Orders must enter specified order information in relation to the price and size of the order and the amount to be displayed. The displayed portion of a Reserve Order is published in NYSE OpenBook® [8] and is available to the specialist on the Floor. Both the displayed and the non-displayed portion are available for automatic execution against incoming contra-side orders. Displayed and non-displayed interest of Reserve Orders is available for manual executions as well.[9]

To afford the Exchange and its customers the ability to gain systemic experience with the new Reserve Order type, the Exchange implemented the amendment to Exchange Rule 13 allowing off-Floor participants to enter Reserve Orders on a pilot basis. The pilot currently operates in 100 securities traded on the Floor of the Exchange.

[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] *See* Securities Exchange Act Release No. 57688 (April 18, 2008), 73 FR 22194 (April 24, 2008) (SR–NYSE–2008–30) ("Reserve Order Notice").

[6] *See id.*

[7] The Exchange represents that this functionality is equivalent to the functionality currently available to Floor brokers and specialists with respect to entry of reserve interest. In order for Floor brokers' reserve interest not to be visible by the specialists, a Floor broker must designate his or her reserve interest as "Do Not Display" interest. Reserve Orders in contrast are never shown to the specialist except when included in aggregate quantities for manual executions.

[8] NYSE OpenBook® provides aggregate limit order volume that has been entered on the Exchange at price points for all NYSE-traded securities.

[9] *See* Reserve Order Notice, *supra* note 5, for a detailed description of Reserve Orders and their functionality; *see also* NYSE Information Memo No. 08–24 (April 22, 2008) (both documents are available on the Exchange's Web site at *http://www.nyse.com*). The Exchange will issue a revised Information Memo to the Floor providing notice of the expansion of the Reserve Order pilot to include all equity securities traded on the Exchange.

Pilot Results and Expansion

The Exchange has determined that the technology modifications that were required to allow off-Floor participants the ability to enter Reserve Orders are operating successfully. The Exchange states that, to date, there have been no system problems associated with Reserve Orders.

In addition, entry of Reserve Orders in the securities approved to operate in the pilot program has been steadily increasing throughout the pilot period. Moreover, Exchange customers continue to request the ability to send Reserve Orders in all securities traded on the NYSE.

Given the customer demand and the fact that no technological impediments to the operation of Reserve Orders have arisen, the Exchange now proposes to expand the Reserve Order pilot program operating pursuant to Exchange Rule 13 to all Exchange-traded equity securities.[10]

Conclusion

The Exchange believes that by providing all market participants with the ability to maintain non-displayed liquidity on the Display Book in all equity securities traded on the Exchange, market participants will be encouraged to post liquidity and thus offer Exchange customers additional opportunities for price improvement by expanding the interest available to execute against incoming orders at a single price.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Section 6(b)(5) of the Act[12] in particular, in that it is 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 proposed rule change also is designed to support the principles of Section 11A(a)(1)[13] in that it seeks to assure economically efficient execution of securities transactions, fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets, and provide an opportunity for investors' orders to be executed without the participation of a dealer. The Exchange believes that the instant proposal is in keeping with these objectives in that extending Reserve Order functionality will provide an opportunity for all market participants to receive efficient, low cost executions available through the use of this order type, and promote fair competition among markets which already provide for entry of Reserve Orders by all market participants in all equity securities traded on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[16] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay set forth in Rule 19b–4(f)(6)(iii) under the Act, which would make the rule change operative upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would immediately allow off-Floor participants to directly enter orders that use reserve functionality for all equity securities traded on the Exchange. The Exchange represents that, to date, there have been no system problems associated with the Reserve Orders pilot program, and that Exchange customers have requested the ability to send Reserve Orders in all securities traded on the Exchange. Finally, the proposed reserve functionality is currently available on other exchanges.[17] Accordingly, the Commission designates the proposal to be operative upon filing with the Commission.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2008–36 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.

[10] The expansion of the pilot program to operate in all equity securities traded on the Floor of the Exchange does not change the expiration date of the Reserve Order pilot established pursuant to the Reserve Order Notice (*supra* note 5). The Reserve Order pilot program is scheduled to expire no later than the earlier of September 30, 2008 or the effective date of Commission approval of a proposed rule change to make the pilot program permanent.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78k–1(a)(1).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NYSE has satisfied the pre-filing notice requirement.

[17] *See, e.g.*, Nasdaq Rule 4751(f)(2); Securities Exchange Act Release No. 54155 (July 14, 2006), 71 FR 41291 (July 20, 2006) (SR–NASDAQ–2006–001).

[18] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

All submissions should refer to File Number SR–NYSE–2008–36. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2008–36 and should be submitted on or before June 3, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Nancy M. Morris,

Secretary.

[FR Doc. E8–10538 Filed 5–12–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57778; File No. SR–NYSEArca–2008–45]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To List and Trade Shares of the iShares MSCI Emerging Markets Eastern Europe Index Fund

May 5, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 25, 2008, NYSE Arca, Inc. ("NYSE Arca" or "Exchange"), through its wholly owned subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. NYSE Arca filed the proposal 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

NYSE Arca proposes to list and trade shares ("Shares") of the iShares MSCI Emerging Markets Eastern Europe Index Fund ("Fund"). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 5.2(j)(3), the Exchange's listing standards for Investment Company Units ("ICUs").[5] The investment objective of the Fund is to provide investment results that correspond generally to the price and yield performance, before fees and expenses, of the MSCI Emerging Markets Eastern Europe Index ("Index" or "Underlying Index"). The Index is a free float adjusted market capitalization index designed to measure the equity performance of companies domiciled in four Eastern European emerging market nations: The Czech Republic, Hungary, Poland and Russia.

The Exchange is submitting this proposed rule change because the Underlying Index does not meet all of the "generic" listing requirements of Commentary .01(a)(B) to NYSE Arca Equities Rule 5.2(j)(3) applicable to listing of ICUs based on international or global indexes. The Underlying Index meets all such requirements except for those set forth in Commentary .01(a)(B)(3).[6] Specifically, the Underlying Index fails to meet the requirement that the most heavily weighted component stock shall not exceed 25% of the weight of the index or portfolio. As of April 2, 2008, Gazprom (Russia) represented 27.28% of the weight of the Underlying Index.

The Exchange represents that: (1) Except for the requirement under Commentary .01(a)(B)(3) to NYSE Arca Equities Rule 5.2(j)(3) relating to the most heavily weighted component stock, the Shares of the Fund currently satisfy all of the generic listing standards under NYSE Arca Equities Rule 5.2(j)(3);[7] (2) the continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to ICUs shall apply to the Shares; and (3) the Trust is required to comply with Rule 10A–3 under the Act[8] for the initial and continued listing of the Shares. In addition, the Exchange represents that the Shares will comply with all other requirements applicable to ICUs including, but not limited to, requirements relating to the dissemination of key information such as the Index value and Intraday Indicative Value, rules governing the trading of equity securities, trading hours, trading halts, surveillance, and Information Bulletin to ETP Holders, as set forth in prior Commission orders approving the generic listing rules

[19] 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] An ICU is a security that represents an interest in a registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities (or holds securities in another registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities). See NYSE Arca Equities Rule 5.2(j)(3)(A).

[6] Commentary .01(a)(B)(3) to NYSE Arca Equities Rule 5.2(j)(3) provides that the most heavily weighted component stock shall not exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks shall not exceed 60% of the weight of the index or portfolio.

[7] *See e-mail* dated May 5, 2008 from Michael Cavalier, Associate General Counsel, NYSE Euronext, to Christopher W. Chow, Special Counsel, Commission.

[8] 17 CFR 240.10A–3.

applicable to the listing and trading of ICUs.[9]

Detailed descriptions of the Fund, the Underlying Index, procedures for creating and redeeming Shares, transaction fees and expenses, dividends, distributions, taxes, risks, and reports to be distributed to beneficial owners of the Shares can be found in the Registration Statement [10] or on the Web site for the Fund (*http://www.ishares.com*), as applicable.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5) of the Act,[12] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange states that written comments on the proposed rule change were neither solicited nor received.

[9] *See, e.g.*, Securities Exchange Act Release Nos. 55621 (April 12, 2007), 72 FR 19571 (April 18, 2007) (SR–NYSEArca–2006–86) (order approving generic listing standards for ICUs based on international or global indexes); 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR–PCX–2001–14) (order approving generic listing standards for ICUs and Portfolio Depositary Receipts); and 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR–PCX–98–29) (order approving rules for listing and trading of ICUs).

[10] See the iShares, Inc. Registration Statement on Form N–1A, dated April 2, 2008 (File Nos. 333–97598 and 811–09102) ("Registration Statement").

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the Exchange can list and trade the Shares immediately. The Exchange states that the proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. The Exchange also believes that the proposal is non-controversial because, although the Underlying Index fails to meet the requirements set forth in Commentary .01(a)(B)(3) to NYSE Arca Equities Rule 5.2(j)(3) by a small amount (2.28%), the Shares currently satisfy all of the other applicable generic listing standards under NYSE Arca Equities Rule 5.2(j)(3), and will be subject to all of the continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to ICUs. Additionally, the Exchange represents that the Shares will comply with all other requirements applicable to ICUs.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[15] Given that the Shares comply with all of the NYSE Arca Equities generic listing standards for ICUs (except for narrowly missing the requirement that the most heavily weighted component not exceed 25% of the weight of the Underlying Index), the listing and trading of the Shares by NYSE Arca does not appear to present any novel or significant regulatory issues or impose any significant burden on competition. For these reasons, the Commission designates the proposed rule change as operative upon filing.

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.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[15] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2008–45 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–NYSEArca–2008–45. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in

the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2008–45 and should be submitted on or before June 3, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–10572 Filed 5–12–08; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before June 12, 2008. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Agency Clearance Officer*, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *OMB Reviewer*, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Gulf Coast Relief Financing Pilot Information Collection.

Form No's: 2276 A/B/C, 2281, 2282.

Frequency: On occasion.

Description of Respondents: Applicants for an SBA Loan.

Responses: 500.

Annual Burden: 375.

Title: Applications for Business Loans.

Form No's: 4, 4Sch, 4–Short, 4I.

Frequency: On Occasion.

Description of Respondents: SBA Participating Lenders.

Responses: 21,000.

Annual Burden: 292,000.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E8–10646 Filed 5–12–08; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2008–0002]

Retirement Estimator

AGENCY: Social Security Administration (SSA).

ACTION: Notice.

SUMMARY: The Commissioner of Social Security gives notice that SSA intends to add a new calculator to its online Benefit Calculators suite. The Retirement Estimator will allow authenticated individuals to calculate estimates of potential retirement benefits in real-time, based in part on their SSA-maintained records and in part on user-entered information, such as the last year of Social Security earnings. In addition to quick estimates of retirement benefits at specific points such as full retirement age, users may also submit a number of "what if" scenarios based on information they provide regarding future earnings and retirement dates. The estimates can be printed and saved. The initial release of the Retirement Estimator will not reflect offset due to the Windfall Elimination Provision (WEP), or Government Pension Offset (GPO).

SSA currently has four benefit calculators on its Web site–the Quick, Online, WEP and Detailed calculators (*http://www.ssa.gov/planners/calculators.htm*). The Quick Calculator provides a simple, rough estimate based on user-entered date of birth and current year earnings For more precise estimates, the Online, WEP and Detailed calculators require that the user have access to his or her Social Security Statement in order to manually key each year of their lifetime earnings for use in the benefit computation. American Customer Satisfaction Index Surveys consistently indicate that less than 25% of users have their Statement available when using the calculators; therefore, 75% of users cannot immediately use the Online, WEP and Detailed calculators. The Detailed Calculator also requires downloading and installing software.

In accordance with OMB Circular A–130 and OMB Memo M–04–04, *E-Authentication Guidelines for Federal Agencies*, SSA conducted an authentication risk assessment. Based on the analysis of the Impact Categories and corresponding Assurance Level Impact Profiles, the Retirement Estimator was assessed at a medium level of risk (Level 2). There will be no disclosure of Personal Identifying Information that could lead to identity theft, no disclosure of address information that could facilitate physical harm, and no disclosure of earnings information from SSA records. Further, the source data cannot be reverse-engineered from the estimate. Based on the risk assessment, a knowledge-based authentication protocol will be used to match user-entered information with SSA records in order to control access to the application. SSA consulted with privacy experts and added additional data matches in the authentication protocol and a "block access" feature that allows clients to prevent online access to their account.

The Retirement Estimator calculator will provide a safe, user-friendly and convenient tool that will: (1) Contribute to financial literacy by helping members of the public plan for retirement; (2) help to promote SSA's online benefit application; and, (3) save Agency resources.

DATES: The Retirement Estimator will be released to the public on July 19, 2008.

FOR FURTHER INFORMATION CONTACT: Gerard R. Hart, Operations, Office of Electronic Services, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, Phone 410–965–8707, e-mail *Gerard.R.Hart@ssa.gov*. For information on eligibility or applying for benefits, call 1–800–772–1213, or visit our Internet site, Social Security Online at *http://www.socialsecurity.gov*.

[16] 17 CFR 200.30–3(a)(12).

Dated: May 7, 2008.

Michael J. Astrue,

Commissioner of Social Security.

[FR Doc. E8–10544 Filed 5–12–08; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 6221]

Culturally Significant Objects Imported for Exhibition Determinations: "Art of Two Germanys/During the Cold War"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Art of Two Germanys/During the Cold War", imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Los Angeles County Museum of Art, from on or about January 25, 2009, until on or about April 19, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8048). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: May 7, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–10650 Filed 5–12–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6220]

Culturally Significant Objects Imported for Exhibition Determinations: "Benin—Kings and Rituals: Court Arts From Nigeria"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects in the exhibition: "Benin—Kings and Rituals: Court Arts from Nigeria," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Art Institute of Chicago, Chicago, IL, from on or about July 10, 2008, until on or about September 21, 2008, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: May 7, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–10652 Filed 5–12–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6222]

Determination Under Section 612 of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008, Relating to Assistance to the Democratic Republic of Congo, Liberia, and Somalia

Pursuant to section 612 of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008 (Div. J, Pub. L. 110–161) (the Act), Executive Order 12163, as amended by Executive Order 13346, and Delegation of Authority 245, I hereby determine that assistance to the Democratic Republic of Congo, Liberia, and Somalia is in the national interest of the United States and thereby waive, with respect to these countries, the application of section 612 of the Act.

This determination shall be reported to Congress and published in the **Federal Register**.

Dated: March 28, 2008.

John D. Negroponte,

Deputy Secretary of State, Department of State.

[FR Doc. E8–10656 Filed 5–12–08; 8:45 am]

BILLING CODE 4710–26–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice Before Waiver With Respect to Land at Lynchburg Regional Airport, Lynchburg, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The FAA is publishing notice of proposed release of 0.02 acres of land at the Lynchburg Regional Airport, Campbell County, Virginia to the Virginia Department of Transportation for the Improvement of U.S. Route 29. There are no impacts to the Airport and the land is not needed for airport development as shown on the Airport Layout Plan. Fair Market Value of the land will be paid to the Airport Sponsor, and used for Airport purposes.

DATES: Comments must be received on or before June 12, 2008.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Terry J. Page, Manager, FAA Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, VA 20166.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mark Courtney, Director, Lynchburg Regional Airport, at the following address: Mark Courtney, A.A.E., Airport Director, Lynchburg Regional Airport, 4308 Wards Road, Lynchburg, Virginia 24502.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Page, Manager, Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, VA 20166; telephone (703) 661–1354, fax (703) 661–1370, e-mail *Terry.Page@faa.gov*.

SUPPLEMENTARY INFORMATION: On April 5, 2000, new authorizing legislation became effective. That bill, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Public Law 10–181 (Apr. 5, 2000; 114 Stat. 61) (AIR 21) requires that a 30 day public notice must be provided before the Secretary may waive any condition imposed on an interest in surplus property.

Terry J. Page,

Manager, Washington Airports District Office, Eastern Region.

[FR Doc. E8–10419 Filed 5–12–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

13th Meeting: RTCA Special Committee 206/EUROCAE WG 76 Plenary

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 206 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 206: Aeronautical Information Services Data Link

DATES: The meeting will be held June 9–13, 2008 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at St. Petersburg University of Aerospace Instrumentation (SUAI) 67, Bolshaya Morskaya, St. Petersburg, 190000 Russia, *http://suari.ru*.

FOR FURTHER INFORMATION CONTACT: Oksana Muhina, International co-operation Department; telephone (+7 812) 3 12–09–37; E-mail *int@aanet.ru*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 206 meeting/EUROCE WG 76. The agenda will include:

June 9

- Open Plenary (Chairman's Remarks and Introductions, Review and Approve Meeting Agenda and Minutes, Discussion)
- Coordination with WG78/SC214
- Action Item Review
- Schedule for this week
- Schedule for next meetings

Presentations

- To be determined
- SPR and INTEROP

June 10

- AIS Subgroup meeting—Meteorology Subgroup meetings
- Meteorology Subgroup meeting

June 11

- Subgroup 1 and Subgroup 2 Meetings

June 12

- Subgroup 1 and Subgroup 2 Meetings

June 13

- Subgroup 1 and Subgroup 2 Meetings
- Plenary Session (Other Business, Meeting Plans and Dates, Closing Remarks, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 5, 2008.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. E8–10412 Filed 5–12–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Marine Transportation System National Advisory Council

ACTION: National Advisory Council Public Meeting.

SUMMARY: The Maritime Administration announces that the Marine Transportation System National Advisory Council (MTSNAC) will hold a meeting to review an expanded Marine Transportation System outreach and education program that addresses future workforce needs, environmental issues, and freight mobility; public and private sector data collection efforts; and an update and revision of the Council's Intermodal Report. A public comment period is scheduled for 9 a.m. to 9:30 a.m. on Wednesday, June 4, 2008. To provide time for as many people to speak as possible, speaking time for each individual will be limited to three minutes. Members of the public who would like to speak are asked to contact Richard J. Lolich by May 28, 2008. Commenters will be placed on the agenda in the order in which notifications are received. If time allows, additional comments will be permitted. Copies of oral comments must be submitted in writing at the meeting. Additional written comments are welcome and must be filed by June 13, 2008.

DATES: The meeting will be held on Tuesday, June 3, 2008, from 8:30 a.m. to 5 p.m. and Thursday, June 4, 2008, from 8:30 a.m. to 12:30 p.m.

ADDRESSES: The meeting will be held in the Sheraton St. Louis City Center Hotel, 400 South 14th Street, St. Louis, MO 63103. The hotel's phone number is 314–231–5007.

FOR FURTHER INFORMATION CONTACT: Richard Lolich, (202) 366–0704; Maritime Administration, MAR–540, Room W21–309, 1200 New Jersey Ave., SE., Washington, DC 20590–0001; *richard.lolich@dot.gov*.

Authority: 5 U.S.C. App 2, Sec. 9(a)(2); 41 CFR 101–6. 1005; DOT Order 1120.3B.

Dated: May 7, 2008.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. E8–10540 Filed 5–12–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–RSPA–2004–19856]

Pipeline Safety: Notice to Operators of Gas Transmission Pipelines on the Regulatory Status of Direct Sales Pipelines

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice; Issuance of Advisory Bulletin.

SUMMARY: PHMSA advises gas transmission pipeline operators that the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006

eliminated the former exception of direct sales natural gas pipelines from the definition of an interstate gas pipeline facility. As a result, direct sales gas transmission pipelines subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC) formerly considered to be intrastate pipelines for purposes of the pipeline safety laws are now defined as interstate pipelines. As interstate pipelines, direct sales pipelines are subject to the applicable Federal pipeline safety regulations and PHMSA is responsible for regulatory oversight and enforcement. In some cases, inspections of these pipelines may continue to be conducted by a State pipeline safety agency acting as PHMSA's representative.

FOR FURTHER INFORMATION CONTACT: Cheryl Whetsel, (202) 366–4431, or by e-mail at *cheryl.whetsel@dot.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal pipeline safety laws (49 U.S.C. 60101 *et seq.*) define an "interstate gas pipeline facility" as a facility subject to the jurisdiction of the FERC under the Natural Gas Act (15 U.S.C. 717 *et seq.*). Prior to the passage of the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 (PIPES Act) (Pub. L. 109–468), the interstate gas pipeline facility definition contained an exception for a gas pipeline facility transporting gas from an interstate gas pipeline in a State to a direct sales customer in that State buying gas for its own consumption. Because of this exception, these pipelines were considered to be intrastate pipelines and were regulated on a state-by-state basis. Section 7 of the PIPES Act changed this by eliminating the exception. As a result, direct sales gas transmission pipelines subject to FERC jurisdiction formerly considered to be intrastate pipelines for purposes of the pipeline safety laws are now considered to be interstate pipelines.

As interstate gas pipeline facilities, direct sales pipelines are subject to the applicable Federal pipeline safety regulations and PHMSA is responsible for regulatory oversight and enforcement. Subjecting direct sales gas pipelines to the same requirements as other interstate gas pipelines should provide improved regulatory certainty and ensure consistency in regulatory requirements.

In cases where a State has both an annual certification for gas under 49 U.S.C. 60105 and an agreement under 49 U.S.C. 60106(b), inspections of these direct sales pipelines may continue to be conducted by a State pipeline safety agency acting as PHMSA's representative although any enforcement action must be referred to PHMSA. If the line has a State certification from the State Public Utility Commission (PUC) that such State PUC has regulatory jurisdiction over the rates and service of the line and is exercising it, that would be grounds for concluding that the line is not subject to FERC jurisdiction and therefore can be regulated as an intrastate pipeline by a State having a certification for gas under 49 U.S.C. 60105. This change does not affect direct sales pipelines that are intrastate pipelines because they extend from another intrastate line to the consumer.

II. Advisory Bulletin (ADB–08–01)

To: Owners and Operators of Gas Transmission Pipeline Systems.

Subject: Notice to Operators of Gas Transmission Pipelines on the Regulatory Status of Direct Sales Pipelines.

Advisory: PHMSA advises gas transmission pipeline operators that the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 eliminated the exception of direct sales natural gas pipelines from the definition of an interstate gas pipeline facility. As a result, direct sales gas transmission pipelines subject to the jurisdiction of FERC formerly considered to be intrastate pipelines for purposes of the pipeline safety laws are now defined as interstate pipelines. As interstate pipelines, direct sales pipelines are subject to the applicable Federal pipeline safety regulations and PHMSA is responsible for regulatory oversight and enforcement. In some cases, inspections of these pipelines may continue to be conducted by a State pipeline safety agency acting as PHMSA's representative.

Authority: 49 U.S.C. chapter 601; 49 CFR 1.53.

Issued in Washington, DC, on May 7, 2008.

Jeffrey D. Wiess,

Associate Administrator for Pipeline Safety.

[FR Doc. E8–10627 Filed 5–12–08; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds—Termination: North Pointe Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 13 to the Treasury Department Circular 570, 2007 Revision, published July 2, 2007, at 72 FR 36192.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above-named company under 31 U.S.C. 9305 to qualify as acceptable surety on Federal bonds was terminated effective May 1, 2008. Federal bond-approving officials should annotate their reference copies of the Treasury Department Circular 570 ("Circular"), 2007 Revision, to reflect this change.

With respect to any bonds currently in force with this company, bond-approving officers may let such bonds run to expiration and need not secure new bonds.

However, no new bonds should be accepted from this company, and bonds that are continuous in nature should not be renewed.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570*.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: May 2, 2008.

Rose M. Miller,

Acting Director, Financial Accounting and Services Division.

[FR Doc. E8–10503 Filed 5–12–08; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Foreign Assets Control Office

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 name of one additional entity whose property and interests in property has been blocked pursuant to the Foreign Narcotics Kingpin Designation Act ("Kingpin Act") (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The designation by the Secretary of the Treasury of the one entity identified in this notice pursuant to

section 805(b) of the Kingpin Act is effective on May 7, 2008.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the President to impose sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and to the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Kingpin Act blocks the property and interests in property, subject to U.S. jurisdiction, of foreign persons designated by the Secretary of Treasury, in consultation with the Attorney General, the Director of Central Intelligence, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On May 7, 2008, OFAC designated an additional entity whose property and interests in property are blocked pursuant to section 805(b) of the Foreign Narcotics Kingpin Designation Act.

The additional designee is as follows:

1. MERCURIO INTERNACIONAL S.A., Avenida Carrera 15 No. 100–69, Oficina 303, Bogota, Colombia; Carrera 15 No. 93–60 Local 205, Bogota, Colombia; Transversal 71D No. 26–94 Sur, Local 3504, Bogota, Colombia; Calle 5 No. 50–103, Local C108, Cali, Colombia; Carrera 1 No. 61A–30, Locales 80 y 81, Cali, Colombia; Calle 19 No. 6–48, Oficinas 403 y 404, Pereira, Colombia; Carrera 14 No. 18–56, Locales 34 y 35, Piso 3, Armenia, Colombia; Carrera 43A No. 34–95, Local 253, Medellin, Colombia; Carrera 54 No. 72–147, Local 144, Barranquilla, Colombia; NIT #830063708–7 (Colombia); (ENTITY) [SDNTK].

Dated: May 7, 2008.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E8–10600 Filed 5–12–08; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Narcotics Trafficker Pursuant to Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the name of three individuals whose property and interests in property have been unblocked pursuant to Executive Order 12978 of October 21, 1995, *Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers.*

DATES: The unblocking and removal from the list of Specially Designated Narcotics Traffickers of the individuals identified in this notice whose property and interests in property were blocked pursuant to Executive Order 12978 of October 21, 1995, is effective on May 7, 2008.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2420.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background

On October 21, 1995, the President, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) ("IEEPA"), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the "Order"). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and Secretary of State, to play a significant role in international narcotics trafficking centered in Colombia; or (3) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to this order; and (4) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to this Order.

On May 7, 2008, the Director of OFAC removed from the list of Specially Designated Narcotics Traffickers the individuals listed below, whose property and interests in property were blocked pursuant to the Order.

The listing of the unblocked individuals follows:

1. GOMEZ POVEDA, Gustavo, c/o C A V J CORPORATION LTDA., Bogota, Colombia; DOB 8 Nov 1960; Cedula No. 19416811 (Colombia); Passport 19416811 (Colombia) (individual) [SDNT].

2. GALLEGO SANCHEZ, Isaac, c/o DISMERCOOP, Cali, Colombia; c/o GRACADAL S.A., Cali, Colombia; DOB 3 Nov 1953; Cedula No. 6457399 (Colombia) (individual) [SDNT].

3. BENITEZ CASTELLANOS, Cesar Tulio, c/o DROGAS LA REBAJA, Cali, Colombia; c/o RIONAP COMERCIOS Y REPRESENTACIONES S.A., Quito, Ecuador; c/o D'CACHE S.A., Cali, Colombia; c/o INVERSIONES MONDRAGON Y CIA. S.C.S., Cali, Colombia; c/o INVERSIONES Y CONSTRUCCIONES ABC S.A., Cali,

Colombia; Carrera 65 No. 13B–82, Cali, Colombia; c/o COMUNICACION VISUAL LTDA., Cali, Colombia; Cedula No. 14969366 (Colombia) (individual) [SDNT].

Dated: May 7, 2008.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E8–10599 Filed 5–12–08; 8:45 am]

BILLING CODE 4811–45–P

UNITED STATES INSTITUTE OF PEACE

Announcement of the Fall 2008 Annual Grant Competition (Formerly Known as the Unsolicited Grant Initiative); Effective October 1, 2008

AGENCY: United States Institute of Peace.

ACTION: Notice.

SUMMARY: The Agency announces its Annual Grant Competition, which offers support for research, education and training, and the dissemination of information on international peace and conflict resolution. The Annual Grant Competition is open to any project that falls within the Institute's broad mandate of international conflict resolution.

Deadline: October 1, 2008. Application material available on request and at *http://www.usip.org/grants/unsolicited.html.*

DATES: *Receipt of Application*: October 1, 2008.

Notification Date: March 31, 2009.

ADDRESSES: *For Application Package*: United States Institute of Peace, Grant Program, 1200 17th Street, NW., Suite 200, Washington, DC 20036–3011. (202) 429–3842 (phone). (202) 833–1018 (fax). (202) 457–1719 (TTY). E-mail: *grants@usip.org.*

FOR FURTHER INFORMATION CONTACT: The Grant Program, Annual Grant Competition, Phone (202) 429–3842, E-mail: *grants@usip.org.*

Dated: May 7, 2008.

Michael Graham,

Vice President for Administration.

[FR Doc. E8–10502 Filed 5–12–08; 8:45 am]

BILLING CODE 6820–AR–M

UNITED STATES INSTITUTE OF PEACE

Announcement of the Priority Grantmaking Competition (Formerly the Solicited Grant Initiative); Effective Immediately

AGENCY: United States Institute of Peace.

ACTION: Notice.

SUMMARY: The Agency announces its ongoing Priority Grantmaking Competition. Priority Grantmaking focuses on seven countries as they relate to USIP's mandate. Applications are accepted throughout the year. Priority Grantmaking is restricted to projects that fit specific themes or topics identified for each country.

The seven Priority Grantmaking countries are outlined below. The specific themes and topics for each country may be found at our Web site at: *http://www.usip.org/grants/solicited.html.*

- Afghanistan;
- Colombia;
- Iran;
- Iraq;
- Nigeria;
- Pakistan;
- Sudan.

Deadline: Priority Grantmaking applications are accepted throughout the year. Please visit our Web site at: *http://www.usip.org/grants/solicited.html* for specific information on the competition as well as instructions about how to apply.

ADDRESSES: If you are unable to access our Web site, you may submit an inquiry to: United States Institute of Peace, Grant Program, Priority Grantmaking, 1200 17th Street, NW., Suite 200, Washington, DC 20036–3011. (202) 429–3842 (phone). (202) 833–1018 (fax). (202) 457–1719 (TTY). E-mail: *grants@usip.org.*

FOR FURTHER INFORMATION CONTACT: The Grant Program, Phone (202)–429–3842, E-mail: *grants@usip.org.*

Dated: May 7, 2008.

Michael Graham,

Vice President for Administration.

[FR Doc. E8–10501 Filed 5–12–08; 8:45 am]

BILLING CODE 6820–AR–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0154]

Agency Information Collection (Application for VA Education Benefits) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 12, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0154" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0154."

SUPPLEMENTARY INFORMATION:

Titles:

a. Application for VA Education Benefits, VA Form 22–1990.

b. Application for Transfer of Entitlement (TOE), Basic Educational Assistance Under the Montgomery GI Bill, VA Form 22–1990E.

c. Application for VA Education Benefits Under the National Call to Service (NCS) Program, VA Form 22–1990N.

OMB Control Number: 2900–0154.

Type of Review: Revision of a currently approved collection.

Abstract:

a. Claimants complete VA Form 22–1990 to apply for education assistance allowance.

b. Claimants who signed an enlistment contract with the Department of Defense for the National Call to Service program and elected one of the two education incentives complete VA Form 22–1990E.

c. VA Form 22–1990N is completed by claimants who wish to transfer his or her Montgomery GI Bill entitlement their dependents.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on February 26, 2008, at page 10335.

Affected Public: Individuals or households.

Estimated Annual Burden: 49,399 hours.

Estimated Average Burden per Respondent: 16.50 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 179,631.

Dated: May 2, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–10530 Filed 5–12–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0613]

Agency Information Collection (Recordkeeping at Flight Schools) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 12, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0613" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0613."

SUPPLEMENTARY INFORMATION:

Title: Recordkeeping at Flight Schools (38 U.S.C. 21.4263 (h)(3).

OMB Control Number: 2900–0613.

Type of Review: Extension of a currently approved collection.

Abstract: Flight schools are required to maintain records on students to support continued approval of their courses. VA uses the data collected to determine whether the courses and students meet the requirements for flight training benefits and to properly pay students.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on February 21, 2008, at page 9618.

Affected Public: Business or other for-profit, not -for-profit institutions, and Federal Government.

Estimated Annual Burden: 427 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 320.

Estimated Annual Responses: 1,280.

Dated: May 2, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–10531 Filed 5–12–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0408]

Agency Information Collection (Manufactured Home Loan Claim) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 12, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0408" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0408."

SUPPLEMENTARY INFORMATION:

Titles:

a. Manufactured Home Loan Claim Loan Guaranty (Manufactured Home Unit Only), (Section 3720, Chapter 37, Title 38 U.S.C), VA Form 26–8629.

b. Manufactured Home Loan Claim Under Loan Guaranty (Manufactured Home Unit and Lot or Lot Only), (Section 3712, Chapter 37, Title 38 U.S.C), VA Form 26–8630.

OMB Control Number: 2900–0408.

Type of Review: Extension of a currently approved collection.

Abstract: Holders of foreclosed VA guaranteed manufactured home unit and guaranteed combination manufactured home complete VA Forms 26–8629 and 26–8630 as a prerequisite payment of claims. The holder record accrued interest, various expenses of liquidation and claim balance on the forms to determine the amoun' claimed and submit with supporting documentation to VA. VA uses the data to determine the proper claim payment due to the holder.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on February 21, 2008, at pages 9614–9615.

Estimated Annual Burden:

a. Manufactured Home Loan Claim Loan Guaranty (Manufactured Home Unit Only), (Section 3720, Chapter 37, Title 38 U.S.C), VA Form 26–8629—33 hours.

b. Manufactured Home Loan Claim Under Loan Guaranty (Manufactured Home Unit and Lot or Lot Only), (Section 3712, Chapter 37, Title 38 U.S.C), VA Form 26–8630—3 hours.

Estimated Average Burden Per Respondent:

a. Manufactured Home Loan Claim Loan Guaranty (Manufactured Home Unit Only), (Section 3720, Chapter 37, Title 38 U.S.C), VA Form 26–8629—20 minutes.

b. Manufactured Home Loan Claim Under Loan Guaranty (Manufactured Home Unit and Lot or Lot Only),

(Section 3712, Chapter 37, Title 38 U.S.C), VA Form 26–8630—20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. Manufactured Home Loan Claim Loan Guaranty (Manufactured Home Unit Only), (Section 3720, Chapter 37, Title 38 U.S.C), VA Form 26–8629—100.

b. Manufactured Home Loan Claim Under Loan Guaranty (Manufactured Home Unit and Lot or Lot Only), (Section 3712, Chapter 37, Title 38 U.S.C), VA Form 26–8630—10.

Dated: May 2, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–10539 Filed 5–12–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0031]

Agency Information Collection (Veteran's Supplemental Application for Assistance In Acquiring Specially Adapted Housing) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 12, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0031" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0031."

SUPPLEMENTARY INFORMATION: Title: Veteran's Supplemental Application for Assistance in Acquiring Specially Adapted Housing, VA Form 26–4555c.

OMB Control Number: 2900–0031.

Type of Review: Revision of a currently approved collection.

Abstract: Veterans complete VA Form 26–4555c to apply for specially adapted housing grant. VA will use the data collected to determine if it is economically feasible for a veteran to reside in specially adapted housing and to compute the proper grant amount.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on February 15, 2008, at page 8933.

Affected Public: Individuals or households.

Estimated Annual Burden: 200 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 800.

Dated: May 2, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–10541 Filed 5–12–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0668]

Agency Information Collection (Supplemental Income Questionnaire (for Philippine Claims Only)) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 12, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0668" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0668."

SUPPLEMENTARY INFORMATION:

Title: Supplemental Income Questionnaire (For Philippine Claims Only), VA Form 21–0784.

OMB Control Number: 2900–0668.

Type of Review: Extension of a currently approved collection.

Abstract: Philippine claimants residing in the Philippine complete VA Form 21–0784 to report their countable family income and net worth. VA uses the information to determine the claimant's entitlement to pension benefits.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on February 21, 2008, at pages 9617–9618.

Affected Public: Individuals or households.

Estimated Annual Burden: 30 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 120.

Dated: May 2, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–10542 Filed 5–12–08; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
May 13, 2008

Part II

Department of Transportation

14 CFR Part 382
Nondiscrimination on the Basis of Disability in Air Travel; Final Rule

DEPARTMENT OF TRANSPORTATION

14 CFR Part 382

[Dockets OST–2004–19482; OST–2005–22298; OST–2006–23999]

[RINs 2105–AC97; 2105–AC29; 2105–AD41]

Nondiscrimination on the Basis of Disability in Air Travel

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Final Rule.

SUMMARY: The Department of Transportation is amending its Air Carrier Access Act (ACAA) rules to apply to foreign carriers. The final rule also adds new provisions concerning passengers who use medical oxygen and passengers who are deaf or hard-of-hearing. The rule also reorganizes and updates the entire ACAA rule. The Department will respond to some matters raised in this rulemaking by issuing a subsequent supplemental notice of proposed rulemaking.

DATES: *Effective Date:* This rule is effective May 13, 2009.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 1200 New Jersey Ave., SE., Room W94–302, Washington, DC 20590 (202) 366–9310 (voice); 202–366–7687 (TTY); *bob.ashby@dot.gov*. You may also contact Blane Workie, Aviation Civil Rights Compliance Branch, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 1200 New Jersey Ave., SE., Room W98–310, Washington, DC 20590 (202) 366–9345), *blane.workie@dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

Congress enacted the Air Carrier Access Act (ACAA) in 1986. The statute prohibits discrimination in airline service on the basis of disability. Following a lengthy rulemaking process that included a regulatory negotiation involving representatives of the airline industry and disability community, the Department issued a final ACAA rule in March 1990. Since that time, the Department has amended the rule ten times.[1] These amendments have concerned such subjects as boarding assistance via lift devices for small aircraft, and subsequently for other aircraft, where level entry boarding is unavailable; seating accommodations for passengers with disabilities; reimbursement for loss of or damage to wheelchairs; modifications to policies or practices necessary to ensure nondiscrimination; terminal accessibility standards; and technical changes to terminology and compliance dates.

The Department has also frequently issued guidance that interprets or explains further the text of the rule. These interpretations have been disseminated in a variety of ways: Preambles to regulatory amendments, industry letters, correspondence with individual carriers or complainants, enforcement actions, web site postings, informal conversations between DOT staff and interested members of the public, etc. This guidance, on a wide variety of subjects, has never been collected in one place. Some of this guidance would be more accessible to the public and more readily understandable if it were incorporated into regulatory text.

There have also been changes in the ways airlines operate since the original publication of Part 382. For example, airlines now make extensive use of Web sites for information and booking purposes. Preboarding announcements are not as universal as they once were. Many carriers now use regional jets for flights that formerly would have been served by larger aircraft. Security screening has become a responsibility of the Transportation Security Administration (TSA), rather than that of the airlines. In this rulemaking, the Department is updating Part 382 to take these and other changes in airline operations into account.

The over 17-year history of amendments and interpretations of Part 382 have made the rule something of a patchwork, which does not flow as clearly and understandably as it might. Restructuring the rule for greater clarity, including using "plain language" to the extent feasible, is an important objective. To this end, Part 382 has been restructured in this rule, to organize it by subject matter area. Compared to the present rule, the text is divided into more subparts and sections, with fewer paragraphs and less text in each on average, to make it easier to find regulatory provisions. The rule uses a question-answer format, with language specifically directing particular parties to take particular actions (*e.g.*, "As a carrier, you must * * *"). We have also tried to express the (admittedly sometimes technical) requirements of the rule in plain language.

The Department recognizes that some users, who have become familiar and comfortable with the existing organization and numbering scheme of Part 382, might have to make some adjustments as they work with the restructured rule. However, the structure of this revision is consistent with a Federal government-wide effort to improve the clarity of regulations, which the Department has employed with great success and public acceptance in the case of other significant rules in recent years, such as revisions of our disadvantaged business enterprise and drug and alcohol testing procedures rules.[2] Many of the provisions of the current Part 382 are retained in this rule with little or no substantive change. To assist users familiar with the current rule in finding material in the new version of the rule, we have included a cross-reference table in Appendix B to the final rule.

In addition to this general revision and update, the Department in this rule is making important substantive changes to the rule in three areas: coverage of foreign carriers, accommodations for passengers who use oxygen and other respiratory assistive devices, and accommodation for deaf or hard-of-hearing passengers.

The original 1986 ACAA covered only U.S. air carriers. However, on April 5, 2000, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21) amended the ACAA specifically to include foreign carriers. The ACAA now reads in relevant part:

> In providing air transportation, an air carrier, including (subject to [49 U.S.C.] section 40105(b)) any foreign air carrier, may not discriminate against an otherwise qualified individual on the following grounds:
>
> (1) The individual has a physical or mental impairment that substantially limits one or more major life activities.
>
> (2) The individual has a record of such an impairment.
>
> (3) The individual is regarded as having such an impairment.

Section 40105(b) provides as follows:

> (b) Actions of Secretary and Administrator—
>
> (1) In carrying out this part, the Secretary of Transportation and the Administrator
>
> (A) Shall act consistently with obligations of the United States Government under an international agreement;
>
> (B) Shall consider applicable laws and requirements of a foreign country; and

[1] The dates and citations for these amendments are the following: April 3, 1990, 55 FR 12341; June 11, 1990, 55 FR 23544; November 1, 1996, 61 FR 56422; January 2, 1997, 62 FR 17; March 4, 1998, 63 FR 10535; March 11, 1998, 63 FR 11954; August 2, 1999, 64 FR 41703; January 5, 2000, 65 FR 352; May 3, 2001, 66 FR 22115; July 3, 2003, 68 FR 4088.

[2] See 64 FR 5096, February 2, 1999 (for 49 CFR Part 26, disadvantaged business enterprise) and 65 FR 79462, December 19, 2000 (for 49 CFR Part 40, drug and alcohol testing procedures).

(C) May not limit compliance by an air carrier with obligations or liabilities imposed by the government of a foreign country when the Secretary takes any action related to a certificate of public convenience and necessity issued under chapter 411 of this title.

(2) This subsection does not apply to an agreement between an air carrier or an officer or representative of an air carrier and the government of a foreign country, if the Secretary of Transportation disapproves the agreement because it is not in the public interest. Section 40106(b)(2) of this title applies to this subsection.

In response to the AIR–21 requirements, the Department on May 18, 2000, issued a notice of its intent to investigate complaints against foreign carriers according to the amended provisions of the ACAA. The notice also announced the Department's plan to initiate a rulemaking modifying Part 382 to cover foreign carriers. On November 4, 2004, the Department issued a notice of proposed rulemaking (NPRM) to apply the ACAA rule to foreign carriers (69 FR 64364). The NPRM sought to apply Part 382 to foreign carriers in a way that achieves the ACAA's nondiscrimination objectives while not imposing undue burdens on foreign carriers. This NPRM also proposed revisions to a number of other provisions of 14 CFR Part 382 and generally reorganized the rule. The Department received about 1300 comments on this NPRM. In this preamble to the final rule, this proposed rule is called the "Foreign Carriers NPRM" or the "2004 NPRM."

On September 7, 2005, the Department published a second NPRM, on the subject of medical oxygen and portable respiratory assistive devices (70 FR 53108). The Department received over 1800 comments on this proposed rule, which is referred to in this preamble as the "Oxygen NPRM." On February 23, 2006, the Department published a third NPRM, concerning accommodations for passengers who are deaf, hard-of-hearing, or deaf-blind. The Department received over 700 comments on this proposed rule, which is called the deaf and hard-of-hearing (DHH) NPRM in this preamble. This document addresses the over 3800 comments received on all three NPRMs. The section-by-section analysis will describe each provision of the combined final rule.

In this preamble, when we mention the "present," "current," or "existing" rule, we mean the version of Part 382 that is in effect now. It will remain in effect until a year from today, when it will be replaced by the provisions that are published in this final rule.

Comments and Responses

General Regulatory Approach

A number of airline industry commenters—principally, but not only, foreign carriers—criticized the Foreign Carriers NPRM's approach as being too detailed and prescriptive. Many of these commenters said they preferred a more general approach, in which an overall objective of nondiscrimination and service to persons with disabilities was stated, with the details of implementation left to the discretion of carrier policies, guided by codes of recommended practice issued by various governments or international organizations.

It is the Department's experience, over the 21 years since the enactment of the Air Carrier Access Act, that in order to ensure that carriers are accountable for providing nondiscriminatory service to passengers with disabilities, detailed standards and requirements are essential. If all that carriers are responsible for is carrying out, in their best judgment, general objectives of nondiscrimination and good service, or best practices or recommendations, or regulations that are not enforceable by the Department, then effective enforcement of the rights Congress intended to protect in the ACAA becomes impracticable. It is understandable that carriers would wish to implement their goals through policies of their own devising and to limit potential compliance issues. However, the Department is responsible for ensuring consistent nondiscriminatory treatment of passengers with disabilities, including implementation of the variety of specific accommodations that are essential in providing such treatment. We must structure our response to this mandate in a way that allows for clear and consistent implementation by the carriers, and clear and consistent enforcement by the Department. Consequently, we are convinced that the approach taken in the NPRM, reflecting the Department's years of successful experience in carrying out the ACAA, is appropriate.

Coverage and Definition of "Flight"

The Foreign Carriers NPRM proposed to cover the activities of foreign carriers with respect to a "flight," defined as a continuous journey, in the same aircraft or using the same flight number that begins or ends at a U.S. airport. The Foreign Carriers NPRM included several examples of what would or would not be considered covered "flights." One of these examples proposed that if a passenger books a journey on a foreign carrier from New York to Cairo, with a change of plane or flight number in London, the entire flight would be covered for that passenger. When there is a change in both aircraft and flight number at a foreign airport, the rule would not apply beyond that point. Another example proposed that the rules applying to U.S. carriers would apply to a flight operated by a foreign carrier between foreign points that was also listed as a flight of a U.S. carrier via a code sharing arrangement.

Commenters, including foreign carriers, generally conceded that it was acceptable for the rule to cover foreign carriers' flights that started or ended at a U.S. airport. Some carriers said that it was burdensome for them to continue to observe Part 382 rules for a leg of a flight that did not itself touch the U.S. (*e.g.*, the London-Cairo leg in the example mentioned above). We note that only service and nondiscrimination provisions of the rule apply in such a situation, not aircraft accessibility requirements.

Foreign carriers' main objection, however, centered on codeshare flights between two foreign points. They said that it was an inappropriate extraterritorial extension of U.S. jurisdiction to apply U.S. rules to a foreign carrier just because the foreign carrier's flight between two foreign points carried passengers under a code-sharing arrangement with a U.S. carrier. In response to these comments, the Department has changed the applicable provision of the final rule. If a foreign carrier operates a flight between two non-U.S. points and the flight carries the code of a U.S. carrier, the final rule will not extend coverage to the foreign carrier for that flight segment and the foreign carrier will not be responsible to the Department for compliance with Part 382 for that segment. Rather, with respect to passengers ticketed to travel under the U.S. carrier's code, the Department regards the transportation of those passengers to be transportation by a U.S. carrier, concerning which the U.S. carrier is responsible for Part 382 compliance. If there is a service-related violation of Part 382 on a flight between two non-U.S. points operated by a foreign carrier, affecting a passenger traveling under the U.S. carrier's code, the violation would be attributed to the U.S. carrier, and any enforcement action taken by the Department would be against the U.S. carrier. We note that the aircraft accessibility requirements would not apply in such a situation. U.S. carriers can work with their foreign carrier codeshare partners to ensure that required services are provided to passengers.

Conflict of Law Waivers and Equivalent Alternative Determinations

One of the most frequent comments made by foreign carriers and their organizations was that implementation of the proposed rules would lead to conflicts between Part 382 and foreign laws, rules, voluntary codes of practice, and carrier policies. These conflicts, commenters said, would lead to confusion and reduce efficiency in service to passengers with disabilities. Many commenters advocated that the Department should defer to foreign laws, rules, and guidance, or accept them as equivalent for purposes of compliance with Part 382.

In anticipation of this concern, and in keeping with the Department's obligation and commitment to giving due consideration to foreign law where it applies, the Foreign Carriers NPRM proposed a conflict of laws waiver mechanism. Under the proposal, a foreign carrier would be required to comply with Part 382, but could apply to DOT for a waiver if a foreign legal requirement conflicted with a given provision of the rule. If DOT agreed that there was a conflict, then the carrier could continue to follow the binding foreign legal requirement, rather than the conflicting provision of Part 382. Foreign carriers commented that this provision was unfair, because it would force them to begin complying with a Part 382 requirement allegedly in conflict with a foreign legal requirement while the application for a waiver was pending. Some commenters also objected to DOT making a determination concerning whether there really was a conflict between DOT regulations and a provision of foreign law.

In order to determine whether a foreign carrier should be excused from complying with an otherwise applicable provision of Part 382, the Department has no reasonable alternative to deciding whether a conflict with a foreign legal requirement exists. The Department cannot rely solely on an assertion by a foreign carrier that such a conflict exists.

Comments from a number of foreign carriers asked the Department to broaden the concept of the proposed waiver, by allowing foreign carriers to comply with recommendations, voluntary codes of practice, etc. We do not believe such a broadening is necessary to comply with the Department's legal obligations. Nor would it be advisable from a policy point of view, as it would not provide the consistency that passengers with disabilities should expect, regardless of the identity or nationality of the carrier they choose.

We therefore want to make clear, for purposes of this waiver provision, what we mean by a conflict with a provision of foreign law. By foreign law, we mean a legally binding mandate (*e.g.*, a statute, regulation, a safety rule equivalent to an FAA regulation) that imposes a nondiscretionary obligation on the foreign carrier to take, or refrain from taking, a certain action. Binding mandates frequently can subject a carrier to penalties imposed by a government in the event of noncompliance. Guidance, recommendations, codes of best practice, policies of carriers or carrier organizations, and other materials that do not have mandatory, binding legal effect on a carrier cannot give rise to a conflict between Part 382 and foreign law for purposes of this Part, even if they are published or endorsed by a foreign government. In order to create a conflict, the foreign legal mandate must require legally something that Part 382 prohibits, or prohibit something that Part 382 requires. A foreign law or regulation that merely authorizes carriers to adopt a certain policy, or gives carriers discretion in a certain area that Part 382 addresses, does not create a conflict cognizable under the conflict of laws waiver provision.

For example, Part 382 says that carriers are prohibited from imposing number limits on passengers with disabilities. Suppose that Country S has a statute, or the equivalent of an FAA regulation, mandating that no more than three wheelchair users can, under any circumstances, travel on an S Airlines flight. S Airlines would have no discretion in the matter, since it was subject to a legal mandate of its government. This would create a conflict between Part 382 and the laws of Country S that could be the subject of a conflict of laws waiver. However, suppose that the government of Country S publishes a guidance document that says limiting wheelchair users on a flight to three is a good idea, has a regulation authorizing S Airlines to impose a number limit if it chooses, or approves an S Airlines safety program that includes a number limit. In these cases, the conflict of laws waiver would not apply, since in each case there is not a binding government requirement for a number limit, and S Airlines has the discretion whether or not to adopt one.

We note one exception to this point. If a foreign government officially informs a carrier that it intends to take enforcement action (*e.g.*, impose a civil penalty) against a carrier for failing to implement a provision of a government policy, guidance document, or recommendation that conflicts with a portion of the Department's rules, the Department would view the government action as creating a legal mandate cognizable under this section.

While retaining the substance of the conflict of laws provision of the NPRM, the Department has, in response to comments, modified the process for considering waiver requests. We agree with commenters that it would be unfair to insist that carriers comply with a Part 382 provision that allegedly conflicts with foreign law while a waiver request is pending. Consequently, we have established an effective date for the rule of one year after its publication date. If a carrier sends in a waiver request within 120 days of the publication date of the final rule, the Department will, to the maximum extent feasible, respond before the effective date of the rule. If we are unable to do so, the carrier can keep implementing the policy or practice that is the subject of the request until we do respond, without becoming subject to enforcement action by the Department. The purpose of the 120-day provision is to provide an incentive to foreign carriers to conduct a due diligence review of foreign legal requirements that may conflict with Part 382 and make any waiver requests to DOT promptly, so that the Department can resolve the issues before the rule takes effect.

What a foreign carrier obtains by filing all its conflict of laws waiver requests within the first 120 days is, in effect, a commitment from DOT not to take enforcement action related to implementing the foreign law in question pending DOT's response to the waiver request. For example, if S Airlines filed a waiver request with respect to an alleged requirement of a Country S law requiring number limits for disabled passengers within 120 days of the rule's publication, then the Department would not commence an enforcement action relating to an alleged violation of Part 382's prohibition of number limits that occurred during the interval between the effective date of Part 382 and the date on which DOT responds to S Airline's waiver request. This would be true even if the Department later denies the request.

However, if S Airlines did not file its request until 180 or 210 days after the rule is published, DOT could begin enforcement action against the carrier for implementing number limits inconsistent with Part 382 during the period between the effective date of the rule and the Department's response to the waiver request. If the Department

granted the waiver request, any enforcement action relating to the carrier's actions during that interval would probably be dismissed. However, if the waiver request were denied, the enforcement action would proceed. S Airlines thus would have put itself at somewhat greater risk by failing to submit its waiver request on a timely basis.

We also recognize that laws change. Consequently, if a new provision of foreign law comes into effect after the 120-day period, a carrier may file a waiver request with the Department. The carrier may keep the policy or practice that is the subject of the request in effect pending the Department's response, which we will try to provide within 180 days. Again, the carrier would not be at risk of a DOT enforcement action relating to the period during which the Department was considering the waiver request concerning the new foreign law.

Carriers should not file frivolous waiver requests, the stated basis for which is clearly lacking in merit or which are filed with the apparent intent of delaying implementation of a provision of Part 382 or abusing the waiver process. In such cases, the Department may pursue enforcement action even if the frivolous waiver request has been filed within 120 days. As a general matter, a carrier that does not file a request for a waiver, or whose request is denied, cannot then raise the alleged existence of a conflict with foreign law as a defense to a DOT enforcement action.

Many foreign carriers and their organizations also said that a conflict of laws waiver, standing alone, was insufficient. They said that their policies and approaches to assisting passengers with disabilities, or laws or policies relating to disability access of foreign carriers' countries (either single-country laws or those of, for example, the European Union) should be recognized as equivalent to DOT's rules. Compliance with equivalent foreign laws and carrier policies, they said, should be sufficient to comply with Part 382.

U.S. disability law includes a concept—equivalent facilitation—that can address these comments to a reasonable degree. This concept, which is embodied in such sources as the Department's Americans with Disabilities Act (ADA) regulations and the Americans with Disabilities Act Accessibility Guidelines (ADAAG), states that a transportation or other service provider can use a different accommodation in place of one required by regulation if the different accommodation provides substantially equivalent accessibility. The final rule permits U.S. and foreign carriers to apply to the Department for a determination of what the final rule will call an "equivalent alternative." (We use this term is used in place of "equivalent facilitation" to avoid any possible confusion with the use of "equivalent facilitation" in other contexts.). If, with respect to a specific accommodation, the carrier demonstrates that what it wants to do will provide substantially equivalent accessibility to passengers with disabilities than literal compliance with a particular provision of the rule, the Department will determine that the carrier can comply with the rule using its alternative accommodation. This provision applies to equipment, policies, procedures, or any other method of complying with Part 382.

It should be emphasized that equivalent alternative determinations concern alternatives only to specific requirements of Part 382. The Department will not entertain an equivalent alternative request relating to an entire regulatory scheme (*e.g.*, an application asserting that compliance with European Union regulations on services to passengers with disabilities was equivalent to Part 382 as a whole). It should be emphasized that the fact that a carrier policy or foreign regulation addresses the same subject as a provision of Part 382 does not mean the carrier policy or foreign regulation is an equivalent alternative. For example, both Part 382 and various carrier policies address the transportation of service animals. A policy or regulation that was more restrictive than Part 382 would not be viewed as an equivalent alternative, since it provided less, rather than substantially equivalent, accessibility for passengers who use service animals.

As with the conflict of laws waiver, if a carrier submits a request for an equivalent alternative determination within 120 days of the publication of this Part, the Department will endeavor to have a response to the carrier by the effective date of the rule. If the Department has not responded by that time, the carrier can implement its proposed equivalent alternative until and unless the Department disapproves it. However, with respect to a request filed subsequent to that date, carriers must begin complying with the Part 382 provision when it becomes effective, and could not use their proposed equivalent alternative until and unless the Department approved it.

Other International Law Issues

A number of foreign carriers said that application of the rule alike to U.S. and foreign carriers was unfair, in that U.S. carriers receive Federal funds to support their operations, while European and other foreign carriers do not. Commenters also argued that it was unfair for DOT to allow U.S. carriers to avoid civil penalties if they have introduced programs that go beyond minimum requirements.

The Department disagrees with both these comments. The very reason for the existence of the ACAA is that the Supreme Court, in *Paralyzed Veterans of America* v. *Civil Aeronautics Board*, 477 U.S. 597 (1986), determined that, with minor exceptions not germane to the issue raised by commenters, U.S. carriers do *not* receive Federal financial assistance. For this reason, the Court said, section 504 of the Rehabilitation Act of 1973—which applies only to entities receiving Federal financial assistance—largely does not cover U.S. air carriers. Congress then enacted the ACAA to ensure that U.S. air carriers provided nondiscriminatory service to passengers with disabilities, notwithstanding the absence of Federal financial assistance. The situation that the Court saw in 1986 remains: U.S. carriers engaging in international transportation do not receive Federal financial assistance.

The second of these comments appears to be a somewhat inaccurate reflection of a DOT enforcement policy that, in some cases, allows a carrier to invest part of a civil penalty to improve services for passengers with disabilities above and beyond what the ACAA requires, rather than paying the amount of this investment to the Department. For example, if a carrier were assessed a $1.5 million civil penalty for failure to provide timely and adequate assistance to passengers who use wheelchairs, the Department's Office of Aviation Enforcement and Proceedings might require a cash payment of only $200,000 if the carrier agreed to use the remaining $1.3 million to enhance accessibility for passengers with mobility impairments in ways that go beyond the requirements of Part 382. Since this enforcement approach applies equally to foreign and U.S. carriers, continued implementation of this policy will not result in any inequity between U.S. and foreign carriers.

Numerous foreign carriers and organizations complained that the Foreign Carriers NPRM was inconsistent with 49 U.S.C. 40105(b), which directs the Secretary to "act consistently with obligations of the United States

government under an international agreement" and to "consider applicable laws and requirements of a foreign country." In the context of this rule, the Department believes that the conflict of laws waiver provision effectively discharges the statutory obligation imposed on the Department by the language of subsection (b)(1)(B), since the Department would "consider" foreign requirements in implementing its waiver authority when a Department regulatory provision that was shown to conflict with a foreign legal mandate. In addition, The Department has also provided greater flexibility in the rule through incorporating an equivalent alternative provision, which covers policies and practices that are not mandated by foreign laws and requirements. This provision will facilitate our efforts to implement ACAA requirements smoothly in the context of our international relationships.

A related argument that many foreign carriers made is that the Foreign Carriers NPRM proposed provisions inconsistent with international agreements binding on the U.S., thereby violating subsection (b)(1)(A). In particular, commenters cited provisions of the Chicago Convention (*e.g.*, Articles 1 and 37 and Annex 9). Article 1 concerns the sovereignty of signatory states with respect to aviation; Article 37 authorizes the International Civil Aviation Organization (ICAO) to adopt standards and recommendations in a variety of areas, and Annex 9 includes a series of standards and recommendations concerning transportation of persons with disabilities.

In the Department's view, Article 1 is fully consistent with the adoption of requirements that affect flights to and from the U.S., a point with which many commenters agreed. The one area in which the Foreign Carriers NPRM was said by many commenters to assert extraterritorial jurisdiction—coverage of foreign carriers with respect to flights carrying passengers under the code of a U.S. carrier—has been changed in the final rule, as described above.

The authority of ICAO under Article 37 to issue standards and recommendations does not purport to pre-empt a signatory state's authority to issue rules concerning air commerce to and from its airports. Nor do the standards and recommendations of Annex 9 with respect to transportation of passengers with disabilities purport to occupy the field, such that member states are pre-empted from issuing their own rules in this area. Indeed, the ICAO recommended practices suggest that member states *should* take their own implementing actions. It is reasonable to state that the provisions of the ACAA and Part 382 faithfully carry out these recommendations, making concrete many of the suggestions that ICAO makes to member states.

The two ICAO standards in Annex 9 related to transportation of passengers with disabilities are the following:

Standard 8.27. Contracting States shall take the necessary steps to ensure that airport facilities and services are adapted to the needs of persons with disabilities.

Standard 8.34. Contracting States shall take the necessary steps to ensure that persons with disabilities have adequate access to air services.

The ACAA rule does not conflict with these standards, it supports them. The rule requires that airport facilities and services involving transportation to and from the U.S. provide nondiscriminatory service to passengers with disabilities. The rule includes a variety of steps necessary to ensure that passengers with disabilities have nondiscriminatory access to air services, again in transportation to and from the U.S.

Some commenters alleged that requirements of the Chicago Convention regarding "notification of differences" should apply to the rulemaking and that the Department had failed to comply with them. The relevant language is the following:

Notification of differences. The attention of Contracting States is drawn to the obligation imposed by Article 38 of the Convention by which Contracting States are required to notify the Organization of any differences between their national regulations and practices and the International Standards contained in this Annex and any amendments thereto. Contracting States are invited to extend such notification to any differences from the Recommended Practices contained in this Annex, and any amendments thereto.

The requirement for a notification of differences applies only to differences between Standards and national regulations. As noted above, there are no differences between the ICAO Standards and the ACAA rule. The Convention's language says that States are "invited" to extend notification to ICAO with respect to any differences from Recommended Practices. Obviously, an "invitation" falls well short of a legal mandate. In any event, the ACAA requirements have the effect of carrying out the Recommended Practices. We reject any assertion that, by making specific accommodations mandatory (*e.g.*, by saying "must" instead of "should") or by limiting airline discretion to provide poorer rather than better accommodations for passengers (*e.g.*, with respect to service animals), the rule is creating "differences" with International Standards cognizable under provisions of the Chicago Convention.

In connection with their Chicago Convention-related arguments, a number of foreign carriers or organizations cited *British Caledonian Airways* v. *Bond*, 665 F.2d 1153 (D.C. Cir., 1981). This case arose from the crash of a DC–10 that FAA traced to cracks in engine pylons that were exacerbated by faulty maintenance procedures. FAA issued an emergency Special Federal Aviation Regulation (SFAR) grounding all DC–10s of U.S. carriers. FAA then issued a similar SFAR prohibiting foreign carriers' DC–10s from operating in U.S. airspace. Shortly before FAA rescinded the SFARs in question, their purpose having been achieved, several foreign carriers sought judicial review of the foreign carrier SFAR. The Court found that the SFAR conflicted with Article 33 of the Chicago Convention, which provides that certificates of airworthiness or licenses issued by the State in which the aircraft is registered must be recognized as valid by other contracting States, unless the country of registration is not observing "minimum standards."

This case concerns solely Article 33 and its relationship to the validity of carrier airworthiness certificates issued by foreign governments. This rulemaking, on the other hand, has nothing to do with Article 33 or airworthiness certificates. The case therefore is irrelevant to the rulemaking. It may be that commenters were arguing that DOT regulatory actions in general that conflict with the Chicago Conventions are vulnerable to court challenges; however, as noted above, this regulation is fully consistent with relevant portions of the Chicago Convention.

Other comments from foreign carriers and organizations were more policy-oriented in nature, asking for consultation through ICAO or other channels prior to publication of a rule which, while carefully limited to matters affecting service to and from the U.S., had implications for the international aviation system. Comments asked for greater focus on international harmonization. In fact, the Department consulted extensively with other interested parties. The volume and detail of comments from foreign carriers and organizations testify to the extensive opportunity non-U.S. parties have had to participate in this rulemaking. This final rule reflects the

Department's consideration of this participation (and we note that participation between the time of the Foreign Carriers NPRM and the final rule is just as valid as participation before issuance of the Foreign Carriers NPRM). DOT officials also met and had phone conferences with organizations representing European and Asian governments and/or carriers. It would be unreasonable to contend that this extensive participation somehow does not count.

The Department is willing to continue discussions with foreign carriers and international organizations with respect to harmonization of U.S. and other standards in the area of transportation of passengers with disabilities. Meantime, the Department has a responsibility to carry out its statutory mandate to apply the ACAA to foreign carriers, and we cannot make working with other parties on harmonization matters a condition precedent to carrying out what Congress has mandated.

Some comments alluded to the regulatory negotiation process that preceded the issuance of the original ACAA NPRM, complaining that there was not a similar process prior to the issuance of the November 2004 NPRM. Regulatory negotiation, is, of course, a wholly voluntary process on the Department's part. There can be no implication that, because the Department chose to use such a process in the 1980s, the Department was in any sense required to do so again for this rulemaking. Nor is there any such requirement in the statutory amendment applying the ACAA to foreign carriers. It is worth noting, in any event, that the original ACAA NPRM was not the product of consensus resulting from the regulatory negotiation. That negotiation terminated short of consensus, because of intractable disagreements on some issues between carriers and disability groups. The original NPRM, like the 2004 NPRM, was wholly the Department's proposal. The variety of disagreements among commenters concerning the November 2004 NPRM suggests, in retrospect, that the likelihood of achieving consensus on the application of the ACAA to foreign carriers in a manner consistent with the Department's obligations under the ACAA would have been very low. Moreover, in the years since the original ACAA regulatory negotiation, disability groups have expressed some skepticism about the utility of the regulatory negotiation process for nondiscrimination rules of this kind, making it questionable whether they would have chosen to participate in such a venture.

Accessibility of Airport Terminals and Facilities

The Foreign Carriers NPRM (sec. 382.51) proposed that both U.S. and foreign carriers, at both U.S. and foreign airports, would be responsible for ensuring the accessibility of terminal facilities they own, lease, or control. The responsibility of foreign carriers at foreign airports would extend only to facilities involved with flights to or from the U.S. U.S. airports must meet applicable accessibility requirements (*e.g.*, the ADAAG) under the ADA and section 504. The Foreign Carriers NPRM proposed a performance standard for foreign airports, since U.S. accessibility standards do not apply there. This performance standard would require carriers to ensure that passengers with disabilities could readily move through terminal facilities to get to or from boarding areas. Carriers could meet this performance standard by a variety of means. A related provision (sec. 382.91) proposed that, at both U.S. and foreign airports, both U.S. and foreign carriers would have to provide assistance to passengers with disabilities in moving through the terminal and making connections between gates.

Some comments appear to have misunderstood the Foreign Carriers NPRM to propose that DOT wished U.S. accessibility standards, like the ADAAG, to apply to foreign airports. The Foreign Carriers NPRM did not make such a proposal. Those comments aside, the most frequent comment made by foreign carriers and their organizations on this subject was that the Foreign Carriers NPRM's proposals for airport facility accessibility did not sufficiently take into account the fact that foreign governments or airport operators, not airlines, controlled matters relating to accessibility at many foreign airports. For example, it was pointed out that under recent European Union regulations, airport operators are given most of the responsibility for accommodating passengers with disabilities in airports.

The Department recognizes that this may often be the case, and the final rule should not be understood to require carriers to duplicate the accommodations made by airport operators at foreign airports. Where foreign airport operators provide accessibility services or accessible facilities, foreign carriers may rely on the airport operators' efforts, to the extent that those efforts fully meet the requirements of this Part. What happens, though, if the foreign airport operators' efforts do not fully provide the accessibility that this rule requires (*e.g.*, the airport operator is responsible for providing wheelchair assistance to passengers within the terminal, but does not provide connecting service between gates for wheelchair users who are changing planes on flights covered by the rule)? In such a case, this rule requires air carriers to supplement the services provided by the airport operator, by providing the supplemental services itself or hiring a contractor to do so. If the carrier cannot legally do so (*e.g.*, the airline is legally prohibited from supplementing the airport's services to passengers with disabilities), the carrier could seek a conflict of laws waiver.

The Foreign Carriers NPRM asked whether the final rule should require automated kiosks operated by carriers in airports or other locations (*e.g.*, for ticketing and dispensing of boarding passes) to be accessible, and, if so, what accessibility standards should apply to them. Disability community commenters generally expressed support for this proposal; carriers and their organizations generally expressed concern about the cost and technical feasibility of accessible kiosks. The Department believes that all services available to the general public should be accessible to people with disabilities. Nevertheless, the comments concerning kiosks were not sufficient to answer our questions about cost and technical issues. Consequently, the Department plans to seek further comment about kiosks in a forthcoming supplemental notice of proposed rulemaking (SNPRM). The preamble to the SNPRM will discuss this issue in more detail. On this subject, the Department intends to coordinate with the Access Board, which also has work under way that could affect kiosks.

As an interim measure, the final rule will require a carrier whose kiosks are not accessible to provide equivalent service to passengers with disabilities who cannot use the kiosks. For example, suppose a passenger with a disability having only carry-on luggage wants to use a kiosk to get a boarding pass without standing in line with passengers checking baggage. If, because the kiosk is not accessible, the passenger cannot use it, the carrier would have to provide equivalent service, such as by having carrier personnel operate the kiosk for the passenger or allowing the passenger to use the first class boarding pass line.

We recognize that some disability community commenters have expressed concern about the latter approach, thinking that it might call undue attention to the individuals receiving the accommodation. We agree that

assisting the passenger at the kiosk is preferable. In our view, however, a potentially awkward accommodation is preferable to none at all (*e.g.*, in a situation where personnel were not available to assist the passenger at the kiosk). We urge carriers to provide such an accommodation with sensitivity to passengers' potential concerns about looking as though they have been singled out for special treatment.

U.S. airports are governed, for disability nondiscrimination, by several Federal laws and rules, all of which coexist on the same airport real estate. The ACAA and DOT's ACAA rules apply to terminal facilities owned, leased, or controlled by a carrier, specifically facilities that provide access to air transportation (*e.g.*, ticket counters, baggage claim areas, gates). Title II of the ADA, and the Title II rules of the Department of Justice (DOJ) apply to terminal facilities owned by public entities like state and local airport authorities. DOT's rules under section 504 of the Rehabilitation Act of 1973 apply to those same facilities owned by public entities, if they receive DOT financial assistance (*i.e.*, under the FAA's airport improvement program). In some cases, DOT's 504 rules could apply to airport facilities of airlines (*e.g.*, those air carriers who receive essential air service program funds from DOT). DOT's Title II ADA rules apply to transportation services provided by public entities (*e.g.*, a parking shuttle service run by the airport authority) or public transportation services that serve the airport (e.g. a public rail or bus transit link to the airport) DOT's Title III ADA rules apply to private transportation serving the airport (*e.g.*, private taxi, demand-responsive shuttle, or bus service). DOJ's Title III ADA rules also apply to places of public accommodation on airport grounds that serve the general public (*e.g.*, hotels, restaurants, news and gift stores).

Fortunately, ascertaining the practical obligations of various parties at the airport is a good deal less confusing than this summary of overlapping authorities might make it seem. In a November 1996 amendment to its existing ACAA rule, the Department clarified these relationships, and this understanding of the relationship carries over into the new ACAA rule (see 61 FR 56417–56418, November 1, 1996). Basically, regardless of which statutory or regulatory authority or authorities apply to a particular facility or portion of a facility, Title II ADA requirements apply to public entity spaces and Title III ADA requirements apply to private entity spaces. The Americans with Disabilities Act Accessibility Guidelines (ADAAG) are the physical accessibility standards that apply throughout the airport (note, however, that until DOJ completes its adoption of the 2004 ADAAG, the 1991 ADAAG continues to apply spaces controlled by DOJ regulations).

Enplaning, Deplaning, and Connecting Assistance

The original Part 382, issued in 1990, required U.S. carriers to provide enplaning and deplaning assistance, and it assigned to the arriving carrier the responsibility for providing assistance in making connections and moving between gates. The Foreign Carriers NPRM built on this existing requirement, proposing to require carrier assistance between the terminal entrance and gate, as well with accessing ticket and baggage locations, rest rooms, and food service concessions. The Foreign Carriers NPRM asked whether carriers should be permitted to require advance notice for these accommodations, and it proposed that enplaning, deplaning, and connecting assistance be provided "promptly."

The Foreign Carriers NPRM proposed requiring carriers, in the course of providing this assistance, to help passengers with disabilities with carry-on and gate-checked luggage. It also proposed requiring carriers to make a general announcement in the gate area offering preboarding to passengers with disabilities.

Some carriers said that while they would voluntarily provide assistance to passengers with disabilities in moving through the terminal when practical and feasible, they opposed a regulatory requirement to provide this assistance. The Department does not believe that, under the ACAA, it is appropriate to tell passengers that they must learn to rely on the kindness of strangers. One of the purposes of Part 382 always has been, and remains, to create legally enforceable expectations upon which passengers with disabilities can consistently depend. Reliance on purely voluntary action by carriers does not achieve this objective.

One of the issues discussed most often in comments concerned the proposed requirement that enplaning, deplaning, and connecting assistance be provided promptly. Many commenters, particularly people with disabilities and organizations representing them, thought that the rule should specify maximum times for assistance—5, 10, or 15 minutes—rather than having a more general requirement for promptness. Some disability community comments also said that the rule should prohibit carriers from waiting until everyone else had left the plane before providing deplaning assistance to passengers with disabilities (*e.g.*, to deplane a person needing assistance at the same time as persons in adjacent rows leave), or at least that the rule should require carriers to assist passengers with disabilities in deplaning no later than the time the aircraft aisle is free of other passengers. Carriers, on the other hand, opposed such specificity, saying that it was impractical and potentially costly. Some carriers wanted a less specific term than "promptly," preferring a concept like "as soon as reasonably possible under the circumstances."

The Department has decided to adopt the "promptly" language as proposed. The Department is concerned that, given the wide variety of situations in different airports and flights, adopting a specific time limit as some commenters advocated would be unrealistic. On the other hand, having no standard would have the effect of reducing the requirement, as a practical matter, to "whenever the carrier gets around to it." We understand "promptly" to mean, in the case of deplaning, that personnel and boarding chairs should be available to deplane the passenger no later than as soon as other passengers have left the aircraft. We believe that halting the boarding process for everyone behind, for example, Row 15, until a wheelchair user in Row 15 was transferred to a boarding chair and assisted off the aircraft, could unduly inconvenience a considerably greater number of persons. The requirement for prompt service imposes a reasonable performance requirement on carriers without creating unnecessarily rigid timing requirements which, in some situations, carriers operating in the best of faith might be unable to meet.

Many carriers suggested that they be allowed to require advance notice (*e.g.*, of 24 or 48 hours) from passengers wanting enplaning, deplaning, and connecting assistance. This would make the logistics of providing the service easier for carriers to deal with, they said, and would ensure better service for passengers. We agree that it is highly advisable for passengers who want assistance to tell the airline about their needs in advance, and we urge passengers to communicate with carriers as soon as possible to set up assistance. We also noted comments from some carriers that, at some airports, particular locations have been established at which passengers arriving without prior notice can obtain assistance more easily and quickly than might otherwise be the case. This appears to be a good idea that carriers

might consider using more widely. Nevertheless, being able to receive assistance in moving through the airport is so fundamental to access to the air travel system that the Department does not believe that allowing carriers to require—as distinct from recommending—advance notice would be consistent with the nondiscrimination objectives of the ACAA. Passengers with disabilities, like other passengers, sometimes must travel on short notice for business or personal reasons, and it would not be consistent with the ACAA to limit their access to needed assistance in moving through the terminal.

Carrier comments also mentioned, in this context, the relationship between carriers and many foreign airports, where airports often have the major responsibility for providing assistance in the terminal. As noted elsewhere in the preamble, carriers can rely on airports' efforts with respect to assistance in the terminal, supplementing the assistance that airports provide as necessary to meet fully the requirements of Part 382. If carriers are precluded by law from supplementing the airport-provided assistance, carriers can request a conflict of laws waiver.

The Foreign Carriers NPRM, like the existing rule, assigns responsibility for connecting assistance to the carrier on which the passenger arrives. One foreign carrier mentioned that, per agreements with other carriers in at least some airports, its arriving passengers would be assisted to a connecting carrier's gate by personnel of the connecting carrier. As noted elsewhere, the Department does not object to contractual agreements between carriers that would delegate the connecting assistance function to the connecting carrier. However, under the rule, the arriving carrier would retain responsibility for ensuring that the function was properly carried out.

Many carriers objected to having to allow passengers they are assisting to stop at a restroom or food service location, saying that this would delay service and increase personnel costs. Passenger comments, to the contrary, suggested that it was unfair for assistance personnel to insist on wheeling a passenger who needed to go to the bathroom or who was hungry past a conveniently located restroom or food concession, at which ambulatory passengers could stop at their discretion. Their comments pointed out that eating and relieving oneself are basic life activities that people must do from time to time. This issue has become increasingly significant in recent years due to the need for early arrival at the airport for security screening and cutbacks in airline meal service.

The final rule is structured to accommodate both sets of concerns. If an airline or contractor employee is assisting a passenger from, for example, the ticket counter to the gate, and they come to a restroom or food service location on the route they are taking, the employee is required to allow the passenger a brief stop, if the passenger self-identifies as a person with a disability needing this service. The employee is not required to detour to a different route, provide personal care attendant services to the passenger, or incur an unreasonable delay. A delay which would result in the passenger not getting to a connecting flight would obviously be unreasonable. With respect to food service locations, the kind of brief stop the Department envisions is one sufficient to pick up a prepared carry-out item or fast-food sandwich, as distinct from eating at a sit-down restaurant. Even in the case of a carry-out or fast-food location, a long line might create an unreasonable delay.

The Foreign Carriers NPRM proposed that persons with disabilities who need assistance in boarding be provided an opportunity to preboard. It also proposed requiring a general preboarding announcement to this effect in the gate area. Disability community comments generally supported the proposed requirements. Carrier comments did not object to the proposed requirement to provide an opportunity for persons with disabilities to preboard, though some carriers did object to making the general announcement of the opportunity in the gate area, mostly out of concern that too many ineligible people would try to preboard, thereby slowing the boarding process. The Department believes that preboarding is an important way in which carriers can facilitate transportation by passengers with disabilities. Indeed, some portions of Part 382 (*e.g.*, with respect to on-board stowage of accessibility equipment) are premised on the availability of preboarding. The final rule will include this requirement. However, we will not make final the proposed provision requiring a general announcement of this opportunity in the boarding area. Some carriers make such an announcement as a matter of policy. Even where this is not the case, carrier personnel are generally responsive to requests from passengers with disabilities to preboard and often scan the boarding area to determine if there are passengers for whom preboarding would be appropriate. Passengers who want to ensure that they can preboard should ask gate personnel for the opportunity. It is reasonable to expect passengers to take this step.

The Foreign Carriers NPRM proposed that carriers, in the course of providing assistance to passengers with a disability in moving through the terminal, would assist them in transporting carry-on and gate-checked baggage. A number of carrier comments opposed this proposal, saying that it would impose staffing and cost burdens on them. If a passenger wanted to have someone carry his or her bags, at least one comment suggested, the passenger should hire porter service. Other commenters said that such service should be limited to wheelchair users or persons with severe hearing or vision impairments.

The Department notes that, in many cases, passengers with disabilities do not need extensive extra assistance in dealing with carry-on items. It is commonplace for wheelchair users to carry their briefcases or purses on their laps when being assisted through the terminal, for example. Proper-size carry-on and gate-checked items are, by definition, limited in size, and they are not the kind of items that passengers in general need to use a skycap and a cart to move through the airport. It would not be appropriate, in the context of a nondiscrimination rule, to effectively require passengers with disabilities to hire such service. We agree with commenters, however, that passengers who can carry their own items should do so, and we have added language saying that this service need be provided only to those passengers who cannot do so because of their disability. Carrier or contractor personnel can request credible verbal assurances from a passenger that he or she cannot transport the item in question or, in the absence of such credible assurances, require documentation as a condition of providing the service.

Number Limits

A number of foreign carriers commented that being able to limit the number of passengers with disabilities on board a given flight was important for safety, particularly in the context of an emergency evacuation. In some cases, carriers mentioned that laws or regulations of their governments either permitted or required them to impose limits on the numbers of either passengers with disabilities or assistive devices in the cabin.

A number limit permits a carrier to say to a passenger, in effect "As a person with a disability, we will deny

you transportation on this flight solely because some number of other persons with disabilities are on the flight." Such a response to a passenger is intrinsically discriminatory. The Department discussed this issue in the preamble to the original ACAA rule (55 FR 8025–8028; March 6, 1990), and our view of the matter has not changed. If anything, our view of the matter has been strengthened by the fact that, during the 17 years since the original rule was issued, we are not aware of any instances of safety problems resulting from the existing rule's prohibition on number limits. As mentioned elsewhere, a foreign carrier can apply for a conflict of laws waiver concerning number limits. The final rule also retains the existing provision permitting a carrier to require advance notice for a group of 10 or more passengers with disabilities traveling together, so that the airline can make appropriate preparations for the group (*e.g.*, a team traveling to a competition for wheelchair athletes).

Safety Assistants/Attendants

The Foreign Carriers NPRM proposed retaining, with minor modifications, the existing Part 382 limitations on the ability of carriers to require passengers with disabilities to travel with attendants. One terminological change we proposed was to refer to attendants that airlines could require in certain specified situations for safety purposes as "safety assistants." The use of this term is intended to emphasize that the only reason a carrier may require another person to travel with a passenger with a disability is safety. It would never be permitted for a carrier to require someone to travel with a passenger with a disability as a personal care attendant; that is, as someone who is present to assist the passenger with personal needs such as eating, drinking, and elimination.

A number of foreign carriers asserted that they should retain the discretion to require attendants for passengers with disabilities. They gave several reasons for this desire. Some commenters did not want to have to rely on passengers' self-assessments of their ability to travel independently. Some cited provisions of carrier manuals or government guidance that were contrary to the proposed regulation. Some feared that crew members might be pressed into performing personal care functions. Others argued that, on lengthy overseas flights, it was reasonable to require attendants for personal care purposes, since otherwise passengers with disabilities would be unable to perform personal functions for long periods, with harm possibly resulting to themselves or others. Some comments said that the requirement to allow a safety assistant to fly free if the carrier disagreed with the passenger's self-assessment could lead to abuse by clever passengers trying to get free flights for someone. Some of these comments suggested providing discounted, rather than free, transportation for the attendant in these situations.

Disability community commenters generally supported the Foreign Carriers NPRM proposals, and a number of comments were particularly supportive of the change to the "safety assistant" term, believing that it helped to clarify the meaning of the provision. Some comments from people with disabilities, however, objected to the provision to the extent that it would ever permit carriers to insist on an attendant over the passenger's objections. These commenters did not trust the carriers' judgments about passengers' capabilities and were concerned that carriers would impose attendant requirements arbitrarily, increasing the costs and difficulty of flying for passengers with disabilities.

The limits on carrier requirements for attendants were a significant issue in the original ACAA rulemaking, and the Department's discussion of that issue in the preamble to the 1990 ACAA rule remains relevant (see 55 FR 8029–8032; March 6, 1990). Passengers with disabilities, for the most part, are the best judges of their capabilities, and providing broad discretion to carriers to override that judgment does carry with it a significant risk of arbitrary burdens being placed on passengers. On the other hand, carriers have ultimate responsibility for the safety of passengers, and we believe that the balance struck in the original ACAA rule is a sensible one. Passengers have the primary responsibility for making the determination if they can travel independently, but carriers can overrule that determination, in a carefully limited set of circumstances, and require a safety assistant. If it is really an overriding safety reason that compels a carrier to overrule a passenger's decision and insist that he or she travel with a safety assistant, then it is appropriate for the carrier to bear the cost of the safety judgment that it makes. In the 17 years that the Department has implemented this provision under the existing ACAA rule, this requirement has not resulted, to the best of our knowledge, either in safety problems or frequent or significant abuse by passengers.

Even on long flights, passengers with disabilities, under a nondiscrimination statute, have the right to determine whether they will incur the discomfort involved with not having someone available to assist them with personal functions. A passenger may choose to forego the airline's food and beverage service. A passenger may dehydrate himself and avoid the need to urinate. The Foreign Carriers NPRM, like the present rule, emphasizes that flight attendants and other carrier personnel are never required to perform personal care functions for a passenger. To ensure that passengers who make the choice to fly unaccompanied have the opportunity to be fully informed of the implications of their decision, the information to which passengers are entitled (see sec. 382.41(f)) includes a description of services that are or are not available on a flight.

For these reasons, the Department is adopting the proposed provision and thereby retaining the substance of the existing provision of Part 382. The Department has made a few modifications in the rule text, however. In a situation where the carrier insists on a passenger traveling with a safety assistant, contrary to the passenger's self-assessment, we are deleting the proposed language that would require the carrier to make a good-faith effort to find someone to perform the safety assistant function. This language was not part of the original 1990 rule, and we do not think it is essential to add it. As stated in the preamble to the 1990 rule (see 55 FR 8031), the carrier can play an important role in selecting a safety assistant (*e.g.*, a deadheading crew member, a passenger volunteer), which can be useful from the carrier's point of view if the carrier is worried about a passenger with a disability trying to abuse the system. If the carrier does not designate an employee or volunteer to be the safety assistant, the carrier cannot refuse to accept someone designated by the passenger (*i.e.*, with the result that no one would be available to act as the safety assistant), as long as that person is capable of assisting the passenger in an evacuation.

With respect to passengers who have mobility impairments, we have clarified the criterion relating to safety assistants to say that the passenger with a disability must be capable of "physically" assisting in his or her own evacuation. This clarification is made to avoid the possibility that someone could claim he is assisting in his own evacuation merely by calling for help. Finally, given that the rule will now apply to foreign carriers, we have added to the provisions concerning persons with mental disabilities and deaf-blind individuals a notation referring to

briefings required by foreign government regulations, as well as those of the FAA.

Consistent with the approach taken in the current rule and the Foreign Carriers NPRM, we proposed in the DHH NPRM to allow carriers to require any passenger who has severe hearing and vision impairment or is deaf-blind to travel with a safety assistant if communication adequate for transmission of the required safety briefing cannot be established. (We use the term "severe hearing and vision impairment" to include the entire spectrum of this disability, including the extreme of "deaf-blind," unless we expressly indicate otherwise.) We proposed to require both the carrier's personnel and the disabled passenger to make reasonable attempts to establish adequate communication, beginning with self-identification on the passenger's part. We further proposed that if the carrier disagrees with the passenger's assessment that he or she is capable of traveling independently, the carrier must transport the safety assistant free of charge and must also make reasonable efforts to locate such an assistant. We solicited comments on the proposed joint responsibility, on what might qualify as reasonable attempts to communicate, on whether our proposal is specific enough for all parties concerned to understand their responsibilities, and on whether a different standard might be more appropriate. We also solicited comments on the costs of compliance.

The carriers and carrier associations that filed comments all supported the proposed requirement that passengers with severe hearing and vision impairment self-identify. Most opposed being required to find a voluntary safety assistant if they disagree with the disabled passenger's self-assessment of being able to travel without one, and all opposed being required to transport the safety assistant without charge. They contend that not only would the requirement to transport the safety assistant without charge create incentives for fraudulent assertions of independence, but using voluntary safety assistants would raise serious insurance and liability issues, and requiring free transportation would saddle them with undue costs. Most sought clarification of carriers' responsibility for making reasonable efforts to establish communication with passengers whose hearing and vision are severely impaired. For flights of twelve hours or more, some carriers said, inexperienced passengers may not be aware of what needs may arise for them during their flight.

Of the disability organizations that filed comments, one supported joint responsibility for reasonable efforts to establish communication to determine the need for a safety assistant. Others maintained that the rule should ensure that persons with severe hearing and vision impairment are not denied travel because a carrier's employees lack adequate training in or knowledge of basic communication techniques.

In response to the comments we received, we are modifying the proposed rule in some respects. In so doing, we are maintaining the basic principle that has worked effectively in the domestic airline industry since the original 1990 rule: if a passenger is able to establish adequate communication with the carrier for purposes of receiving the safety briefing, and the carrier nonetheless decides to overrule the passenger's assessment that he or she can travel independently, the carrier cannot charge for the transportation of the safety assistant that the carrier requires.

To allow the carrier an opportunity to confirm that the passenger had such a means of communication available, the final rule provides that the carrier can require the passenger to self-identify 48 hours before the flight. As part of this notification, the passenger would explain to the carrier how communication can be established (*e.g.*, via tactile speech-reading by touching the speaker's lips, cheek and throat). If the passenger does not notify the carrier 48 hours before the flight, the rule nonetheless requires the carrier to accommodate the passenger as far as is practicable.

For example, if a passenger with severe hearing and vision impairments does not notify the carrier 48 hours before the flight of his or her intent to travel alone and of his or her ability to communicate adequately for transmission of the safety briefing, the carrier could refuse to transport the passenger without a safety assistant. If, however, the same passenger does not provide advance notice but is taking a nonstop flight, brings an interpreter to the airport, and is able to establish communication (in the gate area) adequate for the transmission of the safety briefing and to receive instruction during an emergency evacuation, the carrier must allow the passenger to travel without a safety assistant.

The FAA requires that the safety briefing be provided before each takeoff, so communication to permit transmission of this briefing must be established for each flight segment of the passenger's itinerary. Passengers can use a variety of means to establish the needed communication. A passenger could, for example, bring a companion to the airport to serve as a go-between with carrier personnel there. That individual can interpret for the passenger during the safety briefing and can help the passenger agree with carrier personnel on physical signals—touching the passenger's hand in a specific manner, for example—for use during evacuation or other emergencies. Another means by which the passenger may establish communication is to give carrier personnel an instruction sheet for communicating with him or her.

While we are not requiring carriers to make safety briefing information available on Braille cards, they are free to do so. The carrier may not require the passenger to demonstrate his or her ability to communicate or that he or she has understood the safety briefing. For example, there could not be a quiz on the contents of the safety briefing or a demonstration of lip reading or finger spelling ability.

In the case of codeshare flights, the carrier whose code is used must inform the operating carrier that a passenger with severe hearing and vision impairment has provided notice 48 hours in advance of his or her intent to travel without a safety assistant. If there is sufficient time before the 48-hour deadline for the passenger to directly contact the operating carrier, the carrier whose code is being used could, as an alternative, provide the passenger a number where he or she could contact the operating carrier to impart this information.

Consistent with the treatment of this issue in the rest of the rule, in cases where carriers disagree with a passenger's self-assessment that he or she can travel alone, we will continue to require that they transport the safety assistant without charge. Of course, any carrier that wishes to accommodate a passenger with severely impaired vision and hearing by designating a safety assistant from among, say, non-revenue passengers, its airport personnel, ticketed passengers on the same flight who volunteer to serve in that capacity, or a person accompanying the disabled passenger to the airport is free to do so.

This requirement of free transportation for the safety assistant also applies in cases when the disabled passenger who believes that he or she does not need a safety assistant proposes to establish communication by means of tactile signing or finger spelling, but no member of the carrier's flight crew can communicate using these methods. Carriers may decide as a practical matter that providing free transportation for a safety assistant in

these cases is less costly than training personnel to communicate using such methods.

Finally, with respect to a passenger with a mental impairment (*e.g.*, someone with Alzheimer's disease), the Department wants carriers and passengers to understand that it is the passenger himself, not someone accompanying the passenger to the airport, who must be able to understand safety instructions from the crew.

Medical Certificates/Communicable Diseases

The Foreign Carriers NPRM proposed to continue, and apply to covered flights of foreign carriers, the existing Part 382 limits on the extent to which carriers can exclude or restrict passengers with communicable diseases and the situations in which carriers can require a passenger to get a medical certificate from a physician before traveling.

Many air carrier comments asked for greater guidance on how to apply the provisions of these sections. Some of these suggested incorporating past DOT guidance that spelled out that a combination of severity of health consequences and easy transmission of a disease in the aircraft cabin environment would create an appropriate situation for restrictions on an individual's travel and/or a requirement for a medical certificate. Commenters asked whether such conditions as the common cold, SARS, tuberculosis, or AIDS would meet the requirements of the proposed rule for permitting restrictions on travel or the requirement for a medical certificate. Some comments also asked how directives or recommendations from public health authorities would play into carrier decisions under the rule.

There were a number of comments about the concept of "direct threat," which is defined as a significant risk to the health or safety of others that cannot be eliminated by a modification of polices, practices, or procedures or eliminated by the provision of auxiliary aids or services. Disability community commenters expressed the concern that use of this term—derived from the Americans with Disabilities Act—would make it too easy for carriers to use their discretion to exclude passengers, perhaps in a discriminatory fashion. Some carriers believed, to the contrary, that it would make it too difficult to exercise the discretion they need to protect the health of travelers or that it would be too burdensome for their personnel to make judgments on this basis. A medical group suggested that a direct threat be defined as a condition that would be seriously exacerbated by the flight itself or a serious communicable disease that could be transmitted to another person in flight.

Some carriers questioned the objectivity or qualifications of a passenger's physician to make a sound determination of whether it was safe for a passenger to travel. Some carriers preferred that their own medical staffs make these determinations, or at least have the ability to evaluate and override medical certificates provided by passengers' physicians. Generally, carriers preferred to have wider discretion to restrict passengers' travel than they perceived the provisions of the Foreign Carriers NPRM as giving them.

In response to comments, the Department has made some modifications in the final rule provisions on these subjects. We have included the substance of the DOT guidance. Under this provision, carriers would have the ability to impose travel restrictions and/or require a medical certificate if a passenger presented with a communicable disease that was *both* readily transmitted in the course of a flight and which had serious health consequences (*e.g.*, SARS, but not AIDS or a cold). In addition, carriers could conduct additional medical reviews of a passenger and, notwithstanding a medical certificate, restrict travel under some conditions. This additional review would have to be conducted by medical personnel (*e.g.*, members of the carrier's medical staff or medical personnel to whom the carrier referred the passenger), and this provision is not a license for non-medically trained carrier staff to disregard medical certificates presented by passengers from their own physicians. Nor would it be appropriate for carrier staff to exclude or discriminate against passengers because the passengers' appearance might disturb or upset other persons (see also sec. 382.19(b)).

Existing language of the regulation, which will be carried forward, permits a carrier to require a medical certificate from a passenger when there is reasonable doubt that the individual can complete the flight safely without requiring extraordinary medical assistance. This language accommodates the comment that one aspect of a direct threat is a passenger having a condition that would be seriously exacerbated by the flight itself. We disagree with a commenter's assertion that a carrier should be able to ask for a medical certificate if *any* medical attention might be needed. This suggestion goes too far in the direction of granting carriers discretion to demand medical documentation for potentially minor medical conditions or for disabilities that do not entail any acute medical condition.

We have added language permitting carriers to rely on instructions issued by public health authorities (*e.g.*, the U.S. Centers for Disease Control or Public Health Service; comparable agencies in other countries; the World Health Organization) in making decisions about carrying passengers with communicable diseases. For example, if CDC or WHO issues an alert or directive telling airlines not to carry a particular individual who poses a serious health risk (*e.g.*, an individual with multiple drug-resistant tuberculosis), or persons exhibiting symptoms of a serious health condition (*e.g.*, SARS), we would expect carriers to follow the public health agency's instructions. Carriers could do so without contradicting the requirements of this Part.

Aircraft Accessibility Features

The Foreign Carriers NPRM proposed extending to foreign carriers requirements for aircraft accessibility features based, with some modifications, on provisions in the existing ACAA rule. These features include accessible lavatories, movable aisle armrests, provision of on-board wheelchairs, and space to store wheelchairs and other mobility aids in the cabin. A few commenters apparently misunderstood the proposal as requiring retrofit of existing aircraft. This is not the case; no such requirement has ever existed or been proposed.

1. Movable Aisle Armrests

The current rule requires U.S. carriers using aircraft with 30 or more seats to have movable aisle armrests on at least half the passenger aisle seats. Such armrests need not be provided on emergency exit row seats or on seats on which movable aisle armrests are not feasible. The carrier is required to provide a means to ensure that individuals with mobility impairments or other passengers with disabilities can readily obtain seating in rows having movable aisle armrests. The requirement applies to new aircraft ordered or delivered after the rule went into effect (retrofitting was not required) or to situations in which existing seats are replaced by newly manufactured seats.

The Foreign Carriers NPRM proposed retaining these requirements and applying them to foreign carriers, with some modifications and clarifications. The exception for seats on which movable aisle armrests are not feasible was not included in the Foreign Carriers NPRM regulatory text, and a new requirement was proposed that would

call on U.S. and foreign carriers to ensure that movable aisle armrests were proportionately provided in all classes of service. The information provided by carriers about the location of movable aisle armrests would have to be specified by row and seat number.

A number of carriers and aircraft manufacturers commented that the proposed deletion of the feasibility exception and the requirement to have movable aisle armrests in each class of service were problematic. They said that some seats and seat console designs for first and business class seats in fact did make movable armrests infeasible or too costly. Moreover, they said, the wider seat pitches in first and business class cabins often permitted horizontal transfers of passengers from boarding chairs to aircraft seats, making movable armrests unnecessary in these cases.

The Department agrees that, if in a given aircraft, seats and seat pitches are configured so as to permit a horizontal transfer of a passenger from a boarding wheelchair to the aircraft seat (*i.e.*, a transfer that can be accomplished without lifting the passenger over the aisle armrest), it would not be necessary to have a movable aisle armrest at that location. Consequently, if a carrier can show, through an equivalent alternative request, that such transfers are feasible with a given cabin configuration, the Department would grant the request for the carrier's aircraft using that configuration. The underlying rule, however, will be adopted as proposed, because without a means of making a horizontal transfer into aircraft seats, passengers who board using boarding wheelchairs will have to use the less comfortable, safe, and dignified method of being lifted over the armrest. Carriers that are unable to demonstrate an equivalent alternative would have to provide movable aisle armrests even in first and business class.

Some commenters also said that putting seats with movable armrests into existing aircraft should be required only when newly designed or developed types of seats are installed, as distinct from newly manufactured seats of the same type that formerly occupied the space. Consistent with other provisions of the ACAA, ADA, and section 504, when a feature of a vehicle or facility is replaced, it must be replaced with an accessible item. (We note that, according to information referred to in the regulatory evaluation, movable aisle armrests are now standard features of at least some seat manufacturers' products.) This obligation is not limited to new models of a feature placed into a space where older models formerly were used. Indeed, adopting the commenters' suggestion would create a means for carriers to avoid providing movable aisle armrests on existing aircraft when newly manufactured armrests are installed, since carriers could simply order older seat models whenever they replaced the seats. When carriers remove any of the old seats on existing aircraft and replace them with newly manufactured seats, half of the replacement aisle seats must have movable armrests.

Disability community commenters generally favored the Foreign Carriers NPRM proposal, but suggested some modifications. Some comments said that emergency exit rows should be made part of the base from which the 50 percent calculation should be made. The Department believes, however, that the existing formula, which excludes those rows from the calculation, will result in sufficient rows being equipped with movable aisle armrests. Other comments suggested requiring some rows (presumably, in economy as well as business or first-class sections) to have wider seat pitches, the better to accommodate service animals or assistive devices, or to remove some rows entirely and provide securement devices so that passengers could sit in their own wheelchairs. The Department regards these suggestions as impractical and potentially too costly to airlines, as they would reduce seating capacity on the aircraft. The latter suggestion, in addition, would be inconsistent with FAA safety rules concerning passenger seats on aircraft, since aircraft seats must be certified to withstand specified g-forces.

One comment suggested requiring that in new aircraft or those subject to a cabin refit, the bulkhead row always have a movable aisle armrest. While we do not believe it is necessary to be this specific in the regulatory text, we believe that this is a good idea that carriers and manufacturers should consider, except when a bulkhead row is unavailable to passengers with disabilities because of FAA safety rules (*e.g.*, a bulkhead row that is also an exit row). Bulkhead rows are often used by people with disabilities (see the seating accommodations section of this Part).

2. Accessible Lavatories

The Foreign Carriers NPRM proposed to retain the existing requirement that cabins of aircraft with more than one aisle (*e.g.*, a twin-aisle aircraft like a 747) have an accessible lavatory. As under the existing rule, this requirement would apply to new aircraft (*i.e.*, aircraft ordered/delivered after the effective date of the rule). If a carrier replaced an inaccessible lavatory on an existing twin-aisle aircraft, it would have to do so with an accessible lavatory. The Foreign Carriers NPRM also proposed to clarify that if a carrier replaced a component of an existing, inaccessible lavatory on a twin-aisle aircraft (*e.g.*, a sink) without replacing the entire lavatory, the new component would have to be accessible.

Many disability community commenters believed the existing and proposed requirements concerning accessible lavatories were inadequate. They said that accessible lavatories should be required in all aircraft, including the much more common single-aisle aircraft. The absence of accessible lavatories makes travel uncomfortable and difficult for passengers with disabilities, they said. Airline industry commenters, on the other hand, said that adding a requirement for accessible lavatories on single-aisle aircraft would be overly costly and burdensome.

Particularly given that single-aisle aircraft often make lengthy flights (*e.g.*, across North America, some trans-oceanic flights), it is clear that providing accessible lavatories on single-aisle aircraft would be a significant improvement in airline service for passengers with disabilities. One of the organizations that commented on the Foreign Carriers NPRM is in the process of working with carriers and manufacturers to develop an accessible lavatory design for single-aisle aircraft that would minimize seat loss. At the present time, however, the Department is concerned that the revenue loss and other cost impacts of requiring accessible lavatories on single-aisle aircraft could be too great. Consequently, we are not imposing such a requirement at this time. Providing accessible lavatories on single-aisle aircraft remains a matter of interest to the Department, and we will look carefully at ongoing developments in this area to determine if future rulemaking proposals may be warranted.

Some comments objected to the proposed requirement to use accessible components (*e.g.*, a sink) when replacing a component of a lavatory on a twin-aisle aircraft. Cost concerns aside, the main point of these comments was that lavatories typically are sold and installed as a unit, and that it is unusual to replace a single component of a lavatory. Even when this happens, because the lavatory is an integrated unit, only a given component that is dimensionally consistent with its original design is likely to fit. The Department believes that this comment

has merit, and we are deleting the sentence in question.

Several foreign carriers objected to the application to them of the existing rule's requirement that when an inaccessible lavatory unit was being replaced on a twin-aisle aircraft, it must be replaced with an accessible lavatory. Their main concern was that since the accessible lavatory unit would require more space than its inaccessible predecessor, they would have to remove or forego seats, causing revenue loss. One carrier made very high estimates of seat loss from such a change (*e.g.*, eight seats on some aircraft) and suggested that alternative means (*e.g.*, a curtain) could provide as adequate restroom facilities as an accessible lavatory. Consequently, these commenters urged, the rule should require an inaccessible lavatory to be replaced with an accessible lavatory only in the context of a change in cabin layout.

Since the original ACAA rule (see 55 FR 8020–8021; March 6, 1990), the Department has drawn a distinction between single-aisle and twin-aisle aircraft for purposes of accessible lavatory requirements. While the Department has acknowledged since the time of the original rule that requiring accessible lavatories in twin-aisle aircraft involves direct costs and revenue losses (though some seat loss estimates, like the one referred to above, appear overstated), the Department determined then and continues to believe now that the requirement is justified in twin-aisle aircraft. The cabins of these aircraft are physically larger, affording somewhat greater flexibility than single-aisle aircraft in placing accessible lavatory units. They tend to be used on longer-distance flights and carry more people, making the presence of accessible lavatories all the more important to passengers. U.S. carriers have been subject to the same requirement for many years, and it is important to maintain a level playing field between U.S. carriers and their foreign carrier competitors in terms of such a requirement. Contrary to one foreign carrier comment, requiring accessible lavatories on twin-aisle aircraft does not discriminate against foreign carriers; U.S. carriers, no less than their foreign counterparts, use twin-aisle aircraft on long-distance international routes.

Several commenters requested a clarification with respect to the accessible lavatory requirement in a twin-aisle airplane, to the effect that only one accessible lavatory need be installed. For example, if a carrier was refitting a cabin, and replacing all its old inaccessible lavatories, it would only have to install one accessible lavatory unit. We believe that this is a reasonable interpretation of the requirement, and we will use this interpretation as we implement and enforce the rule. However, we do not believe that additional regulatory language is necessary.

3. Stowage Space for Wheelchairs

The Foreign Carriers NPRM proposed to retain with some modifications, and to apply to foreign carriers' aircraft, the existing requirement that aircraft with 100 or more passenger seats have a priority space to stow at least one passenger wheelchair. The modifications proposed from the existing rule were to add dimensions of a wheelchair that would fit without disassembly into the priority space and to delete the application of this section to electric wheelchairs.

As with other aircraft accessibility provisions of the Foreign Carriers NPRM, the proposed requirement concerning on-board stowage of wheelchairs would apply to new aircraft. Contrary to concerns expressed by a number of carriers, the Foreign Carriers NPRM did not propose a retrofit requirement. Nor would the requirement apply to "all types of aircraft," as several comments asserted. It would apply only to aircraft with 100 or more seats.

Comments from disability community commenters generally supported the proposed requirement, though several of these comments said that the dimensions proposed for wheelchairs to be carried in the cabin should be enlarged, given the size of many current types of mobility devices. Many foreign carrier comments said either that all wheelchairs should be carried in the cargo compartment or that carriers should have discretion concerning whether or not to carry a wheelchair in the cabin. Some comments expressed the concern that carriers could not fit a space for a folding wheelchair into their cabin configurations without losing seating capacity. One foreign carrier added that crew luggage should have priority over a passenger's wheelchair.

The reasons for storing a wheelchair in the cabin are twofold. First, it can often be more convenient for a passenger to have the wheelchair close at hand when he or she leaves the aircraft and to be able to get as close as possible to the aircraft door on boarding before having to transfer. Second, as pointed out in the preamble to the original ACAA rule (55 FR 8035; March 6, 1990), passengers with disabilities have the same concerns as other passengers about loss of or damage to their property when it is checked. While, as some comments pointed out, requiring space for one wheelchair does not completely solve this problem for all passengers with disabilities, doing so does help at least one such passenger per flight. A bit of added inconvenience to non-disabled passengers or crew who might have to stow their carry-on items elsewhere seems an acceptable price to pay, in the context of a nondiscrimination rule, for this service to passengers with respect to their means of mobility.

For these reasons, the Department is adopting the proposed requirement. We recognize that some foreign carriers are used to exercising their discretion about where to carry passengers' wheelchairs, as were U.S. carriers prior to the adoption of the original ACAA rule. U.S. carriers, with appropriate oversight from DOT, have successfully adapted to this requirement, and foreign carrier comments did not contain any compelling reasons why they could not do so as well. It is important to remember that foreign carriers will not be required to modify existing cabins just for the purpose of creating a space for passengers' wheelchairs.

There is a wide variety of wheelchairs and mobility devices on the market. It would not be practical to require spaces that can handle every sort of device. The rule's requirement is now limited to spaces for folding manual wheelchairs, the present and proposed language concerning cabin stowage of power wheelchairs having been deleted in response to comments expressing concern about the adequacy of space, problems arising from the disassembly and reassembly of wheelchairs in the context of transportation in the cabin, and potential issues concerning stowage of batteries. Of course, since only folding manual wheelchairs are permitted in the cabin, large, motorized mobility-assistive devices of any type—not just power wheelchairs, as such—would not have to be carried in the cabin.

Based on the Department's experience, the dimensions in the Foreign Carriers NPRM should be sufficient to handle a considerable majority of models of folding wheelchairs. Consequently, while we agree that this required space will not be sufficient for all models, we believe it is a reasonable compromise between the needs of passengers and the space constraints of carriers. We note that, under the final rule, carriers are not required to carry electric wheelchairs in the cabin.

One matter that some comments raised was the so-called "seat-

strapping" method of carrying wheelchairs in cabins. This involves strapping down a wheelchair across a row of seats in an aircraft that does not have the required space for stowing a folding wheelchair in the cabin. While nowhere mentioned or authorized in the current Part 382, this practice has been permitted by DOT enforcement policy in some cases. Some comments supported allowing this approach as an alternative to providing a stowage space in the cabin. The Department does not believe that this is an appropriate alternative to endorse in the rule, because it is a more awkward way of carrying a wheelchair and because it can, on a given flight, reduce seating capacity for other passengers. This is a more important consideration than ever, given frequently high load factors on many flights. However, because DOT practice has allowed this measure in the past, we do not believe it is fair to ban the practice altogether. Consequently, seat-strapping will not be permitted as an alternative to designated stowage spaces on new aircraft ordered by or delivered to carriers after two years from the rule's effective date. The Department's policy will not change with respect to existing aircraft.

4. On-Board Wheelchairs

The existing rule requires that, on aircraft with more than 60 seats, the carrier must provide an on-board wheelchair in any case if the aircraft has an accessible lavatory, and on a passenger's advance request even if the aircraft does not have an accessible lavatory. The rationale for the latter requirement is that some passengers with limited mobility may be able to use an inaccessible lavatory on their own but may need to be assisted down the aisle to the lavatory in an on-board wheelchair. The Foreign Carriers NPRM proposed that this requirement apply on aircraft with 50 or more seats, as distinct from the criterion of more than 60 seats in the existing regulation. The reason for this proposal was that 50-seat regional jets are becoming an increasingly important component of the fleets of many carriers, and the accommodation provided by this section should be made available to passengers who use those aircraft.

Carriers and their associations objected to the application of the provision to 50-seat aircraft. Carriers cited cost as one reason for their position. In addition, they said, 50-seat aircraft typically have only one flight attendant on board. If that attendant is assisting a passenger using an on-board wheelchair, he or she will be unable to carry out other duties. This could create difficulties if an emergency occurred while the flight attendant was assisting a user of an on-board wheelchair, which might also obstruct the aisle in an emergency situation. In addition, carriers questioned whether the interior of a 50-seat regional jet could be configured to provide storage space for the on-board wheelchair when it was not in use.

While the cost estimates of commenters for on-board wheelchairs appear to be overstated, we believe that the operational concerns of carriers with respect to the use of on-board wheelchairs on 50-seat aircraft with one flight attendant have merit. In addition, the typically very confined spaces in lavatory units on these aircraft make their use by persons with limited mobility problematic. Consequently, the final rule will retain the existing rule's provision applying on-board wheelchair requirements to aircraft with more than 60 seats.

Stowage of Wheelchairs and Mobility Aids

The current rule requires wheelchairs that cannot be carried in the cabin to be checked, carried as baggage, and returned to users as closely as possible to the door of the aircraft. These devices have priority over other items in the baggage compartment. Carriers must accept battery-powered wheelchairs (and other battery-powered mobility aids) in baggage, subject to applicable hazardous materials rules. Wheelchairs powered by lithium batteries may not be permitted under the hazardous materials rules depending on the lithium content of the battery. Generally, non-spillable batteries do not need to be removed from wheelchairs and separately packaged, if the batteries are securely attached to the wheelchair and the batteries or their housing, if any, are clearly marked as being non-spillable. Wet cell batteries which are not non-spillable may require removal from the wheelchair if the wheelchair cannot be loaded and stowed in an upright condition and secured against movement in the cargo compartment. Carriers may establish a one-hour advance check-in time to process battery-powered wheelchairs. Wheelchair users may provide written instructions concerning assembly and disassembly of their devices. On domestic flights, U.S. carriers must fully compensate passengers for loss of or damage to wheelchairs, without regard to rules limiting liability for lost or damaged baggage.

The Foreign Carriers NPRM essentially proposed to continue these provisions and apply them to foreign as well as U.S. carriers. Commenters made a number of points in response. One commenter asserted that the requirement to carry power wheelchairs in the baggage compartment was inconsistent with ICAO technical standards and IATA dangerous goods rules. While virtually identical in many respects, the DOT and ICAO/IATA standards differ, the commenter said, because the latter gives carriers discretion to refuse to carry such mobility aids while the former does not. The Department, according to the commenter, cannot impose a lesser requirement than the international standard. In the Department's view, there is no conflict. As cited by the commenter, the ICAO/IATA standard gives carriers the discretion to carry battery-powered wheelchairs. The DOT requirement tells carriers to exercise the discretion permitted them by the ICAO/IATA standard by, in fact, carrying the wheelchairs. The DOT rule does not require anything that the ICAO/IATA rule does not allow. It would not be accurate to call the Department's requirement a "lesser" standard than that of ICAO/IATA. Indeed, it is more properly regarded as a higher standard, since it ensures service to passengers with disabilities that the ICAO/IATA materials leave to carrier discretion.

On October 5, 2007, the Department's Pipeline and Hazardous Materials Administration (PHMSA) issued a special permit in response to an IATA request. The permit, which granted an exemption from portions of the Department's hazardous materials rules concerning battery-powered mobility aids, was revised in response to ATA's request on October 30, 2007. Under the special permit, the current term of which expires January 31, 2009, a non-spillable battery that is completely enclosed and protected from short circuits in a rigid case integral to the mobility aid would not have to be disconnected and its terminals further protected from short circuits to be carried on an aircraft. This special permit should make handling of some battery-powered wheelchairs easier for carriers to which the permit applies. It is PHMSA's intention to issue a rulemaking in the future that will extend the provisions of this exemption to all carriers. Due to the many instances of wheelchair damage resulting from disconnecting battery cables, the Department will require carriers not to disconnect the cables on non-spillable batteries unless a PHMSA or FAA safety regulation, or the safety regulation of a foreign government, requires them to do so.

Carriers and passengers with disabilities had differing views on the existing and proposed requirements for carriers to permit passengers to provide written instructions about the disassembly and reassembly of wheelchairs. Some of the former suggested requiring passengers to provide the manufacturer's instructions; some of the latter suggested that the airline employee who disassembles the wheelchair provide written instructions that would go forward to the employee who reassembles the wheelchair at its destination telling that employee how to put the device back together.

The Department believes that both suggestions have some merit. To the extent that there are relevant manufacturer's instructions, it seems useful for passengers to provide a copy to carriers. We do not think it would be appropriate to require the provision of manufacturer's instructions, since they may not exist in all cases and may not apply to specialized or customized features of a particular passenger's device. It also seems plausible that a user of a particular device would be in a good position to provide experience-based instructions to the carrier. Likewise, to the extent that a carrier employee at the passenger's originating airport can write down a "here's how I took it apart and here's how it goes back together" note to his counterpart at the destination, the information could be helpful to the latter. However, the employee may not have time to do so, and some passengers may prefer that the employee does not do so (*i.e.*, out of concern that the employee could get it wrong). Consequently, we do not believe it advisable to change the proposed language.

Some carrier comments said that Warsaw/Montreal convention provisions controlled payments for items carried as baggage and that the Department should not attempt to alter compensation requirements for international flights. We agree, and the Foreign Carriers NPRM proposed to make compensation requirements for lost or damaged mobility aids applicable only to U.S. domestic passenger trips. The final rule will do the same.

Some commenters suggested that the advance check-in time for persons delivering mobility aids for transportation in the baggage compartment should be 60 minutes before the regular check-in time for passengers, rather than 60 minutes before scheduled departure time. We agree, and we have changed the rule accordingly.

Some carrier comments noted that the existing and proposed regulatory language concerning luggage that doesn't make a flight because of the space taken by a wheelchair calls for the carrier to make best efforts to deliver the luggage within four hours. Commenters said that this often was not practical in international service, where flights may be scheduled at intervals of one a day or less. This is a fair comment; we have changed the language to say that such luggage must be placed on the carrier's next flight. We believe this is a reasonable standard for domestic as well as international flights.

The Department recognizes that there may be some circumstances in which it is not practical to stow an electric wheelchair, or some other sort of assistive device, in the baggage compartment. Only devices that fit and that meet all applicable hazardous materials and other safety regulations need be carried.

Some wheelchairs—such as those equipped with securely mounted non-spillable batteries or those for which the carriers remove the batteries and stow them separately under 49 CFR 175.10(a)(15) and (16)—are capable of being stowed in other than an upright position without damage to the wheelchair or batteries. However, if the physical size of the compartment—its actual dimensions, not crowding caused by other items—do not permit a wheelchair to be carried upright safely without risk of serious damage to the wheelchair, or a load imbalance caused by a large wheelchair in a small baggage compartment may violate weight and balance safety requirements, carriers could legitimately decline transportation of the item on that flight and should assist the passenger in identifying a flight using an aircraft that can accommodate the chair.

Given that the rule allows the carrier to require 48 hours' advance notice with respect to carrying electric wheelchairs, the carrier should use this time period to find an arrangement that will get the passenger and his or her chair to the intended destination. For example, when a change to a smaller aircraft the day before the flight's departure will preclude the passenger's wheelchair from being accommodated in the cargo hold (*e.g.*, the cargo space dimensions are too small for the chair to fit), the carrier must either offer the passenger alternative transportation at a different time or provide a fare refund. In circumstances where the passenger accepts alternative transportation on a flight of a different carrier, the first carrier must, to the maximum extent feasible, provide assistance to the second carrier in providing the accommodation requested by the individual from the first carrier.

A disability group also raised the concern—which could apply to manual as well as electric wheelchairs—that if several wheelchair users were traveling on a small aircraft, like a commuter aircraft or a regional jet, there might not be room in the baggage compartment for everyone's wheelchair. This situation could occur, but we do not see a regulatory solution to it. If a group is traveling together, providing as much notice as possible to the carrier to work the problem is advisable. Otherwise, the carrier would probably have to put some passengers' wheelchairs on a subsequent flight. A carrier association said that carriers should only have to carry one motorized mobility device per passenger. We do not believe it is necessary to provide for this situation in the regulatory text. However, in a situation like the above where there was not room for all disabled passengers' wheelchairs, we agree that it would make sense for the carrier to take one mobility device for each passenger on the flight before taking a second device for some passengers.

Seating Accommodations

The Foreign Carriers NPRM proposed carrying forward and applying to foreign carriers the seating accommodations requirements of the current ACAA rule. These provisions would require carriers to make available certain seat locations to individuals with certain types of disability calling for a particular seating accommodation.

Some disability community commenters suggested that, if adequate seating accommodations for a person with a disability were not present, the individual should be seated in business or first class without additional charge. Carriers generally opposed this idea. Under the current rule, carriers are not required to provide accommodations in a seating/service class for which a passenger has not bought a ticket (see section 382.38(i)). The final rule continues this approach. Carriers are responsible for making seating accommodations in the seating/service class for which someone has bought a ticket, but are not required to provide a higher level of seat or service because doing so would be more comfortable or convenient for a passenger with a disability. Likewise, the Department is continuing its existing approach that a person who requires two seats for any reason (*e.g.*, because of obesity or a disability) can be required to pay for two seats.

Some carriers asked for an advance notice requirement for passengers

needing a seating accommodation (*e.g.*, 48 hours). While it is always a good idea for passengers and carriers to communicate about accommodations as early as possible, the Department's ACAA regulations and nondiscrimination policies have discouraged advance notice policies as an undue limitation of the ability of passengers with disabilities to travel freely and without discrimination. The experience of U.S. carriers with the existing seating accommodations provision suggests that carriers can provide needed seating accommodations without additional advance notice.

There were several miscellaneous comments concerning seating accommodations. One carrier commented that persons with fused legs could be transported more comfortably in a rear window seat rather than a bulkhead seat in some aircraft configurations. This approach appears consistent with section 382.81 of the final rule, which requires carriers to seat a passenger with a fused leg in a bulkhead seat "or other seat that provides greater legroom than other seats."

Another carrier mentioned that because it provides "soft bulkheads" and "inflatable seatbelts" in some seats, national safety regulations prohibit seating some persons with disabilities in those seats. In this case, the carrier would then have to accommodate a passenger with a fused leg in any other seat on the aircraft offering greater legroom. If due to a particular aircraft model's design, no seat on that model other than those prohibited by national regulations offered greater legroom, the carrier would have to apply for a conflict of law waiver. We do not believe it is appropriate, as some disability groups suggested, to require bulkhead row seating to be made available to all wheelchair users. The apparent rationale for this request was to make it more convenient for such passengers to access their personal wheelchairs quickly in order to transfer to another flight or exit the airport. The rationale of the bulkhead seating accommodation for people with fused legs, however, is to make seating on the flight itself less difficult or uncomfortable for passengers, rather than easing the passenger's exit. A disability group asked the Department to clarify that wheelchair users are not limited to sitting in aisle seats. We agree, like the existing ACAA rule, the final rule does not allow carriers to limit seating options for passengers with disabilities, except where needed to comply with applicable safety rules (*e.g.*, concerning exit rows).

Accommodations for Passengers Who Use Oxygen Devices

A. Passenger-Owned Respiratory Devices

1. Covered Entities

In the Oxygen NPRM, we proposed that the requirements concerning the evaluation and use of passenger-owned electronic devices that assist passengers with respiration apply to all operations worldwide of U.S. air carriers that conduct passenger carrying service other than on-demand air taxi operators. The Oxygen NPRM proposed to cover foreign carriers operating flights to and from the United States in as similar a fashion as possible to U.S. air carriers. We also specifically requested comment as to whether the Department should limit coverage of this section to carriers operating larger than 60-seat aircraft and whether flights operated by commuter carriers should be covered.

Consumers argued against an exception for aircraft with 60 or fewer seats and favored a regulation of general applicability because many carriers that operate "hub and spoke" service as well as many carriers that service smaller cities and less frequently traveled routes use small aircraft. Consumers also asserted that it would frustrate the purpose of the regulation to exempt flights operated by commuter carriers as many individuals who use medical oxygen fly on commuter carriers from small regional airports to larger airports to connect to a flight to their ultimate destination. However, small carriers supported an exception for aircraft with 60 or fewer seats because of the costs associated with the regulation, particularly the cost of testing to determine if the electronic respiratory assistive devices interfere with the navigation or communication systems of each model of aircraft operated by the carrier. These carriers explained that testing would be more costly for small carriers because they do not have the technical knowledge or personnel necessary for testing, necessitating the hiring of subcontractors for compliance testing. Small carriers also indicated concern with the onboard service obligations associated with permitting passengers to use electronic respiratory assistive devices on an aircraft since there is no flight attendant on aircraft with fewer than 20 seats and only one flight attendant on aircraft with 20 to 50 seats Further, small carriers asserted that allowing a passenger to use an electronic respiratory device such as a portable oxygen concentrator (POC) onboard small aircraft is of limited benefit because they contend that many regional flights are one hour in length and carriers can prohibit the use of electronic devices during take-off and landing which can take a total of approximately forty minutes, leaving the passenger with only twenty minutes to use his/her device.

After fully considering the comments received regarding the applicability of section 382.133 to carriers, the Department believes that it is reasonable to apply the requirements of this section to U.S. and foreign carriers that conduct passenger carrying service other than on-demand air taxis and not to exempt carriers that only operate aircraft with 60 or fewer seats. The contention of small carriers that the costs associated with the requirements in this section would be unduly burdensome to them no longer carries the same weight, since this final rule shifts the responsibility for electromagnetic interference testing of the four types of electronic respiratory assistive devices from the carriers as proposed in the Oxygen NPRM to the manufacturers of these devices, as the manufacturers have a market incentive to test such devices. (See the discussion of industry comments on this issue in the section below entitled "Testing and Labeling of Electronic Respiratory Assistive Devices.").The Department is also not persuaded that there are onboard service obligations associated with permitting passengers to use electronic respiratory assistive devices that require the assistance of a flight attendant. We also find unpersuasive the argument that electronic respiratory devices such as POCs are of limited use onboard small aircraft because they tend to operate shorter flights during which passengers could only use their devices for a small portion of the total flight time as it presumes that the devices cannot be used during ascent and descent. A device's use during a particular phase of a flight (*e.g.*, ascent and descent) should be prohibited only if the device cannot be safely used during that phase (*e.g.*, interferes with navigation or communications equipment). Absent evidence of such interference gained from the required testing, this rule requires carriers to allow passengers to use their electronic respiratory assistive devices, including POCs approved by the Federal Aviation Administration (FAA), during all phases of flight if safe.

2. Types of Electronic Respiratory Assistive Devices

We proposed in the Oxygen NPRM to address the carriage of four types of portable electronic respiratory assistive

devices excepted from coverage under applicable FAA regulations, *e.g.*, 14 CFR 121.306, 135.144, 121.574, 135.91 and Special Federal Aviation Regulation No. 106—ventilators, respirators, continuous positive airway pressure (CPAP) machines and portable oxygen concentrators. We sought information from foreign governments, foreign carriers and other interested parties regarding any foreign safety restrictions affecting the carriage and use of these electronic respiratory assistive devices. While commenters did not conclusively identify any particular device as being specifically prohibited by foreign safety rules, there was a suggestion that certain governments may view all POCs as containing hazardous materials and may not permit their carriage or use onboard aircraft. Commenters also identified a number of foreign carriers that prohibit the use of electronic devices (including the aforementioned electronic assistive devices) during take-off and landing. The commenters noted that most of these foreign-carriers are required to submit their aircraft passenger policies to a government agency for approval and expressed concern that the Department may not consider a foreign carrier's prohibition on use of electronic devices during ascent and descent which has been approved by its government to be a foreign government safety requirement.

The Department recognizes that foreign carriers operate under a variety of laws and regulations. We have revised section 382.133 to clarify that foreign carriers need to permit the carriage and use of a ventilator, respirator, CPAP machine and POC only if among other things, the device can be stowed and used in the passenger cabin consistent with applicable TSA, FAA, and PHMSA regulations and *the safety or security regulations of its government* (emphasis added). In addition, section 382.9 allows a foreign carrier to petition the Department for a waiver of compliance with any provision in Part 382, including section 382.133, if an applicable foreign law or regulation precludes a foreign carrier from complying with that provision. As noted earlier in this document, the Department employs a narrow definition of the phrases "the safety or security regulations of its government" and "foreign law or regulation." A carrier's policy, even if approved by its government, would not be considered a foreign nation's law and would not exempt the carrier from compliance with Part 382.

3. Testing and Labeling of Electronic Respiratory Assistive Devices

In the Oxygen NPRM, we proposed that a U.S. carrier that conducts passenger-carrying service other than an on-demand air taxi operator perform the necessary evaluation and testing of a ventilator, respirator, CPAP machine or FAA-approved POC to determine if the device causes interference with the navigation or communication systems of each model of aircraft the U.S. carrier operates. We also proposed requiring a foreign carrier that conducts passenger-carrying service other than an on-demand air taxi operator to perform the necessary evaluation and testing of these devices to ascertain whether such device can be used safely by passengers during a flight on each aircraft that the foreign carrier operates on flights to and from the U.S.

Industry commenters as well as some consumers said that the burden of testing should be shifted away from the carriers. The Air Transport Association and other industry commenters proposed that carriers only be required to permit the use of an electronic respiratory assistive device that has been tested and marked as approved by RTCA, Inc. (formerly the Radio Technical Commission for Aeronautics). These commenters argued that if carriers have the option of refusing to carry any device that is not tested and marked as approved by the RTCA then the device manufacturers would have an incentive to test their devices and produce safety testing results for the carriers to review. Other commenters suggested that the device manufacturers and the aircraft manufacturers should be required to conduct the testing and then label the device as approved for use aboard aircraft, as manufacturers have the greatest incentive to test devices. Industry commenters also requested that the FAA create a generic safety standard for testing respiratory devices as well as a uniform labeling system for all approved devices to cut down on confusion by carriers and passengers.

Having considered all of these comments, the Department is persuaded that responsibility for electromagnetic interference testing of the four types of electronic respiratory assistive devices covered in the Oxygen NPRM should be borne by the manufacturers of such devices rather than the carriers. However, this regulation does not mandate manufacturer testing. The FAA is considering whether to issue an NPRM in which the agency would propose to require manufacturers that want to market their ventilators, respirators, CPAP machines, and FAA-approved POCs for passenger use on aircraft to test those devices against FAA-prescribed performance standards and affix a label to each device stating that it meets the applicable standards prescribed in the federal aviation regulations. If the FAA decides to issue such an NPRM, the NPRM would clarify that those manufacturers that do not intend to market their devices for use on aircraft would be under no obligation to conduct any testing and would not be permitted to affix a label indicating FAA approval. The manufacturers that want to market such devices for use on aircraft but whose devices fail to meet the performance standards would also not be permitted to affix a label indicating FAA approval. Moreover, the FAA will consider whether to include other proposals in that NPRM, including specifying how a carrier would "verify" whether the aforementioned electronic respiratory assistive devices meet FAA performance standards.

In this rulemaking, we are strongly encouraging manufacturers that market their electronic respiratory assistive devices for use by passengers on aircraft to test their devices to determine whether they meet FAA electromagnetic and radio frequency interference emission standards set forth in FAA Advisory Circular No. 91.21–1B, and if they do so, to label the devices as FAA-compliant. The label should indicate that the device is approved for air travel (*i.e.*, the device can be used safely during all phases of travel). The FAA generally prohibits the operation of portable electronic devices aboard U.S. registered civil aircraft while operating under instrument flight rules. See 14 CFR 91.21. However, the FAA through its Advisory Circular No. 91.21–1B *allows* U.S. carriers to permit passengers to use onboard the aircraft specified portable electronic devices (including the four types of respiratory devices addressed in this rulemaking) that have been tested by the manufacturer and found to not exceed the maximum level of radiated radio frequency interference as described in section 21, Category M of RTCA Document (DO)–160 while in all modes of operation, without any further testing by the carrier to establish compliance with this performance standard. It is worth noting that the FAA does not have a prohibition on the operation of portable electronic devices aboard civil aircraft registered in a country other than the United States.

This rule *requires* U.S. carriers to permit individuals to use electronic respiratory assistive devices in the passenger cabin so long as the devices have been tested and labeled by their manufacturer(s) as meeting the

applicable FAA requirements for medical portable electronic devices as described in FAA Advisory Circular No. 91.21–1B (the FAA-approved POCs would also be subject to the requirements of Special Federal Aviation Regulation 106) and the device can be stowed consistent with FAA cabin safety requirements. At present, a label indicating that the device complies with RTCA standards meets FAA requirements and need not specifically state that the device is FAA approved.

The final rule also *requires* foreign carriers to permit individuals to use electronic respiratory assistive devices in the passenger cabin if certain conditions are met. First, the device must have been tested and labeled by its manufacturer as meeting the requirements for medical portable electronic devices set by the foreign carrier's government. If the foreign carrier's government does not have applicable requirements, then the carrier may elect to apply requirements for medical portable electronic devices set by the FAA for U.S. carriers. It would be a violation of our rules for a foreign carrier to prohibit a passenger from using his/her ventilator, respirator, CPAP machine, or POC in the passenger cabin because its government has not issued applicable rules on the testing or labeling of electronic respiratory assistive devices. We encourage foreign carriers to apply FAA requirements for medical portable electronics where the foreign carriers' government has not issued applicable rules. Otherwise, it is not clear how the foreign carrier can be assured that the electronic respiratory assistive device that it is accepting for use in the cabin is safe. Also, the electronic respiratory assistive device must be stowed and used in the passenger cabin consistent with any applicable U.S. regulations and the regulations of the carrier's government.

We expect that both U.S. and foreign carriers will inspect the device label at the departure gate to ensure that it is labeled by the manufacturer in accordance with the applicable regulations. U.S. carriers' internal procedures must ensure that approved devices bearing labels indicating that they meet the FAA requirements are accepted. For foreign carriers, devices containing labels indicating that the device meets requirements set by the foreign carrier's government or, if no such requirement exists, the requirements for medical portable electronics set by the FAA for U.S. carriers, should be accepted.

4. Passenger Information

We explained in the Oxygen NPRM that carriers would be required to inform passengers, on request, about any restrictions on using their personal respiratory assistive devices aboard the carrier's flights (*e.g.*, device can only be used after takeoff and before landing, availability of electrical outlets). In this regard, we indicated that we thought carriers would need to maintain some type of list of approved or disapproved devices and sought comments as to what extent carriers should be required to provide information to disabled air travelers. We also asked about the issues that are raised if carriers are required to provide information on the limitation of the carriers' codeshare partners to accommodate the use of respiratory devices.

The Department received a number of comments from consumers strongly urging that a centralized list of approved and disapproved devices be provided by carriers, airports and/or the government. Industry comments varied, with some carriers indicating a willingness to provide this information, while others believed a list of approved and disapproved devices would be difficult to maintain and would open the airline up to liability. Many carriers suggested that the Department provide a list of approved devices through its Web site and by phone. Carriers also expressed concern about any requirement to provide information on the limitation of its codeshare partners to accommodate the use of respiratory devices. According to these carriers, some carriers have up to ten codeshare partners and the burden of knowing the limitation of its codeshare partners' ability to provide accommodations would be substantial.

Because this final rule shifts the responsibility for testing the electronic respiratory assistive devices from the carriers to the manufacturers of such devices and requires carriers to permit passengers to use these devices aboard aircraft only if appropriately labeled, we do not see a need for carriers or any other entity to produce a central list of approved or disapproved devices. A passenger can simply look to see if the label on his/her electronic respiratory assistive device indicates that the device has been approved for air travel (*i.e.*, no restriction on the device's use during any phase of travel).

However, we do see a need for carriers, during the reservation process, to inform passengers who express a desire to use a respirator, ventilator, CPAP machine, or FAA-approved POC aboard an aircraft of the conditions that must be met before these devices can be approved for such use. For instance, this final rule requires carriers through their reservation agents to inform passengers of the maximum weight and dimensions of a device that can be accommodated in the aircraft cabin, the requirement that an electronic respiratory assistive device be labeled appropriately, any requirement for advance check-in, any requirement for the individual to contact the carrier before the scheduled departure to learn the expected maximum duration of his/her flight, the requirement to bring an adequate number of fully charged batteries (*i.e.*, battery is charged to full capacity) to power the electronic respiratory device and to ensure that extra batteries are packaged properly, and the requirement that an individual who wishes to use a POC provide a physician's statement. While a carrier can require a physician's statement (*i.e.*, medical certificate) from an individual who wishes to use a POC during flight, we note that it normally would not be appropriate for a carrier to ask for such a certificate from someone wishing to use a ventilator, respirator or CPAP machine aboard a flight. Consistent with section 382.23, a medical certificate should be required of an individual who uses a ventilator, respirator or CPAP machine only if the individual's medical condition is such that there is reasonable doubt that the individual can complete the flight safely, without requiring extraordinary medical assistance during the flight.

The Department understands the concerns expressed by carriers regarding the difficulty and the costs associated with providing information to passengers about the limitation on the ability of its codeshare partners to accommodate users of respiratory devices. The Department also believes that it is imperative that users of electronic respiratory assistive devices receive, in advance, accurate information concerning any limitation on the ability of the carrier to accommodate their need to use such a device in the cabin of the aircraft. The Department has tried to balance these somewhat conflicting concerns/needs. The final rule requires that, in a codeshare situation, the carrier whose code is used on the flight must either advise an individual who inquires about using his/her electronic respiratory assistive device onboard an aircraft to contact the carrier operating the flight for information about its requirements for use of such a device in the cabin, or provide such information on behalf of the codeshare carrier operating the flight. For example, consider a

passenger who buys a codeshare ticket from carrier A for a connecting itinerary from New York to Cairo through London, where carrier A operates the New York to London leg and carrier B operates the London to Cairo leg under carrier A's designator code. In this example, carrier A must upon inquiry from the passenger: (1) Inform the passenger about carrier A's requirements for the use in the cabin of a ventilator, respirator, CPAP machine or POC and (2) inform the passenger about carrier B's requirements for the use in the cabin of the aforementioned devices or tell the passenger to contact carrier B directly to obtain this information.

5. Advance Notice

We sought comments in the Oxygen NPRM about operational reasons, if any, in support of permitting carriers to require a passenger with a disability to provide advance notice of his or her intention to use a battery-operated CPAP machine, an approved POC, a respirator or a ventilator aboard a flight. We also asked whether carriers should be permitted to require a passenger to provide advance notice of his or her intention to use the aircraft electrical system as well as what would be a reasonable amount of advance notice.

Industry commenters provided a number of operational reasons why they said there should be advance notice requirements for individuals who wish to use electronic respiratory assistive devices aboard a flight. These commenters explained that advance notice is needed to: (1) Ensure the device is approved for use onboard the aircraft; (2) ensure that a passenger brings an adequate battery supply to power his/her device; (3) ensure that the respiratory device is medically necessary; (4) ensure the pilot in command is apprised when a passenger is using a POC; and (5) ensure that the passenger has talked with his/her physician regarding fitness to fly with the respiratory assistive device. Many consumers also indicated that they were comfortable with an advance notice requirement for individuals who wish to use a battery-operated CPAP machine, an approved POC, a respirator or a ventilator aboard a flight. There was, however, disagreement as to what would constitute a reasonable amount of advance notice. While most consumer and industry comments indicated that 48 hours is a reasonable amount of advance notice, some industry comments asked for 96 hours advance notice for international flights and a few consumers stated that 24 hours is sufficient notification.

With respect to electrical outlets, industry comments strongly urged that electrical outlets not be relied upon by respiratory device users. According to these commenters, electronic device users cannot depend on the presence of an outlet, as most aircraft do not have electrical outlets; the electrical outlets that are available on aircraft may not be compatible with the passenger's device, as most respiratory assistive devices require more wattage; electrical outlets may be turned off during takeoff and landing; and the carrier may switch aircraft and use aircraft with no outlets at the last minute.

Based on the comments received and the Department's belief that providing 48 hours' advance notice would not be burdensome for consumers, this final rule permits carriers to require up to 48 hours' advance notice from individuals who wish to use electronic respiratory assistive devices aboard a domestic or international flight. The Department believes that a 48 hour advance notice is reasonable as that time period provides sufficient time for carriers to prepare for the accommodation. Further, in other sections of this Part where a carrier has been permitted to require a qualified individual with a disability to provide advance notice of his or her need for certain accommodations or of his or her disability as a condition of receiving the requested accommodation, that advance notice has been limited to 48 hours. The Department also believes, as comments provided by the industry representatives contend, that electrical outlets are generally not reliable sources of power for electronic respiratory assistive devices. Of course, if a carrier is confident that the electrical outlet on the aircraft is reliable (*e.g.*, uninterrupted service), nothing in this rule prohibits the carrier from permitting a passenger to plug his/her electronic respiratory assistive device into such an outlet, consistent with applicable FAA safety rules.

6. Advance Check-In Time

The proposed rule asked questions about operational reasons, if any, for requiring passengers who request to use their respiratory assistive devices to comply with an advance check-in deadline. It also asked about issues passengers who use respiratory assistive devices would face if carriers were permitted to require an advance check-in deadline, as well as what would be a reasonable length of time for the advance check-in.

Comments provided by the industry to justify the need for advance check-in are similar to the justifications provided for advance notice (*e.g.*, to ensure the device is safe for use on board, to ensure proper packaging of batteries, ensure an adequate supply of batteries). Consumers questioned whether advance check-in is necessary if a passenger provides advance notice of his/her intention to bring and use the electronic respiratory assistive devices. The consumers noted that they have other obligations and restrictions on their time and that advance check-in places significant burdens on their time. If advance check-in is required, consumer commenters favored a one hour advance check-in requirement. Industry comments supported one hour advance check-in for all domestic flights but two hour advance check-in for international flights. Carrier comments also sought the authority to deny boarding if a passenger has failed to comply with the carrier's procedural instructions on using electronic devices onboard.

The Department believes that it is necessary to permit carriers to require advance check-in to enable the carrier personnel to inspect the label on the electronic respiratory assistive device to ensure that it was labeled by the manufacturer in accordance with the applicable regulations and to ensure that a passenger is carrying an adequate number of properly packaged batteries to power his/her assistive device. The Department generally believes that one hour advance check-in is reasonable for both domestic and international flights, especially since "advance check-in" as used in this rule means checking in one hour before the carrier's normal check-in time for the general public. Thus, for example, if a carrier's normal check-in deadline for all passengers for an international flight is one hour before scheduled departure time, the carrier is free to require passengers who wish to use electronic respiratory assistive devices to check in two hours before scheduled departure time. That having been said, it would not be reasonable for a carrier to require one hour advance check-in in situations where a passenger is not able to check-in one hour in advance because the passenger's connecting flight arrived late. Consider the example, of a codeshare connecting itinerary from Washington, DC to Johannesburg through Rome, where carrier A operates the segment from Washington, DC to Rome and carrier B operates the segment from Rome to Johannesburg. If carrier B has a one hour advance check-in requirement and the passenger checks in for the flight to Johannesburg less than an hour before departure due to carrier A's late arrival in Rome, the passenger must be accepted on the flight to Johannesburg

up until carrier B's general check-in deadline for all passengers on that flight. The Department is not persuaded by consumer comments that one hour advance check-in would be a significant burden on them, particularly since this rule would not permit carriers to require a one hour advance check-in for a passenger who is not able to meet that requirement due to his/her connecting flight arriving late. The Department is also not persuaded by industry comments that a two hour advance check-in is needed for international flights, in part because the information that the carrier personnel will be verifying at the departure gate does not change based on whether the flight is a domestic flight or an international flight.

7. Seating Accommodations

In the Oxygen NPRM, we asked whether a passenger who uses a ventilator, respirator, CPAP machine or an FAA-approved POC should be given priority over users of other types of electronic equipment that are not assistive devices (*e.g.*, laptops) with respect to obtaining power for the device from the aircraft's electrical outlets. Virtually all of the consumer comments stated that upon request airlines should be required to seat a passenger who self-identifies as using an electronic respiratory assistive device next to an electrical outlet, if one is available on the aircraft. Industry comments on this issue varied. Some carriers supported providing priority seating while other industry commenters opposed this proposal. The industry commenters that opposed providing priority seating asserted that access to seats with electrical outlets is an aircraft amenity based on other considerations (*e.g.*, frequent flier status) and explained that the cost of ensuring access to electric outlets is burdensome. Some of the costs attributed to implementing the proposed seating accommodation include the cost to a carrier of updating its seating maps to indicate the presence of electric outlets, updating its reservation system to allow blocking of seats near outlets for qualified disabled passengers, and training flight attendants and others regarding the location of each aircraft's electrical outlets. Also, as noted above, many industry comments emphasized that not all aircraft have outlets and the unreliability of electrical outlets on aircraft that do have them (*e.g.*, outlets turned off during take off and landing, outlets often don't have sufficient wattage to power respiratory devices).

The Department is not convinced by the industry arguments opposing priority seating on the basis of costs associated with such a seating accommodation but is convinced that, for safety reasons, it would not be good policy to have any requirements concerning the use of electrical outlets when electrical outlets are not available on a number of aircraft and are generally not reliable sources of power for electronic respiratory assistive devices. Therefore, this rule does not mandate that carriers allow users of respiratory assistive devices to plug their devices into the aircraft's power supply or to provide priority seating near such outlets. The Department does encourage carriers to permit passengers to hook up the four types of respiratory assistive devices to the aircraft electrical power supply in circumstances where the carrier is confident that the electrical outlet on the aircraft is reliable (*e.g.*, uninterrupted service).

8. Batteries

The Oxygen NPRM sought information about whether the rule should allow carriers to require users of electronic respiratory devices to carry a certain number of batteries. It also solicited comments about what action the Department should authorize the carrier to take if a passenger does not bring a sufficient number of batteries to power an electronic respiratory assistive device or a passenger does not ensure that the batteries for the device are packaged in a manner to allow them to be transported safely in the cabin.

Consumers generally agreed that it would be appropriate to require users of electronic respiratory assistive devices to carry a sufficient number of batteries to power the device for 1.5 times the length of the flight. Some carriers suggested that users of electronic respiratory assistive devices should carry enough batteries to power the device for the length of the flight plus an additional two hours. Other comments suggested enough batteries to power the device for 1.5 times the length of the flight plus one additional battery. There were also comments recommending that the passenger's physician should indicate the appropriate number of batteries in the prescription that indicates the passenger's medical need for the device. A number of carriers asked for the authority to refuse to carry a passenger who does not have an adequate number of batteries. A few carriers asked to be able to charge the passenger who does not carry a sufficient number of batteries for the cost of any resulting emergency action that may be required. Many industry comments also suggested that PHMSA and FAA should be involved in the discussion of the appropriate number of batteries to carry in the cabin to ensure that an excessive number of batteries is not carried onboard.

After fully considering the comments received and consulting with FAA and PHMSA personnel, the Department has determined that there is no need to place a limit on the number of batteries users of electronic respiratory devices transport in the cabin of an aircraft. The FAA and PHMSA are confident that batteries that are protected against short circuits and wrapped in strong outer packagings can safely be transported in the passenger cabin provided there are sufficient approved stowage locations available. On March 26, 2007, PHMSA published a safety advisory to inform the traveling public and airline employees about the importance of properly packing and handling batteries and battery-powered devices when they are carried aboard aircraft. Federal regulations require that electrical storage batteries or battery-powered devices carried aboard passenger aircraft be properly packaged or protected to avoid short-circuiting or overheating. In its safety advisory, PHMSA suggested various practical measures for complying with the regulations and minimizing transportation risks. Recommended practices include keeping batteries installed in electronic devices; packing spare batteries in carry-on baggage; keeping spare batteries in their original retail packaging; separating batteries from other metallic objects such as keys, coins and jewelry by packing individual batteries in a sturdy plastic bag; securely packing battery-powered equipment in a manner to prevent accidental activation; and ensuring batteries are undamaged and purchased from reputable sources.

The Department has decided to allow a carrier to require an individual who uses a ventilator, respirator, CPAP machine or FAA-approved POC to bring an adequate number of fully charged batteries onboard to operate the device for not less than 150% of the expected maximum flight duration. The appropriate number of batteries should be calculated using the manufacturer's estimate of the hours of battery life while the device is in use and the information provided in the physician's statement (*e.g.*, flow rate for POCs). The expected maximum flight duration is defined as the carrier's best estimate of the total duration of the flight from departure gate to arrival gate, including taxi time to and from the terminals, based on the scheduled flight time and factors such as (a) wind and other weather conditions forecast; (b) anticipated traffic delays; (c) one

instrument approach and possible missed approach at destination; and (d) any other conditions that may delay arrival of the aircraft at the destination gate. This rule also makes it clear that a carrier may deny boarding, on the basis of safety, to an individual who does not carry the number of fully charged batteries prescribed in the rule or an individual who does not properly package the extra batteries needed to power his/her device. Information for passengers on how to safely travel with batteries is available at *safetravel.dot.gov*. However, a carrier may not deny boarding due to an inadequate number of batteries unless the carrier can provide information from a reliable source demonstrating that the number of batteries that the passenger has supplied will not provide adequate power for 150% of the expected maximum flight duration based on the battery life indicated in the manufacturer's specification when the device is operating at the flow rate specified in the physician's statement. It is also worth noting that the requirement to bring an adequate number of batteries to continuously operate the device for up to 150% of the expected maximum flight duration does not apply in circumstances where the passenger will be using an FAA approved POC while boarding or disembarking from the aircraft and will not be relying on the POC during flight because the passenger has contracted for carrier-supplied oxygen. In instances where the carrier denies boarding to an individual, the carrier must provide the individual a written statement of the reason for the refusal to provide transportation within 10 days of the incident.

B. Carrier-Supplied Oxygen

The Oxygen NPRM proposed to require certificated U.S. carriers operating aircraft that conduct passenger-carrying service with at least one aircraft having a designed seating capacity of more than 60 passengers and foreign carriers operating to and from the United States that conduct passenger-carrying service with at least one aircraft having a designed seating capacity of more than 60 passengers to provide passengers free in-flight medical oxygen in accordance with applicable safety rules. The Department is committed to providing individuals dependent on medical oxygen greater access to air travel, consistent with Federal safety and security requirements. However, in order to obtain additional information about the cost of carrier-supplied in-flight medical oxygen, the Department is deferring final action on this proposal.

Under existing Air Carrier Access Act interpretation and practice, carriers are not required to make modifications that would constitute an undue burden or fundamentally alter the nature of the carriers' service. As a matter of disability law, undue burden implies that there may necessarily be some burden (a "due burden") in accommodating someone's disability. Generally, an action is deemed to be an undue burden if it would require significant difficulty or expense on the part of the covered entity when considered in light of factors such as the overall size of the business, the financial resources of the business, the type of operation, and the nature and cost of the accommodation. There is no hard and fast rule about what is or is not an "undue burden." The portion of the cost of carrier-supplied oxygen that would constitute an undue burden could differ among carriers and could differ from one route to another with the same carrier. We do not currently have sufficient information available to determine if requiring a carrier to provide free in-flight medical oxygen would create an undue burden. The Department will seek additional comment about the cost of carrier-supplied oxygen in a supplemental notice of proposed rulemaking (SNPRM) that it plans to issue. The preamble to the SNPRM will also discuss comments received on the Oxygen NPRM with respect to this issue. In the interim, carriers can continue to charge for in-flight medical oxygen that they choose to provide.

Service Animal Issues

The subject that attracted the most comments on the Foreign Carriers NPRM—over 1100 of the 1290 received—was service animals. Interestingly, most of these comments did not pertain to anything in the Foreign Carriers NPRM's proposed regulatory text, but rather to a guidance document concerning transportation of service animals that the Department had issued in May 2003. As an informational matter, this existing guidance document was published as an appendix to the November 2004 NPRM. The paragraph in the document that was the focus of most of the comments was the following:

> If the service animal does not fit in the assigned location, you should relocate the passenger and the service animal to some other place in the cabin in the same class of service where the animal will fit under the seat in front of the passenger and not create an obstruction, such as the bulkhead. If no single seat in the cabin will accommodate the animal and passenger without causing an obstruction, you may offer the option of purchasing a second seat, traveling on a later flight or having the service animal travel in the cargo hold. As indicated above, airlines may not charge passengers with disabilities for services required by part 382, including transporting their oversized service animals in the cargo compartment. (69 FR 64393)

During the one and a half years preceding the issuance of the Foreign Carriers NPRM during which the guidance had been available, and during the over three years since the Foreign Carriers NPRM has been issued, there have been few if any instances brought to the attention of the Department in which service animals have been denied transportation, separated from their owners, or charged for an extra seat. Despite this apparent lack of problems in the real world of air travel, hundreds of comments expressed the fear that Department was proposing new regulations that would unfairly limit the travel opportunities of service animal users. Many of these comments suggested that there were no circumstances under which a service animal should be denied transportation in the cabin. If there were space limitations concerning accommodating larger animals, some commenters said, airlines should reconfigure their cabins to provide some larger spaces.

The Department believes that the fears of these commenters are largely unfounded. Nevertheless, in order to avoid future misunderstanding, the Department is republishing its service animal guidance later in the preamble to this final rule and has revised the language in this guidance document concerning carriage of larger, but otherwise acceptable, service animals to read as follows:

> The only situation in which the rule contemplates that a service animal would not be permitted to accompany its user at his or her seat is where the animal blocks a space that, per FAA or applicable foreign government safety regulations, must remain unobstructed (*e.g.*, an aisle, access to an emergency exit) AND the passenger and animal cannot be moved to another location where such a blockage does not occur. In such a situation, the carrier should first talk with other passengers to find a seat location where the service animal and its user can be agreeably accommodated (*e.g.*, by finding a passenger who is willing to share foot space with the animal). The fact that a service animal may need to use a reasonable portion of an adjacent seat's foot space—that does not deny another passenger effective use of the space for his or her feet—is not, however, an adequate reason for the carrier to refuse to permit the animal to accompany its user at his or her seat. Only if no other alternative is available should the carrier discuss less

desirable options concerning the transportation of the service animal with the passenger traveling with the animal, such as traveling on a later flight with more room or carrying the animal in the cargo compartment. As indicated above, airlines may not charge passengers with disabilities for services required by Part 382, including transporting their oversized service animals in the cargo compartment.

In modifying this paragraph in the guidance, we deleted the phrase concerning the potential purchase of a second seat, since there are probably no circumstances under which this would happen. If a flight is totally filled, there would not be any seat available to buy. If the flight had even one middle seat unoccupied, someone with a service animal could be seated next to the vacant seat, and it is likely that even a large animal could use some of the floor space of the vacant seat, making any further purchase unnecessary. Of course, service animals generally sit on the floor, so it is unlikely that a service animal would ever actually occupy a separate seat.

We have not taken other steps recommended by some commenters, such as mandating that airlines accommodate coach passengers with service animals in first class or reconfigure cabins. We would regard such mandates as potentially requiring a fundamental alteration of airlines' operations, and consequently outside the scope of the statutory authority for this rule.

A second category of comments concerned the relationship of service animal requirements to Part 382's coverage of foreign carriers. Many foreign carriers and their organizations stated that foreign carriers often had policies more restrictive than those of the ACAA (*e.g.*, only dogs, or only dogs certified by recognized training schools or associations, are accommodated; some carriers don't allow any animals in the cabin; service animals may be seated only in certain designated locations; there are number limits or advance notice requirements for service animals in the cabin). These commenters generally wished to maintain such restrictions.

As a general matter, foreign carrier policies with respect to service animals, like other foreign carrier policies, are subject to the conflict of laws waiver and equivalent alternative provisions of the final rule. Otherwise, modifying carrier policies to accommodate U.S. civil rights requirements is something foreign carriers must accept as part of their obligation to comply with U.S. law when flying to and from the U.S.

In addition to wishing to maintain existing policies restricting the access of service animals, some commenters mentioned that some countries have quarantine rules that severely delay or limit the entrance of certain animals, or effectively prohibit, certain animals—even service animals—from entering those countries. The Department agrees that, if Country S prohibits a certain kind of animal from entering, an airline serving an airport in Country S could apply for a conflict of laws waiver to be relieved of carrying such an animal to that country. Such a waiver would be country-specific; however. If the same airline is asked to carry the same animal to Country R, which does not have such a prohibition, the carrier would have to transport the creature. The final rule also requires carriers to promptly take all steps necessary to comply with such foreign regulations as are necessary to legally transport service animals from the U.S. into foreign airports (*e.g.*, the United Kingdom's Pet Travel Scheme).

Commenters mentioned that some persons may have religious or cultural objections to traveling in proximity to certain service animals. Other commenters raised the issue of passengers who may have allergies to certain animals. It has long been a principle of the Department's ACAA and other disability regulations that it is improper for a transportation provider to deny or restrict service to a passenger with a disability because doing so may offend or annoy other persons (see for instance current 14 CFR 382.31(b) and section 382.19(b) of the final rule). This principle is again articulated in the final rule's service animal section. Only if a safety problem amounting to a direct threat can be shown is restricting access required by Part 382 justifiable.

This principle applies to concerns about passengers who have allergies not rising to the level of a disability or cultural or personal objections to being on the same aircraft with a certain service animal. Their discomfort must yield to the nondiscrimination mandate of the ACAA. As stated in the Department's service animal guidance, to which we have added language concerning the handling of allergy issues, carriers should do their best to accommodate other passengers' concerns by steps like seating passengers with service animals and passengers who are uncomfortable with service animals away from one other. We note that, on flights operated by foreign carriers that are not subject to these rules, the carriers may, of course, apply their own policies with respect to carriage of service animals.

A number of commenters objected to the requirement that carriers accept animals as service animals on the basis of the "credible verbal assurances" of passengers, especially in the absence of credentials from a training school that the carrier recognizes. Under U.S. law (the ADA as well as the ACAA), it is generally not permissible to insist on written credentials for an animal as a condition for treating it as a service animal. It would be inconsistent with the ACAA to permit a foreign carrier, for example, to deny passage to a U.S. resident's service animal because the animal had not been certified by an organization that the foreign carrier recognized. When flying to or from the United States, foreign carriers are subject to requirements of U.S. nondiscrimination law, though carriers may avail themselves of the conflict of laws waiver and equivalent alternative provisions of this Part. We acknowledge that some foreign carriers may be unused to making the kinds of judgment calls concerning the credibility of a passenger's verbal assurances that the Department's service animal guidance describes, and which U.S. carriers have made for over 17 years. However, the comments do not provide any persuasive evidence that foreign carriers are incapable of doing so or that making such judgment calls will in any important way interfere with the operation of their flights.

A number of carriers commented that making provision for service animals on long (*e.g.*, trans-oceanic) flights was especially problematic. The main concern focused on the animals' eating, drinking, and elimination functions. They pointed out that health and sanitation issues could arise. Some service animal users said that their animals were well trained to avoid creating sanitation problems on even a very long flight. The Department agrees that, on very long flights, carriers have a legitimate concern about sanitation issues that could arise if animals relieve themselves in the cabin. Consequently, the Department has added a provision to the regulatory text pertaining to a flight segment scheduled to take eight hours or more. For such a segment, the carrier may, if it chooses, require the passenger using the animal to provide documentation that the animal will not need to relieve itself on the flight or that the animal can do so in a way that does not create a health or sanitation issue. We agree with commenters that carriers should not have any responsibility for assisting with the eating, drinking, or elimination functions of service animals on board an aircraft.

Another important issue that a number of commenters raised concerned "emotional support animals." Unlike other service animals, emotional support animals are often not trained to perform a specific active function, such as pathfinding, picking up objects, carrying things, providing additional stability, responding to sounds, etc. This has led some service animal advocacy groups to question their status as service animals and has led to concerns by carriers that permitting emotional support animals to travel in the cabin would open the door to abuse by passengers wanting to travel with their pets.

The Department believes that there can be some circumstances in which a passenger may legitimately travel with an emotional support animal. However, we have added safeguards to reduce the likelihood of abuse. The final rule limits use of emotional support animals to persons with a diagnosed mental or emotional disorder, and the rule permits carriers to insist on recent documentation from a licensed mental health professional to support the passenger's desire to travel with such an animal. In order to permit the assessment of the passenger's documentation, the rule permits carriers to require 48 hours' advance notice of a passenger's wish to travel with an emotional support animal. Of course, like any service animal that a passenger wishes to bring into the cabin, an emotional support animal must be trained to behave properly in a public setting.

We have also noted a concern that there could be differences, in the airport terminal context, between the ACAA regulations that apply to airlines, and their facilities and services, contrasted with public accommodations like restaurants and stores. The DOJ Title III rules for places of public accommodation govern concession facilities of this kind. As a consequence, a concession could, without violating DOJ rules, deny entry to a properly documented emotional support animal that an airline, under the ACAA, would have to accept. On the other hand, nothing in the DOJ rules would prevent a concession from accepting a properly documented emotional support animal. We urge all parties at airports to be aware that their services and facilities are intended to serve all passengers. Airlines, airport operators, and concessionaires should work together to ensure that all persons who are able to use the airport to access the air transportation system are able equally to use all services and facilities provided to the general public.

Because they make for colorful stories, accounts of unusual service animals have received publicity wholly disproportionate to their frequency or importance. Some (*e.g.*, tales of service snakes, which grow larger with each retelling) have become the stuff of urban legends. A number of commenters nevertheless expressed concern about having to accommodate unusual service animals. To allay these concerns, the Department has added language to the final rule specifying that carriers need never permit certain creatures (*e.g.*, rodents or reptiles) to travel as service animals. For others (*e.g.*, miniature horses, pot-bellied pigs, monkeys), a U.S. carrier could make a judgment call about whether any factors (*e.g.*, size and weight of the animal, any direct threat to the health and safety of others, significant disruption of cabin service) would preclude carrying the animal. Absent such factors, the carrier would have to allow the animal to accompany its owner on the flight. Any denial of transportation to a service animal would have to be explained, in writing, to the passenger within 10 days.

While it is possible that foreign air carriers may have safety-related reasons for objecting to service animals other than dogs, even ones that have been successfully accommodated on U.S. carriers, these reasons were generally not articulated in their comments to the docket. Nevertheless, to give foreign carriers a further opportunity to raise any safety-related objections specific to foreign airlines to carrying these animals, the final rule does not apply the requirement to carry service animals other than dogs to foreign airlines. However, foreign carriers could not, absent a conflict of laws waiver, impose certification or documentation requirements for dogs beyond those permitted to U.S. carriers. We intend to seek further comment on this subject in the forthcoming SNPRM.

A few comments suggested adding, to the section prohibiting carriers from requiring passengers to sign waivers or releases of liability, language specifically applying this prohibition to the loss, injury, or death of service animals. We believe that this is a sensible suggestion, and we have added the language.

Information for Passengers

The Foreign Carriers NPRM proposed that, similar to the current rule, carriers would have to make certain information available to passengers with disabilities upon request concerning the accommodations that were available to them for a particular flight. This includes the location of seats with a movable armrest as well as seats (*e.g.*, those in an exit row) that are not available to passengers with a disability. It also includes information about any service limitation as well as the ability of an aircraft to accommodate people with disabilities (*e.g.*, limitations on boarding assistance, limitations on storage areas for mobility aids, presence or absence of an accessible lavatory). The Foreign Carriers NPRM recognized that there were circumstances (*e.g.*, change of aircraft because of weather or mechanical problems) that could affect the accuracy of information provided at the time a passenger made a reservation.

Disability community comments supported these proposals, which did not propose significant substantive changes from the provisions of the ACAA that have been in effect since 1990. Some carrier comments objected to the provision to identify seats with movable armrests, saying that, given the variety of cabin configurations and aircraft, it would be too hard and too expensive to be able to know where these seats are located.

The final rule does not mandate that carriers reconfigure cabins on all aircraft in order to meet this requirement, as some commenters mistakenly appeared to conclude. Rather, carriers would provide the best information available at the time a passenger made a reservation or inquiry. If the location of movable armrest seats on the aircraft actually providing the flight did not match the information previously provided to the passenger, gate and flight crew personnel could modify the passenger's seating assignment prior to or at the time of boarding in order to ensure that the passenger could transfer to a seat with a movable armrest.

A carrier could make the necessary information about seating configurations of each aircraft available to its personnel for this purpose, noting locations of movable armrest seats. We note that there are at least two commercial Web sites that make detailed information on characteristics of each seat of each configuration of most carriers' various aircraft models publicly available. While these sites do not include information on movable armrests, the detailed information they make available (*e.g.*, the location of seats that have sockets available to plug in laptops) suggests that doing so would not pose an insurmountable technical problem. Carriers that found a computer-based system too challenging could use a low-cost, low-tech means of identifying the movable armrest seats for gate and flight crew personnel, such as placing unobtrusive stickers on the seats or a photocopied seating chart that

flight attendants and gate agents could use.

Another proposal carried over from the existing rule into the Foreign Carriers NPRM would require carriers to make a copy of Part 382 available at all the airports that they serve (for flights to the U.S., in the case of foreign airports). The Department sought further comment on this matter in the DHH NPRM. We also proposed to require all carriers to give passengers information on how to obtain both a copy of Part 382 in an accessible format and disability-related assistance from the Department (*i.e.*, via the Disability Hotline or directly from the Aviation Consumer Protection Division). We solicited comment on our proposals and on the potential costs to carriers and benefits to passengers of a requirement that carriers have copies of Part 382 in accessible formats available at all airports involved in service to, from, or within the U.S.

A few disability community comments said that the rule should specify that the document be made available in other accessible formats as well as hard copy. Some foreign carrier comments objected to making copies of a U.S. regulation available, though others did not. Most foreign carriers, however, opposed any requirement that they have copies of Part 382 available at airports in accessible formats as unreasonably burdensome and of little practical use to passengers who are not already aware of this regulation. Some foreign carriers objected to being required to have a copy of Part 382 at the foreign airports from which they fly to the U.S., on the grounds that the foreign jurisdictions have their own disability-related requirements for carriers serving them. Virtually all of them took the position that any passenger desiring a copy of Part 382 in an accessible format should obtain it from this Department rather than from a carrier. Some suggested that passengers should be made aware of Part 382 and its availability from the Department at the time of booking or at some other point before they actually go to the airport. One foreign carrier did not object to having a copy of Part 382 available at airports in its home country from which it flies to the U.S., but it did object to any requirement that it also have copies available at third-country airports that could be the U.S. passenger's origin or final destination. Another made a similar argument concerning airports that are endpoints of flights operated on a codeshare basis with a U.S. carrier.

While we agree that carriers should make a print copy of the rule available, so that passengers can refer to it to assist them in resolving any problems that arise at the airport, the final rule will not require copies to be made available in other accessible formats, or in languages other than English. We also will not adopt the proposed requirement in § 382.45 that carriers provide information on the Department's Disability Hotline service or its Aviation Consumer Protection Division to passengers with disability-related complaints or concerns. Such a requirement is not necessary here, as other sections of the rule require carriers to tell passengers of their right to contact the Department as part of the resolution of complaints (*see* 14 CFR 382.153, 382.155). We agree with those commenters who suggest that access to Part 382 is most useful to consumers before they reach the airport. We are therefore requiring carriers to include notice on their Web sites that consumers can obtain a copy of Part 382 in accessible format from the Department and information on how this may be done. The performance requirement that carriers effectively communicate with passengers—which carriers can meet in a variety of ways—should be sufficient to ensure that passengers can use the regulatory information. Making a copy of the regulations available in an airport, for the cost of a photocopy, should not unduly burden carriers.

Probably the most important proposal in this portion of the NPRM would require carriers and their agents to make their Web sites accessible to people with vision impairments and other disabilities. Web sites are an increasingly important way in which passengers get information about airline service and make reservations. Some carriers make discounts available to Web site users, or charge extra fees to persons who make reservations by other means. Disability community commenters strongly supported the proposed requirements. Many carriers and carrier organizations opposed it, primarily on the grounds that it would be too difficult and expensive to accomplish. Many of these comments said the Department had underestimated the cost of Web site accessibility.

The Department continues to believe that Web site accessibility is extremely important to nondiscriminatory access to air travel for people with disabilities, and we note that many existing carrier Web sites provide a degree of accessibility. However, in order to obtain additional information about the costs and any technical issues involved, the Department is deferring final action on this proposal and seeking additional comment in the SNPRM that we are planning to issue. The preamble to the SNPRM will discuss comments on Web site accessibility and the issues they raise in greater detail. In the meantime, in order to comply with the general nondiscrimination requirement of Part 382, carriers will be prohibited from charging fees, or not making Web fare discounts available, to passengers with disabilities who cannot use inaccessible Web sites and therefore must make phone or in-person reservations.

TTY Use

We proposed in the DHH NPRM to require carriers to ensure that the service and response times are equal for TTY information and reservation lines and non-TTY information and reservation lines, including the provision of a queue for the former if one is provided for the latter. (Since 1990, U.S. carriers that offer telephone reservations and information service to the general public have been required by § 382.47 to offer TTY service as well.) TTY users should not be subject to longer wait times than other callers. We stated our belief that the cost to carriers of installing queuing features on their TTY lines would not be high. We solicited comments on this proposal.

The individuals and disability organizations that commented on this issue mostly supported all of our proposals. The carriers and carrier associations that filed comments expressed strong reservations about our proposal. Some foreign carriers opposed TTY requirements on the grounds that TTY access is technically infeasible in many countries. Some opposed the requirement of a queuing system for TTY calls, claiming that such systems are in fact quite costly and that the expense is not justified given the low incidence and low frequency of TTY calls that they receive (*i.e.*, no more than two to three calls per month). Some asserted that deaf and hard of hearing consumers are using the internet more and more to communicate with carriers and thus relying less and less on TTYs. Some opposed the requirement that response time for TTY users and other callers be "equivalent," arguing that the delay inherent in typing text rather than speaking it makes equivalent response times physically impossible.

The purpose of § 382.43 is to put deaf and hard of hearing passengers on a substantially equivalent footing with the rest of the public in their ability to communicate with carriers by telephone regarding information and reservations. We aim to ensure substantial equivalence in both access to any carrier and wait time if an agent is not available when a connection is first made.

Regarding access, both the comments and our own further investigations into voice relay services have persuaded us that we need not require carriers to make TTY service available *per se*. Instead, we are requiring only that carriers make their telephone reservation and information services available to individuals who use a TTY. Carriers may of course meet this requirement by using TTYs themselves, but they may also do so by means of voice relay or any other available technology that permits TTY users to communicate with them. This requirement is set forth in § 382.43(a). We are also adding a new access requirement in § 382.43(a)(4) to ensure that deaf and hard of hearing passengers are informed of how to reach carriers by TTY: in any medium in which a carrier states the telephone number of its information and reservation service for the general public, it must also state its TTY number if it has one, or if not, it must specify how TTY users can reach the information and reservation service (*e.g.*, via voice relay service). Such media include, for example, Web sites, ticket jackets, telephone books, and print advertisements.

Regarding wait time, the comments and our own experiments with voice relay systems have persuaded us not to require carriers that use TTYs to implement a queuing system for TTY calls even if they do maintain one for calls from the rest of the public. Calls from a TTY to a carrier via a voice relay service are treated exactly the same as calls from conventional telephones. If an agent is available to take the call, the caller is connected to the agent. If not, if the carrier has a queuing system the call goes into the queue along with non-TTY calls. (If the carrier does not have a queuing system, any caller gets a busy signal.) Therefore, a TTY caller who calls the carrier's TTY number and gets a busy signal can hang up and immediately try the carrier's general public number through a voice relay service, where all calls receive identical treatment. We consider the timing in this scenario to be "substantially equivalent" to the timing for the rest of the public, the extra call notwithstanding. We do not intend for "substantially equivalent" to mean "exactly the same." As long as disparities in wait times between TTY users and the general public remain both low and infrequent, we will consider the treatment of these groups to be substantially equivalent. Of course, we can and will investigate allegations of routine or lengthy disparities and require corrective action where appropriate.

We are concerned, moreover, that given the reportedly high cost of implementing a TTY queuing service *vis-á-vis* the reportedly low incidence of TTY calls, if we required queuing systems for TTYs, carriers that currently maintain TTYs might have an incentive to discontinue them, as this rule will permit them to do, and opt instead to offer access to TTY callers only via voice relay. We do not wish to create disincentives that may deprive those TTY users who may prefer calling another TTY directly rather than using voice relay of this option, especially when the record in this proceeding contains no evidence that the incidence of busy signals in TTY-to-TTY calls is high or even moderate. We would expect any carrier that operates TTY service and whose TTY callers experience a high incidence of busy signals to find some way of accommodating the TTY callers so as to avoid violating the "substantially equivalent" standard. For example, rather than acquire and maintain a queuing system, the carrier could allow a TTY caller who cannot be accommodated immediately to leave a message and then have an agent promptly return the call.

In-Flight Audio and Video Services

We proposed in the DHH NPRM to broaden the existing requirements for accommodating individuals who are deaf and hard of hearing that apply to video displays on aircraft. First, we proposed to require U.S. and foreign carriers to caption all safety and informational videos on aircraft within set periods of time. The current rule, § 382.47(b), only requires that U.S. carriers make safety briefings on the aircraft that are presented by video accessible to persons who are deaf or hard of hearing, and it exempts cases where open captioning or an inset would interfere with the video presentation so as to render it ineffective or if the captioning or inset would itself be unreadable. The proposed rule, applicable to foreign carriers as well, would eliminate the exemption, require high-contrast captioning of informational videos as well as safety videos, require compliance for safety videos within 180 days of the rule's effective date, and require compliance for informational videos within an additional 60 days. Until the new rule's compliance dates, U.S. carriers would remain bound by the provisions of the existing rule. We solicited comment on the elimination of the exemption clause, on extending the captioning requirement to informational displays, and on the technical feasibility of captioning all safety and informational videos, DVDs, and other audio-visual displays in such a way that they will still be useful to individuals without hearing disabilities. We also solicited comment on the proposed timetable.

Second, we proposed to require U.S. and foreign carriers to provide high-contrast captioning on entertainment videos, DVDs, and other audio-visual displays on new aircraft, or aircraft ordered after the rule's effective date or delivered more than two years after that date. Aircraft on which the audio-visual machinery is replaced after that date would also be considered new for purposes of § 382.69. We did not propose requiring the captioning of entertainment videos on existing aircraft, believing that the costs of such a requirement would exceed the benefits that would follow. We solicited comment on the costs and feasibility of both modifying and replacing equipment on existing aircraft and complying with the proposed rule with new aircraft.

The carriers and carrier groups that filed comments generally objected to the proposals. RAA opposes requiring videos on existing aircraft to be captioned, contending that the costs of modification would greatly exceed any potential benefits. One foreign carrier contended that this provision should not apply to foreign carriers. Some faulted the Department for not distinguishing between English and non-English products and maintained that the latter should be excluded from any captioning requirement. Some carriers argued that the exact content of any safety briefing provided by video can always be found in print in each seat pocket and maintain that the content of informational videos can be found in print both in seat pockets and elsewhere in the cabin. Most if not all carriers and carrier groups objected to allowing less time for compliance with the safety-video requirement than with the requirement for informational videos; some maintained that rather than a specific deadline, carriers should be permitted to comply if and when they replace video equipment in the normal course of operating the aircraft. Some claimed to have no control over the content of informational videos provided by third parties. Some opposed the requirement that captioning be high-contrast—*i.e.*, white letters on a consistent black background. Several commenters called for retention of the current rule's exemption for captioning a safety video when the

captioning or inset would render the video ineffective.

All of the carriers and carrier groups opposed requiring captioning for all in-flight entertainment, advancing several arguments: With existing technology, the costs and difficulties of compliance are prohibitive; for overhead screens, the size of captioning relative to the size of the screen would degrade the entertainment value of the video presentation for all passengers; on individual seat screens, current technology and cost do not permit the installation of systems that would let individual passengers choose whether to caption individual programs; captioning of all entertainment videos, regardless of what type of screen the aircraft features, is too costly and would increase the price of air transportation; in-flight entertainment is beyond the Department's jurisdiction to regulate, as it does not come within the purview of access to air transportation; film owners' restrictions on DVDs could make compliance impractical to impossible; in some cases, government censorship could make compliance illegal; the proposal does not specify whether or not captioning would be required in languages other than English, which would increase the costs and difficulties of complying. Many carriers endorsed the comments of the World Airline Entertainment Association ("WAEA"), which are summarized below, and many called for inclusion in any provision adopted of an exemption like the one in the current rule for safety videos—*i.e.*, for cases where captioning would interfere with the video presentation so as to render it ineffective or if the captioning would itself be unreadable.

The individuals and disability organizations that filed comments unanimously supported the proposed rule except insofar as they believed the compliance dates to be too far in the future. None of these commenters addressed the costs or difficulties of achieving compliance.

The WGBH Educational Foundation's National Center for Accessible Media ("the Center"), which reported that it is conducting a study on ways of making airline travel more accessible to passengers with sensory disabilities, filed comments on this proposal. The Center maintained that all safety videos are already being captioned and that pre-recorded informational videos are readily captionable, thus making the existing exemption unnecessary. It maintained that due to current technologies, the rule need not specify white letters on a black background to ensure that captions can be read, and given the number of production techniques available, a requirement that displayed text be "legible" or "readable" should suffice. The Center stated that the next generation of in-flight entertainment ("IFE") systems can be designed to accommodate captioning in various ways and that it is advances in these systems, not new aircraft, that will make captions readily available. It therefore recommended that the rule be tied to changes in IFE systems and not the purchase or modification of aircraft. Further, the Center reported that captioning on next-generation IFE systems is a work in progress based on new means of sending video signals through the aircraft cabin. Caption data for broadcast and cable television, it stated, are incompatible with the digital signals being routed to seat screens in the newest IFE systems, and while the transformation of these data for use on in-flight systems can be developed, the process is not yet automatic, nor is it trivial. A further complication, according to the Center, lies in the variety in types of video signals being provided in-flight. The Center stated that despite the small size of seat screens, properly rendered captions can be as effective on these screens as they are on home television sets. It reported that the portable IFE systems that some carriers use as alternatives to installed systems—for example, DVD players or hard disks—can accommodate closed captions as readily as installed systems can.

As mentioned above, the comments filed by WAEA were endorsed by many of the carriers. WAEA stated that its members include both airlines and suppliers to the IFE industry, the latter including aircraft manufacturers, major electronics manufacturers, motion picture studios, audio/video post-production labs, broadcast networks, licensing bodies, communications providers, and others, worldwide. WAEA took the position that some of the proposed captioning requirements and implementation timelines would impose undue and unacceptable financial burdens on the carriers and that some of the requirements are not even technologically or operationally feasible given the following: technical limitations of both old and new IFE systems, variations among proprietary IFE systems currently in service and being installed, limited space for and readability of captioning on both seat screens and on more distant communal screens, the intrusion factor of open captions for passengers without a sensory disability, limited cabin-server storage for additional captioned video files to complement up to eight languages offered onboard, and lengthy aircraft retrofit and fleet order cycles and IFE system design and certification timelines.

Among other things, WAEA agreed with the Center that the implementation of the proposed new requirements should be tied to IFE system development and not the aircraft. Given the limitations of video files that may be available on the aircraft, WAEA contended that the rule should apply only to English-language videos and only to entertainment videos exhibited "while in United States territory." WAEA reported that current IFE systems are typically based on proprietary rather than standard architectures and technologies and that they were not designed to accommodate broadcast closed-captioning signals and technologies. Given the limitations of IFE screens in terms of their size and distance from the viewer, WAEA opposed the requirement that captioning be white letters on a black background and supported instead the choice of using the same process as subtitling, which, it said, provides readable characters while keeping most of the picture visible and poses fewer risks of copyright infringement.

Based on the comments, we have made several changes to the final rule. We are retaining the requirement that safety and informational audio-visual displays played on the aircraft be high-contrast captioned, but we have revised the definition of that term to permit the use of captioning that is at least as easy to read as white letters on a consistent black background. The requirement will not apply, however, to informational videos that were not created under the carrier's control. The captioning need only be in the predominant language or languages in which the carrier communicates with passengers on the flight. If the carrier makes announcements both in English and another language, captions must be in both languages. We are retaining the compliance dates set forth in the DHH NPRM, based among other things on the Center's report that all safety videos are already being captioned and that pre-recorded informational videos can be captioned readily. This report also undercuts the carriers' arguments for retaining the current rule's exemption for cases in which captioning would interfere with the video presentation so as to render it ineffective or would itself be unreadable.

We have reluctantly concluded, though, that we cannot adopt a regulation governing entertainment displays at this time. We reject the contention that access to in-flight

entertainment falls outside the scope of the Air Carrier Access Act of 1986, as amended, and that we therefore have no authority to regulate IFE. Remedial statutes such as the ACAA are properly construed broadly, for the benefit of the protected class, as we have consistently done via Part 382. (*See, e.g.*, § 382.1 and § 382.11–13 [formerly § 382.7].) No party challenging our jurisdiction over IFE has provided any support for its position.

Notwithstanding our authority to regulate, however, the record in this proceeding does not provide a basis for adopting a captioning requirement for IFE at present. We cannot conclude on the basis of the comments that providing high-contrast captioning for entertainment displays is technically and economically feasible now, nor can we ascertain a date by which it most likely will be. Therefore, we will shortly be issuing an SNPRM to call for more current and more complete information on the cost and feasibility of providing high-contrast captioning for entertainment displays, information not only on current technology but also on the nature and pace of technological developments. Regarding the latter, we are aware that on March 6, 2007, after the conclusion of the period for commenting on the DHH NPRM. WAEA's Board of Directors adopted a new specification as part of an ongoing effort to establish a standard digital content delivery system for IFE. This new specification reflects progress toward development of a common methodology for delivering digital content and greater interoperability for in-flight entertainment systems.

Other Information for Individuals With Hearing or Vision Impairments

We proposed in the DHH NPRM to require carriers to provide the same information to deaf, hard of hearing, and deaf-blind individuals in airport terminals that they provide to other members of the public. We proposed that they must provide this information promptly when such individuals identify themselves as needing visual or auditory assistance, or both. The proposed rule set forth the following non-exhaustive list of covered topics: flight safety, ticketing, flight check-in, flight delays or cancellations, schedule changes, boarding, the checking and claiming of baggage, the solicitation of volunteers on oversold flights (*e.g.*, offers of compensation for surrendering a reservation), individuals being paged by airlines, aircraft changes that affect the travel of persons with disabilities, and emergencies (*e.g.*, fire, bomb threat). We proposed that the rule apply to U.S. carriers at each gate, baggage claim area, ticketing area, or other terminal facility that they own, lease, or control at any U.S. or foreign airport. The proposed rule would apply to foreign carriers at gates, baggage claim areas, ticketing areas, or other terminal facilities that they own, lease, or control at any U.S. airport and at terminal facilities of foreign airports that serve flights beginning or ending in the U.S. (We inadvertently neglected to include the phrase "that they own, lease, or control" in the NPRM regulatory text on foreign carriers at foreign airports.)

We explained in the DHH NPRM that we were proposing a performance standard, namely "prompt," rather than requiring carriers to use a particular medium (*e.g.*, LCD screens, wireless pagers, erasable boards, or handwritten notes) to allow carriers to design their own compliance plans in a manner that best suits their needs and serves their passengers. We solicited comment on whether the term "prompt," which we believe to be a higher standard than "timely," is sufficiently specific. We also stated our concern that methods of communicating with deaf-blind individuals may not be readily available. We did not propose to require carriers to use any of the following methods: using a finger to trace block letters on the deaf-blind individual's palm or forearm, using an index card with raised letters, with the communicator placing the deaf-blind individual's index finger on each word's letters in sequence, or tactile signing or finger spelling where the deaf-blind individual places his or her hands on top of the signer's hands to feel the shape of the signs. We solicited comment on other less specialized methods of communicating with deaf-blind individuals and on whether, if none exists, we should limit the promptness requirement to individuals with vision or hearing impairments but not to apply it to an individual who has both of these disabilities.

The carriers and carrier groups that filed comments all supported the requirement that passengers needing special transmission of this information identify themselves to carrier personnel. Most asked the Department to use "timely" as a standard rather than "prompt." Some complain that any such standard is too subjective to provide effective guidance. One carrier suggested that the emphasis should be not on how swiftly carriers can transmit the information to the disabled passenger but on when the passenger needs to have it. Carriers shared considerable concern over the costs of compliance, both in terms of having personnel available at all of the areas listed in the proposal and in terms of potential technical solutions. One carrier opposed making the requirements applicable at foreign airports, arguing that foreign carriers are not likely to have the leverage they would need to comply. Several contended that the cost estimates in the initial Regulatory Evaluation were unrealistically low. Some proposed limiting the required "promptness" to individuals with either hearing or visual impairment, not both, who are traveling without a companion; one stated that it communicates the information at issue here to deaf-blind passengers through their traveling companions. Some objected to the list of types of information that must be provided promptly. (The list represents an expansion of the list in the existing rule, 14 CFR 382.45(c), which up to this time has applied only to U.S. carriers, and which is explicitly not exhaustive.) One U.S. carrier association was particularly concerned about the financial burdens that it assumes the rule would impose on its regional-airline members. It asserted that adoption of much of the technology discussed in the proposal is impossible at small airports and states that in any case its members report very few deaf-blind passengers flying from these airports. The costs of compliance, it contended, far exceed any putative benefits and could result in the reduction or even elimination of service.

The individuals and disability organizations that filed comments had a very different perspective. Most of these commenters objected to the requirement of self-identification. Many took the position that carriers should have reliable methods in place for conveying information to all passengers at all times. Several supported requiring simultaneous visual transmission of any information disseminated over a public address system. Some related that in the past self-identification has failed to result in this type of information's being transmitted at all, much less "promptly" or even in a "timely" manner.

Based on the comments, we have made several changes to the proposal in the final rule. First, we are adding the language that we inadvertently omitted in the proposed rule to limit the requirements for foreign carriers at foreign airports to areas that these carriers own, lease, or control. Second, we have determined that it is not appropriate at this time to require carriers to provide the information covered in § 382.53 to deaf-blind passengers. The information at issue is constantly changing, and we know of no methods of communicating with deaf-

blind individuals that allow for prompt transmission of the information and do not require highly specialized training. We do encourage members of the public to petition the Department for a rulemaking to amend this rule in the future if and when technology becomes available that would permit the prompt and efficient transmission of the covered information to deaf-blind individuals. We also encourage carriers to acquire and use such technology on their own initiative.

Third, we have determined that the costs of requiring prompt transmission of the covered information at all of the terminal areas listed in the DHH NPRM exceed the benefits. We are therefore limiting the requirement to gates, ticketing areas, and customer service desks. For purposes of the rule, a customer service desk is a location in the terminal that a carrier dedicates to addressing customer problems that are not addressed at the gate or the ticket counter, most commonly the rerouting of passengers affected by a delayed or canceled flight. Fourth, we are adding a provision for information about baggage. This information must be transmitted to passengers who have identified themselves as having hearing or vision impairment no later than the time that it is transmitted to the other passengers. For example, assuming that information on collection of baggage is given to arriving passengers at the baggage claim area, carriers can comply with this rule by giving the information to self-identifying passengers before the others—*e.g.*, onboard the flight or at the gate—or at the baggage claim area at the same time as the others. Fifth, as in the case of § 382.51, in cases where a U.S. airport has actual control over the gates, ticketing areas, and customer service desks, we are making the airport and the carrier jointly responsible.

We are retaining the self-identification requirement, because we believe that requiring simultaneous visual transmission of the information along with each and every public-address announcement would saddle carriers with undue costs. In this regard, passengers with impaired hearing or vision must identify themselves to carrier personnel at the gate area or the customer service desk even if they have already done so at the ticketing area.

We are also retaining the "prompt" standard. It requires carriers to provide the information to self-identifying passengers with hearing or vision impairment as close as possible to the time that the information is transmitted to the general public. For example, when gate agents announce a flight cancellation or gate change, if they provide the information to self-identifying passengers with impaired hearing or vision either immediately before or immediately after they make a general announcement, the carrier will be complying with § 382.53. If a gate change is announced fifteen minutes before a scheduled departure but the gate agents do not provide effective notice to a passenger with impaired hearing until it is too late for that individual to reach the gate in time to board, or if they delay providing the information long enough that the individual reasonably believes that he or she will probably miss the flight, the carrier is violating the rule. The rule requires that carrier personnel notify a self-identifying passenger with impaired hearing that he or she has been paged immediately after making the announcement over a public address system unless the same information is displayed visually on a screen. If a flight is oversold and the carrier is soliciting volunteers to relinquish their seats in exchange for compensation, to comply with this rule carrier personnel must notify self-identifying passengers with impaired hearing or vision in time for them to take advantage of the offer—*i.e.*, well before the quota has been filled by other volunteers. The rule does not require carriers to provide a sign language interpreter in the gate area or elsewhere to ensure that a deaf passenger receives all pertinent information simultaneously with other passengers.

As for passengers with impaired vision, for example, the rule requires carriers to notify a visually impaired passenger orally where his or her baggage can be claimed if the information is otherwise only posted on visual displays, and the notification must take place no later than the posting. At the time when a visually impaired passenger identifies himself or herself to an agent at the gate, the rule requires the agent to notify him or her of any change that has occurred that affects his or her itinerary even if the change has already been announced and is now posted on a screen. If a gate change is posted on the screen but not announced orally, as soon as possible after the posting a gate agent must notify any passenger who has identified himself or herself as having impaired vision.

We are retaining the entire list of types of information that carriers must provide even though it contains more items than the list in the current rule. In our view, since the list in the current rule is expressly non-exhaustive, the new items on the list in this section were never excluded obligations. Having them explicitly stated informs the carriers more effectively of their responsibilities.

In the DHH NPRM, we proposed a somewhat similar requirement for providing information aboard aircraft to the proposed requirements pertaining to information in airport terminals. U.S. and foreign carriers would be required, upon request, to provide deaf, hard of hearing, and deaf-blind individuals with the same information provided to other passengers in a prompt manner. We again proposed a non-exhaustive list of types of information to be covered by the rule: flight safety, procedures for take-off or landing, flight delays, schedule or aircraft changes that affect the travel of persons with disabilities, diversion to a different airport, scheduled departure and arrival times, boarding information, weather conditions, beverage and menu information, connecting gate assignments, baggage claim, individuals being paged by airlines, and emergencies (*e.g.*, fire or bomb threat). The proposal differs from the current rule in that it changes the timing requirement from "timely" to "prompt" and expands the current rule's list, also non-exhaustive, of covered types of information. We solicited comment on whether the change from "timely" to "prompt" is appropriate for providing information aboard the aircraft and on the proposed new list.

The carriers and carrier groups that filed comments generally objected to the proposal as too broad and too prescriptive, particularly the expanded list of types of information for which accommodation would be required. The Air Transport Association of America ("ATA") argued that the expanded list would create a tension between crew members' obligations to provide information to disabled passengers and their duties related to safety and concluded that if busy crew members are further burdened with having to transcribe every in-flight announcement for passengers with impaired hearing, only safety announcements mandated by the FAA will be made. Such a result, according to ATA, would work to the detriment of all passengers and constitute an undue burden not required by the ACAA. ATA proposed limiting the covered information to critical flight and safety information. Some commenters contended that they (or their members) already give passengers with hearing or vision impairment the same relevant information that they announce aloud. The International Air Transport Association ("IATA") contended that the proposal would not allow carriers enough flexibility to make

individual assessments and that compliance would require retraining of all staff, redrafting of training manuals, and dramatic changes in procedures at high cost to the carriers and with little benefit to passengers. Some carriers took the position that individuals who are not capable of communicating with the flight crew orally or in writing should be required to travel with a companion who can establish communication. RAA characterized the scope of information in the proposed list as excessive and maintained that the "prompt" standard should only apply to information about flight safety procedures for take-off or landing. RAA said that 80 percent of airplanes operated by regional carriers either have only one flight attendant or none at all.

The individuals and disability organizations that filed comments unanimously supported the proposed rule, including the expanded list of topics. Most objected to the requirement that individuals with hearing impairments identify themselves to the carrier and request accommodation. Most supported a requirement that all oral announcements made aboard the aircraft be simultaneously transmitted visually; some claimed that in practice, sporadic requests for accommodation are not honored.

With minor clarifying changes to the language of the proposed rule, we are adopting its substance as proposed. As with § 382.53, however, we have determined that it is not appropriate at this time to require carriers to provide the information covered in § 382.119 to deaf-blind passengers. As stated above, the information is constantly changing, and we know of no methods of communicating with deaf-blind individuals that allow for prompt transmission of information and do not require highly specialized training. Also as with § 382.53, we encourage members of the public to petition the Department for a rulemaking to amend this rule if and when technology becomes available that would permit the prompt and efficient transmission of the information to deaf-blind individuals.

We are also following our approach in § 382.53 with regard to maintaining the self-identification requirement, the standard of promptness, and the list of types of information that the rule covers. Here, as there, we believe that at this time, requiring simultaneous visual transmission of the information along with every spoken announcement would saddle the carriers with undue costs. Here, as there, carriers must provide the information to self-identifying passengers with hearing or vision impairment as close as possible to the time that the information is announced aloud. Here, as there, expanding the list in the current rule does not impose additional requirements on U.S. carriers, because the current rule's list is explicitly non-exhaustive and would thus cover the items added here. Specifying our expectation informs the carriers more completely of what the rule encompasses.

Finally, the carriers' concerns that compliance with the requirements of section 382.119 could keep their flight crews from performing their duties related to safety are misplaced. The rule expressly relieves the crew from complying when this would interfere with their safety duties under FAA and foreign regulations. There is similar language in § 382.53, though, given the duties of such personnel as gate agents, ticket agents, and baggage claim personnel, the likelihood of any conflict between normal duties and legally-mandated safety duties is probably lower than in the air crew context, outside, perhaps of an unusual emergency situation.

Training

The Foreign Carriers NPRM proposed that carriers operating aircraft with 19 or more passenger seats must train its personnel to proficiency concerning ACAA requirements and providing services to passengers with disabilities. One element of the carrier's training efforts would be to consult with organizations representing persons with disabilities in developing training programs. Refresher training to maintain proficiency would also be required. Complaints resolution officials (CROs) would have to be trained in their duties by the effective date of the rule. Training for current employees would generally have to be accomplished within one year. New crewmembers would have to be trained before starting their duties, and other new employees would have to be trained within 60 days of starting their duties. For foreign carriers, training requirements would apply only to employees who are involved with flights to and from U.S. points. Carriers would incorporate procedures implementing Part 382 requirements into their manuals, but they would not need to submit these materials or a certification of compliance to DOT for review.

Disability community commenters generally supported the proposed training requirements, though several said that U.S. carriers were not providing adequate training. Some commenters said that they had rarely, if ever, encountered carrier personnel who, when asked, recalled getting ACAA training. Some of these commenters, as well as some carriers, asked for a stronger DOT role in providing training (*e.g.*, preparing a training curriculum, developing training materials, or providing funding for training). One association representing foreign carriers suggested a forum at which carriers and the Department could discuss implementation issues before the effective date of the rule.

Some foreign carriers mentioned that they already had disability-related training programs for their employees, and suggested that these programs should be recognized as equivalent to the proposed requirements. A few foreign carriers said that the proposed training time frames were too short. Other foreign carriers objected to training their employees to meet U.S. requirements, since they already trained their personnel to meet applicable requirements of their home countries. Several of these commenters particularly objected to consulting with disability groups, some suggesting that the requirement should be waived if they could not find a local disability group to consult. (Disability groups expressed different views on this point, most suggesting such a waiver was unnecessary because the U.S.-based staff of the airline could consult with U.S. groups if necessary, while another group suggested such a waiver could be acceptable if the carrier showed it had made good faith efforts to consult.) An association of U.S. carriers cautioned that any waiver available to foreign carriers should also be available to U.S. carriers.

The Department regards thorough training of carrier personnel who interact with passengers with disabilities as vital to good service to those passengers and to compliance with the ACAA. We recognize that many foreign carriers already have disability-related training programs. Since specific ACAA requirements do not yet apply to these carriers, it is very likely that these training programs would need to be amended, for those personnel who serve flights to and from the U.S., in order to ensure that the personnel understand ACAA requirements. Personnel serving U.S.-related flights would not have to be retrained from scratch, only provided additional training on ACAA-specific matters. To respond to concerns about the time it would take to train employees, the final rule provides foreign carriers a year from the effective date of the rule to complete the process. Since there will be a year between publication of the final and its effective

date, any carriers still concerned about the length of training time frames can get a head start by beginning to train employees during the year prior to the effective date.

While U.S. disability groups can undoubtedly be a useful resource for both U.S. and foreign carriers, we do not believe it would be realistic to require foreign carriers to seek out U.S. disability groups for consultation (in many cases, U.S.-based personnel of these carriers would be operations staff, not management and training officials). Consequently, we have modified the language of this provision to refer to seeking disability groups in the home country of the airline. If home country disability groups are not available, a carrier could consult individuals with disabilities or international organizations representing individuals with disabilities. We do not believe that a waiver provision is needed, since it is unlikely that a carrier would be completely unable to find anyone—home country or international disability groups, individuals with disabilities—with whom to consult. As a matter of enforcement policy, however, the Department would take into consideration a situation in which a carrier with an otherwise satisfactory training program documented it had made good faith efforts to consult but was unable to find anyone with whom to consult.

The Department has posted a model training program based on the current Part 382 at *http://airconsumer.ost.dot.gov/training/index.htm*, and we will consider whether it would be useful to produce additional training materials. Our staff have long experience in working with carriers on training and compliance issues, and they will continue to work with both U.S. and foreign carriers on training-related issues. We believe the idea of one or more forums to discuss implementation issues in the interval between the publication and effective dates of the rule is a good one, and we are now planning to hold such a meeting in June 2008.

We understand the concern of disability group commenters that some carrier personnel do not seem to have been trained to proficiency or at all. In an industry environment in which there is considerable personnel turbulence, carriers and the Department must both be vigilant to ensure that training takes place as required.

Because of the concern that some carrier employees may not be current in their knowledge of ACAA requirements, the final rule will require refresher training at least every three years. Carriers will have to develop a program for this purpose. Refresher training is intended to assist employees in maintaining proficiency, both by reminding them of ACAA requirements and their carriers' procedures for implementing them and by providing updated information about new developments, additional guidance etc. While the Department will not require such programs to be submitted for approval, carriers will be required to retain records concerning both initial and refresher training, including the instructional materials and individual employee training records, for three years. These records will be subject to inspection by the Department.

We also think that it is important to understand the relationship between compliance with the "trained to proficiency" requirement and compliance with other provisions of the rule. In the Department's view, a pattern or practice by a carrier of noncompliance with operational provisions of the ACAA rule (*e.g.*, wheelchair stowage in the cabin, boarding or connecting assistance) may reveal that the carrier's personnel have not been trained to proficiency with respect to the provision in question. Training to proficiency seems inconsistent, on its face, with systemic mistakes in providing required accommodations. Consequently, where the Department sees widespread implementation problems, our staff may also examine the adequacy of the carrier's training, and we may take enforcement action and require corrective action in the carrier's training activities.

Carriers generally supported the proposal to not require submission of material in manuals and procedures to DOT for review. The Department believes, based on the experience of reviewing carrier submissions at the time the original Part 382 went into effect, that mandating such submissions is not productive, so we will not impose such a requirement. Some disability community commenters supported the idea of submitting certificates of compliance. However, the Department believes that doing so would result in increasing information collection burdens without giving the Department a significant additional amount of information about carriers' actual compliance status. We believe it is sufficient for the Department to be able to review materials carriers have on file as part of our compliance and enforcement process.

In the DHH NPRM, we proposed to require carriers to train their employees to recognize the requests for communication accommodation by passengers with impaired vision or hearing and to use the most common methods that are readily available for communicating with these passengers. The required training would be for proficiency in basic visual and auditory methods for communicating with passengers whose disabilities affect communication. We explained that we were not proposing to require carriers to train their employees to use sign language. Rather, employees would be trained in methods that are readily mastered and of which one or more can be used as required to communicate with an individual who is deaf or hard of hearing (*e.g.*, handwritten notes). We solicited comment on whether the terms "common methods" and "readily available" give carriers sufficient guidance for complying fully with this training requirement. We also solicited comment on what kind of training would meet the requirement and on the effect, feasibility, and necessity of expanding the proposal to require that employees also be trained to communicate with deaf-blind individuals.

The carriers and carrier associations that filed comments generally characterized the proposed requirements as far too vague and potentially too costly. Most objected to requiring training for all personnel and contractors that deal with the traveling public. One carrier suggested that a better approach would be to train all personnel to better awareness of communications needs and give carriers discretion to choose how to satisfy those needs—for example, by ensuring that proficient communicators can be made available on short notice. Foreign carriers generally argued that any training requirement should only apply to their employees in the United States. One carrier association noted that a person without training would naturally resort to writing to communicate with a deaf person and wondered what more would be taught in formal training. One carrier questioned the existence of universally established or internationally accepted methods in which to train carrier personnel. RAA asked that training requirements not apply to aircraft carrying 30 or fewer passengers and that training to communicate with deaf-blind individuals not be required.

The individuals and disability organizations that filed comments all supported training requirements. One organization argued that training in sign language should be required as well as training in how to operate any technology used to provide visual

access—for example, captioning controls on video monitors or LCD terminals. One individual called for carrier personnel to be trained in how to handle people with service or guide dogs, including not to pet or feed the dogs. One organization maintained that trainers of carrier personnel should be individuals with hearing loss and that they should focus on imparting an understanding of the barriers that deaf, hard of hearing, and deaf-blind passengers face. This organization also suggested that effective communication might involve visual communication, appropriate seating arrangements, lighting to ensure a clear line of sight to visual information displays, and attention-getting techniques such as gentle tapping on the shoulder.

In the final rule, we are retaining the proposed training requirement with some clarification and one addition. Carriers must train those employees who come into contact with passengers whose hearing or vision is impaired or who are deaf-blind both to recognize these passengers' requests for accommodation in communicating and to communicate with these passengers in ways that are common and readily available. For example, employees should be able to communicate with passengers whose hearing or vision is impaired via written notes or clear enunciation, respectively. We are adding a requirement that the training also cover deaf-blind passengers. Examples of communication accommodations for the latter include passing out Braille cards (which this rule does not require), reading any information sheet that a passenger provides, and communicating with the passenger through an interpreter. Given that what we are requiring is fairly rudimentary, the training costs should not be high, nor should compliance otherwise be burdensome.

Complaints

Like the existing rule, the Foreign Carriers NPRM emphasized the role of CROs. These are individuals trained to be the carrier's experts in ensuring that carrier personnel correctly implement ACAA requirements and that problems of passengers with disabilities are resolved in a way that is consistent with Part 382. The purpose of having a CRO is to resolve passengers' problems as quickly as possible, without resort to formal DOT enforcement procedures and, we hope, in many cases, before a violation occurs.

Under the Foreign Carriers NPRM, there would have to be a CRO available to passengers with disabilities at every airport the U.S. carrier serves and at every airport where a foreign carrier operates a flight to or from the U.S., whether in person or by phone. Carrier personnel would have to refer a passenger with a disability-related complaint or problem to a CRO. The Foreign Carriers NPRM also would tell carriers to provide the number of the DOT Disability Hotline to such passengers. CROs have the authority to direct other carrier personnel (except pilots-in-command with respect to safety matters) to take actions to resolve problems so as to comply with the ACAA. Carriers and CROs would have to respond to consumer complaints in a timely manner.

Disability community comments generally supported the proposed rule, though some comments suggested that CROs and carriers should have to respond faster to consumer complaints than the Foreign Carriers NPRM proposed. Some carriers, on the other hand, thought that the time frames in the Foreign Carriers NPRM were too short, especially if a lengthy investigation were needed in order to respond. Disability community commenters also strongly supported the proposal to direct carriers to refer passengers who raise disability-related issues to a CRO, since many individuals may not know about the availability of CROs otherwise.

A number of carriers said that they thought that having CROs available to passengers at every airport was not cost-effective and that existing customer service offices could meet the need. One foreign carrier thought that its personnel could not be successfully trained to carry out the CRO role. Some carriers thought that they should not have to refer passengers to the DOT Hotline, saying that this would undermine the purpose of having CROs resolve problems as close to the scene of the action as possible. Some commenters objected to providing TTY service as a means of permitting hearing-impaired passengers to contact a CRO, saying that this was impractical in some places (*e.g.*, an airport in a country where TTY service was unavailable). Some comments said the Foreign Carriers NPRM's proposal to allow 18 months after the event for a passenger to file a complaint with DOT was too long.

The final rule retains the role and functions of the CRO. Our experience supports the proposition that the use of CROs is crucial to prompt and efficient solution of passengers' problems. However, we are making a few clarifications and changes in response to comments. Carriers may use other accessible technologies in lieu of TTYs to permit hearing-impaired passengers to communicate with CROs. The proposed requirement for carriers to refer passengers to the DOT Hotline has been dropped. The time frame for a carrier to respond to an oral complaint to a CRO has been expanded to 30 days, making it consistent with the time frame for responding to written complaints. The final rule clarifies that with respect to CROs and complaint responses, carriers providing scheduled service, and carriers providing nonscheduled service using aircraft with 19 or more passenger seats, are covered. When the rule speaks of "immediate" responses by carriers, it means prompt and timely referral to a CRO when passengers raise a disability-related problem or complaint that cannot be quickly resolved by carrier personnel on the spot (*e.g.*, a gate agent, a flight attendant). We have reduced from 18 months to six months the period after an event in which a passenger may file a complaint with DOT.

A few foreign carriers said that it was improper to permit non-U.S. citizens to have access to the U.S. DOT through the complaint process. In the commenters' view, this implied improper extraterritorial jurisdiction under a law that was intended to create rights only for U.S. citizens. We do not agree. First, the ACAA protects "individuals with disabilities," with no limitation on the nationality of those individuals. Second, the Department has a legitimate interest in ensuring that its legal requirements are implemented. It does not matter to the Department who brings a problem to its attention. Once we know about the problem, it is up to the Department, working with the carrier, to correct the problem, and civil penalties are one of the Department's tools for helping to correct a problem.

An association representing U.S. carriers objected to a proposed exception to the 45-day limitation on accepting written complaints for complaints referred by the Department of Transportation. The commenter also suggested that carriers be allowed to limit the means through which a disability-related complaint is transmitted to them to the means used to accept non-disability-related complaints. In the Department's view, if we think a complaint is important enough to refer to an air carrier, it is important enough for the carrier to respond. We also believe that, in attempting to enforce rights under a nondiscrimination statute, passengers should be able to send a complaint by any reasonable means available to them, without limitations placed by carriers on the transmission of other sorts of consumer complaints. These features of

the proposed rule will be included in the final rule without change.

Section-by-Section Analysis

The purpose of this portion of the preamble is to describe each of the sections of the final rule. The focus of the descriptions is on new or changed material.

382.1 What is the purpose of this Part?

The section is amended to include foreign carriers.

382.3 What do the terms in this rule mean?

This definitions section makes several additions or changes to the definitions in the current rule. A new definition of "carrier" includes both U.S. and foreign carriers. A new definition of "CPAP machine" or continuous positive airway pressure machine, a type of respiratory assistive device, has also been added. There are new definitions of "direct threat," which concerns the standard that may permit carriers to take otherwise prohibited actions with respect to passengers with a disability, and "equivalent alternative," which concerns the standard used in 382.10 for carriers to adopt policies, practices or other accommodations in lieu of compliance with the letter of provisions of the rule. "Indirect air carrier" refers to a person not directly involved with the operation of aircraft who sells transportation services to the general public other than as the agent of a carrier. Two agencies concerned with safety and security aspects of flight are also recognized in this section: The Pipeline and Hazardous Materials Safety Administration of DOT and the Transportation Security Administration of the Department of Homeland Security. In the definition of "qualified individual with a disability," the final rule specifically mentions the term "passenger with a disability" that is frequently used throughout the rule. Finally, there is a new definition of "portable oxygen concentrator" (POC), a device used to provide oxygen to passengers who need it during flight.

We have also included in the final rule a definition of "commuter carrier" and "on-demand air taxi" as an understanding of those terms is essential to an understanding of the applicability of section 382.133. The Department also decided to include a definition of "expected maximum flight duration" in the final rule as commenters had a number of questions regarding how a carrier should determine if a passenger has a sufficient number of batteries available to power an electronic respiratory assistive device. In this final rule, the Department explains that a carrier may require an individual to bring enough fully charged batteries to power the device for not less than 150% of the expected maximum flight duration. The definition of "expected maximum flight duration" provides carriers a list of factors that they must take into account in determining the total length of a flight.

We proposed in the DHH NPRM to change the phrase, "telecommunication device for the deaf," and its acronym, "TDD," to "text telephone" and "TTY," respectively. All who commented on this proposal supported it, so we are using the new phraseology in the final rule.

In the DHH NPRM, we proposed not to include a definition of "hard of hearing, deaf, and deaf-blind" in the rule, reasoning that the definition of an "individual with a disability" is broad enough to cover individuals who are hard of hearing, deaf, or deaf-blind. We did, however, solicit comments on this issue. We also proposed not to include a definition of "captioning," but we solicited comments on this issue as well. We further proposed not to include a definition of "informational," but we stated in the preamble that we intended that word to apply to all videos, DVDs, and other audio-visual displays that do not qualify as safety or entertainment displays, including but not limited to the following: videos, DVDs, and other audio-visual displays addressing weather, shopping, frequent flyer programs, customs and immigration information, carrier routes, and other general customer service presentations. We also solicited comments on this issue.

Of those who commented on § 382.3, the carriers and carrier associations generally opposed a definition of "hard of hearing, deaf, and deaf-blind," agreeing with the Department that such individuals are covered by the definition of an "individual with a disability." They opposed any definition of "captioning" that might be difficult to meet or that would not allow for innovation, and they agreed that "informational" need not be defined. One of the disability organizations argued for a definition of "hard of hearing, deaf, and deaf-blind" in order to cover the "entire spectrum" of hearing disabilities. All disability organizations supported a definition of captioning that makes all audio-visual displays easily readable, and they agreed with the proposal to explain the purport of "informational" in the preamble. One of these organizations asked the Department to add safety, entertainment, and other materials that are communicated to passengers who can see and hear normally.

The final rule includes a definition of the term "indirect air carrier." For readers' information, an indirect air carrier is an entity that indirectly engages in "air transportation" as that term is defined in the governing statute by engaging the services of a "direct air carrier" (an airline). For example, when a tour operator or an air freight forwarder contracts for space on a wholesale level with an airline and the tour operator or air freight forwarder then re-sells space on that flight on a retail basis, setting his own price and terms, bearing the entrepreneurial risk of profit or loss rather than acting as an agent, and controlling the inventory and schedule, that tour operator or air freight forwarder is acting as an "indirect air carrier" as defined in the statute. Conversely, a retail travel agent who sells the product of a disclosed principal (*e.g.*, a seat on a scheduled airline or on a charter flight), offering it at the price and terms set by that principal, is acting as an agent rather than a principal and is not an indirect air carrier. Nor are other participants in the air travel system (concessionaires, suppliers) considered indirect air carriers.

The final rule will not include definitions of "hard of hearing, deaf, and deaf-blind" or "informational." The comments have not persuaded us of the need for a separate definition to cover hearing and vision problems: the definition of an "individual with a disability" logically includes individuals with the whole spectrum of hearing and vision impairments. Similarly, the comments do not show a need for a definition of "informational" in the rule. As we stated in the DHH NPRM, by "informational" displays we mean all videos, DVDs, and other audio-visual displays that do not qualify as safety or entertainment displays, including but not limited to the following: videos, DVDs, and other audio-visual displays addressing weather, shopping, frequent flyer programs, customs and immigration information, carrier routes, and other general customer service presentations. We exclude safety and entertainment displays: these are covered elsewhere, in §§ 382.53, 382.69, and 382.119.

As for captioning, we have determined that we should consistently use the term "high-contrast captioning" in the rule and define it in § 382.3 rather than do so whenever it occurs elsewhere. In our definition we are adopting a pragmatic approach. Defining "high-contrast captioning" as "captioning that is at least as easy to

read as white letters on a consistent black background" not only ensures that captions will be effective but also allows carriers to use existing or future technologies to achieve captions that are as effective as white on black or more so. Some of the comments indicate that such technology already exists, and we think it would be poor public policy not to allow for innovation and improvement. The high-contrast captioning may be either open—*i.e.*, text that is recorded directly in the video and cannot be turned off at a user's discretion—or closed—*i.e.*, text that can be toggled on or off at the user's choice.

382.5 When are U.S. and foreign carriers required to begin complying with the provisions of this Part?

Both U.S. and foreign carriers must begin complying with the new final rule on its effective date, which will be a year from the date on which the rule is published in the **Federal Register**. This phase-in period is intended to give carriers time to take the steps they need to comply as well as to submit to the Department, in a timely fashion, requests for conflict of laws waivers and requests for equivalent alternative determinations.

382.7 To whom do the provisions of this Part apply?

The rule applies to all U.S. carriers, regardless of where their operations take place, except where otherwise provided in the rule. With respect to foreign carriers, the application of the rule is more limited. Only flights of foreign carriers that begin or end at a U.S. airport, and aircraft used in these operations, are covered. A flight means a continuous journey of a passenger in the same aircraft or using the same flight number. The rule provides several examples of what constitutes a "flight" and what does not. Notably, a foreign carrier is not covered under the rule with respect to an operation between two foreign points, even if, under a code-sharing arrangement with a U.S. carrier, the foreign carrier transports passengers flying under the U.S. carrier's code. The U.S. carrier, however, is covered under the rule with respect to the passengers traveling under its code on such a flight, such that if there is a violation of the Part 382 rights of a passenger traveling under the U.S. carrier's code, the Department would hold the U.S. carrier, not the foreign carrier, responsible. Finally, a charter flight on a foreign carrier from a foreign airport to a U.S. airport and back would not be covered if the carrier did not pick up any passengers in the U.S.

In the DHH NPRM, we proposed that the provisions concerning deaf, hard of hearing, and deaf-blind passengers apply to all U.S. carrier operations and to all flights operated by foreign carriers that begin or end at a U.S. airport. We proposed that in the case of flights operated by foreign carriers between two foreign points that are codeshared with a U.S. carrier, the service-related requirements of the rule would apply to the U.S. carrier whose code is used but not the aircraft accessibility and equipment requirements. In addition, we observed in the Preamble that § 382.51, which governs audio-video displays at airports, carves out an exception for U.S. and foreign carriers at foreign airports: § 382.51 applies by its terms only to U.S. airport terminal facilities owned, leased, or controlled by U.S. or foreign carriers. We solicited comments on the cost and feasibility of requiring U.S. carriers to modify equipment, space, or both at foreign airport terminals that they lease, own, or control.

Consistent with their comments on the Foreign Carriers NPRM, foreign carriers and carrier associations that filed comments generally criticized the Department, saying that it had acted unilaterally in this area. Some contended that Part 382 should not apply to flights that are not part of a single journey to or from the United States in the same aircraft with the same flight number. One U.S. carrier, Delta, expressed concern that its foreign codeshare partners might find the requirements so onerous that they will end the code-sharing rather than comply, precipitating declines in service and competition. One association of U.S. carriers supported the applicability of Part 382 to foreign carriers, as did the disability groups and individuals that commented. The Regional Airline Association ("RAA") asked the Department to exempt all aircraft of up to 30 seats from the rule because its requirements will create excessive burdens for operators of small aircraft.

The individuals and disability organizations that filed comments generally favored making the rule applicable to all foreign carrier flights that originate or end at a U.S. airport and to foreign carrier flights between two foreign airports that are codeshared with a U.S. carrier.

We find unpersuasive the foreign carriers' suggestions that in applying these requirements to them we are somehow exceeding our authority. As we explained in the Foreign Carriers and DHH NPRMs, in the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21), Congress amended the Air Carrier Access Act (ACAA) to include foreign carriers in the prohibition against discriminating against otherwise qualified individuals with disabilities. This rulemaking merely implements that law. This Department's authority to issue regulations that apply to foreign carriers is well-established. This general issue is discussed at greater length in the "Response to Comments" portion of the preamble above. In that section, the Department explains the final rule's approach to the issue of code-sharing, which applies to deaf and hard-of-hearing issues as well as to other provisions of Part 382.

The service-related requirements regarding deaf, hard of hearing, and deaf-blind passengers that apply to U.S. carriers on codeshare flights operated by their foreign-carrier partners between two foreign points are those listed in § 382.119. Although we are not applying these requirements to the foreign carrier operating these flights, the U.S. carrier will be subject to enforcement action if the foreign carrier fails to provide the required information promptly to "qualified individuals with a disability who identify themselves as needing visual and/or hearing assistance" and whose tickets bear the code of the U.S. carrier. The aircraft-accessibility requirements set forth in § 382.69 do not apply on such flights. Part 382 has no equipment requirements specific to deaf, hard of hearing, and deaf-blind passengers.

As for RAA's request, the evidence in the record does not provide a basis for a blanket exemption from Part 382 for aircraft with 30 or fewer seats. If an airport or aircraft operator does not use a particular technology, sections concerning that technology would not apply. Normal provisions concerning exemptions from Office of the Secretary rules (see 49 CFR Part 5) could be used if a carrier or airport believes an exemption is needed in a particular situation.

382.9 What may foreign carriers do if they believe a provision of a foreign nation's law prohibits compliance with a provision of this Part?

This provision creates a conflict of laws waiver mechanism to give appropriate consideration to requirements of foreign law applicable to foreign carriers. It is important to note that this mechanism is intended to apply only to genuine conflicts with legally binding foreign legal mandates. A foreign law that requires a foreign carrier to do something prohibited by this rule, or that prohibits a foreign

carrier from doing something required by this rule, is an appropriate subject for a conflict of laws waiver. A foreign carrier's or foreign government's policy, authorized practice, recommendation, or preference is not. However, if a foreign government officially informs a carrier that it plans to take enforcement action (*e.g.*, impose a civil penalty) against a carrier for failing to implement a provision of a government policy, guidance document, or recommendation, the Department would view the enforcement action as creating a legal mandate that could be addressed under this section.

If, as a legal matter, the foreign carrier has no choice but to act contrary to this rule, the Department would grant a waiver. If the foreign carrier, as a matter of law, has any discretion in the matter, it must exercise that discretion by complying with this rule, even if contrary to the carrier's policy or the recommendation of a foreign government, and the Department would not grant a waiver. A waiver request would have to include the carrier's proposal for an alternative means of achieving the rule's objectives with respect to any provision that is waived.

The Department wants to ensure that waiver requests are submitted and granted or denied in a timely manner, avoiding the dilemma for foreign carriers of having to choose between compliance with this rule and with conflicting foreign laws when the rule goes into effect a year after its publication. We encourage foreign carriers to make any waiver requests within 120 days of the rule's publication. The Department commits to deciding requests made in this time period before the rule goes into effect. If we are late, then the foreign carrier may continue to carry out the policy or practice involved until we do respond, and if the request is denied the Department would not take any enforcement action against the carrier with respect to activities that took place prior to the denial. Even with respect to waiver requests submitted after the 120-day period, the Department will do its best to respond before the effective date of the rule. Again, the carrier can choose to continue to follow the policy or practice that is the subject of the request until the Department does respond. However, if such a request is denied, the carrier risks enforcement action with respect to the period between the effective date of the rule and the date of the Department's response. The Department has established this two-stage waiver consideration process to help avoid a situation in which a foreign carrier would delay submission of a waiver request until shortly before the effective date of the rule, in an attempt to delay compliance with the rule while the Department considered its late-filed request.

We also recognize that new foreign legal mandates can arise. If a new mandate is created after the initial 120-day period following publication of the rule (not an existing legal mandate that is subsequently discovered or goes into effect subsequently), then a foreign carrier may submit a waiver request and continue to implement the policy or practice involved until the Department responds. In this case, the carrier would not be subject to enforcement action for the period prior to the Department's response.

This section also notes that if a foreign carrier submits a frivolous or dilatory waiver request, has not submitted a waiver request with respect to a particular policy or practice, or continues to follow a policy or practice concerning which a waiver request has been denied, the carrier could be subject to DOT enforcement action. For example, if the Department initiates enforcement action because we believe a foreign carrier's practice is contrary to the rule, the carrier could not defend against the enforcement by claiming a conflict with an existing foreign legal mandate if the carrier had not previously submitted a waiver request concerning the practice, or the request had been denied.

382.10 How does a U.S. or foreign carrier obtain a determination that it is providing an equivalent alternative to passengers with disabilities?

While the concept of equivalent facilitation has been a part of DOT Americans with Disabilities Act (ADA) rules since 1991 (see 49 CFR 37.7–37.9), it has not previously been part of ACAA rules. The use of "equivalent alternative" in this rule is somewhat broader than the use of "equivalent facilitation" in DOT or DOJ ADA rules or in the Americans with Disabilities Act Accessibility Guidelines issued by the U.S. Access Board, which focused on "hardware" modifications to vehicles and facilities. In the ACAA context, equivalent alternative can also refer to policies, practices, or other accommodations to passengers with disabilities.

The key point of this section is that, in order to be viewed as an equivalent alternative, a policy, practice, accommodation, or piece of equipment must really provide substantially equivalent accessibility to passengers with disabilities than compliance with a provision of the rule. It isn't enough for a carrier's proposed alternative to be different from a provision of the rule. Alternatives that provide less accessibility than the provisions of the rule, or that impose greater burdens on passengers with disabilities, cannot be considered an equivalent alternatives. Equivalent alternatives also pertain only to specific requirements of the rule. The Department would not entertain an equivalent alternative request that asked us to find that an entire foreign regulatory scheme was equivalent to this rule, for example.

Similar to the conflict of laws waiver provision, the equivalent alternative provision is structured to provide an incentive to carriers to file timely requests. If a carrier submits its request within 120 days of the publication date of this Part, the Department will try to respond before the effective date of the rule. The carrier can implement the policy or practice it requests as an equivalent alternative beginning on the effective date of the rule until the Department does respond. (A U.S. carrier subject to the current rule could not begin implementing an equivalent alternative it had requested within the 120-day time period until the new rule goes into effect, since the current rule does not provide for equivalent alternatives.) If a carrier submits its request after the 120-day period following publication, the carrier must comply with the provision of the regulation pending the Department's response.

382.11 What is the general nondiscrimination requirement of this Part?

382.13 Do carriers have to modify policies, practices, and facilities to ensure nondiscrimination?

These sections are very similar to section 382.7 of the current regulation. One difference is that the new rule specifies that carriers may require preboarding as a condition of receiving certain seating or in-cabin stowage accommodations. The requirement to make modifications of policies, practices, and facilities has been broken out into a separate section. This requirement recognizes that there can be times when, in order to provide nondiscriminatory service to a particular individual, carriers must change or make an exception to an otherwise acceptable general policy or practice for that individual. It should be emphasized that this provision is not intended to require carriers to make generally applicable changes in policies for all passengers, or all passengers with disabilities. The provision focuses on

the carrier doing what it needs to do—short of incurring an undue burden or making a fundamental alteration in its services—to make sure that a passenger with a disability can take the trip for which he or she is ticketed.

382.15 Do carriers have to make sure that contractors comply with the requirements of this Part?

It is a basic principle of nondiscrimination law that while a regulated party can contract out its functions, it cannot contract away its responsibilities. Consequently, a carrier that contracts out any functions concerning passengers with disabilities must ensure that the contractors comply with the provisions of this Part, just as if the carrier were performing the functions itself. Assurances and contract conditions in the agreements between carriers and their contractors are a key measure to carriers' compliance with this section. Noncompliance with these contract conditions by the contractor must be stated in the contract as being a material breach of the contract. The Department expects carriers to monitor the performance of contractors to ensure that the contractors' performance complies with the requirements of this Part and to take appropriate contract action against contractors that breach their contracts by failing to comply. The Department would view a carrier's failure to do so as noncompliance with the carrier's obligations under this rule, and a carrier cannot defend against an enforcement action by the Department by claiming that a contractor erred. The carrier remains responsible.

382.19 May carriers refuse to provide transportation on the basis of disability?

This section continues, and extends to foreign carriers, the key nondiscrimination requirement of the ACAA and the existing Part 382. With narrow exceptions, a carrier is prohibited from denying transportation to a passenger on the basis of disability. Carriers retain their authority, under 49 U.S.C. 44902 and 14 CFR 121.533, to deny transportation to any passenger, disabled or not, on the basis of safety or whose carriage would violate FAA or TSA requirements.

If the carrier's reason for excluding a passenger on the basis of safety is that the individual's disability creates a safety problem, the carrier's decision must be based on a "direct threat" analysis. This concept, grounded in the Americans with Disabilities Act, calls on carriers to make an individualized assessment (*e.g.*, as opposed to a generalization or stereotype about what a person with a given disability can or can't do) of the safety threat the person is thought to pose. In doing so, the carrier must take into account the nature, duration and severity of the risk; the probability that the potential harm will actually occur; and whether reasonable mitigating measures can reduce the risk to the point where the individual no longer poses a direct threat. In using its authority to make a direct threat determination and exclude a passenger, a carrier must not act inconsistently with other provisions of Part 382. Direct threat determinations must not be used as a sort of de facto exception to specific requirements of this Part (*e.g.*, the prohibition on number limits).

Exclusion of a passenger because his disability-related appearance or involuntary behavior may offend, annoy, or inconvenience other persons—as distinct from creating a direct threat to safety—is an important part of this nondiscrimination mandate. The rationale for this requirement was stated in the preamble to the 1990 ACAA rule, and it remains valid (see 55 FR 8027; March 6, 1990).

382.21 May carriers limit access to transportation on the basis that a passenger has a communicable disease or other medical condition?

As a general matter, carriers may not exclude or impose other requirements or conditions on a passenger on the basis that the passenger has a communicable disease. However, if the passenger poses a direct threat, the carrier may take appropriate action to safeguard the health and safety of other persons on the flight.

The Department has added regulatory language codifying the Department's guidance on how airlines should determine whether someone's disease presents a direct threat. To be a direct threat, a condition must be both able to be readily transmitted by casual contact in the course of a flight AND have severe health consequences (*e.g.*, SARS, active tuberculosis). If a condition is readily transmissible but does not typically have severe health consequences (*e.g.*, the common cold), or has severe health consequences but is not readily transmitted by casual conduct in the course of a flight (*e.g.*, HIV), its presence would not create a direct threat. Carriers may also rely on directives issued by public health authorities (*e.g.*, in the context of a future flu pandemic).

If a passenger who is deemed to present a direct threat cannot travel at his or her scheduled time as a result, the carrier must allow the passenger to travel at a time up to 90 days from the date of postponed travel at the same price or, if the passenger prefers, provide a refund. Consequently, cancellation or rebooking fees or penalties would not apply in this situation, and the passenger would not be subject to any fare increases that may occur in the meantime or any increase in that passenger's fare due to the non-availability of a seat in the fare class on his or her original ticket.

382.23 May carriers require a passenger with a disability to provide a medical certificate?

Like the medical certificates section in the current rule, this section generally prohibits carriers from requiring medical certificates (*i.e.*, written statements from a doctor saying that a passenger is capable of completing a flight safely, without requiring extraordinary medical assistance during the flight). People with disabilities have functional impairments with respect to walking, seeing, hearing etc. These impairments, by and large, are not sicknesses requiring medical treatment or clearance (though, of course, persons with disabilities can have illnesses like everyone else). At the same time, airlines and their personnel are not medical service providers, and it is not reasonable to expect them to perform medical services. This provision is intended to balance these realities.

Oxygen users and, people traveling in a stretcher or incubator can be required to produce a medical certificate. The situation that most commonly would result in a call for a medical certificate is one in which carrier personnel have a reasonable doubt that someone can complete the flight safely, without requiring extraordinary medical assistance. In such a case, carrier personnel can require a medical certificate in order to provide assurance that the passenger will not need such assistance. The rule clarifies that a medical certificate must be recent (within 10 days of the passenger's departing flight).

There is also a relationship between this section and the communicable diseases provision. Section 382.21(a)(4) allows a carrier to require a medical certificate if the carrier determines that the passenger has a communicable disease that could pose a direct threat. Under section 382.23(c), the passenger would then have to produce a medical certificate, to the effect that the passenger's condition would not be communicable to other persons during the normal course of the flight. If it is potentially transmissible during the flight but this can be prevented if

certain conditions or precautions are implemented, the certificate would have to describe those conditions or precautions. Unlike the situation with respect to medical certificates under paragraph (b)(3), a medical certificate in the situation of a communicable disease under paragraph (d) would have to be dated within 10 days of the flight for which it is presented (not 10 days prior only to the passenger's initial departing flight). Under paragraph 382.21(c), if the section 382.23(c)(2) medical certificate provides measures for preventing the transmission of a disease, the carrier must provide transportation to the passenger—carrying out the prescribed measures—unless the carrier determines that it is unable to carry out the measures. If the carrier is unable to do so, it can deny transportation to the passenger. In this event, the carrier's written explanation to the passenger under section 382.21(e) would include an explanation of why it was not able to carry out the measures identified in the medical certificate.

A carrier may elect to subject a passenger with a medical certificate to additional medical review (*e.g.*, by the carrier's physician) if the carrier believes either that there has been a significant adverse change in the passenger's medical condition since the issuance of the medical certificate or that the certificate significantly understates the passenger's risk to the health of other persons on the flight. If this additional review shows that the passenger is unlikely to be able to complete the flight without extraordinary medical assistance or would pose a direct threat to other passengers, the carrier could, notwithstanding the medical certificate, deny or restrict the passenger's transportation.

We also note that, under section 382.117(e), airlines can require passengers traveling with emotional support or psychiatric service animals to provide certain documentation. This information is not a medical certificate in the sense articulated in section 382.23, but airlines are entitled to obtain this documentation as a condition of permitting the emotional support or psychiatric service animal to travel in the cabin with the passenger.

382.25 May a carrier require a passenger with a disability to provide advance notice that he or she is traveling on a flight?

382.27 May a carrier require a passenger with a disability to provide advance notice in order to obtain specific services in connection with a flight?

Carriers may not require a passenger with a disability to provide advance notice of the fact that he or she is traveling on a flight. That is, a carrier cannot say to a passenger, in effect, "You have a disability; therefore, you must let me know in advance that you are going to fly on my aircraft, Flight XXX."

On the other hand, there is a series of accommodations that many passengers with disabilities may need or want that carriers reasonably require time to arrange. For these services, carriers may require up to 48 hours' advance notice (*i.e.*, 48 hours before the scheduled departure time of the flight) AND a check-in time one hour before the check-in time for the general public. That is, if passengers generally are told to arrive at the gate one hour before the scheduled departure time of the flight to check in, the carrier may tell passengers seeking one of these listed accommodations to check in two hours before the scheduled departure time for the flight. If the passenger with a disability meets the advance notice and check-in time requirements, the carrier must provide the requested accommodation. If not, the carrier must still provide the accommodation if it can do so by making reasonable efforts, without delaying the flight.

Most of the services or accommodations for which a carrier can require advance notice are the same as under the existing regulation (*e.g.*, transportation of an electric wheelchair on a flight scheduled to be made on an aircraft with fewer than 60 seats, accommodation for a group of 10 or more passengers with a disability who make reservations to travel as a group). It is important to note that, with respect to the onboard use of supplemental oxygen, advance notice can be required of a passenger whether the carrier provides the oxygen (*i.e.*, via POC or containerized oxygen,) or the passenger brings his or her own POC for use during the flight. It should also be noted that when requesting carrier-supplied supplemental oxygen, advance notice of up to 48 hours for domestic flights and up to 72 hours for international flights may be required.

There are a few new situations in which the rule permits carriers to require advance notice. These include transportation of an emotional support or psychiatric service animal, transportation of any service animal on a flight scheduled to take eight hours or more, and accommodation of an individual who has both severe vision and hearing impairments.

382.29 May a carrier require a passenger with a disability to travel with a safety assistant?

The terminology of this section has been changed from "attendant" to "safety assistant" to more accurately reflect the role of the person accompanying the passenger. A safety assistant is not a personal care attendant who looks after the personal care needs of a passenger. A carrier cannot require a personal care attendant to travel with a passenger with a disability. Rather, the safety assistant is someone who would assist the passenger to exit the aircraft in case of an emergency evacuation or to establish communication with carrier personnel for purposes of the required safety briefing. People like passenger volunteers, an individual selected by the passenger, or deadheading crew members remain appropriate candidates to act as safety assistants.

This section generally follows the model of the corresponding section of the existing regulation. However, with respect to the situation of a passenger with a severe mobility impairment, the criterion for permitting the carrier to require a safety assistant has been clarified to address circumstances where the passenger is unable to physically assist in his or her own evacuation. This change is made to avoid potential confusion that a passenger could assist in his or her own evacuation simply by calling for help.

The "Response to Comments" section of the preamble describes in greater detail other changes, including a new advance notice requirement, that would apply to passengers who have both severe vision and hearing impairments. In section 382.29(b)(4), it is mentioned that a passenger with both severe hearing and vision impairments is responsible for explaining how he or she can establish communication adequate to permit transmission of the safety briefing and to enable the passenger to assist in his or her own evacuation of the aircraft in the event of an emergency. The new 48-hours' advance notice requirement is intended to give the carrier time to make any arrangements necessary to accommodate the passenger following this explanation. The language in section 382.29(b)(4) concerning the ability of a passenger to assist in his or her own

evacuation refers to being able to establish, at or around the time of the safety briefing, a means by which the passenger can receive instructions concerning an emergency evacuation. For example, the passenger and air carrier could arrange a hand or touch signal that the passenger knows means "get up and follow passengers to an emergency exit."

When a passenger with a disability cannot travel on a flight because there is no seat available for a safety assistant that the carrier has determined to be necessary, the passenger must be compensated in an amount to be calculated under the Department's denied boarding compensation (DBC) rule, 14 CFR Part 250, where Part 250 applies. The DBC rule applies to both U.S. and foreign carriers with respect to domestic and international scheduled-service nonstop flight segments departing from a U.S. airport. It does not apply to flights departing from a foreign airport, whether operated by a U.S. or foreign carrier.

382.31 May carriers impose special charges on passengers with a disability for providing services and accommodations required by this rule?

Carriers may not impose charges on passengers for accommodations required by the rule. However, if a carrier voluntarily provides a service that this rule does not require, the carrier may charge a passenger with a disability for that service.

The issue of carrier web site accessibility requirements has been deferred to a forthcoming SNPRM. While that issue is being considered, the Department is adding a provision to address potentially discriminatory effects of their web site-related policies on passengers with disabilities who cannot use a carrier's web site because it is not accessible. If a carrier charges people who make reservations by phone or in person more than people who make reservations on the web site, this surcharge cannot be applied to persons with disabilities who must make reservations by another means because the web site is inaccessible to them. Likewise, if there are "web only" discounts or special offers made available to passengers on the carrier's web site, passengers with disabilities who cannot use the web site must be offered the same terms when they seek to book a flight by other means.

382.33 May carriers impose other restrictions on passengers with a disability that they do not impose on other passengers?

382.35 May carriers require passengers with a disability to sign waivers or releases?

Carriers must not impose requirements or restrictions on passengers with a disability that they do not impose on other passengers, except where this regulation explicitly permits the carrier to do so (*e.g.*, advance notice for certain services). We hope that many of the practices specifically banned in this section are only of historical interest (*e.g.*, making passengers with disabilities sit on blankets or restricting such passengers to so-called "corrals" in terminals), but we believe they are still useful examples of the sort of discriminatory treatment that is unacceptable in the context of a nondiscrimination statute. Waivers of liability or releases either for passengers themselves or for loss or damage of wheelchairs and other assistive devices are among the forbidden practices, although as we have stated in the past, carriers are free to note pre-existing damage to an assistive device to the same extent that carriers do this with respect to other checked baggage.

382.41 What flight-related information must carriers provide to qualified individuals with a disability?

This provision is very similar to the corresponding provision of the existing rule. Carriers must provide information about the accessibility features of aircraft (*e.g.*, the presence and location of seats that can be accessed through movable armrests, and seats not available to passengers with disabilities). In addition, carriers must provide information about any service limitations in accommodating a passenger with a disability. When level-entry boarding is not available on a particular flight, carriers must also provide information about boarding assistance requiring the use of a ramp or lift to all passengers who indicate that they will use a wheelchair for boarding, whether or not they specifically ask for the information.

As a general matter under Part 382, when an agent acting on behalf of an airline provides inaccurate information to a passenger with a disability concerning a disability-related accommodation, in most instances the airline will be responsible for any resulting information-related violation of the law. It should also be noted that when a carrier agrees to provide a service not specifically required under this Part to accommodate a particular passenger's disability, the carrier is obliged to provide that service to the passenger or risk being found in violation of section 382.41. For example, if a carrier informs a passenger that it will accommodate his or her peanut allergy by not serving peanuts on his or her flight itinerary, the carrier must ensure that peanuts are not served on those flights or it will be in violation of section 382.41.

382.43 Must information and reservation services of carriers be accessible to individuals with hearing and vision impairments?

The "Response to Comments" section of the preamble discusses the requirements that will apply to carriers with respect to TTY or telephone relay communication between users of TTYs and carriers. As noted in that discussion, the purpose of § 382.43 is to put deaf and hard of hearing passengers on a substantially equivalent footing with the rest of the public in their ability to communicate with carriers by telephone regarding information and reservations. We aim to ensure substantial equivalence in both access to any carrier and wait time if an agent is not available when a connection is first made.

Carriers may meet this requirement by using TTYs themselves, but they may also do so by means of voice relay or any other available technology that permits TTY users to communicate with them. This requirement is set forth in § 382.43(a). We are also adding a new access requirement in § 382.43(a)(4) to ensure that deaf and hard of hearing passengers are informed how to reach carriers by TTY: In any medium in which a carrier states the telephone number of its information and reservation service for the general public, it must also state its TTY number if it has one, or if not, it must specify how TTY users can reach the information and reservation service (*e.g.*, via call relay service). Such media include, for example, web sites, ticket jackets, telephone books, and print advertisements.

Based on comments to the docket, we are also adding § 382.43(b), which states that the requirements of § 382.43(a) do not apply to carriers in any country in which the telecommunications infrastructure does not readily permit compliance.

Carriers that provide written information to passengers must ensure that that this information can be communicated effectively to passengers with vision impairments. This could be done through alternative formats or,

especially for brief or compact pieces of information that can be comprehended and remembered effectively by a listener, through verbal communication (*e.g.*, the time and date of a specific flight, as distinct from the airline's entire timetable for a city pair).

For foreign carriers, these requirements apply only with respect to information and reservation services for flights covered by section 382.5. With respect to TTY services, the requirement applies to foreign carriers only with respect to flights for which reservation phone calls from the U.S. are accepted.

Please see the "Response to Comments" section for further information about the requirement that a copy of Part 382 be made available in airports served by carriers subject to this rule.

382.45 Must carriers make copies of this Part available to passengers?

U.S. carriers must keep a copy of Part 382 at each airport they serve and make it available to anyone who asks for it. Foreign carriers must do this at any airport serving a flight that begins or ends at a U.S. airport. An English-language copy of the rule is sufficient for this purpose. Carriers are not required to translate the document into other languages. Although carriers are not required to make a copy of Part 382 available in accessible formats at airports, carriers that provide information to the public on a website must place information on that website telling passengers that they can obtain an accessible copy of the rule from DOT.

382.51 What requirements must carriers meet concerning the accessibility of airport facilities?

The principal substance of airport facility accessibility requirements is the same for both U.S. and foreign carriers. Certain aspects of the requirements differ depending on whether the facility in question is located in the U.S. or in a foreign country.

U.S. facilities that a carrier owns, controls, or leases must meet requirements applicable to Title III facilities under the Americans with Disabilities Act. The requirements are those of the Americans with Disabilities Act Accessibility Guidelines (ADAAG), as incorporated in Department of Justice (DOJ) ADA regulations implementing Title III. There must be an accessible path between gate and boarding area when level entry boarding is not available to an aircraft. The ADAAG reference in paragraph (a)(2) is to the former version of the ADAAG, which is still the version incorporated in the DOJ rules. When DOJ incorporates the new version of ADAAG in their Title III rules, we will update this reference.

Inter-terminal and intra-terminal transportation owned, leased, or controlled by a carrier at a U.S. airport must meet DOT ADA rules. Since DOT has already incorporated the new version of ADAAG into its regulations, the new ADAAG's provision will apply to any features covered by the DOT rules. One new requirement at U.S. airports is to provide, in cooperation with the airport operator, animal relief areas for service animals that accompany passengers who are departing, arriving, or connecting at the facility.

At foreign airports, to which the ADAAG do not apply, Part 382 applies a performance requirement to make sure that passengers with a disability can readily use the facilities the carrier owns, leases, or controls at the airport. For foreign carriers, this requirement applies only to terminal facilities that serve flights that begin or end in the U.S (*i.e.*, those covered by section 382.5). Both U.S. and foreign carriers must meet the requirements at foreign airports within one year after the effective date of the rule. As noted elsewhere in the preamble, carriers may rely on the facility accessibility services provided by airport operators at foreign airports, supplementing where needed to ensure full compliance with this rule.

In the DHH NPRM, we proposed several requirements for U.S. and foreign carriers at terminal facilities that they own, lease, or control at any U.S. airport. First, we proposed a requirement that carriers enable any existing captioning feature (preferably high-contrast) on all televisions and other audio-visual displays providing safety, information, or entertainment content in those portions of the airport that are open to the general public and that they keep this captioning feature on at all times. Second, we proposed a requirement that in areas of restricted passenger access such as club rooms, carriers enable any existing captioning function on televisions and other audio and visual displays upon request. Third, we proposed a requirement that carriers replace any televisions and other audio-visual displays that do not have a high-contrast captioning function with ones that do as these devices are replaced in the normal course of operations or when the airport facilities undergo substantial renovation or expansion. Fourth, we proposed a requirement that newly acquired televisions and other audio-visual displays be equipped with high-contrast captioning capability. We solicited comments both on these proposals and on whether any carriers have leases for terminal facilities at a U.S. airport whereby the airport retains control over the televisions and other audio-visual displays in that facility. If so, we said, we would consider requiring the carriers and airports to work together to enable captioning on equipment that has captioning capability and to replace equipment that does not have high-contrast captioning capability with equipment that does. (We also noted that all televisions with screens of at least 13 inches made or sold in the U.S. since July 1, 1993, have been required to have captioning capabilities.) We further solicited comment on whether televisions and other audio-visual displays equipped with captioning features would necessarily have high-contrast captioning (*e.g.*, white letters on a consistent black background), whether such equipment may have some type of captioning other than "high-contrast," and whether the availability of high-contrast captioning, as opposed to low- or medium-contrast captioning, depends on the age, cost, or screen size of the equipment.

None of the comments addressed the question of high- versus medium- versus low-contrast captioning. Most of the carriers and carrier groups that filed comments claimed not to have control over the audio-visual equipment at their terminal facilities. The individuals and disability organizations that filed comments strongly objected to different standards for audio-visual equipment in areas open to all passengers versus areas with restricted access, and all support captioning on all such equipment at all times.

We are modifying the language of the proposed § 382.51 to make our intentions clearer, and based on the comments, we are also adding language that places joint responsibility for compliance on the carrier and the airport in cases where the latter has control over the televisions and other audio-visual equipment that this section addresses. (To this end, we will also be amending 49 CFR Part 27, Subpart B, to codify the requirement for airports.) We have determined, based both on the comments from individuals and disability groups and on the lack of objections from carriers and carrier groups, that the same standard should apply to all equipment, whether it be in areas to which the general public has access or in areas to which access is limited. If such equipment has captioning capability, that capability must be enabled at all times. These requirements do not apply to either U.S. or foreign carriers at foreign airports.

382.53 What information must carriers give individuals with a vision and/or hearing impairment at airports?

With some variations for the situations of U.S. and foreign airports, and U.S. and foreign carriers, the basic point of this section is that at each gate, ticketing area, and customer service desk that a carrier owns, leases, or controls, a carrier must ensure that passengers with a disability who identify themselves as persons needing visual or hearing assistance have prompt access to the same information provided to other passengers. This requirement applies to a wide variety of information, concerning such subjects as flight safety, ticketing, flight check-in, flight delays or cancellations, schedule changes, boarding information, connections, gate assignments, checking baggage, volunteer solicitation on oversold flights (*e.g.*, offers of compensation for surrendering a reservation), individuals being paged by airlines, aircraft changes that affect the travel of persons with disabilities, and emergencies (*e.g.*, fire, bomb threat).

382.55 May carriers impose security screening procedures for passengers with disabilities that go beyond TSA requirements or those of foreign governments?

All passengers are subject, at U.S. airports, to TSA screening procedures and, at foreign airports, to screening procedures established by the law of the country in which the airport is located. If a carrier wants to go beyond those mandated procedures, it must make sure that it treats passengers with disabilities equally with other passengers. Security personnel may examine assistive devices and must provide, on request, private screenings for passengers with disabilities requiring secondary screening.

382.57 What services must carriers provide if their automated kiosks are inaccessible?

The Department will seek further comment on kiosk accessibility issues in an SNPRM. Meanwhile, if existing kiosks are inaccessible (*e.g.*, to wheelchair users because of height or reach issues, to visually-impaired passengers because of issues related to visual displays or touch screens), carriers must ensure equal treatment for persons for disabilities who cannot use them. This can be done in a variety of ways. For example, a passenger who cannot use the kiosk could be allowed to come to the front of the line at the check-in counter, or carrier personnel could meet the passenger at the kiosk and help the passenger use the kiosk.

382.61 What are the requirements for movable aisle armrests?

This section is very similar to the movable aisle armrest provisions of the present rule. Armrests on at least half the aisle seats in rows containing seats in which passengers with mobility impairments are permitted to sit under FAA rules must be movable. If there are no seats in which a person with a mobility impairment can sit under FAA rules (*e.g.*, an exit row), then that row does not constitute part of the base from which the calculation of half the rows is made, and of course such a row is not one in which a movable armrest is needed.

The provision clarifies that movable aisle armrests must be provided proportionately in all classes of service. As discussed elsewhere in the preamble, if the seats in a given class of service, such as first class, can be accessed by a wheelchair user without a movable aisle armrest being provided, the carrier may request an equivalent alternative determination. Consistent with section 382.41, carriers must find ways of ensuring that passengers with disabilities can locate specific seats they can access with movable armrests.

A carrier wishing to submit an equivalent alternative request concerning movable armrests must show the Department that, in fact, persons with mobility impairments using aisle and boarding wheelchairs can transfer horizontally into a given seat without being lifted over an armrest or other obstacle. The Department would not make such a determination based solely on the representation of the carrier that such transfers were possible. "Show your work" is the appropriate maxim. Diagrams could be one useful part of such a showing. What the Department recommends, however, is a video of a demonstration showing carrier personnel actually transferring passengers with disabilities—preferably, passengers of various sizes—into the seat or row in question from an aisle or boarding chair.

Carriers are not required to retrofit cabins of existing aircraft to install movable armrests. However, if a carrier replaces any of an aircraft's aisle seats with newly manufactured seats, at least half the replacement seats must have movable armrests. For example, if a carrier replaces four aisle seats with newly manufactured seats, then two of these seats have to have movable armrests. If the carrier is replacing an odd number of seats, a majority of the newly manufactured aisle seats installed must have movable armrests. For example, if the carrier is replacing five old aisle seats with newly manufactured seats, at least three of the newly manufactured aisle seats must have movable armrests. The Department does not intend this provision to require carriers to have more than 50% movable armrests in the cabin, however. For example, suppose an aircraft has 40 aisle seats, 20 of which have movable armrests. The carrier decides to replace five aisle seats that do not have movable armrests with newly manufactured seats. These new seats would not have to include movable armrests.

The timing of the application of these requirements is as follows: Foreign carriers must comply with "new aircraft" requirements with respect to planes ordered after the effective date of this Part or delivered more than one year after the effective date of this Part. Foreign carriers must comply with the requirement for replacement seats (paragraph (e)) beginning on the effective date of the rule. U.S. carriers are already subject to the requirements of this section, except the proportionality requirement (paragraph (c)) with respect to aircraft ordered after April 5, 1990 or delivered after April 5, 1992. When we say "new aircraft" in this context, we mean aircraft that were new at the time they were ordered by or delivered to the U.S. carrier. U.S. carriers will have to comply with paragraph (c) for new aircraft ordered after the effective date of this Part or which are delivered more than one year after the effective date of this Part. With respect to the purchase of used aircraft, in this section and similar places, the date the aircraft was originally ordered from the manufacturer or initially delivered by the manufacturer determines whether the aircraft is subject to the aircraft accessibility requirements of this Part.

382.63 What are the requirements for accessible lavatories?

As under the present rule, only aircraft with more than one aisle must have an accessible lavatory. U.S. carriers are already subject to these requirements for new aircraft they ordered after April 5, 1990, or which were delivered after April 5, 1992. Foreign carriers must comply with respect to new aircraft ordered after the effective date of the rule or delivered more than one year after the effective date.

Also, if a carrier replaces a lavatory on an aircraft with more than one aisle it must replace the lavatory with an accessible unit. A carrier need not have more than one accessible lavatory on an

aircraft, however. This requirement already applies to U.S. carriers for new aircraft they ordered after April 5, 1990, or which were delivered after April 5, 1992. It will begin to apply to foreign carriers on the effective date of the rule.

382.65 What are the requirements concerning on-board wheelchairs?

These requirements are also patterned on the existing rule. In aircraft with more than 60 passenger seats, carriers must provide an on-board wheelchair if the aircraft has an accessible lavatory. In an aircraft that has 60 or more seats that does not have an accessible lavatory, the carrier must provide an on-board wheelchair on the request, with advance notice, of a person who can use the inaccessible lavatory but cannot reach it from his or her seat without use of an on-board wheelchair. U.S. carriers are already subject to these requirements. Foreign carriers must meet these requirements by a date one year after the rule's effective date.

Under the current rule, the Department had granted exemptions to the requirement for providing a requested on-board wheelchair to two aircraft models, the ATP and the ATR–72. These exemptions will remain in force under the new rule.

382.67 What is the requirement for priority space in the cabin to store a passenger's wheelchair?

The most important change in this section from the present regulation is that carriers are no longer required to stow any kind of electric wheelchair in the cabin. Only manual wheelchairs are required to be stored there. The section provides that there must be a priority space in the cabin capable of stowing at least one adult-size manual wheelchair of the stated dimensions. This requirement applies to aircraft with 100 or more passenger seats. The space must be in addition to the normal under-seat and overhead compartment storage made available for carry-on luggage. Where a carrier plans to use a closet or other storage area to comply with this requirement, we emphasize that in saying priority storage we mean that the space for a wheelchair trumps other possible uses for that closet or other storage area, including passenger hanging bags and crew luggage. This requirement to stow a passenger's wheelchair in the cabin is in addition to the carrier's on-board wheelchair as required under section 382.65. This requirement already applies to U.S. carriers for new aircraft they ordered after April 5, 1990, or which were delivered after April 5, 1992. Foreign carriers must comply with respect to new aircraft ordered after the effective date of the rule or delivered more than one year after the effective date.

382.69 What requirements must carriers meet concerning the accessibility of videos, DVDs, and other audio-visual presentations shown on aircraft to individuals who are deaf or hard of hearing?

This section requires carriers to ensure that all new videos, DVDs, and other audio-visual displays played on aircraft for safety purposes, and all such audio-visual displays played on aircraft for informational purposes that were created under the carrier's control, are high-contrast captioned. The captioning must be in the predominant language or languages in which the carrier communicates with passengers on the flight. If the carrier communicates regularly in more than one language (*e.g.*, French and English on a Canadian air carrier), then the captioning must be in all of those languages. By saying that this section applies to "new" videos, we mean that carriers are not required to retrofit or replace existing videos.

For purposes of this section, we view a video as being controlled by a carrier not only if the carrier directly produces it, but if a contractor or other party produces the video for the carrier's use, with the carrier having significant editorial control or approval of the video's content. Note that the provision about carrier control of a video applies only to informational materials. Safety materials must be captioned in all cases.

The requirements of this section go into effect 180 days after the effective date of the rule with respect to safety videos, and 240 days after the effective date of the rule with respect to informational videos. This timing is the same for both U.S. and foreign carriers. The corresponding section of the current version of Part 382 permits carriers to use a non-video alternative only if neither open captioning nor a sign language interpreter inset can be used without so interfering with the video as to render it ineffective. This exception is not included in the new rule. The overall effective date of the rule is one year after the rule is published, but, as indicated above, carriers are not required to implement the provision concerning videos in the new rule until 180 to 240 days after that overall effective date. Consequently, starting on the overall effective date (*i.e.*, one year after the rule is published) there would be no requirement in effect on this subject for U.S. carriers. In order to avoid such a situation, as a bridge between the current Part 382 and the new Part 382 U.S. carriers are required to comply with a requirement identical to the current rule's provision on safety videos between the effective date of the new rule and 180 days after that date.

382.71 What other aircraft accessibility requirements apply to carriers?

This provision, like its counterpart in the existing rule, requires maintenance of accessibility features in proper working order and tells carriers to ensure that any replacement or refurbishing of cabin features does not reduce existing accessibility.

382.81 For which passengers must carriers make seating accommodations?

382.83 Through what mechanisms do carriers make seating accommodations?

382.85 What seating accommodations must carriers make to passengers in circumstances not covered by section 382.81(a) through (d)?

Carriers must provide a seat that will accommodate a passenger with a disability other than one listed in section 382.81(a)–(d) when the passenger self-identifies and requests the accommodation in order to readily access and use the carrier's air transportation service.

382.87 What other requirements pertain to seating for passengers with a disability?

These provisions are essentially the same as their counterparts in the existing regulation. The provisions are broken out into additional sections for clarity. The rule requires carriers to ensure an adequate number of seats to handle a reasonably expectable demand for seating accommodations of various kinds and emphasizes the need for passengers to self-identify in order to get seating accommodations. The provisions already apply to U.S. carriers and will apply to foreign carriers on the effective date of the rule. The one-year delay in the effective date of the rule following publication should be sufficient for foreign carriers to design procedures to carry out these requirements.

382.91 What assistance must carriers provide to passengers with a disability in moving within the terminal?

With respect to connecting assistance, the basic mandate is the same as under the existing rule. The arriving carrier (*i.e.*, the one that operates the first of the two flights that are connecting) has the responsibility for connecting assistance. It is permissible for the two carriers to mutually agree that the carrier operating the departing connecting flight (*i.e.*, the

second flight of the two) will provide this assistance, but the carrier operating the arriving flight remains responsible under this section for ensuring that the assistance is provided.

The requirements concerning movement through the terminal are clarified to say that the carrier's assistance responsibility starts at the terminal entrance and goes through the airport to the gate for a passenger arriving to take a flight, and vice-versa for a passenger leaving the airport after a flight.

One addition concerns enroute stops at the entrance to a rest room. If the passenger is being assisted along the basic route from entrance to gate or vice-versa, or to make a connection, and the route goes by a rest room, the person assisting the passenger must stop and allow the passenger to use the amenity, if doing so will not result in unreasonable delay. To receive this assistance, the passenger must self-identify. It could also be very helpful to a passenger to be able to stop at a takeout food or beverage vendor that was enroute, if doing so would would not result in an unreasonable delay. The final rule does not require a stop for this purpose, but we believe that airlines and airports interested in good customer service would should allow a brief stop for this purpose.

Another addition, applicable only in U.S. airports, is that a carrier would, on request, and in cooperation with the airport operator, have to escort a passenger to a service animal relief area. Finally, carriers would have to assist passengers with disabilities in transporting their carry-on or gate-checked luggage to or from the gate. This obligation would arise only if the passenger could make credible verbal assurances of his or her inability to carry the item due to his or her disability. If the passenger's verbal assurances to the carrier are not credible, the carrier may require the passenger to produce documentation as a condition of providing the service. All the services mentioned in this paragraph would be provided only on request of a passenger with a disability.

At foreign airports, as mentioned in connection with the terminal accessibility section, airport operators may be the basic providers of terminal services. The carrier may rely on these services, but would have to supplement them if they did not fully comply with the provisions of this Part.

382.93 Must carriers offer preboarding to passengers with a disability?

Carrier must offer an opportunity for preboarding to passengers with a disability who self-identify at the gate as needing additional time or assistance to board, stow accessibility equipment, or be seated. This obligation exists regardless of the carriers' preboarding policies for other persons (*e.g.*, families with small children). Carriers are not required to make general announcements about preboarding in the gate area specifically for passengers with disabilities, where no preboarding announcements are made for other types of passengers. However, as a matter of general nondiscrimination principles, a carrier that makes a preboarding announcement in the gate area for other types or classes of passengers would have to make the announcement for persons with disabilities as well.

382.95 What are carriers' general obligations with respect to boarding and deplaning assistance?

Carriers must promptly provide assistance to passengers in getting on and getting off aircraft. The assistance can use a variety of means to accomplish the section's objective; examples are listed in paragraph (a). This obligation exists at both U.S. and foreign airports.

At U.S. airports with 10,000 or more annual enplanements, boarding assistance must be provided through the use of lifts or ramps, where level-entry boarding is not otherwise available (paragraph (b)).

382.97 To which aircraft does the requirement to provide boarding and deplaning assistance through the use of lifts apply?

At U.S. airports where lift or ramp boarding is required, the requirement applies to aircraft with 19 or more passenger seats, with a few stated exceptions. The Department reserves the option to expand the list of aircraft to which the requirement does not apply, if we determine that there is no model of boarding device on the market that will accommodate the aircraft without a significant risk of serious damage to the aircraft or injury to persons, or that there are internal barriers in the aircraft that would preclude passengers who use a boarding or aisle chair from reaching a non-exit row seat. The Department need not amend this rule in order to make such a determination.

382.99 What agreements must carriers have with the airports they serve?

Consistent with the present rule, carriers serving U.S. airports must have agreements with the airport operators to provide, operate, and maintain lifts and ramps used to meet the boarding requirement of section 382.95(b). This requirement already applies to U.S. carriers. Foreign carriers would have a year from the effective date of the rule to enter into such agreements. Foreign carriers serving a particular airport may be able to join existing agreements among the airport and U.S. carriers serving it, rather than starting from scratch. Foreign carriers would have two years from the effective date of the rule to ensure that the boarding assistance called for in this rule was actually being provided.

Carriers may require passengers needing lift assistance for boarding to check in for the flight an hour before the standard check-in time for the flight.

382.101 What other boarding and deplaning assistance must carriers provide?

When level-entry boarding is not required, carriers must still take whatever actions are necessary to assist people with disabilities to get on and off aircraft. For example, boarding and deplaning assistance using lifts is not required at smaller U.S. airports and foreign airports, or when severe weather or unexpected mechanical breakdowns prevent the use of a lift. In those circumstances, airlines must still provide enplaning and deplaning assistance by other available means, such as by placing the passenger in a boarding chair and carrying him or her up the boarding stairs unless the design of the aircraft (*e.g.*, the Fairchild Metro, the Jetstream 31 and 32, the Beech 1900 (C and D models) and the Embraer EMB–120) makes this impossible. The only limitation on the means of providing this assistance is that hand-carrying by carrier personnel as defined in that section is prohibited, except in situations of an emergency evacuation where no other timely means of assistance is available.

382.103 May a carrier leave a passenger unattended in a wheelchair or other device?

The carrier and its contractors may not leave a passenger unattended in a wheelchair or other device in which the passenger is not independently mobile for more than 30 minutes.

382.105 What is the responsibility of carriers at foreign airports at which airport operators have responsibility for enplaning, deplaning, or connecting assistance?

This section reemphasizes that at a foreign airport where airport operators have this responsibility, both U.S and foreign carriers can rely on the airport operator's services. If these services do not fully meet the requirements of this

Part, then the carrier must supplement the airport operator's services to ensure that the requirements are met. If a carrier believes that it is legally precluded from supplementing the airport operator's services, it can apply for a conflict of laws waiver.

382.111 What services must carriers provide to passengers with a disability on board the aircraft?

382.113 What services are carriers not required to provide to passengers with a disability on board the aircraft?

These sections are parallel to their counterparts in the existing rule. Personal care services like assistance in actual eating and drinking are not required, but more limited assistance such as assisting with the opening of packages is required.

382.115 What requirements apply to on-board safety briefings?

This provision also parallels its counterpart in the existing rule.

382.117 Must carriers permit passengers with a disability to travel with service animals?

This section has been made more detailed than the current rule's service animal provision, in response to the comments discussed earlier in the preamble. Appendix A provides further guidance to carriers and passengers concerning service animals.

The general rule is that service animals must be allowed to accompany their users. Carriers cannot deny transportation to a service animal because its presence may offend or annoy other passengers (*e.g.*, by causing an allergic reaction that does not rise to the level of a disability or by offending someone's cultural or personal preferences). When another passenger is uncomfortable with proximity to a service animal, the carrier should do its best to satisfy all passengers by offering the uncomfortable passenger the opportunity to sit elsewhere. Forcing the passenger with the service animal to move to another seat to make another passenger more comfortable, let alone denying transportation in the cabin to the service animal or its user, is not an option.

If a flight segment is scheduled to take eight hours or more, the carrier may require documentation that the service animal will not need to relieve itself or can do so in a way that will not create a health or sanitation issue on the flight.

The only acceptable reason for not allowing a service animal to accompany its user at the user's seat is that the animal will block a space that, according to FAA or equivalent foreign safety regulations, must remain unobstructed. If, for this reason, the animal cannot be accommodated at the user's seat, the carrier must allow the passenger and the animal to sit elsewhere on the aircraft, if an appropriate place exists.

There are new, more detailed procedures for the carriage of emotional support and psychiatric service animals. The carrier may require the passenger to provide current documentation from a mental health professional caring for the passenger that the passenger has a specific, recognized mental or emotional disability and that the passenger needs to be accompanied by the specific emotional support or psychiatric service animal in question, either on the flight or at the passenger's destination.

Certain unusual service animals need never be accommodated (*e.g.*, rodents, snakes). Other uncommonly used animals (*e.g.*, miniature horses, monkeys) can travel as service animals on U.S. carriers, but the carrier can decide to exclude a particular animal on a case-by-case basis if it is too large or heavy to be accommodated on a given flight. Foreign carriers are not required to carry service animals other than dogs. We will seek further comment in the SNPRM on whether there are safety-related reasons for excluding animals that may be specific to foreign carriers.

Near the end of this preamble, the Department has included a revised guidance document containing further discussion of service animal matters. With the exception of changes discussed earlier in the preamble, this guidance document incorporates the guidance the Department issued on service animal matters in May 2003. As guidance, it does not have independent mandatory effect, but rather describes how the Department understands the requirements of section 382.117. It also makes suggestions and recommendations concerning how carriers can best accommodate service animals and their users.

The guidance document notes that carriers can properly apply the same policies to "psychiatric service animals" as they do for emotional support animals. This is because carriers and the Department have encountered instances of attempted abuse of service animal transportation policies by persons traveling with animals in both categories. Should the Department encounter a pattern of abuse concerning service animals in other categories, we can consider additional safeguards with respect to those categories as well.

We would call also readers" attention to recent DOT guidance concerning the transportation of service animals into the United Kingdom. "Guidance Concerning the Carriage of Services Animals in Air Transportation Into the United Kingdom" (February 26, 2007) discusses the transportation of service dogs and cats into the U.K. via U.S. and foreign carriers. To transport service animals into the U.K., carriers must participate in the U.K. Pet Travel Scheme. A supplementary DOT guidance document, "Carriage of Service Animals in Air Transportation Into the United Kingdom and Foreign Health Documentation Requirements for Service Animals in Air Transportation" (July 17, 2007), provides further information for carriers and the public concerning carriage of, and documentation needed for, carriage of service animals into countries other than the U.K.

These documents may be found on the Department's Aviation Consumer Protection Division website.

382.119 What information must carriers give individuals with vision or hearing impairment on aircraft?

This section requires that carriers ensure that passengers with a disability who identify themselves as needing visual or hearing assistance have prompt access to the same information provided to other passengers on the aircraft. In providing this information, carriers are not required to take steps that would interfere with crewmembers' safety duties as set forth in FAA and applicable foreign regulations.

The covered information includes, but is not limited to, information concerning flight safety, procedures for takeoff and landing, flight delays, schedule or aircraft changes that affect the travel of persons with disabilities, diversion to a different airport, scheduled departure and arrival time, boarding information, weather conditions at the flight's destination, beverage and menu information, connecting gate assignments, baggage claim (*e.g.*, at which carousel an arriving flight's bags may be retrieved), individuals being paged by airlines, and emergencies (*e.g.*, fire or bomb threat). The requirement of this section applies whether the information is provided to passengers by the carrier in the aircraft or in the terminal (*e.g.*, the gate area).

We intend to require carriers to provide information that a reasonable consumer would deem important, even if it falls outside the list in § 382.119(b). Conversely, carriers are not required to provide information that a reasonable consumer would not deem important. For example, we do not consider information on sightseeing at the flight's destination or an announcement that the

aircraft is flying over the Grand Canyon to be covered by this rule.

382.121 What mobility aids and other assistive devices may passengers with a disability bring into the aircraft cabin?

Passengers may bring manual, but not electric wheelchairs, other mobility aids (*e.g.*, canes, including those used by blind passengers), and other assistive devices (*e.g.*, POCs), as well as prescription medications and any medical devices needed to administer them (*e.g.*, syringes, auto-injectors), as long as they comply with applicable safety, security and hazardous materials rules. These devices and aids cannot be counted against the airline's carry-on limits.

382.123 What are the requirements concerning priority cabin stowage for wheelchairs and other assistive devices?

This section is related to the requirements for priority stowage spaces in section 382.67 and an opportunity to preboard in section 382.93. A passenger who takes advantage of the offer to preboard can stow his or her wheelchair in the aircraft's priority stowage area, with priority over other passengers' items brought onto the aircraft at the same airport, consistent with applicable safety and security regulatory requirements. The passenger's wheelchair also takes priority over items that may be stowed in the space by the carrier and its personnel, such as on-board wheelchairs or crew luggage, even if these items came on board at an earlier stop of the plane's itinerary. If such items are in the space when a wheelchair user comes on board, they must be moved to accommodate the passenger's wheelchair. Carriers must also offer this opportunity for other assistive devices, though wheelchairs retain priority. Passengers with wheelchairs or other assistive devices who do not preboard must still be allowed to use the priority stowage areas for their devices, but their use of the space is on a first-come-first-served basis with respect to other passengers' items.

Some U.S. carriers have used the so-called "seat-strapping" method of securing passengers' wheelchairs in the cabin, usually in situations in which, contrary to the existing rule in some cases, aircraft did not have closets or other spaces capable of accommodating the wheelchairs. The Department does not believe that this is a good long-term approach to carrying passenger wheelchairs in the cabin, especially in these times of frequently full flights. The Department emphasizes that providing priority stowage spaces as required by section 382.67 is essential. To limit the ability of carriers to use the seat-strapping method as a way of getting around the designated priority stowage requirement, carriers may not use the seat-strapping method in any aircraft ordered after the effective date of this Part or delivered more than two years after the rule's effective date.

382.125 What procedures do carriers follow when wheelchairs, other mobility aids, and other assistive devices must be stowed in the cargo compartment?

As under the current rule, electric wheelchairs and other devices that are not required to be stowed in the cabin must be transported in the cargo compartment. These items have priority over other passengers' items. If other passengers' items are bumped as a result, the carrier must use its best efforts to ensure that they are delivered to the passenger's destination on the carrier's next flight. This may be a flight within an hour or two with respect to a domestic destination; it could be a matter of days with respect to some carriers' international flights.

382.127 What procedures apply to the stowage of battery-powered mobility aids?

This provision does not make substantive changes from its counterpart in the existing rule, except to say that carriers may require a passenger wishing to check his or her device to check in an hour before the standard check-in time for the flight. DOT's Pipeline and Hazardous Materials Safety Administration (PHMSA) has issued a special permit which may affect procedures for handling power wheelchairs (see PHMSA "Special Permit 14548" dated October 5, 2007, and revised on October 30, 2007.)

382.129 What other requirements apply when passengers' wheelchairs, other mobility aids, and other assistive devices must be disassembled for stowage?

382.131 Do baggage liability limits apply to mobility aids and other assistive devices?

These provisions are substantively the same as their counterparts in the existing rule. Carriers and passengers should note that section 382.131 applies only to domestic U.S. travel. Baggage liability limits for international travel, including flights of U.S. carriers, are governed by the Montreal Convention and other international agreements, rather than by 14 CFR Part 254.

382.133 What are the requirements concerning the evaluation and use of passenger-owned electronic devices that assist passengers with respiration in the cabin during flight and do not contain hazardous materials?

The basic point of this section is that, with minor exceptions, carriers must permit passengers with a disability to use a portable oxygen concentrator (POC) and other respiratory assistive devices in the cabin. Such devices must meet FAA or foreign government requirements, as applicable, and display a manufacturer's label that indicates that the device meets the FAA or foreign government requirements.

When a passenger asks a carrier about bringing his or her electronic respiratory assistive device, the carrier must tell the passenger about the requirements for carrying such a device on board, touching on such matters as meeting FAA requirements, having the manufacturer's label, bringing an adequate number of fully charged batteries, any check-in or advance notice requirements, medical certificate requirements, and the expected duration of the flight. Carriers may insist on passengers bringing on board fully charged batteries adequate to last for 150 percent of the expected maximum flight duration. If a passenger does not comply with the conditions outlined in the rule, the carrier can deny him or her transportation on the flight.

382.141 What training are carriers required to provide for their personnel?

This section continues, for the most part, the requirements of the existing rule. There are a few differences, in view of the rule's application to foreign carriers. The requirement to consult with disability groups now focuses on disability groups in the carrier's home country. If such groups are not available, consulting with individuals with disabilities or disability groups in other countries is appropriate.

382.143 When must carriers complete training for their personnel?

Employees of U.S. carriers that have already received initial training must be trained on changes to Part 382 at their next recurrent training after the rule goes into effect or within one year after the effective date of the rule, whichever comes first. New crewmembers have to be trained before they assume their duties. Other employees new to a position must be trained within 60 days after starting their jobs. Current employees of foreign carriers that serve flights covered by the rule must be trained within a year after the effective

date of the rule. After that date, new crewmembers must be trained before assuming their duties, and other new employees within 60 days after when they assume their duties. For employees who fall in between these categories—those who start work during the first year after the effective date of the rule—training must occur before the second anniversary of the effective date of the rule or 60 days from their start date, whichever is later.

While the rule provides a reasonable amount of time for employees to be trained, carriers are nevertheless responsible for violations that occur between the effective date of the rule and the training deadlines. We strongly encourage carriers to expedite their training schedules so that as many employees as possible are trained by the final rule's effective date.

To ensure that foreign carriers have resource persons to deal with disability issues as soon as possible, foreign carriers will have to complete training for CROs, and U.S. carriers will have to complete training for CROs about changes in Part 382, by the effective date of the rule. Given the critical role played by CROs in carriers' implementation of the rule, it is essential for CROs to be trained before the rule becomes effective. U.S. carriers have been subject to requirements to train CROs under the existing rule, and additional training for these CROs should be limited in scope, since it would need only to cover changes between the existing rule and this final rule. Since foreign carriers will have a year between the publication of the rule and its effective date, they too should have adequate time to train CROs by the effective date of the rule.

382.145 What records concerning training must carriers retain?

Carriers must maintain records of the procedures they use to comply with this rule, including those portions of manuals and other instructional materials concerning Part 382 compliance, and individual employee training records. Training records must be retained for three years. Carriers are not to send these materials to DOT for review, but it must be made available to the Department if we ask to look at it. If we determine that something in these materials needs to be changed in the interest of compliance with the rule, the carrier must make the changes the Department directs.

382.151 What are the requirements for providing Complaints Resolution Officials?

The CRO requirement is essentially the same as under the current rule. U.S. carriers must make a CRO available—either in person or via telephone—at each airport the carrier serves, at all times the carrier is operating at the airport. Foreign carriers must make a CRO available at each airport serving flights the carrier operates that begin or end at a U.S. airport. The Department realizes that, in some cases, carriers operate covered flights infrequently. For example, a foreign carrier may fly from Dulles to a foreign airport only at 5 p.m. on Mondays and Thursdays. On other days, and on Monday and Thursday mornings for that matter, the foreign airline would not have to make a CRO available to persons at Dulles. CRO services would have to be made available in languages in which the carrier provides services to the general public.

This rule clarifies that carriers are responsible for making passengers aware of the availability of a CRO in some circumstances even if the passenger does not say "I want to talk to a CRO." If a passenger raises a disability-related concern, and the carrier's personnel do not immediately resolve the issue to the customer's satisfaction, the carrier must say, in effect, "We have a CRO available that you can talk to about this problem if you want to. The CRO is our resource person who can help solve disability-related issues. Here is where you can find, or call, our CRO."

CROs must have authority to definitively resolve complaints. This means they must have the power to overrule decisions of other carrier personnel, except that they are not required to have authority to countermand a safety decision of a pilot-in-command of an aircraft. Of course, even decisions of pilots, if they later are shown to be in noncompliance with this rule, can subject the carrier to DOT enforcement action.

382.153 What actions do CROs take on complaints?

382.155 How must carriers respond to written complaints?

CROs are to promptly take action to resolve complaints made to them. In some cases, CROs can take quick action to prevent a potential violation (*e.g.*, a threatened denial of service) from becoming a real violation. If a CRO determines that a violation has already occurred, the CRO must write the complainant and describe the carrier's corrective action. Of course, not all complaints have merit, and if the CRO decides that a violation did not occur, the CRO must also write the complainant and explain this determination. CRO responses are due 30 days from the date of the complaint.

Often, complaints to carriers may be made in writing (letters, e-mails etc.). These complaints may or may not have been processed through the carrier's CRO, though they need to state whether a CRO was involved. Except for complaints DOT refers to a carrier, the carrier is not required to respond to a complaint transmitted more than 45 days after the incident in question. The carrier must respond within 30 days.

382.157 What are carriers obligations for recordkeeping and reporting on disability-related complaints?

This section is identical to the current regulatory provision on disability-related complaint reporting. The language referring to carriers "covered by this Part" is not intended to change the scope of the existing provision, which refers to carriers conducting passenger operations with at least one aircraft having a designed seating capacity of more than 60 seats on flights to, from, or in the United States.

382.159 How are complaints filed with DOT?

Changes from the corresponding provision of the existing regulation include a time frame for filing informal complaints, a change of postal address for sending an informal complaint by mail, and the Web address for filing an informal complaint on the Air Consumer Web site.

Appendix A—Disability Complaint Reporting Form

This appendix contains the form carriers use to submit disability-related complaint data.

Appendix B—Cross-Reference Table

This appendix provides, for the convenience of readers, information on where material found in a given section of the existing version of Part 382 is found in the new version of Part 382.

Guidance Concerning Service Animals

Introduction

In 1990, the U.S. Department of Transportation (DOT) promulgated the official regulations implementing the Air Carrier Access Act (ACAA). Those rules are entitled *Nondiscrimination on the Basis of Disability in Air Travel* (14 CFR part 382). Since then the number of people with disabilities traveling by air has grown steadily. This growth has

increased the demand for air transportation accessible to all people with disabilities and the importance of understanding DOT's regulations and how to apply them. This document expands on an earlier DOT guidance document published in 1996,[3] which was based on an earlier Americans with Disabilities Act (ADA) service animal guide issued by the Department of Justice (DOJ) in July 1996. The purpose of this document is to aid airline employees and people with disabilities in understanding and applying the ACAA and the provisions of Part 382 with respect to service animals in determining:

(1) Whether an animal is a service animal and its user a qualified individual with a disability;

(2) How to accommodate a qualified person with a disability with a service animal in the aircraft cabin; and

(3) When a service animal legally can be refused carriage in the cabin.

This guidance will also be used by Department of Transportation staff in reviewing the implementation of § 382.117 of this Part by carriers.

Background

The 1996 DOT guidance document defines a service animal as "any guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability. If the animal meets this definition, it is considered a service animal regardless of whether it has been licensed or certified by a state or local government." This document refines DOT's previous definition of service animal[4] by making it clear that animals that assist persons with disabilities by providing emotional support qualify as service animals and ensuring that, in situations concerning emotional support animals and psychiatric service animals, the authority of airline personnel to require documentation of the individual's disability and the medical necessity of the passenger traveling with the animal is understood.

Today, both the public and people with disabilities use many different terms to identify animals that can meet the legal definition of "service animal." These range from umbrella terms such as "assistance animal" to specific labels such as "hearing," "signal," "seizure alert," "psychiatric service," "emotional support" animal, etc., that describe how the animal assists a person with a disability.

When Part 382 was first promulgated, most service animals were guide or hearing dogs. Since then, a wider variety of animals (e.g. cats, monkeys, etc.) have been individually trained to assist people with disabilities. Service animals also perform a much wider variety of functions than ever before (*e.g.*, alerting a person with epilepsy of imminent seizure onset, pulling a wheelchair, assisting persons with mobility impairments with balance). These developments can make it difficult for airline employees to distinguish service animals from pets, especially when a passenger does not appear to be disabled, or the animal has no obvious indicators that it is a service animal. Passengers may claim that their animals are service animals at times to get around airline policies that restrict the carriage of pets. Clear guidelines are needed to assist airline personnel and people with disabilities in knowing what to expect and what to do when these assessments are made.

Since airlines also are obliged to provide all accommodations in accordance with FAA safety regulations, educated consumers help assure that airlines provide accommodations consistent with the carriers' safety duties and responsibilities. Educated consumers also assist the airline in providing them the services they want, including accommodations, as quickly and efficiently as possible.

General Requirements of Part 382

In a nutshell, the main requirements of Part 382 regarding service animals are:

- Carriers shall permit dogs and other service animals used by persons with disabilities to accompany the persons on a flight. See § 382.117(a).
  - ➢ Carriers shall accept as evidence that an animal is a service animal identifiers such as identification cards, other written documentation, presence of harnesses, tags or the credible verbal assurances of a qualified individual with a disability using the animal.
  - ➢ Carriers shall permit a service animal to accompany a qualified individual with a disability in any seat in which the person sits, unless the animal obstructs an aisle or other area that must remain unobstructed in order to facilitate an emergency evacuation or to comply with FAA regulations.
- If a service animal cannot be accommodated at the seat location of the qualified individual with a disability whom the animal is accompanying, the carrier shall offer the passenger the opportunity to move with the animal to a seat location in the same class of service, if present on the aircraft, where the animal can be accommodated, as an alternative to requiring that the animal travel in the cargo hold (see § 382.117(c)).
- Carriers shall not impose charges for providing facilities, equipment, or services that are required by this Part to be provided to qualified individuals with a disability (see § 382.31).

Two Steps for Airline Personnel

To determine whether an animal is a service animal and should be allowed to accompany its user in the cabin, airline personnel should:

1. Establish whether the animal is a pet or a service animal, and whether the passenger is a qualified individual with a disability; and then
2. Determine if the service animal presents either:
   - A "direct threat to the health or safety of others," or
   - A significant threat of disruption to the airline service in the cabin (*i.e.*, a "fundamental alteration" to passenger service). See § 382.19(c).

Service Animals

How do I know it's a service animal and not a pet?

Remember: In most situations the key is training. Generally, a service animal is individually trained to perform functions to assist the passenger who is a qualified individual with a disability. In a few extremely limited situations, an animal such as a seizure alert animal may be capable of performing functions to assist a qualified person with a disability without individualized training. Also, an animal used for emotional support need not have specific training for that function. Similar to an animal that has been individually trained, the definition of a service animal includes: An animal that has been shown to have the innate ability to assist a person with a disability; or an emotional support animal.

These five steps can help one determine whether an animal is a service animal or a pet:

1. *Obtain credible verbal assurances:* Ask the passenger: "Is this your pet?" If the passenger responds that the animal is a service animal and not a pet, but uncertainty remains about the animal, appropriate follow-up questions would include:
   - ➢ "*What tasks or functions does your animal perform for you?*" or
   - ➢ "*What has it been trained to do for you?*" or
   - ➢ "*Would you describe how the animal performs this task (or function) for you?*"

[3] 61 FR 56409, 56420 (Nov. 1, 1996).

[4] See Glossary for definition of this and other terms.

• As noted earlier, functions include, but are not limited to:

A. Helping blind or visually impaired people to safely negotiate their surroundings;

B. Alerting deaf and hard-of-hearing persons to sounds;

C. Helping people with mobility impairments to open and close doors, retrieve objects, transfer from one seat to another, maintain balance; or

D. Alert or respond to a disability-related need or emergency (*e.g.*, seizure, extreme social anxiety or panic attack).

• Note that to be a service animal that can properly travel in the cabin, the animal need not necessarily perform a function for the passenger during the flight. For example, some dogs are trained to help pull a passenger's wheelchair or carry items that the passenger cannot readily carry while using his or her wheelchair. It would not be appropriate to deny transportation in the cabin to such a dog.

• If a passenger cannot provide credible assurances that an animal has been individually trained or is able to perform some task or function to assist the passenger with his or her disability, the animal might not be a service animal. In this case, the airline personnel may require documentation (see Documentation below).

• There may be cases in which a passenger with a disability has personally trained an animal to perform a specific function (*e.g.*, seizure alert). Such an animal may not have been trained through a formal training program (*e.g.*, a "school" for service animals). If the passenger can provide a reasonable explanation of how the animal was trained or how it performs the function for which it is being used, this can constitute a "credible verbal assurance" that the animal has been trained to perform a function for the passenger.

2. *Look for physical indicators on the animal:* Some service animals wear harnesses, vests, capes or backpacks. Markings on these items or on the animal's tags may identify it as a service animal. It should be noted, however, that the absence of such equipment does not necessarily mean the animal is not a service animal. Similarly, the presence of a harness or vest on a pet for which the passenger cannot provide such credible verbal assurance may not be sufficient evidence that the animal is, in fact, a legitimate service animal.

3. *Request documentation for service animals other than emotional support or psychiatric service animals:* The law allows airline personnel to ask for documentation as a means of verifying that the animal is a service animal, but DOT's rules tell carriers not to require documentation as a condition for permitting an individual to travel with his or her service animal in the cabin unless a passenger's verbal assurance is not credible. In that case, the airline may require documentation as a condition for allowing the animal to travel in the cabin. This should be an infrequent situation. The purpose of documentation is to substantiate the passenger's disability-related need for the animal's accompaniment, which the airline may require as a condition to permit the animal to travel in the cabin. Examples of documentation include a letter from a licensed professional treating the passenger's condition (*e.g.*, physician, mental health professional, vocational case manager, etc.)

4. *Require documentation for emotional support and psychiatric service animals:* With respect to an animal used for emotional support (which need not have specific training for that function but must be trained to behave appropriately in a public setting), airline personnel may require current documentation (*i.e.*, not more than one year old) on letterhead from a licensed mental health professional stating (1) that the passenger has a mental health-related disability listed in the Diagnostic and Statistical Manual of Mental Disorders (DSM IV); (2) that having the animal accompany the passenger is necessary to the passenger's mental health or treatment; (3) that the individual providing the assessment of the passenger is a licensed mental health professional and the passenger is under his or her professional care; and (4) the date and type of the mental health professional's license and the state or other jurisdiction in which it was issued. Airline personnel may require this documentation as a condition of permitting the animal to accompany the passenger in the cabin. The purpose of this provision is to prevent abuse by passengers that do not have a medical need for an emotional support animal and to ensure that passengers who have a legitimate need for emotional support animals are permitted to travel with their service animals on the aircraft. Airlines are not permitted to require the documentation to specify the type of mental health disability, *e.g.*, panic attacks.

There is a separate category of service animals generally known as "psychiatric service animals." These animals may be trained by their owners, sometimes with the assistance of a professional trainer, to perform tasks such as fetching medications, reminding the user to take medications, helping people with balance problems caused by medications or an underlying condition, bringing a phone to the user in an emergency or activating a specially equipped emergency phone, or acting as a buffer against other people crowding too close. As with emotional support animals, it is possible for this category of animals to be a source of abuse by persons attempting to circumvent carrier rules concerning transportation of pets. Consequently, it is appropriate for airlines to apply the same advance notice and documentation requirements to psychiatric service animals as they do to emotional support animals.

5. *Observe behavior of animals:* Service animals are trained to behave properly in public settings. For example, a properly trained guide dog will remain at its owner's feet. It does not run freely around an aircraft or an airport gate area, bark or growl repeatedly at other persons on the aircraft, bite or jump on people, or urinate or defecate in the cabin or gate area. An animal that engages in such disruptive behavior shows that it has not been successfully trained to function as a service animal in public settings. Therefore, airlines are not required to treat it as a service animal, even if the animal performs an assistive function for a passenger with a disability or is necessary for a passenger's emotional well-being.

What about service animals in training?

Part 382 requires airlines to allow service animals to accompany their handlers[5] in the cabin of the aircraft, but airlines are not required otherwise to carry animals of any kind either in the cabin or in the cargo hold. Airlines are free to adopt any policy they choose regarding the carriage of pets and other animals (*e.g.*, search and rescue dogs) provided that they comply with other applicable requirements (*e.g.*, the Animal Welfare Act). Although "service animals in training" are not pets, the ACAA does not include them, because "in training" status indicates that they do not yet meet the legal definition of service animal. However, like pet policies, airline policies regarding service animals in training vary. Some airlines permit qualified trainers to bring service animals in training aboard an aircraft for training purposes. Trainers of service animals should consult with airlines, and become familiar with their policies.

[5] Service animal users typically refer to the person who accompanies the animal as the "handler."

What about a service animal that is not accompanying a qualified individual with a disability?

When a service animal is not accompanying a passenger with a disability, the airline's general policies on the carriage of animals usually apply. Airline personnel should know their company's policies on pets, service animals in training, and the carriage of animals generally. Individuals planning to travel with a service animal other than their own should inquire about the applicable policies in advance.

Qualified Individuals with Disabilities [6]

How do I know if a passenger is a qualified individual with a disability who is entitled to bring a service animal in the cabin of the aircraft if the disability is not readily apparent?

- Ask the passenger about his or her disability as it relates to the need for a service animal. Once the passenger identifies the animal as a service animal, you may ask, "How does your animal assist you with your disability?" Avoid the question "What is your disability?" as this implies you are asking for a medical label or the cause of the disability, which is intrusive and inconsistent with the intent of the ACAA. Remember, Part 382 is intended to facilitate travel by people with disabilities by requiring airlines to accommodate them on an individual basis.
- Ask the passenger whether he or she has documentation as a means of verifying the medical necessity of the passenger traveling with the animal. Keep in mind that you can ask but cannot require documentation as proof of service animal status UNLESS (1) a passenger's verbal assurance is not credible and the airline personnel cannot in good faith determine whether the animal is a service animal without documentation, or (2) a passenger indicates that the animal is to be used as an emotional support or psychiatric service animal.
- Using the questions and other factors above, you must decide whether it is reasonable to believe that the passenger is a qualified individual with a disability, and the animal is a service animal.

Denying a Service Animal Carriage in the Cabin

What do I do if I believe that carriage of the animal in the cabin of the aircraft would inconvenience non-disabled passengers?

Part 382 requires airlines to permit qualified individuals with a disability to be accompanied by their service animals in the cabin, as long as the animals do not (1) pose a direct threat to the health or safety of others (*e.g.*, animal displays threatening behaviors by growling, snarling, lunging at, or attempting to bite other persons on the aircraft) or (2) cause a significant disruption in cabin service (*i.e.*, a "fundamental alteration" to passenger service). Offense or inconvenience to other passengers (*e.g.*, a cultural or personal discomfort with being in proximity to certain kinds of animals, allergies that do not rise to the level of a disability, reasonable limitations on foot space) is not sufficient grounds to deny a service animal carriage in the cabin. However, carriers should try to accommodate the wishes of other passengers in this situation, such as by relocating them to a different part of the aircraft.

What do I do if a passenger claims that he or she is allergic to someone else's service animal?

- First, remember that not all allergies rise to the level of a disability. The fact that someone may have a stuffy nose or sneeze when exposed to dog or cat dander does not necessarily mean that the individual has a disability.
- If a passenger expresses discomfort or annoyance because of an allergic reaction to the presence of a service animal nearby, you can offer the uncomfortable passenger the opportunity to change to a seat further away from the animal. Passengers who state they have allergies or other animal aversions should be located as far away from the service animal as practicable. Each individual's needs should be addressed to the fullest extent possible under the circumstances and in accordance with the requirements of Part 382 and company policy.
- If a passenger provides credible verbal assurances, or medical documentation, that he or she has an allergy to a particular sort of animal that rises to the level of a disability (*e.g.*, produces shock or respiratory distress that could require emergency or significant medical treatment), and there is a service animal of that kind seated nearby, the carrier should try to place as much distance as possible between the service animal and the individual with the allergy. Depending on where the passengers are initially seated, this could involve moving both passengers. For example, if both are seated toward the center of the cabin, one could be moved to the front and the other to the back.
- It is unlikely that the mere presence of an animal in the same cabin would, by itself, even if located at a distance from an allergic passenger, produce a severe allergic reaction rising to the level of a disability. However, if there was strong evidence that this was the case, it could be necessary to rebook one of the passengers on another flight. Since one disability does not trump another, the carrier should consider a disability-neutral means of determining which passenger would have to be rebooked (*e.g.*, which passenger made the earlier reservation). We emphasize that we expect any such situation to be extremely rare, and that carriers should not rebook a passenger absent strong evidence that the mere presence of an animal in the cabin, even in a location distant from the allergic passenger, would produce an allergic reaction rising to the level of a disability.
- There may be situations in which, with respect to a passenger who brings a very serious potential allergy situation to the attention of your personnel, it is appropriate to seek a medical certificate for the passenger.

What do I do if I believe that a passenger's assertions about having a disability or a service animal are not credible?

- Ask if the passenger has documentation that satisfies the requirements for determining that the animal is a service animal (see discussion of "Documentation" above).
- If the passenger has no documents, then explain to the passenger that the animal cannot be carried in the cabin, because it does not meet the criteria for service animals. Explain your airline's policy on pets (*i.e.*, will or will not accept for carriage in the cabin or cargo hold), and what procedures to follow.
- If the passenger does not accept your explanation, avoid getting into an argument. Ask the passenger to wait while you contact your airline's complaint resolution official (CRO). Part 382 requires all airlines to have a CRO available at each airport they serve during all hours of operation. The CRO may be made available by telephone. The CRO is a resource for resolving difficulties related to disability accommodation.
- Consult with the CRO immediately, if possible. The CRO normally has the authority to make the final decision regarding carriage of service animals. In

[6] See Glossary.

the rare instance that a service animal would raise a concern regarding flight safety, the CRO may consult with the pilot-in-command. If the pilot-in-command makes a decision to restrict the animal from the cabin or the flight for safety reasons, the CRO cannot countermand the pilot's decision. This does not preclude the Department from taking subsequent enforcement action, however, if it is determined that the pilot's decision was inconsistent with Part 382.

• If a CRO makes the final decision not to accept an animal as a service animal, then the CRO must provide a written statement to the passenger within 10 days explaining the reason(s) for that determination. If carrier personnel other than the CRO make the final decision, a written explanation is not required; however, because denying carriage of a legitimate service animal is a potential civil rights violation, it is recommended that carrier personnel explain to the passenger the reason the animal will not be accepted as a service animal. A recommended practice may include sending passengers whose animals are not accepted as service animals a letter within 10 business days explaining the basis for such a decision.

In considering whether a service animal should be excluded from the cabin, keep these things in mind:

• Certain unusual service animals (*e.g.*, snakes, other reptiles, ferrets, rodents, and spiders) pose unavoidable safety and/or public health concerns and airlines are not required to transport them.

• In all other circumstances for U.S. carriers, each situation must be considered individually. Do not make assumptions about how a particular unusual animal is likely to behave based on past experience with other animals. You may inquire, however, about whether a particular animal has been trained to behave properly in a public setting. Note that, under the 2008 final rule, foreign carriers are not required to carry animals other than dogs.

• Before deciding to exclude the animal, you should consider and try available means of mitigating the problem (*e.g.*, muzzling a dog that barks frequently, allowing the passenger a reasonable amount of time under the circumstances to correct the disruptive behavior, offering the passenger a different seat where the animal won't block the aisle.)

If it is determined that the animal should not accompany the disabled passenger in the cabin at this time, offer the passenger alternative accommodations in accordance with Part 382 and company policy (*e.g.*, accept the animal for carriage in the cargo compartment at no cost to the passenger).

What about unusual service animals?

• As indicated above, certain unusual service animals, (*e.g.*, snakes, other reptiles, ferrets, rodents, and spiders) pose unavoidable safety and/or public health concerns and airlines are not required to transport them. The release of such an animal in the aircraft cabin could result in a direct threat to the health or safety of passengers and crewmembers. For these reasons, airlines are not required to transport these types of service animals in the cabin, and carriage in the cargo hold will be in accordance with company policies on the carriage of animals generally.

• Other unusual animals such as miniature horses, pigs, and monkeys should be evaluated on a case-by-case basis by U.S. carriers. Factors to consider are the animal's size, weight, state and foreign country restrictions, and whether or not the animal would pose a direct threat to the health or safety of others, or cause a fundamental alteration (*e.g.*, significant disruption) in the cabin service. If none of these factors apply, the animal may accompany the passenger in the cabin. In most other situations, the animal should be carried in the cargo hold in accordance with company policy. Under the 2008 final rule, foreign carriers are not required to transport animals other than dogs.

Miscellaneous Questions

What about the passenger who has two or more service animals?

• A single passenger legitimately may have two or more service animals. In these circumstances, you should make every reasonable effort to accommodate them in the cabin in accordance with Part 382 and company policies on seating. This might include permitting the passenger to purchase a second seat so that the animals can be accommodated in accordance with FAA safety regulations. You may offer the passenger a seat on a later flight if the passenger and animals cannot be accommodated together at a single passenger seat. Airlines may not charge passengers for accommodations that are required by Part 382, including transporting service animals in the cargo compartment. If carriage in the cargo compartment is unavoidable, notify the destination station to return the service animal(s) to the passenger at the gate as soon as possible, or to assist the passenger as necessary to retrieve them in the appropriate location.

Are there any situations in which an animal would not be permitted to accompany its user on the flight?

The only situation in which the rule contemplates that a service animal would not be permitted to accompany its user at his or her seat is where the animal blocks a space that, per FAA or applicable foreign government safety regulations, must remain unobstructed (*e.g.*, an aisle, access to an emergency exit) AND the passenger and animal cannot be moved to another location where such a blockage does not occur. In such a situation, the carrier should first talk with other passengers to find a seat location in the cabin where the service animal and its user can be agreeably accommodated (*e.g.*, by finding a passenger who is willing to share foot space with the animal). The fact that a service animal may need to use a reasonable portion of an adjacent seat's foot space that does not deny another passenger effective use of the space for his or her feet by taking all or most of the passenger's foot space is not, however, an adequate reason for the carrier to refuse to permit the animal to accompany its user at his or her seat. Only if no other alternative is available should the carrier discuss less desirable options concerning the transportation of the service animal with the passenger traveling with the animal, such as traveling on a later flight with more room or carrying the animal in cargo. As indicated above, airlines may not charge passengers with disabilities for services required by Part 382, including transporting their oversized service animals in the cargo compartment.

Should passengers provide advance notice to the airline concerning multiple or large service animals?

In most cases, airlines may not insist on advance notice or health certificates for service animals under the ACAA regulations. However, it is very useful for passengers to contact the airline well in advance if one or more of their service animals may need to be transported in the cargo compartment. The passenger will need to understand airline policies and should find out what type of documents the carrier would need to ensure the safe passage of the service animal in the cargo compartment and any restrictions for cargo travel that might apply (*e.g.*, temperature conditions that limit live animal transport).

Accommodating Passengers With Service Animals in the Cabin

How can airline personnel help ensure that passengers with service animals are assigned and obtain appropriate seats on the aircraft?

• Let passengers know the airline's policy about seat assignments for people with disabilities. For instance: (1) Should the passenger request preboarding at the gate? or (2) should the passenger request an advance seat assignment (a priority seat such as a bulkhead seat or aisle seat) up to 24 hours before departure? or (3) should the passenger request an advance seat assignment at the gate on the day of departure? When assigning priority seats, ask the passenger what location best fits his/her needs.

• Passengers generally know what kinds of seats best suit their service animals. In certain circumstances, passengers with service animals must either be provided their pre-requested priority seats, or if their requested seat location cannot be made available, they must be assigned to other available priority seats of their choice in the same cabin class. Part 382.81(c) requires airlines to provide a bulkhead seat or a seat other than a bulkhead seat at the request of an individual traveling with a service animal.

• Passengers should comply with airline recommendations or requirements regarding when they should arrive at the gate before a flight. This may vary from airport to airport and airline to airline. Not all airlines announce preboarding for passengers with special needs, although it may be available. If you wish to request preboarding, tell the agent at the gate.

• A timely request for preboarding by a passenger with a disability must be honored (see sections 382.83(c) and 382.93)

Part 382 does not require carriers to make modifications that would constitute an undue burden or would fundamentally alter their programs (382.13(c)). Therefore, the following are *not required* in providing accommodations for users of service animals

➢ Requiring another passenger to give up all or a most of the space in front of his or her seat to accommodate a service animal. (There is nothing wrong with asking another passenger if the passenger would mind sharing foot space with a service animal, as distinct from telling the passenger that he or she must do so. Indeed, finding a passenger willing to share space is a common, and acceptable, method of finding an appropriate place for someone traveling with a service animal that may not be able to be seated in his or her original seat location.)

➢ Denying transportation to any individual on a flight in order to provide an accommodation to a passenger with a service animal;

➢ Furnishing more than one seat per ticket; and

➢ Providing a seat in a class of service other than the one the passenger has purchased. (While a carrier is not required to do so, there could be situations in which the carrier could voluntarily reseat a passenger with a service animal in a different seating class. For example, suppose that the economy cabin is completely full and no alternate seat location in that cabin can be found for a service animal that cannot be seated at the passenger's original seat location. If the business or first class cabin has vacant space, the carrier could choose to move the passenger and animal into the vacant space, rather than make the passenger and animal take a later flight.)

Are airline personnel responsible for the care and feeding of service animals?

Airline personnel are not required to provide care, food, or special facilities for service animals. The care and supervision of a service animal is solely the responsibility of the passenger with a disability whom the animal is accompanying.

May a carrier charge a maintenance or cleaning fee to passengers who travel with service animals?

Part 382 prohibits carriers from imposing special charges for accommodations required by the regulation, such as carriage of a service animal. However, a carrier may charge passengers with a disability if a service animal causes damage, as long as it is its regular practice to charge non-disabled passengers for similar kinds of damage. For example, it could charge a passenger with a disability for the cost of repairing or cleaning a seat damaged by a service animal, assuming that it is its policy to charge when a non-disabled passenger or his or her pet causes similar damage.

Advice for Passengers With Service Animals

• Ask about the airline's policy on advance seat assignments for people with disabilities. For instance: (1) Should a passenger request preboarding at the gate? or (2) should a passenger request an advance seat assignment (a priority seat such as a (bulkhead seat or aisle seat)) up to 24 hours before departure? or (3) should a passenger request an advance seat assignment at the gate on the day of departure?

• Although airlines are not permitted to automatically require documentation for service animals other than emotional support or psychiatric service animals, if you think it would help you explain the need for a service animal, you may want to carry documentation from your physician or other licensed professional confirming your need for the service animal. Passengers with unusual service animals also may want to carry documentation confirming that their animal has been trained to perform a function or task for them.

• If you are traveling with an emotional support or psychiatric service animal, you may be required by the airline to provide 48 hours' advance notice.

• If you need a specific seat assignment for yourself and your service animal, make your reservation as far in advance as you can, and identify your need at that time.

• You may have to be flexible if your assigned seat unexpectedly turns out to be in an emergency exit row. When an aircraft is changed at the last minute, seating may be reassigned automatically. Automatic systems generally do not recognize special needs, and may make inappropriate seat assignments. In that case, you may be required by FAA regulations to move to another seat.

• Arrive at the gate when instructed by the airline, typically at least one hour before departure, and ask the gate agent for preboarding—if that is your desire.

• Remember that your assigned seat may be reassigned if you fail to check in on time; airlines typically release seat assignments not claimed 30 minutes before scheduled departure. In addition, if you fail to check in on time you may not be able to take advantage of the airline's preboard offer.

• If you have a very large service animal or multiple animals that might need to be transported in the cargo compartment, contact the airline well in advance of your travel date. In most cases, airlines cannot insist on advance notice, except for emotional support or psychiatric service animals, or on health certificates for service animals under the ACAA regulations. However, it is very useful for passengers to contact the airline well in advance if one or more of their service animals may need to be transported in the cargo compartment. The passenger will need to understand airline policies and should find out what type of documents the carrier would need to ensure the safe passage of the service animal in the cargo compartment and any restrictions for

cargo travel that might apply (*e.g.*, temperature conditions that limit live animal transport).

• If you are having difficulty receiving an appropriate accommodation, ask the airline employee to contact the airline's CRO. Part 382 requires all airlines to have a CRO available during all hours of operation. The CRO is a resource for resolving difficulties related to disability accommodations.

• Another resource for resolving issues related to disability accommodations is the U.S. Department of Transportation's Disability Hotline. The toll-free number is 1–800–778–4838 (voice) and 1–800–455–9880 (TTY).

Glossary

Direct Threat to the Health or Safety of Others

A significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

Fundamental Alteration

A modification that substantially alters the basic nature or purpose of a program, service, product or activity.

Individual With a Disability

• "Any individual who has a physical or mental impairment that, on a permanent or temporary basis, substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment." (Section 382.5)

Qualified Individual With a Disability

Any individual with a disability who:

(1) "Takes those actions necessary to avail himself or herself of facilities or services offered by a carrier to the general public with respect to accompanying or meeting a traveler, use of ground transportation, using terminal facilities, or obtaining information about schedules, fares or policies";

(2) "Offers, or makes a good faith attempt to offer, to purchase or otherwise validly to obtain * * * a ticket" "for air transportation on an carrier"; or

(3) "Purchases or possesses a valid ticket for air transportation on an carrier and presents himself or herself at the airport for the purpose of traveling on the flight for which the ticket has been purchased or obtained; and meets reasonable, nondiscriminatory contract of carriage requirements applicable to all passengers." (Section 382.5).

Service Animal

Any animal that is individually trained or able to provide assistance to a qualified person with a disability; or any animal shown by documentation to be necessary for the emotional well-being of a passenger.

Sources

In addition to applicable provisions of Part 382, the sources for this guidance include the following: "Guidance Concerning Service Animals in Air Transportation," (61 FR 56420–56422, (November 1, 1996)), "Commonly Asked Questions About Service Animals in Places of Business" (Department of Justice, July, 1996), and "ADA Business Brief: Service Animals" (Department of Justice, April 2002).

Regulatory Analyses and Notices

A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This action has been determined to be significant under Executive Order 12866 and the Department of Transportation Regulatory Policies and Procedures. It extends regulatory coverage under the ACAA to foreign carriers for the first time and adds requirements concerning passengers who use medical oxygen and accommodations for deaf and hard-of-hearing passengers. These are areas of considerable importance to passengers and air carriers and are of interest to the public and members of Congress.

The costs and benefits of the rule are summarized in the following tables, taken from the regulatory evaluation. It is very important to keep in mind that, in the Department's view, this rule has very significant nonquantifiable benefits, which these tables do not address. These nonquantifiable benefits include increased opportunities for individuals with disabilities to access the air travel system without discrimination and with fewer unnecessary barriers. This access opens up business and personal travel opportunities and the personal and economic benefits that result from the increased chance to travel. These nonquantifiable benefits make the rule cost-beneficial, even without considering the significant economic benefits displayed in the tables below.

TABLE A.—SUMMARY OF FOREIGN CARRIER COST AND BENEFIT ESTIMATES

[Millions 2005$]

	Boarding equipment (lifts/ ramps, chairs)	On-board wheel-chairs	Cabin stowage area for on-board wheelchair and pas-senger's folding wheelchair	Accessible lavatories	Personnel training costs	Total costs ($M)	Total car-rier bene-fits high MC case ($M)	Net carrier benefits high MC case ($M)	Total car-rier bene-fits low MC case ($M)	Net carrier benefits low MC case ($M)
Low Impact Case:										
Present Value over 20 years	1.161	2.507	0.260	138.373	22.959	165.3	112.0	−53.3	179.2	13.9
Year 20 undiscounted	0.010	0.061	0.044	32.132	2.769	35.0	35.8	0.8	57.2	22.2
High Impact Case:										
Present Value over 20 years	2.245	3.051	0.260	276.747	45.917	328.2	224.0	−104.2	358.4	30.2
Year 20 undiscounted	0.013	0.075	0.044	64.264	5.539	69.9	71.5	1.6	114.5	44.5

TABLE B.—SUMMARY OF DEAF AND HARD-OF-HEARING COST AND BENEFIT ESTIMATES
[Millions 2005$]

	Assistants' fares forgone	Reservation TTY	Copy of part 382	Captioning in waiting areas	Public announcements	Awareness training	Total costs ($M)	Total carrier benefits high MC case ($M)	Net carrier benefits high MC case ($M)	Total carrier benefits low MC case ($M)	Net carrier benefits low MC case ($M)
Low Impact Case:											
Present value over 20 years	3.500	2.420	0.108	0.250	1.400	80.000	87.7	110.1	22.4	176.2	88.5
Year 20 undiscounted	0.500	0.080	0.000	0.017	0.000	6.400	7.0	16.4	9.4	26.2	19.2
High Impact Case:											
Present Value over 20 years	7.000	4.840	0.216	0.500	2.800	160.000	175.4	220.2	44.9	352.4	177.0
Year 20 undiscounted	1.000	0.160	0.000	0.034	0.000	12.800	14.0	32.7	18.7	52.3	38.3

TABLE C.—SUMMARY OF MEDICAL OXYGEN COST AND BENEFIT ESTIMATES
[Millions 2005$]

	Total costs ($M)	Total carrier benefits high MC case ($M)	Net carrier benefits high MC case ($M)	Total carrier benefits low MC case ($M)	Net carrier benefits low MC case ($M)
Low Impact Case:					
Present Value over 20 years	97.2	449.8	352.6	719.7	622.5
Year 20 undiscounted	15.9	76.3	60.4	122.2	106.3
High Impact Case:					
Present Value over 20 years	194.4	899.6	705.2	1,439.4	1,245.0
Year 20 undiscounted	31.8	152.7	120.9	244.3	212.5

TABLE D.—AGGREGATE COST AND BENEFIT ESTIMATES
[Millions 2005$]

	Total costs ($M)	Total carrier benefits high MC case ($M)	Net carrier benefits high MC case ($M)	Total carrier benefits low MC case ($M)	Net carrier benefits low MC case ($M)
Low Impact Case:					
Present Value over 20 years	350.1	671.9	321.8	1,075.1	724.9
Year 20 undiscounted	57.9	128.5	70.6	205.6	147.6
High Impact Case:					
Present Value over 20 years	698.0	1,343.9	645.9	2,150.2	1,452.2
Year 20 undiscounted	115.7	256.9	141.2	411.1	295.4

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. A direct air carrier or a foreign carrier is a small business if it provides air transportation only with small aircraft (*i.e.*, aircraft with up to 60 seats/18,000 pound payload capacity). See 14 CFR 399.73. Our analysis identified 338 small businesses potentially affected by the requirements of the final rule.

We project that about 30 small foreign carriers would incur costs related to boarding equipment (small U.S. carriers already are subject to this requirement). These costs represent a total present value ranging from $1.161 million to $2.245 million, or from $39,000 to $75,000 per carrier, almost entirely in the first two years. When more than one small carrier uses the same airport, however, a sharing arrangement may be more efficient. The affected airlines are, it should be noted, the larger small carriers, those which use aircraft with more than 19 seats and which serve a greater number of airports.

Both small U.S. and small foreign carriers would incur costs related to training. We project that U.S. carriers would need to provide two hours of training to each of their employees with respect to new requirements concerning oxygen and deaf and hard-of-hearing passengers. On this assumption, the present value of training costs would be $2.6 million or $7,738 for each of the 338 carriers affected by the rule.

Our analysis estimates that training costs for foreign carriers would amount to a present value of $0.8 million to $1.6 million over 20 years. Assuming the number of carriers affected to be 30, the cost would be $27,000 to $54,000 per carrier.

With small carriers handling 2.8 percent of the estimated medical oxygen reservations at a cost of $25 each, we would project small carrier costs as being a total present value of $5.4 million, or $16,000 per carrier. This figure is probably overstated, because many small carriers are affiliated with larger airlines that process reservations for them.

Following the line of argument adopted throughout Department's overall regulatory evaluation, these costs should be offset by an expected

increase in the number of PWDs willing and able to fly on small carriers.

We note that, while we have examined the effects of the rule on small foreign as well as small U.S. carriers, the Regulatory Flexibility Act does not apply to foreign entities. On the basis of this examination, the Department certifies that this rule will not have a significant economic impact on a significant number of small entities.

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Following the line of argument adopted throughout Department's overall regulatory evaluation, these costs should be offset by an expected increase in the number of PWDs willing and able to fly on small carriers.

We note that, while we have examined the effects of the rule on small foreign as well as small U.S. carriers, the Regulatory Flexibility Act does not apply to foreign entities. On the basis of this examination, the Department certifies that this rule will not have a significant economic impact on a significant number of small entities.

C. Executive Order 13132 (Federalism)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule does not include any provision that: (1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts state law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

D. Executive Order 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13084 do not apply.

E. Paperwork Reduction Act

The final rule does contain a new information collection requirement that requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 2507 *et. seq.*). Specifically, section 382.145 includes record retention requirements for information concerning training. The Department will pursue OMB approval for this requirement during the year between the publication and effective dates of the rule.

Section 382.157 involves disability-related complaint reporting to the Department. This provision is identical to a provision of the existing Part 382, and it is subject to an existing Paperwork Reduction Act approval by OMB. No further approvals are needed for this section at the present time.

F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

Issued this 28th Day of April, 2008, at Washington, DC.

Mary E. Peters,

Secretary of Transportation.

List of Subjects in 14 CFR Part 382

Air carriers, Consumer protection, Individuals with disabilities, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Department revises 14 CFR part 382 to read as follows:

PART 382—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN AIR TRAVEL

Sec.

Subpart A—General Provisions

382.1 What is the purpose of this Part?
382.3 What do the terms in this rule mean?
382.5 When are foreign carriers required to begin complying with the provisions of this Part?
382.7 To whom do the provisions of this Part apply?
382.9 What may foreign carriers do if they believe a provision of a foreign nation's law prohibits compliance with a provision of this Part?
382.10 How does a carrier obtain a determination that it is providing an equivalent alternative to passengers with disabilities?

Subpart B—Nondiscrimination and Access to Services and Information

382.11 What is the general nondiscrimination requirement of this Part?
382.13 Do carriers have to modify policies, practices, and facilities to ensure nondiscrimination?
382.15 Do carriers have to make sure that contractors comply with the requirements of this Part?
382.17 May carriers limit the number of passengers with a disability on a flight?
382.19 May carriers refuse to provide transportation on the basis of disability?
382.21 May carriers limit access to transportation on the basis that a passenger has a communicable disease or other medical condition?
382.23 May carriers require a passenger with a disability to provide a medical certificate?
382.25 May a carrier require a passenger with a disability to provide advance notice that he or she is traveling on a flight?
382.27 May a carrier require a passenger with a disability to provide advance notice in order to obtain certain specific services in connection with a flight?

382.29 May a carrier require a passenger with a disability to travel with a safety assistant?
382.31 May carriers impose special charges on passengers with a disability for providing services and accommodations required by this rule?
382.33 May carriers impose other restrictions on passengers with a disability that they do not impose on other passengers?
382.35 May carriers require passengers with a disability to sign waivers or releases?

Subpart C—Information for Passengers

382.41 What flight-related information must carriers provide to qualified individuals with a disability?
382.43 Must information and reservation services of carriers be accessible to individuals with hearing and vision impairments?
382.45 Must carriers make copies of this Part available to passengers?

Subpart D—Accessibility of Airport Facilities

382.51 What requirements must carriers meet concerning the accessibility of airport facilities?
382.53 What accommodations are required in airports for individuals with a vision impairment and individuals who are deaf or hard-of-hearing?
382.55 May carriers impose security screening procedures with passengers with disabilities that go beyond TSA requirements or those of foreign governments?
382.57 What services must carriers provide if their automated kiosks are inaccessible?

Subpart E—Accessibility of Aircraft

382.61 What are the requirements for movable aisle armrests?
382.63 What are the requirements for accessible lavatories?
382.65 What are the requirements concerning on-board wheelchairs?
382.67 What is the requirement for priority space in the cabin to store passenger wheelchairs?
382.69 What requirements must carriers meet concerning the accessibility of videos, DVDs, and other audio-visual presentations shown on aircraft to individuals who are deaf or hard-of-hearing?
382.71 What other aircraft accessibility requirements apply to carriers?

Subpart F—Seating Accommodations

382.81 For which passengers must carriers make seating accommodations?
382.83 Through what mechanisms do carriers make seating accommodations?
382.85 What seating accommodations must carriers make to passengers in circumstances not covered by 382.81 (a)—(d)?
382.87 What other requirements pertain to seating for passengers with a disability?

Subpart G—Boarding, Deplaning, and Connecting Assistance

382.91 What assistance must carriers provide to passengers with a disability in moving within the terminal?
382.93 Must carriers offer preboarding to passengers with a disability?
382.95 What are carriers' general obligations with respect to boarding and deplaning assistance?
382.97 To which aircraft does the requirement to provide boarding and deplaning assistance through the use of lifts apply?
382.99 What agreements must carriers have with the airports they serve?
382.101 What other boarding and deplaning assistance must carriers provide?
382.103 May a carrier leave a passenger unattended in a wheelchair or other device?
382.105 What is the responsibility of carriers at foreign airports at which airport operators have responsibility for enplaning, deplaning, and connecting assistance?

Subpart H—Services on Aircraft

382.111 What services must carriers provide to passengers with a disability on board the aircraft?
382.113 What services are carriers not required to provide to passengers with a disability on board the aircraft?
382.115 What requirements apply to on-board safety briefings?
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Authority: 49 U.S.C. 41705.

Subpart A—General Provisions

§ 382.1 What is the purpose of this Part?

The purpose of this Part is to carry out the Air Carrier Access Act of 1986, as amended. This rule prohibits both U.S. and foreign carriers from discriminating against passengers on the basis of disability; requires carriers to make aircraft, other facilities, and services accessible; and requires carriers to take steps to accommodate passengers with a disability.

§ 382.3 What do the terms in this rule mean?

In this regulation, the terms listed in this section have the following meanings:

Air Carrier Access Act or ACAA means the Air Carrier Access Act of 1986, as amended, the statute that provides the principal authority for this Part.

Air transportation means interstate or foreign air transportation, or the transportation of mail by aircraft, as defined in 49 U.S.C. 40102.

Assistive device means any piece of equipment that assists a passenger with a disability to cope with the effects of his or her disability. Such devices are intended to assist a passenger with a disability to hear, see, communicate, maneuver, or perform other functions of daily life, and may include medical devices and medications.

Battery-powered mobility aid means an assistive device that is used by individuals with mobility impairments such a wheelchair, a scooter, or a Segway when it is used as a mobility device by a person with a mobility-related disability.

Carrier means a U.S. citizen ("U.S. carrier") or foreign citizen ("foreign carrier") that undertakes, directly or indirectly, or by a lease or any other

arrangement, to engage in air transportation.

Commuter carrier means an air taxi operator as defined in 14 CFR part 298 that carries passengers on at least 5 round trips per week on at least one route between two or more points according to its published flight schedules that specify the times, days of the week and places between which those flights are performed.

CPAP machine means a continuous positive airway pressure machine.

Department or DOT means the United States Department of Transportation.

Direct threat means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

Equivalent alternative means a policy, practice, or other accommodation that provides substantially equivalent accessibility to passengers with disabilities, compared to compliance with a provision of this Part.

Expected maximum flight duration means the carrier's best estimate of the total duration of the flight from departure gate to arrival gate, including taxi time to and from the terminals, based on the scheduled flight time and factors such as (a) wind and other weather conditions forecast; (b) anticipated traffic delays; (c) one instrument approach and possible missed approach at destination; and (d) any other conditions that may delay arrival of the aircraft at the destination gate.

FAA means the Federal Aviation Administration, an operating administration of the Department of Transportation.

Facility means a carrier's aircraft and any portion of an airport that a carrier owns, leases, or controls (*e.g.*, structures, roads, walks, parking lots, ticketing areas, baggage drop-off and retrieval sites, gates, other boarding locations, loading bridges) normally used by passengers or other members of the public.

High-contrast captioning means captioning that is at least as easy to read as white letters on a consistent black background.

Indirect carrier means a person not directly involved in the operation of an aircraft who sells air transportation services to the general public other than as an authorized agent of a carrier.

Individual with a disability means any individual who has a physical or mental impairment that, on a permanent or temporary basis, substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(a) *Physical or mental impairment* means:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory including speech organs, cardio-vascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

(b) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(c) *Has a record of such impairment* means has a history of, or has been classified, or misclassified, as having a mental or physical impairment that substantially limits one or more major life activities.

(d) *Is regarded as having an impairment* means:

(1) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by an air carrier as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits a major life activity only as a result of the attitudes of others toward such an impairment; or

(3) Has none of the impairments set forth in this definition but is treated by an air carrier as having such an impairment.

On-demand air taxi means an air taxi operator that carries passengers or property and is not a commuter carrier as defined in this section.

PHMSA means the Pipeline and Hazardous Materials Safety Administration, an operating administration of the Department of Transportation.

POC means portable oxygen concentrator.

Qualified individual with a disability means an individual with a disability—

(a) Who, as a passenger (referred to as a "passenger with a disability"),

(1) With respect to obtaining a ticket for air transportation on a carrier, offers, or makes a good faith attempt to offer, to purchase or otherwise validly to obtain such a ticket;

(2) With respect to obtaining air transportation, or other services or accommodations required by this Part,

(i) Buys or otherwise validly obtains, or makes a good faith effort to obtain, a ticket for air transportation on a carrier and presents himself or herself at the airport for the purpose of traveling on the flight to which the ticket pertains; and

(ii) Meets reasonable, nondiscriminatory contract of carriage requirements applicable to all passengers; or

(b) Who, with respect to accompanying or meeting a traveler, using ground transportation, using terminal facilities, or obtaining information about schedules, fares, reservations, or policies, takes those actions necessary to use facilities or services offered by an air carrier to the general public, with reasonable accommodations, as needed, provided by the carrier.

Scheduled service means any flight scheduled in the current edition of the Official Airline Guide, the carrier's published schedule, or the computer reservation system used by the carrier.

TSA means the Transportation Security Administration, an agency of the Department of Homeland Security.

United States or U.S. means the United States of America, including its territories and possessions.

§ 382.5 When are U.S. and foreign carriers required to begin complying with the provisions of this Part?

As a U.S. or foreign carrier, you are required to comply with the requirements of this Part on May 13, 2009, except as otherwise provided in individual sections of this Part.

§ 382.7 To whom do the provisions of this Part apply?

(a) If you are a U.S. carrier, this Part applies to you with respect to all your operations and aircraft, regardless of where your operations take place, except as otherwise provided in this Part.

(b) If you are a foreign carrier, this Part applies to you only with respect to flights you operate that begin or end at a U.S. airport and to aircraft used for these flights. For purposes of this Part, a "flight" means a continuous journey in the same aircraft or with one flight number that begins or ends at a U.S.

airport. The following are some examples of the application of this term:

Example 1 to paragraph (b): A passenger books a nonstop flight on a foreign carrier from New York to Frankfurt, or Frankfurt to New York. Each of these is a "flight" for purposes of this Part.

Example 2 to paragraph (b): A passenger books a journey on a foreign carrier from New York to Prague. The foreign carrier flies nonstop to Frankfurt. The passenger gets off the plane in Frankfurt and boards a connecting flight (with a different flight number), on the same foreign carrier or a different carrier, which goes to Prague. The New York-Frankfurt leg of the journey is a "flight" for purposes of this Part; the Frankfurt-Prague leg is not. On the reverse routing, the Prague-Frankfurt leg is not a covered flight for purposes of this Part, while the Frankfurt-New York leg is.

Example 3 to paragraph (b): A passenger books a journey on a foreign carrier from New York to Prague. The plane stops for refueling and a crew change in Frankfurt. If, after deplaning in Frankfurt, the passengers originating in New York reboard the aircraft (or a different aircraft, assuming the flight number remains the same) and continue to Prague, they remain on a covered flight for purposes of this Part. This is because their transportation takes place on a direct flight between New York and Prague, even though it had an interim stop in Frankfurt. This example would also apply in the opposite direction (Prague to New York via Frankfurt).

Example 4 to paragraph (b): In Example 3, the foreign carrier is not subject to coverage under this Part with respect to a Frankfurt-originating passenger who boards the aircraft and goes to Prague, or a Prague-originating passenger who gets off the plane in Frankfurt and does not continue to New York.

(c) As a foreign carrier, you are not subject to the requirements of this Part with respect to operations between two foreign points, even with respect to flights involving code-sharing arrangements with U.S. carriers. As a U.S. carrier that participates in a code-sharing arrangement with a foreign carrier with respect to operations between two foreign points, you (as distinct from the foreign carrier) are responsible for ensuring compliance with the service provisions of subparts A through C, F through H, and K with respect to passengers traveling under your code on such a flight.

Example 1 to paragraph (c): A passenger buys a ticket from a U.S. carrier for a journey from New York to Prague. The ticket carries the U.S. carrier's code and flight number throughout the entire journey. There is a change of carrier and aircraft in Frankfurt, and a foreign carrier operates the Frankfurt-Prague segment. The foreign carrier is not subject to the provisions of Part 382 for the Frankfurt-Prague segment. However, the U.S. carrier must ensure compliance with the applicable provisions of Part 382 on the Frankfurt-Prague segment with respect to passengers flying under its code, and the Department could take enforcement action against the U.S. carrier for acts or omissions by the foreign carrier.

(d) As a foreign carrier, if you operate a charter flight from a foreign airport to a U.S. airport, and return to a foreign airport, and you do not pick up any passengers in the U.S., the charter operation is not a flight subject to the requirements of this Part.

(e) Unless a provision of this Part specifies application to a U.S. carrier or a foreign carrier, the provision applies to both U.S. and foreign carriers.

(f) If you are an indirect carrier, §§ 382.17 through 382.157 of this Part do not apply, except insofar as § 382.11(b) applies to you.

(g) Notwithstanding any provisions of this Part, you must comply with all FAA safety regulations, TSA security regulations, and foreign safety and security regulations having legally mandatory effect that apply to you.

§ 382.9 What may foreign carriers do if they believe a provision of a foreign nation's law conflicts with compliance with a provision of this Part?

(a) If you are a foreign carrier, and you believe that an applicable provision of the law of a foreign nation precludes you from complying with a provision of this Part, you may request a waiver of the provision of this Part.

(b) You must send such a waiver request to the following address: Assistant General Counsel for Aviation Enforcement and Proceedings, C–70 U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W96–322, Washington, DC 20590.

(c) Your waiver request must be in English and include the following elements:

(1) A copy, in the English language, of the foreign law involved;

(2) A description of how the foreign law applies and how it precludes compliance with a provision of this Part;

(3) A description of the alternative means the carrier will use, if the waiver is granted, to effectively achieve the objective of the provision of this Part subject to the waiver or, if applicable, a justification of why it would be impossible to achieve this objective in any way.

(d) The Department may grant the waiver request, or grant the waiver request subject to conditions, if it determines that the foreign law applies, that it does preclude compliance with a provision of this Part, and that the carrier has provided an effective alternative means of achieving the objective of the provisions of this Part subject to the waiver or have demonstrated by clear and convincing evidence that it would be impossible to achieve this objective in any way.

(e) (1) If you submit a waiver request on or before September 10, 2008, the Department will, to the maximum extent feasible, respond to the request before May 13, 2009. If the Department does not respond to the waiver request by May 13, 2009, you may continue to implement the policy or practice that is the subject of your request until the Department does respond. The Department will not take enforcement action with respect to your implementation of the policy or practice during the time prior to the Department's response.

(2) If you submit a waiver request after September 10, 2008, the Department will, to the maximum extent feasible, respond to the request by May 13, 2009 or within 180 days of receiving it, whichever is later. If the Department does not respond to the waiver request by this date, you may continue to implement the policy or practice that is the subject of your request until the Department does respond. However, the Department may take enforcement action with respect to your implementation of the policy or practice during the time between May 13, 2009 and the date of the Department's response.

(3) If you submit a waiver request after September 10, 2008, and the request pertains to an applicable provision of the law of a foreign nation that did not exist on September 10, 2008, you may continue to implement the policy or practice that is the subject of your request until the Department responds to the request. The Department will, to the maximum extent feasible, respond to such requests within 180 days of receiving them. The Department will not take enforcement action with respect to your implementation of the policy or practice during the time prior to the Department's response.

(f) Notwithstanding any other provision of this section, the Department may commence enforcement action at any time after May 13, 2009 with respect to the policy or practice that is the subject of the request if it finds the request to be frivolous or dilatory.

(g) If you have not submitted a request for a waiver under this section with respect to a provision of this Part, or such a request has been denied, you cannot raise the alleged existence of such a conflict as a defense to an enforcement action.

§ 382.10 How does a U.S. or foreign carrier obtain a determination that it is providing an equivalent alternative to passengers with disabilities?

(a) As a U.S. or foreign carrier, you may apply to the Department for a determination that you are providing an equivalent alternative to passengers with disabilities.

(b) You must send your application for an equivalent alternative determination to the following address: Assistant General Counsel for Aviation Enforcement and Proceedings (C–70), U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W96–322, Washington, DC 20590.

(c) Your application must be in English and include the following elements:

(1) A citation to the specific provision of this Part concerning which you are proposing an equivalent alternative.

(2) A detailed description of the alternative policy, practice, or other accommodation you are proposing to use in place of compliance with the provision of this Part that you cite, and an explanation of how it provides substantially equivalent accessibility to passengers with disabilities.

(d) The Department may grant the application, or grant the application subject to conditions, if it determines that the proposed facilitation does provide substantially equivalent accessibility to passengers with disabilities, compared to compliance with the provision of this Part in question.

(e) If your application is granted, you will be deemed to be in compliance with this Part through implementing the equivalent alternative. If your application is denied, you must implement this Part as written.

(f)(1) If you submit your application on or before September 10, 2008, the Department will respond to the request before May 13, 2009 to the maximum extent feasible. If the Department does not respond to the application by May 13, 2009, you may implement your policy or practice that is the subject of your application until the Department does respond.

(2) With respect to an application you make after September 10, 2008, you must comply with the provisions of this Part without change from May 13, 2009 until the Department responds to your application.

Subpart B—Nondiscrimination and Access to Services

§ 382.11 What is the general nondiscrimination requirement of this Part?

(a) As a carrier, you must not do any of the following things, either directly or through a contractual, licensing, or other arrangement:

(1) You must not discriminate against any qualified individual with a disability, by reason of such disability, in the provision of air transportation;

(2) You must not require a qualified individual with a disability to accept special services (including, but not limited to, preboarding) that the individual does not request. However, you may require preboarding as a condition of receiving certain seating or in-cabin stowage accommodations, as specified in §§ 382.83(c), 382.85(b), and 382.123(a) of this Part.

(3) You must not exclude a qualified individual with a disability from or deny the person the benefit of any air transportation or related services that are available to other persons, except where specifically permitted by this Part. This is true even if there are separate or different services available for individuals with a disability, except when specifically permitted by another section of this Part; and

(4) You must not take any adverse action against an individual (*e.g.* refusing to provide transportation) because the individual asserts, on his or her own behalf or through or on behalf of others, rights protected by this Part or the Air Carrier Access Act.

(b) If, as an indirect carrier, you provide facilities or services for other carriers that are covered by sections 382.17 through 382.157, you must do so in a manner consistent with those sections.

§ 382.13 Do carriers have to modify policies, practices, and facilities to ensure nondiscrimination?

(a) As a carrier, you must modify your policies, practices, and facilities when needed to provide nondiscriminatory service to a particular individual with a disability, consistent with the standards of section 504 of the Rehabilitation Act, as amended.

(b) This requirement is part of your general nondiscrimination obligation, and is in addition to your duty to make the specific accommodations required by this Part.

(c) However, you are not required to make modifications that would constitute an undue burden or would fundamentally alter your program.

§ 382.15 Do carriers have to make sure that contractors comply with the requirements of this Part?

(a) As a carrier, you must make sure that your contractors that provide services to the public (including airports where applicable) meet the requirements of this Part that would apply to you if you provided the services yourself.

(b) As a carrier, you must include an assurance of compliance with this Part in your contracts with any contractors that provide services to the public that are subject to the requirements of this Part. Noncompliance with this assurance is a material breach of the contract on the contractor's part.

(1) This assurance must commit the contractor to compliance with all applicable provisions of this Part in activities performed on behalf of the carrier.

(2) The assurance must also commit the contractor to implementing directives issued by your CROs under §§ 382.151 through 382.153.

(c) As a U.S. carrier, you must also include such an assurance of compliance in your contracts or agreements of appointment with U.S. travel agents. You are not required to include such an assurance in contracts with foreign travel agents.

(d) You remain responsible for your contractors' compliance with this Part and for enforcing the assurances in your contracts with them.

(e) It is not a defense against an enforcement action by the Department under this Part that your noncompliance resulted from action or inaction by a contractor.

§ 382.17 May carriers limit the number of passengers with a disability on a flight?

As a carrier, you must not limit the number of passengers with a disability who travel on a flight. (See also § 382.27(b)(6) of this Part.)

§ 382.19 May carriers refuse to provide transportation on the basis of disability?

(a) As a carrier, you must not refuse to provide transportation to a passenger with a disability on the basis of his or her disability, except as specifically permitted by this Part.

(b) You must not refuse to provide transportation to a passenger with a disability because the person's disability results in appearance or involuntary behavior that may offend, annoy, or inconvenience crewmembers or other passengers.

(c) You may refuse to provide transportation to any passenger on the basis of safety, as provided in 49 U.S.C. 44902 or 14 CFR 121.533, or to any passenger whose carriage would violate FAA or TSA requirements or applicable requirements of a foreign government.

(1) You can determine that there is a disability-related safety basis for refusing to provide transportation to a passenger with a disability if you are able to demonstrate that the passenger

poses a direct threat (see definition in § 382.3). In determining whether an individual poses a direct threat, you must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain:

(i) The nature, duration, and severity of the risk;

(ii) The probability that the potential harm to the health and safety of others will actually occur; and

(iii) Whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

(2) If you determine that the passenger does pose a direct threat, you must select the least restrictive response from the point of view of the passenger, consistent with protecting the health and safety of others. For example, you must not refuse transportation to the passenger if you can protect the health and safety of others by means short of a refusal.

(3) In exercising this authority, you must not act inconsistently with the provisions of this Part.

(4) If your actions are inconsistent with any of the provisions of this Part, you are subject to enforcement action under Subpart K of this Part.

(d) If you refuse to provide transportation to a passenger on his or her originally-scheduled flight on a basis relating to the individual's disability, you must provide to the person a written statement of the reason for the refusal. This statement must include the specific basis for the carrier's opinion that the refusal meets the standards of paragraph (c) of this section or is otherwise specifically permitted by this Part. You must provide this written statement to the person within 10 calendar days of the refusal of transportation.

§ 382.21 May carriers limit access to transportation on the basis that a passenger has a communicable disease or other medical condition?

(a) You must not do any of the following things on the basis that a passenger has a communicable disease or infection, unless you determine that the passenger's condition poses a direct threat:

(1) Refuse to provide transportation to the passenger;

(2) Delay the passenger's transportation (*e.g.*, require the passenger to take a later flight);

(3) Impose on the passenger any condition, restriction, or requirement not imposed on other passengers; or

(4) Require the passenger to provide a medical certificate.

(b) In assessing whether the passenger's condition poses a direct threat, you must apply the provisions of § 382.19(c)(1)–(2) of this subpart.

(1) In making this assessment, you may rely on directives issued by public health authorities (*e.g.*, the U.S. Centers for Disease Control or Public Health Service; comparable agencies in other countries; the World Health Organization).

(2) In making this assessment, you must consider the significance of the consequences of a communicable disease and the degree to which it can be readily transmitted by casual contact in an aircraft cabin environment.

Example 1 to Paragraph (b)(2): The common cold is readily transmissible in an aircraft cabin environment but does not have severe health consequences. Someone with a cold would not pose a direct threat.

Example 2 to Paragraph (b)(2): AIDS has very severe health consequences but is not readily transmissible in an aircraft cabin environment. Someone would not pose a direct threat because he or she is HIV-positive or has AIDS.

Example 3 to Paragraph (b)(2): SARS may be readily transmissible in an aircraft cabin environment and has severe health consequences. Someone with SARS probably poses a direct threat.

(c) If a passenger with a communicable disease meeting the direct threat criteria of this section gives you a medical certificate of the kind outlined in § 382.23(c)(2) describing measures for preventing transmission of the disease during the normal course of the flight, you must provide transportation to the passenger, unless you are unable to carry out the measures.

(d) If your action under this section results in the postponement of a passenger's travel, you must permit the passenger to travel at a later time (up to 90 days from the date of the postponed travel) at the fare that would have applied to the passenger's originally scheduled trip without penalty or, at the passenger's discretion, provide a refund for any unused flights, including return flights.

(e) If you take any action under this section that restricts a passenger's travel, you must, on the passenger's request, provide a written explanation within 10 days of the request.

§ 382.23 May carriers require a passenger with a disability to provide a medical certificate?

(a) Except as provided in this section, you must not require a passenger with a disability to have a medical certificate as a condition for being provided transportation.

(b)(1) You may require a medical certificate for a passenger with a disability—

(i) Who is traveling in a stretcher or incubator;

(ii) Who needs medical oxygen during a flight; or

(iii) Whose medical condition is such that there is reasonable doubt that the individual can complete the flight safely, without requiring extraordinary medical assistance during the flight.

(2) For purposes of this paragraph, a medical certificate is a written statement from the passenger's physician saying that the passenger is capable of completing the flight safely, without requiring extraordinary medical assistance during the flight.

(3) To be valid, a medical certificate under this paragraph must be dated within 10 days of the scheduled date of the passenger's initial departing flight.

Example to paragraph (b)(3): A passenger who schedules a flight from New York to London on January 15 with a return on April 15 would have to show a medical certificate dated January 5 or later. The passenger would not have to show a second medical certificate dated April 5 or later.

(c)(1) You may also require a medical certificate for a passenger if he or she has a communicable disease or condition that could pose a direct threat to the health or safety of others on the flight.

(2) For purposes of this paragraph, a medical certificate is a written statement from the passenger's physician saying that the disease or infection would not, under the present conditions in the particular passenger's case, be communicable to other persons during the normal course of a flight. The medical certificate must state any conditions or precautions that would have to be observed to prevent the transmission of the disease or infection to other persons in the normal course of a flight. A medical certificate under this paragraph must be dated within 10 days of the date of the flight for which it is presented.

(d) As a carrier, you may require that a passenger with a medical certificate undergo additional medical review by you if there is a legitimate medical reason for believing that there has been a significant adverse change in the passenger's condition since the issuance of the medical certificate or that the certificate significantly understates the passenger's risk to the health of other persons on the flight. If the results of this medical review demonstrate that the passenger, notwithstanding the medical certificate, is likely to be unable to complete the flight without requiring extraordinary medical assistance (*e.g.*,

the passenger has apparent significant difficulty in breathing, appears to be in substantial pain, etc.) or would pose a direct threat to the health or safety of other persons on the flight, you may take an action otherwise prohibited under § 382.23(a) of this Part.

§ 382.25 May a carrier require a passenger with a disability to provide advance notice that he or she is traveling on a flight?

As a carrier, you must not require a passenger with a disability to provide advance notice of the fact that he or she is traveling on a flight.

§ 382.27 May a carrier require a passenger with a disability to provide advance notice in order to obtain certain specific services in connection with a flight?

(a) Except as provided in paragraph (b) of this section and §§ 382.133(c)(3) and 382.133(d)(3), as a carrier you must not require a passenger with a disability to provide advance notice in order to obtain services or accommodations required by this Part.

(b) You may require a passenger with a disability to provide up to 72 hours' advance notice and check in one hour before the check-in time for the general public to receive carrier-supplied in-flight medical oxygen on international flights, 48 hours' advance notice and check-in one hour before the check-in time for the general public to receive carrier-supplied in-flight medical oxygen on domestic flights, and 48 hours' advance notice and check-in one hour before the check-in time for the general public to use his/her ventilator, respirator, CPAP machine or POC.

(c) You may require a passenger with a disability to provide up to 48 hours' advance notice and check in one hour before the check-in time for the general public to receive the following services and accommodations. The services listed in paragraphs (c)(1) through (c)(3) of this section are optional; you are not required to provide them, but you may choose to do so.

(1) Carriage of an incubator;

(2) Hook-up for a respirator, ventilator, CPAP machine or POC to the aircraft electrical power supply;

(3) Accommodation for a passenger who must travel in a stretcher;

(4) Transportation for an electric wheelchair on an aircraft with fewer than 60 seats;

(5) Provision of hazardous materials packaging for batteries or other assistive devices that are required to have such packaging;

(6) Accommodation for a group of ten or more qualified individuals with a disability, who make reservations and travel as a group; and

(7) Provision of an on-board wheelchair on an aircraft with more than 60 seats that does not have an accessible lavatory.

(8) Transportation of an emotional support or psychiatric service animal in the cabin;

(9) Transportation of a service animal on a flight segment scheduled to take 8 hours or more;

(10) Accommodation of a passenger who has both severe vision and hearing impairments (see § 382.29(b)(4)).

(d) If the passenger with a disability provides the advance notice you require, consistent with this section, for a service that you must provide (see paragraphs (c)(4) through (c)(10) of this section) or choose to provide (see paragraphs (c)(1) through (c)(3) of this section), you must provide the requested service or accommodation.

(e) Your reservation and other administrative systems must ensure that when passengers provide the advance notice that you require, consistent with this section, for services and accommodations, the notice is communicated, clearly and on time, to the people responsible for providing the requested service or accommodation.

(f) If a passenger with a disability provides the advance notice you require, consistent with this section, and the passenger is forced to change to another flight (*e.g.*, because of a flight cancellation), you must, to the maximum extent feasible, provide the accommodation on the new flight. If the new flight is another carrier's flight, you must provide the maximum feasible assistance to the other carrier in providing the accommodation the passenger requested from you.

(g) If a passenger does not meet advance notice or check-in requirements you establish consistent with this section, you must still provide the service or accommodation if you can do so by making reasonable efforts, without delaying the flight.

§ 382.29 May a carrier require a passenger with a disability to travel with a safety assistant?

(a) Except as provided in paragraph (b) of this section, you must not require that a passenger with a disability travel with another person as a condition of being provided air transportation.

(b) You may require a passenger with a disability in one of the following categories to travel with a safety assistant as a condition of being provided air transportation, if you determine that a safety assistant is essential for safety:

(1) A passenger traveling in a stretcher or incubator. The safety assistant for such a person must be capable of attending to the passenger's in-flight medical needs;

(2) A passenger who, because of a mental disability, is unable to comprehend or respond appropriately to safety instructions from carrier personnel, including the safety briefing required by 14 CFR 121.571(a)(3) and (a)(4) or 14 CFR 135.117(b) or the safety regulations of a foreign carrier's government, as applicable;

(3) A passenger with a mobility impairment so severe that the person is unable to physically assist in his or her own evacuation of the aircraft;

(4) A passenger who has both severe hearing and severe vision impairments, if the passenger cannot establish some means of communication with carrier personnel that is adequate both to permit transmission of the safety briefing required by 14 CFR 121.57(a)(3) and (a)(4), 14 CFR 135,117(b) or the safety regulations of a foreign carrier's government, as applicable, and to enable the passenger to assist in his or her own evacuation of the aircraft in the event of an emergency. You may require a passenger with severe hearing and vision impairment who wishes to travel without a safety assistant to notify you at least 48 hours in advance to provide this explanation. If the passenger fails to meet this notice requirement, however, you must still accommodate him or her to the extent practicable.

(c)(1) If you determine that a person meeting the criteria of paragraph (b)(2), (b)(3) or (b)(4) of this section must travel with a safety assistant, contrary to the individual's self-assessment that he or she is capable of traveling independently, you must not charge for the transportation of the safety assistant. You are not required to find or provide the safety assistant, however.

(2) For purposes of paragraph (b)(4) of this section, you may require, contrary to the individual's self-assessment, that an individual with both severe hearing and vision impairments must travel with a safety assistant if you determine that—

(i) The means of communication that the individual has explained to you does not adequately satisfy the objectives identified in paragraph (b)(4) of this section; or

(ii) The individual proposes to establish communication by means of finger spelling and you cannot, within the time following the individual's notification, arrange for a flight crew member who can communicate using this method to serve the passenger's flight.

(3) If a passenger voluntarily chooses to travel with a personal care attendant

or safety assistant that you do not require, you may charge for the transportation of that person.

(d) If, because there is not a seat available on a flight for a safety assistant whom the carrier has determined to be necessary, a passenger with a disability holding a confirmed reservation is unable to travel on the flight, you must compensate the passenger with a disability in an amount to be calculated as provided for instances of involuntary denied boarding under 14 CFR part 250, where part 250 applies.

(e) For purposes of determining whether a seat is available for a safety assistant, you must deem the safety assistant to have checked in at the same time as the passenger with a disability.

(f) Concern that a passenger with a disability may need personal care services (*e.g.*, assistance in using lavatory facilities or with eating) is not a basis for requiring the passenger to travel with a safety assistant. You must explain this clearly in training or information you provide to your employees. You may advise passengers that your personnel are not required to provide such services.

§ 382.31 May carriers impose special charges on passengers with a disability for providing services and accommodations required by this rule?

(a) Except as otherwise provided in this Part you must not, as a carrier, impose charges for providing facilities, equipment, or services that this rule requires to be provided to passengers with a disability. You may charge for services that this Part does not require.

(b) You may charge a passenger for the use of more than one seat if the passenger's size or condition (*e.g.*, use of a stretcher) causes him or her to occupy the space of more than one seat. This is not considered a special charge under this section.

(c) If your web site that passengers use to make reservations or purchase tickets is not accessible to a passenger with a disability, you must not charge a fee to the passenger who is consequently unable to make a reservation or purchase a ticket on that site for using another booking method (*e.g.*, making a reservation by phone). If a discount is made available to a passenger who books a flight using an inaccessible web site, you must make that discount available to a passenger with a disability who cannot use the web site and who purchases a ticket from you using another method.

§ 382.33 May carriers impose other restrictions on passengers with a disability that they do not impose on other passengers?

(a) As a carrier, you must not subject passengers with a disability to restrictions that do not apply to other passengers, except as otherwise permitted in this Part (*e.g.*, advance notice requirements for certain services permitted by § 382.27).

(b) Restrictions you must not impose on passengers with a disability include, but are not limited to, the following:

(1) Restricting passengers'' movement within the terminal;

(2) Requiring passengers to remain in a holding area or other location in order to receive transportation, services, or accommodations;

(3) Making passengers sit on blankets on the aircraft;

(4) Making passengers wear badges or other special identification (*e.g.*, similar to badges worn by unaccompanied minors); or

(5) Otherwise mandating separate treatment for passengers with a disability, unless permitted or required by this Part or other applicable Federal requirements.

§ 382.35 May carriers require passengers with a disability to sign waivers or releases?

(a) As a carrier, you must not require passengers with a disability to sign a release or waiver of liability in order to receive transportation or to receive services or accommodations for a disability.

(b) You must not require passengers with a disability to sign waivers of liability for damage to or loss of wheelchairs or other assistive devices, or for the loss of, death of, or injury to service animals. Carriers may note pre-existing damage to an assistive device to the same extent that carriers do this with respect to other checked baggage.

Subpart C—Information for Passengers

§ 382.41 What flight-related information must carriers provide to qualified individuals with a disability?

As a carrier, you must provide the following information, on request, to qualified individuals with a disability or persons making inquiries on their behalf concerning the accessibility of the aircraft expected to make a particular flight. The information you provide must be specific to the aircraft you expect to use for the flight unless it is unfeasible for you to do so (*e.g.*, because unpredictable circumstances such as weather or a mechanical problem require substitution of another aircraft that could affect the location or availability of an accommodation). The required information is:

(a) The specific location of seats, if any, with movable armrests (*i.e.*, by row and seat number);

(b) The specific location of seats (*i.e.*, by row and seat number) that the carrier, consistent with this Part, does not make available to passengers with a disability (*e.g.*, exit row seats);

(c) Any aircraft-related, service-related or other limitations on the ability to accommodate passengers with a disability, including limitations on the availability of level-entry boarding to the aircraft at any airport involved with the flight. You must provide this information to any passenger who states that he or she uses a wheelchair for boarding, even if the passenger does not explicitly request the information.

(d) Any limitations on the availability of storage facilities, in the cabin or in the cargo bay, for mobility aids or other assistive devices commonly used by passengers with a disability, including storage in the cabin of a passenger's wheelchair as provided in §§ 382.67 and 382.123 of this Part;

(e) Whether the aircraft has an accessible lavatory; and

(f) The types of services to passengers with a disability that are or are not available on the flight.

§ 382.43 Must information and reservation services of carriers be accessible to individuals who are deaf, hard of hearing, or deaf-blind?

(a) If, as a carrier, you provide telephone reservation and information service to the public, you must make this service available to individuals who use a text telephone (TTY), whether via your own TTY, voice relay, or other available technology, as follows:

(1) You must provide access to TTY users during the same hours as the telephone service is available to the general public.

(2) You must ensure that the response time for answering calls and the level of service provided to TTY users is substantially equivalent to the response time and level of service provided to the general public (*i.e.*, non-TTY users).

(3) You must not subject TTY users to charges exceeding those that apply to non-TTY users of telephone information and reservation service.

(4) In any medium in which you list the telephone number of your information and reservation service for the general public, you must also list your TTY number if you have one. If you do not have a TTY number, you must state how TTY users can reach your information and reservation service (*e.g.*, via a voice relay service).

(5) If you are a foreign carrier, you must meet this requirement by May 13, 2010.

(b) The requirements of paragraph (a) do not apply to you in any country in which the telecommunications infrastructure does not readily permit compliance.

§ 382.45 Must carriers make copies of this Part available to passengers?

(a) As a carrier, you must keep a current copy of this Part at each airport you serve. As a foreign carrier, you must keep a copy of this Part at each airport serving a flight you operate that begins or ends at a U.S. airport. You must make this copy available for review by any member of the public on request.

(b) If you have a Web site, it must provide notice to consumers that they can obtain a copy of this Part in an accessible format from the Department of Transportation by any of the following means:

(1) For calls made from within the United States, by telephone via the Toll-Free Hotline for Air Travelers with Disabilities at 1–800–778–4838 (voice) or 1–800–455–9880 (TTY),

(2) By telephone to the Aviation Consumer Protection Division at 202–366–2220 (voice) or 202–366–0511 (TTY),

(3) By mail to the Air Consumer Protection Division, C–75, U.S. Department of Transportation, 1200 New Jersey Ave., SE., West Building, Room W96–432, Washington, DC 20590, and

(4) On the Aviation Consumer Protection Division's Web site (*http://airconsumer.ost.dot.gov*).

Subpart D—Accessibility of Airport Facilities

§ 382.51 What requirements must carriers meet concerning the accessibility of airport facilities?

(a) As a carrier, you must comply with the following requirements with respect to all terminal facilities you own, lease, or control at a U.S. airport:

(1) You must ensure that terminal facilities providing access to air transportation are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. You are deemed to comply with this obligation if the facilities meet requirements applying to places of public accommodation under Department of Justice (DOJ) regulations implementing Title III of the Americans with Disabilities Act (ADA).

(2) With respect to any situation in which boarding and deplaning by level-entry loading bridges or accessible passenger lounges to and from an aircraft is not available, you must ensure that there is an accessible route between the gate and the area from which aircraft are boarded (*e.g.*, the tarmac in a situation in which level-entry boarding is not available). An accessible route is one meeting the requirements of the Americans with Disabilities Act Accessibility Guidelines (ADAAG), sections 4.3.3 through 4.3.10.

(3) You must ensure that systems of intra- and inter-terminal transportation, including, but not limited to, moving sidewalks, shuttle vehicles and people movers, comply with applicable requirements of the Department of Transportation's ADA rules (49 CFR parts 37 and 38).

(4) Your contracts or leases with airport operators concerning the use of airport facilities must set forth your airport accessibility responsibility under this Part and that of the airport operator under applicable section 504 and ADA rules of the Department of Transportation and Department of Justice.

(5) In cooperation with the airport operator and in consultation with local service animal training organization(s), you must provide animal relief areas for service animals that accompany passengers departing, connecting, or arriving at an airport on your flights.

(6) You must enable captioning at all times on all televisions and other audio-visual displays that are capable of displaying captions and that are located in any portion of the terminal to which any passengers have access on May 13, 2009. The captioning must be high-contrast insofar as is feasible.

(7) You must replace any televisions and other audio-visual displays providing passengers with safety briefings, information, or entertainment that do not have high-contrast captioning capability with equipment that does have such capability whenever such equipment is replaced in the normal course of operations and/or whenever areas of the terminal in which such equipment is located are undergoing substantial renovation or expansion.

(8) If you newly acquire televisions and other audio-visual displays for passenger safety briefings, information, or entertainment on or after May 13, 2009, such equipment must have high-contrast captioning capability.

(b) As a carrier, you must ensure that passengers with a disability can readily use all terminal facilities you own, lease, or control at a foreign airport. In the case of foreign carriers, this requirement applies only to terminal facilities that serve flights covered by § 382.7 of this part.

(1) This means that passengers with a disability must be able to move readily through such terminal facilities to get to or from the gate and any other area from which passengers board the aircraft you use for such flights (*e.g.*, the tarmac in the case of flights that do not use level-entry boarding). This obligation is in addition to your obligation to provide enplaning, deplaning, and connecting assistance to passengers.

(2) You may meet this obligation through any combination of facility accessibility, auxiliary aids, equipment, the assistance of personnel, or other appropriate means consistent with the safety and dignity of passengers with a disability.

(c) As a foreign carrier, you must meet the requirements of this section by May 13, 2010. As a U.S. carrier, you must meet the requirements of paragraph (b) of this section by May 13, 2010.

§ 382.53 What information must carriers give individuals with a vision or hearing impairment at airports?

(a)(1) As a U.S. carrier, you must ensure that passengers with a disability who identify themselves as persons needing visual or hearing assistance have prompt access to the same information provided to other passengers at each gate, ticketing area, and customer service desk that you own, lease, or control at any U.S. or foreign airport, to the extent that this does not interfere with employees' safety and security duties as set forth in FAA, TSA, and applicable foreign regulations.

(2) As a foreign carrier, you must make this information available at each gate, ticketing area, and customer service desk that you own, lease, or control at any U.S. airport. At foreign airports, you must make this information available only at gates, ticketing areas, or customer service desks that you own, lease, or control and only for flights that begin or end in the U.S.

(3) As a U.S. or foreign carrier, at any U.S. airport covered by this paragraph where the airport has effective control over the covered gates, ticketing areas, and customer service desks, you and the airport are jointly responsible for compliance.

(b) The information you must provide under paragraph (a) of this section includes, but is not limited to, the following: Information concerning flight safety, ticketing, flight check-in, flight delays or cancellations, schedule changes, boarding information, connections, gate assignments, checking baggage, volunteer solicitation on oversold flights (*e.g.*, offers of

compensation for surrendering a reservation), individuals being paged by airlines, aircraft changes that affect the travel of persons with disabilities, and emergencies (*e.g.*, fire, bomb threat).

(c) With respect to information on claiming baggage, you must provide the information to passengers who identify themselves as persons needing visual or hearing assistance no later than you provide this information to other passengers.

§ 382.55 May carriers impose security screening procedures for passengers with disabilities that go beyond TSA requirements or those of foreign governments?

(a) All passengers, including those with disabilities, are subject to TSA security screening requirements at U.S. airports. In addition, passengers at foreign airports, including those with disabilities, may be subject to security screening measures required by law of the country in which the airport is located.

(b) If, as a carrier, you impose security screening procedures for passengers with disabilities that go beyond those mandated by TSA (or, at a foreign airport, beyond the law of the country in which the airport is located), you must ensure that they meet the following requirements:

(1) You must use the same criteria for applying security screening procedures to passengers with disabilities as to other passengers.

(2) You must not subject a passenger with a disability to special screening procedures because the person is traveling with a mobility aid or other assistive device if the person using the aid or device clears the security system without activating it.

(i) However, your security personnel may examine a mobility aid or assistive device which, in their judgment, may conceal a weapon or other prohibited item.

(ii) You may conduct security searches of qualified individuals with a disability whose aids activate the security system in the same manner as for other passengers.

(3) You must not require private security screenings of passengers with a disability to a greater extent, or for any different reason, than for other passengers.

(c) Except as provided in paragraph (c) of this section, if a passenger with a disability requests a private screening in a timely manner, you must provide it in time for the passenger to enplane.

(d) If you use technology that can conduct an appropriate screening of a passenger with a disability without necessitating a physical search of the person, you are not required to provide a private screening.

§ 382.57 What services must carriers provide if their automated kiosks are inaccessible?

As a carrier, if your automated kiosks in airport terminals cannot readily be used by a passenger with a disability for such functions as ticketing and obtaining boarding passes that the kiosks make available to other passengers, you must provide equivalent service to the passenger (*e.g.*, by assistance from your personnel in using the kiosk or allowing the passenger to come to the front of the line at the check-in counter).

Subpart E—Accessibility of Aircraft

§ 382.61 What are the requirements for movable aisle armrests?

(a) As a carrier, you must ensure that aircraft with 30 or more passenger seats on which passenger aisle seats have armrests are equipped with movable aisle armrests on at least one-half of the aisle seats in rows in which passengers with mobility impairments are permitted to sit under FAA or applicable foreign government safety rules.

(b) You are not required to provide movable armrests on aisle seats of rows which a passenger with a mobility impairment is precluded from using by an FAA safety rule.

(c) You must ensure that these movable aisle armrests are provided proportionately in all classes of service in the cabin. For example, if 80 percent of the aisle seats in which passengers with mobility impairments may sit are in coach, and 20 percent are in first class, then 80 percent of the movable aisle armrests must be in coach, with 20 percent in first class.

(d) For aircraft equipped with movable aisle armrests, you must configure cabins, or establish administrative systems, to ensure that passengers with mobility impairments or other passengers with a disability can readily identify and obtain seating in rows with movable aisle armrests. You must provide this information by specific seat and row number.

(e) You are not required to retrofit cabin interiors of existing aircraft to comply with the requirements of this section. However, if you replace any of an aircraft's aisle seats with newly manufactured seats, the new seats must include movable aisle armrests as required by this section. However, an aircraft is never required to have movable aisle armrests on more than one half of the aisle seats.

(f) As a foreign carrier, you must comply with the requirements of paragraphs (a) through (d) of this section with respect to new aircraft you operate that were initially ordered after May 13, 2009 or which are delivered after May 13, 2010. As a U.S. carrier, the requirements of paragraphs (a), (b), (d), and (e) of this section applies to you with respect to new aircraft you operate that were initially ordered after April 5, 1990, or which are delivered after April 5, 1992. As a U.S. carrier, paragraph (c) of this section applies to you with respect to new aircraft you operate that were initially ordered after May 13, 2009 or which were delivered after May 13, 2010.

(g) As a foreign carrier, you must comply with the requirements of paragraph (e) of this section with respect to seats ordered after May 13, 2009.

§ 382.63 What are the requirements for accessible lavatories?

(a) As a carrier, you must ensure that aircraft with more than one aisle in which lavatories are provided shall include at least one accessible lavatory.

(1) The accessible lavatory must permit a qualified individual with a disability to enter, maneuver within as necessary to use all lavatory facilities, and leave, by means of the aircraft's on-board wheelchair.

(2) The accessible lavatory must afford privacy to persons using the on-board wheelchair equivalent to that afforded ambulatory users.

(3) The lavatory shall provide door locks, accessible call buttons, grab bars, faucets and other controls, and dispensers usable by qualified individuals with a disability, including wheelchair users and persons with manual impairments.

(b) With respect to aircraft with only one aisle in which lavatories are provided, you may, but are not required to, provide an accessible lavatory.

(c) You are not required to retrofit cabin interiors of existing aircraft to comply with the requirements of this section. However, if you replace a lavatory on an aircraft with more than one aisle, you must replace it with an accessible lavatory.

(d) As a foreign carrier, you must comply with the requirements of paragraph (a) of this section with respect to new aircraft you operate that were initially ordered after May 13, 2009 or which are delivered after May 13, 2010. As a U.S. carrier, this requirement applies to you with respect to new aircraft you operate that were initially ordered after April 5, 1990, or

which were delivered after April 5, 1992.

(e) As a foreign carrier, you must comply with the requirements of paragraph (c) of this section beginning May 13, 2009. As a U.S. carrier, these requirements apply to you with respect to new aircraft you operate that were initially ordered after April 5, 1990, or which were delivered after April 5, 1992.

§ 382.65 What are the requirements concerning on-board wheelchairs?

(a) As a carrier, you must equip aircraft that have more than 60 passenger seats, and that have an accessible lavatory (whether or not having such a lavatory is required by § 382.63 of this Part) with an on-board wheelchair. The Aerospatiale/Aeritalia ATR–72 and the British Aerospace Advanced Turboprop (ATP), in configurations having between 60 and 70 passenger seats, are exempt from this requirement.

(b) If a passenger asks you to provide an on-board wheelchair on a particular flight, you must provide it if the aircraft being used for the flight has more than 60 passenger seats, even if the aircraft does not have an accessible lavatory.

(1) The basis of the passenger's request must be that he or she can use an inaccessible lavatory but cannot reach it from a seat without using an on-board wheelchair.

(2) You may require the passenger to provide the advance notice specified in § 382.27 to receive this service.

(c) You must ensure that on-board wheelchairs meet the following standards:

(1) On-board wheelchairs must include footrests, armrests which are movable or removable, adequate occupant restraint systems, a backrest height that permits assistance to passengers in transferring, structurally sound handles for maneuvering the occupied chair, and wheel locks or another adequate means to prevent chair movement during transfer or turbulence.

(2) The chair must be designed to be compatible with the maneuvering space, aisle width, and seat height of the aircraft on which it is to be used, and to be easily pushed, pulled, and turned in the cabin environment by carrier personnel.

(d) As a foreign carrier, you must meet this requirement as of May 13, 2010. As a U.S. carrier, you must meet this requirement by May 13, 2009.

§ 382.67 What is the requirement for priority space in the cabin to store passengers' wheelchairs?

(a) As a carrier, you must ensure that there is a priority space in the cabin of sufficient size to stow at least one typical adult-sized folding, collapsible, or break-down manual passenger wheelchair, the dimensions of which are within a space of 13 inches by 36 inches by 42 inches without having to remove the wheels or otherwise disassemble it. This requirement applies to any aircraft with 100 or more passenger seats; and

(b) This space must be other than the overhead compartments and under-seat spaces routinely used for passengers' carry-on items.

(c) As a foreign carrier, you must meet the requirement of paragraph (a) of this section for new aircraft ordered after May 13, 2009 or delivered after May 13, 2010. As a U.S. carrier, this requirement applies to you with respect to new aircraft you operate that were ordered after April 5, 1990, or which were delivered after April 5, 1992.

§ 382.69 What requirements must carriers meet concerning the accessibility of videos, DVDs, and other audio-visual presentations shown on-aircraft to individuals who are deaf or hard of hearing?

(a) As a carrier, you must ensure that all new videos, DVDs, and other audio-visual displays played on aircraft for safety purposes, and all such new audio-visual displays played on aircraft for informational purposes that were created under your control, are high-contrast captioned. The captioning must be in the predominant language or languages in which you communicate with passengers on the flight.

(b) The requirements of paragraph (a) of this section go into effect with respect to audio-visual displays used for safety purposes on November 10, 2009.

(c) Between May 13, 2009 and November 9, 2009, U.S. carriers must ensure that all videos, DVDs, and other audio-visual displays played on aircraft for safety purposes have open captioning or an inset for a sign language interpreter, unless such captioning or inset either would interfere with the video presentation so as to render it ineffective or would not be large enough to be readable, in which case these carriers must use an equivalent non-video alternative for transmitting the briefing to passengers with hearing impairments.

(d) The requirements of paragraph (a) of this section go into effect with respect to informational displays on January 8, 2010.

§ 382.71 What other aircraft accessibility requirements apply to carriers?

(a) As a carrier, you must maintain all aircraft accessibility features in proper working order.

(b) You must ensure that any replacement or refurbishing of the aircraft cabin or its elements does not reduce the accessibility of that element to a level below that specified in this Part.

Subpart F—Seating Accommodations

§ 382.81 For which passengers must carriers make seating accommodations?

As a carrier, you must provide the following seating accommodations to the following passengers on request, if the passenger self-identifies to you as having a disability specified in this section and the type of seating accommodation in question exists on the particular aircraft. Once the passenger self-identifies to you, you must ensure that the information is recorded and properly transmitted to personnel responsible for providing the accommodation.

(a) For a passenger who uses an aisle chair to access the aircraft and who cannot readily transfer over a fixed aisle armrest, you must provide a seat in a row with a movable aisle armrest. You must ensure that your personnel are trained in the location and proper use of movable aisle armrests, including appropriate transfer techniques. You must ensure that aisle seats with movable armrests are clearly identifiable.

(b) You must provide an adjoining seat for a person assisting a passenger with a disability in the following circumstances:

(1) When a passenger with a disability is traveling with a personal care attendant who will be performing a function for the individual during the flight that airline personnel are not required to perform (*e.g.*, assistance with eating);

(2) When a passenger with a vision impairment is traveling with a reader/assistant who will be performing functions for the individual during the flight;

(3) When a passenger with a hearing impairment is traveling with an interpreter who will be performing functions for the individual during the flight; or

(4) When you require a passenger to travel with a safety assistant (see § 382.29).

(c) For a passenger with a disability traveling with a service animal, you must provide, as the passenger requests, either a bulkhead seat or a seat other than a bulkhead seat.

(d) For a passenger with a fused or immobilized leg, you must provide a bulkhead seat or other seat that provides greater legroom than other seats, on the

side of an aisle that better accommodates the individual's disability.

§ 382.83 Through what mechanisms do carriers make seating accommodations?

(a) If you are a carrier that provides advance seat assignments to passengers (*i.e.*, offer seat assignments to passengers before the day of the flight), you must comply with the requirements of § 382.81 of this Part by any of the following methods:

(1) You may "block" an adequate number of the seats used to provide the seating accommodations required by § 382.81.

(i) You must not assign these seats to passengers who do not meet the criteria of § 382.81 until 24 hours before the scheduled departure of the flight.

(ii) At any time up until 24 hours before the scheduled departure of the flight, you must assign a seat meeting the requirements of this section to a passenger with a disability meeting one or more of the requirements of § 382.81 who requests it, at the time the passenger initially makes the request.

(iii) If a passenger with a disability specified in § 382.81 does not make a request at least 24 hours before the scheduled departure of the flight, you must meet the passenger's request to the extent practicable, but you are not required to reassign a seat assigned to another passenger in order to do so.

(2) You may designate an adequate number of the seats used to provide seating accommodations required by § 382.81 as "priority seats" for passengers with a disability.

(i) You must provide notice that all passengers assigned these seats (other than passengers with a disability listed in § 382.81 of this Part) are subject to being reassigned to another seat if necessary to provide a seating accommodation required by this section.

(ii) You may provide this notice through your computer reservation system, verbal information provided by reservation personnel, ticket notices, gate announcements, counter signs, seat cards or notices, frequent-flier literature, or other appropriate means.

(iii) You must assign a seat meeting the requirements of this section to a passenger with a disability listed in § 382.81 of this Part who requests the accommodation at the time the passenger makes the request. You may require such a passenger to check in and request the seating accommodation at least one hour before the standard check-in time for the flight. If all designated priority seats that would accommodate the passenger have been assigned to other passengers, you must reassign the seats of the other passengers as needed to provide the requested accommodation.

(iv) If a passenger with a disability listed in § 382.81 does not check in at least an hour before the standard check-in time for the general public, you must meet the individual's request to the extent practicable, but you are not required to reassign a seat assigned to another passenger in order to do so.

(b) If you assign seats to passengers, but not until the date of the flight, you must use the "priority seating" approach of paragraph (a)(2) of this section.

(c) If you do not provide advance seat assignments to passengers, you must allow passengers specified in § 382.81 to board the aircraft before other passengers, including other "preboarded" passengers, so that the passengers needing seating accommodations can select seats that best meet their needs.

(d) As a carrier, if you wish to use a different method of providing seating assignment accommodations to passengers with disabilities from those specified in this subpart, you must obtain the written concurrence of the Department of Transportation. Contact the Department at the address cited in § 382.159 of this Part.

§ 382.85 What seating accommodations must carriers make to passengers in circumstances not covered by § 382.81 (a) through (d)?

As a carrier, you must provide the following seating accommodations to a passenger who self-identifies as having a disability other than one in the four categories listed in § 382.81 (a) through (d) of this Part and as needing a seat assignment accommodation in order to readily access and use the carrier's air transportation services:

(a) As a carrier that assigns seats in advance, you must provide accommodations in the following ways:

(1) If you use the "seat-blocking" mechanism of § 382.83(a)(1) of this Part, you must implement the requirements of this section as follows:

(i) When a passenger with a disability not described in § 382.81(a) through (d) of this Part makes a reservation more than 24 hours before the scheduled departure time of the flight, you are not required to offer the passenger one of the seats blocked for the use of passengers with a disability listed under § 382.81.

(ii) However, you must assign to the passenger any seat, not already assigned to another passenger that accommodates the passenger's needs, even if that seat is not available for assignment to the general passenger population at the time of the request.

(2) If you use the "designated priority seats" mechanism of § 382.83(a)(2) of this Part, you must implement the requirements of this section as follows:

(i) When a passenger with a disability not described in § 382.81 makes a reservation, you must assign to the passenger any seat, not already assigned to another passenger, that accommodates the passenger's needs, even if that seat is not available for assignment to the general passenger population at the time of the request. You may require a passenger making such a request to check in one hour before the standard check-in time for the flight.

(ii) If such a passenger is assigned to a designated priority seat, he or she is subject to being reassigned to another seat as provided in § 382.83(a)(2)(i) of this subpart.

(b) On flights where advance seat assignments are not offered, you must provide seating accommodations under this section by allowing passengers to board the aircraft before other passengers, including other "preboarded" passengers, so that the individuals needing seating accommodations can select seats that best meet their needs.

(c) If you assign seats to passengers, but not until the date of the flight, you must use the "priority seating" approach of section 382.83(a)(2).

§ 382.87 What other requirements pertain to seating for passengers with a disability?

(a) As a carrier, you must not exclude any passenger with a disability from any seat or require that a passenger with a disability sit in any particular seat, on the basis of disability, except to comply with FAA or applicable foreign government safety requirements.

(b) In responding to requests from individuals for accommodations under this subpart, you must comply with FAA and applicable foreign government safety requirements, including those pertaining to exit seating (see 14 CFR 121.585 and 135.129).

(c) If a passenger's disability results in involuntary active behavior that would result in the person properly being refused transportation under § 382.19, and the passenger could be transported safely if seated in another location, you must offer to let the passenger sit in that location as an alternative to being refused transportation.

(d) If you have already provided a seat to a passenger with a disability to furnish an accommodation required by this subpart, you must not (except in the

circumstance described in § 382.85(a)(2)(ii)) reassign that passenger to another seat in response to a subsequent request from another passenger with a disability, without the first passenger's consent.

(e) You must never deny transportation to any passenger in order to provide accommodations required by this subpart.

(f) You are not required to furnish more than one seat per ticket or to provide a seat in a class of service other than the one the passenger has purchased in order to provide an accommodation required by this Part.

Subpart G—Boarding, Deplaning, and Connecting Assistance

§ 382.91 What assistance must carriers provide to passengers with a disability in moving within the terminal?

(a) As a carrier, you must provide or ensure the provision of assistance requested by or on behalf of a passenger with a disability, or offered by carrier or airport operator personnel and accepted by a passenger with a disability, in transportation between gates to make a connection to another flight. If the arriving flight and the departing connecting flight are operated by different carriers, the carrier that operated the arriving flight (*i.e.*, the one that operates the first of the two flights that are connecting) is responsible for providing or ensuring the provision of this assistance, even if the passenger holds a separate ticket for the departing flight. It is permissible for the two carriers to mutually agree that the carrier operating the departing connecting flight (*i.e.*, the second flight of the two) will provide this assistance, but the carrier operating the arriving flight remains responsible under this section for ensuring that the assistance is provided.

(b) You must also provide or ensure the provision of assistance requested by or on behalf of a passenger with a disability, or offered by carrier or airport operator personnel and accepted by a passenger with a disability, in moving from the terminal entrance (or a vehicle drop-off point adjacent to the entrance) through the airport to the gate for a departing flight, or from the gate to the terminal entrance (or a vehicle pick-up point adjacent to the entrance after an arriving flight).

(1) This requirement includes assistance in accessing key functional areas of the terminal, such as ticket counters and baggage claim.

(2) This requirement also includes a brief stop upon the passenger's request at the entrance to a rest room (including an accessible rest room when requested). As a carrier, you are required to make such a stop only if the rest room is available on the route to the destination of the enplaning, deplaning, or connecting assistance and you can make the stop without unreasonable delay. To receive such assistance, the passenger must self-identify as being an individual with a disability needing the assistance.

(c) As a carrier at a U.S. airport, you must, on request, in cooperation with the airport operator, provide for escorting a passenger with a service animal to an animal relief area provided under § 382.51(a)(5) of this Part.

(d) As part of your obligation to provide or ensure the provision of assistance to passengers with disabilities in moving through the terminal (*e.g.*, between the terminal entrance and the gate, between gate and aircraft, from gate to a baggage claim area), you must assist passengers who are unable to carry their luggage because of a disability with transporting their gate-checked or carry-on luggage. You may request the credible verbal assurance that a passenger cannot carry the luggage in question. If a passenger is unable to provide credible assurance, you may require the passenger to provide documentation as a condition of providing this service.

§ 382.93 Must carriers offer preboarding to passengers with a disability?

As a carrier, you must offer preboarding to passengers with a disability who self-identify at the gate as needing additional time or assistance to board, stow accessibility equipment, or be seated.

§ 382. 95 What are carriers' general obligations with respect to boarding and deplaning assistance?

(a) As a carrier, you must promptly provide or ensure the provision of assistance requested by or on behalf of passengers with a disability, or offered by carrier or airport operator personnel and accepted by passengers with a disability, in enplaning and deplaning. This assistance must include, as needed, the services of personnel and the use of ground wheelchairs, accessible motorized carts, boarding wheelchairs, and/or on-board wheelchairs where provided in accordance with this Part, and ramps or mechanical lifts.

(b) As a carrier, you must, except as otherwise provided in this subpart, provide boarding and deplaning assistance through the use of lifts or ramps at any U.S. commercial service airport with 10,000 or more annual enplanements where boarding and deplaning by level-entry loading bridges or accessible passenger lounges is not available.

§ 382.97 To which aircraft does the requirement to provide boarding and deplaning assistance through the use of lifts apply?

The requirement of section 382.95(b) of this Part to provide boarding and deplaning assistance through the use of lifts applies with respect to all aircraft with a passenger capacity of 19 or more, with the following exceptions:

(a) Float planes;

(b) The following 19-seat capacity aircraft models: the Fairchild Metro, the Jetstream 31 and 32, the Beech 1900 (C and D models), and the Embraer EMB–120;

(c) Any other aircraft model determined by the Department of Transportation to be unsuitable for boarding and deplaning assistance by lift, ramp, or other suitable device.

The Department will make such a determination if it concludes that—

(1) No existing boarding and deplaning assistance device on the market will accommodate the aircraft without a significant risk of serious damage to the aircraft or injury to passengers or employees, or

(2) Internal barriers are present in the aircraft that would preclude passengers who use a boarding or aisle chair from reaching a non-exit row seat.

§ 382.99 What agreements must carriers have with the airports they serve?

(a) As a carrier, you must negotiate in good faith with the airport operator of each U.S. airport described in § 382.95(b) to ensure the provision of lifts for boarding and deplaning where level-entry loading bridges are not available.

(b) You must have a written, signed agreement with the airport operator allocating responsibility for meeting the boarding and deplaning assistance requirements of this subpart between or among the parties. For foreign carriers, with respect to all covered aircraft, this requirement becomes effective May 13, 2010.

(c) For foreign carriers, the agreement with a U.S. airport must provide that all actions necessary to ensure accessible boarding and deplaning for passengers with a disability are completed as soon as practicable, but no later than May 13, 2010.

(d) Under the agreement, you may, as a carrier, require that passengers wishing to receive boarding and deplaning assistance requiring the use of a lift for a flight check in for the flight one hour before the standard check-in

time for the flight. If the passenger checks in after this time, you must nonetheless provide the boarding and deplaning assistance by lift if you can do so by making a reasonable effort, without delaying the flight.

(e) The agreement must ensure that all lifts and other accessibility equipment are maintained in proper working condition.

(f) All carriers and airport operators involved are jointly and severally responsible for the timely and complete implementation of the agreement.

(g) You must make a copy of this agreement available, on request, to representatives of the Department of Transportation.

§ 382.101 What other boarding and deplaning assistance must carriers provide?

When level-entry boarding and deplaning assistance is not required to be provided under this subpart, you must, as a carrier, provide or ensure the provision of boarding and deplaning assistance by any available means to which the passenger consents. However, you must never use hand-carrying (*i.e.*, directly picking up the passenger's body in the arms of one or more carrier personnel to effect a level change the passenger needs to enter or leave the aircraft), even if the passenger consents, unless this is the only way of evacuating the individual in the event of an emergency. The situations in which level-entry boarding is not required but in which you must provide this boarding and deplaning assistance include, but are not limited to, the following:

(a) The boarding or deplaning process occurs at a U.S. airport that is not a commercial service airport that has 10,000 or more enplanements per year;

(b) The boarding or deplaning process occurs at a foreign airport;

(c) You are using an aircraft subject to an exception from the lift boarding and deplaning assistance requirements under § 382.97 (a)–(c) of this subpart;

(d) The deadlines established in § 382.99(c) have not yet passed; and

(e) Circumstances beyond your control (*e.g.*, unusually severe weather; unexpected mechanical problems) prevent the use of a lift.

§ 382.103 May a carrier leave a passenger unattended in a wheelchair or other device?

As a carrier, you must not leave a passenger who has requested assistance required by this subpart unattended by the personnel responsible for enplaning, deplaning, or connecting assistance in a ground wheelchair, boarding wheelchair, or other device, in which the passenger is not independently mobile, for more than 30 minutes. This requirement applies even if another person (*e.g.*, family member, personal care attendant) is accompanying the passenger, unless the passenger explicitly waives the obligation.

§ 382.105 What is the responsibility of carriers at foreign airports at which airport operators have responsibility for enplaning, deplaning, and connecting assistance?

At a foreign airport at which enplaning, deplaning, or connecting assistance is provided by the airport operator, rather than by carriers, as a carrier you may rely on the services provided by the airport operator to meet the requirements of this subpart. If the services provided by the airport operator are not sufficient to meet the requirements of this subpart, you must supplement the airport operator's services to ensure that these requirements are met. If you believe you are precluded by law from supplementing the airport operator's services, you may apply for a conflict of laws waiver under § 382.9 of this Part.

Subpart H—Services on Aircraft

§ 382.111 What services must carriers provide to passengers with a disability on board the aircraft?

As a carrier, you must provide services within the aircraft cabin as requested by or on behalf of passengers with a disability, or when offered by carrier personnel and accepted by passengers with a disability, as follows:

(a) Assistance in moving to and from seats, as part of the enplaning and deplaning processes;

(b) Assistance in preparation for eating, such as opening packages and identifying food;

(c) If there is an on-board wheelchair on the aircraft, assistance with the use of the on-board wheelchair to enable the person to move to and from a lavatory;

(d) Assistance to a semi-ambulatory person in moving to and from the lavatory, not involving lifting or carrying the person; or

(e) Assistance in stowing and retrieving carry-on items, including mobility aids and other assistive devices stowed in the cabin (see also 382.91(c)). To receive such assistance, the passenger must self-identify as being an individual with a disability needing the assistance.

(f) Effective communication with passengers who have vision impairments and/or who are deaf or hard-of-hearing, so that these passengers have timely access to information the carrier provides to other passengers (*e.g.*, weather, on-board services, flight delays, connecting gates at the next airport).

§ 382.113 What services are carriers not required to provide to passengers with a disability on board the aircraft?

As a carrier, you are not required to provide extensive special assistance to qualified individuals with a disability. For purposes of this section, extensive special assistance includes the following activities:

(a) Assistance in actual eating;

(b) Assistance within the restroom or assistance at the passenger's seat with elimination functions; and

(c) Provision of medical services.

§ 382.115 What requirements apply to on-board safety briefings?

As a carrier, you must comply with the following requirements with respect to on-board safety briefings:

(a) You must conduct an individual safety briefing for any passenger where required by 14 CFR 121.571(a)(3) and (a)(4), 14 CFR 135.117(b), or other FAA requirements.

(b) You may offer an individual briefing to any other passenger, but you may not require an individual to have such a briefing except as provided in paragraph (a) of this section.

(c) You must not require any passenger with a disability to demonstrate that he or she has listened to, read, or understood the information presented, except to the extent that carrier personnel impose such a requirement on all passengers with respect to the general safety briefing. You must not take any action adverse to a qualified individual with a disability on the basis that the person has not "accepted" the briefing.

(d) When you conduct an individual safety briefing for a passenger with a disability, you must do so as inconspicuously and discreetly as possible.

(e) The accessibility requirements for onboard video safety presentations that carriers must meet are outlined in section 382.69.

§ 382.117 Must carriers permit passengers with a disability to travel with service animals?

(a) As a carrier, you must permit a service animal to accompany a passenger with a disability.

(1) You must not deny transportation to a service animal on the basis that its carriage may offend or annoy carrier personnel or persons traveling on the aircraft.

(2) On a flight segment scheduled to take 8 hours or more, you may, as a condition of permitting a service animal to travel in the cabin, require the

passenger using the service animal to provide documentation that the animal will not need to relieve itself on the flight or that the animal can relieve itself in a way that does not create a health or sanitation issue on the flight.

(b) You must permit the service animal to accompany the passenger with a disability at any seat in which the passenger sits, unless the animal obstructs an aisle or other area that must remain unobstructed to facilitate an emergency evacuation.

(c) If a service animal cannot be accommodated at the seat location of the passenger with a disability who is using the animal, you must offer the passenger the opportunity to move with the animal to another seat location, if present on the aircraft, where the animal can be accommodated.

(d) As evidence that an animal is a service animal, you must accept identification cards, other written documentation, presence of harnesses, tags, or the credible verbal assurances of a qualified individual with a disability using the animal.

(e) If a passenger seeks to travel with an animal that is used as an emotional support or psychiatric service animal, you are not required to accept the animal for transportation in the cabin unless the passenger provides you current documentation (*i.e.*, no older than one year from the date of the passenger's scheduled initial flight) on the letterhead of a licensed mental health professional (*e.g.*, psychiatrist, psychologist, licensed clinical social worker) stating the following:

(1) The passenger has a mental or emotional disability recognized in the Diagnostic and Statistical Manual of Mental Disorders—Fourth Edition (DSM IV);

(2) The passenger needs the emotional support or psychiatric service animal as an accommodation for air travel and/or for activity at the passenger's destination;

(3) The individual providing the assessment is a licensed mental health professional, and the passenger is under his or her professional care; and

(4) The date and type of the mental health professional's license and the state or other jurisdiction in which it was issued.

(f) You are never required to accommodate certain unusual service animals (*e.g.*, snakes, other reptiles, ferrets, rodents, and spiders) as service animals in the cabin. With respect to other unusual or exotic animals that are presented as service animals (*e.g.*, miniature horses, pigs, monkeys), as a U.S. carrier you must determine whether any factors preclude their traveling in the cabin as service animals (*e.g.*, whether the animal is too large or heavy to be accommodated in the cabin, whether the animal would pose a direct threat to the health or safety of others, whether it would cause a significant disruption of cabin service, whether it would be prohibited from entering a foreign country that is the flight's destination). If no such factors preclude the animal from traveling in the cabin, you must permit it to do so. As a foreign carrier, you are not required to carry service animals other than dogs.

(g) Whenever you decide not to accept an animal as a service animal, you must explain the reason for your decision to the passenger and document it in writing. A copy of the explanation must be provided to the passenger either at the airport, or within 10 calendar days of the incident.

(h) You must promptly take all steps necessary to comply with foreign regulations (*e.g.*, animal health regulations) needed to permit the legal transportation of a passenger's service animal from the U.S. into a foreign airport.

(i) Guidance concerning the carriage of service animals generally is found in the preamble of this rule. Guidance on the steps necessary to legally transport service animals on flights from the U.S. into the United Kingdom is found in 72 FR 8268–8277, (February 26, 2007).

§ 382.119 What information must carriers give individuals with vision or hearing impairment on aircraft?

(a) As a carrier, you must ensure that passengers with a disability who identify themselves as needing visual or hearing assistance have prompt access to the same information provided to other passengers on the aircraft as described in paragraph (b) of this section, to the extent that it does not interfere with crewmembers' safety duties as set forth in FAA and applicable foreign regulations.

(b) The covered information includes but is not limited to the following: information concerning flight safety, procedures for takeoff and landing, flight delays, schedule or aircraft changes that affect the travel of persons with disabilities, diversion to a different airport, scheduled departure and arrival time, boarding information, weather conditions at the flight's destination, beverage and menu information, connecting gate assignments, baggage claim, individuals being paged by airlines, and emergencies (*e.g.*, fire or bomb threat).

Subpart I—Stowage of Wheelchairs, Other Mobility Aids, and Other Assistive Devices

§ 382.121 What mobility aids and other assistive devices may passengers with a disability bring into the aircraft cabin?

(a) As a carrier, you must permit passengers with a disability to bring the following kinds of items into the aircraft cabin, provided that they can be stowed in designated priority storage areas or in overhead compartments or under seats, consistent with FAA, PHMSA, TSA, or applicable foreign government requirements concerning security, safety, and hazardous materials with respect to the stowage of carry-on items.

(1) Manual wheelchairs, including folding or collapsible wheelchairs;

(2) Other mobility aids, such as canes (including those used by persons with impaired vision), crutches, and walkers; and

(3) Other assistive devices for stowage or use within the cabin (*e.g.*, prescription medications and any medical devices needed to administer them such as syringes or auto-injectors, vision-enhancing devices, and POCs, ventilators and respirators that use non-spillable batteries, as long as they comply with applicable safety, security and hazardous materials rules).

(b) In implementing your carry-on baggage policies, you must not count assistive devices (including the kinds of items listed in paragraph (a) of this section) toward a limit on carry-on baggage.

§ 382.123 What are the requirements concerning priority cabin stowage for wheelchairs and other assistive devices?

(a) The following rules apply to the stowage of passengers' wheelchairs or other assistive devices in the priority stowage area provided for in § 382.67 of this Part:

(1) You must ensure that a passenger with a disability who uses a wheelchair and takes advantage of the opportunity to preboard the aircraft can stow his or her wheelchair in this area, with priority over other items brought onto the aircraft by other passengers or crew enplaning at the same airport, consistent with FAA, PHMSA, TSA, or applicable foreign government requirements concerning security, safety, and hazardous materials with respect to the stowage of carry-on items. You must move items that you or your personnel have placed in the priority stowage area (*e.g.*, crew luggage, an on-board wheelchair) to make room for the passenger's wheelchair, even if these items were stowed in the priority stowage area before the passenger

seeking to stow a wheelchair boarded the aircraft (*e.g.*, the items were placed there on a previous leg of the flight).

(2) You must also ensure that a passenger with a disability who takes advantage of the opportunity to preboard the aircraft can stow other assistive devices in this area, with priority over other items (except wheelchairs) brought onto the aircraft by other passengers enplaning at the same airport consistent with FAA, PHMSA, TSA, or applicable foreign government requirements concerning security, safety, and hazardous materials with respect to the stowage of carry-on items.

(3) You must ensure that a passenger with a disability who does not take advantage of the opportunity to preboard is able to use the area to stow his or her wheelchair or other assistive device on a first-come, first-served basis along with all other passengers seeking to stow carry-on items in the area.

(b) If a wheelchair exceeds the space provided for in § 382.67 of this Part while fully assembled but will fit if wheels or other components can be removed without the use of tools, you must remove the applicable components and stow the wheelchair in the designated space. In this case, you must stow the removed components in areas provided for stowage of carry-on luggage.

(c) You must not use the seat-strapping method of carrying a wheelchair in any aircraft you order after May 13, 2009 or which are delivered after May 13, 2011. Any such aircraft must have the designated priority stowage space required by section 382.67, and you must permit passengers to use the space as provided in this section 382.123.

§ 382.125 What procedures do carriers follow when wheelchairs, other mobility aids, and other assistive devices must be stowed in the cargo compartment?

(a) As a carrier, you must stow wheelchairs, other mobility aids, or other assistive devices in the baggage compartment if an approved stowage area is not available in the cabin or the items cannot be transported in the cabin consistent with FAA, PHMSA, TSA, or applicable foreign government requirements concerning security, safety, and hazardous materials with respect to the stowage of carry-on items.

(b) You must give wheelchairs, other mobility aids, and other assistive devices priority for stowage in the baggage compartment over other cargo and baggage. Only items that fit into the baggage compartment and can be transported consistent with FAA, PHMSA, TSA, or applicable foreign government requirements concerning security, safety, and hazardous materials with respect to the stowage of items in the baggage compartment need be transported. Where this priority results in other passengers' baggage being unable to be carried on the flight, you must make your best efforts to ensure that the other baggage reaches the passengers' destination on the carrier's next flight to the destination.

(c) You must provide for the checking and timely return of passengers' wheelchairs, other mobility aids, and other assistive devices as close as possible to the door of the aircraft, so that passengers may use their own equipment to the extent possible, except

(1) Where this practice would be inconsistent with Federal regulations governing transportation security or the transportation of hazardous materials; or

(2) When the passenger requests the return of the items at the baggage claim area instead of at the door of the aircraft.

(d) In order to achieve the timely return of wheelchairs, you must ensure that passengers' wheelchairs, other mobility aids, and other assistive devices are among the first items retrieved from the baggage compartment.

§ 382.127 What procedures apply to stowage of battery-powered mobility aids?

(a) Whenever baggage compartment size and aircraft airworthiness considerations do not prohibit doing so, you must, as a carrier, accept a passenger's battery-powered wheelchair or other similar mobility device, including the battery, as checked baggage, consistent with the requirements of 49 CFR 175.10(a)(15) and (16) and the provisions of paragraphs (b) through (f) of this section.

(b) You may require that passengers with a disability wishing to have battery-powered wheelchairs or other similar mobility devices transported on a flight check in one hour before the check-in time for the general public. If the passenger checks in after this time, you must nonetheless carry the wheelchair or other similar mobility device if you can do so by making a reasonable effort, without delaying the flight.

(c) If the battery on the passenger's wheelchair or other similar mobility device has been labeled by the manufacturer as non-spillable as provided in 49 CFR 173.159(d)(2), or if a battery-powered wheelchair with a spillable battery can be loaded, stored, secured and unloaded in an upright position, you must not require the battery to be removed and separately packaged. Notwithstanding this requirement, you must remove and package separately any battery that is inadequately secured to a wheelchair or, for a spillable battery, is contained in a wheelchair that cannot be loaded, stowed, secured and unloaded in an upright position, in accordance with 49 CFR 175.10(a)(15) and (16). A damaged or leaking battery should not be transported.

(d) When it is necessary to detach the battery from the wheelchair, you must, upon request, provide packaging for the battery meeting the requirements of 49 CFR 175.10(a)(15) and (16) and package the battery. You may refuse to use packaging materials or devices other than those you normally use for this purpose.

(e) You must not disconnect the battery on wheelchairs or other mobility devices equipped with a non-spillable battery completely enclosed within a case or compartment integral to the design of the device unless an FAA or PHMSA safety regulation, or an applicable foreign safety regulation having mandatory legal effect, requires you to do so.

(f) You must not drain batteries.

§ 382.129 What other requirements apply when passengers' wheelchairs, other mobility aids, and other assistive devices must be disassembled for stowage?

(a) As a carrier, you must permit passengers with a disability to provide written directions concerning the disassembly and reassembly of their wheelchairs, other mobility aids, and other assistive devices. You must carry out these instructions to the greatest extent feasible, consistent with FAA, PHMSA, TSA, or applicable foreign government requirements concerning security, safety, and hazardous materials with respect to the stowage of carry-on items.

(b) When wheelchairs, other mobility aids, or other assistive devices are disassembled by the carrier for stowage, you must reassemble them and ensure their prompt return to the passenger. You must return wheelchairs, other mobility aids, and other assistive devices to the passenger in the condition in which you received them.

§ 382.131 Do baggage liability limits apply to mobility aids and other assistive devices?

With respect to transportation to which 14 CFR Part 254 applies, the limits to liability for loss, damage, or delay concerning wheelchairs or other assistive devices provided in Part 254 do not apply. The basis for calculating the compensation for a lost, damaged, or

destroyed wheelchair or other assistive device shall be the original purchase price of the device.

§ 382.133 What are the requirements concerning the evaluation and use of passenger-supplied electronic devices that assist passengers with respiration in the cabin during flight?

(a) Except for on-demand air taxi operators, as a U.S. carrier conducting passenger service you must permit any individual with a disability to use in the passenger cabin during air transportation, a ventilator, respirator, continuous positive airway pressure machine, or an FAA-approved portable oxygen concentrator (POC) on all flights operated on aircraft originally designed to have a maximum passenger capacity of more than 19 seats, unless:

(1) the device does not meet applicable FAA requirements for medical portable electronic devices and does not display a manufacturer's label that indicates the device meets those FAA requirements, or

(2) the device cannot be stowed and used in the passenger cabin consistent with applicable TSA, FAA, and PHMSA regulations.

(b) Except for foreign carriers conducting operations of a nature equivalent to on-demand air taxi operations by a U.S. carrier, as a foreign carrier conducting passenger service you must permit any individual with a disability to use a ventilator, respirator, continuous positive airway pressure machine, or portable oxygen concentrator (POC) of a kind equivalent to an FAA-approved POC for U.S. carriers in the passenger cabin during air transportation to, from or within the United States, on all aircraft originally designed to have a maximum passenger capacity of more than 19 seats unless:

(1) The device does not meet requirements for medical portable electronic devices set by the foreign carrier's government if such requirements exist and/or it does not display a manufacturer's label that indicates the device meets those requirements, or

(2) The device does not meet requirements for medical portable electronic devices set by the FAA for U.S. carriers and does not display a manufacturer's label that indicates the device meets those FAA requirements in circumstances where requirements for medical portable electronic devices have not been set by the foreign carrier's government and the foreign carrier elects to apply FAA requirements for medical portable electronic devices, or

(3) The device cannot be stowed and used in the passenger cabin consistent with applicable TSA, FAA and PHMSA regulations, and the safety or security regulations of the foreign carrier's government.

(c) As a U.S. carrier, you must provide information during the reservation process as indicated in paragraphs (c)(1) through (c)(6) of this section upon inquiry from an individual concerning the use in the cabin during air transportation of a ventilator, respirator, continuous positive airway machine, or an FAA-approved POC. The following information must be provided:

(1) The device must be labeled by the manufacturer to reflect that it has been tested to meet applicable FAA requirements for medical portable electronic devices;

(2) The maximum weight and dimensions (length, width, height) of the device to be used by an individual that can be accommodated in the aircraft cabin consistent with FAA safety requirements;

(3) The requirement to bring an adequate number of batteries as outlined in paragraph (f)(2) of this section and to ensure that extra batteries carried onboard to power the device are packaged and protected from short circuit and physical damage in accordance with SFAR 106, Section 3 (b)(6);

(4) Any requirement, if applicable, that an individual contact the carrier operating the flight 48 hours before scheduled departure to learn the expected maximum duration of his/her flight in order to determine the required number of batteries for his/her particular ventilator, respirator, continuous positive airway pressure machine, or POC;

(5) Any requirement, if applicable, of the carrier operating the flight for an individual planning to use such a device to check-in up to one hour before that carrier's general check-in deadline; and

(6) For POCs, the requirement of paragraph 382.23(b)(1)(ii) of this Part to present to the operating carrier at the airport a physician's statement (medical certificate) prepared in accordance with applicable federal aviation regulations.

(d) As a foreign carrier operating flights to, from or within the United States, you must provide the information during the reservation process as indicated in paragraphs (d)(1) through (d)(7) of this section upon inquiry from an individual concerning the use in the cabin during air transportation on such a flight of a ventilator, respirator, continuous positive airway machine, or POC of a kind equivalent to an FAA-approved POC for U.S. carriers:

(1) The device must be labeled by the manufacturer to reflect that it has been tested to meet requirements for medical portable electronic devices set by the foreign carrier's government if such requirements exist;

(2) The device must be labeled by the manufacturer to reflect that it has been tested to meet requirements for medical portable electronic devices set by the FAA for U.S. carriers if requirements for medical portable electronic devices have not been set by the foreign carrier's government and the foreign carrier elects to apply FAA requirements for medical portable electronic devices;

(3) The maximum weight and dimensions (length, width, height) of the device to be used by an individual that can be accommodated in the aircraft cabin consistent with the safety regulations of the foreign carrier's government;

(4) The requirement to bring an adequate number of batteries as outlined in paragraph (f)(2) of this section and to ensure that extra batteries carried onboard to power the device are packaged in accordance with applicable government safety regulations;

(5) Any requirement, if applicable, that an individual contact the carrier operating the flight 48 hours before scheduled departure to learn the expected maximum duration of his/her flight in order to determine the required number of batteries for his/her particular ventilator, respirator, continuous positive airway pressure machine, or POC;

(6) Any requirement, if applicable, of the carrier operating the flight for an individual planning to use such a device to check-in up to one hour before that carrier's general check-in deadline; and

(7) Any requirement, if applicable, that an individual who wishes to use a POC onboard an aircraft present to the operating carrier at the airport a physician's statement (medical certificate).

(e) In the case of a codeshare itinerary, the carrier whose code is used on the flight must either inform the individual inquiring about using a ventilator, respirator, CPAP machine or POC onboard an aircraft to contact the carrier operating the flight for information about its requirements for use of such devices in the cabin, or provide such information on behalf of the codeshare carrier operating the flight.

(f)(1) As a U.S. or foreign carrier subject to paragraph (a) or (b) of this section, you must inform any individual who has advised you that he or she plans to operate his/her device in the aircraft cabin, within 48 hours of his/her

making a reservation or 24 hours before the scheduled departure date of his/her flight, whichever date is earlier, of the expected maximum flight duration of each segment of his/her flight itinerary.

(2) You may require an individual to bring an adequate number of fully charged batteries onboard, based on the battery manufacturer's estimate of the hours of battery life while the device is in use and the information provided in the physician's statement, to power the device for not less than 150% of the expected maximum flight duration.

(3) If an individual does not comply with the conditions for acceptance of a medical portable electronic device as outlined in this section, you may deny boarding to the individual in accordance with 14 CFR 382.19(c) and in that event you must provide a written explanation to the individual in accordance with 14 CFR 382.19(d).

Subpart J—Training and Administrative Provisions

§ 382.141 What training are carriers required to provide for their personnel?

(a) As a carrier that operates aircraft with 19 or more passenger seats, you must provide training, meeting the requirements of this paragraph, for all personnel who deal with the traveling public, as appropriate to the duties of each employee.

(1) You must ensure training to proficiency concerning:

(i) The requirements of this Part and other applicable Federal regulations affecting the provision of air travel to passengers with a disability;

(ii) Your procedures, consistent with this Part, concerning the provision of air travel to passengers with a disability, including the proper and safe operation of any equipment used to accommodate passengers with a disability; and

(iii) For those personnel involved in providing boarding and deplaning assistance, the use of the boarding and deplaning assistance equipment used by the carrier and appropriate boarding and deplaning assistance procedures that safeguard the safety and dignity of passengers.

(2) You must also train such employees with respect to awareness and appropriate responses to passengers with a disability, including persons with physical, sensory, mental, and emotional disabilities, including how to distinguish among the differing abilities of individuals with a disability.

(3) You must also train these employees to recognize requests for communication accommodation from individuals whose hearing or vision is impaired and to use the most common methods for communicating with these individuals that are readily available, such as writing notes or taking care to enunciate clearly, for example. Training in sign language is not required. You must also train these employees to recognize requests for communication accommodation from deaf-blind passengers and to use established means of communicating with these passengers when they are available, such as passing out Braille cards if you have them, reading an information sheet that a passenger provides, or communicating with a passenger through an interpreter, for example.

(4) You must consult with organizations representing persons with disabilities in your home country when developing your training program and your policies and procedures. If such organizations are not available in your home country, you must consult with individuals with disabilities and/or international organizations representing individuals with disabilities.

(5) You must ensure that all personnel who are required to receive training receive refresher training on the matters covered by this section, as appropriate to the duties of each employee, as needed to maintain proficiency. You must develop a program that will result in each such employee receiving refresher training at least once every three years. The program must describe how employee proficiency will be maintained.

(6) You must provide, or ensure that your contractors provide, training to the contractors' employees concerning travel by passengers with a disability. This training is required only for those contractor employees who deal directly with the traveling public, and it must be tailored to the employees' functions. Training for contractor employees must meet the requirements of paragraphs (a)(1) through (a)(5) of this section.

(7) The employees you designate as CROs, for purposes of § 382.151 of this Part, must receive training concerning the requirements of this Part and the duties of a CRO.

(8) Personnel subject to training required under this Part, who are already employed on May 13, 2009, must be trained one time in the changes resulting from the reissuance of this Part.

(b) If you are a carrier that operates only aircraft with fewer than 19 passenger seats, you must provide training for flight crewmembers and appropriate personnel to ensure that they are familiar with the matters listed in paragraphs (a)(1) and (a)(2) of this section and that they comply with the requirements of this Part.

§ 382.143 When must carriers complete training for their personnel?

(a) As a U.S. carrier, you must meet the training requirements of § 382.141 by the following times.

(1) Employees designated as CROs shall receive training concerning the requirements of this Part and the duties of a CRO before assuming their duties under § 382.151 (see § 382.141(a)(7)). You must ensure that all employees performing the CRO function receive annual refresher training concerning their duties and the provisions of this regulation. The one-time training for CROs about the changes to Part 382 must take place by May 13, 2009. For employees who have already received CRO training, this training may be limited to changes from the previous version of Part 382.

(2) The one-time training for existing employees about changes to Part 382 (see § 382.141(a)(8)) must take place as part of the next scheduled recurrent training after May 13, 2009 for each such employee or within one year after May 13, 2009, whichever comes first.

(3) For crewmembers subject to training requirements under 14 CFR Part 121 or 135 whose employment in any given position commences after May 13, 2009, before they assume their duties; and

(4) For other personnel whose employment in any given position commences after May 13, 2009, within 60 days after the date on which they assume their duties.

(b) As a foreign carrier that operates aircraft with 19 or more passenger seats, you must provide training meeting the requirements of paragraph (a) of this section for all personnel who deal with the traveling public in connection with flights that begin or end at a U.S. airport, as appropriate to the duties of each employee. You must ensure that personnel required to receive training complete the training by the following times:

(1) Employees designated as CROs shall receive training in accordance with paragraph (a)(1) of this section, by May 13, 2009.

(2) For crewmembers and other personnel who are employed on May 13, 2009, within one year after that date;

(3) For crewmembers whose employment commences after May 13, 2010, before they assume their duties;

(4) For other personnel whose employment in any given position commences after May 13, 2010, or a date within 60 days after the date on which they assume their duties; and

(5) For crewmembers and other personnel whose employment in any given position commences after May 13,

2009, but before May 13, 2010, by May 13, 2010 or a date 60 days after the date of their employment, whichever is later.

§ 382.145 What records concerning training must carriers retain?

(a) As a carrier that operates aircraft with 19 or more passenger seats, you must incorporate procedures implementing the requirements of this Part in the manuals or other guidance or instructional materials provided for the carrier and contract personnel who provide services to passengers, including, but not limited to, pilots, flight attendants, reservation and ticket counter personnel, gate agents, ramp and baggage handling personnel, and passenger service office personnel. You must retain these records for review by the Department on the Department's request. If, upon such review, the Department determines that any portion of these materials must be changed in order to comply with this Part, DOT will direct you to make appropriate changes. You must incorporate and implement these changes.

(b) You must retain for three years individual employee training records demonstrating that all persons required to receive initial and refresher training have done so.

Subpart K—Complaints and Enforcement Procedures

§ 382.151 What are the requirements for providing Complaints Resolution Officials?

(a) As a carrier providing scheduled service, or a carrier providing nonscheduled service using aircraft with 19 or more passenger seats, you must designate one or more CROs.

(b) As a U.S. carrier, you must make a CRO available at each airport you serve during all times you are operating at that airport. As a foreign carrier, you must make a CRO available at each airport serving flights you operate that begin or end at a U.S. airport. You may make the CRO available in person at the airport or via telephone, at no cost to the passenger. If a telephone link to the CRO is used, TTY service or a similarly effective technology must be available so that persons with hearing impairments may readily communicate with the CRO. You must make CRO service available in the language(s) in which you make your services available to the general public.

(c) You must make passengers with a disability aware of the availability of a CRO and how to contact the CRO in the following circumstances:

(1) In any situation in which any person complains or raises a concern with your personnel about discrimination, accommodations, or services with respect to passengers with a disability, and your personnel do not immediately resolve the issue to the customer's satisfaction or provide a requested accommodation, your personnel must immediately inform the passenger of the right to contact a CRO and then contact a CRO on the passenger's behalf or provide the passenger a means (*e.g.*, a phone, a phone card plus the location and/or phone number of the CRO available at the airport). Your personnel must provide this information to the passenger in a format he or she can use.

(2) Your reservation agents, contractors, and Web sites must provide information equivalent to that required by paragraph (c)(1) of this section to passengers with a disability using those services who complain or raise a concern about a disability-related issue.

(d) Each CRO must be thoroughly familiar with the requirements of this Part and the carrier's procedures with respect to passengers with a disability. The CRO is intended to be the carrier's "expert" in compliance with the requirements of this Part.

(e) You must ensure that each of your CROs has the authority to make dispositive resolution of complaints on behalf of the carrier. This means that the CRO must have the power to overrule the decision of any other personnel, except that the CRO is not required to be given authority to countermand a decision of the pilot-in-command of an aircraft based on safety.

§ 382.153 What actions do CROs take on complaints?

When a complaint is made directly to a CRO for a carrier providing scheduled service, or a carrier providing nonscheduled service using aircraft with 19 or more passenger seats (*e.g.*, orally, by phone, TTY), the CRO must promptly take dispositive action as follows:

(a) If the complaint is made to a CRO before the action or proposed action of carrier personnel has resulted in a violation of a provision of this Part, the CRO must take, or direct other carrier personnel to take, whatever action is necessary to ensure compliance with this Part.

(b) If an alleged violation of a provision of this Part has already occurred, and the CRO agrees that a violation has occurred, the CRO must provide to the complainant a written statement setting forth a summary of the facts and what steps, if any, the carrier proposes to take in response to the violation.

(c) If the CRO determines that the carrier's action does not violate a provision of this Part, the CRO must provide to the complainant a written statement including a summary of the facts and the reasons, under this Part, for the determination.

(d) The statements required to be provided under this section must inform the complainant of his or her right to pursue DOT enforcement action under this Part. The CRO must provide the statement in person to the complainant at the airport if possible; otherwise, it must be forwarded to the complainant within 30 calendar days of the complaint.

§ 382.155 How must carriers respond to written complaints?

(a) As a carrier providing scheduled service, or a carrier providing nonscheduled service using aircraft with 19 or more passenger seats, you must respond to written complaints received by any means (*e.g.*, letter, fax, e-mail, electronic instant message) concerning matters covered by this Part.

(b) As a passenger making a written complaint, you must state whether you had contacted a CRO in the matter, provide the name of the CRO and the date of the contact, if available, and enclose any written response you received from the CRO.

(c) As a carrier, you are not required to respond to a complaint postmarked or transmitted more than 45 days after the date of the incident, except for complaints referred to you by the Department of Transportation.

(d) As a carrier, you must make a dispositive written response to a written disability complaint within 30 days of its receipt. The response must specifically admit or deny that a violation of this Part has occurred.

(1) If you admit that a violation has occurred, you must provide to the complainant a written statement setting forth a summary of the facts and the steps, if any, you will take in response to the violation.

(2) If you deny that a violation has occurred, your response must include a summary of the facts and your reasons, under this Part, for the determination.

(3) Your response must also inform the complainant of his or her right to pursue DOT enforcement action under this Part.

§ 382.157 What are carriers' obligations for recordkeeping and reporting on disability-related complaints?

(a) For the purposes of this section, a disability-related complaint means a specific written expression of dissatisfaction received from, or

submitted on behalf, of an individual with a disability concerning a difficulty associated with the person's disability, which the person experienced when using or attempting to use an air carrier's or foreign carrier's services.

(b) If you are a carrier covered by this Part, conducting passenger operations with at least one aircraft having a designed seating capacity of more than 60 passengers, this section applies to you. As a foreign carrier, you are covered by this section only with respect to disability-related complaints associated with any flight segment originating or terminating in the United States.

(c) You must categorize disability-related complaints that you receive according to the type of disability and nature of complaint. Data concerning a passenger's disability must be recorded separately in the following areas: vision impaired, hearing impaired, vision and hearing impaired, mentally impaired, communicable disease, allergies (*e.g.*, food allergies, chemical sensitivity), paraplegic, quadriplegic, other wheelchair, oxygen, stretcher, other assistive device (cane, respirator, etc.), and other disability. Data concerning the alleged discrimination or service problem related to the disability must be separately recorded in the following areas: refusal to board, refusal to board without an attendant, security issues concerning disability, aircraft not accessible, airport not accessible, advance notice dispute, seating accommodation, failure to provide adequate or timely assistance, damage to assistive device, storage and delay of assistive device, service animal problem, unsatisfactory information, and other.

(d) You must submit an annual report summarizing the disability-related complaints that you received during the prior calendar year using the form specified at the following internet address: *http://382reporting.ost.dot.gov*. You must submit this report by the last Monday in January of each year for complaints received during the prior calendar year. You must make submissions through the World Wide Web except for situations where you can demonstrate that you would suffer undue hardship if not permitted to submit the data via paper copies, disks, or e-mail, and DOT has approved an exception. All fields in the form must be completed; carriers are to enter "0" where there were no complaints in a given category. Each annual report must contain the following certification signed by your authorized representative: "I, the undersigned, do certify that this report has been prepared under my direction in accordance with the regulations in 14 CFR Part 382. I affirm that, to the best of my knowledge and belief, this is a true, correct, and complete report." Electronic signatures will be accepted.

(e) You must retain correspondence and record of action taken on all disability-related complaints for three years after receipt of the complaint or creation of the record of action taken. You must make these records available to Department of Transportation officials at their request.

(f)(1) As either carrier in a codeshare relationship, you must comply with paragraphs (c) through (e) of this section for—

(i) Disability-related complaints you receive from or on behalf of passengers with respect to difficulties encountered in connection with service you provide;

(ii) Disability-related complaints you receive from or on behalf of passengers when you are unable to reach agreement with your codeshare partner as to whether the complaint involves service you provide or service your codeshare partner provides; and

(iii) Disability-related complaints forwarded by another carrier or governmental agency with respect to difficulties encountered in connection with service you provide.

(2) As either carrier in a codeshare relationship, you must forward to your codeshare partner disability-related complaints you receive from or on behalf of passengers with respect to difficulties encountered in connection with service provided by your code-sharing partner.

(g) Each carrier, except for carriers in codeshare situations, shall comply with paragraphs (c) through (e) of this section for disability-related complaints it receives from or on behalf of passengers as well as disability-related complaints forwarded by another carrier or governmental agency with respect to difficulties encountered in connection with service it provides.

(h) Carriers that do not submit their data via the Web shall use the disability-related complaint data form specified in Appendix A to this Part when filing their annual report summarizing the disability-related complaints they received. The report shall be mailed, by the date specified in paragraph (d) of this section, to the following address: U.S. Department of Transportation, Aviation Consumer Protection Division (C–75), 1200 New Jersey Avenue, SE., West Building, Room W96–432, Washington, DC 20590.

§ 382.159 How are complaints filed with DOT?

(a) Any person believing that a carrier has violated any provision of this Part may seek assistance or file an informal complaint at the Department of Transportation no later than 6 months after the date of the incident by either:

(1) going to the web site of the Department's Aviation Consumer Protection Division at *http://airconsumer.ost.dot.gov* and selecting "Air Travel Problems and Complaints," or

(2) writing to Department of Transportation, Aviation Consumer Protection Division (C–75), 1200 New Jersey Avenue, SE., Washington, DC 20590.

(b) Any person believing that a carrier has violated any provision of this Part may also file a formal complaint under the applicable procedures of 14 CFR Part 302.

(c) You must file a formal complaint under this Part within six months of the incident on which the complaint is based in order to ensure that the Department of Transportation will investigate the matter.

BILLING CODE 4910–9X–P

APPENDIX A TO PART 382 – REPORT OF DISABILITY-RELATED COMPLAINT DATA

Name of Carrier: _____ Submission Date: _____

Contact Person: Period of Data Collection: _____

Name: _____
Telephone # (include country code if outside the U.S.): _____
Email address: _____
Mailing address: _____

Total number of complaints (i.e., incidents): _____

REPORT OF DISABILITY-RELATED COMPLAINT DATA

	Vision Impaired	Hearing Impaired	Vision & Hearing Impaired	Paraplegic	Quadriplegic	Other wheelchair	Oxygen	Stretcher	Other Disability	Other Assistive Device	Mentally Impaired	Communicable Disease	Allergies
Refusal To Board Passenger													
Refusal to Board w/o Attendant													
Security Issues Regarding Disability													
Aircraft Not Accessible													
Airport Not Accessible													
Advance Notice Dispute													
Seating Accomm-odation													
Failure to Provide Assistance													

BILLING CODE 4910-9X-C

	Vision Impaired	Hearing Impaired	Vision & Hearing Impaired	Paraplegic	Quadriplegic	Other wheelchair	Oxygen	Stretcher	Other Disability	Other Assistive Device	Mentally Impaired	Communicable Disease	Allergies
Damage to Assistive Device													
Storage and Delay of Assistive Device													
Service Animal Problem													
Unsatisfac -tory Info													
Other													

Certification Statement: I, the undersigned, do certify that this report has been prepared under my direction in accordance with the regulations in 14 CFR Part 382. I affirm that, to the best of my knowledge and belief, this is a true, correct, and complete report

Signature: _____

The valid OMB control number for this information collection is 2105-0551. The time required to complete this information is estimated to average 30 minutes per response.

Appendix B to Part 382—Cross-Reference Table

The Department is providing the following table to assist users familiar with the current Part 382 in finding material in the new, renumbered Part 382.

SECTION NUMBERS: OLD AND NEW RULES

Old section (382.x)	New section (382.x)	Subject
General provisions:		
1	1	Purpose.
3	7	Applicability.
5	3	Definitions.
7	11, 13	Non-discrimination generally.
9	15	Contractors.
Aircraft accessibility:		
21(a)(1)	61	Movable armrests.
21(a)(2)	67	Stowage space in cabin for passenger wheelchair.
21(a)(3)	63	Accessible lavatories.
21(a)(4)	65	Carrier-supplied on-board wheelchair.
21(e) and (f)	71	Aircraft accessibility: miscellaneous.
Airport accessibility:		
23	51	General.
(New)	53	Vision/hearing impairments.
Services and information:		
31	19	Refusal of transportation.
31(c)	17	Number limits.
33	25, 27	Advance notice requirements.
35	29	Safety assistants (formerly "attendants").
37	87(a)	Seat assignments.
38	81 through 87	Seating accommodations.
39(a)	91 through 105	Enplaning, deplaning and connecting assistance.
39(b)	111 through 119	Assistance in cabin.
40 and 40a	99	Mechanical lifts.
41	121 through 133	Stowage of assistive devices.
43(a)	129(b)	Timely return of assistive devices.
43(b)	131	Liability limits.
43(c)	35	Liability waivers.
45(a)	41	Access to information (general).
45(b)	115	Individual safety briefings.
45(c)	119	Access to information in airport and aircraft.
45(d)	45	Availability of copy of rule.
47(a)	43	TTY's and reservations systems.
47(b)	69	Accessibility of videos on aircraft.
49	55	Security screening.
51	21	Communicable diseases.
53	23	Medical certificates.
55(a)	117	Service animals.
55(b)	33	Sitting on blankets.
55(c)	33	Restricting movement.
55	31	Charges for accommodations.
Administrative provisions:		
61	141, 143	Training.
63(c) and (d)	145	Manuals; directed changes.
65(a)	151, 153	Complaints Resolution Officials.
65(b)	155, 157	Written complaints to carriers.
65(c) and (d)	159	Complaints to DOT.

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Federal Register

Tuesday,
May 13, 2008

Part III

Department of Education

34 CFR Part 300

Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 300

RIN 1820–AB60

[Docket ID ED–2008–OSERS–0005]

Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Secretary proposes to amend the regulations in 34 CFR part 300 governing the Assistance to States for the Education of Children with Disabilities Program and Preschool Grants for Children with Disabilities Program, as published in the **Federal Register** on August 14, 2006, and seeks public comment on the proposed amendments that we have determined are necessary for effective implementation and administration of these programs. The proposed regulations were not included in the notice of proposed rulemaking published in the **Federal Register** on June 21, 2005 to implement changes made to the Individuals with Disabilities Education Act (IDEA or Act), as amended by the Individuals with Disabilities Education Improvement Act of 2004, and, thus, have not previously been available for public comment.

DATES: We must receive your comments on or before July 28, 2008.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

Federal eRulemaking Portal: Go to *http://www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket is available on the site under "How To Use This Site."

- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these proposed regulations, address them to Tracy R. Justesen, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5107, Potomac Center Plaza, Washington, DC 20202–2600.

Privacy Note: The Department's policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing on the Federal eRulemaking Portal at *http://www.regulations.gov*. All submissions will be posted to the Federal eRulemaking Portal without change, including personal identifiers and contact information.

FOR FURTHER INFORMATION CONTACT: Tracy R. Justesen, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5107, Potomac Center Plaza, Washington, DC 20202–2600. Telephone: (202) 245–7605.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should provide to reduce the potential costs or increase potential benefits while preserving the effective and efficient administration of the programs.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You also may inspect the comments, in person, in Room 5104, Potomac Center Plaza, 550 12th Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Background

On December 3, 2004, the Individuals with Disabilities Education Improvement Act of 2004 was enacted into law as Pub L. 108–446, and made significant changes to the IDEA. On June 21, 2005, the Secretary published a notice of proposed rulemaking in the **Federal Register** (70 FR 35782) (June 21, 2005 NPRM) to amend the regulations governing the Assistance to States for the Education of Children with Disabilities Program (Part 300), the Preschool Grants for Children with Disabilities Program (Part 301), and Service Obligations under Special Education Personnel Development to Improve Services and Results for Children with Disabilities (Part 304).

Final regulations for Part 304—Special Education-Personnel Development to Improve Services and Results for Children with Disabilities were published in the **Federal Register** on June 5, 2006 (71 FR 32396), and became effective July 5, 2006.

On August 14, 2006, the Secretary published final regulations in the **Federal Register** (71 FR 46540) that addressed more than 5,500 public comments on Parts 300 and 301 that were received in response to the June 21, 2005 NPRM. With the issuance of those final regulations, Part 301 was removed and the regulations implementing the Preschool Grants for Children with Disabilities Program were included under subpart H of the final regulations for Part 300. The final regulations became effective October 13, 2006.

In developing final regulations for the Assistance to States for the Education of Children with Disabilities Program, we identified certain issues for which additional regulatory changes might be necessary. These issues, which we address in this NPRM, are: (1) Parental revocation of consent after consenting to the initial provision of services; (2) a State's or local educational agency's (LEA's) obligation to make positive efforts to employ qualified individuals

with disabilities; (3) representation of parents by non-attorneys in due process hearings; (4) State monitoring, technical assistance, and enforcement of the Part B program; and (5) the allocation of funds, under sections 611 and 619 of the Act, to LEAs that are not serving any children with disabilities. This NPRM also proposes minor modifications to the consent provisions to correct an inadvertent omission.

Significant Proposed Regulations

We discuss issues according to subject, with appropriate sections of the proposed regulations indicated.

Parental Revocation of Consent for Special Education Services (§§ 300.9 and 300.300)

We propose to amend §§ 300.9 and 300.300 (71 FR 46757, 46783–46784) to permit parents to unilaterally withdraw their children from further receipt of special education and related services by revoking their consent for the continued provision of special education and related services to their children. Under the proposed regulation, a public agency would not be able, through mediation or a due process hearing, to challenge the parent's decision or seek a ruling that special education and related services must continue to be provided to the child.

Under section 614(a)(1)(D)(i)(II) of the Act, agencies responsible for making a free appropriate public education (FAPE) available to a child with a disability under Part B of the Act must seek to obtain informed consent from the child's parent before initiating the provision of special education and related services to the child. Section 614(a)(1)(D)(ii)(II) further requires that, if a parent refuses to provide such consent, the LEA shall not require the provision of those services to the child by utilizing the due process procedures under section 615 of the Act. In these circumstances, under section 614(a)(1)(D)(ii)(III) of the Act, the LEA is not considered to be in violation of its obligation to provide FAPE and is not required to convene an individualized education program (IEP) Team meeting or develop an IEP.

The regulations in § 300.300(b) (71 FR 46784) interpret the statutory provision in section 614(a)(1)(D)(i)(II) of the Act to require consent prior to the initial provision of special education and related services; *i.e.*, before a child with a disability receives special education and related services for the first time. However, the regulations do not specifically address whether parents, by revoking their consent, can require a public agency to cease providing their child special education and related services after the parents already have consented to the initial provision of special education and related services and the child has begun receiving those services.

It has been our longstanding interpretation of the current regulations in § 300.300(b), and similar regulations that were in effect prior to October 13, 2006, that, although parents have the right to determine whether their child would initially receive special education and related services by providing or withholding parental consent for the initial provision of services, once the child receives special education and related services, parents cannot unilaterally withdraw their child from receipt of special education and related services. If parents no longer want their child to receive those services, yet the public agency believes the services are necessary to ensure that the child continues to receive FAPE, our view was that the public agency had an obligation to continue to provide the services, or if under State law the parent had the right to consent to continued services, to take the necessary steps, which could include using informal means to reach agreement with the parent, as well as requesting a due process hearing, to seek to override the parent's refusal to consent to the continuation of those services.

The issue of whether parents have the right to unilaterally withdraw their child from continued receipt of special education and related services was not included in the June 21, 2005 NPRM. The Department, however, received several comments on the consent provisions in the proposed regulations in §§ 300.9 and 300.300(b), including comments requesting that we address situations in which a child's parents want to discontinue special education and related services because they believe that their child no longer needs those services. As we indicated in the *Analysis of Comments and Changes* section of the final regulations (71 FR 46551, 46633), these commenters stated that public agencies should not be allowed to use the Part B procedural safeguards to continue special education and related services if a parent revokes consent. In response, we indicated that we would solicit comment on this suggested change in a subsequent notice of proposed rulemaking.

Therefore, we prcpose to amend the regulations to provide that parents may unilaterally withdraw their child from continued receipt of special education and related services and that public agencies may not take steps to override a parent's refusal to consent to further services. Just as, under section 614(a)(1)(D)(ii)(II), parents have the authority to consent to the initial provision of special education and related services, we believe that parents also should have the authority to revoke that consent, thereby ending the provision of special education and related services to their child. This change is also consistent with the IDEA's emphasis on the role of parents in protecting their child's rights and the Department's goal of enhancing parent involvement and choice in their child's education.

These proposed regulations would not require public agencies, once they have obtained parental consent for the initial provision of special education and related services, to obtain parental consent to provide special education and related services at any subsequent time, such as for the provision of services under a subsequent IEP. We believe that including this type of additional consent requirement would be unduly burdensome for public agencies, and an unwarranted intrusion on State and local control of education. States, however, have the discretion to establish additional consent requirements, consistent with the provisions in § 300.300(d) (71 FR 46784).

The proposed amendment to § 300.300(b)(3) would combine the provisions in current § 300.300(b)(3) and (b)(4) (71 FR 46784) relating to parental consent for the provision of initial services. Section 300.300(b)(3) currently provides that a public agency may not use the procedures in subpart E of the regulations (Procedural Safeguards and Due Process Procedures) to obtain agreement or a ruling that services may be provided if the parent of a child fails to respond or refuses to consent to the initial provision of services. Section 300.300(b)(4) currently provides that a public agency will not be considered in violation of its obligation to make FAPE available and is not required to convene an IEP Team meeting or develop an IEP if a parent refuses or fails to consent to the initial provision of services. This proposed change would simplify the regulation by eliminating the slight differences in the introductory material in the current provisions and would clarify that the provision would apply to situations in which a parent refuses or fails to consent to the initial provision of special education and related services.

We propose to add a new § 300.300(b)(4) to provide that if, at any time subsequent to the initial provision of special education and related

services, the parent of a child revokes consent for the provision of special education and related services, a public agency—(a) may not continue to provide special education and related services to the child; (b) may not use the procedures in subpart E of the regulations (including the mediation procedures under § 300.506 or the due process procedures under §§ 300.507 through 300.516) to obtain agreement or a ruling that services may be provided; (c) will not be considered in violation of its obligation to make FAPE available to the child for failure to provide the child with further special education and related services; and (d) is not required to convene an IEP Team meeting or develop an IEP, under §§ 300.320 through 300.324. Therefore, this proposed regulation would—(a) clarify that parents have the right to withdraw their child from receipt of special education and related services without being subjected to mediation or a due process hearing requested by the public agency; and (b) protect the public agency from any subsequent action by the parents based on the public agency's termination of special education services following the parents' revocation of consent. Of course, if a parent subsequently provides consent for services, a public agency would again have an obligation to make FAPE available to the child, including developing and implementing an IEP, as appropriate. We also note that under current § 300.534(c)(1)(ii) a public agency is not deemed to have knowledge that a child is a child with a disability for purposes of disciplinary actions if the parent of the child has refused services under the IDEA; for example, if a parent revokes consent for the provision of special education services and the child subsequently faces a disciplinary action, the school district would be able to discipline the child in the same manner as a nondisabled child. This provision would apply to situations in which a parent has revoked consent for the receipt of special education and related services.

We also propose to revise § 300.300(d)(2) and (d)(3) (71 FR 46784) to correct an inadvertent omission. Section 300.300(d)(2) (71 FR 46784) currently provides that States may require parental consent for other services and activities under Part 300 in addition to the consent requirements in § 300.300(a) (71 FR 46783), which addresses parental consent for an initial evaluation. Section 300.300(d)(3) (71 FR 46784) currently provides that a public agency may not use a parent's refusal to consent to one service or activity under § 300.300(a) or (d)(2) to deny the parent or child other services and activities. To be consistent with comparable provisions in effect before the final regulations published in 2006, § 300.300(d)(2) should have included a reference to the parental consent provisions in § 300.300(a), (b), and (c), rather than just § 300.300(a), and § 300.300(d)(3) should have referred to § 300.300(a), (b), (c), or (d)(2), rather than just § 300.300(a) or (d)(2). Therefore, we propose to revise § 300.300(d)(2) to refer to paragraphs (a), (b), and (c) of § 300.300 rather than just paragraph (a). We propose to revise § 300.300(d)(3) to refer to paragraphs (a), (b), (c), or (d)(2) of § 300.300, rather than just paragraphs (a) or (d)(2).

We would add a new § 300.9(c)(3) to clarify that, if a parent revokes consent for the child's receipt of special education and related services after the child is initially provided special education and related services, the public agency would not be required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the parent's revocation of consent. We believe that this change is necessary to clarify that the child's education records would not be required to be changed for the period prior to the parent's revocation of consent for special education and related services. Schools need the ability to keep accurate records of a child's school experience, including whether the child received special education and related services.

States' Sovereign Immunity and Positive Efforts To Employ and Advance Qualified Individuals With Disabilities (§ 300.177)

We propose to amend § 300.177, regarding States' sovereign immunity, by adding a new provision relating to States' and LEAs' obligations to make positive efforts to employ and advance qualified individuals with disabilities. Specifically, we are proposing to redesignate current § 300.177(a) through (c), regarding States' sovereign immunity, as proposed § 300.177(a)(1) through (a)(3), and add a new paragraph (b) to provide that any recipient of assistance under Part B of the Act must make positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted under Part B of the Act, such as special education programs of an SEA or LEA or the State-wide assessment program of an SEA that is using IDEA funds to develop assessments for children with disabilities. This paragraph would reflect the provisions in section 606 of the Act, which provides that the Secretary will ensure that each grant recipient under the IDEA makes positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted under the IDEA.

Representation by Non-Attorneys in Due Process Hearings (§ 300.512)

Section 615(h)(1) of the Act provides that any party to a hearing conducted under Part B of the IDEA has the right to be accompanied and advised by counsel, and by individuals with special knowledge or training with respect to the problems of children with disabilities. This statutory provision is reflected in § 300.512(a)(1) (71 FR 46795).

Both the Act and its implementing regulations are silent on the issue of whether individuals who are not attorneys, but have special knowledge or expertise regarding the problems of children with disabilities, may represent parties at IDEA due process hearings. However, as indicated in an April 8, 1981 letter from Theodore Sky, Acting General Counsel of the Department of Education, to the Honorable Frank B. Brouillet, the Department previously interpreted section 615(h) of the Act and implementing regulations to mean that attorneys and lay advocates may perform the same functions at due process hearings.

One commenter, in responding to the June 21, 2005 NPRM, requested that the Department amend the regulations to indicate that a parent has the right to be represented by a non-attorney at an IDEA due process hearing. The Department believes that some clarification is warranted because the IDEA is silent regarding the representational role of non-attorneys at IDEA due process hearings.

In the absence of statutory or regulatory language, at least one court concluded that State laws regulating the practice of law and prohibiting representation by lay advocates in due process hearings do not conflict with the IDEA. *In re Arons*, 756 A.2d 867 (Del. 2000), *cert. denied sub nom, Arons v. Office of Disciplinary Counsel*, 532 U.S. 1065 (2001). Given that the language of the Act and regulations is not clear, we are persuaded now that this position best reflects an appropriate regard for the principle of Federal-State comity. We believe that the regulations should respect the interests that States have in regulating the practice of law so as to protect the public and ensure the appropriate administration of justice.

Therefore, we propose to change the Department's earlier interpretation of section 615(h) of the Act and the regulations regarding representation of parents by non-attorneys in due process hearings, and amend the regulation in § 300.512(a)(1) (71 FR 46795) accordingly.

Specifically, § 300.512(a)(1) (71 FR 46795), concerning a parent's right to be accompanied and advised by counsel and by other individuals with special knowledge or training with respect to the problems of children with disabilities, would be amended to specify that a parent's right to be represented by non-attorneys at due process hearings is determined by State law. We believe alerting parents that State laws affect whether they can be represented in a due process hearing by a non-attorney advocate should reduce future litigation of this issue. The proposed change also is consistent with the Department's general position to provide flexibility to States where the IDEA is silent or where State law does not conflict with the Act.

Because this proposed change would directly reverse a prior interpretation that the Department authoritatively adopted and consistently followed, and the June 21, 2005 NPRM did not indicate that we were considering any change, we are now proposing in this NPRM, that a parent's right to be represented by non-attorneys at a due process hearing must be determined under State law.

Note that this change would not prevent parents from representing themselves in due process hearings or during court proceedings under the IDEA. In *Winkelman* v. *Parma City School District*, 550 U.S. _____, 127 S. Ct. 1994 (2007), the Supreme Court held that parents can prosecute IDEA claims on their own behalf without being represented by an attorney. The proposed regulatory change would not affect this holding.

State Monitoring, Technical Assistance, and Enforcement (§§ 300.600, 300.602, and 300.606)

1. State Determinations About LEA Performance and State Enforcement

Section 616(a)(1)(C) of the Act requires States to monitor the implementation of Part B of the Act by LEAs, and to enforce Part B of the Act in accordance with the monitoring priorities and enforcement mechanisms set forth in section 616(a)(3) and (e) of the Act. Section 300.600(a) (71 FR 46800) implements section 616(a)(1) of the Act, and requires States to monitor implementation of Part B of the Act by LEAs, enforce Part B of the Act in accordance with the statutory enforcement mechanisms that are appropriate for States to apply to LEAs, and annually report on performance under Part B of the Act.

Section 616(e) of the Act makes clear that the Secretary's enforcement actions are based, in large part, on annual determinations about a State's performance, as provided in section 616(d) of the Act. Based on the language in section 616(a)(1)(C)(ii) of the Act, which requires States to enforce Part B of the Act consistent with section 616(e), States also have an obligation to make annual determinations about each LEA's performance using the same categories, under section 616(d) of the Act, that the Secretary applies to States. We believe that § 300.600(a) (71 FR 46800), however, should address more clearly States' responsibilities to make annual determinations about each LEA's performance. Therefore, we propose to amend § 300.600(a) (71 FR 46800) to clarify that a State must annually review and make determinations about the performance of each LEA in the State, consistent with the Secretary's responsibility, under section 616(d) of the Act, to annually review and make determinations concerning the performance of each State. Specifically, we propose adding language to § 300.600(a) to clarify that States must use the categories listed in § 300.603(b)(1) (71 FR 46801) to make annual determinations about the performance of each LEA.

We also believe that it would be useful to clarify the specific enforcement mechanisms that a State must use, consistent with section 616(a)(1)(C)(ii) and (e) of the Act. The current regulations in § 300.600(a) use regulatory citations to refer to the enforcement mechanisms in § 300.604 that States must use. We propose to revise § 300.600(a) (71 FR 46800) to identify specifically the enforcement mechanisms associated with each relevant regulatory citation. Therefore, we propose to reorganize § 300.600(a) for clarity by indicating that the State must: (a) Under proposed paragraph (a)(1), monitor the implementation of Part B of the IDEA; (b) under proposed paragraph (a)(2), make annual determinations about the performance of each LEA using the categories in § 300.603(b)(1); (c) under proposed paragraph (a)(3), enforce the requirements of the IDEA, consistent with § 300.604, by using applicable enforcement mechanisms in § 300.604(a)(1) (technical assistance), (a)(3) (conditions on funding of an LEA's grant), (b)(2)(i) (corrective action plan or improvement plan), (b)(2)(v) (withholding funds, in whole or in part, by the SEA), and (c)(2) (withholding funds, in whole or in part, by the SEA); and (d) under proposed paragraph (a)(4), report annually to the public on the performance of the State and each LEA under Part B of the Act, as provided in § 300.602(b)(1)(A) and (b)(2).

Proposed § 300.600(e) would clarify that a State, in exercising its monitoring responsibilities under § 300.600(d), must ensure that when it identifies noncompliance with the requirements of Part B of the Act by its LEAs, the noncompliance is corrected as soon as possible, and in no case, later than one year after the State's identification.

We propose to add § 300.600(e) because, based on our monitoring activities, we have determined that correction of noncompliance does not always occur in a timely manner. Noncompliance must be corrected in a timely manner to ensure that children with disabilities receive appropriate services and to ensure proper and effective implementation of the requirements of Part B of the IDEA. Throughout our 30 years of monitoring experience we have observed that, in most cases, when a State makes a good faith effort, the needed corrective actions can be accomplished and their effectiveness verified within one year. It is important to note that timely correction of noncompliance is critical to ensuring that children with disabilities receive a free appropriate public education. Allowing noncompliance to continue can negatively impact the education of great numbers of children with disabilities.

Correction of noncompliance means that a State requires a public agency to revise any noncompliant policies, procedures and practices, and verifies, through a follow-up review of documentation or interviews, or both, that the noncompliant policies, procedures, and practices are corrected. We believe that States must ensure correction as soon as possible and that one year is a reasonable timeframe for an LEA to correct noncompliant policies, procedures, and practices and for the State to verify that the LEA is complying with the requirements under the IDEA. For example, if an SEA determines that an LEA is not in compliance with the requirement to make placement decisions consistent with the least restrictive environment requirements of the Act, we would expect the SEA to require corrective actions and verify correction by determining that the LEA corrected any noncompliant policies, procedures, or practices, and that placement teams,

subsequent to those changes, were making placement decisions consistent with the requirements of the Act.

2. Timeframe for Public Reporting About LEA Performance

Section 300.602(b)(1)(i)(A) (71 FR 46801) implements section 616(b)(2)(C)(ii)(I) of the Act and requires a State to annually report to the public on the performance of each LEA in the State on the targets in the State's performance plan. The Act is silent, however, on when a State must provide this report to the public and the June 21, 2005 NPRM did not address this issue.

Following the publication of the final regulations on August 14, 2006 (71 FR 46540), the Department received many informal inquiries from SEA personnel and other interested parties regarding the timeframe for reporting information to the public about LEAs' performance relative to its State's targets. To clarify States' obligations, we are proposing in § 300.602(b)(2) to require each State to report to the public on the performance of each LEA located in the State on the targets in the State's performance plan no later than 60 days following a State's submission of its annual performance report (APR) to the Secretary under § 300.602(b). We believe this timeframe is reasonable, and would not be burdensome to States. This timeframe should ensure that each State provides timely information to the public.

3. Additional Information To Be Made Available to the Public

Section 300.602(b)(1)(i)(B) (71 FR 46801) implements section 616(b)(2)(C)(ii)(I) of the Act and requires each State to make its performance plan available through public means, including by posting it on the State's Web site and distributing it to the media and through public agencies. The Department received inquiries regarding whether other materials, such as a State's APRs to the Secretary and the annual report on the performance of each LEA on the targets in the State's performance plan, must be made available through the same public means, so that the public has easy access to State and LEA performance information. We believe that public accountability is served by requiring States to make these documents available to the public by the same means as their performance plans, and this requirement should not impose significant burden on States, because the documents are already required and could easily be made available to the public.

Public reporting of each LEA's performance on the targets in the State's performance plan is currently required by § 300.602(b)(1)(i)(A) (71 FR 46801); however, the means by which such public reporting may be completed are not specified. Additionally, a State's APRs are public documents that would otherwise be available to the public on request under State freedom of information laws. Therefore, we propose to amend § 300.602(b)(1)(i)(B) to require States to make each of the following documents available through public means (including, posting on the SEA's Web site, distributing to the media, and distributing through public agencies): (a) The State's performance plan, under § 300.601(a); (b) the State's APRs, under § 300.602(b)(2); and (c) the State's annual reports on the performance of each LEA located in the State, under § 300.602(b)(1)(i)(A). Additionally, in the interest of transparency and public accountability, we strongly encourage States to report to the public on any enforcement actions taken under § 300.604.

4. Notifying the Public of Federal Enforcement Actions

Section 300.606 (71 FR 46802) implements section 616(e)(7) of the Act, which requires any State that has received notice of a determination under section 616(d)(2) of the Act to take steps to bring the pendency of an enforcement action, under section 616(e) of the Act, to the attention of the public within that State. However, § 300.606 is unclear about when States are required to notify the public of enforcement actions. There is confusion in States because of this lack of clarity. Some States may make public the Department's determinations, enforcement actions, both determinations and enforcement actions, or neither determinations nor enforcement actions. This clarification would eliminate the confusion by delineating the public notification requirements. Therefore, we propose to clarify the circumstances under which public notice is required.

Specifically, we propose to amend § 300.606 to require States to provide public notice of any enforcement action taken by the Secretary pursuant to § 300.604. This change would clarify that States do not have to provide public notice of the Secretary's annual determinations, but must provide public notice when the Secretary takes an enforcement action as a result of those determinations. We believe that this clarification will minimize the States' reporting burden while providing the public with appropriate notice of the actions taken by the Secretary as a result of the determinations required by section 616(d) of the Act and § 300.603. Additionally, we propose to amend § 300.606 to specify that each State's public notice of enforcement actions must include, posting the notice on the State's Web site and distributing the notice to the media and through public agencies.

Allocation of Funds Under Section 611 of the IDEA to LEAs That Are Not Serving Any Children With Disabilities (§ 300.705)

1. Subgrants to LEAs

We propose to add language to § 300.705(a) (71 FR 46808), regarding subgrants to LEAs, to clarify that States are required to make a subgrant under section 611(f) of the Act to eligible LEAs, including public charter schools that operate as LEAs, even if an LEA is not serving any children with disabilities. This requirement would take effect with funds that become available on the first July 1 following the effective date of the final regulations.

The Department's Office of Inspector General (OIG) indicated, in an October 26, 2004 final audit report (2004 OIG Report), that the regulations and guidance implementing Part B of the Act in effect at that time did not address the application of the funding formula under section 611 of the Act for a charter school established as an LEA that does not have a child with a disability enrolled during the school's first year of operation. *See http://www.ed.gov/about/offices/list/oig/auditreports/a09e0014.pdf.* The OIG recommended that we consider providing guidance on this issue. Given the OIG's recommendation and because the Act and its implementing regulations are silent on this issue, we believe that it is necessary to regulate to ensure that all States treat LEAs, including public charter schools that operate as LEAs, in the same manner when making a subgrant under section 611(f) of the Act to LEAs, including those LEAs that are not serving any children with disabilities.

Under section 611(f)(1) of the Act, each State must provide subgrants to LEAs, including public charter schools that operate as LEAs in the State, that have established their eligibility under section 613 of the Act for use in accordance with Part B of the Act. Under section 613(a) of the Act, an LEA is eligible for assistance under Part B of the Act for a fiscal year if the LEA submits a plan that provides assurances to the SEA that the LEA meets each of the conditions in section 613(a) of the Act. There is no requirement in section

613(a) of the Act that an LEA must be serving children with disabilities for an LEA to be eligible for a subgrant. We believe that requiring States to make a subgrant to all eligible LEAs, including public charter schools that operate as LEAs, would ensure that LEAs have Part B funds available if they are needed to conduct child find activities or to serve children with disabilities who subsequently enroll or are identified during the year. The payment made to an LEA, including a public charter school that operates as an LEA, that is not serving any children with disabilities, would be based on enrollment and poverty data and any base payment to which the LEA is entitled, in accordance with the statutory formula in section 611(f)(2) of the Act.

Under the current regulations, a previously-existing LEA not serving any children with disabilities, is entitled to the base payment it received in the previous fiscal year. A newly-created LEA, including a new public charter school LEA, is entitled to a base payment that is calculated by dividing the base allocation of LEAs that would have been responsible for serving children with disabilities now being served by the new LEA, among the new LEA and affected LEAs, based on the relative numbers of children with disabilities currently provided special education by each of the LEAs. *See* § 300.705(b)(2)(i) (71 FR 46808–46809). For a newly-created LEA that is not a public charter school LEA, a State has some flexibility in determining the number of children with disabilities currently provided special education by the newly-created LEA. For example, a State may choose to determine the base payment of a newly-created LEA based on the location of children with disabilities who were included in a previous count or a new count of children served that year. If the SEA determines that the newly-created LEA is not serving any children with disabilities, based on its count, the newly-created LEA would be entitled to a base payment of zero in its first year of operation.

In determining the base payment to which a new public charter school LEA would be entitled, States must comply with the requirements in section 5206 of the ESEA and its implementing regulations in subpart H of 34 CFR part 76 of the Education Department General Administrative Regulations (EDGAR). These requirements apply to a public charter school LEA that opens or significantly expands its enrollment. Specifically under 34 CFR 76.791(b), when making a subgrant to a new public charter school LEA, a State cannot rely on enrollment or eligibility data from a prior year when calculating the subgrant of a public charter school LEA opening for the first time. A State may, but is not required to, allocate funds to, or reserve funds for, an eligible new public charter school LEA based on reasonable estimates of projected enrollment at the public charter school LEA, in accordance with 34 CFR 76.789(b)(2). Once the public charter school LEA is open, the public charter school LEA must provide actual enrollment and eligibility data to the SEA at a time the SEA may reasonably require in accordance with 34 CFR 76.788(b)(2)(i). A State is not required to provide funds to a new public charter school LEA until the public charter school LEA provides the SEA with the required actual enrollment and eligibility data in accordance with 34 CFR 76.788(b)(2)(ii). If the SEA allocates funds based on estimated enrollment or eligibility data, the SEA must make appropriate adjustments to the amount of funds allocated to a new public charter school LEA, as well as to other LEAs, based on actual enrollment or eligibility data for the public charter school LEA, on or after the date the public charter school LEA first opens, in accordance with 34 CFR 76.796. If, on the date the SEA reasonably requires the new public charter school LEA to provide actual enrollment and eligibility data, which must be on or after the date the public charter school LEA opens, the new public charter school LEA is not serving any children with disabilities, its base payment in its first year of operation would be zero.

Because we believe it would be burdensome for States to comply with the requirement to distribute funds to eligible LEAs not currently serving children with disabilities after subgrants have been made for a fiscal year, we propose to add language to § 300.705(a) to clarify that this requirement would take effect with funds that become available on the first July 1 following the effective date of the final regulations.

2. Base Payment Adjustments

The 2004 OIG Report also recommended that the Department consider issuing guidance on whether a public charter school LEA that has no children with disabilities enrolled in its first year of operation is entitled to a base payment adjustment in subsequent years if it enrolls children with disabilities. We agree that further clarification is necessary and propose to add a new paragraph (iv) to § 300.705(b)(2) (71 FR 46808–09), regarding base payment adjustments. The amended regulations would require that an LEA that received a base payment of zero in its first year of operation because it was serving no children with disabilities, and that subsequently provides special education and related services to children with disabilities, must receive a base payment adjustment for the fiscal year after the first annual child count in which the LEA reports that it is serving any children with disabilities. Under this provision, the State must divide the base allocation determined under § 300.705(b)(1) for the LEAs that would have been responsible for serving children with disabilities now being served by the LEA, among the LEA and affected LEAs, based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21, currently provided special education by each of the LEAs.

Under this proposed change, an LEA, including a public charter school that operates as an LEA, that received a base payment of zero in its first year of operation, would be entitled to a base payment adjustment for the first fiscal year after the first annual child count in which the LEA reports that it is serving any children with disabilities. This adjusted base payment would apply to all subsequent years, unless the LEA's base payment is adjusted due to one of the other circumstances described in § 300.705(b)(2) (71 FR 46808–46809). Because the current regulations do not require a base payment adjustment under these circumstances, and we believe that it would be burdensome for States to comply with this requirement after subgrants have been made for a fiscal year, we propose to add language to § 300.705(b)(2)(iv), to clarify that this requirement would take effect with funds that become available on the first July 1 following the effective date of the final regulations.

3. Reallocation of Funds

Section 611(f)(3) of the Act and § 300.705(c) (71 FR 46809) authorize an SEA to reallocate Part B funds not needed by an LEA, if the SEA determines that an LEA is adequately providing FAPE to all children with disabilities residing in the area served by that agency, with State and local funds. Under these statutory and regulatory provisions, States may, but are not required to, reallocate these Part B funds. The regulations in current § 300.705(c) do not address reallocation of funds from an LEA that does not use its funds because it is not serving any children with disabilities.

We propose to amend § 300.705(c) (71 FR 46809) to indicate that, after an SEA distributes funds under Part B to an eligible LEA that is not serving any children with disabilities, as provided in proposed § 300.705(a), the SEA must determine, within a reasonable period of time prior to the end of the carryover period specified in 34 CFR 76.709, whether the LEA has obligated the funds. The SEA may, if it chooses, reallocate any of those funds not obligated by the LEA to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas served by those other LEAs. The SEA may also retain those funds for use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to § 300.704. Given the fact that small amounts of funds distributed late in their period of availability to LEAs would be prone to lapse, we are clarifying that States may use these funds at the State level, to the extent the State has not set aside the maximum amount for State-level activities, in order to increase the chance these funds would be well spent. Whether funds are reallocated or retained for use at the State-level under § 300.705(c), they must be obligated prior to the close of the period of availability for those funds. In sum, these proposed regulations would help to ensure that the funds under section 611 of the Act do not lapse, by making it clear that SEAs may redistribute funds that have not been obligated by LEAs that currently are not serving any children with disabilities or retain these funds for State-level activities.

Allocation of Funds Under Section 619 of IDEA to LEAs That Are Not Serving Any Children With Disabilities (§ 300.815)

1. Subgrants to LEAs

We propose to add language to § 300.815 (71 FR 46813), regarding subgrants to LEAs, to clarify that States are required to make a subgrant under section 619(g) of the Act to eligible LEAs, including public charter schools that operate as LEAs, that are responsible for providing education to children aged three through five years (preschool), even if an LEA is not serving any preschool children with disabilities. This requirement would take effect with funds that become available on the first July 1 following the effective date of the final regulations.

The Department's OIG indicated, in the 2004 OIG Report, that the regulations and guidance implementing Part B of the Act in effect at that time did not address the application of the funding formula under section 619 of the Act for a public charter school established as an LEA that does not have a preschool child with a disability enrolled during the school's first year of operation. *See http://www.ed.gov/about/offices/list/oig/auditreports/a09e0014.pdf.* The OIG recommended that we consider providing guidance on this issue. Given the OIG's recommendation and because the Act and its implementing regulations are silent on this issue, we believe that it is necessary to regulate to ensure that all States treat LEAs, including public charter schools that operate as LEAs, in the same manner when making a subgrant under section 619(g) of the Act to LEAs, including those LEAs that are not serving any preschool children with disabilities.

Under section 619(g)(1) of the Act, each State must provide subgrants to LEAs, including public charter schools that operate as LEAs in the State, that have established their eligibility under section 613 of the Act. Under section 613(a) of the Act, an LEA is eligible for assistance under Part B of the Act for a fiscal year if the LEA submits a plan that provides assurances to the SEA that the LEA meets each of the conditions in section 613(a) of the Act. There is no requirement in section 613(a) of the Act that an LEA must be serving preschool children with disabilities in order for an LEA to be eligible for a subgrant. We believe that requiring States to make a subgrant to all eligible LEAs responsible for providing education to preschool children, including public charter schools that operate as LEAs, would ensure that LEAs have Part B funds available if they are needed to conduct child find activities or to serve preschool children with disabilities who subsequently enroll or are identified during the year. The payment made to an LEA, including a public charter school that operates as an LEA, that is not serving any preschool children with disabilities, would be based on enrollment and poverty data and any base payment to which the LEA is entitled, in accordance with the statutory formula in section 619(g) of the Act.

Under the current regulations, a previously-existing LEA not serving any preschool children with disabilities, is entitled to the base payment it received in the previous fiscal year. A newly-created LEA, including a new public charter school LEA, is entitled to a base payment that is calculated by dividing the base allocation of LEAs that would have been responsible for serving preschool children with disabilities now being served by the new LEA, among the new LEA and affected LEAs, based on the relative numbers of preschool children with disabilities currently provided special education by each of the LEAs. *See* § 300.816(b)(1) (71 FR 46813). For a newly-created LEA that is not a public charter school LEA, a State has some flexibility in determining the number of preschool children with disabilities currently provided special education by the newly-created LEA. For example, a State may choose to determine the base payment of a newly-created LEA based on the location of preschool children with disabilities who were included in a previous count or a new count of preschool children served that year. If the SEA determines that the newly-created LEA is not serving any preschool children with disabilities, based on its count, the newly-created LEA would be entitled to a base payment of zero in its first year of operation.

In determining the base payment to which a new public charter school LEA would be entitled, States must comply with the requirements in section 5206 of the ESEA and its implementing regulations in subpart H of 34 CFR part 76 of EDGAR. These requirements apply to a public charter school LEA that opens or significantly expands its enrollment. Specifically, under 34 CFR 76.791(b), when making a subgrant to a new public charter school LEA, a State cannot rely on enrollment or eligibility data from a prior year when calculating the subgrant of a public charter school LEA opening for the first time. A State may, but is not required to, allocate funds to, or reserve funds for, an eligible new public charter school LEA based on reasonable estimates of projected enrollment at the public charter school LEA, in accordance with 34 CFR 76.789(b)(2). Once the public charter school LEA has opened, the public charter school LEA must provide actual enrollment and eligibility data to the SEA at a time the SEA may reasonably require in accordance with 34 CFR 76.788(b)(2)(i). A State is not required to provide funds to a new public charter school LEA until the public charter school LEA provides the SEA with the required actual enrollment and eligibility data in accordance with 34 CFR 76.788(b)(2)(ii). If the SEA allocates funds based on estimated enrollment or eligibility data, the SEA must make appropriate adjustments to the amount of funds allocated to a new public

charter school LEA, as well as to other LEAs, based on actual enrollment or eligibility data for the public charter school LEA, on or after the date the public charter school LEA first opens, in accordance with 34 CFR 76.796. If, on the date the SEA reasonably requires the new public charter school LEA to provide actual enrollment and eligibility data, which must be on or after the date the public charter school LEA opens, the new public charter school LEA is not serving any preschool children with disabilities, its base payment in its first year of operation would be zero.

Because we believe it would be burdensome for States to comply with the requirement to distribute funds to eligible LEAs not currently serving preschool children with disabilities, after subgrants have been made for a fiscal year, we propose to add language to § 300.815 to clarify that this requirement would take effect with funds that become available on the first July 1 following the effective date of the final regulations.

2. Base Payment Adjustments

The 2004 OIG Report also recommended that the Department consider issuing guidance on whether a public charter school LEA that has no preschool children with disabilities enrolled in its first year of operation is entitled to a base payment adjustment in subsequent years if it enrolls preschool children with disabilities. We agree that further clarification is necessary and propose to add a new paragraph (4) to § 300.816(b) (71 FR 46813), regarding base payment adjustments. The amended regulations would require that an LEA that is responsible for providing education to preschool children, but that received a base payment of zero in its first year of operation because it was serving no preschool children with disabilities, and that subsequently provides special education and related services to preschool children with disabilities, must receive a base payment adjustment for the fiscal year after the first annual child count in which the LEA reports that it is serving any preschool children with disabilities. Under this provision, the State must divide the base allocation determined under § 300.816(a) for the LEAs that would have been responsible for serving preschool children with disabilities now being served by the LEA, among the LEA and affected LEAs, based on the relative numbers of preschool children with disabilities currently provided special education by each of the LEAs.

Under this proposed change, an LEA, including a public charter school that operates as an LEA, that received a base payment of zero in its first year of operation, would be entitled to a base payment adjustment for the first fiscal year after the first annual child count in which the LEA reports that it is serving any preschool children with disabilities. This adjusted base payment would apply to all subsequent years, unless the LEA's base payment is adjusted due to one of the other circumstances described in § 309.816(b) (71 FR 46813). Because the current regulations do not require a base payment adjustment under these circumstances, and we believe it would be burdensome for States to comply with this requirement after subgrants have been made for a fiscal year, we propose to add language to § 300.816(b)(4), to clarify that this requirement would take effect with funds that become available on the first July 1 following the effective date of the final regulations.

3. Reallocation of Funds

Section 619(g)(2) of the Act and § 300.817 (71 FR 46813) authorize an SEA to reallocate section 619 funds not needed by an LEA, if the SEA determines that an LEA is adequately providing FAPE to all preschool children with disabilities residing in the area served by that agency, with State and local funds. Under these statutory and regulatory provisions, States may, but are not required to, reallocate these section 619 funds. The regulations in current § 300.817 do not address reallocation of funds from an LEA that does not use its funds because it is not serving any preschool children with disabilities.

We propose to amend § 300.817 (71 FR 46813) to indicate that, after an SEA distributes funds under section 619 to an eligible LEA that is not serving any preschool children with disabilities, as provided in proposed § 300.815, the SEA must determine, within a reasonable period of time prior to the end of the carryover period specified in 34 CFR 76.709, whether the LEA has obligated the funds. The SEA may, if it chooses, reallocate any of those funds not obligated by the LEA to other LEAs in the State that are not adequately providing special education and related services to all preschool children with disabilities residing in the areas served by those other LEAs. The SEA may also retain those funds for use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to § 300.812. Given the fact that small amounts of funds distributed late in their period of availability to LEAs would be prone to lapse, we are clarifying that States may use these funds at the State level, to the extent the State has not set aside the maximum amount for State-level activities, in order to increase the chance these funds would be well spent. Whether funds are reallocated or retained for use at the State level under § 300.817, they must be obligated prior to the close of the period of availability for those funds. In sum, these proposed regulations would help to ensure that the funds under section 619 of the Act do not lapse, by making it clear that SEAs may redistribute funds not obligated by LEAs that currently are not serving any children with disabilities aged three through five or retain these funds for State-level activities.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive Order and review by OMB. Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an "economically significant" rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. The Secretary has determined that this regulatory action is significant under section 3(f)(4) of the Executive Order.

Under Executive Order 12866, we have assessed the potential costs and benefits of these proposed regulations. In conducting this analysis, the Department examined the extent to which the amended regulations would add to, or reduce, the costs for public agencies and others in relation to the costs of implementing the program regulations. Based on this analysis, the Secretary has concluded that the amendments to the regulations would not impose significant net costs in any one year. The amendments to the regulations would primarily affect SEAs and LEAs responsible for carrying out

the requirements of Part B of the Act as a condition of receiving Federal financial assistance under the Act. For example, the amendments to the regulations add language to further explain the intent of the Act, clarify the intent of existing regulations, and add timeframes for implementation. The amendments do not add provisions to the regulations that would increase the fiscal responsibilities of, or burdens on, SEAs or LEAs in implementing the proposed amendments. In fact, the provisions related to parental revocation of consent may reduce burden on, and costs to, LEAs by relieving them of the obligation to override a parent's refusal to consent subsequent to the initiation of special education services through informal means or through due process procedures. The clarification relating to non-attorney representation at due process hearings can be expected to reduce costs associated with disputes regarding non-attorney representation.

2. Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a number heading; for example, § 300.172, regarding access to instructional materials.)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand see the instructions in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these amendments to the final regulations governing the Assistance to States for the Education of Children with Disabilities and the Preschool Grants for Children with Disabilities programs, would not have a significant economic effect on a substantial number of small entities. The small entities that would be affected by these proposed regulations regarding allocation of funds under sections 611 and 619 of the IDEA to LEAs, that are not serving any children with disabilities, are small LEAs, including charter schools that operate as LEAs. These small entities would benefit from the proposed changes that clarify their eligibility for funding in cases where they are not serving any children with disabilities.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), we have assessed the potential information collections in these proposed regulations that would be subject to review by the OMB. In conducting this analysis, the Department examined the extent to which the amended regulations would add information collection requirements for public agencies. Based on this analysis, the Secretary has concluded that these amendments to the Part B IDEA regulations would not impose additional information collection requirements. The proposed changes to § 300.602(b)(1)(i)(B) (71 FR 46801) would--(1) Add the State's APR to the list of documents that a State must make available through public means; and (2) specify that the SEA make the State's performance plan, the State's APR, and the State's annual reports on the performance of each LEA in the State available to the public by posting the documents on the State's Web site and distributing the documents to the media and through public agencies. Each State already is required to report to the Secretary on the annual performance of the State as a whole in its APR. Because the APR is a completed document, the additional time for reporting to the public would be minimal and is within the established reporting and recordkeeping estimate of current information collection 1820–0624 (71 FR 46751–46752). Additionally, States already are required by current § 300.602(a) and (b)(1)(i)(A) to analyze the performance of each LEA on the State's targets, and to report annually to the public on the performance of each LEA on the targets. The proposed regulation, by requiring that these documents be posted on the State's Web site and be distributed to the media and through public agencies, merely adds specificity about the means of public reporting. The additional time for reporting to the public through these means would be minimal and is within the established reporting and recordkeeping estimate of current information collection 1820–0624 (71 FR 46751–46752).

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79 of EDGAR. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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List of Subjects in 34 CFR Part 300

Administrative practice and procedure, Education of individuals with disabilities, Elementary and secondary education, Equal educational opportunity, Grant programs—education, Privacy, Charter schools, Reporting and recordkeeping requirements.

Dated: May 7, 2008.

Margaret Spellings,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend title 34 of the Code of Federal Regulations as follows:

PART 300—ASSISTANCE TO STATES FOR THE EDUCATION OF CHILDREN WITH DISABILITIES

1. The authority citation for part 300 continues to read as follows:

Authority: 20 U.S.C. 1221e–3, 1406, 1411–1419, unless otherwise noted.

* * * * *

2. Section 300.9 is amended by adding a new paragraph (c)(3).

The addition reads as follows:

§ 300.9 Consent.

* * * * *

(c) * * *

(3) If the parents revoke consent for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

* * * * *

3. Section 300.177 is revised to read as follows:

§ 300.177 States' sovereign immunity and positive efforts to employ and advance qualified individuals with disabilities.

(a) *States' sovereign immunity.*

(1) A State that accepts funds under this part waives its immunity under the 11th amendment of the Constitution of the United States from suit in Federal court for a violation of this part.

(2) In a suit against a State for a violation of this part, remedies (including remedies both at law and in equity) are available for such a violation in the suit against any public entity other than a State.

(3) Paragraphs (a)(1) and (a)(2) of this section apply with respect to violations that occur in whole or part after the date of enactment of the Education of the Handicapped Act Amendments of 1990.

(b) *Positive efforts to employ and advance qualified individuals with disabilities.*

Each recipient of assistance under Part B of the Act must make positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted under Part B of the Act.

(Authority: 20 U.S.C. 1403, 1405)

4. Section 300.300 is amended by:

A. Revising paragraphs (b)(3) and (b)(4).

B. In paragraph (d)(2), removing the words "paragraph (a)" and inserting, in their place, the words "paragraphs (a), (b), and (c)".

C. In paragraph (d)(3), adding after the words "paragraphs (a)" the words ", (b), (c),".

The revision reads as follows:

§ 300.300 Parental consent.

* * * * *

(b) * * *

(3) If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, the public agency—

(i) May not use the procedures in subpart E of this part (including the mediation procedures under § 300.506 or the due process procedures under §§ 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;

(ii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent; and

(iii) Is not required to convene an IEP Team meeting or develop an IEP under §§ 300.320 and 300.324 for the child.

(4) If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent for the continued provision of special education and related services, the public agency—

(i) May not continue to provide special education and related services to the child;

(ii) May not use the procedures in subpart E of this part (including the mediation procedures under § 300.506 or the due process procedures under §§ 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;

(iii) Will not be considered to be in violation of the requirement to make available FAPE to the child because of the failure to provide the child with further special education and related services; and

(iv) Is not required to convene an IEP Team meeting or develop an IEP under §§ 300.320 and 300.324 for the child for further provision of special education and related services.

* * * * *

5. Section 300.512 is amended by revising paragraph (a)(1) to read as follows:

§ 300.512 Hearing rights.

(a) * * *

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities, except that whether parents have the right to be represented by non-attorneys at due process hearings is determined under State law;

* * * * *

6. Section 300.600 is amended by:

A. Revising paragraph (a).

B. Adding a new paragraph (e).

The revision and addition read as follows:

§ 300.600 State monitoring and enforcement.

(a) The State must—

(1) Monitor the implementation of this part;

(2) Make determinations annually about the performance of each LEA using the categories in § 300.603(b)(1);

(3) Enforce this part, consistent with § 300.604, using appropriate enforcement mechanisms, which must include, if applicable, the enforcement mechanisms identified in § 300.604(a)(1) (technical assistance), (a)(3) (conditions on funding of an LEA), (b)(2)(i) (a corrective action plan or improvement plan), (b)(2)(v) (withholding funds, in whole or in part, by the SEA), and (c)(2) (withholding funds, in whole or in part, by the SEA); and

(4) Report annually on the performance of the State and of each LEA under this part, as provided in § 300.602(b)(1)(A) and (b)(2).

* * * * *

(e) In exercising its monitoring responsibilities under paragraph (d) of this section, the State must ensure that when it identifies noncompliance with the requirements of this part by LEAs, the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification.

* * * * *

7. Section 300.602(b)(1)(i) is revised to read as follows:

§ 300.602 State use of targets and reporting.

* * * * *

(b) *Public reporting and privacy.*

(1) *Public report.* (i) Subject to paragraph (b)(1)(ii) of this section, the State must—

(A) Report annually to the public on the performance of each LEA located in the State on the targets in the State's performance plan no later than 60 days following the State's submission of its annual performance report to the Secretary under paragraph (b)(2) of this section; and

(B) Make each of the following items available through public means: the State's performance plan, under § 300.601(a); annual performance reports, under paragraph (b)(2) of this section; and the State's annual reports on the performance of each LEA located in the State, under paragraph (b)(1)(i)(A) of this section. In doing so, the State must, at a minimum, post the plan and reports on the State's Web site, and distribute the plan and reports to the media and through public agencies.

* * * * *

8. Section 300.606 is revised to read as follows:

§ 300.606 Public attention.

Whenever a State receives notice that the Secretary is proposing to take or is taking an enforcement action pursuant to § 300.604, the State must, by means of a public notice, take such actions as may be necessary to notify the public within the State of the pendency of an action pursuant to § 300.604, including, at a minimum, by posting the notice on the State's Web site and distributing the notice to the media and through public agencies.

(Authority: 20 U.S.C. 1416(e)(7))

9. Section 300.705 is amended by:

A. Revising paragraph (a).

B. In paragraph (b)(2)(ii), removing the word "and" at the end of the paragraph.

C. In paragraph (b)(2)(iii), removing the punctuation "." and inserting in its place the words "; and".

D. Adding a new paragraph (b)(2)(iv).

E. Revising paragraph (c).

The revisions and addition read as follows:

§ 300.705 Subgrants to LEAs.

(a) *Subgrants required.* Each State that receives a grant under section 611 of the Act for any fiscal year must distribute any funds the State does not reserve under § 300.704 to LEAs (including public charter schools that operate as LEAs) in the State that have established their eligibility under section 613 of the Act for use in accordance with Part B of the Act. Effective with funds that become available on the first July 1 following the effective date of this regulation each State must distribute funds to eligible LEAs, including public charter schools that operate as LEAs, even if the LEA is not serving any children with disabilities.

(b) * * *

(2) * * *

(iv) If an LEA received a base payment of zero in its first year of operation, the SEA must adjust the base payment for the first fiscal year after the first annual child count in which the LEA reports that it is serving any children with disabilities. The State must divide the base allocation determined under paragraph (b)(1) of this section for the LEAs that would have been responsible for serving children with disabilities now being served by the LEA, among the LEA and affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 currently provided special education by each of the LEAs. This requirement takes effect with funds that become available on the first July 1 following the effective date of this regulation.

* * * * *

(c) *Reallocation of LEA funds.* (1) If an SEA determines that an LEA is adequately providing FAPE to all children with disabilities residing in the area served by that agency with State and local funds, the SEA may reallocate any portion of the funds under this part that are not needed by that LEA to provide FAPE, to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas served by those other LEAs. The SEA may also retain those funds for use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to § 300.704.

(2) After an SEA distributes funds under this part to an eligible LEA that is not serving any children with disabilities, as provided in paragraph (a) of this section, the SEA must determine, within a reasonable period of time prior to the end of the carryover period in 34 CFR 76.709, whether the LEA has obligated the funds. The SEA may reallocate any of those funds not obligated by the LEA to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas served by those other LEAs. The SEA may also retain those funds for use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to § 300.704.

* * * * *

10. Section 300.815 is revised to read as follows:

§ 300.815 Subgrants to LEAs.

Each State that receives a grant under section 619 of the Act for any fiscal year must distribute all of the grant funds the State does not reserve under § 300.812 to LEAs (including public charter schools that operate as LEAs) in the State that have established their eligibility under section 613 of the Act. Effective with funds that become available on the first July 1 following the effective date of this regulation, each State must distribute funds to eligible LEAs that are responsible for providing education to children aged three through five years, including public charter schools that operate as LEAs, even if the LEA is not serving any preschool children with disabilities.

(Authority: 20 U.S.C. 1419(g)(1))

11. Section 300.816 is amended by:

A. In paragraph (b)(2), removing the word "and".

B. In paragraph (b)(3), removing the punctuation "." and adding, in its place, the words "; and".

C Adding a new paragraph (b)(4) to read as follows:

§ 300.816 Allocations to LEAs.

* * * * *

(b) * * *

(4) If an LEA received a base payment of zero in its first year of operation, the SEA must adjust the base payment for the first fiscal year after the first annual child count in which the LEA reports that it is serving any children with disabilities aged three through five years. The State must divide the base allocation determined under paragraph (a) of this section for the LEAs that would have been responsible for serving children with disabilities aged three through five years now being served by the LEA, among the LEA and affected LEAs based on the relative numbers of children with disabilities aged three through five years currently provided special education by each of the LEAs. This requirement takes effect with funds that become available on the first July 1 following the effective date of this regulation.

* * * * *

12. Section 300.817 is revised to read as follows:

§ 300.817 Reallocation of LEA funds.

(a) If an SEA determines that an LEA is adequately providing FAPE to all children with disabilities aged three through five years residing in the area served by the LEA with State and local funds, the SEA may reallocate any portion of the funds under section 619 of the Act that are not needed by that LEA to provide FAPE, to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities aged three through five years residing in the areas served by those other LEAs. The SEA may also retain those funds for

use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to § 300.812.

(b) After an SEA distributes section 619 funds to an eligible LEA that is not serving any children with disabilities aged three through five years, as provided in § 300.815, the SEA must determine, within a reasonable period of time prior to the end of the carryover period in 34 CFR 76.709, whether the LEA has obligated the funds. The SEA may reallocate any of those funds not obligated by the LEA to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities aged three through five years residing in the areas served by those other LEAs. The SEA may also retain those funds for use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to § 300.812.

(Authority: 20 U.S.C. 1419(g)(2))

[FR Doc. E8–10522 Filed 5–12–08; 8:45 am]

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Federal Register

Tuesday,
May 13, 2008

Part IV

Department of Housing and Urban Development

Federal Housing Administration (FHA) Single Family Mortgage Insurance: Implementation of Risk-Based Premiums; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5171–N–02]

Federal Housing Administration (FHA) Single Family Mortgage Insurance: Implementation of Risk-Based Premiums

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice provides for FHA's implementation of risk-based premiums for most of its Title II single family mortgage insurance programs, enabling mortgage lenders to offer borrowers FHA-insured financing with a range of mortgage insurance premiums based on the risk the insurance contract represents. This notice follows a September 20, 2007, notice that solicited public comment on the proposal to implement risk-based premiums. This notice makes certain changes, in response to public comment, to FHA's risk-based premium structure and implements risk-based premiums in accordance with those changes.

DATES: *Effective Date:* July 14, 2008.

FOR FURTHER INFORMATION CONTACT: Margaret E. Burns, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone number (202) 708–2121 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background—September 20, 2007, Notice

By notice published by HUD in the **Federal Register** on September 20, 2007 (72 FR 53872), FHA announced its plan to implement risk-based premiums for FHA loans which, under that proposal, would apply to case numbers assigned on or after January 1, 2008. Section 203(c)(2) of the National Housing Act (12 U.S.C. 1709(c)(2)) provides for upfront and annual mortgage insurance premiums for most FHA single family programs. Such upfront and annual insurance premiums are set at levels not to exceed 2.25 percent and 0.50 percent (0.55 percent for mortgages involving an original principal obligation that is greater than 95 percent of the appraised value of the property), respectively, with a discount available on the upfront premiums for some mortgagors who are first-time homebuyers and who successfully complete pre-purchase homeownership counseling approved by the Secretary.

In the September 20, 2007, notice, FHA advised that, by offering a range of premiums based on risk, it would be able to offer options to: (1) Mortgagees serving borrowers who were previously underserved, or not served, by the conventional marketplace; and (2) mortgagees serving those borrowers wishing to lower their premiums by, for example, increasing their downpayment or by improving their credit scores. Additionally, offering a range of premiums based on risk helps to ensure the future financial soundness of FHA programs that are obligations of the Mutual Mortgage Insurance Fund (MMIF or the Fund). The September 20, 2007, notice emphasized that under risk-based premiums, no qualified borrower will be charged by the mortgagee in excess of the current statutory upfront and annual mortgage insurance premium limits.

The September 20, 2007, notice solicited public comment for a period of 30 days. Although, as more fully discussed in Sections III and IV of this notice, a number of public commenters opposed HUD's proposal to implement risk-based premiums but did not fully explain the reasons for the opposition, other commenters raised important issues for HUD's consideration and offered suggestions that HUD should adopt. Therefore, after careful review and consideration of the public comments, HUD will implement risk-based premiums, as provided in this notice, with certain revisions made after consideration of public comments. HUD is proceeding to implement risk-based premiums for the reasons expressed in the September 20, 2007, notice; namely, that such a pricing mechanism will allow FHA to serve a range of borrowers and will help ensure the financial soundness of FHA programs that are obligations of the MMIF. These policy reasons are more fully discussed in Section III of this notice.

II. This Notice—Changes Made After Consideration of Public Comments

After consideration of public comments, this notice makes the following changes to the September 20, 2007, proposal:

- The effective date is changed from January 1, 2008, to July 14, 2008, for FHA loans for which case numbers are assigned on or after that date.
- The classifications used in the upfront premium rate table are changed from minimum downpayment to loan-to-value (LTV) ratio.
- Source of downpayment is eliminated as a factor in determining the borrower's mortgage insurance premium.
- Borrowers with nontraditional credit are eligible for 97 percent LTV financing.
- The September 20, 2007, notice's provision on averaging the borrower's credit scores has been removed and replaced with the lowest-decision credit score.
- A revised matrix shows both upfront and annual premiums for loans with terms in excess of 15 years, and another matrix shows premiums for loans with terms of 15 years or fewer.
- The minimum upfront premium is raised from 75 basis points to 125 basis points for mortgages in excess of 15 years, and from 75 basis points to 100 basis points for mortgages of 15 years or fewer.

III. Overview of Key Public Comment Concerns and the Importance of Implementation of Risk-Based Premiums

At the close of the public comment period on October 22, 2007, HUD received 176 public comments. These public comments came from a variety of sources, including the general public, loan officers, mortgage companies, regional and national banks, state housing finance agencies, various organizations representing the interests of the mortgage lending and home building industries, private mortgage insurers, seller-funded downpayment assistance providers, and companies providing information management systems services.

While many of the commenters opposed risk-based premiums, the majority did not clearly express the basis for their opposition. Some of these commenters stated that risk-based premiums would hurt the very persons FHA was established to serve, but provided no information or explanation to support this claim. One commenter stated that if risk-based premiums are implemented, FHA will offer only more expensive, conventional-type loans and will cease to assist lower-income borrowers who represent the target audience for FHA insurance. Other commenters stated that HUD did not need to implement risk-based premiums and eliminate downpayment assistance; that is, that one or the other should be sufficient to address higher risk mortgages. (These comments and others are more fully addressed in Section IV of this notice.)

FHA is implementing risk-based premiums in support of its mission to promote homeownership among first-time and minority homebuyers. While the conventional market regularly uses risk-based premiums to price insurance risk, FHA, to date, continues to charge a one-size-fits-all premium to mortgagees, resulting in lower-risk borrowers paying a higher premium than necessitated by their risk, and higher-risk borrowers paying a lower premium relative to their risk. The criteria that FHA proposes to use for risk-based premiums—credit scores and LTV ratios—are strongly associated with claim rates and have become the primary risk factors used in conventional market pricing of mortgage credit risk. FHA has a legitimate business basis for charging higher premiums to higher-risk borrowers. Indeed, it has a business imperative, because the current FHA method of average-risk pricing is no longer sustainable.

Risk-based premiums expand FHA's ability to serve borrowers whom it would otherwise have to turn away. By charging them a slightly higher insurance premium, FHA can assist underserved borrowers with fewer monetary resources or impaired credit to become homeowners while protecting the MMIF with the higher premium. Many homebuyers, who were steered to subprime products, paid substantially more for access to homeownership. As the 2004, 2005, and 2006 Home Mortgage Disclosure Act (HMDA) data show, many of these homebuyers were minorities. FHA can potentially lower the cost to borrowers because it is actually less costly for borrowers to pay for their credit risk in a mortgage insurance premium than what is charged to them through a higher subprime mortgage interest rate. For example, if a borrower with imperfect credit used an FHA-insured loan rather than a subprime loan for a $200,000 mortgage used to purchase a $225,000 home, the borrower would typically qualify for a 3 percentage point-lower mortgage interest rate. Assuming a 6.5 percent mortgage interest rate, a 10 percent downpayment, financing of a 1.75 percent upfront mortgage insurance premium, and payment of a 0.50 percent annual premium on the declining principal balance, a borrower would still save nearly $4,000 in monthly payments in the first year alone with an FHA-insured loan compared to a 9.5 percent subprime loan. After 10 years, the borrower would experience a total of nearly $40,000 of savings in monthly payments. Not only would the borrower benefit from lower loan costs with an FHA-insured loan, but FHA requires FHA-approved mortgagees to take measures designed to provide foreclosure alternatives that may not be offered with a subprime loan. FHA requires loan servicers to offer an array of loss mitigation options that may result in defaulting borrowers being able to stay in their homes.

In addition, as the accompanying Appendix chart shows, substantial shares of FHA's lower-income borrowers have FICO [1] scores above 680 and would qualify for premium reductions relative to today's premium levels. In fact, as a result of the predominantly low- and moderate-income character of FHA borrowers, a larger number of low-income borrowers would benefit from premium reductions than would moderate-, middle-, and upper-income borrowers combined. See the Appendix for a chart showing the distribution of FY 2007 homebuyers by FICO category and income group.

Risk-based premiums enable FHA to respond to changes in the market, like the recent implosion of subprime lending, by reaching out to higher-risk borrowers without having to raise premiums for all borrowers. Borrowers are better off, even with higher mortgage insurance premiums, because FHA insurance gives borrowers access to substantially lower interest rates than are charged for subprime loans, thereby lowering borrowers' overall borrowing costs.

Risk-based premiums do not end the cross-subsidization that has always existed within the MMIF programs, but, by implementing risk-based premiums FHA can better manage the cross-subsidization. At present, some segments of the borrowers served by FHA have very high default and foreclosure rates. Ultimately, if FHA did not implement risk-based premiums, FHA would have to raise premiums for all borrowers and impose new underwriting restrictions. Increasing premiums for all borrowers would drive away more of the lower-risk borrowers who are needed to provide cross-subsidies to higher-risk borrowers and would only increase any adverse selection. As a result, FHA would serve fewer borrowers than it does now, and more borrowers would be left with either a higher-cost and higher-risk subprime option, or no access to mortgage credit.

[1] FICO is a credit score developed by Fair Isaac Corporation.

IV. Discussion of Public Comments

Authority to Implement a Credit-Score Based Premium Structure, and Effectiveness of Such Structure in Achieving Stated Goals

Comment—FHA Should Not Be Exercising Risk-Based Premium Authority Now: One commenter challenged the authority of FHA to implement a credit-score premium structure at this point in FHA's history. The commenter stated: "Congress gave FHA the authority to risk-base price its premium according to the initial LTV of the loan and for the past six and one-half years FHA chose not to exercise that authority." The commenter continued, "However, FHA never fully implemented a risk-based premium based on the initial LTV of the loan and significantly reduced its common up-front premium. The result has been an inadequate premium structure that has contributed to FHA's current financial problems."

HUD Response: HUD disagrees with the commenter's statement. Inherent in the insurance function is the management of risk. FHA, as a mortgage insurer, is charged with managing risk, and risk-based premiums help FHA manage risk.

FHA is provided with flexible authority in section 203 of the National Housing Act (12 U.S.C. 1709) to charge an upfront premium not exceeding 2.25 percent of the mortgage balance and an annual premium not exceeding 50 basis points on the declining mortgage balance, but not exceeding 55 basis points for mortgages with LTVs greater than 95 percent. This authority has been implemented by HUD through regulations at 24 CFR 203.284 and 203.285. Therefore, HUD has discretion to charge an upfront and an annual insurance premium that are greater than 0 percent but do not exceed the respective statutory limits. The range of insurance premiums in this notice is consistent with, and supported by, the statutory authority in section 203(c)(2) of the National Housing Act (12 U.S.C. 1709(c)(2)). FHA also is authorized to discount the upfront premiums for some mortgagors who are first-time homebuyers and who successfully complete pre-purchase homeownership counseling approved by HUD. Notwithstanding the date of enactment of its statutory authority, FHA is not prohibited from trying new and different approaches from the one originally chosen, consistent with its statutory authority, to improve its financial management and to make its programs more available to the

populations they are intended to benefit.

Comment—Over-Reliance on Credit Scores to Assess Risk: With regard to FHA's proposed approach to risk-based premiums, the same commenter above stated that it is concerned that FHA is over-relying on the predictive power of credit scores to pinpoint likely future borrower claims. The commenter said credit scores have proven to have a weak correlation to real risk during periods of economic or housing market stress and, as bank regulators have correctly determined, lenders should not over-rely on credit scores as a substitute for careful analysis of the multiple risk factors associated with mortgage risk. The commenter further stated that the proposed over-reliance on credit scores would lead FHA to repeat the same mistakes now creating major losses throughout the subprime mortgage arena. The commenter elaborated as follows: "For example, the recent guidance on nontraditional mortgages notes that 'the analysis of repayment capacity should avoid over-reliance on credit scores as a substitute for income verification in the underwriting process'."

HUD Response: FHA disagrees with this comment. First, FHA is not replacing its strict underwriting criteria. FHA has avoided the major losses now being suffered in the subprime mortgage arena because FHA requires, and will continue to require, full documentation of a borrower's income and credit. Second, FHA recognizes that credit scores matter, but does not intend to over-rely on a borrower's credit score. FHA assesses the borrower's credit using its TOTAL[2] mortgage scorecard that takes into account multiple, statistically significant credit characteristics in approving a borrower's credit or referring the borrower for manual underwriting where the underwriter may determine that compensating factors exist that warrant the borrower's approval for credit. Finally, similar to all other industry organizations, including private mortgage insurers, lenders, and the Federal Reserve, FHA considers credit scores to be highly predictive of borrower performance, even during this period of economic and housing market stress. One demonstration of the predictive power of credit scores comes from the actuarial reviews of the FHA MMIF that are conducted annually by independent contractors for congressional review and are in the public domain. The FY 2006 and FY 2007 actuarial reviews incorporated credit scores as explanatory variables in their loan performance models, which use the most recent 30 years of FHA's actual historical experience and critical economic variables to model loan performance. The correlation between credit scores and loan performance shown by these reviews highlights the importance of credit scores in managing risk. (The FY 2006 actuarial review is available at *http://www.hud.gov/offices/hsg/comp/rpts/actr/2006actr.cfm*. The FY 2007 actuarial review is available at *http://www.hud.gov/offices/hsg/comp/rpts/actr/2007actr.cfm*.)

Comment—Loss of Cross-Subsidization: The same commenter and other commenters expressed the fear that FHA would be prevented by a risk-based premium structure from practicing the cross-subsidization traditionally associated with FHA mortgage insurance programs. For example, one of the commenters stated that there is concern "that the credit score related portion of the proposed upfront premium as set forth in the proposal will undermine the cross balancing of multiple mortgage risk factors that makes FHA, as a government program, accessible to low and moderate income borrowers and broadly available to areas with large concentrations of minority borrowers." Another commenter urged that: "FHA should consider other premium pricing differentials based on credit risk elements such as mortgage terms and loan-to-value ratios. To the greatest extent possible, the FHA should preserve cross-subsidization of premium pricing in the prime mortgage market. Individual borrower credit scores may be an appropriate element of premium pricing in the subprime market."

HUD Response: FHA rejects the implication of these comments that FHA is moving away from cross-subsidization. In fact, FHA is seeking to implement risk-based premiums in order to improve its management of cross-subsidization. FHA disagrees with the view that credit scores should be used for establishing premiums in the subprime market but not in the prime market where FHA operates. FHA serves borrowers from the full range of the credit scores. Like any insurance company, FHA must assess and manage its business risk on the basis of the actual characteristics of its borrowers and other factors that have been demonstrated to affect loan performance. In FHA's historical experience, credit scores have proven to be statistically significant indicators of additional risk, while the type of the mortgage—fixed versus adjustable—has not.

FHA's adjustable rate mortgages (ARMs) do not bear the risk characteristics of subprime ARMs because FHA does not permit initial teaser rates, and it underwrites the borrower's credit on the basis of the maximum second-year rate to avoid "payment shock." As a result, the performance of FHA's ARMs does not differ sufficiently from the performance of its fixed-rate mortgages to justify a premium differential.

In managing risk, however, FHA will continue cross-subsidization by charging higher than break-even premiums to borrowers with better credit scores and lower LTVs so that it can serve some borrowers whose premiums do not cover their full risk to the Fund. Such cross-subsidies have been normal and subject to study within the MMIF, and FHA plans to analyze them even more intensely in the future with the implementation of risk-based pricing.

Comment—Fewer Borrowers Would Qualify for FHA-Insured Mortgages: Several commenters cite the June 2007 study of the Government Accountability Office (GAO) on "Modernization Proposals Would Have Program and Budget Implications and Require Continued Improvements in Risk Management," to argue that risk-based pricing would bar an excessive number of borrowers from qualifying for a FHA-insured mortgage. For example, one commenter reprinted Figure 4 from the report and stated: "As is clearly evidenced above, the imposition of risk-based pricing will arbitrarily redline out 20% of all current FHA users and a full 32% of African-American families and 20% of Latino families currently utilizing FHA."

HUD Response: FHA provided the data used in the GAO analysis and does not dispute its findings. Some categories of loans have excessively high expected claim rates. While FHA is committed to expanding homeownership, it is also committed to sustainable homeownership. It is FHA's position that expected claim rates above 25 percent are too high, even for a small percentage of borrowers. Consequently, FHA is tightening its underwriting standards resulting in a restriction that requires borrowers with credit scores below 500 to have a 90 percent or lower LTV ratio in order to be eligible for a FHA-insured mortgage.

[2] TOTAL is the acronym for Technology Open to Approved Lenders, which is a mathematical equation to use with an automated underwriting system (AUS). FHA's TOTAL Mortgage Scorecard evaluates the overall creditworthiness of the applicants based on a number of credit variables and, when combined with the functionalities of the AUS, indicates a recommended level of underwriting and documentation to determine a loan's eligibility for insurance by FHA.

While the percentage of borrowers obtaining FHA-insured mortgage financing that will be affected by this restriction is small, this restriction is imposed to serve the public purpose of avoiding excessive foreclosures and to ensure the sustainability of the insurance fund. Due to statutory ceilings, FHA is not authorized to charge premium rates high enough to cover the costs of foreclosures on these loans, and high foreclosure rates adversely impact neighborhoods and communities, as well as the individual families. FHA holds the view that borrowers who lack sufficient credit quality to qualify for immediate homeownership will be best served if they are referred to mortgage counseling, and if they can focus on improving their credit scores or saving for a larger downpayment and, thereby, increase their chances of sustainable homeownership in the future.

Comment—Proposal Will Not Resolve MMIF Solvency Concern: Similar to the preceding comments, two commenters stated that HUD's risk-based premium proposal would not improve the "financially precarious position" of the MMIF and would instead negatively impact both the MMIF and the much larger market for prime mortgages, by eliminating the cross-subsidization of premium pricing in the prime mortgage market. One commenter believed it is "inappropriate for FHA, as a government program, to implement a premium structure that would effectively deny access to low income and minority groups who have traditionally relied on this program."

HUD Response: HUD disagrees with the commenters' statements. First, as discussed in the response to the previous comment, HUD has documented from its own experience, and using loan-performance forecasts from the annual independent actuarial studies of the MMIF, that this proposal will improve FHA's financial and actuarial solvency. That analysis has been verified by the Office of Management and Budget. Second, HUD is denying access to no one based on income or race. Rather HUD is establishing reasonable parameters for the levels of cross-subsidies that are appropriate within the FHA insurance programs, based on its own historical experience.

By implementing risk-based premiums, HUD is preserving and enhancing its ability to serve low-income and minority groups that represent FHA's traditional borrowers. HUD is doing so by improving its management of—not eliminating—cross-subsidization. Risk-based premiums offer a balanced approach that will permit FHA to reach more potential homebuyers, an objective that is necessary to continue to provide cross-subsidies to targeted groups. Furthermore, because risk-based premiums will also apply to the refinancing of loans, borrowers who improve their creditworthiness through regular mortgage payments or through increases in home value can lower the insurance premiums they pay to FHA, when refinance opportunities present themselves.

Comment—Other and Better Proposals Will Achieve FHA Goals: Two commenters suggested that HUD, instead of implementing risk-based pricing premiums, use other methods for achieving the stated goals of increasing market share, improving competition with the subprime market, and avoiding the need for a credit subsidy. As examples, the commenters cited better marketing of FHA loans and expanded use of loss mitigation.

HUD Response: While serving borrowers who were previously underserved or not served by the conventional market is a goal of this notice, FHA's objectives in implementing risk-based premiums are not to increase market share, nor to compete with the private sector. FHA must engage in a range of appropriate practices that will best serve the needs of homebuyers while protecting the financial soundness of the MMIF. FHA continues to operate its comprehensive loss mitigation program, but these activities do not serve the same objectives as risk-based premiums.

Process for Implementing Risk-Based Premiums

Comment: One commenter stated that HUD failed to follow Administrative Procedure Act (APA) notice and comment rulemaking requirements. The commenter stated that the "risk-based premium proposal is clearly a "substantive rule of general applicability"' and, as such, formal rulemaking under the APA is required.

HUD Response: The National Housing Act authorizes FHA to establish mortgage insurance premiums. For FHA single family programs, the National Housing Act directs that the upfront and annual premiums to be established by FHA may not exceed statutorily set maximum levels. The National Housing Act, however, gives FHA flexibility to set premiums within those maximum levels. On the basis of this statutory foundation, FHA may set premiums as it determines to be appropriate within the statutory parameters, to maintain the financial soundness of the MMIF. The September 20, 2007, notice presented FHA's proposal to establish premiums commencing in calendar year 2008 that would maintain the financial soundness of the MMIF.

The key element of APA notice and comment rulemaking is "notice and comment"; that is, advance notice and the opportunity to comment prior to agency action. HUD has provided such advance notice and opportunity to comment through the September 20, 2007, notice. What HUD has not undertaken at this point is codification, which is not a matter covered by or subject to the APA. Codification presents a convenient organization for rules with some degree of permanence. However, when agencies are charged with setting prices or costs, such as insurance premiums, interest rates, fees or rents, which are based on market or other changing conditions that may necessitate periodic changes, then codification is less convenient. In such cases, what is important is that an agency provides advance notice and the opportunity to comment, and HUD has provided such notice and opportunity for comment in this matter.

Complexity of Proposal

Comment: Three commenters stated that the risk-based premium proposal is too complex and complicated. One commenter specified that the chart outlining the proposed risk-based premiums was "too complicated and needs to be simplified." One commenter noted that HUD should provide, in the final, published notice or in the ensuing mortgagee letter, concrete examples on how to do calculations for determining the borrower's decision credit score and the insured property's base LTV ratio.

HUD Response: In this notice, FHA has made changes that simplify the upfront premium rate table. Moreover, as is FHA's practice, FHA will issue a mortgagee letter that will provide examples of how to perform calculations, as well as additional practical information that may be helpful to assist FHA-approved lenders with risk-based premiums.

Determination of the Borrower's Decision Credit Score

Comment: Several commenters questioned the decision to determine the decision credit score by averaging the scores of multiple borrowers on the loan. The commenters urged FHA to clarify the method of determination or to adopt current industry practice.

HUD Response: FHA agrees with this comment and will determine the decision credit score according to standard industry practice. See footnote

3 of the risk-based premium chart in Section V of this notice for a more detailed description of how decision credit scores for multiple borrowers will be determined.

Multiple Sources of Downpayment

Comment: Two commenters asked FHA to clarify the guidelines for borrowers who receive gifts from multiple sources. One commenter suggested that HUD regulations should either prohibit multiple gifts per loan transaction or permit such multiple gifts and update the TOTAL Scorecard system to accept additional data on the gifts. Another commenter stated that the proposal does not adequately assess and price the risk associated with multiple gift sources depending on the type of mortgage product offered or the type of gift provided (*i.e.*, amortized second mortgage; deferred payment zero-interest; deferred payment loans; seller-funded downpayment assistance, etc.).

HUD Response: FHA will allow all permissible sources of downpayment assistance to be added together to determine the appropriate LTV.

Use of Manual Underwriting

Comment: Some commenters stated that a "major benefit" of FHA is the ability to manually review and examine all aspects of a borrower's credit profile. They also stated that the risk-based premiums will only make it harder for individuals to obtain a mortgage with favorable terms. By requiring the use of credit scores, commenters stated that FHA is removing the ability of a trained underwriter to estimate the risk of providing mortgage insurance. One commenter suggested that HUD allow underwriters to exercise discretion when approving a loan with low or no credit scores, and to issue guidance that such loans be underwritten with "extreme caution and possibly subject to FHA review."

HUD Response: The risk-based premium structure does not replace FHA's existing underwriting criteria. Eligibility for an FHA-insured loan is first determined by FHA's TOTAL Scorecard, which relies on credit scores, LTV ratio, and several additional factors to determine a borrower's credit quality.

For borrowers that receive a "Refer" decision from TOTAL, FHA will continue to require manual underwriting, which allows an underwriter to consider additional compensating factors beyond the credit and application factors considered in TOTAL. Further, FHA may accept loans underwritten using nontraditional credit sources where borrowers have insufficient experience with traditional credit.

FHA has made the decision to establish risk-based premiums using credit scores as a principal determinant because a borrower's credit score provides the most important single measure of the willingness and ability of any single borrower to be successful under the borrower's debt obligations. A home loan is the most significant debt obligation that most households will ever enter into. In statistical models used to predict mortgage performance, credit scores and LTV ratios are the most important determinants. They, therefore, provide the best basis for establishing mortgage insurance premiums.

The premiums charged by FHA are independent of the interest rates charged by lenders on the insured loans. FHA provides lenders with 100 percent insurance on the principal balance of the loan. Therefore, the interest rates charged for FHA-insured loans are very close to those charged for prime, conventional loans purchased by Fannie Mae or Freddie Mac. That would not change regardless of what premiums FHA might charge for the insurance.

Borrowers With Nontraditional Credit

Comment: Several commenters expressed concern about borrowers without credit histories or borrowers with primarily nontraditional credit sources. The commenters stated that, in many instances, such borrowers prove more creditworthy than borrowers with low credit scores. One commenter suggested that the problem lies with HUD's failure to enforce policies requiring sufficient documentation of nontraditional credit sources.

HUD Response: HUD agrees that lenders should be encouraged to underwrite borrowers with no credit histories or borrowers who use nontraditional credit, to determine if such borrowers can qualify for FHA-insured mortgage financing. FHA issued guidance on this subject in Mortgagee Letter 2008–11, which was published on April 29, 2008.

Other Downpayment Concerns

Comment—Provide Zero Downpayment Product: Two commenters noted that the risk-based premium schedule does not allow for the possibility of a "zero-downpayment" insured product.

HUD Response: HUD does not currently have the statutory authority to offer a zero-downpayment product to FHA customers.

Comment—State Housing Finance Agencies Should Not Be Categorized as "Other Sources of Funds": Several commenters, primarily representing state housing finance agencies (HFAs) and other state and local government entities, expressed concern that the proposal, as published in September 2007, would place downpayment and closing cost assistance packages offered by HFAs in the "Other Sources of Funds" category. The commenters stated that this categorization would add 50 basis points to the upfront mortgage insurance premium charged to HFA clients. The commenters stated that there should be an exception in the "Other Sources of Funds" category for downpayment assistance programs provided or funded by instrumentalities of state and local government. The commenters cautioned HUD against "lumping in," under the "Other Sources of Funds" category, downpayment assistance provided by HFAs and other state and local government entities with seller-funded downpayment assistance, which was categorized, in HUD's final rule published on October 1, 2007, as an impermissible source of downpayment assistance for FHA-insured mortgages. The commenters stated that borrowers receiving downpayment assistance from HFAs and other state or local government entities generally have lower default or delinquency rates than borrowers receiving assistance from other organizations.

HUD Response: HUD agrees and has removed source of downpayment assistance as a basis for premium determination. Whatever downpayment assistance is provided, however, it must be from a permissible source.

Comment—Borrowers with Government-Funded Downpayment Assistance Should Not Be Categorized as "High Risk": One commenter noted that most state and local governments and instrumentalities of these governments use, as their source of downpayment assistance to qualified borrowers, funds from various HUD programs designed to increase homeownership opportunities, including the Community Development Block Grant (CDBG) program, HOME program, and American Dream Downpayment Initiative (ADDI). The commenter suggested that classifying borrowers who receive funds from HFAs or instrumentalities of government as "high risk" completely contradicts the goals and purposes of programs such as HOME and ADDI.

HUD Response: HUD agrees and has removed source of downpayment as a factor in determining the borrower's mortgage insurance premium.

Comment—LTV, Not Downpayment, Should Be the Benchmark for Risk-

Based Premiums: Several commenters urged FHA to use LTV ratio as the appropriate benchmark for establishing risk-based premiums. One commenter stated that there is a discrepancy between the minimum 3 percent downpayment requirement in the risk-based premium chart in the proposed notice and FHA's current maximum LTV ratios, which are greater than 97 percent. The commenter requested that this discrepancy be addressed.

HUD Response: By law, FHA must require a minimum investment of 3 percent cash in the property in a purchase transaction to be FHA-insured. However, the National Housing Act also permits an LTV that is above 97 percent when the borrower wishes to finance closing costs in the mortgage. To avoid any confusion, HUD is changing the classifications used in the upfront premium rate table from "downpayment" to "LTV," as shown in the new risk-based premium chart published herein.

Effective Dates

Comment: Several commenters noted that the proposed effective date for risk-based premiums of January 1, 2008, is not feasible. One commenter stated that compliance with the Sarbanes-Oxley Act necessitates that end-of-year freezes are in place to meet the statute's requirement that internal controls and systems be operating effectively at year end; thus, the commenter's company instituted a policy of not permitting programming changes during the fourth quarter. The commenters also stated that lenders would not be able to update their software systems in time to meet the implementation date of January 1. Various commenters suggested alternative effective dates such as: March 1, 2008; April 1, 2008; June 30, 2008; July 1, 2008; and 12 months from the date the final risk-based premium notice has been published. One commenter suggested that lender systems could be ready for risk-based premium pricing 90 days from the date the mortgagee letter is issued by FHA. Another commenter requested that HUD defer the implementation of risk-based premiums until automated underwriting systems that employ the TOTAL Scorecard, such as Fannie Mae's Desktop Underwriter, are revised to calculate the appropriate risk-based upfront and annual mortgage insurance premiums.

HUD Response: Although most commenters did not oppose the proposed January 1, 2008, implementation date, HUD is nevertheless changing the implementation date from January 1, 2008, to July 14, 2008, for FHA loans for which case numbers have not been assigned. HUD believes that the July 14, 2008, date will provide adequate time for mortgagees to update computer systems to accommodate risk-based premiums. Furthermore, FHA has, in response to public comments, simplified the upfront premium rate table in the notice by eliminating the source of downpayment as a variable in determining the appropriate insurance premium.

Two- to Four-Unit Dwellings

Comment: One commenter stated that the September 20, 2007, notice did not address pricing mechanisms for properties with two- to four-units, even though, historically, two- to four-unit family dwellings have a higher risk for default. The commenter suggested that FHA charge a 25 basis point premium for these properties.

HUD Response: At this time, FHA is not moving to develop risk-based premiums for two- to four-unit dwellings because FHA's overall portfolio includes very few loans secured by multi-unit properties.

Mortgages With 15-Year (or Less) Terms

Comment: Two commenters asked for clarification on how mortgages with 15-year terms or less would be addressed under the proposal. One commenter asked whether such mortgages would be subject to risk-based premiums under the proposal. Another commenter urged HUD to maintain the current practice of waiving the annual premium for loans of 15-year amortizations or less and loans with an LTV ratio of 89.99 percent or less.

HUD Response: FHA is not changing the maximum or minimum annual premiums on 15-year loans at this time. However, 15-year loans with low LTV ratios will have the advantage of the lower upfront premiums as provided in FHA's risk-based premium structure, and as described in Section V of this notice.

Homeownership Counseling

Comment: Two commenters requested that FHA more clearly define "pre-purchase homeownership counseling acceptable to the Secretary." One commenter suggested that *all* homebuyers who complete pre-purchase homeownership counseling should be eligible for the 25 basis point reduction that is currently made available only to first-time homebuyers who would otherwise pay a 225 basis point premium.

HUD Response: Pre-purchase homeownership counseling must be obtained from a HUD-approved housing counseling agency, and must be completed up to one year before the homebuyer signs a purchase agreement for the property. Subsequent to the publication of this final notice, FHA will publish a standard homebuyer counseling certificate that will be used to document the provision of services. The 200 basis point cap on the upfront premium payment for first-time homebuyers is consistent with and reflects the language of section 203(c)(2) of the National Housing Act (12 U.S.C. 1709(c)(2)).

Relationship to FHASecure Temporary Initiative (FHASecure)

Comment: Five commenters suggested that the Department's risk-based premium proposal is inconsistent or incompatible with *FHASecure*, which is designed to help current homeowners avoid foreclosure by refinancing their conventional mortgage with an FHA-insured mortgage. The commenters stated that homeowners who refinance under *FHASecure* should be exempt from the premium pricing schedule outlined in the September 20, 2007, notice.

HUD Response: FHA's risk-based premium proposal is not inconsistent or incompatible with *FHASecure*, and, therefore, an exemption is not needed for *FHASecure* customers. The slightly higher premium for *FHASecure* customers will be more than offset by the substantially reduced mortgage payment they will achieve by refinancing into an FHA-insured mortgage. The slightly higher premium that may be paid by a borrower whose credit score has been impaired by defaulting on the borrower's conventional mortgage will have no effect on the borrower's eligibility for FHA refinancing, pursuant to *FHASecure* underwriting criteria. Furthermore, the difference between the existing 150 basis point upfront premium and the highest proposed upfront premium of 225 basis points for a $150,000 mortgage is approximately $7 per month. Therefore, the proposal should not have a significant impact on those borrowers covered by *FHASecure*.

Other FHA-Insured Programs

Comment: Two commenters noted that other FHA-insured programs, such as for adjustable rate mortgages (ARMs), condominiums, and mortgages insured under section 203(h) of the National Housing Act (12 U.S.C. 1709(h)), were not mentioned in the September 20, 2007, notice. The commenters asked whether these and other FHA-insured programs will be affected by the new

risk-based premium pricing structure. One commenter asked whether military impact zones, which currently do not require the payment of an upfront insurance premium, would be included in the risk-based pricing proposal.

HUD Response: The risk-based premium rates apply to those forward mortgages insured under FHA's MMIF, the Section 203(k) rehabilitation mortgage insurance program, and individual condominium units insured under Section 234(c). Risk-based premiums do not apply to reverse mortgages under FHA's Home Equity Conversion Mortgage (HECM) program. Risk-based premiums also do not apply to Section 223(e) (declining neighborhoods), Section 238(c) (military impact areas in Georgia and New York), Section 247 (Hawaiian Homelands), and Section 248 (Indian Reservations).

Upfront Mortgage Insurance Premiums (UFMIPs)

Comment: Six commenters asked whether current policies regarding upfront mortgage insurance premiums would carry over under the new risk-based pricing scheme. For example, one commenter asked whether mortgage insurance premiums could still be financed by the borrower. Two commenters urged HUD to keep the "78 percent" and the "5-year" rules in effect.

HUD Response: FHA agrees that the existing policies concerning mortgage insurance premium financing, and the 78 percent and 5-year termination of mortgage insurance premiums should continue to apply. FHA will reiterate these policies in a future mortgagee letter.

Annual Mortgage Insurance Premiums

Comment: One commenter asked for HUD to clarify the downpayment thresholds for determining the annual mortgage insurance premiums. The commenter noted that the proposed risk-based premium calculations do not address the annual mortgage insurance premium rates for a downpayment amount other than 3, 5, or 10 percent.

HUD Response: All borrowers qualifying for an FHA-insured mortgage will pay an annual premium rate equal to 50 basis points, unless the LTV is greater than or equal to 95.01 percent. For loans with an LTV of greater than or equal to 95.01 percent, the annual premium rate will be equal to 55 basis points. No borrower who qualifies for an FHA-insured mortgage will pay more than 55 basis points for the annual premium.

V. Risk-Based Premiums—Effective July 14, 2008

This notice replaces FHA's Mortgagee Letter 00–38, which identifies the current mortgage insurance premiums for FHA's single family programs. The risk-based premium structure, as provided in this Section V, is effective for new FHA case number assignments made on or after July 14, 2008.

Risk-based premiums will utilize the following schedule for upfront and annual mortgage insurance premium rates:

FHA Single Family Mortgage Insurance
Upfront and Annual Mortgage Insurance Premiums
(Loan Terms > 15 years)
Effective as of July 14, 2008
All premiums are specified in basis points (0.01%)

	DECISION CREDIT SCORE (FICO)						
LTV	850–680	679–640	639–600	599–560	559–500	499–300	Non-traditional
≤ 90.00	125/50	125/50	125/50	150/50	175/50	175/50	150/50
90.01–95.00	125/50	125/50	150/50	175/50	200/50	n/a	175/50
> 95	125/55	150/55	175/55	200/55	225[a]/55	n/a	200/55

[a] A first-time homebuyer, with HUD-approved counseling, will pay only 200 basis points for the upfront mortgage insurance premiums.

Notes

1. Annual premium rates are: 50 basis points for loans with a loan-to-value (LTV) ratio of less than or equal to 95 percent; and 55 basis points for loans with an LTV ratio of 95.01 percent and higher.

2. The LTV ratio, computed to two decimals (*e.g.*, 95.65) is calculated by dividing the mortgage amount prior to adding on any upfront mortgage insurance premium by the property's sale price or appraised value, whichever is lower.

3. Eligibility for the mortgage insurance premiums listed in the chart above is based on an applicant's decision credit score. A "decision credit score" is determined for each applicant according to the following guidelines: when three scores are available (one from each national consumer reporting agency: Equifax, TransUnion, and Experian®), the middle value is used; when only two are available, the lesser of the two is chosen; when only one is available, then that score is used. If more than one individual is applying for the same mortgage, the lender should determine the decision credit score for each individual borrower and then use the lowest score to determine the final decision credit score for the application. That application "decision" credit score is then used as part of underwriting to determine if the mortgagor is considered an acceptable risk.

4. Except as provided below, eligibility for these insurance premiums is dependent upon borrower acceptance by TOTAL (Technology Open to Approved Lenders). Therefore, all borrowers with valid credit scores must be scored by TOTAL.

5. Borrowers not scored by TOTAL or with insufficient trade lines to generate credit bureau scores will fall in the "non-traditional" column in the premium chart and are priced accordingly. Borrowers falling into cells with no premium price shown are not eligible for FHA-insured financing. Note that a minimum decision credit score of 500 will be required for FHA-insured mortgages with an LTV ratio in excess of 90 percent.

6. If TOTAL refers a loan for manual underwriting and the underwriter deems that there are sufficient compensating factors to create an acceptable risk to FHA, then the upfront insurance premium charge will be as shown on the premium chart.

7. These premiums apply to all purchase loans and to fully underwritten (non-streamline) refinance loans. Cash-out refinance loans must meet a minimum 5 percent equity requirement, based on the appraised value of the property.

8. Streamline refinance of an existing FHA loan for which a case number was assigned prior to July 14, 2008, will have an upfront premium of 100 basis points and an annual premium of 50 basis points.

9. The risk-based premium rates established in this notice apply to those forward mortgages insured under FHA's Mutual Mortgage Insurance (MMI) fund, the Section 203(k) rehabilitation mortgage insurance program, and individual condominium units insured under Section 234(c). Risk-based premiums do not apply to mortgages insured under Title I of the National Housing Act, nor to reverse mortgages under FHA's Home Equity Conversion Mortgage (HECM) program. Risk-based premiums also do not apply to Section 223(e) (declining neighborhoods), Section 238(c) (military impact areas in Georgia and New York), Section 247 (Hawaiian

Homelands), and Section 248 (Indian Reservations).

The following matrix shows upfront and annual mortgage insurance premiums for loan terms with 15 or fewer years.

FHA Single Family Mortgage Insurance
Upfront Mortgage and Annual Mortgage Insurance Premiums
Loan Terms of 15 Years or Fewer
Effective as of July 14, 2008
All premiums are specified in basis points (0.01%)

	DECISION CREDIT SCORE (FICO)						
LTV	850–680	679–640	639–600	599–560	559–500	499–300	Non-traditional
≤ 90.00	100/0	100/0	125/0	150/0	175/0	175/0	150/0
90.01–95.00	100/25	125/25	150/25	175/25	200/25	n/a	175/25
> 95	125/25	150/25	175/25	200/25	200/25	n/a	200/25

VI. Findings and Certifications

Environmental Review

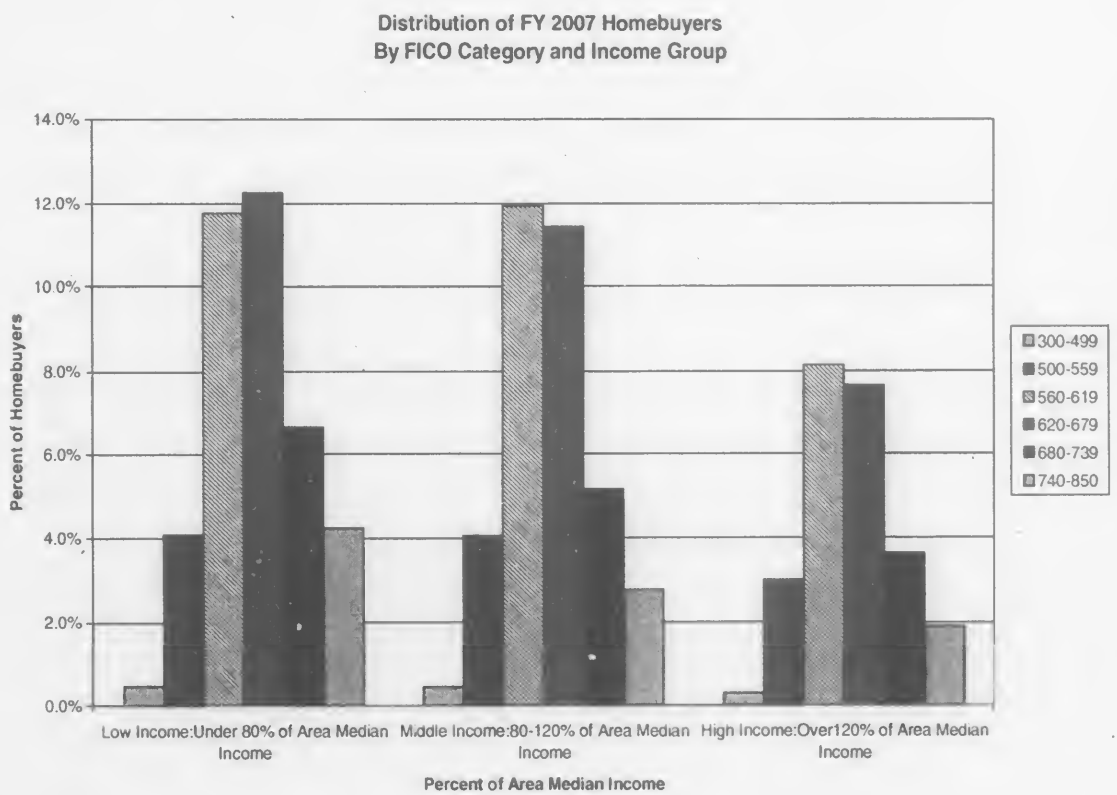
A Finding of No Significant Impact is not required for this notice. Under 24 CFR 50.19(b)(6), the subject matter of this notice is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4332 *et seq.*).

Dated: May 5, 2008.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner

Appendix



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To provide for extensions of leases of certain land by Mashantucket Pequot (Western) Tribe. (May 8, 2008; 122 Stat. 753)

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110th Congress

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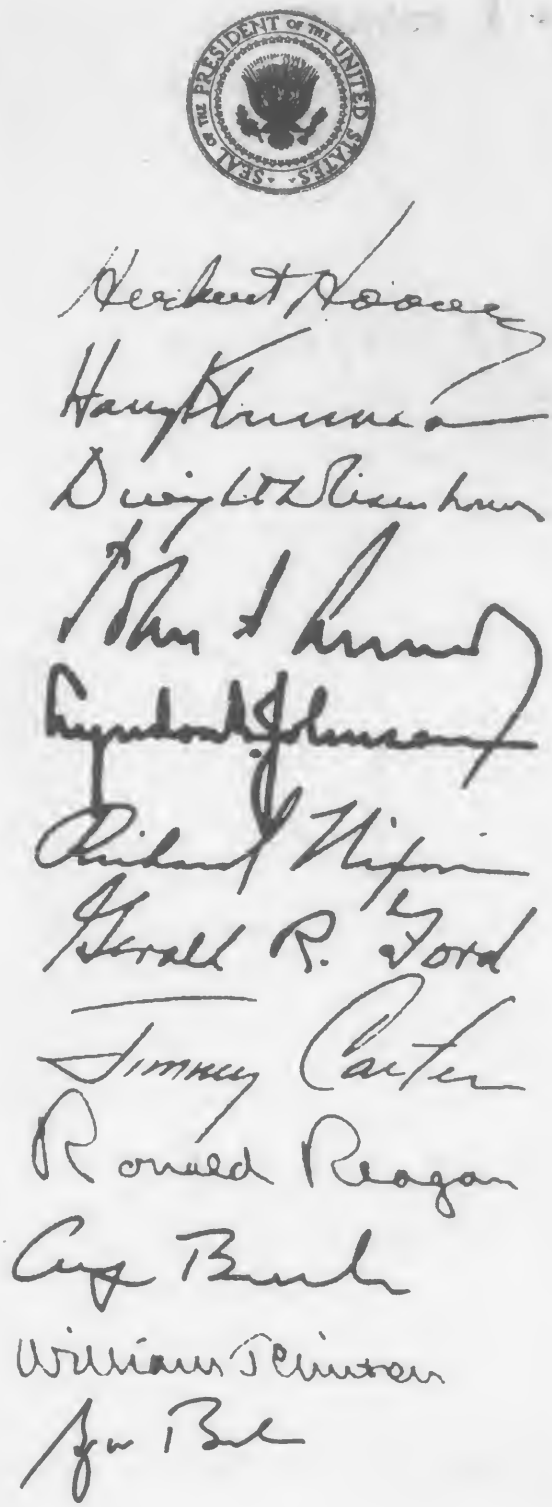

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