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9–7–06 Thursday
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4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, September 12, 2006
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741–6008

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

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Presidential Documents

Title 3—

The President

Notice of September 5, 2006

Continuation of the National Emergency With Respect to Certain Terrorist Attacks

Consistent with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency I declared on September 14, 2001, in Proclamation 7463, with respect to the terrorist attacks at the World Trade Center, New York, New York, the Pentagon, and aboard United Airlines flight 93, and the continuing and immediate threat of further attacks on the United States.

Because the terrorist threat continues, the national emergency declared on September 14, 2001, and the measures adopted to deal with that emergency must continue in effect beyond September 14, 2006. Therefore, I am continuing in effect for an additional year the national emergency I declared on September 14, 2001, with respect to the terrorist threat.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

THE WHITE HOUSE,
September 5, 2006.

[FR Doc. 06–7527
Filed 9–6–06; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV06–985–2 FIR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 3 (Native) Spearmint Oil for the 2006–2007 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule revising the quantity of Class 3 (Native) spearmint oil that handlers may purchase from, or handle for, producers during the 2006–2007 marketing year. This rule continues in effect the action that increased the Native spearmint oil salable quantity from 1,007,886 pounds to 1,161,260 pounds, and the allotment percentage from 46 percent to 53 percent. The marketing order regulates the handling of spearmint oil produced in the Far West and is administered locally by the Spearmint Oil Administrative Committee (Committee). The Committee recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices to help maintain stability in the Far West spearmint oil market.

DATES: *Effective Date:* October 10, 2006.

FOR FURTHER INFORMATION CONTACT: Susan M. Hiller, Marketing Specialist and Gary D. Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or E-mail: *Susan.Hiller@usda.gov* and *GaryD.Olson@usda.gov*, respectively.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule continues in effect the action that increased the quantity of Native spearmint oil produced in the Far West that may be purchased from or handled for producers by handlers during the 2006–2007 marketing year, which ends on May 31, 2007. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The original salable quantity and allotment percentages for Scotch and Native spearmint oil for the 2006–2007 marketing year were recommended by the Committee at its October 5, 2005, meeting. The Committee recommended salable quantities of 878,205 pounds and 1,007,886 pounds, and allotment percentages of 45 percent and 46 percent, respectively, for Scotch and Native spearmint oil. A proposed rule was published in the **Federal Register** on February 1, 2006 (71 FR 5183). Comments on the proposed rule were solicited from interested persons until March 3, 2006. No comments were received. Subsequently, a final rule establishing the salable quantities and allotment percentages for Scotch and Native spearmint oil for the 2006–2007 marketing year was published in the **Federal Register** on April 5, 2006 (71 FR 16986).

This rule continues in effect the action that revised the quantity of Native spearmint oil that handlers may purchase from, or handle for, producers during the 2006–2007 marketing year, which ends on May 31, 2007. Pursuant to authority contained in §§ 985.50, 985.51, and 985.52 of the order, the Committee, with seven of the eight members present, met on April 18, 2006, and unanimously recommended that the 2006–2007 Native spearmint oil allotment percentage be increased by 7 percent.

Thus, taking into consideration the following discussion on adjustments to the Native spearmint oil salable quantity, the 2006–2007 marketing year salable quantity and allotment percentage for Native spearmint oil is increased to 1,161,260 pounds and 53 percent, respectively.

The salable quantity is the total quantity of each class of oil that handlers may purchase from, or handle for, producers during the marketing year. The total salable quantity is divided by the total industry allotment base to determine an allotment percentage. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's individual allotment base for the applicable class of spearmint oil.

The estimated total industry allotment base for Native spearmint oil for the 2006–2007 marketing year was established at 2,191,056 pounds. This figure represents a one percent increase over the revised 2005–2006 total allotment base. This figure is generally revised each year on June 1 due to producer base being lost because of the bona fide effort production provisions of § 985.53(e). The revision is usually minimal.

By increasing the salable quantity and allotment percentage, this final rule makes an additional amount of Native spearmint oil available by releasing oil from the reserve pool. When applied to each individual producer, the allotment percentage increase allows each producer with reserve pool oil to take up to an amount equal to their allotment base from their reserve for this class of oil. Before November 1, 2006, a producer may also transfer excess oil to another producer to enable that producer to fill a deficiency in that producer's annual allotment for this class of oil.

The following table summarizes the Committee recommendation:

Native Spearmint Oil Recommendation

(A) Estimated 2006–2007 Allotment Base—2,191,056 pounds. This is the estimate on which the original 2006–2007 Native spearmint oil salable quantity and allotment percentage was based.

(B) Original 2006–2007 Allotment Percentage—46 percent. This was unanimously recommended by the Committee on October 5, 2005.

(C) Original 2006–2007 Salable Quantity—1,007,886 pounds. This figure is 46 percent of the estimated 2006–2007 allotment base of 2,191,056 pounds.

(D) Increase in Allotment Percentage—7 percent. The Committee recommended a 7 percent increase at its April 18, 2006, meeting.

(E) 2006–2007 Allotment Percentage—53 percent. This figure is derived by adding the increase of 7 percent to the original 2006–2007 allotment percentage of 46 percent.

(F) Calculated Revised 2006–2007 Salable Quantity—1,161,260 pounds. This figure is 53 percent of the estimated 2006–2007 allotment base of 2,191,056 pounds.

(G) Computed Increase in the 2006–2007 Salable Quantity—153,374 pounds. This figure is 7 percent of the estimated 2006–2007 allotment base of 2,191,056 pounds.

In making this recommendation, the Committee considered all available information on price, supply, and demand. The Committee also considered reports and other information from handlers and producers in attendance at the meeting and reports given by the Committee manager from handlers and producers who were not in attendance. On average, handlers estimated that the demand for 2006–2007 Native spearmint oil is 300,000 pounds above the quantity already contracted for sale.

The 2006–2007 marketing year began on June 1, 2006, with an estimated carry-in of 50,000 pounds of salable oil. When the estimated carry-in is added to the original 2006–2007 salable quantity of 1,007,886 pounds, a total estimated available supply for the 2006–2007 marketing year of 1,057,886 pounds results. Of this amount, 819,560 pounds of oil has already been contracted for the 2006–2007 marketing year. Additionally, an estimated deficiency of 133,800 pounds may exist from producers not producing their full salable quantity. As a result, an estimated 104,526 pounds of oil would remain uncontracted and available for sale without this increase. This increase supplies an additional 153,374 pounds of oil to the market, resulting in 257,900 pounds of oil available for contracting for 2006–2007 marketing year.

The Committee was reluctant to recommend any more of an increase in the salable quantity due to the uncertainty of the 2006–2007 marketing year; however, the Committee continues to believe that an increase is necessary to supply the higher quantity of Native spearmint oil demanded according to their revised market estimate. Therefore, the industry may not be able to meet market demand without this increase. In addition, when the Committee made its original recommendation for the establishment of the Native spearmint oil salable quantity and allotment percentage for the 2006–2007 marketing year, it had anticipated that the year would end with an ample available supply.

Based on its analysis of available information, USDA has determined that the salable quantity and allotment percentage for Native spearmint oil for the 2006–2007 marketing year should be increased to 1,161,260 pounds and 53 percent, respectively.

This rule finalizes an interim final rule that relaxed the regulation of Native spearmint oil and will allow producers to meet market demand while improving producer returns. In conjunction with the issuance of this rule, the Committee's revised marketing policy statement for the 2006–2007 marketing year has been reviewed by USDA. The Committee's marketing policy statement, a requirement whenever the Committee recommends implementing volume regulations or recommends revisions to existing volume regulations, meets the intent of § 985.50 of the order. During its discussion of revising the 2006–2007 salable quantity and allotment percentage, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with USDA's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" has also been reviewed and confirmed.

The increase in the Native spearmint oil salable quantity and allotment percentage allows for anticipated market needs for this class of oil. In determining anticipated market needs, consideration by the Committee was given to historical sales, and changes and trends in production and demand.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are eight spearmint oil handlers subject to regulation under the order, and approximately 59 producers of Scotch spearmint oil and approximately 88 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $6,500,000, and small agricultural producers are

defined as those having annual receipts of less than $750,000.

Based on the SBA's definition of small entities, the Committee estimates that 2 of the 8 handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 19 of the 59 Scotch spearmint oil producers and 18 of the 88 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. A typical spearmint oil-producing operation has enough acreage for rotation such that the total acreage required to produce the crop is about one-third spearmint and two-thirds rotational crops. Thus, the typical spearmint oil producer has to have considerably more acreage than is planted to spearmint during any given season. Crop rotation is an essential cultural practice in the production of spearmint for weed, insect, and disease control. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil-producing farms fall into the SBA category of large businesses.

Small spearmint oil producers generally are not as extensively diversified as larger ones and as such are more at risk to market fluctuations. Such small producers generally need to market their entire annual crop and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because income from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation.

This rule continues in effect the action that revised the quantity of Native spearmint oil that handlers may purchase from, or handle for, producers during the 2006–2007 marketing year, which ends on May 31, 2007. That interim final rule increased the Native spearmint oil salable quantity from 1,007,886 pounds to 1,161,260 pounds, and the allotment percentage from 46 percent to 53 percent.

An econometric model was used to assess the impact that volume control has on the prices producers receive for their commodity. Without volume control, spearmint oil markets would likely be over-supplied, resulting in low producer prices and a large volume of oil stored and carried over to the next crop year. The model estimates how much lower producer prices would likely be in the absence of volume controls.

The recommended allotment percentages, upon which 2006–2007 producer allotments are based, are 45 percent for Scotch and 53 percent for Native (a 7 percentage point increase from the original salable percentage of 46 percent). Without volume controls, producers would not be limited to these allotment levels, and could produce and sell additional spearmint oil. The econometric model estimated a $1.40 decline in the season average producer price per pound (from both classes of spearmint oil) resulting from the higher quantities that would be produced and marketed if volume controls were not used (i.e., if the salable percentages were set at 100 percent).

Loosening the volume control restriction by increasing the allotment percentages resulted in this revised price decline estimate of $1.40 per pound if volume controls were not used. A previous price decline estimate of $1.49 per pound was based on the 2006–2007 allotment percentages (45 percent for Scotch and 46 percent for Native) published in the **Federal Register** on April 5, 2006 (71 FR 16986).

The surplus situation for the spearmint oil market that would exist without volume controls in 2006–2007 also would likely dampen prospects for improved producer prices in future years because of the buildup in stocks.

The use of volume controls allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. The use of volume controls is believed to have little or no effect on consumer prices of products containing spearmint oil and will not result in fewer retail sales of such products.

Based on projections available at the meeting, the Committee considered alternatives to the increase finalized herein. The Committee not only considered leaving the salable quantity and allotment percentage unchanged, but also looked at various increases ranging from 0 percent to 10 percent. The Committee reached its recommendation to increase the salable quantity and allotment percentage for Native spearmint oil after careful consideration of all available information, and believes that the level recommended will achieve the objectives sought. Without the increase, the Committee believes the industry would not be able to meet market needs.

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

This rule will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the April 18, 2006, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on May 26, 2006. Copies of the rule were mailed by the Committee's staff to all committee members, producers, handlers, and other interested persons. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided for a 60-day comment period which ended July 25, 2006. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (71 FR 30266, May 26, 2006) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

■ Accordingly, the interim final rule amending 7 CFR part 985, which was published at 71 FR 30266 on May 26, 2006, is adopted as a final rule without change.

Dated: August 31, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–14760 Filed 9–6–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1437

RIN 0560 AH19

Noninsured Crop Disaster Assistance Program—Tropical Regions

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule changes how the Commodity Credit Corporation (CCC) handles certain claims under the Noninsured Crop Disaster Assistance Program (NAP) for "tropical" regions, including Hawaii, Puerto Rico and other specified areas. The changes will reduce the burden on the affected program participants and ease program administration in the affected areas.

EFFECTIVE DATE: January 1, 2006.

FOR FURTHER INFORMATION CONTACT: Frances Williams, Program Specialist, Noninsured Crop Disaster Assistance Program, Farm Service Agency, United States Department of Agriculture (USDA), STOP 0517, Room 3648–S, 1400 Independence Avenue, SW., Washington, DC 20250–0517. Telephone: 202–690–0700. Electronic Mail: *Frances.Williams@wdc.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, *etc.*) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

A proposed rule published on October 3, 2005 proposed changes for handling certain but not all claims for assistance in certain defined "tropical regions" (including Hawaii and Puerto Rico) under the Noninsured Crop Disaster Assistance Program (NAP) program administered by CCC under rules found at 7 CFR Part 1437. The comment period for the rule ended on November 2, 2005, and no comments were received. The background and need for the rule were described in the preamble to the proposed rule. The new regulations, as proposed, are adopted by final rule with minor clarifying changes. This final rule is made effective as of January 1, 2006, since, as contemplated in the proposed rule, the rule was to be effective with all covered crops planted as of that date. Provision is made in the rule itself for adjustments as may be needed between the old and new rules. It is understood, however, that the changes in 7 CFR 1437 are, in all cases, advantageous to producers. If not, any producer with a claim arising from a policy issued before the date of publication of this final rule who would have profited from the old policy may apply for relief.

In the preamble to the proposed rule it was indicated that the source of authority for extending the rule to certain tropical regions was 48 U.S.C. 1469d. However, the NAP program has been since inception extended to those regions. NAP was first provided for in crop insurance legislation that allowed for crop insurance in such regions and allowed NAP as an alternative to catastrophic crop insurance coverage where such coverage is not available. It remains the case, even though the statutory authority for NAP has changed, that NAP is to be available where conventional federal crop insurance catastrophic insurance is not available and the authority for federal crop insurance continues to include an allowance for federal crop insurance in the areas covered by this NAP rule. That noted, on review, the provisions of the rule which provide for different treatment in certain tropical areas as opposed to others have been found to be justified because of differing agricultural conditions and no change has been made in the rule in this regard.

Executive Order 12866

This rule is issued in conformance with Executive Order 12866, was determined to be not significant, and was not reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because CCC is not required to publish a notice of proposed rulemaking for the subject matter of this rule.

Environmental Assessment

The environmental impacts of this rule have been considered consistent with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA regulations for compliance with NEPA, 7 CFR 799. FSA has concluded that this rule is categorically excluded from further environmental review and documentation. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. This rule preempts State and other local laws that are inconsistent with it. Before any legal action may be brought regarding a determination under this rule, the administrative appeal provisions set forth at 7 CFR parts 11 and 780 must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. "States" for this purpose included the 50 States and other areas addressed in the rule. See the notice related to 7 CFR part 3014, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates Reform Act of 1995

The rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, Local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act of 1995

The information collection burden for NAP is by OMB under 5 CFR 1320 and

assigned OMB Control Number 0560–0175. In the proposed rule (70 FR 57520, 57521) the Agency provided an estimate of the effect this rule would have on the information collection requirements of the NAP program and requested public comment on whether the collection of information is necessary for the proper performance of the functions of the agency, whether the information will have practical utility, the accuracy of the agency's burden estimate, ways to enhance the quality, utility, and clarity of the information collected, and ways to minimize the burden. No comments were received.

Executive Order 12612

This rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. This rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government. "States" for this purpose included the 50 States and other areas addressed in the rule.

Government Paperwork Elimination Act

FSA is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general and FSA in particular to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required for participation in the program are available electronically for downloading or electronic submission through the USDA eForms Web site at *http://forms.sc.egov.usda.gov/eforms*.

Federal Assistance Programs

The title and number of the Federal assistance program found in the Catalog of Federal Domestic Assistance to which this final rule applies are Noninsured Assistance, 10–451.

List of Subjects in 7 CFR Part 1437

Agricultural commodities, Disaster assistance, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons set forth in the preamble, 7 CFR part 1437 is amended as follows:

PART 1437—NONINSURED CROP DISASTER ASSISTANCE PROGRAM

■ 1. The authority citation for part 1437 is revised to read as follows:

Authority: 7 U.S.C. 7333; 15 U.S.C. 714 *et seq.*; and 48 U.S.C. 1469.

■ 2. Add Subpart F to read as follows:

Subpart F—Coverage in the Tropical Region

Sec.

Subpart F—Determining Coverage in the Tropical Region

§ 1437.501 Applicability; definition of "tropical region" and additional definitions.

(a) This subpart shall only apply to covered tropical crops in the tropical region for the 2006 and subsequent crops years, as those terms are defined in this subpart. Benefits under this part may be extended to those crops only to the extent that they are otherwise eligible for assistance under this part. Covered crops shall not apply to "value loss" crops, as defined elsewhere in this part. For those crops that are covered by this subpart, loss and payment determinations for the program covered in this part shall be determined by the rules that otherwise apply to the program subject to the modifications provided by this subpart. The rules that otherwise apply include, but are not limited to, limitations on payments that appear elsewhere in this part.

(b) For purposes of this subpart:

(1) *Tropical region* includes, as may be further limited by the Deputy Administrator: Hawaii, American Samoa, Guam, the U.S. Virgin Islands, Puerto Rico, and the former Trust Territory of the Pacific Islands (the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau).

(2) *2006 and subsequent crops* means those crops in the ground on or after January 1, 2006.

(3) *Covered tropical crops* means those crops and commodities in the tropical region governed by this subpart, those being all crops and commodities in the tropical region that are otherwise eligible for generating a benefit claim under this part, except for value-loss crops as defined elsewhere in this part.

(c) The Deputy Administrator may adjust requirements for assistance so as to provide a fair transition from previous rules for crop covered by this subpart to those provisions which are provided for in this subpart.

§ 1437.502 Coverage periods and fees for covered tropical crops.

(a) The crop year for all covered tropical crops is the calendar year (January 1 through December 31 beginning in 2006 through subsequent years).

(b) The application closing date for all covered tropical crops is December 1 of the calendar year before the applicable crop year.

(c) For covered tropical crops, per county per crop year, a maximum service fee of $100.00 is required of the producer for coverage of:

(1) With respect to annual and biennial crops, all plantings of the same crop planted during the crop year, as determined by CCC.

(2) With respect to perennial crops, all acreage of the crop existing during the crop year, as determined by CCC.

(d)(1) Multiple planting periods and final planting dates are not applicable for covered tropical crops. However, nothing in this section shall prohibit assigning different production expectations to different fields.

(2) The coverage period for perennial and other crops covered by this subpart begins on January 1 of the relevant crop year and ends on December 31 of that year.

§ 1437.503 Covered losses and recordkeeping requirements for covered tropical crops.

(a) Prevented planting coverage is not available for covered tropical crops, other than in Hawaii and Puerto Rico, except as approved by the Deputy Administrator in special cases.

(b) Except in Hawaii and Puerto Rico, or as otherwise approved by the Deputy Administrator in individual cases, eligible causes of loss for covered tropical crops will only include hurricanes, typhoons, and named tropical storms.

(c) Producers who have applied for coverage on covered tropical crops must maintain for the full coverage period contemporaneous records. Contemporaneous records are those created at the time of planting and harvesting of the crop for which the application for coverage is filed. In this regard:

(1) Producers may be selected on a random or targeted basis for compliance review with this requirement and any other requirements that may apply to this program.

(2) A failure to maintain acceptable contemporaneous records throughout the crop year may be treated by CCC as grounds of ineligibility for benefits under this part.

§ 1437.504 Notice of loss for covered tropical crops.

(a) The provisions of § 1437.10(c) regarding late filed notice of loss do not apply to covered tropical crops.

(b) Where a notice of loss for covered tropical crops is provided according to § 1437.10, producers must provide records maintained according to § 1437.503(c) of the:

(1) Number of acres or other basis of measurement, as applicable, of the crop from which production could be achieved existing on the day the eligible natural disaster occurred or, for prolonged natural disasters, such as a drought and similar damage where applicable, existing on the day the notice of loss is filed.

(2) Amount, including zero, as applicable, of production harvested, before or after the disaster, from those crop plantings (damaged or undamaged) which were in existence on the farm at the time of the disaster including production from the covered plantings (in existence at the time of the loss event) that may occur after the loss event even when, to the extent provided for in paragraph (c) of this section, the harvest occurs after the end of the crop year. Crop acreage of the covered crop that is in existence at the time of the loss event that can be harvested after the eligible natural disaster must be harvested, or continue to be harvested, and the harvested acres and production reported to FSA according to this subpart, except that for perennial crops the requirement ends with the end of the crop year. For non-perennial crops the obligation to harvest ends with the end of the life-cycle for the plantings that were in existence at the time of the loss event. In this regard:

(i) Except as otherwise determined by FSA, such production, before or after the loss event, will be taken into account in computing eligibilities.

(ii) Production that must be reported under paragraph (b)(2)(i) of this section includes, except in the case of perennial plants, all production irrespective of whether the production occurs in the same crop year.

(iii) For perennial plants, only production in the same crop year must be reported.

(iv) All production that must be reported for covered tropical crops will, except as specified by the Deputy Administrator, be taken into account in the loss determinations made under this part. The producer is obligated to maximize that production. That is, harvesting and other production activities for the plants in the ground at the time of the disaster must be undertaken or continue to be undertaken, to the maximum extent possible, for the full reporting period, that being the period for which production could count against a loss as indicated in this subpart.

(3) Failure to keep sufficient records to allow the computations provided for in this subpart is grounds for denial of the claim.

(c) Producers with coverage of a covered tropical crop for a crop year must, by the earlier of 90 calendar days after the crop year ends or the date a notice of loss is filed, file a certified report setting out the:

(1) Collective acres of the crop acreage planted or in the ground during the crop year.

(2) Total production harvested from the crop acreage for the full crop year in the case of a perennial plant and for the full life of the plants for other crops.

(d) With respect to the report required in paragraph (c) of this section:

(1) If a report is filed before the end of the crop year, an updated crop report must be filed within 90 calendar days from the end of the crop year to supplement the original report;

(2) If the report is for any annual or biennial crops where production continued or could have continued beyond the period covered in the reports otherwise filed under this section, an additional report of production must be filed within 30 days of the end of the last countable production for the covered crop or 30 days after the last date on which such production could have been obtained, whichever is later.

(3) A failure to file an adequate report where a report is required by this section may result in the producer being treated as having a zero yield capability for the crop year involved for purposes of constructing a crop history. Alternatively, the Deputy Administrator may assign another sanction for that failure. In addition to other sanctions as may apply, a failure to file such reports may be grounds for denial of a claim. The Deputy Administrator may adjust crop histories as determined appropriate to create, to the extent practicable, an appropriate crop history for loss computation purposes.

(4) Such reports as are provided for in this subsection must be filed for every crop year for which there is coverage, irrespective of whether a claim is filed for that year.

(e) Unless otherwise specified by the Deputy Administrator, appraisals are not required of crop acreage for covered tropical crops on Guam, Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

(f) All crop acreage for covered tropical crops for which a notice of loss is filed must not be destroyed until authorized by CCC.

§ 1437.505 Application for payment for the tropical region.

(a) For producers of covered tropical crops in Guam, Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau, an application for payment must be filed at the same time as the filing of the notice of loss required under §§ 1437.10 and 1437.504.

(b) For producers in Puerto Rico and Hawaii, an application for payment for such crops must be filed by the later of:

(1) The date on which the notice of loss is filed in accordance with §§ 1437.10 and 1437.502(i), and

(2) The date of the completion of harvest for the specific crop acreage that existed at the time of loss for which the notice of loss was filed.

Signed in Washington, DC, August 23, 2006.

Thomas B. Hofeller,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. E6–14736 Filed 9–6–06; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–24813; Airspace Docket No. 06–AAL–16]

Modification of Legal Description of Class D and E Airspace; Fairbanks, Fort Wainwright Army Airfield, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The U.S. Army will soon be changing the name of Fort (Ft.) Wainwright Army Airfield (AAF) to Ladd AAF. This action amends the airport name accordingly for each of the Class D and Class E airspace descriptions in FAA Order 7400.9N. This action also amends an altitude omission which currently does not exist in the FAA Order 7400.9N. This action also redefines the airspace description to account for recent updates to the airfield coordinates.

DATES: This direct final rule is effective on 0901 UTC, November 23, 2006.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on Monday, July 17, 2006 (71 FR 40394). The FAA uses the direct final rulemaking procedure for non-controversial actions where the FAA believes that there will be no adverse public comment. The direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on November 23, 2006.

One comment was received via telephone, in which the person voiced opposition to the name change. That opinion is not within the scope of this action, in that it does not address any aeronautical effect. His complaint is with the U.S. Army's decision to change the name. This action essentially addresses the title of the airspace annoted in the the FAA Order 7400.8. No other adverse comments were received. This notice confirms that the rule will become effective on that date.

Issued in Anchorage, AK, on August 28, 2006.

Anthony M. Wylie,

Director, Alaska Flight Service Information Office.

[FR Doc. E6–14821 Filed 9–6–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–23714; Airspace Docket No. 06–AAL–07]

Revision of Class E Airspace; Barter Island, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the airspace description contained in a Final Rule that was published in the **Federal Register** on Wednesday, August 23, 2006 (71 FR 49343). Airspace Docket No. 06–AAL–07.

DATES: *Effective Date:* 0901 UTC, November 23, 2006

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

History

Federal Register Document E6–13803, Airspace Docket No. 06–AAL–07, published on Wednesday, August 23, 2006 (71 FR 49343), revised Class E airspace at Barter Island, AK. An error was discovered in the airspace description that incorrectly identified the Barter Island Airport by including the name "Edward Burnell Sr. Memorial". This action corrects that error.

Correction to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the airspace description of the Class E airspace published in the **Federal Register**, Wednesday, August 23, 2006 (71 FR 49343), (FR Doc E6–13803, page 49344, column 3) is corrected as follows:

§ 71.1 [Corrected]

* * * * *

AAL AK E5 Barter Island, AK [Revised]

Barter Island Airport, AK
(Lat. 70°08′02″ N., long. 143°34′55″ W.)

That airspace extending upward from 700 feet above the surface within a 4.7-mile radius of the Barter Island Airport; and that airspace extending upward from 1,200 feet above the surface within a 83-mile radius of the Barter Island Airport, excluding that airspace east of 141° West Longitude.

* * * * *

Issued in Anchorage, AK, on August 23, 2006.

Anthony M. Wylie,

Director, Alaska Flight Service Information Office.

[FR Doc. E6–14830 Filed 9–6–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS NEW ORLEANS (LPD 18) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: *Effective Date:* August 18, 2006.

FOR FURTHER INFORMATION CONTACT: Commander Gregg A. Cervi, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS NEW ORLEANS (LPD 18) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Rule 27, pertaining to the placement of all-round task lights in a vertical line; Annex I, paragraph 3(a), pertaining to the horizontal distance between the forward and after masthead lights; and Annex I, paragraph 2(k), pertaining to the vertical separation between anchor lights. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed

herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

■ For the reasons set forth in the preamble, amend part 706 of title 32 of the Code of Federal Regulations as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read:

Authority: 33 U.S.C. 1605.

■ 2. Table Three of § 706.2 is amended by adding, in numerical order, the following entry for USS NEW ORLEANS:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE THREE

Vessel	No.	Masthead lights arc of visibility; rule 21(a)	Side lights arc of visibility; rule 21(b)	Stern light arc of visibility; rule 21(c)	Side lights distance inboard of ship's sides in meters 3(b) annex 1	Stern light, distance forward of stern in meters; rule 21(c)	Forward anchor light, height above hull in meters; 2(K) annex 1	Anchor lights relationship of aft light to forward light in meters 2(K) annex 1
*	*	*	*	*	*	*	*	*
USS NEW ORLEANS.	LPD 18	.....	.....	.....	.....	.....	.....	2.36m below.
*	*	*	*	*	*	*	*	*

■ 3. Table Four, in Paragraph 20 of § 706.2, is amended by adding, in numerical order, the following entry for USS NEW ORLEANS (LPD 18):

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Angle in degrees of task lights off vertical as viewed from directly ahead or astern
USS NEW ORLEANS	LPD 18	10
* * * * * * *		*

■ 4. Table Five of § 706.2 is amended by adding, in numerical order, the following entry for USS NEW ORLEANS:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
* * *	*	*	*	*	*
USS NEW ORLEANS	LPD 18	.....	.....	X	70.7
* * *	*	*	*	*	*

Approved: August 18, 2006.

Gregg A. Cervi,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

[FR Doc. E6–14693 Filed 9–6–06; 8:45 am]

BILLING CODE 3810–FF–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

32 CFR Part 2002

[NARA–06–006]

RIN 3095–AB51

General Guidelines for Systematic Declassification Review of Foreign Government Information; Removal of Part

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: The National Archives and Records Administration (NARA) is removing Information Security Oversight Office (ISOO) regulations on the general guidelines for systematic declassification review of foreign government information. Following the issuance of Executive Order 12958 (Classified National Security Information) on April 17, 1995, and its amendment on March 25, 2003, the General Guidelines for Systematic Declassification Review of Foreign Government Information, became obsolete. The final rule will affect Federal agencies.

EFFECTIVE DATE: Effective September 7, 2006.

FOR FURTHER INFORMATION CONTACT: J. William Leonard, Director, ISOO, at 202–357–5400.

SUPPLEMENTARY INFORMATION: The authority citation for part 2002 is no longer valid with the revocation of E.O. 12356 following the issuance of E.O. 12958, as amended. Part 2002 prescribed the general guidelines for the systematic declassification review of classified foreign government information that was either received or classified by the United States Government or its agents, and incorporated into records determined by the Archivist of the United States to have permanent value. E.O. 12958, as amended, and its implementing regulation, 32 CFR parts 2001 and 2004 (ISOO Directive No. 1), provide for the declassification of classified foreign government information. As national security classified information, classified foreign government information is subject to automatic declassification after 25 years unless specifically exempted.

Therefore, pursuant to 5 U.S.C. 553(b)(B), good cause exists for waiving the requirements of notice and opportunity for comment on the withdrawal of 32 CFR part 2002. Following the issuance of Executive Order 12958, as amended, these sections became obsolete. Therefore, because the Information Security Oversight Office (ISOO) has no authority to retain these sections, the process of notice and comment would be unproductive and is unnecessary. Additionally, it is in the public interest to remove an obsolete regulation.

This rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been submitted for Office of Management and Budget review under that order. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities because this rule applies to Federal agencies. This regulation does not have any federalism implications.

List of Subjects in 32 CFR Part 2002

Archives and records, Declassification.

PART 2002—[REMOVED]

■ Under E.O. 12958, as amended, section 3.3(g) and for the reasons set forth in the preamble, NARA amends 32 CFR chapter 20 by removing part 2002.

Dated: August 24, 2006.

J. William Leonard,

Director, Information Security Oversight Office.

Approved: August 30, 2006.

Allen Weinstein,

Archivist of the United States.

[FR Doc. E6–14761 Filed 9–6–06; 8:45 am]

BILLING CODE 7515–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–06–111]

Drawbridge Operation Regulations; Housatonic River, Stratford, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the U.S. 1 Bridge, across the Housatonic River, mile 3.5, at Stratford, Connecticut. Under this temporary deviation, only one of the two moveable bascule spans will be opened for the passage of vessel traffic. This deviation is necessary to facilitate scheduled bridge maintenance.

DATES: This deviation is effective from September 18, 2006 through November 16, 2006.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, One South Street, New York, New York 10004, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The First Coast Guard District Bridge Branch Office maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Judy Leung-Yee, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The U.S. 1 Bridge across the Housatonic River, mile 3.5, at Stratford, Connecticut, has a vertical clearance in the closed position of 32 feet at mean high water and 37 feet at mean low water. The existing operating regulations are listed at 33 CFR 117.207(a).

The bridge owner, Connecticut Department of Transportation, requested a temporary deviation to allow opening only one of the two moveable bascule spans for the passage of vessel traffic from September 18, 2006 through November 16, 2006, in order to facilitate scheduled bridge maintenance.

Under this temporary deviation, the U.S. 1 Bridge need only open one of the two movable bascule spans for the passage of vessel traffic from September 18, 2006 through November 16, 2006. Two-span, full bridge, openings shall be provided upon request, if at least a three-day advance notice is given, by calling the number posted at the bridge. Otherwise, the bridge will continue to open during this temporary deviation in accordance with the schedule specified in 33 CFR 117.207(a).

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Should the bridge maintenance authorized by this temporary deviation be completed before the end of the effective period published in this notice, the Coast Guard will rescind the remainder of this temporary deviation, the bridge shall be returned to its normal operating schedule, and notice will be provided to the public.

This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: August 28, 2006.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E6–14834 Filed 9–6–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AI42

Claims Based on Aggravation of a Nonservice-Connected Disability

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its adjudication regulations concerning secondary service connection. This amendment is necessary because of a court decision that clarified the circumstances under which a veteran may be compensated for an increase in the severity of an otherwise nonservice-connected condition which is caused by aggravation from a service-connected condition. The intended effect of this amendment is to conform VA regulations to the court's decision.

DATES: *Effective Date:* October 10, 2006.

FOR FURTHER INFORMATION CONTACT: Bill Russo, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–7211.

SUPPLEMENTARY INFORMATION: VA published in the **Federal Register** (62 FR 30547) a proposed rule to amend 38 CFR 3.310 by adding a new paragraph to implement a decision of the United States Court of Veterans Appeals (now the United States Court of Appeals for Veterans Claims) (CAVC) in the case of *Allen* v. *Brown*, 7 Vet. App. 439 (1995), that provided for establishing service connection for that amount of increase in an otherwise nonservice-connected condition which was caused by aggravation from a service-connected condition (*Allen* aggravation). We received comments from the Disabled American Veterans and the Vietnam Veterans of America, Inc. Based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule as a final rule with the changes indicated below.

One commenter expressed the opinion that VA should establish service connection for the entire aggravated injury or disease, but only pay compensation for that part of the condition that is due to aggravation by an already service-connected condition. The commenter opined that 38 U.S.C. 1110 and 1131 do not allow VA to establish service connection for part of a condition. The same commenter stated that it has been the policy of VA to compensate the entire disability where a service-connected condition and a nonservice-connected condition affect a single organ, body system, or function, and the two conditions have common symptoms that cannot be separated. This commenter felt that the policy was an acknowledgment by VA that the symptoms cannot be separated to allow proportioning the disability attributable to each organ, body system, or function. We do not agree with this proposed amendment to the rule.

In *Allen* v. *Brown*, 7 Vet. App. 439 (1995), the CAVC held that 38 U.S.C. 1110 requires VA to pay compensation for the aggravation of the nonservice-connected disability but did not, we believe, express a specific view on whether VA would be required or permitted to grant "service connection" for all or only part of the nonservice-connected disease. Section 1110 does not directly speak to awards of "service connection," but merely authorizes compensation for "disability," which the CAVC in *Allen* construed to mean "impairment of earning capacity." Section 1110 further requires that the disability have been caused by an injury or disease incurred or aggravated in service. This is consistent with the proposed rule, which requires that the "disability" (the increased severity of the nonservice-connected condition) must be caused by a service-connected injury or disease. Accordingly, section 1110 does not support the commenter's position. In its holding in *Tobin* v. *Derwinski*, 2 Vet. App. 34 (1991), the CAVC apparently interpreted 38 CFR 3.310 to require VA to grant "service connection" for the portion of the nonservice-connected disability attributable to aggravation by the service-connected condition. Thus, when read in tandem, the CAVC's rulings require VA to service connect the degree of aggravation of a nonservice-connected condition by a service-connected disability and to pay compensation for that level of disability attributable to such aggravation. Although § 3.310 reasonably provides that any disability proximately caused by a service-connected disease will be considered part of the service-connected condition, for purposes of authorizing service connection and compensation, there is no clear basis for awarding service connection for the entire nonservice-connected condition, including aspects of that condition that are not attributable to a service-connected condition.

Although 38 U.S.C. 1110 neither uses nor defines the term "service-connected," that term is defined in 38 U.S.C. 101(16) to mean, in pertinent part, that a "disability was incurred or aggravated * * * in line of duty in the active military, naval, or air service." Nothing in that definition requires or authorizes VA to grant service connection for the entirety of a disease or injury that was not incurred or aggravated in service.

Both commenters expressed concerns about the difficulties in establishing the degree of aggravation that is to be compensated. However, VA believes that, if medical evidence is adequately developed, computation of the degree of aggravation should be attainable. The degree of aggravation would be assessed based upon the objective medical evidence of record.

Both commenters objected to the proposed rule's requirement of "medical evidence extant before the aggravation sufficient to establish the pre-aggravation severity of the disability." They suggested that a current medical opinion should be sufficient to establish the fact of aggravation.

Aggravation is a comparative term meaning that a disability has worsened from one level of severity to another. In order to establish the degree to which aggravation has occurred, it is necessary to compare the current level of severity to a prior level of severity. In cases of disabilities which pre-existed service, in standard aggravation claims under 38 U.S.C. 1153, the pre-service level of severity is generally established by a service entrance examination. If no disabilities are noted on that examination, the veteran is presumed to have been in sound condition when he or she entered service. If disabilities are noted on the entrance examination, the examiner should include sufficient findings to permit a determination of the degree of disability. If the findings indicate severe disability, the person would not be allowed on active duty. If the findings indicate mild to moderate disability, an assessment of fitness for duty would be made. If the person were allowed on active duty, there should be sufficient findings for a later assessment of the pre-service level of disability, which would be deducted from the post-service level of disability in a

standard aggravation claim. It is the Government's responsibility to conduct the entrance examination and to create and maintain a record of that examination. If the Government fails to conduct the examination or fails to provide sufficient findings for assessing the level of pre-service disability, or if the record of the examination is lost or destroyed, that should not operate to the disadvantage of the veteran. That is the reason for the language in 38 CFR 3.322 and 4.22, which requires deduction of the pre-service level of disability from the current level of disability only if the pre-service level of disability is "ascertainable."

The requirement for proof of baseline disability is much different in an *Allen* aggravation case. The threshold requirement for entitlement under § 3.310(a) is evidence demonstrating an increase in disability of a nonservice-connected disability that is proximately due to or the result of service. Thus, evidence of baseline disability is first necessary to establish entitlement to service connection. Plainly stated, such evidence of aggravation would necessarily include some demonstration of baseline disability in order to show an increase in severity. Once entitlement has been established, such evidence would also be necessary for purposes of determining the level of compensation. In so doing, the veteran would demonstrate that the nonservice-connected disability has increased in severity because of aggravation from a service-connected condition. Unlike the standard aggravation claim pursuant to 38 U.S.C. 1153 where the baseline level of severity (referred to in the text of the proposed rule as "the pre-aggravation severity") is based on an entrance examination, there is no Government responsibility to create and maintain medical records on nonservice-connected conditions for purposes of determining the baseline level of severity in *Allen* aggravation claims. The veteran must "support" the claim with medical evidence of the baseline level of severity of a nonservice-connected condition which can then be compared to the current level of severity to establish the fact of aggravation and the degree of disability for which the veteran will be compensated.

One commenter stated it would be unreasonable for VA to require proof of a baseline level of disability as a condition for granting service connection for aggravation. To illustrate, the commenter suggested that if a physician opined that a service-connected condition aggravated a nonservice-connected condition, VA would be required to concede aggravation, in the absence of any contrary evidence, even if there were no evidence of a baseline level of pre-aggravation disability.

This comment is premised upon the incorrect assumption that there is necessarily a difference under *Allen* between the issue of service connection and the degree of disability. As indicated, the evidence of baseline disability satisfies the initial requirement of additional disability necessary to establish entitlement, but also is necessary to demonstrate the level of disability due to aggravation. Because we cannot service connect the entire nonservice-connected condition, only the degree of disability resulting from aggravation may be service connected. Therefore, evidence concerning the degree of disability is essential to establish service connection in *Allen* aggravation claims and it is reasonable for VA to require claimant's to submit proof of a baseline disability level. Such a requirement is in accordance with VA's authority under 38 U.S.C. 501 to specify the types of proof that are necessary to establish a benefit.

Finally, in the example suggested by the commenter, if a physician determines that a service-connected condition has aggravated a nonservice-connected condition, it is reasonable to expect that that medical opinion would be based on evidence of the baseline and the current level of disability of the nonservice-connected condition. Thus, the requirement to provide proof of a baseline level of disability is not as onerous as contemplated and suggested by this commenter.

We have, however, reconsidered the requirement of "medical evidence extant before the aggravation" to establish the baseline level of severity when computing the degree of aggravation. It could be difficult for some claimants to identify the date of onset of the aggravation and then to locate medical evidence created before that date to establish the baseline. Thus, limiting the medical evidence for baseline calculation to that which existed prior to the onset of aggravation could likely result in unfavorable decisions in several claims. Obviously, if such records were available, they would establish the lowest baseline level of severity and, hence, the greatest degree of aggravation when compared to the current level of severity. However, since aggravation is generally an ongoing process, medical evidence establishing the aggravation could be created at any time between the onset of aggravation and the date of the current claim. VA's acceptance of medical evidence created at any time between the onset of aggravation and the date of the current claim for purposes of establishing the baseline level of severity would be more favorable to claimants, although claims granted in this regard would likely result in findings of smaller degrees of aggravation and less compensation. We are, therefore, amending the proposed rule to allow the acceptance, for baseline purposes, of medical evidence created at any time between the onset of aggravation and the receipt of medical evidence establishing the current level of severity. The earlier medical evidence will establish the baseline level of severity for comparison with the current level of severity to determine the degree of aggravation that may be service-connected and compensated. For example, if the onset of aggravation was sometime in 1996, but the veteran can only produce medical evidence from 1999, the 1999 medical evidence would be accepted for purposes of establishing the baseline level of severity. The rule will also state that VA will also accept, for baseline purposes, medical evidence created before the onset of aggravation.

One commenter suggested that the provisions of 38 CFR 3.322 with regard to in-service aggravation of pre-service disabilities should have equal application in *Allen* aggravation claims. Specifically, § 3.322 provides that no deduction for the pre-service level of disability may be made unless that pre-service level is "ascertainable." It also provides that no deduction is to be made if the aggravated disability becomes totally disabling. We do not agree with this suggestion. As mentioned earlier, when a pre-service level of disability is not ascertainable, the Government has failed to discharge its responsibility to conduct, and/or maintain a record of, an adequate entrance examination. That failure should not be allowed to disadvantage the veteran in any way. In *Allen* aggravation claims the Government has no such responsibility. The responsibility for establishing a baseline level of disability in such claims rests with the veteran. If no baseline can be established, no aggravation can be demonstrated, and the deduction issue would be moot.

With respect to the provision concerning no deduction when the aggravated disability is totally disabling, we believe such action is prohibited by the *Allen* decision itself. There the Court stated with parenthetical emphasis that "such veteran shall be compensated for the degree of disability (but only that degree) over and above the degree of disability existing prior to

the aggravation." Based on that language it is clear that only the incremental increase in disability is to be compensated. To hold otherwise could lead to absurd results. For example, if, 20 years after service, a Vietnam veteran developed a nonservice-connected psychosis which was 70 percent disabling but also had a service-connected disability that aggravated the psychosis causing it to be totally disabling, then the application of 38 CFR 3.322 would require payment of compensation at the 100 percent rate for a 70 percent nonservice-connected condition, when the aggravated percentage is 30 percent. Such a result could not have been intended by the *Allen* court, and we decline to apply § 3.322 to *Allen* aggravation claims in the manner suggested.

Both commenters suggested that it would be difficult, if not impossible, for VA to determine, for deduction purposes, the degree of increase in a nonservice-connected condition that is attributable to "the normal progression of the disability" and that perhaps that provision in the proposed rule should just be deleted on the basis of workload considerations. While we agree that it could be difficult to establish the degree of increased disability due to "normal progression," that does not relieve VA of the responsibility to consider such evidence if it exists. In *Allen* aggravation claims VA can only pay compensation for the increased disability attributable to aggravation from a service-connected condition. Any increase attributable to other causes is beyond the scope of *Allen* and may not be compensated unless specifically authorized by statute. While authoritative medical evidence on the degree of increase due to "normal progression" of a disease is rare, if it exists in an individual case, VA cannot ignore it and cannot adopt the suggestion to delete this provision in the proposed rule.

However, in analyzing and responding to the above suggestion, we noted that the proposed rule uses language different from that found in 38 U.S.C. 1153 and 38 CFR 3.306. The proposed rule uses the phrase "normal progression of the disability" whereas the cited statute and regulation dealing with aggravation use the phrase "natural progress of the disease." Although the choice of words in the proposed rule is slightly different from the statutory phrasing, no change in meaning was intended. For purposes of clarity, however, we will incorporate the statutory phrasing in the first and last sentences of 3.310(b). The proposed rule also uses the term "disability" to mean "disease or injury", in four other instances. The term "disability" is used in 38 U.S.C. 1153 and 38 CFR 3.306 to mean the level of disability, rather than the disease or injury itself. To avoid any possible confusion about our intent (to refer to the disease or injury), we believe it will provide greater clarity to use the term "disease or injury" instead of disability in 3.310(b). We are also changing "rather than" to "and not due to" to provide a more parallel structure for the first sentence of 3.310(b).

One commenter urged VA to include in this regulation some directions to field personnel on how to evaluate the "natural progress" of a disease including the effects of such variables as race, age, gender and geographic location on such "progress." The commenter also opined that VA was incapable of providing adequate directions on this subject.

We do not believe that special instructions for evaluating "natural progress" are necessary. Any evidence of "natural progress" of a disease would be in the form of medical evidence. Since our field personnel are already charged with assessing the credibility and weight of such evidence with regard to other issues in a claim, it would not be appropriate to have a separate set of instructions for assessing the credibility and weight of medical evidence relating to "natural progress" of a disease. The variables mentioned by the commenter would be considered by the medical professional who was providing the evidence of "natural progress." Therefore, no changes in the proposed rule are warranted based on this comment.

One commenter noted that VA has taken a pro-veteran approach to allowing a veteran to claim the aggregate disability caused by a service-connected and nonservice-connected condition, demonstrated by § 4.127, which provides that a veteran with a mental retardation or a personality disorder may also have a mental disorder that may be service-connected. Section 4.127 states that a veteran may have co-existing mental disorders, one service-connectable and the other congenital or developmental, and that the service-connectable disorder should not be overlooked because of the congenital or developmental disorder. Nothing in § 4.127 provides for granting service connection for the co-existing mental retardation or personality disorder.

While VA will compensate overlapping symptoms as if the overlapping symptoms were all due to the effects of the service-connected condition, we do this in specific situations where it is impossible for a medical examiner to distinguish which symptoms are due to the service-connected disability and which are due to the nonservice-connected disability, such as where two separate disabilities share common symptoms. Where various symptoms affecting a single body part or system can be separated into those attributable to the service-connected disability and those attributable to the nonservice-connected disability, VA evaluates for compensation only those symptoms attributable to the service-connected disability.

While VA agrees that the provision referred to by the commenter is pro-veteran, it does not stand for the proposition that VA grants service connection for conditions not related to military service. No changes are warranted based on this comment.

One commenter also referenced the principle codified in 38 U.S.C. 1160 and 38 CFR 3.383, which provide for special consideration when a specified degree of disability is service-connected in certain organs or extremities and there is a nonservice-connected disability affecting the corresponding paired organ or extremity. In this situation, VA is authorized to pay disability compensation as if the combination of disabilities in those paired organs or extremities were service-connected. The commenter expressed the opinion that this demonstrates that VA will grant service connection for a nonservice-connected disability.

Section 3.383 does not authorize a grant of service connection for the disability affecting the nonservice-connected paired organ or extremity. Rather, the disability of the nonservice-connected paired organ or extremity remains nonservice-connected but is compensated as if it was service-connected. Further, section 3.383 merely reiterates statutory provisions in 38 U.S.C. 1160 and in no way suggests that VA has general authority to grant service connection for nonservice-connected conditions. Thus, this comment is not directly relevant to the subject of the proposed rule. We make no changes based on this comment.

One commenter opined that the determinations of the level of disability must be made by medical personnel and not Rating Veterans Service Representatives. This commenter urged VA to include in the Adjudication Manual a provision stating this.

We make no changes based on this suggestion. While the Adjudication Manual may need to be amended to reflect the procedures necessary to implement this regulatory change, the

suggestion itself is beyond the scope of this rulemaking.

Based on our review of the proposed amendment, we are making a minor change in wording. In the first sentence of new paragraph (b), we are changing "shall" to "will" to reflect VA's current efforts to write regulations in plain language.

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 Order classifies a rule as a significant regulatory action requiring review by the Office of Management and Budget if it meets any one of a number of specified conditions, including: Having an annual effect on the economy of $100 million or more, creating a serious inconsistency or interfering with an action of another agency, materially altering the budgetary impact of entitlements or the rights of entitlement recipients, or raising novel legal or policy issues. VA has examined the economic, legal, and policy implications of this final rule and has concluded that it is a significant regulatory action under Executive Order 12866 because it materially alters the rights of entitlement recipients based upon a court decision.

Paperwork Reduction Act

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

Unfunded Mandates

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

Regulatory Flexibility Act

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

Catalog of Federal Domestic Assistance

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

List of Subjects in 38 CFR Part 3

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

Approved: May 26, 2006.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

Editorial Note: This document was received at the Office of the Federal Register on September 1, 2006.

■ For the reasons set forth in the preamble, VA is amending 38 CFR part 3 as set forth below:

PART 3—ADJUDICATION

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

■ 1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Section 3.310 is amended by revising the section heading; by redesignating paragraph (b) as paragraph (c); and by adding a new paragraph (b) to read as follows:

§ 3.310 Disabilities that are proximately due to, or aggravated by, service-connected disease or injury.

* * * * *

(b) *Aggravation of nonservice-connected disabilities.* Any increase in severity of a nonservice-connected disease or injury that is proximately due to or the result of a service-connected disease or injury, and not due to the natural progress of the nonservice-connected disease, will be service connected. However, VA will not concede that a nonservice-connected disease or injury was aggravated by a service-connected disease or injury unless the baseline level of severity of the nonservice-connected disease or injury is established by medical evidence created before the onset of aggravation or by the earliest medical evidence created at any time between the onset of aggravation and the receipt of medical evidence establishing the current level of severity of the nonservice-connected disease or injury. The rating activity will determine the baseline and current levels of severity under the Schedule for Rating Disabilities (38 CFR part 4) and determine the extent of aggravation by deducting the baseline level of severity, as well as any increase in severity due to the natural progress of the disease, from the current level.

(Authority: 38 U.S.C. 1110 and 1131)

* * * * *

[FR Doc. E6–14835 Filed 9–6–06; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 90 and 95

[WT Docket 01–90; ET Docket 98–95; RM–9096; FCC 06–110]

Amendment of the Commission's Rules Regarding Dedicated Short-Range Communications Services in the 5.850–5.925 GHz (5.9 GHz Band)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission takes certain actions in response to four petitions for reconsideration filed by 3M Company, ARINC Incorporated, Intelligent Transportation Society of America and John Hopkins University of Applied Physics Laboratory. Each petitioner seeks reconsideration of the Commission's *Report and Order*, which adopted licensing and service rules for the Dedicated Short Range Communications (DSRC) Service in the Intelligent Transportation Systems (ITS) Radio Service, located in the 5.850–5.925 GHz band (5.9 GHz band) licensing and service rules for the Dedicated Short Range Communications (DSRC) Service in the Intelligent Transportation Systems (ITS) Radio Service located in the 5.850–5.925 GHz band (5.9 GHz band).

DATES: Effective November 6, 2006.

FOR FURTHER INFORMATION CONTACT: Technical Information: Tim Maguire, *Tim.Maguire@FCC.gov*, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418–0680, or TTY (202) 418–7233. Legal Information: Jeannie Benfaida,

Jeannie.Benfaida@FCC.gov, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau (202) 418–0680, or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Memorandum Opinion and Order*, FCC 06–110, adopted July 20, 2006 and released on July 26, 2006. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *Brian.Millin@fcc.gov*.

1. In the *Memorandum Opinion and Order*, the Commission takes the following actions:

- Designates Channel 172 (frequencies 5.855–5.865 GHz) exclusively for vehicle-to-vehicle safety communications for accident avoidance and mitigation, and safety of life and property applications; and designate Channel 184 (frequencies 5.915–5.925 GHz) exclusively for high-power, longer-distance communications to be used for public safety applications involving safety of life and property, including road intersection collision mitigation.
- Requires licensees to file a notice of construction with the Commission for each site registered and to clarify that site priority attaches to prior registered sites that have been fully constructed within the requisite twelve-month construction period.
- Amends the power reduction rule to only apply to DSRC Roadside Unit antenna height only between eight and fifteen meters, thereby providing increased flexibility and reduced implementation costs.
- Declines to adopt rules that would implement a software-based prior frequency coordination protocol that directs or recommends that licensees use particular service channels, or that would establish a third party database manager to coordinate and maintain site registrations.
- Declines to amend the current emission mask applicable to DSRC Class D devices, pending further developments and recommendations from the ASTM E17.51 DSRC Standards Writing Group.
- Declines to adopt rules governing frequency coordination between DSRC licensees and Fixed Satellite Service (FSS) licensees, pending results of studies of interference methodology and ongoing industry discussions.
- Declines to adopt a rule establishing a separate class of On-Board Units to be used exclusively by public safety eligibles, *i.e.*, "public safety OBUs."
- Declines to require dual-band DSRC devices to be uniquely identified in order to be used to provide DSRC services in the 5.9 GHz band.

I. Procedural Matters

A. Paperwork Reduction Act

2. The order does not contain any new or modified information collection.

B. Report to Congress

3. The Commission will send a copy of this *Memorandum Opinion and Order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

C. Supplemental Final Regulatory Flexibility Analysis

4. As required by the Regulatory Flexibility Act (RFA), a Supplemental Final Regulatory Flexibility Analysis (FRFA) was incorporated in the *DSRC Report and Order*. In view of the fact that we have adopted further rule amendments in this *Memorandum Opinion and Order*, we have included this Supplemental Final Regulatory Flexibility Certification. This Certification conforms to the RFA.

5. The RFA requires that regulatory flexibility analysis be prepared for rulemaking proceedings unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines "small entity" as having the same meaning as the term "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

6. This *Memorandum Opinion and Order* amends our rules to require licensees to file a notice of construction to the Commission for each site registered and clarify that site priority attaches to prior registered sites that have fully constructed within the twelve month construction period; amends the antenna height correction factor adopted for DSRC to increase flexibility and reduce implementation costs to public safety, and designates Channel 172 (5.855–5.865 GHz) for vehicle-to-vehicle safety communications for accident avoidance and mitigation, and Channel 184 (5.915–5.925 GHz) for high-power, longer-distance communications for public safety applications and road intersection vehicular collision mitigation. These rule changes are not expected to affect the cost of DSRC equipment or implementation. Therefore, we certify that the requirements of this *Memorandum Opinion and Order* will not have a significant economic impact on a substantial number of small entities.

7. The Commission will send a copy of the *Memorandum Opinion and Order*, including a copy of this final certification, in a report to Congress pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A). In addition, the *Memorandum Opinion and Order* and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this *Memorandum Opinion and Order* and (or summaries thereof) will also be published in the **Federal Register**.

II. Ordering Clauses

8. Pursuant to sections 1, 4(i), 302, 303(f) and (r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 302, 303(f) and (r), and 332, this *Memorandum Opinion and Order* is adopted.

9. It is further ordered that, the amendments of the Commission's rules as set forth in rule changes are adopted November 6, 2006.

10. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Memorandum Opinion and Order*, including the Supplemental Final Flexibility Certification, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

List of Subjects in 47 CFR Parts 1, 90, and 95

Communications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications

Commission amends 47 CFR parts 1, 90 and 95 to read as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), and 309.

■ 2. Section 1.946 is amended by revising paragraph (d) to read as follows:

§ 1.946 Construction and coverage requirements.

* * * * *

(d) *Licensee notification of compliance.* A licensee who commences service or operations within the construction period or meets its coverage or substantial services obligations within the coverage period must notify the Commission by filing FCC Form 601. The notification must be filed within 15 days of the expiration of the applicable construction or coverage period. Where the authorization is site-specific, if service or operations have begun using some, but not all, of the authorized transmitters, the notification must show to which specific transmitters it applies.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 3. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r) and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

■ 4. Section 90.155 is amended by revising paragraph (i) to read as follows:

§ 90.155 Time in which station must be placed in operation.

* * * * *

(i) DSRCS Roadside Units (RSUs) in the 5850–5925 MHz band must be placed in operation within 12 months from the date of registration (*see* § 90.375) or the authority to operate the RSUs cancels automatically (*see* § 1.955 of this chapter). Such registration date(s) do not change the overall renewal period of the single license. Licensees must notify the Commission in accordance with § 1.946 of this chapter when registered units are placed in operation within their construction period.

■ 5. Section 90.377 is revised to read as follows:

§ 90.377 Frequencies available; maximum EIRP and antenna height, and priority communications.

(a) Licensees shall transmit only the power (EIRP) needed to communicate with an OBU within the communications zone and must take steps to limit the Roadside Unit (RSU) signal within the zone to the maximum extent practicable.

(b) Frequencies available for assignment to eligible applicants within the 5850–5925 MHz band for RSUs and the maximum EIRP permitted for an RSU with an antenna height not exceeding 8 meters above the roadway bed surface are specified in the table below. Where two EIRP limits are given, the higher limit is permitted only for state or local governmental entities.

Channel No.	Frequency range (MHz)	Max. EIRP [1] (dBm)	Channel use
170	5850–5855	.....	Reserved.
172	5855–5865	33	Service Channel.[2]
174	5865–5875	33	Service Channel.
175	5865–5885	23	Service Channel.[3]
176	5875–5885	33	Service Channel.
178	5885–5895	33/44.8	Control Channel.
180	5895–5905	23	Service Channel.
181	5895–5915	23	Service Channel.[3]
182	5905–5915	23	Service Channel.
184	5915–5925	33/40	Service Channel.[4]

[1] An RSU may employ an antenna with a height exceeding 8 meters but not exceeding 15 meters provided the EIRP specified in the table above is reduced by a factor of 20 log(Ht/8) in dB where Ht is the height of the radiation center of the antenna in meters above the roadway bed surface. The EIRP is measured as the maximum EIRP toward the horizon or horizontal, whichever is greater, of the gain associated with the main or center of the transmission beam. The RSU antenna height shall not exceed 15 meters above the roadway bed surface.

[2] Channel 172 is designated for public safety applications involving safety of life and property.

[3] Channel Nos. 174/176 may be combined to create a twenty megahertz channel, designated Channel No. 175. Channels 180/182 may be combined to create a twenty-megahertz channel, designated Channel No. 181.

[4] Channel 184 is designated for public safety applications involving safety of life and property. Only those entities meeting the requirements of § 90.373(a) are eligible to hold an authorization to operate on this channel.

(c) Except as provided in paragraphs (d) and (e) of this section, non-reserve DSRCS channels are available on a shared basis only for use in accordance with the Commission's rules. All licensees shall cooperate in the selection and use of channels in order to reduce interference. This includes monitoring for communications in progress and any other measures as may be necessary to minimize interference. Licensees of RSUs suffering or causing harmful interference within a communications zone are expected to cooperate and resolve this problem by mutually satisfactory arrangements. If the licensees are unable to do so, the Commission may impose restrictions including specifying the transmitter power, antenna height and direction, additional filtering, or area or hours of operation of the stations concerned. Further the use of any channel at a given geographical location may be denied when, in the judgment of the Commission, its use at that location is not in the public interest; use of any such channel may be restricted as to specified geographical areas, maximum power, or such other operating conditions, contained in this part or in the station authorization.

(d) *Safety/public safety priority.* The following access priority governs all DSRCS operations:

(1) Communications involving the safety of life have access priority over all other DSRCS communications;

(2) Subject to a control channel priority system management strategy (*see* ASTM E2213–03 DSRC Standard at § 4.1.1.2(4)), DSRCS communications involving public safety have access priority over all other DSRC communications not listed in paragraph (d)(1) of this section. Roadside Units (RSUs) operated by state or local governmental entities are presumptively

engaged in public safety priority communications.

(e) *Non-priority communications.* DSRCS communications not listed in paragraph (d) of this section, are non-priority communications. If a dispute arises concerning non-priority communications, the licensee of the later-registered RSU must accommodate the operation of the early registered RSU, *i.e.*, interference protection rights are date-sensitive, based on the date that the RSU is first registered (*see* § 90.375) and the later-registered RSU must modify its operations to resolve the dispute in accordance with paragraph (f) of this section.

(f) Except as otherwise provided in the ASTM–DSRC Standard (*see* § 90.379) for the purposes of paragraph (e) of this section, objectionable interference will be considered to exist when the Commission receives a complaint and the difference in signal strength between the earlier-registered RSU and the later-registered RSU (anywhere within the earlier-registered RSU's communication zone) is 18 dB or less (co-channel). Later-registered RSUs causing objectionable interference must correct the interference immediately unless written consent is obtained from the licensee of the earlier-registered RSU.

PART 95—PERSONAL RADIO SERVICES

■ 6. The authority citation for part 95 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

■ 7. Section 95.1511 is revised to read as follows:

§ 95.1511 Frequencies available.

(a) The following table indicates the channel designations of frequencies available for assignment to eligible applicants within the 5850–5925 MHz band for On-Board Units (OBUs): [1]

Channel No.	Channel use	Frequency range (MHz)
170	Reserved	5850–5855
172	Service Channel [2]	5855–5865
174	Service Channel	5865–5875
175	Service Channel [3]	5865–5885
176	Service Channel	5875–5885
178	Control Channel	5885–5895
180	Service Channel	5895–5905
181	Service Channel [3]	5895–5915
182	Service Channel	5905–5915
184	Service Channel [4]	5915–5925

[1] The maximum output power for portable DSRCS–OBUs is 1.0 mW. *See* § 95.639(i).
[2] Channel 172 is designated for public safety applications involving safety of life and property.
[3] Channel Nos. 174/176 may be combined to create a twenty megahertz channel, designated Channel No. 175. Channels 180/182 may be combined to create a twenty-megahertz channel, designated Channel No. 181.
[4] Channel 184 is designated for public safety applications involving safety of life and property.

(b) Except as provided in paragraph (c) of this section, non-reserve DSRCS channels are available on a shared basis only for use in accordance with the Commission's rules. All licensees shall cooperate in the selection and use of channels in order to reduce interference. This includes monitoring for communications in progress and any other measures as may be necessary to minimize interference. Licensees suffering or causing harmful interference within a communications zone are expected to cooperate and resolve this problem by mutually satisfactory arrangements. If the licensees are unable to do so, the Commission may impose restrictions, including specifying the transmitter power, antenna height and direction, additional filtering, or area or hours of operation of the stations concerned. Further, the use of any channel at a given geographical location may be denied when, in the judgment of the Commission, its use at that location is not in the public interest; the use of any channel may be restricted as to specified geographical areas, maximum power, or such other operating conditions, contained in this part or in the station authorization.

(c) *Safety/public safety priority.* The following access priority governs all DSRCS operations:

(1) Communications involving the safety of life have access priority over all other DSRCS communications;

(2) Subject to a control channel priority system management strategy (see ASTM E2213–03 DSRC Standard at § 4.1.1.2(4)), DSRCS communications involving public safety have access priority over all other DSRC communications not listed in paragraph (c)(1) of this section. On-Board Units (OBUs) operated by state or local governmental entities are presumptively engaged in public safety priority communications.

(d) *Non-priority communications.* DSRCS communications not listed in paragraph (c) of this section, are non-priority communications. If a dispute arises concerning non-priority DSRCS–OBU communications with Roadside Units (RSUs), the provisions of § 90.377(e) and (f) of this chapter will apply. Disputes concerning non-priority DSRCS–OBU communications not associated with RSUs are governed by paragraph (b) of this section.

[FR Doc. E6–14795 Filed 9–6–06; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 02–55; ET Docket No. 00–258; ET Docket No. 95–18, RM–9498; RM–10024; FCC 06–63]

Private Land Mobile Services; 800 MHz Public Safety Interference Proceeding

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: The Federal Communications Commission published a document in the **Federal Register** on December 28, 2005, revising Commission rules. That document contained discrepancies between the text of the order and the final rules set forth at § 90.677. This document corrects the final regulations by revising 47 CFR 90.677.

DATES: Effective September 7, 2006.

FOR FURTHER INFORMATION CONTACT: Roberto Mussenden, Public Safety and Critical Infrastructure Division at (202) 418–0838.

SUPPLEMENTARY INFORMATION: This is a summary of a Federal Communications Commission (FCC) Order which, *inter*

alia, corrects a **Federal Register** document (70 FR 76704, December 28, 2005). Previously, the FCC released a Memorandum Opinion and Order, which among other things amended the rules governing dispute resolution between licensees who must reconfigure their systems to alleviate interference to public safety communications in the 800 MHz band.

The Memorandum Opinion and Order contained discrepancies between the text of the order and the final rules in § 90.677 of the rules. In this document we correct those discrepancies.

List of Subjects in 47 CFR Part 90

Communications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

■ Accordingly, 47 CFR part 90 is corrected by making the following correcting amendments:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

■ 2. Amend § 90.677, by revising paragraph (d) to read as follows:

§ 90.677 Reconfiguration of the 806–824/851–869 MHz band in order to separate cellular systems from non-cellular systems.

* * * * *

(d) *Transition Administrator.* (1) The Transition Administrator, or other mediator, shall attempt to resolve disputes referred to it before the conclusion of the mandatory negotiation period as described in § 90.677(c) within thirty working days after the Transition Administrator has received a submission by one party and a response from the other party. Any party thereafter may seek expedited non-binding arbitration which must be completed within thirty days of the Transition Administrator's, or other mediator's recommended decision or advice. Should issues still remain unresolved after mediation or arbitration they shall be referred to the Chief of the Public Safety and Critical Infrastructure Division of the Wireless Telecommunications Bureau within ten days of the Transition Administrator's or other mediator's advice, or if arbitration has occurred, within ten days of the completion of arbitration. When referring an unresolved matter to the Chief of the Public Safety and Critical Infrastructure Division, the Transition Administrator shall forward the entire record on any disputed issues, including such dispositions thereof that the Transition Administrator has considered. Upon receipt of such record and advice, the Commission will decide the disputed issues based on the record submitted. The authority to make such decisions is delegated to the Chief of the Public Safety and Critical Infrastructure Division of the Wireless Telecommunications Bureau who may decide the disputed issue or designate it for an evidentiary hearing before an Administrative Law Judge. If the Chief of the Public Safety and Critical Infrastructure Division of the Wireless Telecommunications Bureau decides an issue, any party to the dispute wishing to appeal the decision may do so by filing with the Commission, within ten days of the effective date of the initial decision, a Petition for de novo review; whereupon the matter will be set for an evidentiary hearing before an Administrative Law Judge. Any disputes submitted to the Transition Administrator after the conclusion of the mandatory negotiation period as described in § 90.677(c) shall be resolved as described in § 90.677(d)(2).

(2) If no agreement is reached during either the voluntary or mandatory negotiating periods, all disputed issues shall be referred to the Transition Administrator, or other mediator, who shall attempt to resolve them. If disputed issues remain thirty working days after the end of the mandatory negotiation period, the Transition Administrator shall forward the record to the Chief of the Public Safety and Critical Infrastructure Division, together with advice on how the matter(s) may be resolved. The Chief of the Public Safety and Critical Infrastructure Division is hereby delegated the authority to rule on disputed issues, de novo. If the Chief of the Public Safety and Critical Infrastructure Division of the Wireless Telecommunications Bureau decides an issue, any party to the dispute wishing to appeal the decision may do so by filing with the Commission, within ten days of the effective date of the initial decision, a Petition for de novo review; whereupon the matter will be set for an evidentiary hearing before an Administrative Law Judge.

* * * * *

[FR Doc. E6–14788 Filed 9–6–06; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

49 CFR Part 1

[Docket No. OST–1999–6189]

RIN 9991–AA50

Organization and Delegation of Powers and Duties

AGENCY: Office of the Secretary of Transportation (OST), DOT.

ACTION: Final rule.

SUMMARY: This final rule revises delegations of authority to carry out the Federal hazardous material transportation law, as amended by the Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005 (Title VII of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users or "SAFETEA–LU"), and in accordance with the Norman Y. Mineta Research and Special Programs Improvement Act, Public Law 108–426, 118 Stat. 2423 (November 30, 2004) (Mineta Act) that were previously published in 71 FR 30828 (May 31, 2006). This final rule also adds delegations of authority to the Federal Motor Carrier Safety Administration (FMCSA) and the Research and Innovative Technology Administration (RITA) to carry out certain provisions of SAFETEA–LU.

DATES: *Effective Date:* September 7, 2006.

FOR FURTHER INFORMATION CONTACT: Rebecca S. Behravesh, Attorney Advisor, Office of General Counsel, Department of Transportation, 400 7th St., SW., Room 10424, Washington, DC 20590–0001; Telephone (202) 366–9314.

SUPPLEMENTARY INFORMATION:

Background

The Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, and the regulations issued thereunder apply to the transportation of hazardous materials by air, railroad, highway, and water. In 2004, the Mineta Act established the Pipeline and Hazardous Materials Safety Administration (PHMSA) and RITA and transferred Secretarial authorities previously exercised by the Research and Special Programs Administration (RSPA) to PHMSA and RITA. While the Secretary delegated authorities to PHMSA and RITA under the Mineta Act, the Mineta Act did not remove, restrict, divest or restructure any existing authority, including the

authority to regulate the transportation of hazardous materials, that the Federal Aviation Administration (FAA), Federal Railroad Administration (FRA), and FMCSA previously possessed. Accordingly, certain authorities that apply only to a single mode of transportation were previously delegated to a modal transportation agency within DOT, and enforcement authority was delegated to PHMSA and the modal agencies: FAA, FRA, and FMCSA.[1]

The Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005, which is Title VII of SAFETEA–LU, Public Law 109–59, 119 Stat. 1144, 1891 (Aug. 10, 2005), amended 49 U.S.C. 5121 to provide additional authority to enforce the Federal hazardous material transportation law and the regulations issued under that law. The delegations of authority to FAA, FRA, and FMCSA are being revised to reflect that additional authority, which includes inspecting, investigating, and opening outer packages suspected of containing hazardous materials; having suspected hazardous materials tested; removing from transportation in commerce packages that may pose an imminent hazard; issuing emergency orders necessary to abate imminent hazards; and defending the agency's actions before any administrative or adjudicatory board proceedings related to the agency's implementation of this additional inspection and enforcement authority.

This rulemaking revises 49 CFR 1.47(j)(1), 1.49(s)(1), and 1.73(d)(1) to reflect these delegations. In addition, this final rule removes from these provisions the parallel phrases "relating to investigations, records, inspections, penalties, and specific relief" and "including the manufacture, fabrication, marking, maintenance, reconditioning, repair or test of containers which are represented, marked, certified, or sold for use in the bulk transportation of hazardous materials by [air, railroad, and highway, respectively]." This language simply describes the authority conferred by 49 U.S.C. 5121 (administrative authority to conduct inspections and investigations related to the manufacture, fabrication, and maintenance of packagings or containers and the transportation of a hazardous material in commerce); 5122 (civil enforcement); 5123 (civil penalties); and 5124 (criminal penalties), and is being deleted as superfluous. In the final rule published on May 31, 2005, similar superfluous language was removed from the delegations to PHMSA in section 1.53(b)(1). *See* 71 FR 30828, 30833. The removal of this language is intended to simplify the regulatory text and does not amend, change, modify, or revise the underlying statutory authority that is delegated to FAA, FRA, FMCSA, and PHMSA. The authority to delegate the inspection and enforcement authority in the Federal hazardous material transportation law in this manner is conferred by 49 U.S.C. 108(g).

This rule also removes outdated 49 CFR 1.47(k), which essentially duplicates the FAA's authority in § 1.47(j)(1), but refers to the section numbers of the inspection and enforcement authority in the Federal hazardous material transportation law before the statute was recodified in 1994. *See* Public Law 103–272, 108 Stat. 745 (July 5, 1994). Existing subsection 1.49(s)(2) is also removed, and subsection 1.49(s)(1) is redesignated section 1.49(s), because the authorities delegated in paragraph (2) are no longer in effect: The rail transportation study mandated in 49 U.S.C. 5105(b) has been completed and was transmitted to Congress in September 2005 and Congress repealed 49 U.S.C. 5111 in SAFETEA–LU. In addition, this rule delegates to RITA and FMCSA authority to carry out provisions of SAFETEA–LU, beyond the delegations contained in the final rule published in the **Federal Register** on May 31, 2006. *See* 71 FR 30830, 30833.

This rule also revises 49 CFR 1.74(a) to reflect the broad role and authority of the Under Secretary for Transportation Policy in all Departmental policy matters. *See* 49 CFR 1.23(b). The Under Secretary provides leadership in the development of all transportation policy, including, but not limited to, matters involving hazardous materials transportation and intermodal and multimodal transportation. In this capacity, the Under Secretary resolves disputes among DOT's Operating Administrations on transportation matters, provides oversight, review, and coordination of policy functions carried out by the Operating Administrations, and performs all other functions necessary to lead policy development and advise the Secretary concerning transportation policy.

Because this rule relates to departmental management, organization, procedure, and practice, notice and comment are unnecessary under 5 U.S.C. 553(b). Further, this final rule facilitates enforcement of the laws and regulations covered by this delegation. The Acting Secretary finds good cause under 5 U.S.C. 553(d)(3) for the final rule to be effective on the date of publication in the **Federal Register**.

Regulatory Analysis and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

The final rule is not considered a significant regulatory action under Executive Order 12866 and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). There are no costs associated with this rule.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule does not have a substantial direct effect on, or sufficient federalism implications for, the States, nor would it limit the policymaking discretion of the States. Therefore, the consultation requirements of Executive Order 13132 do not apply.

C. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under the Administrative Procedure Act, 5 U.S.C. 553, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. We also do not believe this rule would impose any costs on small entities because it simply delegates authority from one official to another. Therefore, I certify this final rule will not have a significant economic impact on a substantial number of small entities.

[1] The United States Coast Guard also exercises authority under the Federal hazardous material transportation law under the authority previously delegated to it when it was part of DOT. Under 6 U.S.C. 468(b) "the authorities, functions, personnel, and assets of the Coast Guard * * * including the authorities and functions of the Department of Transportation relating thereto" were transferred to the Department of Homeland Security (DHS). *See also* 6 U.S.C. 551(d)(2) which provides that DHS "shall have all functions relating to the agency [transferred to DHS] that any other official could by law exercise in relation to the agency immediately before such transfer."

E. Paperwork Reduction Act

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

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.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

■ For the reasons set forth in the preamble, the Office of the Secretary of Transportation amends 49 CFR part 1 as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 322; 28 U.S.C. 2672; 31 U.S.C. 3711(a)(2); Public Law 101–552, 104 Stat. 2736; Public Law 106–159, 113 Stat. 1748; Public Law 107–71, 115 Stat. 597; Public Law 107–295, 116 Stat. 2064; Public Law 107–295, 116 Stat. 2065; Public Law 107–296, 116 Stat. 2135; 41 U.S.C. 414; Public Law 108–426, 118 Stat. 2423; Public Law 109–59, 119 Stat. 1144.

■ 2. Amend § 1.46 by adding new paragraph (n) to read as follows:

§ 1.46 Delegations to the Administrator of the Research and Innovative Technology Administration.

* * * * *

(n) *Transportation research and development strategic planning.* Carry out the function vested in the Secretary by Section 5208 of Public Law 109–59, 119 Stat. 1144 (Aug. 10, 2005).

■ 3–4. Revise § 1.47(j)(1) and remove paragraph (k).

§ 1.47 Delegations to Federal Aviation Administrator.

* * * * *

(j)(1) Except as delegated by § 1.74(a), carry out the functions vested in the Secretary by 49 U.S.C. 5121(a), (b), (c), and (d), 5122, 5123, and 5124, with particular emphasis on the transportation or shipment of hazardous materials by air.

* * * * *

■ 5. Revise § 1.49(s) to read as follows:

§ 1.49 Delegations to Federal Railroad Administrator.

* * * * *

(s) Except as delegated by § 1.74(a), carry out the functions vested in the Secretary by 49 U.S.C. 5121(a), (b), (c) and (d), 5122, 5123, and 5124, with particular emphasis on the transportation or shipment of hazardous materials by railroad.

* * * * *

■ 6. Revise § 1.53(b) to read as follows:

§ 1.53 Delegations to the Administrator of the Pipeline and Hazardous Materials Safety Administration.

* * * * *

(b) *Hazardous materials.* Except as delegated by § 1.74(a):

(1) Carry out the functions vested in the Secretary by 49 U.S.C. 5121(a), (b), (c), (d) and (e), 5122, 5123, and 5124, with particular emphasis on the shipment of hazardous materials and the manufacture, fabrication, marking, maintenance, reconditioning, repair or test of multi-modal containers that are represented, marked, certified, or sold for use in the transportation of hazardous materials; and

(2) Carry out the functions vested in the Secretary by all other provisions of the Federal hazardous material transportation law (49 U.S.C. 5101 *et seq.*) except as delegated by §§ 1.47(j)(2) and 1.73(d)(2) of this chapter and by paragraph 2(99) of Department of Homeland Security Delegation No. 0170.

* * * * *

■ 7. Amend § 1.73 as follows:
■ a. Revise paragraphs (a)(7) and (a)(9);
■ b. Revise paragraph (d)(1);
■ c. Revise paragraph (e);
■ d. Revise paragraph (q); and
■ e. Remove paragraphs (r) through (y).

The revisions read as follows:

§ 1.73 Delegations to the Administrator of the Federal Motor Carrier Safety Administration.

* * * * *

(a) * * *

(7) Chapter 145, sections 14501, 14502, 14504, and 14504a relating to Federal-State relations, and section 14506 relating to identification of vehicles;

* * * * *

(9) Chapter 149, sections 14901 through 14912 and 14915 relating to civil and criminal penalties for violations of 49 U.S.C. subtitle IV, part B.

* * * * *

(d)(1) Except as delegated by § 1.74(a), carry out the functions vested in the Secretary by 49 U.S.C. 5121(a), (b), (c), and (d), 5122, 5123, and 5124, with particular emphasis on the transportation or shipment of hazardous materials by highway.

* * * * *

(e) Carry out the functions vested in the Secretary by:

(1) 49 U.S.C. chapter 313 relating to commercial motor vehicle operators, including the requirement of section 31305(a)(5)(C) that States issue a hazardous materials endorsement to a commercial driver's license only after being informed pursuant to 49 U.S.C. 5103a that the applicant does not pose a security risk warranting denial of the license; and

(2) Section 4123(c), (d) and (e) of Public Law 109–59, 119 Stat. 1735 (Aug. 10, 2005) relating to grants, funding, and contract authority and availability, respectively, for commercial driver's license information system modernization.

* * * * *

(q) Carry out the functions vested in the Secretary by the following sections of Public Law 109–59, 119 Stat. 1144 (Aug. 10, 2005):

(1) Section 4105(b)(1) relating to the study concerning predatory tow truck operations;

(2) Section 4126 relating to the commercial vehicle information systems and networks program;

(3) Section 4128 relating to grants under the safety data improvement program;

(4) Section 4129 relating to the operation of commercial motor vehicles by individuals who use insulin to treat diabetes mellitus;

(5) Section 4130 relating to the operators of vehicles transporting agricultural commodities and farm supplies;

(6) Section 4131 relating to the maximum hours of service for operators of ground water well drilling rigs;

(7) Section 4132 relating to hours of service for operators of utility service vehicles;

(8) Section 4133 relating to hours of service rules for operators providing transportation to movie production sites;

(9) Section 4134 relating to the grant program for persons to train operators of commercial motor vehicles;

(10) Section 4135 relating to the task force concerning commercial driver's license program;

(11) Section 4139(a)(1) relating to the training of and outreach to State personnel; section (b)(1) relating to a review of Canadian and Mexican compliance with Federal motor vehicles safety standards; and the first sentence of section (b)(2) relating to the report concerning the findings and conclusions of the review required by section (b)(1);

(12) Section 4146 relating to an hours-of-service exception during harvest periods;

(13) Section 4147 relating to emergency conditions requiring immediate response;

(14) Section 4213 relating to the establishment of a working group for the development of practices and procedures to enhance Federal-State relations;

(15) Section 4214 relating to consumer complaint information;

(16) Section 5503 relating to the motor carrier efficiency study; and

(17) Section 5513(a), under the condition of section (m), relating to the research grant for a thermal imaging inspection system demonstration project.

■ 8. Amend § 1.74 introductory text and paragraph (a) to read as follows:

§ 1.74 Delegations to the Under Secretary for Transportation Policy.

The Under Secretary for Transportation Policy is delegated authority to:

(a) Lead the development of transportation policy and serve as the principal adviser to the Secretary on all transportation policy matters.

* * * * *

Issued this 24th day of August 2006, at Washington, DC.

Maria Cino,

Acting Secretary of Transportation.

[FR Doc. E6–14802 Filed 9–6–06; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216044–6044–01; I.D. 090106A]

Fisheries of the Economic Exclusive Zone Off Alaska; Deep-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2006 Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 5, 2006, through 1200 hrs, A.l.t., October 1, 2006.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (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 2006 Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA is 800 metric tons as established by the 2006 and 2007 harvest specifications for groundfish of the GOA (71 FR 10870, March 3, 2006).

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the 2006 Pacific halibut bycatch allowance specified for the trawl deep-water species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the deep-water species fishery by vessels using trawl gear in the GOA.

The species and species groups that comprise the deep-water species fishery are all rockfish of the genera *Sebastes* and *Sebastolobus*, deep-water flatfish, rex sole, arrowtooth flounder, and sablefish.

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 the deep-water species fishery by vessels using trawl gear in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 31, 2006.

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 § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: September 1, 2006.

James P. Burgess,

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

[FR Doc. 06–7491 Filed 9–1–06; 1:10 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 173
Thursday, September 7, 2006

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM352; Notice No. 25–06–08–SC]

Special Conditions: Airbus Model A380–800 Airplane, Lithium Ion Battery Installation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Airbus A380–800 airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The Airbus A380–800 will incorporate the use of high capacity lithium ion battery technology in on-board systems. For this design feature, the applicable airworthiness regulations do not contain adequate or appropriate safety standards regarding lithium ion batteries. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions will be issued for other novel or unusual design features of the Airbus Model A380–800 airplane.

DATES: Comments must be received on or before October 23, 2006.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM352, 1601 Lind Avenue, SW., Renton, Washington 98055–3356; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM352. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Holly Thorson, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1357; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive as well as a report summarizing each substantive public contact with FAA personnel concerning these proposed special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this notice between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late, if it is possible to do so without incurring expense or delay. We may change the proposed special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

Airbus applied for FAA certification/validation of the provisionally-designated Model A3XX–100 in its letter AI/L 810.0223/98, dated August 12, 1998, to the FAA. Application for certification by the Joint Aviation Authorities (JAA) of Europe had been made on January 16, 1998, reference AI/L 810.0019/98. In its letter to the FAA, Airbus requested an extension to the 5-year period for type certification in accordance with 14 CFR 21.17(c). The request was for an extension to a 7-year period, using the date of the initial application letter to the JAA as the reference date. The reason given by Airbus for the request for extension is related to the technical challenges, complexity, and the number of new and novel features on the airplane. On November 12, 1998, the Manager, Aircraft Engineering Division, AIR–100, granted Airbus' request for the 7-year period, based on the date of application to the JAA.

In its letter AI/LE–A 828.0040/99 Issue 3, dated July 20, 2001, Airbus stated that its target date for type certification of the Model A380–800 has been moved from May 2005, to January 2006, to match the delivery date of the first production airplane. In a subsequent letter (AI/L 810.0223/98 issue 3, January 27, 2006), Airbus stated that its target date for type certification is October 2, 2006. In accordance with 14 CFR 21.17(d)(2), Airbus chose a new application date of December 20, 1999, and requested that the 7-year certification period which had already been approved be continued. The FAA has reviewed the part 25 certification basis for the Model A380–800 airplane, and no changes are required based on the new application date.

The Model A380–800 airplane will be an all-new, four-engine jet transport airplane with a full double-deck, two-aisle cabin. The maximum takeoff weight will be 1.235 million pounds with a typical three-class layout of 555 passengers.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Airbus must show that the Model A380–800 airplane meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–98. If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the Airbus A380–800 airplane because of novel or unusual design features, special conditions are prescribed under the provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A380–800 airplane must comply with the fuel vent and exhaust emission requirements of

14 CFR part 34 and the noise certification requirements of 14 CFR part 36. In addition, the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 93–574, the "Noise Control Act of 1972."

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with 14 CFR 11.38 and become part of the type certification basis in accordance with 14 CFR 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of 14 CFR 21.101.

Discussion of Novel or Unusual Design Features

Statement of Issue

The Airbus A380–800 airplane will use lithium ion batteries for its emergency lighting system. Large, high capacity, rechargeable lithium ion batteries are a novel or unusual design feature in transport category airplanes. This type of battery has certain failure, operational, and maintenance characteristics that differ significantly from those of the nickel-cadmium and lead-acid rechargeable batteries currently approved for installation on large transport category airplanes. The FAA is proposing this special condition to require that (1) all characteristics of the lithium ion battery and its installation that could affect safe operation of the Airbus A380–800 airplane are addressed, and (2) appropriate maintenance requirements are established to ensure the availability of electrical power from the batteries when needed.

Background

The current regulations governing installation of batteries in large transport category airplanes were derived from Civil Air Regulations (CAR) Part 4b.625(d) as part of the re-codification of CAR 4b that established 14 CFR part 25 in February, 1965. The new battery requirements, 14 CFR 25.1353(c)(1) through (c)(4), basically reworded the CAR requirements.

Increased use of nickel-cadmium batteries in small airplanes resulted in increased incidents of battery fires and failures which led to additional rulemaking affecting large transport category airplanes as well as small airplanes. On September 1, 1977 and March 1, 1978, respectively the FAA issued 14 CFR 25.1353c(5) and c(6), governing nickel-cadmium battery installations on large transport category airplanes.

The proposed use of lithium ion batteries for the emergency lighting system on the Airbus A380 airplane has prompted the FAA to review the adequacy of these existing regulations. Our review indicates that the existing regulations do not adequately address several failure, operational, and maintenance characteristics of lithium ion batteries that could affect the safety and reliability of the Airbus A380's lithium ion battery installation.

At present, there is limited experience with use of rechargeable lithium ion batteries in applications involving commercial aviation. However, other users of this technology, ranging from wireless telephone manufacturers to the electric vehicle industry, have noted safety problems with lithium ion batteries. These problems include overcharging, over-discharging, and flammability of cell components.

1. Overcharging

In general, lithium ion batteries are significantly more susceptible to internal failures that can result in self-sustaining increases in temperature and pressure (*i.e.*, thermal runaway) than their nickel-cadmium or lead-acid counterparts. This is especially true for overcharging which causes heating and destabilization of the components of the cell, leading to the formation (by plating) of highly unstable metallic lithium. The metallic lithium can ignite, resulting in a self-sustaining fire or explosion. Finally, the severity of thermal runaway due to overcharging increases with increasing battery capacity due to the higher amount of electrolyte in large batteries.

2. Over-discharging

Discharge of some types of lithium ion batteries beyond a certain voltage (typically 2.4 volts) can cause corrosion of the electrodes of the cell, resulting in loss of battery capacity that cannot be reversed by recharging. This loss of capacity may not be detected by the simple voltage measurements commonly available to flight crews as a means of checking battery status—a problem shared with nickel-cadmium batteries.

3. Flammability of Cell Components

Unlike nickel-cadmium and lead-acid batteries, some types of lithium ion batteries use liquid electrolytes that are flammable. The electrolyte can serve as a source of fuel for an external fire, if there is a breach of the battery container.

These problems experienced by users of lithium ion batteries raise concern about the use of these batteries in commercial aviation. The intent of the proposed special condition is to establish appropriate airworthiness standards for lithium ion battery installations in the Airbus A380–800 airplane and to ensure, as required by 14 CFR 25.601, that these battery installations are not hazardous or unreliable. To address these concerns, the proposed special conditions adopt the following requirements:

- Those sections of 14 CFR 25.1353 that are applicable to lithium ion batteries.
- The flammable fluid fire protection requirements of 14 CFR 25.863. In the past, this rule was not applied to batteries of transport category airplanes, since the electrolytes utilized in lead-acid and nickel-cadmium batteries are not flammable.
- New requirements to address the hazards of overcharging and over-discharging that are unique to lithium ion batteries.
- New maintenance requirements to ensure that batteries used as spares are maintained in an appropriate state of charge.

Applicability

As discussed above, these special conditions are applicable to the Airbus A380–800 airplane. Should Airbus apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features of the Airbus A380–800 airplane. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Airbus A380–800 airplane.

In lieu of the requirements of 14 CFR 25.1353(c)(1) through (c)(4), the following special conditions apply:

Lithium-ion batteries on the Airbus Model 380–800 airplane must be designed and installed as follows:

(1) Safe cell temperatures and pressures must be maintained during any foreseeable charging or discharging condition and during any failure of the charging or battery monitoring system not shown to be extremely remote. The lithium ion battery installation must preclude explosion in the event of those failures.

(2) Design of the lithium ion batteries must preclude the occurrence of self-sustaining, uncontrolled increases in temperature or pressure.

(3) No explosive or toxic gasses emitted by any lithium ion battery in normal operation or as the result of any failure of the battery charging system, monitoring system, or battery installation—not shown to be extremely remote—may accumulate in hazardous quantities within the airplane.

(4) Installations of lithium ion batteries must meet the requirements of 14 CFR 25.863(a) through (d).

(5) No corrosive fluids or gasses that escape from any lithium ion battery may damage surrounding airplane structure or adjacent essential equipment.

(6) Each lithium ion battery installation must have provisions to prevent any hazardous effect on structure or essential systems caused by the maximum amount of heat the battery can generate during a short circuit of the battery or of its individual cells.

(7) Lithium ion battery installations must have a system to control the charging rate of the battery automatically, so as to prevent battery overheating or overcharging, and,

(i) A battery temperature sensing and over-temperature warning system with a means for automatically disconnecting the battery from its charging source in the event of an over-temperature condition, or,

(ii) A battery failure sensing and warning system with a means for automatically disconnecting the battery from its charging source in the event of battery failure.

(8) Any lithium ion battery installation whose function is required for safe operation of the airplane must incorporate a monitoring and warning feature that will provide an indication to the appropriate flight crewmembers, whenever the state-of-charge of the batteries has fallen below levels considered acceptable for dispatch of the airplane.

(9) The Instructions for Continued Airworthiness must contain maintenance requirements for measurements of battery capacity at appropriate intervals to ensure that batteries whose function is required for safe operation of the airplane will perform their intended function as long as the battery is installed in the airplane. The Instructions for Continued Airworthiness must also contain procedures for the maintenance of lithium ion batteries in spares storage to prevent the replacement of batteries whose function is required for safe operation of the airplane with batteries that have experienced degraded charge retention ability or other damage due to prolonged storage at a low state of charge.

Note: These special conditions are not intended to replace 14 CFR 25.1353(c) in the certification basis of the Airbus A380–800 airplane. The special conditions apply only to lithium ion batteries and their installations. The requirements of 14 CFR 25.1353(c) remain in effect for batteries and battery installations of the Airbus A380–800 airplane that do not utilize lithium ion batteries.

Issued in Renton, Washington, on August 28, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–14827 Filed 9–6–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

Initiation of Review of the Management Plan/Regulations of the Flower Garden Banks National Marine Sanctuary; Intent To Prepare Draft Environmental Impact Statement and Management Plan; Scoping Meetings

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Initiation of review of management plan/regulations; intent to prepare environmental impact statement; scoping meetings.

SUMMARY: The Flower Garden Banks National Marine Sanctuary (FGBNMS or Sanctuary) was designated in January 1992, and consists of three separate areas in the Northwestern Gulf of Mexico, known as East Flower Garden, West Flower Garden and Stetson Banks. The present management plan for the Sanctuary was completed at the time of designation. In accordance with Section 304(e) of the National Marine Sanctuaries Act, as amended, (NMSA) (16 U.S.C. 1431 *et seq.*), the National Marine Sanctuary Program (NMSP) of the National Oceanic and Atmospheric Administration (NOAA) is initiating a review of the management plan, to evaluate substantive progress toward implementing the goals for the Sanctuary, and to make revisions to the plan and regulations as necessary to fulfill the purposes and policies of the NMSA.

The proposed revised management plan will likely involve changes to existing policies and regulations of the Sanctuary, to address contemporary issues and challenges, and to better protect and manage the Sanctuary's resources and qualities. The review process is composed of four major stages: Information collection and characterization; preparation and release of a draft management plan/environmental impact statement, and any proposed amendments to the regulations; public review and comment; and preparation and release of a final management plan/environmental impact statement, and any final amendments to the regulations. NOAA anticipates completion of the revised management plan and concomitant documents will require approximately eighteen to twenty-four months.

NOAA will conduct public scoping meetings to gather information and other comments from individuals, organizations, and government agencies on the scope, types and significance of issues related to the Sanctuary's management plan and regulations. The scoping meetings are scheduled for October 17, 19, and 24, 2006, as detailed below.

DATES: Written comments should be received on or before November 10, 2006.

Scoping meetings will be held at:

(1) October 17, 7–10 p.m., Webster, TX (Houston/Galveston area).

(2) October 19, 7–10 p.m., Corpus Christi, TX.

(3) October 24, 7–10 p.m., New Orleans, LA.

ADDRESSES: Written comments may be sent to the Flower Garden Banks National Marine Sanctuary (Management Plan Review), 4700 Avenue U, Building 216, Galveston, Texas 77551. Comments will be available for public review at the same address.

Scoping meetings will be held at:

(1) Webster Civic Center, 311 Pennsylvania Street, Webster, TX 77598.

(2) Harte Research Institute for Gulf of Mexico Studies, Texas A&M University—Corpus Christi, 6300 Ocean Drive, Corpus Christi, TX 78412.

(3) Audubon Zoo—Dominion Learning Center, 6500 Magazine Street, New Orleans, LA 70118.

FOR FURTHER INFORMATION CONTACT: Jennifer Morgan, 409–621–5151 Ext. 103, *fgbmanagementplan@noaa.gov.*

Authority: 16 U.S.C. Section 1431 *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: August 28, 2006.

Daniel J. Basta,

Director, National Marine Sanctuary Program.

[FR Doc. 06–7481 Filed 9–6–06; 8:45am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

Initiation of Review of the Management Plan/Regulations of the Thunder Bay National Marine Sanctuary; Intent To Prepare Draft Environmental Impact Statement and Management Plan; Scoping Meetings

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Initiation of Review of Management Plan/Regulations; Intent to Prepare Environmental Impact Statement; Scoping Meetings.

SUMMARY: Thunder Bay National Marine Sanctuary (TBNMS or Sanctuary) was designated on October 7, 2000. The present management plan was written as part of the sanctuary designation process and published in the Final Environmental Impact Statement in 1999. In accordance with section 304(e) of the National Marine Sanctuaries Act, as amended, (NMSA) (16 U.S.C. 1431 *et seq.*), the National Marine Sanctuary Program (NMSP) of the National Oceanic and Atmospheric Administration (NOAA) is initiating a review of the management plan, to evaluate substantive progress toward implementing the goals for the Sanctuary, and to make revisions to the plan and regulations as necessary to fulfill the purposes and policies of the NMSA.

The proposed revised management plan will likely involve changes to existing policies and regulations of the Sanctuary, to address contemporary issues and challenges, and to better protect and manage the Sanctuary's resources and qualities. The review process is composed of four major stages: information collection and characterization; preparation and release of a draft management plan/environmental impact statement, and any proposed amendments to the regulations; public review and comment; and preparation and release of a final management plan/environmental impact statement, and any final amendments to the regulations. NOAA anticipates completion of the revised management plan and concomitant documents will require approximately eighteen to twenty-four months.

NOAA will conduct public scoping meetings to gather information and other comments from individuals, organizations, and government agencies on the scope, types and significance of issues related to the Sanctuary's management plan and regulations. The scoping meetings are scheduled for September 25, 26, 28 and 29, 2006, as detailed below.

DATES: Written comments should be received on or before October 13, 2006.

Scoping meetings will be held at:

(1) September 25, 6:30 p.m., Presque Isle, MI.

(2) September 26, 6:30 p.m., Alpena, MI.

(3) September 28, 6:30 p.m., Alcona, MI.

(4) September 29, 1 p.m., Lansing, MI.

ADDRESSES: Written comments may be sent to the Thunder Bay National Marine Sanctuary (Management Plan Review), 500 West Fletcher Street, Alpena, MI, 49707. Comments will be available for public review at the same address:

Scoping meetings will be held at:

(1) Presque Isle District Library, 181 East Erie Street, Rogers City, MI 49779.

(2) Great Lakes Maritime Heritage Center, 500 West Fletcher Street, Alpena, MI 49707.

(3) Harrisville Courthouse, 106 North 5th Street, Harrisville, MI 48740.

(4) Michigan Historical Center, 702 West Kalamazoo Street, Lansing, MI 48909.

FOR FURTHER INFORMATION CONTACT: Tera Panknin, 989–356–8805 Ext. 38, *TBMPR@noaa.gov.*

Authority: 16 U.S.C. Section 1431 *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: August 28, 2006.

Daniel J. Basta,

Director, National Marine Sanctuary Program.

[FR Doc. 06–7480 Filed 9–6–06; 8:45 am]

BILLING CODE 3510–08–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1307, 1410, 1500 and 1515

Standards for All Terrain Vehicles and Ban of Three Wheeled All Terrain Vehicles; Notice of Proposed Rulemaking; Correction

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking; correction

SUMMARY: The Consumer Product Safety Commission published a notice of proposed rulemaking in the **Federal Register** of August 10, 2006, regarding all terrain vehicles ("ATVs"). The document contained an incorrect e-mail address to send comments.

FOR FURTHER INFORMATION CONTACT: Elizabeth Leland, Project Manager, ATV Safety Review, Directorate for Economic Analysis, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7706 or e-mail: *eleland@cpsc.gov.*

Correction

In the **Federal Register** of August 10, 2006, in FR Doc. 06–6703, on page 45904 in the first column, correct the first paragraph under the **ADDRESSES** caption to read:

ADDRESSES: Comments shall be filed by e-mail to *cpsc-os@cpsc.gov.* Comments also may be filed by telefacsimile to (301) 504–0127 or they may be mailed or delivered, preferably in five copies, to the Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7923. Comments should be captioned "ATV NPR."

Dated: August 30, 2006.

Todd Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E6–14757 Filed 9–6–06; 8:45 am]

BILLING CODE 6355–01–P

Notices

Federal Register
Vol. 71, No. 173
Thursday, September 7, 2006

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 1, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Economic Research Service

Title: Rapid Consumer Response Survey.

OMB Control Number: 0536–NEW.

Summary of Collection: The Economic Research Service (ERS), as the lead economic research arm of the U.S. Department of Agriculture, has the responsibility to conduct economic research supporting the mission of the Department. This responsibility includes conducting research and providing information to Department officials on economic issues related to food safety, nutrition and health (including factors related to food choices), consumption patterns at and away from home, food prices, food assistance programs, nutrition education, and food industry structure. USDA faces many demands for information about consumer behavior. To better assess issues of importance to consumers and to agriculture, a pilot survey, entitled Rapid Consumer Response Module (RCRM), is being proposed that will address topical issues in consumer behavior. RCRM will enable the Department to assess consumer attitudes and reactions to market developments and such policy events as the new dietary guidelines, mercury standards for fish, country of origin labeling, price or supply shocks in the food distribution system, and food safety incidents.

Need and Use of the Information: The information collected in the RCRM survey will be on consumption, behavior, and consumer reaction to and opinions about food safety incidents and diet and health issues. The information gained from the RCRM will help researchers formulate their hypotheses and provide key indicators on consumers' attitude or perception on dietary and safety issues. Without the information ERS is not able to conduct the proposed surveys, the agency's ability to have access to timely information about consumer behavior and attitude on diet and health issues will be greatly hampered.

Description of Respondents: Individuals or households.

Number of Respondents: 6,600.

Frequency of Responses: Reporting: Quarterly.

Total Burden Hours: 3,080.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–14819 Filed 9–6–06; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 1, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it

displays a currently valid OMB control number.

Rural Housing Service

Title: 7 CFR 1942–A, Community Facility Loans.

OMB Control Number: 0575–0015.

Summary of Collection: The Rural Housing Service (RUS) is a credit agency within the Rural Development mission area of the U.S. Department of Agriculture (USDA). The Community Programs Division of the RHS administers the Community Facilities program under 7 CFR part 1942, subpart A. Rural Development provides loan and grant funds through the Community Facilities program to finance many types of projects varying in size and complexity, from large general hospitals to small fire trucks. The facilities financed are designed to promote the development of rural communities by providing the infrastructure necessary to attract residents and rural jobs. RUS will collect information using several forms.

Need and Use of the Information: RUS will collect information to determine applicant/borrower eligibility, project feasibility, and to ensure borrowers operate on a sound basis and use loan and grant funds for authorized purposes. Failure to collect proper information could result in improper determinations of eligibility, improper use of funds, and/or unsound loans.

Description of Respondents: Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 3,768.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Annually.

Total Burden Hours: 57,177.

Rural Housing Service

Title: 7 CFR 1924–F, Complaints and Compensation Defects.

OMB Control Number: 0575–0082.

Summary of Collection: Section 509 of Title V of the Housing Act of 1949, as amended, authorizes the Rural Housing Service (RHS) to pay the costs for correcting defects or compensate borrowers of Section 502 Direct loan funds for expenses arising out of defects with respect to newly constructed dwellings and new manufactured housing units with authorized funds. This regulation provides instruction to all RHS personnel to enable them to implement a procedure to accept and process complaints from borrowers/owners against builders and dealers/contractors, to resolve the complaint informally. When the complaint involves structural defects which cannot be resolved by cooperation of the builder or dealer/contractor, authorization for expenditure to resolve the defect with grant funds. Resolution could involve expenditure for (1) repairing defects; (2) reimbursing for emergency repairs; (3) pay temporary living expenses or (4) convey dwelling to RHS with release of liability for the RHS loan.

Need and Use of the Information: The information is collected from agency borrowers and the local agency office serving the county in which the dwelling is located. This information is used by Rural Housing Staff to evaluate the request and assist the borrower in identifying possible causes and corrective actions. The information is collected on a case-by-case basis when initiated by the borrower. Without this information, RHS would be unable to assure that eligible borrowers would receive compensation to repair defects to their newly constructed dwellings.

Description of Respondents: Business or for-profit.

Number of Respondents: 500.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 200.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–14818 Filed 9–6–06; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF AGRICULTURE

Forest Service

Plumas County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Plumas County Resource Advisory Committee (RAC) will hold a meeting on September 29, 2006, in Quincy, CA. The purpose of the meeting is to discuss residual funding and recommend how it might be distributed. The funding is available under the Title II Provisions of the Secure Rural Schools and Community Self-Determination Act of 2000. Several Cycle 6 projects not yet approved will be included in the discussion and could potentially be recommended to the Plumas (PNF) or Lassen (LNF) National Forest Supervisor for funding. Cost overruns for other projects will also be considered among other alternatives.

DATES AND ADDRESSES: The meeting will take place from 9–12 at the Mineral Building—Plumas/Sierra County Fairgrounds, 208 Fairgrounds Road, Quincy, CA.

FOR FURTHER INFORMATION CONTACT: Lee Anne Schramel Taylor, Forest Coordinator, USDA, Plumas National Forest, P.O. Box 11500/159 Lawrence Street, Quincy, CA 95971; (530) 283–7850; or by E–Mail. *eataylor@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items for the September 29 meeting include: (1) Forest Service Update; (2) Residual funding availability; (3) Recommendations for funding distribution, potentially including current Cycle 6 projects not yet approved; and, (3) Review future meeting schedule and agenda. The meetings are open to the public and individuals may address the Committee after being recognized by the Chair. Other RAC information including previous meeting agendas and minutes may be obtained at *http://www.notes.fs.fed.us:81/r4/payments_to_states.*

Dated: August 30, 2006.

Robert G. Macwhorter,

Deputy Forest Supervisor.

[FR Doc. 06–7482 Filed 9–6–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[06–01–S]

Designation for the Pocatello (ID), Lewiston (ID), Evansville (IN), and Utah Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: Grain Inspection, Packers and Stockyards Administration (GIPSA) announces designation of the following organizations to provide official services under the United States Grain Standards Act, as amended (Act): Idaho Grain Inspection Service, Inc. (Idaho); Lewiston Grain Inspection Service, Inc. (Lewiston); Ohio Valley Grain Inspection, Inc. (Ohio Valley); and Utah Department of Agriculture and Food (Utah).

EFFECTIVE DATE: October 1, 2006.

ADDRESSES: USDA, GIPSA, Karen Guagliardo, Review Branch Chief, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Karen Guagliardo at 202–720–7312, e-mail *Karen.W.Guagliardo@usda.gov.*

SUPPLEMENTARY INFORMATION: This action has been reviewed and

determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the March 1, 2006 **Federal Register** (71 FR 10471), GIPSA asked persons interested in providing official services in the geographic areas assigned to the official agencies named above to submit an application for designation. Applications were due by March 31, 2006.

Idaho, Lewiston, Ohio Valley, and Utah were the sole applicants for designation to provide official services in the entire area currently assigned to them, therefore, GIPSA did not ask for additional comments on them.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act and, according to Section 7(f)(l)(B), determined that Idaho, Lewiston, Ohio Valley, and Utah are able to provide official services in the geographic areas specified in the March 1, 2006, **Federal Register**, for which they applied. These designation actions to provide official services are effective October 1, 2006 and terminate September 30, 2009, for Idaho, Lewiston, Ohio Valley, and Utah. Interested persons may obtain official services by calling the telephone numbers listed below.

Official agency	Headquarters location and telephone	Designation term
Idaho	Pocatello, ID; 208–233–8303	10/01/06–09/30/09
Lewiston	Lewiston, ID; 208–746–0451	10/01/06–09/30/09
Ohio Valley	Evansville, IN; 812–423–9010	10/01/06–09/30/09
	Additional Location: Hopkinsville, KY	
Utah	Salt Lake City, UT; 801–392–2292	10/01/06–09/30/09

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E6–14816 Filed 9–6–06; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Opportunity for Designation in the Champaign (IL), Detroit (MI), Eastern Iowa (IA), Enid (OK), Keokuk (IA), Marshall (MI), Memphis (TN) and Omaha (NE), and Request for Comments on the Official Agencies Serving These Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA. [06–03–A].

ACTION: Notice.

SUMMARY: The designations of the official agencies listed below will end in March 2007. Grain Inspection, Packers and Stockyards Administration (GIPSA) is asking persons interested in providing official services in the areas served by these agencies to submit an application for designation. GIPSA is also asking for comments on the quality of services provided by these currently designated agencies: Champaign-Danville Grain Inspection Departments, Inc. (Champaign); Detroit Grain Inspection Service, Inc. (Detroit); Eastern Iowa Grain Inspection and Weighing Service, Inc. (Eastern Iowa); Enid Grain Inspection Company, Inc. (Enid); Keokuk Grain Inspection Service (Keokuk); Michigan Grain Inspection Services, Inc. (Michigan); Midsouth Grain Inspection Service (Midsouth); and Omaha Grain Inspection Service, Inc. (Omaha).

DATES: Applications and comments must be postmarked or electronically dated on or before October 10, 2006.

ADDRESSES: We invite you to submit applications and comments on this notice. You may submit applications and comments by any of the following methods:

- *Hand Delivery or Courier:* Deliver to Karen Guagliardo, Review Branch Chief, Compliance Division, GIPSA, USDA, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250.
- *Fax:* Send by facsimile transmission to (202) 690–2755, attention: Karen Guagliardo.
- *E-mail:* Send via electronic mail to *Karen.W.Guagliardo@usda.gov.*
- *Mail:* Send hardcopy to Karen Guagliardo, Review Branch Chief, Compliance Division, GIPSA, USDA, STOP 3604, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

SUPPLEMENTARY INFORMATION: This Action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this Action.

Section 7(f)(1) of the United States Grain Standards Act, as amended (Act), authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act.

1. Current designations being announced for renewal.

Official agency	Main office	Designation start	Designation end
Champaign	Champaign, IL	4/01/2004	3/31/2007
Detroit	Emmett, MI	4/01/2004	3/31/2007
Eastern	Iowa Davenport, IA	4/01/2004	3/31/2007
Enid	Enid, OK	4/01/2004	3/31/2007
Keokuk	Keokuk, IA	4/01/2004	3/31/2007
Michigan	Marshall, MI	4/01/2004	3/31/2007
Midsouth	Memphis, TN	4/01/2006	3/31/2007
Omaha	Omaha, NE	4/01/2006	3/31/2007

a. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the States of Illinois and Indiana, is assigned to Champaign.

In Illinois and Indiana:

Bounded on the North by the northern Livingston County line from State Route 47; the eastern Livingston County line to the northern Ford County line; the northern Ford and Iroquois County lines east to Interstate 57; Interstate 57 north to the northern Will County line;

Bounded on the North by the northern Will County line from Interstate 57 east to the Illinois-Indiana State line; the Illinois-Indiana State line north to the northern Lake County line; the northern Lake, Porter, Laporte, St. Joseph, and Elkhart County lines;

Bounded on the East by the eastern and southern Elkhart County lines; the eastern Marshall County line;

Bounded on the South by the southern Marshall and Starke County lines; the eastern Jasper County line south-southwest to U.S. Route 24; U.S. Route 24 west to Indiana State Route 55; Indiana State Route 55 south to the Newton County line; the southern Newton County line west to U.S. Route 41;

Bounded on the East by U.S. Route 41 south to the northern Parke County line; the northern Parke and Putnam County lines; the eastern Putnam, Owen and Greene County lines;

Bounded on the South by the southern Greene County line; the southern Sullivan County line west to U.S. Route 41(150); U.S. Route 41(150) south to U.S. Route 50; U.S. Route 50 west across the Indiana-Illinois State line to Illinois State Route 33; Illinois State Route 33 north and west to the Western Crawford County line; and

Bounded on the West by the western Crawford and Clark County lines; the Southern Coles County line; the western Coles and Douglas County lines; the western Champaign County line north to Interstate 72; Interstate 72 southwest to the Piatt County line; the western Piatt County line; the southern McLean County line west to a point 10 miles west of the western Champaign County line, from this point through Arrowsmith to Pontiac along a straight line running north and south which intersects with State Route 116; State Route 116 east to State Route 47; State Route 47 north to the northern Livingston County line.

Berrien, Cass, and St. Joseph Counties, Michigan.

The following grain elevators, all in Illinois, located outside of the above contiguous geographic area, are part of this geographic area assignment: Moultrie Grain Association, Cadwell, Moultrie County; Tabor Grain Company (3 elevators), Farmer City, Dewitt County; and Topflight Grain Company, Monticello, Piatt County (located inside Decatur Grain Inspection, Inc.'s, area).

Champaign's assigned geographic area does not include the following grain elevators inside Champaign's area which have been and will continue to be serviced by the following official agency: Titus Grain Inspection, Inc.: Kentland Elevator and Supply, Boswell, Benton County, Indiana; ADM, Dunn, Benton County, Indiana; and ADM, Raub, Benton County, Indiana.

Champaign's assigned geographic area does not include the export port locations inside Champaign's area which are serviced by GIPSA.

b. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the State of Michigan, is assigned to Detroit.

Bounded on the North by the northern Clinton County line; the eastern Clinton County line south to State Route 21; State Route 21 east to State Route 52; State Route 52 north to the Shiawassee County line; the northern Shiawassee County line east to the Genesee County line; the western Genesee County line; the northern Genesee County line east to State Route 15; State Route 15 north to Barnes Road; Barnes Road east to Sheridan Road; Sheridan Road north to State Route 46; State Route 46 east to State Route 53; State Route 53 north to the Michigan State line;

Bounded on the East by the Michigan State line south to State Route 50;

Bounded on the South by State Route 50 west to U.S. Route 127; and

Bounded on the West by U.S. Route 127 north to U.S. Route 27; U.S. Route 27 north to the northern Clinton County line.

The following grain elevator, located outside of the above contiguous geographic area, is part of this geographic area assignment: Caldonia Farmers Elevator, St. Johns, Clinton County (located inside Michigan Grain Inspection Services, Inc.'s, area).

c. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the States of Illinois, Iowa, and Wisconsin, is assigned to Eastern Iowa.

In the States of Illinois and Iowa:

The southern area:

Bounded on the North, in Iowa, by Interstate 80 from the western Iowa County line east to State Route 38; State Route 38 north to State Route 130; State Route 130 east to Scott County; the western and northern Scott County lines east to the Mississippi River;

Bounded on the East, from the Mississippi River, in Illinois, by the eastern Rock Island County line; the northern Henry and Bureau County lines east to State Route 88; State Route 88 south; the southern Bureau County line; the eastern and southern Henry County lines; the eastern Knox County line;

Bounded on the South by the southern Knox County line; the eastern and southern Warren County lines; the southern Henderson County line west to the Mississippi River; in Iowa, by the southern Des Moines, Henry, Jefferson, and Wapello County lines; and

Bounded on the West by the western and northern Wapello County lines; the western and northern Keokuk County lines; the western Iowa County line north to Interstate 80.

The northern area:

Bounded on the North, in Iowa, by the northern Delaware and Dubuque County lines; in Illinois, by the northern Jo Daviess, Stephenson, Winnebago, Boone, McHenry, and Lake County lines;

Bounded on the East by the eastern Illinois State line south to the northern Will County line; the northern Will County line west to Interstate 55; Interstate 55 southwest to the southern Dupage County line;

Bounded on the South by the southern Dupage, Kendall, Dekalb, and Lee County lines; and

Bounded on the West by the western Lee and Ogle County lines; by the southern Stephenson and Jo Daviess County lines; in Iowa, by the southern Dubuque and Delaware County lines; and the western Delaware County line.

In the State of Wisconsin, the entire State of Wisconsin, for domestic services.

Eastern Iowa's assigned geographic area does not include the export port locations inside Eastern Iowa's area in the State of Illinois, which are serviced by GIPSA, and in the State of Wisconsin, which are serviced by Wisconsin.

d. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the State of Oklahoma, is assigned to Enid.

Adair, Alfalfa, Atoka, Beckham, Blaine, Bryan, Caddo, Canadian, Carter, Cherokee, Choctaw, Cleveland, Coal, Comanche, Cotton, Craig, Creek, Custer, Delaware, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper, Haskell, Hughes, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Latimer, Le Flore, Lincoln, Logan, Love, McClain, McCurtain, McIntosh, Major, Marshall, Mayes, Murray, Muskogee, Noble, Nowata, Okfuskee, Oklahoma, Okmulgee, Osage, Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Pottawatomie, Pushmataha,

Roger Mills, Rogers, Seminole, Sequoyah, Stephens, Tillman, Tulsa, Wagoner, Washington, Washita, Woods, and Woodward Counties.

e. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the States of Illinois and Iowa, is assigned to Keokuk.

Adams, Brown, Fulton, Hancock, Mason, McDonough, and Pike (northwest of a line bounded by U.S. Route 54 northeast to State Route 107; State Route 107 northeast to State Route 104; State Route 104 east to the eastern Pike County line) Counties, Illinois.

Davis, Lee, and Van Buren Counties, Iowa.

f. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the States of Michigan and Ohio, is assigned to Michigan.

Bounded on the North by the northern Michigan State line;

Bounded on the East by the eastern Michigan State line south and east to State Route 53; State Route 53 south to State Route 46; State Route 46 west to Sheridan Road; Sheridan Road south to Barnes Road; Barnes Road west to State Route 15; State Route 15 south to the Genesee County line; the northern Genesee County line west to the Shiawassee County line; the northern Shiawassee County line west to State Route 52; State Route 52 south to State Route 21; State Route 21 west to Clinton County; the eastern and northern Clinton County lines west to U.S. Route 27; U.S. Route 27 south to U.S. Route 127; U.S. Route 127 south to the Michigan-Ohio State line. In Ohio, the northern State line east to the eastern Fulton County line; the eastern Fulton, Henry, and Putnam County lines; the eastern Allen County line south to the northern Hardin County line; the northern Hardin County line east to U.S. Route 68; U.S. Route 68 south to State Route 47; Bounded on the South by State Route 47 west-southwest to Interstate 75 (excluding all of Sidney, Ohio); Interstate 75 south to the Shelby County line; the southern and western Shelby County lines; the southern Mercer County line; and

Bounded on the West by the Ohio-Indiana State line from the southern Mercer County line to the northern Williams County line; in Michigan, by the southern Michigan State line west to the Branch County line; the western Branch County line north to the Kalamazoo County line; the southern Kalamazoo and Van Buren County lines west to the Michigan State line; the western Michigan State line north to the northern Michigan State line.

Michigan's assigned geographic area does not include the following grain elevators inside Michigan's area which has been and will continue to be serviced by the following official agencies: Detroit Grain Inspection Service, Inc.: Caldonia Farmers Elevator, St. Johns, Clinton County, Michigan and Northeast Indiana Grain Inspection, Inc.: E.M.P. Coop, Payne, Paulding County, Ohio.

g. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the States of Arkansas, Mississippi, Tennessee, and Texas, is assigned to Midsouth.

The entire State of Arkansas.

The entire State of Mississippi, except those export port locations within the State.

Carroll, Chester, Crockett, Dyer, Fayette, Gibson, Hardeman, Haywood, Henderson, Lauderdale, Madison, McNairy, Shelby, and Tipton Counties, Tennessee.

Bowie and Cass Counties, Texas.

The following grain elevators, located outside of the above contiguous geographic area, are part of this geographic area assignment: Cargill, Inc., Tiptonville, Lake County, Tennessee (located inside Cairo Grain Inspection Agency, Inc.'s, area).

h. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the States of Iowa and Nebraska, is assigned to Omaha.

Bounded on the North by Nebraska State Route 91 from the western Washington County line east to U.S. Route 30; U.S. Route 30 east to the Missouri River; the Missouri River north to Iowa State Route 175; Iowa State Route 175 east to Iowa State Route 37; Iowa State Route 37 southeast to the eastern Monona County line;

Bounded on the East by the eastern Monona County line; the southern Monona County line west to Iowa State Route 183; Iowa State Route 183 south to the Pottawattamie County line; the northern and eastern Pottawattamie County lines; the southern Pottawattamie County line west to M47; M47 south to Iowa State Route 48; Iowa State Route 48 south to the Montgomery County line;

Bounded on the South by the southern Montgomery County line; the southern Mills County line west to Interstate 29; Interstate 29 north to U.S. Route 34; U.S. Route 34 west to the Missouri River; the Missouri River north to the Sarpy County line (in Nebraska); the southern Sarpy County line; the southern Saunders County line west to U.S. Route 77; and

Bounded on the West by U.S. Route 77 north to the Platte River; the Platte River southeast to the Douglas County line; the northern Douglas County line east; the western Washington County line northwest to Nebraska State Route 91.

The following grain elevators, located outside of the above contiguous geographic area, are part of this geographic area assignment: Hancock Elevator, Elliot, Montgomery County, Iowa; Hancock Elevator (2 elevators), Griswold, Cass County, Iowa (located inside Central Iowa Grain Inspection Service, Inc.'s, area); United Farmers Coop, Rising City, Butler County, Nebraska; United Farmers Coop, Shelby, Polk County, Nebraska (located inside Fremont Grain Inspection Department, Inc.'s, area); and Goode Seed & Grain, McPaul, Fremont County, Iowa; Haveman Grain, Murray, Cass County, Nebraska (located inside Lincoln Inspection Service, Inc.'s, area).

Omaha's assigned geographic area does not include the following grain elevators inside Omaha's area which have been and will continue to be serviced by the following official agency: Fremont Grain Inspection Department, Inc.: Farmers Cooperative, and Krumel Grain and Storage, both in Wahoo, Saunders County, Nebraska.

2. *Opportunity for designation.* Interested persons, including Champaign, Detroit, Eastern Iowa, Enid, Keokuk, Michigan, Midsouth, and Omaha are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning April 1, 2007, and ending March 31, 2010. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information, or obtain applications at the GIPSA Web site, *www.gipsa.usda.gov.*

3. *Request for Comments.* GIPSA also is publishing this notice to provide interested persons the opportunity to present comments on the quality of services for the Champaign, Detroit, Eastern Iowa, Enid, Keokuk, Michigan, Midsouth, and Omaha official agencies. Substantive comments citing reasons and pertinent data for support or objection to the designation of the applicants will be considered in the designation process. All comments must be submitted to the Compliance Division at the above address.

Applications, comments, and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E6–14817 Filed 9–6–06; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. EDA has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE FOR THE PERIOD JULY 27, 2006 THROUGH AUGUST 30, 2006

Firm	Address	Date petition accepted	Product
GasTech Engineering, Inc	1007 E. Admiral Boulevard, Tulsa, OK 74145.	7/27/06	Oil and gas production equipment.
Norgren, Inc	5400 South Delaware Street, Littleton, CO 80120.	8/4/06	Motion and fluid control equipment.
Mega Manufacturing, Inc	401 S. Washington Street, Hutchinson, KS 67501.	8/4/06	Metal shearing and fabrication machinery.
COBE Cardiovascular, Inc	14401 W 65th Way, Arvada, CO 80004 ..	8/4/06	Electrosurgical products used in open heart surgery.
El Encanto, Inc. dba Bueno Foods (JV) ...	2001 4th Street SW., Albuquerque, NM 87102.	8/7/06	Vegetable products, spices, tortillas.
Valley Oak Cabinets, Inc	7050 97th Plaza Circle, Omaha, NE 68122.	8/14/06	Wood kitchen cabinets and wood doors.
Bra-Vor Tool and Die Company, Inc	11189 Murray Road, Meadville, PA	8/23/06	Stamped metal parts.
Alumina Ceramic Components, Inc	4532 Route 982, Latrobe, PA 15650	8/23/06	Industrial ceramic components.
Capps Shoe Company, Inc	3715 Mayflower Drive, Lynchburg, VA 24501.	8/23/06	Men's and women's shoes.
Metal Edge International, Inc	337 West Walnut Street, North Wales, PA 19454.	8/23/06	Specialty packaging products.
National Graphics, Inc	2711 Miami Street, St. Louis, MO 63118	8/29/06	Coated inkjet media.
Discovery Plastics, LLC	3607 28th Avenue, NE., Miami, OK 74354.	8/29/06	Automotive plastic injection molding parts.
George Gordon Associates, Inc	12 Continental Boulevard, Merrimack, NH 03054.	8/29/06	Packing and wrapping machinery.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Office of Chief Counsel, Room 7005, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. Please follow the procedures set forth in Section 315.9 of EDA's interim final rule (70 FR 47002) for procedures for requesting a public hearing. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: August 30, 2006.

Barry Bird,

Chief Counsel.

[FR Doc. E6–14815 Filed 9–6–06; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey from the People's Republic of China: Initiation of New Shipper Antidumping Duty Review

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

EFFECTIVE DATE: September 7, 2006.

SUMMARY: On June 21, 2006, the Department of Commerce ("the Department") received a request to conduct a new shipper review of the antidumping duty order on honey from the People=s Republic of China ("PRC") from Shanghai Bloom International Trading Co., Ltd. ("Shanghai Bloom"). We have determined that this request meets the statutory and regulatory requirements for the initiation of a new shipper review.

FOR FURTHER INFORMATION CONTACT: Carrie Blozy or Anya Naschak, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5403 or (202) 482–6375, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department received a timely request from Shanghai Bloom in

accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended ("the Act") and 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on honey from the PRC, which has a December annual anniversary month, and a June semi–annual anniversary month. Shanghai Bloom identified itself as the exporter of honey produced by Linxiang Jindeya Bee–Keeping Co., Ltd. ("Jindeya"). As required by 19 CFR 351.214(b)(2)(ii) and (b)(2)(ii)(A), Shanghai Bloom certified that it did not export honey to the United States during the period of investigation ("POI"), and that it has never been affiliated with any exporter or producer which exported honey to the United States during the POI. Jindeya also certified that it did not export honey to the United States during the POI, and that it has never been affiliated with any exporter or producer which exported honey to the United States during the POI. Furthermore, the two companies have also certified that their activities are not controlled by the government of the PRC, satisfying the requirements of 19 CFR 351.214(b)(2)(iii)(B). Pursuant to 19 CFR 351.214(b)(2)(iv), Shanghai Bloom submitted documentation establishing the date on which the subject merchandise was first entered for consumption in the United States, the volume of that first shipment and any subsequent shipments, and the date of the first sale to an unaffiliated customer in the United States.

The Department conducted Customs database queries and analyzed Customs entry packages to confirm that the shipment of Shanghai Bloom had officially entered the United States via assignment of an entry date in the Customs database by U.S. Customs and Border Protection ("CBP"). In addition, the Department confirmed the existence of Shanghai Bloom and its U.S. customer. We note that although Shanghai Bloom submitted documentation regarding the volume of its shipment, and the date of its first sale to an unaffiliated customer in the United States, CBP entry documents and our Customs database query show that Shanghai Bloom's shipment entered the United States shortly after the anniversary month.

Under 19 CFR 351.214(f)(2)(ii), when the sale of the subject merchandise occurs within the period of review ("POR"), but the entry occurs after the normal POR, the POR may be extended unless it would be likely to prevent the completion of the review within the time limits set by the Department's regulations. The preamble to the Department's regulations states that both the entry and the sale should occur during the POR, and that under "appropriate" circumstances the Department has the flexibility to extend the POR. *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27319–27320 (May 19, 1997). In this instance, Shanghai Bloom's shipment entered in the month following the end of the POR. The Department does not find that this delay prevents the completion of the review within the time limits set by the Department's regulations.

On June 22, 2006, we requested from CBP the entry package for Shanghai Bloom, and we received the entry documentation from CBP. However, we found certain discrepancies between the documentation provided by Shanghai Bloom in its request for a new shipper review and the entry package we received from CBP.[1] On July 20, 2006, pursuant to 19 CFR 351.302(b), the Department extended the time limit to initiate this new shipper review until August 31, 2006, in order to provide Shanghai Bloom an opportunity to explain or resolve the inconsistencies in the entry documentation.[2] On August 7, 2006, we received documentation from Shanghai Bloom, including invoice and shipment documentation, to demonstrate that Jindeya was the producer of the subject merchandise, and a revised Producer Certificate, which contains a Food and Drug Administration ("FDA") registration number and lists Jindeya as the producer. Shanghai Bloom explained that listing Shanghai Bloom on the Producer Certificate was an inadvertent error.

On August 9, 2006, the Department issued a letter to Shanghai Bloom, noting that section 801(m) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 381(m)), amended by section 307 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, requires prior notification and the use of an FDA registration number, which should be assigned to "the owner, operator, or agent in charge of a domestic or foreign facility that manufactures/processes, packs, or holds food for human or animal consumption in the U.S., or an individual authorized by one of them, must register that facility with FDA" (*see* http://www.cfsan.fda.gov/dms/fsbtac12.html), and requesting that Shanghai Bloom submit a copy of the completed online FDA Registration that generated the FDA Registration number appearing on Shanghai Bloom's Producer Certifications.[3] On August 11, 2006, Shanghai Bloom submitted the FDA Registration information, which listed Shanghai Bloom as the foreign facility, and contained the same FDA Registration number appearing on the Producer Certification.

On August 17, 2006, the Department requested that Shanghai Bloom explain the discrepancy between the Producer Certification that lists Jindeya as the producer, and the FDA Registration number that was issued to Shanghai Bloom.[4] On August 21, 2006, Shanghai Bloom submitted a revised Producer Certification, which listed Jindeya's recently acquired FDA Registration number, and explained that, due to a misunderstanding of the requirements of the form, Shanghai Bloom inadvertently put its own name and FDA Registration number on the Producer Certificate, but that Jindeya was the actual producer of the merchandise exported to the United States during the POR.

Based on the information submitted by Shanghai Bloom on August 7, 2006, August 11, 2006, and August 21, 2006, we find that Shanghai Bloom has sufficiently demonstrated for purposes of initiation that Jindeya was the producer of the honey it exported to the United States. In the course of this new shipper review, we will further examine this issue.

Initiation of Review

In accordance with section 751(a)(2)(B) of the Act, and 19 CFR 351.214(d)(1), and based on information on the record, we are initiating a new shipper review for Shanghai Bloom. *See* Memorandum to the File through James C. Doyle, New Shipper Initiation Checklist, dated August 25, 2006. The Department will conduct this new shipper review according to the deadlines set forth in section 751(a)(2)(B)(iv) of the Act.

Pursuant to 19 CFR 351.214(g)(1)(i)(B), the POR for a new

[1] *See* Memorandum to the File from Anya Naschak, Senior Case Analyst, through Carrie Blozy, Program Manager, Re: Honey from the People's Republic of China: Entry Packages from U.S. Customs and Border Protection ("CBP"), dated July 20, 2006 ("CBP Memo").

[2] *See* Letter to Shanghai Bloom from Carrie Blozy: Extension of Initiation Date of New Shipper Review of Honey from the People's Republic of China ("PRC"), dated July 20, 2006 ("Initiation Extension Letter").

[3] "*See* Letter to Shanghai Bloom from Carrie Blozy: Request for Clarification on Shanghai Bloom International Trading Co., Ltd.'s Request for Initiation of a New Shipper Review of Honey from the People's Republic of China ("PRC"), dated August 9, 2006.

[4] See Letter to Shanghai Bloom from Carrie Blozy: Request for Clarification on Shanghai Bloom International Trading Co., Ltd.'s Request for Initiation of a New Shipper Review of Honey from the People's Republic of China ("PRC"), dated August 17, 2006.

shipper review, initiated in the month immediately following the semi–annual anniversary month, will be the six-month period immediately preceding the semi–annual anniversary month. As discussed above, under 19 CFR 351.214(f)(2)(ii), when the sale of the subject merchandise occurs within the POR, but the entry occurs after the normal POR, the POR may be extended. Therefore, the POR for the new shipper review of Shanghai Bloom is December 1, 2005, through June 30, 2006.

Pursuant to the Department's regulations, in cases involving non–market economies, the Department requires that a company seeking to establish eligibility for an antidumping duty rate separate from the country–wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue a questionnaire to Shanghai Bloom, including a separate rates section. The review will proceed if the responses provide sufficient indication that Shanghai Bloom is not subject to either *de jure* or *de facto* government control with respect to its exports of honey. However, if Shanghai Bloom does not demonstrate its eligibility for a separate rate, then the company will be deemed not separate from other companies that exported during the POI and the new shipper review will be rescinded as to Shanghai Bloom.

On August 17, 2006, the Pension Protection Act of 2006 (H.R. 4) was signed into law. Section 1632 of H.R. 4 temporarily suspends the authority of the Department to instruct CBP to collect a bond or other security in lieu of a cash deposit in new shipper reviews. Therefore, the posting of a bond under Section 751(a)(2)(B)(iii) of the Act in lieu of a cash deposit is not available in this case. Importers of subject merchandise exported by Shanghai Bloom and manufactured by Jindeya must continue to post a cash deposit of estimated antidumping duties on each entry of subject merchandise at the current PRC–wide rate of 212.39 percent.

Interested parties that need access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

This initiation notice is issued and published in accordance with section 751(a) of the Act and sections 351.214(d) and 351.221(c)(1)(i) of the Department's regulations.

Dated: August 30, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–14846 Filed 9–6–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–841]

Structural Steel Beams from Korea: Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: In response to a request from the Committee for Fair Beam Imports, Nucor Corp., Nucor–Yamato Steel Co., Steel Dynamics, Inc. and TXI–Chaparral Steel Co., (collectively, petitioners), INI Steel Company (INI), and Dongkuk Steel Mill Co., Ltd. (DSM), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on structural steel beams from the Republic of Korea (Korea). This review covers INI and DSM, manufacturers and exporters of the subject merchandise. The period of review (POR) is August 1, 2004 through July 31, 2005.

We preliminarily determine that INI has sold subject merchandise at less than normal value (NV) during the POR. We also preliminarily determine that DSM has not sold subject merchandise at less than NV. If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries.

We invite interested parties to comment on these preliminary results. Parties who submit arguments in this segment of the proceeding are requested to submit with the argument: (1) A statement of the issue, (2) a brief summary of the argument and (3) a table of authorities.

EFFECTIVE DATE: September 7, 2006.

FOR FURTHER INFORMATION CONTACT: Maryanne Burke or Steve Bezirganian, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Room 7866, Washington, DC 20230; telephone (202) 482–5604 or (202) 482–1131 respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2005 the Department published a notice of opportunity to request an administrative review of the antidumping duty order on structural steel beams from Korea. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 44085 (August 1, 2005). On August 31, 2005 petitioners requested that the Department conduct an administrative review of DSM, a Korean producer of subject merchandise. Also, on August 31, 2005, DSM and INI requested that the Department conduct an administrative review of their sales of subject merchandise during the POR. On September 28, 2005 the Department published a notice of initiation of a review of structural steel beams from Korea covering the period August 1, 2004 through July 31, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 56631 (September 28, 2005). On October 3, 2005 the Department issued its antidumping duty questionnaires to INI and to DSM.

Because we disregarded sales of certain products made by INI at prices below the cost of production (COP) in what was, at that time, the most recently completed review of structural steel beams from Korea (*see Structural Steel Beams from Korea; Notice of Final Results of Antidumping Duty Administrative Review*, 70 FR 6837 (February 9, 2005)), we had reasonable grounds to believe or suspect INI made sales of the foreign like product at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Tariff Act of 1930, as amended (the Tariff Act). Therefore, pursuant to section 773(b)(1) of the Tariff Act, from the outset of this review we required INI to respond to section D of the questionnaire. On November 4, 2005, the Department granted approval of INI's October 12, 2005 request to shift its cost reporting period for section D. The Department had not disregarded sales of structural steel beams made by DSM at prices below the COP in the most recently completed review of DSM; therefore, DSM was not initially required to respond to section D of the questionnaire. However, on December 19, 2005 petitioners alleged that DSM sold the foreign like product at prices below its COP. On January 9, 2006, the Department initiated a cost investigation of DSM based upon the determination that petitioners' allegation established reasonable grounds to believe or suspect sales below cost, and instructed DSM to

respond to section D of the questionnaire.

From November 2005 through June 2006, INI and DSM submitted timely responses to the initial questionnaire and to the Department's subsequent supplemental questionnaires. Because it was not practicable to complete this review within the normal time frame, on April 17, 2006, we published in the **Federal Register** our notice of the extension of time limits for this review. *Structural Steel Beams from the Republic of Korea; Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 19714 (April 17, 2006). This extension established the deadline for these preliminary results as August 31, 2006.

Period of Review

The POR is from August 1, 2004 to July 31, 2005.

Scope of the Order

The products covered by this order are doubly–symmetric shapes, whether hot- or cold–rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated or clad. These products include, but are not limited to, wide–flange beams ("W" shapes), bearing piles ("HP" shapes), standard beams ("S" or "I" shapes) and "M" shapes. All products that meet the physical and metallurgical descriptions provided above are within the scope of this order unless otherwise excluded. The following products are outside and/or specifically excluded from the scope of this order: structural steel beams greater than 400 pounds per linear foot or with a web or section height (also known as depth) over 40 inches.

The merchandise subject to this review is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7216.32.00000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.99.0010, 7216.99.0090, 7228.70.3010, 7228.70.3041 and 7228.70.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Product Comparisons

In accordance with section 771(16) of the Tariff Act, we considered all structural steel beams produced by DSM and INI covered by the description in the "Scope of the Order" section of this notice, *supra*, which were sold in the home market during the reporting period for home market sales, to be the foreign like product for the purpose of determining appropriate product comparisons to structural steel beams products sold in the United States. In making product comparisons, we matched products based on the physical characteristics identified in our questionnaire and reported by DSM and INI as follows (listed in order of preference): hot–formed or cold–formed, shape/size (section depth), strength/grade and whether or not coated. Where there were no sales of identical merchandise in the home market 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 and reporting instructions listed in the questionnaire, or to constructed value (CV), as appropriate.

Normal Value Comparisons

To determine whether sales of structural steel beams from Korea to the United States were made at less than NV, we compared the export price (EP) or the constructed export price (CEP) to NV, as described in the "Export Price," "Constructed Export Price," and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(2) of the Tariff Act, we compared the EPs and CEPs of individual U.S. transactions to the monthly weighted–average NVs of the foreign like product where there were sales at prices above the COP, as discussed in the "Cost of Production" section below.

Export Price and Constructed Export Price

Section 772(a) of the Tariff Act defines EP as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise 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 subsection (c)." Section 772(b) of the Tariff Act defines CEP as "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter as adjusted under subsections (c) and (d)." For the purposes of this administrative review, INI has classified all of its U.S. sales as EP sales. DSM has classified all of its U.S. sales as CEP sales.

INI

For INI we calculated the price of U.S. sales made prior to importation to unaffiliated purchasers in the United States. We made deductions from the reported gross unit price for movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act; these included, where appropriate, foreign inland freight from plant to warehouse, foreign inland freight from plant/warehouse to port of exportation, foreign warehousing, international freight, U.S. duties, and U.S. brokerage expenses. We made an addition to U.S. price for duty drawback pursuant to section 772(c)(1)(B) of the Tariff Act. *See* Administrative Review of the Antidumping Duty Order on Structural Steel Beams from Korea: Preliminary Results for INI Steel Company (INI Preliminary Analysis Memorandum) from Steve Bezirganian to the File, dated August 31, 2006.

DSM

For DSM we calculated CEP based on the prices from DSM's U.S. affiliate, Dongkuk International, Inc. (DKA) to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act; these included, where appropriate, foreign inland freight from the plant to the port of export, foreign brokerage and handling international freight, marine insurance, other U.S. transportation expenses (*i.e.*, U.S. brokerage and handling charges), and U.S. customs duty. Additionally, we made deductions for expenses that bear a direct relationship to the sale in the United States (*i.e.*, credit, and other direct selling expenses) pursuant to section 772(d)(1)(B). We added an amount for duty drawback pursuant to section 772(c)(1)(B) of the Tariff Act.

For CEP sales we also made an adjustment for profit in accordance with section 772 (d)(3) of the Tariff Act. We deducted the profit allocated to expenses deducted under sections 772(d)(1) and 772(d)(2) of the Tariff Act in accordance with sections 772(d)(3) and 772(f) of the Tariff Act. In accordance with section 772(f) of the Tariff Act, we computed profit based on total revenue realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit expenses incurred with respect to U.S. economic activity, based on the ratio of total U.S.

expenses to total expenses for both the U.S. and home markets.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Tariff Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the CEP transaction. The NV LOT is that of the starting–price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP sales, the LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP sales, the LOT is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. If the comparison market sales are at a different LOT and that 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 Tariff Act. Finally, 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 differences in the levels between NV and CEP sales affect price comparability, we adjust NV under section 773(a)(7)(B) of the Tariff Act (the CEP offset provision). *See, e.g., Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From Canada*, 67 FR 8781 (February 26, 2002), and accompanying Issues and Decisions Memorandum at Comment 8; *see also Certain Hot–Rolled Flat–Rolled Carbon Quality Steel Products from Brazil; Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 17406, 17410 (April 6, 2005), unchanged in *Notice of Final Results of Antidumping Duty Administrative Review: Certain Hot–Rolled Flat–Rolled Carbon Quality Steel Products from Brazil*, 70 FR 58683 (October 7, 2005).

In identifying LOTs for CEP, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Tariff Act. *See Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001). Generally, if the reported LOTs are the same in the home and U.S. markets, the functions and activities of the seller should be similar. Conversely, if a party reports LOTs that are different among categories of sales, the functions and activities should be dissimilar. *See Porcelain–on-Steel Cookware from Mexico; Final Results of Administrative Review*, 65 FR 30068 (May 10, 2000), and accompanying Issues and Decisions Memorandum at Comment 6.

In implementing these principles in this administrative review, we obtained information from INI and DSM about the marketing stages involved in its reported U.S. and home market sales, including descriptions of the selling activities performed for each channel of distribution.

INI

INI indicated its home market sales were made through two channels (sales to unaffiliated distributors, and sales to affiliated and unaffiliated end–users) and its U.S. sales were through one channel (to unaffiliated U.S. customers). INI did not claim any distinct LOTs, and its descriptions of selling functions indicated very little variation across channels and markets. Based upon the information on record, we have determined that there is only one LOT in both markets for INI. *See* INI Preliminary Analysis Memorandum.

DSM

DSM claimed one LOT in the home market. DSM reported it sold through one channel of distribution whereby merchandise was sold directly from its factories to unaffiliated customers (distributors and end–users). *See* DSM's November 7, 2005 section A response at 15. DSM also claimed only one LOT in the U.S. market, reporting it sold through one channel of distribution in the United States. DSM's sales were made directly from its production facilities in Korea to its U.S. affiliate, DKA, which resold the merchandise to the unaffiliated U.S. customer (classified as an end–user). *See* DSM's November 7, 2005 section A response at 15.

DSM maintains the constructed LOT from DSM to DKA is much less advanced than the actual LOT of home market sales, claiming DSM performs a limited range of selling activities on sales to the United States. *See* DSM's November 7, 2005 section A response at 19 and DSM's January 20, 2006 supplemental questionnaire response at Appendix SA–16. However, from our analysis of the information on record, we have determined that most selling functions were performed at an equal level of intensity in both the home and U.S. markets. *See* Administrative Review of the Antidumping Duty Order on Structural Steel Beams from Korea: Preliminary Results for Dongkuk Steel Mill Company, Ltd. (DSM Preliminary Analysis Memorandum) from Maryanne Burke to the File, dated August 31, 2006. Therefore, we found no basis for accepting a distinct, less advanced LOT for U.S. sales than for home market sales and conclude no LOT adjustment or CEP offset is warranted.

Normal Value

A. Selection of Comparison Market

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared the respondents' volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Tariff Act. Because both respondents' aggregate volume of home market sales of the foreign like product was greater than five percent of their aggregate volume of U.S. sales for the subject merchandise, we determined the home market was viable for both INI and DSM. *See* INI's June 30, 2006 supplemental questionnaire response at Exhibit A–48 and DSM's December 2, 2005 section B response at Exhibit SA–1.

B. Affiliated Party Transactions and Arm's–Length Test

The Department may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the prices at which sales are made to parties not affiliated with the respondent, (*i.e.*, sales at arm's–length). *See* 19 CFR 351.403(c). Sales to affiliated customers in the home market not made at arm's–length prices are excluded from our analysis because we consider them to be outside the ordinary course of trade. *See* 19 CFR 351.102(b).

INI reported it had made home market sales to affiliated end–users. To test whether INI's sales to affiliates were made at arm's–length prices, we compared on a model–specific basis the starting prices of sales to affiliated and unaffiliated customers net of all direct selling expenses, discounts and rebates, movement charges, and packing. Where applicable, we also made adjustments to gross unit price for reported billing adjustments. Where prices to the affiliated party were, on average, within a range of 98 to 102 percent of the price

of identical or comparable merchandise to the unaffiliated parties, we determined the sales made to the affiliated party were at arm's length. In accordance with the Department's practice, we disregarded sales to affiliated parties that we determined were not made at arm's length. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69194 (November 15, 2002). We found that an INI affiliated home market customer failed the arm's–length test and, in accordance with the Department's practice, we excluded sales to this affiliate from our analysis. DSM reported no sales to affiliated parties in the home market.

C. Cost of Production Analysis

In accordance with section 773(b)(3) of the Tariff Act, we calculated the weighted–average COP for each model based on the sum of material and fabrication costs for the foreign like product, plus amounts for selling expenses, general and administrative (G&A) expenses, interest expenses and packing costs. The Department relied on the COP data reported by INI and DSM; however, we made adjustments to INI's G&A and financial expense ratio (INTEX). *See* the Department's Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - INI Steel Company from Frederick W. Mines to Neal M. Halper (INI Cost Calculation Memorandum), dated August 31, 2006. For DSM, we made an adjustment to its reported INTEX ratio. *See* the Department's Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - Dongkuk Steel Mill Company, Ltd. from Trinette Boyd to Neal M. Halper (DSM Cost Calculation Memorandum), dated August 31, 2006. In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Tariff Act, whether, within an extended period of time, such sales were made in substantial quantities, and whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. Pursuant to section 773(b)(2)(C) of the Tariff Act, where less than 20 percent of the respondent's home market sales of a given model were at prices below the COP, we did not disregard any below–cost sales of that model because we determined that the below–cost sales were not made within an extended period of time in "substantial quantities." Where 20 percent or more of the respondent's home market sales of a given model were at prices less than COP, we disregarded the below–cost sales because: (1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Tariff Act, and (2) based on our comparison of prices to the weighted–average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Tariff Act.

To determine whether INI made sales at prices below COP, we compared the product–specific COP figures to home market prices net of reported billing adjustments, discounts and rebates, and applicable movement expenses of the foreign like product as required under section 773(b) of the Tariff Act. Our cost test for INI revealed that for home market sales of certain models, less than 20 percent of the sales volume (by weight) of those models were at prices below COP. Therefore, we retained all such sales observations in our analysis and used them in the calculation of NV. Our cost test also indicated that for other models of subject merchandise produced by INI, 20 percent or more of the home market sales volume (by weight) were sold at prices below COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Therefore, in accordance with section 773(b)(1) of the Tariff Act, for INI we excluded these below–cost sales from our analysis and used the remaining above–cost sales in the calculation of NV.

To determine whether DSM made sales at prices below COP, we compared the product–specific COP figures to home market prices net of discounts and rebates and applicable movement charges of the foreign like product as required under section 773(b) of the Tariff Act.

We found DSM did not have any models for which 20 percent or more of sales volume (by weight) were below cost during the POR. Therefore, we did not disregard any of DSM's home market sales and included all such sales in our calculation of NV.

D. Constructed Value

In accordance with section 773(e) of the Tariff Act, for both INI and DSM, we calculated CV based on the sum of the respondent's material and fabrication costs, SG&A expenses, profit, and U.S. packing costs. We calculated the COP component of CV as described above in the "Cost of Production Analysis" section of this notice. In accordance with section 773(e)(2)(A) of the Tariff Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For selling expenses, we used the weighted–average home market direct and indirect selling expenses. For these preliminary results the Department did not use CV in its margin calculation analysis for either INI or DSM.

E. Price–to-Price Comparisons

We calculated NV based on prices to unaffiliated customers and prices to affiliated customers we determined to be at arm's length for home market sale observations that passed the cost test, and made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Tariff Act.

For INI we made adjustments to gross unit price, where applicable, for billing adjustments, discounts and rebates and made deductions, where applicable, for foreign inland freight (*i.e.*, inland freight from plant to distribution warehouse), warehousing expenses and inland freight from plant/distribution warehouse to customer, pursuant to section 773(a)(6)(B) of the Tariff Act. In accordance with sections 773(a)(6)(A) and (B) of the Tariff Act, we deducted home market packing costs and added U.S. packing expenses. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of INI merchandise pursuant to section 773(a)(6)(C)(ii) of the Tariff Act and 19 CFR 351.411. We also made adjustments for differences in circumstances of sale (COS), where applicable, for commissions, home market credit expenses, warranty expenses, and U.S. imputed credit expenses, in accordance with section 773(a)(6)(C)(iii) of the Tariff Act and 19 CFR 351.410.

For DSM, we based NV on the home market prices to unaffiliated purchasers. We accounted for billing adjustments, interest revenue and discounts and rebates, where appropriate. We made deductions for foreign inland freight, insurance, and handling. We also removed home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Tariff Act. In addition, we made adjustments for differences in COS, where applicable, for imputed credit expenses and warranty expenses in accordance with section 773(a)(6)(C)(iii) of the Tariff Act and 19 CFR 351.410.

Currency Conversion

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

Preliminary Results of Review

As a result of our review, we preliminarily determine the weighted–average dumping margins for the period August 1, 2004 through July 31, 2005 to be as follows:

Manufacturer / Exporter	Margin
INI Steel Company	1.91%
Dongkuk Steel Mill Co., Ltd.	0.00%

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). An interested party may request a hearing within thirty days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date per 19 CFR 351.310(d). Interested parties may submit case briefs or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 35 days after the date of publication of this notice. Parties who submit arguments in these proceedings are requested to submit with the argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Further, we would appreciate it if parties submitting case briefs, rebuttal briefs, and written comments provided the Department with an additional copy of the public version of any such argument on diskette. The Department will issue final results of this administrative review, including the results of our analysis of the issues in any such case briefs, rebuttal briefs, and written comments or at a hearing, within 120 days of publication of these preliminary results.

Assessment

Upon completion of this review the Department will determine, and CBP will assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1) we have calculated importer–specific (or, where the importer was unknown, customer–specific) *ad valorem* assessment rates for merchandise exported by INI and DSM which is subject to this review. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of this review. The Department clarified its "automatic assessment" regulation on May 6, 2003 (68 FR 23954). *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by INI and DSM for which they did not know their merchandise would be exported by another company to the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the All–Others rate if there is no rate for the intermediate company(ies) involved in the transaction.

Revocation of the Order - Cash Deposits Not Required

On March 15, 2006, the United States International Trade Commission (ITC) determined that the revocation of the antidumping duty orders on structural steel beams from Korea would not likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. Consequently, the Department has revoked this order, effective August 18, 2005. *See Revocation of Antidumping and Countervailing Duty Orders: Structural Steel Beams from Japan and South Korea*, 71 FR 15375 (March 28, 2006). Therefore, there will be no need to issue new cash deposit instructions for this administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: August 31, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–14848 Filed 9–6–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–810]

Preliminary Results of Countervailing Duty Administrative Review: Corrosion–Resistant Carbon Steel Flat Products from France

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

SUMMARY: The Department of Commerce ("the Department") is conducting an administrative review of the countervailing duty ("CVD") order on corrosion–resistant carbon steel flat products ("CORE") from France for the period January 1, 2004, through December 31, 2004. We preliminarily find that the net subsidy rate for the company under review is *de minimis*. *See* the "Preliminary Results of Review" section of this notice, *infra*. Interested parties are invited to comment on these preliminary results. (*See* the "Public Comment" section, *infra*).

EFFECTIVE DATE: September 7, 2006.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson, 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) 482–4793.

SUPPLEMENTARY INFORMATION:

Background

On August 17, 1993, the Department published in the **Federal Register** the CVD order on CORE from France. *See Countervailing Duty Order and Amendment to Final Affirmative Countervailing Duty Determination: Certain Steel Products from France*, 58 FR 43759 (August 17, 1993). On August 1, 2005, the Department published a notice of opportunity to request an administrative review of this CVD order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 44085 (August 1, 2005). On August 31, 2005, we received a timely request for review from Duferco Coating S.A. and Sorral S.A. (collectively, "Duferco Sorral"), a French producer and exporter of subject merchandise, and from the United States Steel Corporation ("the petitioner").

On September 28, 2005, the Department initiated an administrative review of the CVD order on CORE from France, covering the period January 1, 2004, through December 31, 2004. *See*

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 70 FR 56631 (September 28, 2005). On October 4, 2005, the Department issued a questionnaire to Duferco Sorral, the Government of France ("the GOF"), and the European Commission ("the EC"); we received their respective questionnaire responses on December 7, 2005, and December 13, 2005. On April 27, June 14, June 21, July 13, July 17, and August 4, 2006, we issued supplemental questionnaires to Duferco Sorral, the GOF, and the EC. We received supplemental questionnaire responses from Duferco Sorral on May 25, July 7, July 26, and August 9, 2006; from the GOF on May 25, July 7, July 26, and August 18, 2006; and from the EC on May 22, June 27, and July 20, 2006.

On April 17, 2006, the Department published in the **Federal Register** an extension of the deadline for the preliminary results. *See Corrosion–Resistant Carbon Steel Flat Products from France and the Republic of Korea: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Reviews*, 71 FR 19714 (April 17, 2006).

In accordance with 19 CFR 351.213(b), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. The only company subject to this review is Duferco Sorral. This review covers 18 programs.

Scope of the Order

This order covers cold–rolled ("cold–reduced") carbon steel flat–rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion–resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron–based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States ("HTSUS") under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090.

Included in this order are corrosion–resistant flat–rolled products of non–rectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling") for example, products which have been beveled or rounded at the edges. Excluded from this order are flat–rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin–free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this order are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this order are certain clad stainless flat–rolled products, which are three–layered corrosion–resistant carbon steel flat–rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat–rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

These HTSUS item numbers are provided for convenience and customs purposes. The written descriptions remain dispositive.

Period of Review

The period for which we are measuring subsidies is January 1, 2004, through December 31, 2004.

Background and Methodology Information

I. Background

A. *Company History*

Duferco Sorral[1] is wholly owned by Duferco Belgium S.A. ("Duferco Belgium"), a Belgian holding company which is part of the Duferco Group, a Swiss conglomerate. Duferco Sorral is affiliated with Duferco S.A., a Swiss corporation that buys and sells steel products of the Duferco Group, including Duferco Sorral. For sales of CORE to the United States during the POR, Duferco Sorral sold the subject merchandise to Duferco S.A., which then resold the products to Duferco Steel, Inc., an affiliated U.S. sales company.

Duferco Belgium purchased Duferco (formerly known as Beautor S.A. ("Beautor"))[2] and Sorral from Arcelor S.A. in 2003. Arcelor was created through the merger of the French company Usinor S.A. ("Usinor")[3] with the Luxembourg company Arbed S.A. and the Spanish company Aceralia Corporacion Siderurgica S.A. The merger became effective in February 2002, upon approval of the EC. As a condition for the merger, the EC required the divestiture of certain holdings, including Usinor's cold–rolling and electro–galvanizing facilities in Beautor, France (*i.e.*, Beautor) and the hot–dipped galvanized and organic coating facilities in Strasbourg, France (*i.e.*, Sorral).[4] The purpose of the divestiture was to ensure that Usinor/Arcelor no longer controlled the facilities and could not hinder competition in the steel industry. According to the EC's instructions, the purchaser of Beautor and Sorral was to be a viable existing or potential competitor, independent of the parties, and having the incentive to maintain and develop the divested businesses as active competitive forces in competition with the seller.[5] Arcelor proposed Duferco Belgium as a suitable purchaser for Beautor and Sorral. In February 2003, the EC approved the private–to-private sale between Arcelor and Duferco Belgium.

B. *Change–in-Ownership*

[1] Duferco is located in the Picardie region, which is the northern part of France. Sorral is located in the Alsace region, which is on the eastern border of France. There are 26 regions in France.

[2] Beautor S.A. was transformed into Duferco Coating S.A. on March 31, 2004, by the shareholders. This transformation was retroactive to October 1, 2003, the opening day of the company's fiscal year.

[3] Usinor, a formerly government-owned entity, was the only company reviewed in the underlying investigation. *See Final Affirmative Countervailing Duty Determinations: Certain Steel Products from France*, 58 FR 37304 (July 9, 1993). Usinor was later privatized between 1995 and 1997. *See* Issues and Decision Memorandum for the Section 129 Determination: Corrosion-Resistant Carbon Steel Flat Products from France; Final Results of Expedited Sunset Review of Countervailing Duty Order, dated October 24, 2003.

[4] *See* "Non-Confidential Version of the Commitments to the European Commission: Case No. COMP/ECSC 1351 - Aceralia/Arbed/Usinor," at 1-2, contained within the June 27, 2006, Memorandum to the File concerning the Placement of Public Documents on the Record of the Review. This public document is available on the public record in the Central Records Unit ("CRU"), located in the main Commerce Building in room B-099.

[5] *Id.* at 4-5.

As explained in the "Company History" section above, Duferco Belgium purchased Beautor and Sorral, previously Usinor facilities, from Arcelor. The Department has previously determined that Usinor received countervailable subsidies. *See* Issues and Decision Memorandum for the Section 129 Determination: Corrosion–Resistant Carbon Steel Flat Products from France; Final Results of Expedited Sunset Review of Countervailing Duty Order, dated October 24, 2003. In this review, Duferco Sorral reported that Beautor received subsidies over a 15-year Average Useful Life ("AUL").

For purposes of these preliminarily results, we find that the benefits from any allocable, non–recurring, pre–sale subsidies to Beautor and Sorral from the GOF and the EC are fully extinguished prior to the POR. Therefore, as this change in ownership could have no impact on any countervailable subsidy benefits in the POR, we are not making any findings in this review as to the nature or terms of this sale.

II. Subsidies Valuation Information

A. *Allocation Period*

Under 19 CFR 351.524(b), non–recurring subsidies are allocated over a period corresponding to the AUL of the renewable physical assets used to produce the subject merchandise. Pursuant to 19 CFR 351.524(d)(2), there is a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System ("IRS Tables"), as updated by the Department of Treasury. For the subject merchandise, the IRS Tables prescribe an AUL of 15 years. No interested party has claimed that the AUL of 15 years is unreasonable.

Further, for non–recurring subsidies, we have applied the "0.5 percent expense test" described in 19 CFR 351.524(b)(2). Under this test, we compare the amount of subsidies approved under a given program in a particular year to sales (total sales or total export sales, as appropriate) for the same year. If the amount of subsidies is less than 0.5 percent of the relevant sales, then the benefits are allocated to the year of receipt rather than allocated over the AUL period.

Analysis of Programs

I. Program Preliminarily Determined Not To Confer Countervailable Benefits During the POR

A. *European Regional Development Fund*

The European Regional Development Fund ("ERDF") was created pursuant to the authority in Article 130 of the Treaty of Rome to reduce regional disparities in socio–economic performance within the European Community. The ERDF program provides grants to companies located within regions that meet the criteria of Objective 1 (underdeveloped regions), Objective 2 (declining industrial regions), or Objective 5(b) (declining agricultural regions). Duferco Sorral reported that Beautor was approved for an ERDF grant under Objective 2 in 1998 and 1999.[6]

In the *Pasta from Italy Investigation*, the Department determined that ERDF grants constitute a countervailable subsidy within the meaning of section 771(5) of the Tariff Act of 1930, as amended ("the Act"). *See Final Affirmative Countervailing Duty Determination: Certain Pasta from Italy*, 61 FR 30288, 30294 (June 14, 1996) ("*Pasta from Italy Investigation*"); *see also Certain Pasta from Italy: Final Results of the Seventh Countervailing Duty Administrative Review*, 69 FR 70657 (December 7, 2004) ("*Pasta from Italy 7th Review*"), and accompanying Issues and Decision Memorandum at "European Regional Development Fund Grants" within "Programs Determined to Confer Subsidies During the POR" section. Specifically, the Department determined that the ERDF grants are a direct transfer of funds from the government bestowing a benefit in the amount of the grant within the meaning of section 771(5)(D)(i) of the Act. The ERDF grants were also found to be regionally specific within the meaning of section 771(5A)(D)(iv) of the Act. In the *Pasta from Italy Investigation*, we determined that the ERDF grants are non–recurring benefits. In this review, no new information was provided on this program that would warrant reconsideration of our determination that these grants confer a countervailable subsidy or cause us to depart from treating the grants as non–recurring.

Therefore, consistent with the *Pasta from Italy Investigation* and *Pasty from Italy 7th Review*, we are treating Beautor's ERDF grants as non–recurring. In accordance with 19 CFR 351.524(b)(2), we have applied the "0.5 percent expense test."[7] The calculations demonstrate that the total amount approved for each grant is less than 0.5 percent of Beautor's relevant sales (*i.e.*, total sales) for the respective year in which each grant was approved. Because the amount of subsidies is less than 0.5 percent of the relevant sales, we have expensed the benefit from each ERDF grant in the year of receipt rather than allocate the benefits over the AUL period. *See* the August 31, 2006, Memorandum to the File concerning the Preliminary Calculations for the 2004 Administrative Review of Corrosion–Resistant Carbon Steel Flat Products from France.[8] Therefore, no benefit from the ERDF grants was conferred to Duferco Sorral during the POR.

II. Programs Preliminarily Determined Not To Be Countervailable

A. Worker Training Contracts[9]

B. Seine–Normandy Water Agency Assistance

The Seine–Normandy Water Agency ("SNWA"), a public institution with financial autonomy,[10] is administered jointly by the Ministries of the Environment and Finance.[11] The mission of SNWA, one of six water agencies in France, is to reduce and prevent pollution of the Seine River. To that end, SNWA provides financial assistance in the form of grants and loans to companies located along the Seine for projects dedicated to protecting, increasing, and improving the water resources, attaining quality requirements, and protecting against flooding (collectively referred hereto as "pollution prevention program").[12] Pursuant to Article 14 and Article 14–1 of the Water Law of 1964, all polluting

[6] See Duferco Sorral's December 7, 2005, questionnaire response at 12. See also the GOF's December 7, 2005, questionnaire response at "European Development Regional Fund" section.

[7] For more information, see "Allocation Period," supra.

[8] A public version of the document is available on the public record in the CRU.

[9] In prior cases, the Department found Worker Training Contracts not to be countervailable. *See Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from France*, 64 FR 30774, 30782 (June 8, 1999) ("*Sheet and Strip from France*") at "Work/Training Contracts." *See also Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from France*, 64 FR 73277, 73282 ("*CTL France*") at "Investment/Operating Subsidies." If a program is determined to be non-countervailable in a previous proceeding, the Department will not normally reconsider such a determination in future proceedings absent evidence potentially contradicting that determination. We preliminarily find that there is no information on the record of the instant case, including this segment of the proceeding, that warrants a change to our earlier finding that this program is not specific and, therefore, not countervailable.

[10] *See* Article L-213-5 of the Environment Code at Annex 1 contained in the GOF's May 25, 2006, questionnaire response.

[11] *See* Chapter 19 entitled "Seine-Normandy Basin, France" of UNESCO's study "The 1st World Water Development Report: Water for People, Water for Life," at footnote 17 on page 438, which is contained within the June 27, 2006, Memorandum to the File concerning "Placement of Public Documents on the Record of the Review."

[12] *See* the GOF's July 7, 2006, questionnaire response at Annex 2.

companies having plants located in the basin of the Seine River, regardless of their sector of activity, have the legal obligation to enter into the SNWA consortium and fund its activities through the payment of levies.[13] Article 14–1 establishes that the levies are proportional to the quantity of polluting waste the company is likely to produce during the production cycle. Companies which are in arrears are ineligible to receive assistance for pollution reduction projects. Duferco Sorral reported that Beautor received grants and long–term loans from SNWA over a 15-year AUL, and that Duferco Sorral itself received a grant in 2004.

We analyzed whether the benefits provided by SNWA's pollution prevention program are specific "in law or fact" within the meaning of section 771(5A) of the Act. We preliminarily determine that, under section 771(5A)(D)(ii) of the Act, the program is not *de jure* specific according to the criteria for determining which companies are eligible for benefits. These criteria are set forth in the Water Act of 1964 and companion legislation.

We next examined whether the pollution prevention assistance distributed by SNWA is *de facto* specific. Pursuant to section 771(5A)(D)(iii) of the Act, a subsidy is *de facto* specific if one or more of the following factors exists: (1) the number of enterprises, industries, or groups which use a subsidy is limited; (2) there is predominant use of a subsidy by an enterprise, industry, or group; (3) an enterprise, industry, or group receives a disproportionately large amount of the subsidy; or (4) the manner in which the authority providing a subsidy has exercised discretion indicates that an enterprise, industry, or group is favored over others.

For the Picardie region,[14] where Beautor/Duferco is located, the GOF reported the number of companies which received assistance from SNWA for the years 2001, 2002, 2003, and 2004. With the exception of 2003, in which 47 companies received assistance, 60 companies or more were recipients of assistance provided by SNWA in each of the other years.[15] The GOF also reported that no applicant was rejected. The amount of assistance provided to the steel industry ranged from a high of 8.5 percent in 2001 to a low of 0.4 percent in 2003.[16] During the POR, steel companies received assistance of € 69,000 for surface treatment, which was approximately 2.0 percent of the assistance provided by SNWA to companies in the Picardie region.[17] For 2004, the industrial groups located in the eight regions that compose SNWA's territory received pollution assistance totaling € 48.6 million, of which € 25.8 million was loans and € 22.8 million was grants.[18] Economic activity along the Seine River is diverse, consisting of the agro–food, automobile, chemical, metallurgy, oil refining, and paper industries in addition to farming and wine–production.[19]

On this basis of these facts, we preliminarily find that the pollution prevention program is not limited based on the number of users nor is Duferco Sorral or the steel industry a predominant or disproportionate recipient of the total funding. Accordingly, we preliminarily determine that this program is not specific and, therefore, we do not reach the issue of whether there is a financial contribution or benefit. Therefore, this program does not confer countervailable subsidies within the meaning of section 771(5) of the Act.[20]

III. Programs Preliminarily Determined Not To Be Used

We preliminarily determine that Duferco Sorral did not apply for or receive benefits under these programs during the POR:

A. Investment Subsidies
B. Long–Term Loans from Fonds de Developpement Economique et Social and Caisse Francaise de Developpement Industriel
C. Assistance from Delegation a l'Amenagement du Territoire et a l'Action Regionale
D. Financing from the Caisse des Depots et Consignations
E. Preferential Loans from Local Economic (Regional) Development Agencies
F. Regional Development Incentives
G. European Coal and Steel Community Article 54 Loans
H. European Social Fund
I. ECSC Article 56 Conversion Loans, Interest Rebates, and Restructuring Grants
J. Export Financing
K. Grants from the River Dock Agency
L. Loans from the Ministry of Research & Industry
M. New Community Investment Loans
N. Tax Subsidies under Article 39
O. Youthstart.

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we have calculated a subsidy rate for Duferco Sorral for calendar year 2004. We preliminarily determine that the net countervailable subsidy rate is 0.00 percent *ad valorem*.

If the final results of this review remain the same as these preliminary results, the Department intends to instruct U.S. Customs and Border Protection ("CBP") within 15 days of publication of the final results of this review, to liquidate without regard to countervailing duties all shipments of subject merchandise produced by Duferco Sorral entered, or withdrawn from warehouse, for consumption from January 1, 2004, through December 31, 2004. The Department will also instruct CBP not to collect cash deposits of estimated countervailing duties on all shipments of the subject merchandise produced by Duferco Sorral, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

We will also instruct CBP to continue to collect cash deposits for non–reviewed companies at the most recent company–specific or country–wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non–reviewed companies covered by this order are those established in the most recently completed administrative proceeding. *See Certain Steel Products from France: Notice of Final Court Decision and Amended Final Determination of Countervailing Duty Investigation*, 64 FR 67561 (December 2, 1999). These rates shall apply to all non–reviewed companies until a review of a company assigned these rates is requested.

[13] *See* the GOF's May 25, 2006, questionnaire response at Annex 1 for Article 14 and 14-1.

[14] Picardie is one of the 26 regions of France and one of the eight regions in SNWA's territory.

[15] *See* the GOF's July 26, 2006, questionnaire response at "Assistance provided by the Seine-Normandy Water Agency" section.

[16] *See* the GOF's July 26, 2006, questionnaire response for 2001 at Annex 1, and July 7, 2006, questionnaire response for 2004 at Annex 1.

[17] *See* the GOF's May 25, 2006, questionnaire response "Assistance provided by the Seine-Normandy Water Agency" section and Annex 2.

[18] *See* August 10, 2006, Memorandum to the File concerning "Placement of Public Documents on the Record of the Review – Seine-Normandy Water Agency's Annual Report."

[19] *See* Chapter 19 entitled "Seine-Normandy Basin, France" of UNESCO's study "The 1st World Water Development Report: Water for People, Water for Life," at page 432, which is contained within the June 27, 2006, Memorandum to the File concerning "Placement of Public Documents on the Record of the Review."

[20] Even if we were preliminarily to determine that the program was specific for years prior to 2001, the grants which Beautor received would have been expensed in the year of receipt with no benefits allocable to the POR and the benefit provided by the long-term loans is less than 0.005 percent of Duferco Sorral's total sales for the POR.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of the public announcement of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Unless otherwise indicated by the Department, case briefs must be submitted within 30 days after the date of publication of this notice. Rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs, unless otherwise specified by the Department. Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of the issues, and (2) a brief summary of the argument. Parties submitting case and/or rebuttal briefs are requested to provide to the Department copies of the public version on disk. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs, that is, 37 days after the date of publication of these preliminary results.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due. See 19 CFR 351.305(b)(3). The Department will publish the final results of this administrative review, including the results of its analysis of arguments made in any case or rebuttal briefs.

This administrative review is issued and published in accordance with section 751(a)(1) and 777(i)(1) of the Act.

Dated: August 31, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–14847 Filed 9–6–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–806]

Certain Pasta from Turkey: Final Results of Countervailing Duty Administrative Review

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

SUMMARY: On June 9, 2006, the U.S. Department of Commerce ("the Department") published in the **Federal Register** its preliminary results of the administrative review of the countervailing duty order on certain pasta from Turkey for the period January 1, 2004, through December 31, 2004. *See Certain Pasta From Turkey: Preliminary Results of Countervailing Duty Administrative Review*, 71 FR 33439 (June 9, 2006) ("*Preliminary Results*"). We preliminarily found that Gidasa Sabanci Gida Sanayi ve Ticaret A.S. ("Gidasa") did not receive countervailable subsidies during the period of review. We did not receive any comments on our preliminary results, and we have made no revisions.

EFFECTIVE DATE: September 7, 2006.

FOR FURTHER INFORMATION CONTACT: Audrey Twyman or Brandon Farlander, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3534 and (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1996, the Department published in the **Federal Register** the countervailing duty order on certain pasta from Turkey. *See Notice of Countervailing Duty Order: Certain Pasta from Turkey*, 61 FR 38546 (July 24, 1996). On June 9, 2006, the Department published in the **Federal Register** its preliminary results of the administrative review of the countervailing duty order on certain pasta from Turkey for the period January 1, 2004, through December 31, 2004. *See Preliminary Results*. In accordance with 19 CFR 351.213(b), this review of the order covers Gidasa, a producer and exporter of subject merchandise.

In the *Preliminary Results*, we invited interested parties to submit briefs or request a hearing. The Department did not conduct a hearing in this review because none was requested, and no briefs were received.

Scope of Order

Covered by the order are shipments of certain non–egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this order is typically sold in the retail market, in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non–egg dry pasta containing up to two percent egg white.

The merchandise under review is currently classifiable under subheading 1902.19.20 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Scope Ruling

To date, the Department has issued the following scope ruling:

On October 26, 1998, the Department self–initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances may be within the scope of the countervailing duty order. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the countervailing duty order. *See* Memorandum from John Brinkmann to Richard Moreland, dated May 24, 1999, which is on file in the Central Records Unit ("CRU") in Room B–099 of the main Commerce building.

Period of Review

The period of review ("POR") for which we are measuring subsidies is from January 1, 2004, through December 31, 2004.

Final Results of Review

As noted above, the Department received no comments concerning the preliminary results; consistent with the preliminary results, we find that Gidasa did not receive countervailable subsidies during the POR. As there have been no changes or comments from the preliminary results we are not attaching a Decision Memorandum to this **Federal Register** notice. For further details of the

programs included in this proceeding, see the *Preliminary Results*.

Company	*Ad valorem* rate
Gidasa Sabanci Gida Sanayi ve Ticaret A.S.	0.00 percent

Assessment Rates/Cash Deposits

Because Gidasa did not receive countervailable subsidies during the POR, we will instruct U.S. Customs and Border Protection ("CBP") to liquidate all of Gidasa's entries without regard to countervailing duties. Also, since Gidasa has a zero countervailable subsidy rate, the Department will instruct CBP to continue to suspend liquidation of entries, but to collect no cash deposits of estimated countervailing duties for Gidasa on all shipments of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

For all non–reviewed companies, the Department has instructed CBP to assess countervailing duties at the cash deposit rates in effect at the time of entry, for entries between January 1, 2004, and December 31, 2004. The cash deposit rates for all companies not covered by this review are not changed by the results of this review.

Return or Destruction of Proprietary Information

This notice serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 31, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–14844 Filed 9–6–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 083106E]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Habitat Protection Advisory Panel (AP).

DATES: The meeting will convene at 9 a.m. on Tuesday, September 26, 2006 and conclude no later than 4 p.m.

ADDRESSES: This meeting will be held at the Hilton Houston Hobby Airport, 8181 Airport Blvd., Houston, TX 77061; telephone: (713) 645–3000.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Jeff Rester, Habitat Support Specialist, Gulf States Marine Fisheries Commission; telephone: (228) 875–5912.

SUPPLEMENTARY INFORMATION: The Texas group is part of a three unit Habitat Protection Advisory Panel (AP) of the Gulf of Mexico Fishery Management Council. The principal role of the advisory panels is to assist the Council in attempting to maintain optimum conditions within the habitat and ecosystems supporting the marine resources of the Gulf of Mexico. Advisory panels serve as a first alert system to call to the Council's attention proposed projects being developed and other activities which may adversely impact the Gulf marine fisheries and their supporting ecosystems. The panels may also provide advice to the Council on its policies and procedures for addressing environmental affairs.

At this meeting, the AP will tentatively discuss deepening of the Matagorda Ship Channel, the Bahia Grande restoration project, the Texas Artificial Reef Program, the Beacon Port Liquified Natural Gas (LNG) project, dredging associated with the Calhoun LNG facility in LaVaca Bay, review of the Council's Ecosystem Management Plan, and an update on the Sabine-Neches waterway deepening project.

Although other issues not on the agenda may come before the panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal panel action during this meeting. Panel action will be restricted to those issues specifically identified in the agenda listed as available by this notice.

A copy of the agenda can be obtained by calling (813) 348–1630.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina Trezza at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: September 1, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–14786 Filed 8–6–06; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), has submitted a public information collection request (ICR) entitled the Longitudinal Evaluation of AmeriCorps to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Ms. Lillian Dote at (202) 606–6984. Individuals who use a telecommunications device for the deaf (TTY-TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. eastern time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in this **Federal Register**:

(1) *By fax to:* (202) 395–6974, Attention: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service; and

(2) *Electronically by e-mail to: Katherine_T._Astrich@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register** on February 3, 2006. This comment period ended April 4, 2006. No public comments were received from this notice.

Description: AmeriCorps is a national service program that provides grants to nonprofit organizations and government entities to support members and volunteers serving in national and local community service programs. The Corporation is seeking approval for the Longitudinal Study of AmeriCorps, an evaluation of the impacts of AmeriCorps service on program participants.

Type of Review: New Information Collection.

Agency: Corporation for National and Community Service.

Title: Longitudinal Study of AmeriCorps.

OMB Number: None.

Agency Number: None.

Affected Public: Participants in Longitudinal Study of AmeriCorps.

Total Respondents: 4,153.

Frequency: Periodically.

Average Time Per Response: 45 minutes.

Estimated Total Burden Hours: 3,115 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: August 30, 2006.

Robert Grimm,

Director, Office of Research and Policy Development.

[FR Doc. E6–14763 Filed 9–6–06; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Air Force

U.S. Air Force Air University Board of Visitors Meeting

AGENCY: Department of the Air Force, Air University Headquarters.

ACTION: Notice of meeting.

SUMMARY: The Air University Board of Visitors will hold an open meeting on 12–15 November 2006 and 15–18 April 2007. The first business session of each meeting will begin in the Air University Commander's Conference Room at Headquarters Air University, Maxwell Air Force Base, Alabama, (5 seats available). The purpose of the meeting is to give the board an opportunity to review Air University educational programs and to present to the Commander, a report of their findings and recommendations concerning these programs.

FOR FURTHER INFORMATION CONTACT: Contact Dr. Dorothy Reed, Chief of Academic Affairs, Air University Headquarters, Maxwell Air Force Base, Alabama 36112–6335, telephone (334) 953–5159.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E6–14810 Filed 9–6–06; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

AFIT Subcommittee of the Air University Board of Visitors Meeting

AGENCY: Department of the Air Force, Air University Headquarters, DoD.

ACTION: Notice of meeting.

SUMMARY: The Air Force Institute of Technology Subcommittee of the Air University Board of Visitors will hold an open meeting on 12–14 March 2007, with the first business session beginning at 0830 in the Superintendent's Conference Room, Building 642, Wright-Patterson Air Force Base, Ohio (5 seats available). The purpose of the meeting is to give the board an opportunity to review Air Force Institute of Technology's educational programs and to present to the Commandant a report of their findings and recommendations concerning these programs.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Beverly Houtz, Academic Affairs Office, Air Force Institute of Technology, (937) 255–6565 ext 4424.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E6–14811 Filed 9–6–06; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On August 28, 2006, the Department of Education published a notice in the **Federal Register** (page 50901, column 2) for the information collection, "Child Care Survey of Postsecondary Institutions." This notice hereby amends the Burden Hours for the collection from 688 to 1,376. The IC Clearance Official, Regulatory Information Management Services, Office of the Chief Information Officer, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: August 31, 2006.

Dianne Novick,

Acting Leader, Information Policy and Standards Team, Regulatory Information Management Services, Office of the Management.

[FR Doc. E6–14801 Filed 9–6–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Federal Family Education Loan Program

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice of interest rates for the Federal Family Education Loan Program for the period July 1, 2006 through June 30, 2007.

SUMMARY: The Chief Operating Officer for Federal Student Aid announces the interest rates for the period July 1, 2006 through June 30, 2007 for loans made under the Federal Family Education Loan (FFEL) Program.

FOR FURTHER INFORMATION CONTACT: Don Watson, U.S. Department of Education, room 114I2, UCP, 400 Maryland Avenue, SW., Washington, DC 20202–5400. Telephone: (202) 377–4008.

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:

General

Under title IV, part B of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. Section 1071, *et seq.*, most loans made to student and parent borrowers under the FFEL Program have variable interest rates.

The formulas for determining the interest on variable-rate, FFEL Program loans are established in section 427A of the HEA (20 U.S.C. 1077a).

The interest rates on variable-rate loans are determined annually and apply to the following 12-month period beginning July 1 and ending June 30.

As described below, interest rate caps apply to most FFEL Program loans.

FFEL interest rate formulas use the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held before June 1 of each year plus a statutorily established add-on to determine the variable interest rate for—

- FFEL fixed-rate Stafford loans first disbursed before October 1, 1992 that have been converted to variable-rate loans;
- All FFEL Subsidized and Unsubsidized Stafford Loans first disbursed on or after October 1, 1992;
- FFEL PLUS loans first disbursed on or after July 1, 1998; and
- FFEL Consolidation Loans for which the Consolidation Loan application was received by the lender on or after November 13, 1997 and before October 1, 1998.

The bond equivalent rate of the 91-day Treasury bills auctioned on May 30, 2006, which is used to calculate the interest rates for the one-year period beginning on July 1, 2006, is 4.843 percent, which is rounded to 4.84 percent.

For FFEL PLUS loans first disbursed before July 1, 1998, interest rates are calculated based on the weekly average of a 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the last calendar week ending on or before June 26.

The weekly average of the 1-year constant maturity Treasury yield for the last calendar week ending on or before June 26, 2006 is 5.24 percent.

Interest Rates for "Converted" Variable-Rate FFEL Stafford Loans

1. Under section 427A(i)(7) of the HEA (20 U.S.C. 1077a (i)(7)), loans that were originally made with a fixed interest rate of eight percent with an increase to ten percent four years after commencement of the repayment period were converted to a variable interest rate that may not exceed ten percent: The interest rate for these loans for the period from July 1, 2006, through June 30, 2007, is 8.09 percent (4.84 percent plus 3.25 percent).

2. Loans with fixed interest rates of seven percent, eight percent, nine percent, or eight percent with an increase to ten percent four years after commencement of the repayment period, that were subject to the provisions of section 427A(i)(3) of the HEA (20 U.S.C. 1077a(i)(3)) and were converted to variable-rate loans—the interest rate may not exceed seven percent, eight percent, nine percent, or ten percent, respectively. For loans with fixed interest rates of seven percent that were converted to variable-rate loans, the interest rate for the period from July 1, 2006, through June 30, 2007, is the maximum interest rate of 7.00 percent (4.84 percent plus 3.1 percent). For loans with fixed interest rates of eight percent, nine percent, or eight percent with an increase to ten percent that were converted to variable-rate loans, the interest rate for the period from July 1, 2006, through June 30, 2007, is 7.94 percent (4.84 percent plus 3.1 percent).

Interest Rates for Variable-Rate FFEL Stafford Loans

1. FFEL Stafford loans made to "new" borrowers for which the first disbursement was made (a) on or after October 1, 1992, but before July 1, 1994, or (b) on or after July 1, 1994, for a period of enrollment ending before July 1, 1994 (i.e. a late disbursement)—the interest rate may not exceed nine percent: The interest rate for the period from July 1, 2006, through June 30, 2007, is 7.94 percent (4.84 percent plus 3.1 percent).

2. FFEL Stafford loans made to all borrowers, regardless of prior borrowing, for periods of enrollment that include or begin on or after July 1, 1994, for which the first disbursement was made on or after July 1, 1994, but before July 1, 1995—the interest rate may not exceed 8.25 percent: The interest rate for the period from July 1, 2006, through June 30, 2007, is 7.94 percent (4.84 percent plus 3.1 percent).

3. FFEL Stafford loans made to all borrowers, regardless of prior borrowing, on or after July 1, 1995, but before July 1, 1998—the interest rate may not exceed 8.25 percent:

(a) During the in-school, grace, or deferment period: The interest rate for the period from July 1, 2006, through June 30, 2007, is 7.34 percent (4.84 percent plus 2.5 percent); and

(b) During all other periods: The interest rate for the period from July 1, 2006, through June 30, 2007, is 7.94 percent (4.84 percent plus 3.1 percent).

4. FFEL Stafford loans, first disbursed on or after July 1, 1998, but before July 1, 2006—the interest rate may not exceed 8.25 percent:

(a) During the in-school, grace, and deferment periods: The interest rate for the period from July 1, 2006, through June 30, 2007, is 6.54 percent (4.84 percent plus 1.7 percent); and

(b) During all other periods: The interest rate for the period from July 1, 2006, through June 30, 2007, is 7.14 percent (4.84 percent plus 2.3 percent).

Interest Rates for Fixed-Rate FFEL Stafford Loans

1. FFEL Stafford loans for which the first disbursement was made on or after July 1, 2006—the interest rate is fixed at 6.80 percent.

Interest Rates for FFEL PLUS and FFEL Supplemental Loans for Students (SLS) Loans

1. Variable-rate FFEL PLUS and FFEL SLS loans first disbursed before October 1, 1992—the interest rate may not exceed 12 percent: The interest rate for the period from July 1, 2006, through June 30, 2007, is 8.49 percent (5.24 percent plus 3.25 percent).

2. FFEL SLS loans first disbursed on or after October 1, 1992, for a period of enrollment beginning before July 1, 1994—the interest rate may not exceed 11 percent: The interest rate for the period from July 1, 2006, through June 30, 2007, is 8.34 percent (5.24 percent plus 3.10 percent).

3. FFEL PLUS loans first disbursed on or after October 1, 1992, but before July 1, 1994—the interest rate may not exceed ten percent: The interest rate for the period from July 1, 2006, through June 30, 2007, is 8.34 percent (5.24 percent plus 3.10 percent).

4. FFEL PLUS loans first disbursed on or after July 1, 1994, but prior to July 1, 1998—the interest rate may not exceed nine percent: The interest rate for the period from July 1, 2006, through June 30, 2007, is 8.34 percent (5.24 percent plus 3.10 percent).

5. FFEL PLUS loans first disbursed on or after July 1, 1998, and before July 1, 2006—the interest rate may not exceed nine percent: The interest rate for the period from July 1, 2006, through June

30, 2007, is 7.94 percent (4.84 percent plus 3.1 percent).

6. FFEL PLUS loans first disbursed on or after July 1, 2006—the interest rate is fixed at 8.50 percent.

Interest Rates for FFEL Consolidation Loans

1. FFEL Consolidation loans for which the consolidation loan was made by the lender before July 1, 1994—the interest rate is the weighted average of the interest rates on the loans consolidated, rounded to the nearest whole percent, but may not be less than nine percent.

2. FFEL Consolidation loans for which the consolidation loan was made by the lender on or after July 1, 1994, and before November 13, 1997—the interest rate is the weighted average of the interest rates on the loans consolidated, rounded to the nearest whole percent.

3. FFEL Consolidation loans for which the consolidation loan application was received by the lender on or after November 13, 1997, and before October 1, 1998—the interest rate may not exceed 8.25 percent: The interest rate for the period from July 1, 2006, through June 30, 2007, is 7.94 percent (4.84 percent plus 3.1 percent).

4. FFEL Consolidation loans for which the consolidation loan application was received by the lender on or after October 1, 1998, and before July 1, 2006—the interest rate may not exceed 8.25 percent: The interest rate is the weighted average of the interest rates on the loans consolidated, rounded to the nearest higher 1/8 of one percent.

5. If a portion of a Consolidation loan is attributable to a loan made under subpart I of part A of title VII of the Public Health Service Act, the maximum interest rate for that portion of a Consolidation loan is determined annually, for each 12-month period beginning on July 1 and ending on June 30. The interest rate equals the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the quarter ending prior to July 1, plus three percent. For the quarter ending before July 1, 2006, the average 91-day Treasury bill rate was 4.828 percent (rounded to 4.83 percent). The maximum interest rate for the period from July 1, 2006, through June 30, 2007, is 7.83 percent (4.83 percent plus 3.0 percent).

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Program Authority: 20 U.S.C. 1087 *et seq.*

Dated: August 31, 2006.

Theresa S. Shaw,

Chief Operating Officer, Federal Student Aid.

[FR Doc. E6–14799 Filed 9–6–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

William D. Ford Federal Direct Loan Program

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice of interest rates for the William D. Ford Federal Direct Loan Program for the period July 1, 2006 through June 30, 2007.

SUMMARY: The Chief Operating Officer for Federal Student Aid announces the interest rates for the period July 1, 2006 through June 30, 2007 for loans made under the William D. Ford Federal Direct Loan (Direct Loan) Program.

FOR FURTHER INFORMATION CONTACT: Don Watson, U.S. Department of Education, room 114I2, UCP, 400 Maryland Avenue, SW., Washington, DC 20202–5400. Telephone: (202) 377–4008.

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SUPPLEMENTARY INFORMATION: Section 455(b) of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1087e(b), provides formulas for determining the interest rates charged to borrowers for loans made under the Direct Loan Program including, Federal Direct Stafford Loans (Direct Subsidized Loans), Federal Direct Unsubsidized Stafford Loans (Direct Unsubsidized Loans), Federal Direct PLUS Loans (Direct PLUS Loans), and Federal Direct Consolidation Loans (Direct Consolidation Loans).

The Direct Loan Program includes loans with variable interest rates and loans with fixed interest rates. Most loans made under the Direct Loan Program have variable interest rates that change each year. The variable interest rate formula that applies to a particular loan depends on the date of the first disbursement of the loan. The variable rates are determined annually and are effective for each 12-month period beginning July 1 of one year and ending June 30 of the following year. Pursuant to section 455(b) of the HEA, 20 U.S.C. 1087e(b), the interest rate for Direct Subsidized Loans and Direct Unsubsidized Loans that are first disbursed on or after July 1, 2006, have a fixed interest rate of 6.80 percent. In addition, Direct PLUS Loans that are first disbursed on or after July 1, 2006, have a fixed interest rate of 7.90 percent.

In the case of some Direct Consolidation Loans, the interest rate is determined by the date on which the Direct Consolidation Loan application was received. Direct Consolidation Loans for which the application was received on or after February 1, 1999 have a fixed interest rate based on the weighted average of the loans that are consolidated, rounded up to the nearest higher ⅛ of one percent.

Pursuant to section 455(b) of the HEA, 20 U.S.C. 1087e(b), the Direct Loan interest rate formulas use the bond equivalent rates of the 91-day Treasury bills at the final auction held before June 1 of each year plus a statutory add-on percentage to determine the variable interest rate for all Direct Subsidized Loans and Direct Unsubsidized Loans; Direct Consolidation Loans for which the application was received on or after July 1, 1998 and before February 1, 1999; and Direct PLUS Loans disbursed on or after July 1, 1998.

The bond equivalent rate of the 91-day Treasury bills auctioned on May 30, 2006, which is used to calculate the interest rates on these loans, is 4.843 percent, which is rounded to 4.84 percent.

In addition, pursuant to section 455(b) of the HEA, 20 U.S.C. 1087e(b), as amended by Public Law 106–554, the Consolidated Appropriations Act, 2001, the interest rate for Direct PLUS Loans that were disbursed on or after July 1, 1994 and on or before July 1, 1998, is calculated based on the weekly average of a 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the last calendar week

ending on or before June 26 plus a statutory add-on percentage.

The last calendar week ending on or before June 26, 2006 began on June 18, 2006 and ended on June 24, 2006. On June 26, 2006, the Board of Governors of the Federal Reserve System published the 1-year constant maturity Treasury yield average as 5.24 percent.

Below is specific information on the calculation of the interest rates for the Direct Loan Program. This information is listed in order by the date a loan was first disbursed or by the date that the Consolidation Application was received.

In addition, a summary of the interest rates that are effective for the period July 1, 2006 through June 30, 2007, is included on charts at the end of this notice. These charts are organized by loan type. In each chart, the interest rates are arranged by the date a loan was first disbursed or by the date that the consolidation application was received.

For Direct Loan Program Loans first disbursed on or after July 1, 1994, and before July 1, 1995: The interest rate for Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct Subsidized and Unsubsidized Consolidation Loans is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 3.1 percent. These interest rates may not exceed 8.25 percent during any period. From July 1, 2006, to June 30, 2007, the interest rate for Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct Subsidized and Unsubsidized Consolidation Loans that were first disbursed on or after July 1, 1994, and before July 1, 1995, is 7.94 percent during all periods.

The interest rate for Direct PLUS Loans and Direct PLUS Consolidation Loans is the weekly average of a 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the last calendar week ending on or before June 26 plus 3.1 percent. These interest rates may not exceed 9.0 percent during any period. From July 1, 2006, to June 30, 2007, the interest rate for Direct PLUS Loans and Direct PLUS Consolidation Loans that were first disbursed on or after July 1, 1994 and before July 1, 1995, is 8.34 percent for all periods.

For Direct Loan Program Loans first disbursed on or after July 1, 1995, and before July 1, 1998: The interest rate for Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct Subsidized and Unsubsidized Consolidation Loans is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 3.1 percent. However, during in-school, grace, and deferment periods, the interest rate formula is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 2.5 percent. These interest rates may not exceed 8.25 percent during any period. From July 1, 2006, to June 30, 2007, the interest rate for Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct Subsidized and Unsubsidized Consolidation Loans that were first disbursed on or after July 1, 1995, and before July 1, 1998, is 7.34 percent during in-school, grace, and deferment periods and 7.94 percent during all other periods.

The interest rate for Direct PLUS Loans and Direct PLUS Consolidation Loans is the weekly average of a 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the last calendar week ending on or before June 26 plus 3.1 percent. These interest rates may not exceed 9.0 percent during any period. From July 1, 2006, to June 30, 2007, the interest rate for Direct PLUS Loans and Direct PLUS Consolidation Loans that were first disbursed on or after July 1, 1995 and before July 1, 1998, is 8.34 percent during all periods.

For Direct Loans first disbursed on or after July 1, 1998, and before October 1, 1998: The interest rate for Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct Subsidized and Unsubsidized Consolidation Loans is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 2.3 percent. However, during in-school, grace, and deferment periods, the interest rate formula is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 1.7 percent. These interest rates may not exceed 8.25 percent during any period. From July 1, 2006, to June 30, 2007, the interest rate for Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct Subsidized and Unsubsidized Consolidation Loans that were first disbursed on or after July 1, 1998 and before October 1, 1998, is 6.54 percent during in-school, grace, and deferment periods and 7.14 percent during all other periods.

The interest rate for Direct PLUS Loans and Direct PLUS Consolidation Loans is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 3.1 percent. However, during in-school, grace, and deferment periods, the interest rate formula is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 2.5 percent. These interest rates may not exceed 9.0 percent during any period. From July 1, 2006, to June 30, 2007, the interest rate for Direct PLUS Loans and Direct PLUS Consolidation Loans that were disbursed on or after July 1, 1998, and before October 1, 1998, is 7.94 percent during all periods.

For Direct Subsidized Loans, Direct Unsubsidized Loans, Direct PLUS Loans first disbursed on or after October 1, 1998, and before July 1, 2006: The interest rate for Direct Subsidized Loans and Direct Unsubsidized Loans is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 2.3 percent. However, during in-school, grace, and deferment periods, the interest rate formula is the bond equivalent rate of the 91-day Treasury bills plus 1.7 percent. These interest rates may not exceed 8.25 percent during any period. From July 1, 2006, to June 30, 2007, the interest rate for Direct Subsidized Loans and Direct Unsubsidized Loans that were disbursed after July 1, 1998, and before July 1, 2006, is 6.54 percent during in-school, grace, and deferment periods and 7.14 percent during all other periods.

The interest rate for Direct PLUS Loans is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 3.1 percent. These interest rates may not exceed 9.0 percent during any period. From July 1, 2006, to June 30, 2007, the interest rate for Direct PLUS Loans that were disbursed after July 1, 1998, and before July 1, 2006, is 7.94 percent during all periods.

For Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct PLUS Loans first disbursed on or after July 1, 2006: The interest rate for Direct Subsidized Loans and Direct Unsubsidized Loans that were first disbursed on or after July 1, 2006 is a fixed interest rate of 6.80 percent during all periods.

The interest rate for Direct PLUS Loans that were first disbursed on or after July 1, 2006 is a fixed interest rate of 7.90 percent during all periods.

For Direct Consolidation Loans first disbursed on or after October 1, 1998 and for which the application was received before October 1, 1998: The interest rate for Direct Subsidized and Unsubsidized Consolidation Loans is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 2.3 percent. However, during in-school, grace, and deferment periods, the interest rate formula is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 1.7 percent. These interest rates may not exceed 8.25 percent during any period. From July 1, 2006, to June 30, 2007, the interest rate

for Direct Subsidized and Unsubsidized Consolidation Loans that were first disbursed on or after July 1, 1998 and before October 1, 1998, is 6.54 percent during in-school, grace, and deferment periods and 7.14 percent during all other periods.

The interest rate for Direct PLUS Consolidation Loans is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 3.1 percent. These interest rates may not exceed 9.0 percent during any period. From July 1, 2006, to June 30, 2007, the interest rate for Direct PLUS Loans and Direct PLUS Consolidation Loans that were disbursed on or after July 1, 1998, and before October 1, 1998, is 7.94 percent during all periods.

For Direct Consolidation Loans for which the application was received on or after October 1, 1998, and before February 1, 1999: The interest rate for Direct Consolidation Loans for which the application was received on or after October 1, 1998 and before February 1, 1999 is the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 plus 2.3 percent. These interest rates may not exceed 8.25 percent during any period. From July 1, 2006, to June 30, 2007, the interest rate for Direct Consolidation Loans for which the application was received on or after October 1, 1998 and before February 1, 1999, is 7.14 percent during all periods.

For Direct Consolidation Loans for which the application was received on or after February 1, 1999: The interest rate for Direct Consolidation Loans for which the application was received on or after February 1, 1999, and before July 1, 2006, is the lesser of 8.25 percent, or the weighted average of the loans consolidated, rounded to the nearest higher 1/8 of one percent.

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Program Authority: 20 U.S.C. 1087 *et seq.*

Dated: August 31, 2006.

Theresa S. Shaw,

Chief Operating Officer, Federal Student Aid.

BILLING CODE 4000–01–P

Direct Loan Program Interest Rates

Variable Rate Federal Direct Subsidized Loans and Federal Direct Unsubsidized Loans Interest Rates for July 1, 2006 through June 30, 2007

	Status	Treasury Instrument	Add-on			Interest Rate for 7/1/2006 through 6/30/2007	Maximum Interest Rate
Loans with first disbursement date between 7/1/1994 and 6/30/1995	Any status	91-day T-bill / 4.84	+	3.1	=	7.94	8.25
Loans with first disbursement date between 7/1/1995 and 6/30/1998	Repayment or forbearance	91-day T-bill / 4.84	+	3.1	=	7.94	8.25
	In school, grace, or deferment	91-day T-bill / 4.84	+	2.5	=	7.34	8.25
Loans with first disbursement date between 7/1/1998 and 6/30/2006	Repayment or forbearance	91-day T-bill / 4.84	+	2.3	=	7.14	8.25
	In school, grace, or deferment	91-day T-bill / 4.84	+	1.7	=	6.54	8.25

Note: For variable rate loans, if the treasury instrument plus the add-on equals or exceeds the maximum interest rate, then the interest rate is the maximum interest rate.

Fixed Rate Federal Direct Subsidized Loans and Federal Direct Unsubsidized Loans

	Status	Interest Rate
Loans with first disbursement date on or after 7/1/2006	Any status	6.80

Direct Loan Program Interest Rates

Variable Rate Federal Direct Subsidized Consolidation Loans and Federal Direct Unsubsidized Consolidation Loans Interest Rates for July 1, 2006 through June 30, 2007

	Status	Treasury Instrument	Add-on			Interest Rate for 7/1/2006 through 6/30/2007	Maximum Interest Rate
Loans with first disbursement date between 7/1/1994 and 6/30/1995	Any Status	91-day T-bill / 4.84	+	3.1	=	7.94	8.25
Loans with first disbursement date between 7/1/1995 and 6/30/1998	Repayment or forbearance	91-day T-bill / 4.84	+	3.1	=	7.94	8.25
	In school, grace, or deferment	91-day T-bill / 4.84	+	2.5	=	7.34	8.25
Loans with first disbursement date between 7/1/1998 and 9/30/1998 and loans with first disbursement date on or after 10/1/1998 for which the application was received before 10/1/1998	Repayment or forbearance	91-day T-bill / 4.84	+	2.3	=	7.14	8.25
	In school, grace, or deferment	91-day T-bill / 4.84	+	1.7	=	6.54	8.25
Loans for which the application was received between 10/01/1998 and 1/31/1999	Any Status	91-day T-bill / 4.84	+	2.3	=	7.14	8.25

Note: For variable rate loans, if the treasury instrument plus the add-on equals or exceeds the maximum interest rate, then the interest rate is the maximum interest rate.

Direct Loan Program Interest Rates

Fixed Rate Federal Direct Subsidized Consolidation Loans and Federal Direct Unsubsidized Consolidation Loans			
	Status	Interest Rate	Maximum Interest Rate
Loans for which the application was received on or after 2/01/1999	Any Status	The lesser of 8.25 percent or the weighted average of the loans consolidated, rounded to the next higher 1/8 of one percent.	8.25

Variable Rate Federal Direct PLUS Loans Interest Rates for July 1, 2006 through June 30, 2007								
	Status	Treasury Instrument	Add-on			Interest Rate for 7/1/2006 to 6/30/2007	Maximum Interest Rate
Loans with first disbursement date before 7/1/1998	Any status	1-year constant maturity Treasury yield 5.24	+	3.1	=	8.34	9.00
Loans with first disbursement date between 7/1/1998 and 6/30/2006	Any status	91-day T-bill 4.84	+	3.1	=	7.94	9.00
Note: For variable rate loans, if the treasury instrument plus the add-on equals or exceeds the maximum interest rate, then the interest rate is the maximum interest rate.							

Fixed Rate Federal Direct PLUS Loans		
	Status	Interest Rate
Loans with first disbursement date on or after 7/1/2006	Any status	7.90

Direct Loan Program Interest Rates

Variable Rate Federal Direct PLUS Consolidation Loans Interest Rates for July 1, 2006 through June 30, 2007								
	Status	Treasury Instrument	Add-on			Interest Rate for 7/1/2006 to 6/30/2007	Maximum Interest Rate
Loans with first disbursement date before 7/1/1998	Any status	1-year constant maturity Treasury yield 5.24	+	3.1	=	8.34	9.00
Loans with first disbursement date between 7/1/1998 and 9/30/1998 and loans with first disbursement date on or after 10/1/1998 for which the application was received before 10/1/1998	Any status	91-day T-bill 4.84	+	3.1	=	7.94	9.00
Loans for which the application was received between 10/01/1998 and 1/31/1999	Any status	91-day T-bill 4.84	+	2.3	=	7.14	8.25
Note: For variable rate loans, if the treasury instrument plus the add-on equals or exceeds the maximum interest rate, then the interest rate is the maximum interest rate.							

Direct Loan Program Interest Rates

Fixed Rate Federal Direct PLUS Consolidation Loans			
	Status	Interest Rate	Maximum Interest Rate
Loans for which the application was received on or after 2/01/1999	Any status	The lesser of 8.25 percent or the weighted average of the loans consolidated, rounded to the next higher 1/8 of one percent.	8.25

[FR Doc. E6–14800 Filed 9–6–06; 8:45 am]
BILLING CODE 4000–01–C

DEPARTMENT OF ENERGY

[Docket No. EA–98–J]

Application To Export Electric Energy; Western Systems Power Pool

AGENCY: Office Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of Application.

SUMMARY: The Western Systems Power Pool (WSPP) has applied, on behalf of certain of its members, to renew their authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before September 22, 2006.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office Electricity Delivery and Energy Reliability (Mail Code OE–20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–586–5860).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On September 5, 1996, in docket EA–98–C, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized 42 members of the WSPP to export electric energy to Canada. In several subsequent proceedings in the EA–98 docket, the list members authorized to export was modified to add, delete, or reflect corporate name changes. The most recent order in the docket, EA–98–I, was issued on August 6, 2002, and authorized 26 WSPP member companies individually to transmit electric energy to Canada. The international transmission facilities utilized for these exports are owned by the Bonneville Power Administration, also a WSPP member. The facilities consist of two 500–kV transmission lines and one 230–kV transmission line that interconnect with facilities of BC Hydro, and one 230–kV line that

interconnects with West Kootenay Power, Limited. The construction and operation of these international transmission facilities was previously authorized by Presidential Permits PP–10, PP–46, and PP–36, respectively. The current WSPP authorization to export electric energy to Canada will expire on September 5, 2006.

On August 1, 2006, WSPP submitted an application on behalf of 13 member companies to renew the export authority contained in Order EA–98–I. The following WSPP member companies are the only WSPP members that now seek authorization to export electric energy to Canada: Avista Corporation; Candela Energy Corporation; Edison Mission Marketing and Trading, Inc.; Idaho Power Company; Kansas City Power & Light; Northern States Power Company; Pacific Northwest Generating Cooperative; PacifiCorp; Powerex Corporation; Portland General Electric Company; Public Service of Colorado; Puget Sound Energy; and TransCanada Energy Ltd.

WSPP has also requested DOE expedite the processing of its application in order to avoid a lapse in the export authority of its members. Accordingly, DOE has shortened the public comment period to 15 days.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the WSPP application to export electric energy to Canada should be clearly marked with Docket EA–98–J. Additional copies are to be filed directly with Michael E. Small, General Counsel to the WSPP and Matthew K. Segers, Associate, Wright & Talisman, P.C., 1200 G Street, NW., Suite 600, Washington, DC 20005–3802.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, by emailing Odessa Hopkins at *odessa.hopkins@hq.doe.gov*.

Issued in Washington, DC, on August 30, 2006.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E6–14798 Filed 9–6–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–309]

Amended Application To Export Electric Energy; Evergreen Wind Power, LLC

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of Amended Application.

SUMMARY: Evergreen Wind Power, LLC (Evergreen) has submitted supplementary information and a clarification to its application filed with the Department of Energy (DOE) for authorization to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act. Evergreen has clarified its application to request that DOE grant its export authorization without the annual energy limit presently associated with the international transmission lines owned by Maine Public Service Company (MPS) that Evergreen proposes to use for the export. Evergreen also has submitted technical information demonstrating that the power transfer limit associated with these transmission lines is actually higher than that previously authorized by DOE and requests its authorization be granted at the higher limit. DOE hereby gives notice that, based on the submitted information, it plans to remove the annual energy limit on the MPS lines and allow the higher transfer rates for all exports over those lines.

DATES: Comments, protests, or requests to intervene must be submitted on or before September 22, 2006.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office Electricity Delivery and Energy Reliability (Mail Code OE–20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–586–5860).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On March 20, 2006, the Office of Electricity Delivery and Energy Reliability (OE) of DOE received an application from Evergreen to transmit electric energy from the U.S. to Canada. Notice of the application appeared in the **Federal Register** on April 18, 2006 (71 FR 19880) requesting any comments, protests, or petitions to intervene. None were received. Evergreen supplemented its application in filings received by DOE on July 31, 2006, regarding the higher power transfer limit, and on August 21, 2006, regarding the removal of the annual energy limit.

Evergreen is proposing to construct a 49.5-megawatt (MW) wind generation facility, the Mars Hill Project, in Aroostook, Maine, and will sell the electrical output of the facility within the U.S. and/or to customers in Canada. The electric energy to be exported to Canada would be transmitted over the international transmission facilities owned by MPS and authorized by Presidential Permits PP–12 and PP–29.

Exports over the PP–12 and PP–29 facilities are presently limited to a total of 40,000 MWh per year with a power transfer limit of 40.8 MW. Evergreen has submitted technical information which demonstrates that the power transfer limit for the combination of the PP–12 and PP–29 facilities is now 97.8 MW, not the 40.8 MW previously authorized. Evergreen also asserts that if it were subject to the existing 40,000–MWh annual energy limit it would severely hinder its ability to maximize the output of the Mars Hill Project.

DOE proposes to issue an export authorization to Evergreen at the 98.7–MW power transfer limit and without the annual energy limits. DOE notes that it has previously authorized numerous entities to export over the PP–12 and PP–29 facilities and that each of those authorizations contained the 40,000–MWh energy limit and the 40.8–MW power transfer limit. DOE further proposes that all entities previously authorized by DOE to export over the PP–12 and PP–29 facilities would be permitted to export at the higher power transfer limit with no annual energy limit.

Evergreen has also requested DOE expedite the processing of its application in order that Evergreen may complete certain scheduled financing transactions. Accordingly, DOE has shortened the public comment period to 15 days.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application

should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the Evergreen application to export electric energy to Canada should be clearly marked with Docket EA–309. Additional copies are to be filed directly with Peter Gish, General Counsel, Evergreen Wind Power, LLC, 100 Wells Avenue, Suite 201, Newton, MA 02459, *and* David L. Schwartz, Natasha Gianvecchio, Sue Wang, Latham & Watkins LLP, 555 Eleventh Street, NW., Suite 1000, Washington, DC 20004.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by emailing Odessa Hopkins at *Odessa.hopkins@hq.doe.gov.*

Issued in Washington, DC, on August 31, 2006.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E6–14803 Filed 9–6–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–284–A]

Application to Export Electric Energy; Sempra Energy Solutions

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of Application.

SUMMARY: Sempra Energy Solution (SES) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or requests to intervene must be submitted on or before September 22, 2006.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–586–5860).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On September 4, 2003, the Department of Energy (DOE) issued Order No. EA–284 authorizing SES to transmit electric energy from the United States to Mexico for a three-year term. That authorization will expire on September 4, 2006.

On August 12, 2006, SES filed an application with DOE for renewal of the export authority contained in Order No. EA–284. SES proposes to export electric energy to Mexico and to arrange for the delivery of those exports over the international transmission facilities presently owned San Diego Gas & Electric Company.

SES has also requested DOE expedite the processing of its application in order that SES may continue to meet contractual agreements with counterparts in Mexico. Accordingly, DOE has shortened the public comment period to 15 days.

Procedural Matters: Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the dates listed above.

Comments on the SES application to export electric energy to Mexico should be clearly marked with Docket EA–284–A. Additional copies are to be filed directly with Theodore E. Roberts, Attorney for Sempra Energy Solutions, 101 Ash Street, HQ13D, San Diego, CO 92101.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or you may send an e-mail to Odessa Hopkins at *odessa.hopkins@hq.doe.gov.*

Issued in Washington, DC, on August 31, 2006.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E6–14804 Filed 9–6–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RR06–3–000]

North American Electric Reliability Council; North American Electric Reliability Corporation; Notice of Filing

August 25, 2006.

Take notice that on August 23, 2006, North American Electric Reliability Corporation submitted for filing pursuant to Commission's Regulations 18 CFR 39.4 its initial business plan and budget as the electric reliability organization for the year ending December 31, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a

document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on September 13, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–14768 Filed 9–6–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Tennessee Valley Authority; Notice of Filing

August 25, 2006.

Take notice that on August 21, 2006, Tennessee Valley Authority filed a revised Interconnection Agreement with East Kentucky Power Cooperative, Inc., in compliance with the Commission's order issued July 20, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 20, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–14767 Filed 9–6–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–400–002]

Golden Pass Pipeline LP; Notice of Intent To Prepare an Environmental Assessment for the Proposed Northern Segment Amendment Project and Request for Comments on Environmental Issues

August 25, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that discusses the environmental impacts of Golden Pass Pipeline LP's (Golden Pass) proposed Northern Segment Amendment Project (Northern Segment Amendment or Project) which involves design and workspace changes to the pipeline facilities previously approved as part of the Golden Pass LNG Terminal and Pipeline Project.[1] In the Northern Segment Amendment, Golden Pass proposes the following changes to the previously authorized facilities: (1) Replace the authorized, but not yet constructed, 36-inch-diameter pipeline with a 42-inch-diameter pipeline between approximate milepost (MP) 42.81 and MP 77.87, at the American Electric Power Texoma Pipeline (AEP Texoma) interconnect and the Transcontinental Gas Pipe Line Corporation (Transco) interconnect, respectively; (2) relocate a mainline valve (MLV) from MP 54.11 to 52.50 and install a 42-inch MLV rather than a 36-inch MLV; (3) remove from the approved facilities the 36-inch pig receiver and launcher at the AEP Texoma interconnect; and (4) install a 42-inch pig receiver and MLV at the Transco interconnect. The pipeline route would not change as a result of the amended facilities. However, due to the increased diameter of the pipeline, Golden Pass is requesting additional temporary workspaces at certain locations.

This notice announces the opening of the scoping period that will be used to gather environmental input from the public and interested agencies on the Project. Please note that the scoping period will close on September 25, 2006. Details on how to submit comments are provided in the Public Participation section of this notice.

This notice is being sent to potentially affected landowners along the Project route; Federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; and local libraries and newspapers.

With this notice, we[2] are asking Federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies which would like to request cooperating status should follow the instructions for filing comments described later in this notice. We encourage government representatives to notify their constituents of this planned project and encourage them to comment on their areas of concern.

Some affected landowners may be contacted by a project representative about the acquisition of an easement to construct, operate, and maintain the proposed pipeline. If so, the company should seek to negotiate a mutually acceptable agreement. In the event that the Project is certificated by the Commission, that approval conveys the right of eminent domain for securing easements for the pipeline. Therefore, if easement negotiations fail to produce an agreement, the company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*www.ferc.gov*).

[1] On July 6, 2005, the Commission approved the Golden Pass LNG Terminal and Pipeline Project in Docket Nos. CP04–386–000, CP04–400–000, CP04–401–000, and CP04–402–000. The Golden Pass LNG Terminal and Pipeline Project included a liquefied natural gas (LNG) terminal and associated LNG facilities, 77.8 miles of 36-inch diameter mainline pipeline, 42.8 miles of 36-inch diameter looping pipeline that would be constructed adjacent to the mainline, and associated pipeline facilities.

[2] "We," "us," and "our" refer to the environmental staff of the Office of Energy Projects.

Summary of the Proposed Project

In the Commission's July 6, 2005 Order, Golden Pass was authorized to construct and operate approximately 77.8 miles of 36-inch-diameter mainline, 42.8 miles of 36-inch-diameter loop, and 1.8 miles of 24-inch-diameter pipeline and related pipeline facilities. These facilities (or the Authorized Pipeline) will be used to transport natural gas on an open-access basis from the Golden Pass LNG Terminal on the Port Arthur ship channel to various interstate and intrastate pipelines in Texas and Louisiana. The EA prepared for the Project will incorporate by reference information provided in the environmental impact statement prepared for the Golden Pass LNG Terminal and Pipeline Project.

Golden Pass presently has a pending application for the Optimized Pipeline Project (OP Project) by which it proposes to construct and operate a single 42-inch-diameter pipeline, in place of the 42.8 miles of dual 36-inch-diameter pipelines and to shorten the pipeline route. That proposal would involve only those pipeline facilities in Jefferson and Orange Counties, Texas, south of approximate MP 42.81. An environmental assessment of the OP Project was issued on August 15, 2006.

The Northern Segment Amendment would affect the authorized pipeline north of MP 42.81. A map illustrating the authorized facilities and the proposed Project is provided in Appendix 1.[3]

Non-Jurisdictional Facilities

There are no proposed non-jurisdictional facilities associated with this proposal.

Land Requirements for Construction

Construction of the Project would not change the permanent pipeline right-of-way, but it would require additional temporary construction workspace at certain waterbody, road, and pipeline crossings. The total increase in temporary land requirements would be about 4.89 acres.

The EA Process

NEPA requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity under Section 7 of the Natural Gas Act. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. By this notice, we are also asking Federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. Agencies that would like to request cooperating status should follow the instructions for filing comments below.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed Project under these general headings:

- Land use.
- Water resources, fisheries, and wetlands.
- Cultural resources.
- Vegetation and wildlife.
- Endangered and threatened species.

We will also evaluate possible alternatives to the proposed Project or portions of the Project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be included in the EA. Depending on the comments received during the scoping process, the EA would be published and mailed to Federal, state, and local agencies, Native American tribes, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period would be allotted for review of the EA. All comments received on the EA would be considered before we make our recommendations to the Commission. The EA is used by the Commission in its decision-making process to determine whether the Project is in the public convenience and necessity.

To ensure your comments are considered, please carefully follow the instructions in the public participation section described later in this notice.

Currently Identified Environmental Issues

We have identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Golden Pass. This preliminary list of issues may be changed based on your comments and our analysis.

- Water Resources.
- Impact on water quality.
- Impact on wetlands.
- Endangered and Threatened Species.
- Land use.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the Project. By becoming a commentor, your concerns may be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations and routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they may be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 2.
- Reference Docket No. CP04–400–002 on the original and both copies.
- Mail your comments so that they will be received in Washington, DC, on or before September 25, 2006.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. 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 and the link to the User's Guide. Before you can file comments, you will need to open a free account which can be created online.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Internet Web site (*http://www.ferc.gov*) at the "eLibrary" link or from the Commission's Public Reference and Files Maintenance Branch at 1–202–502–8371. For instructions on connecting to eLibrary refer to the Additional Information section of this notice.

documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's eFiling system) or 14 paper copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, see Appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

If you do not want to send comments at this time, but still want to remain on our mailing list, please return the attached Mailing List Retention Form (Appendix 3). If you do not return the form, you will be taken off the mailing list.

Additional Information

Additional information about the Project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact 1–202–502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm*.

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E6–14769 Filed 9–6–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

August 28, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12703–000.

c. *Date filed:* June 28, 2006.

d. *Applicant:* Goshen Hydroelectric Power LLC.

e. *Name of Project:* Goshen Hydroelectric Project.

f. *Location:* The project would be located on the Elkhart River in Elkhart County, Indiana. The project would use the Goshen Dam owned by the Elkhart County Parks and Recreation.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. William Stockhausen, 218 W. Dunlap Street, Northville, MI 48167 (248) 349–2833.

i. *FERC Contact:* Patricia W. Gillis at (202) 502–8735.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of the following: (1) The existing 130-foot-wide, 5-foot-high Goshen Dam owned by the Elkhart County Park and Recreation, (2) an existing impoundment having a surface area of 765 acres with a storage capacity of 3100 acre-feet and normal water surface elevation of 790.9 feet mean sea level, (3) a proposed reconstructed powerhouse containing two proposed generating unit with an installed capacity of 500 kilowatts, (4) an existing 100 feet long and 50 feet wide tailrace, (5) a proposed 60-foot-long, 12.5 kilovolt transmission line, and (6) appurtenant facilities. The proposed project would have an average annual generation of 2.575 gigawatt-hours, which would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "Comments", "Recommendations for Terms and Conditions", "Protest", or "Motion to Intervene", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–14770 Filed 9–6–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

August 28, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12702–000.

c. *Date filed:* June 28, 2006.

d. *Applicant:* Baintertown Hydroelectric Power LLC.

e. *Name of Project:* Baintertown Hydroelectric Project.

f. *Location:* The project would be located on the Elkhart River in Elkhart County, Indiana. The project would use the Baintertown Dam owned by the Elkhart County Parks and Recreation.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. William Stockhausen, 218 W. Dunlap Street, Northville, MI 48167 (248) 349–2833.

i. *FERC Contact:* Patricia W. Gillis at (202) 502–8735.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of the following: (1) The existing 130-foot-wide, 4-foot-high Baintertown Dam owned by the Elkhart County Parks and Recreation, (2) an existing concrete and rock fill spillway with mean crest elevation of 803 feet mean sea level, (3) a proposed reconstructed powerhouse containing one proposed generating unit with an installed capacity of 325 kilowatts, (4) an existing 500 feet long and 50 feet wide tailrace, (5) a proposed 200-foot-long, 12.5 kilovolt transmission line, and (6) appurtenant facilities. The proposed project would have an average annual generation of 870 megawatt-hours, which would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person

to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title COMMENTS, RECOMMENDATIONS FOR TERMS AND CONDITIONS, PROTEST, OR MOTION TO INTERVENE, as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–14771 Filed 9–6–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

August 28, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12701–000.

c. *Date filed:* June 28, 2006.

d. *Applicant:* Benton Hydroelectric Power LLC.

e. *Name of Project:* Benton Hydroelectric Project.

f. *Location:* The project would be located on the Elkhart River in Elkhart County, Indiana. The project would use the Benton Dam owned by the Elkhart County Parks and Recreation.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. William Stockhausen, 218 W. Dunlap Street, Northville, MI 48167 (248) 349–2833.

i. *FERC Contact:* Patricia W. Gillis at (202) 502–8735.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of the following: (1) The existing 130-foot-wide, 5-foot-high Benton Dam owned by the Elkhart County Department of Parks and Recreation, (2) an existing concrete and rock fill spillway with mean crest elevation of 822 feet mean sea level, (3) a proposed reconstructed powerhouse containing one proposed generating unit with an installed capacity of 325 kilowatts, (4) an existing 700 feet long and 50 feet wide tailrace, (5) an existing one-mile-long, 12.5 kilovolt transmission line, and (6) appurtenant facilities. The proposed project would have an average annual generation of 1.7 gigawatt-hours, which would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the

particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "Comments", "Recommendations for Terms and Conditions", "Protest", or "Motion to Intervene", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–14772 Filed 9–6–06; 8:45 am]

BILLING CODE 6717–01–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of information collection—new: EEOC National Contact Center Customer Service Survey.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35), the Commission announces its intent to submit to the Office of Management and Budget (OMB) a request to approve a new information collection as described below.

DATES: Written comments on this notice must be submitted on or before November 6, 2006.

ADDRESSES: Comments should be submitted to Stephen Llewellyn, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, NW., Washington, DC 20507. As a convenience to commentators, the Executive Secretariat will accept comments transmitted by facsimile (fax) machine. The telephone number of the fax receiver is (202) 663–4114. (This is not a toll-free number.) Only comments of six or fewer pages will be accepted via fax transmittal. This limitation is necessary to assure access to the equipment. Receipt of fax transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TTY). (These are not toll-free telephone numbers.) Copies of comments submitted by the public will be available to review at the Commission's library, Room 6502, 1801 L Street, NW., Washington, DC 20507 between the hours of 9:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Cynthia Pierre, Director, Field Management Programs, Office of Field Programs, 1801 L Street, NW., Washington, DC 20507, (202) 663–7115 (voice). This notice is available in the following formats: large print, braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to the Publications Center at 1–800–699–3362.

SUPPLEMENTARY INFORMATION: The Equal Employment Opportunity Commission (EEOC) enforces Title VII of the Civil Rights Act of 1964, the Equal Pay Act, the Age Discrimination in Employment Act, the Rehabilitation Act, Title I of the Americans with Disabilities Act, and the Pregnancy Employment Discrimination Act. Pursuant to its authority under those statutes, EEOC created a National Contact Center to provide the public with 24-hour access to EEOC and information about equal employment rights and responsibilities. The EEOC National Contact Center provides the public with a centralized point of access for reaching the EEOC and offers several choices for communicating with the EEOC, such as phone, TTY, e-mail, facsimile, and standard mail. In an effort to ensure continued quality service, EEOC proposes this customer satisfaction survey in order to request each person who uses the National Contact Center to respond to three questions about the service they received. This constitutes a collection of information under the Paperwork Reduction Act.

Pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and OMB regulation 5 CFR 1320.8(d)(1), the Commission solicits public comment on its proposed survey to enable it 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, 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.

The remainder of this **SUPPLEMENTARY INFORMATION** section provides the public with information it will need to comment on the EEOC proposal. It contains an overview of the information collection and the proposed survey.

Overview of This Information Collection

Collection Title: EEOC National Contact Center Customer Satisfaction Survey.

OMB-Number: None.

Description of Affected Public: Individuals or households; Businesses or other for profit, not-for-profit institutions; state or local governments.

Number of Responses: Unknown.

Estimated Reporting Time Per Respondent: 5 minutes.

Total Burden Hours: Unknown.

Federal Cost: None.

Form:

Customer Satisfaction Survey Questions

EEOC National Contact Center

(To be used with persons who call, e-mail, fax, or write the Contact Center)

Question 1: Overall, I was satisfied with the quality of service that I received.
A. Strongly Agree
B. Agree
C. Neutral
D. Disagree
E. Strongly Disagree

Question 2: The Customer Service Representative who assisted me was helpful.
A. Strongly Agree
B. Agree
C. Neutral
D. Disagree
E. Strongly Disagree

Question 3: I would use the EEOC National Contact Center again.
A. Strongly Agree
B. Agree
C. Neutral
D. Disagree
E. Strongly Disagree

Paperwork Reduction Act Notice (Public Law 104–13)

Persons are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. This collection of information is approved under OMB number ____ (Expiration Date: ____). The obligation to respond to this information collection is voluntary; The average time to respond to this information collection is estimated to be 5 minutes. Submit comments regarding this estimate; including suggestions for reducing response time to the U.S. Equal Employment Opportunity Commission, Office of the Chair, 1801 L Street, NW., Washington, DC 20507. Please reference to OMB Number ____. We are very interested in your thoughts and suggestions about your experience in responding to the Equal Employment Opportunity Commission's National Contact Center Customer Satisfaction Survey. Your comments will be very useful to the Commission in making improvements in our National Contact Center.

Dated: August 30, 2006.

For the Commission.

Cari M. Dominguez,

Chair.

[FR Doc. E6–14813 Filed 9–6–06; 8:45 am]

BILLING CODE 6570–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

August 29, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments by November 6, 2006. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your Paperwork Reduction Act (PRA) comments by email or U.S. postal mail. To submit your comments by e-mail send them to: *PRA@fcc.gov*. To submit your comments by U.S. mail, mark it to the attention of Judith B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–B441, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214. If you would like to obtain or view a copy of this information collection after this 60 day comment period, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0782.

Title: Petition for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 20 respondents; 100 responses.

Estimated Time per Response: 8 hours (5 times/year).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 800 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted as an extension (no change in reporting requirements) after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance.

The Commission, pursuant to the provisions of the Communications Act of 1934, as amended ("the Act"), requests that Bell Operating Companies (BOCs) provide certain information to the Commission regarding BOC requests for limited modification of local access

and transport area (LATA) boundaries to provide extended local calling service (ELCS). The Commission has provided voluntary guidelines for filing ELCS. These guidelines will allow the Commission to conduct smooth and continuous processing of these requests. The collection of information will enable the Commission to determine if there is a public need for expanded local calling service in each area subject to the request.

OMB Control No.: 3060–0786.

Title: Petition for LATA Association Changes by Independent Telephone Companies.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 20.

Estimated Time per Response: 6 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 120 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted as an extension (no change in reporting requirements) after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance.

The Commission, pursuant to the provisions of the Communications Act of 1934, as amended ("the Act"), requests that independent telephone companies (ITCs) and Bell Operating Companies (BOCs) provide certain information to the Commission regarding ITC requests for changes in local access and transport areas (LATA) association and modification of LATA boundaries to permit the change in association. The Commission has provided voluntary guidelines for filing LATA association change requests. These guidelines will allow the Commission to conduct smooth and continuous processing of these requests. The collection of information will enable the Commission to determine if there is a public need for changes in LATA association in each area subject to the request.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–14785 Filed 9–6–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

August 23, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 6, 2006. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your all Paperwork Reduction Act (PRA) comments by email or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0647.

Title: Annual Survey of Cable Industry Prices ("Price Survey").

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; State, Local or Tribal Government.

Number of Respondents: 780.

Estimated Time per Response: 8 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 6,240 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Section 623(k) of the Cable Television Consumer Protection and Competition Act of 1992 requires the Commission to publish annually a statistical report on average rates for basic cable service, cable programming service, and equipment. The report must compare the prices charged by cable operators subject to "effective competition" and those not subject to effective competition. The data needed to prepare this report is collected using the annual cable industry Price Survey.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–14789 Filed 9–6–06; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

August 23, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility;

(b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 6, 2006. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–B441, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *PRA@fcc.gov*. If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214. If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0307.

Title: Amendment of Pat 90 of the Commission's Rules to Facilitate Development of SMR Systems in the 800 MHz Frequency Band.

Form Nos.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 1,042.

Estimated Time Per Response: 2–4.5 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 524 hours.

Total Annual Cost: $304,313.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted as a revision after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance.

There are eight reporting requirements in this information collection. They are: (1) Applicants in the specific categories of 800 Specialized Mobile Radio (SMR) spectrum may request an extended period of time within which to construct their radio systems provided that they demonstrate such additional time is needed and provide a timetable for completing such construction; (2) licensees authorized to use a specific block of 800 MHz SMR frequencies within one of 175 Economic Areas (EAs), must notify the Commission of the technical parameters for any base stations operating on channels within their respective spectrum blocks that have been added, removed, relocated, or otherwise modified in accordance with the Commission's rules; (3) licensees operating on 800 MHz SMR frequencies who do not hold EA licenses must notify the Commission of the technical parameters for any base stations which they operate that have been added, removed, relocated, or otherwise modified in accordance with the Commission's rules; (4) incumbent licensees operating at multiple sites may exchange their multiple site licenses for a single license after the completion of the auction for the spectrum blocks within which their frequencies are included provided they submit a showing that their authorized facilities have been constructed and placed in operation and the contours associated with these facilities are contiguous and overlapping; (5) EA licensees must submit proof of their notification to incumbents operating on frequencies included within the EA licensees' spectrum blocks of their intention to relocate such incumbents; (6) auction winners claiming status as a small business must submit detailed ownership and gross revenue information necessary to determine they qualify as a small business pursuant to the Commission's rules; (7) auction winners must disclose the terms of any joint bidding agreements, if any, with other auction participants, and (8) EA licensees who transfer or assign their license within three years are required to file, together with a transfer application, a statement indicating that the license was obtained through competitive bidding, as well as the associated contracts for sale, option agreements, management agreements and all other documents disclosing the total consideration received in return for the transfer or assignment of the license.

The Commission has revised this collection because on July 22, 2005, the Commission adopted a Report and Order and Further Notice of Proposed Rulemaking (20 FCC Rcd 16293) to streamline and harmonize licensing provisions in the wireless radio services pursuant to biennial regulatory review responsibilities. The Commission modified section 90.693 to eliminate the necessity of incumbent 800 SMR licensees filing notifications of minor modifications in certain circumstances. Specifically, notification of minor modifications is no longer required where a license locates its facilities closer than the minimum required distance separation but nonetheless falls within the parameters of the Short Space Separation Table under 47 CFR 90.621.

The information will be used by the Commission for the following purposes: (a) To update the Commission's licensing database and thereby facilitate the successful coexistence of EA licensees and incumbents in the 800 MHz SMR band; and (b) to determine whether an applicant is eligible for special provisions for small businesses provided for applicants in the 800 MHz service.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–14790 Filed 9–6–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

August 14, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of

information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 10, 2006. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1-B441, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *PRA@fcc.gov*. If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1031.

Title: Commission Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems—Petition of the City of Richardson, TX, Order on Reconsideration II.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 1,158.

Estimated Time Per Response: 4–20 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 6,576 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted as an extension (no change in reporting or third party disclosure requirements) after this 30 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance.

Under the Commission's E911 rules, a wireless carrier must provide E911 service to a particular Public Safety Answering Point (PSAP) within six months only if that PSAP makes a request for the service and is capable of receiving and utilizing the information provided. In the City of Richardson, TX, Order on Reconsideration II, the Commission adopted rules clarifying what constitutes a valid PSAP request so as to trigger a wireless carrier's obligation to provide service to a PSAP within six months. The Commission's actions were intended to facilitate the E911 implementation process by encouraging parties to communicate with each other early in the implementation process, and to maintain a constructive, on-going dialog throughout the implementation process.

OMB Control No.: 3060–0233.

Title: Part 36—Separations.

Form Nos.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,804 respondents; 5,788 responses.

Estimated Time Per Response: 22 hours.

Frequency of Response: On occasion, annual and quarterly reporting requirements and third party disclosure requirement.

Total Annual Burden: 58,418 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: In order to allow determination of the study areas that are entitled to an expense adjustment, and the wire centers that are entitled to high-cost universal service support, incumbent and competitive telecommunications carriers must provide certain data to the National Exchange Carrier Association (NECA) or the Universal Service Administrative Company (USAC) annually and/or quarterly. Local telecommunications carriers that want to participate in the federal universal service program must make certain informational showings to demonstrate eligibility. Without such information, NECA and USAC would not be able to calculate such payments to eligible carriers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–14791 Filed 9–6–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

August 30, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 6, 2006. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit all your Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1045.

Title: Operator: Operator, Mail Address and Operational Information Changes.

Form Number: FCC Form 324.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 5,000.

Estimated Time per Response: 0.5 hours (30 minutes).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 2,500 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On March 13, 2003, the Commission adopted a Report and Order (R&O), Amendment of the Commission's Rules for Implementation of its Cable Operations and Licensing System (COALS) to Allow for Electronic Filing of Licensing Applications, Forms, Registrations and Notifications in the Multichannel Video and Cable Television Service and the Cable Television Relay Service, FCC 03–55. This R&O provided for electronic filing and standardized information collections. Under 47 CFR 76.1610, cable operators must notify the Commission of changes in ownership information or operating status within 30 days of such change using FCC Form 324. FCC Form 324 will cover a variety of changes related to cable operators, replacing the requirement of a letter containing approximately the same information. Every Form 324 filing will require biographical information about the operator and system—the additional information required depending largely upon the nature of the change.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–14807 Filed 9–6–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

DATE AND TIME: Tuesday, September 12, 2006 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, September 14, 2006 at 10 a.m. Place: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 2006–22: Wallace for Congress by counsel, Andrius R. Knotrimas.

Routine Administrative Matters.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Biersack, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 06–7528 Filed 9–5–06; 2:58 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 2, 2006.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309:

1. Private Bancshares, Inc., Atlanta, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Private Bank of Buckhead (in organization), both of Atlanta, Georgia.

Board of Governors of the Federal Reserve System, September 1, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–14777 Filed 9–6–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 21, 2006.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

Lincoln Bancorp, Plainfield, Indiana; to engage *de novo* in lending activities, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, September 1, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–14776 Filed 9–6–06; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Meeting of the Citizens' Health Care Working Group

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Citizens' Health Care Working Group (Working Group) mandated by section 1014 of the Medicare Modernization Act.

DATES: A business meeting of the Working Group will be held on Wednesday September 13, 2006 and Thursday September 14, 2006. On September 13, the session will begin at 8:30 a.m. and end at 4 p.m. On September 14, the session will begin at 8:30 a.m. and end at 2 p.m.

ADDRESSES: The meeting will take place at the conference room of the United Food and Commercial Workers International Union. The office is located at 1775 K Street, NW., Washington, DC 20006. The main receptionist area is located on the 7th floor; the conference room is coated on the 11th floor. The meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Caroline Taplin, Citizens' Health Care Working Group, at (301) 443–1514 or *caroline.taplin@ahrq.hhs.gov*. If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Mr. Donald L. Inniss, Director, Office of Equal Employment Opportunity Program, Program Support Center, on (301) 443–1144.

The agenda for this Working Group meeting will be available on the Citizens' Working Group Web site, *http://www.citizenshealthcare.gov*. Also available at that site is a roster of Working Group members. When a summary of this meeting is completed, it will also be available on the Web site.

SUPPLEMENTARY INFORMATION: Section 1014 of Pub. L. 108–173, (known as the Medicare Modernization Act) directs the Secretary of the Department of Health and Human Services (HHS), acting through the Agency for Healthcare Research and Quality, to establish a Citizens' Health Care Working Group (Working Group). This statutory provision, codified at 42 U.S.C. 299 n., directs the Working Group to: (1) identify options for changing our health care system so that every American has the ability to obtain quality, affordable health care coverage; (2) provide for a nationwide public debate about improving the health care system; and, (3) submit its recommendations to the President and the Congress.

The Citizens' Health Care Working Group is composed of 15 members: the Secretary of HHS is designated as a member by statute. The Comptroller General of the U.S. Government Accountability Office (GAO) was directed to name the remaining 14 members whose appointments were announced on February 28, 2005.

Working Group Meeting Agenda

The Working Group meeting on September 13 and September 14, will be devoted to ongoing Working Group business. The principal topic to be addressed will be completing work on the Working Group's final recommendations and planning for their release later in September. Interim recommendations were posted on the Working Group's Web site *http://www.citizenshealthcare.gov* on June 2, 2006. The comment period for the interim recommendations ended August 31, 2006 and the target date for release of final recommendations is September 26, 2006.

Submission of Written Information

To fulfill its charge described above, the Working Group has been conducting a public dialogue on health care in America through public meetings held across the country and through comments received on its Web site. The Working Group invites members of the public to the Web site to be part of that dialogue and encourages comments on the interim recommendations.

Further, the Working Group will accept written submissions for consideration at the Working Group business meeting listed above. In general, individuals or organizations wishing to provide written information for consideration by the Citizens' Health Care Working Group at this meeting should submit information electronically to *citizenshealth@ahrq.gov*.

This notice is published less than 15 days in advance of the meeting date due to logistical difficulties.

Dated: August 30, 2006.

Carolyn M. Clancy,

Director.

[FR Doc. 06–7478 Filed 9–6–06; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Decision To Evaluate a Petition To Designate a Class of Employees at Bethlehem Steel Corporation, Buffalo, NY, To Be Included in the Special Exposure Cohort

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees at the Bethlehem Steel Corporation, Buffalo, New York, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: Bethlehem Steel Corporation.

Location: 10 inch Bar Mill and blooming Mill.

Job Titles and/or Job Duties: Millwrights, welders, electricians, bricklayers, carpenters, all maintenance, testers, rollers, supervisors, crane operators, hookers, clean-up crews, grinders.

Period of Employment: 1949–1952.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV*.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 06–7484 Filed 9–6–06; 8:45 am]

BILLING CODE 4163–19–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) gives notice of a decision to designate a class of employees at the Ames Laboratory, in Ames, Iowa as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On August 8, 2006, the Secretary of HHS designated the following class of employees as an addition to the SEC:

Department of Energy (DOE) employees or DOE contractor or subcontractor employees who worked at the Ames Laboratory in one or more of the following facilities/locations: Chemistry Annex 1 (also known as "the old women's gymnasium" and "Little Ankeny"), Chemistry Annex 2, Chemistry Building (also known as "Gilman Hall"), Research Building, or the Metallurgical Building (also known as "Harley Wilhelm Hall") from January 1, 1942 through December 31, 1954 for a number of work days aggregating at least 250 work days, or in combination with work days within the parameters (excluding aggregate work day requirements) established for one or more classes of employees in the SEC, and who were monitored or should have been monitored.

This designation will become effective on September 7, 2006, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV*.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 06–7485 Filed 9–6–06; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) gives notice of a decision to designate a class of employees at the Y–12 Plant, in Oak Ridge, Tennessee as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On August 8, 2006, the Secretary of HHS designated the following class of employees an addition to the SEC:

Department of Energy (DOE) employees or DOE contractor or subcontractor employees who were monitored or should have been monitored for:

(1) Thorium exposures while working in Building 9201–3, 9202, 9204–1, 9204–3, 9206, or 9212 at Y–12 for a number of work days aggregating at least 250 work days from January 1948 through December 1957 or in combination with work days within the parameters (excluding aggregate work day requirements) established for one or more classes of employees in the SEC; or

(2) Radionuclide exposures associated with cyclotron operations in Building 9201–2 at Y–12 for a number of work days aggregating at least 250 work days from January 1948 through December 1957 or in combination with work days within the parameters (excluding aggregate work day requirements) established for one or more classes of employees in the SEC.

This designation will become effective on September 7, 2006, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provisions by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support; National Institute for Occupational Safety and Health, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV*.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 06–7486 Filed 9–6–06; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health (NIOSH); Advisory Board on Radiation and Worker Health

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention announces the following committee meeting:

Name: Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health and Subcommittee for Dose Reconstruction and Site Profile Reviews (SDRSPR).

Subcommittee Meeting Time and Date: 9 a.m.–12 p.m., September 19, 2006.

Committee Meeting Times and Dates:

1 p.m.–4:45 p.m., September 19, 2006.
8:30 a.m.–5 p.m., September 20, 2006.
8:30 a.m.–5 p.m., September 21, 2006.

Public Comment Times and Dates:

5 p.m.–6 p.m., September 19, 2006.
7:30 p.m.–8:30 p.m., September 20, 2006.

Place: Westin Casuarina, 160 E. Flamingo Road, Las Vegas, Nevada 89169. Phone 702.836.5900, Fax 702.836.5990.

Status: Open to the public, limited only by the space available. The meeting space accommodates approximately 75 to 100 people.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines which have been promulgated by the Department of Health and Human Services (HHS) as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation

and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2007.

Purpose: This Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters to be Discussed: The agenda for the Subcommittee meeting includes Individual Dose Reconstruction Reviews and Procedures Reviews; Subcommittee Operations and Future Plans. The agenda for the Advisory Board meeting includes Presentation of SEC Petitions for Oak Ridge Institute of Nuclear Studies (ORINS), Chapman Valve, S–50 Thermal, and Los Alamos National Laboratory (LANL) (Radioactive Lanthanum Exposure); Updates on SEC Petitions for Nevada Test Site (NTS), Pacific Proving Ground (PPG), Ames Laboratory, and Rocky Flats Plant; Working Group Reports on the Savannah River Site (SRS) Profile, NTS Site Profile, and SEC Petitions; Individual Dose Reconstruction Reviews; Procedures Review; NIOSH Conflict of Interest Policy; Board Conflict of Interest Policy; Status and Future Funding of Sanford Cohen & Associates (SC&A) Contract; Science Issues Updates; Charter for New Subcommittee; Working Group and Subcommittee Assignments; NIOSH, Office of Compensation Analysis and Support (OCAS) and Department of Labor (DOL) Status Reports; Board Correspondence; Board Future Plans, and Board Working Time. The agenda is subject to change as priorities dictate.

In the event an individual cannot attend, written comments may be submitted. Any written comments should be submitted to the contact person below well in advance of the meeting, and the comments will be provided at the meeting.

For Further Information Contact: Dr. Lewis V. Wade, Executive Secretary, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone 513.533.6825, Fax 513.533.6826.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: August 31, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–14787 Filed 9–6–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006D–0336]

Draft Guidance for Industry and Food and Drug Administration Staff; Commercially Distributed Analyte Specific Reagents (ASRs): Frequently Asked Questions; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled "Commercially Distributed Analyte Specific Reagents (ASRs): Frequently Asked Questions." This guidance document is intended to clarify the regulations regarding ASRs and the role and responsibilities of ASR manufacturers.

DATES: Submit written or electronic comments on this draft guidance by December 6, 2006.

ADDRESSES: Submit written requests for single copies of the guidance document entitled "Commercially Distributed Analyte Specific Reagents (ASRs): Frequently Asked Questions" to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.* Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Courtney C. Harper, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 240–276–0490.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is providing this guidance in order to eliminate confusion regarding particular marketing practices among ASR manufacturers. ASRs are the building blocks of laboratory-developed tests and are defined and classified in a rule codified at § 864.4020 (21 CFR 864.4020). With this draft guidance document, FDA seeks to advise ASR manufacturers that it views certain practices as being inconsistent with the marketing of an ASR, as defined in § 864.4020. Some manufacturers have believed that when they combine a Class I ASR, which is exempt from premarket notification requirements under section 510(l) of the Federal Food, Drug, and Cosmetic Act (the act), (21 U.S.C. 360(l)), with other products, or with instructions for use in a specific test, the product remains exempt because of the presence of an ASR. However, as explained in this draft guidance, when an ASR is marketed in certain ways, FDA views the product as no longer being an ASR within the meaning of § 860.4020.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized will represent the agency's current thinking on commercially distributed ASRs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using

the Internet. To receive "Commercially Distributed Analyte Specific Reagents (ASRs): Frequently Asked Questions, " you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 240–276–3151 to receive a hard copy. Please use the document number 1590 to identify the guidance you are requesting.

CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 807.87 have been approved under OMB control number 0910–0120; the collections of information in 21 CFR 809.10 and 809.30 (§ 809.30) have been approved under OMB control number 0910–0485; and the collections of information in 21 CFR 814.20 have been approved under OMB control number 0910–0231.

The draft guidance includes discussion of the restrictions on the sale, distribution, and use of ASRs (§ 809.30). Under this regulation, a laboratory that develops an in-house test using an ASR must add a disclaimer when reporting the test result to the practitioner (§ 809.30(e)). Advertising and promotional materials for ASRs must not make any statement regarding analytical or clinical performance (§ 809.30(d)(4)). In addition, the labeling for Class I, exempt ASRs must bear the statement, "Analyte Specific Reagent. Analytical and performance characteristics are not established." Class II or III ASRs must bear the statement, "Analyte Specific Reagent. Except as a component of the approved/cleared test (name of approved/cleared test), analytical and performance characteristics are not established" (§ 809.30(d)(2) and (d)(3)). The disclaimer and these statements do not constitute "collections of information" under the PRA. Rather, they are "public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

V. Comments

Interested persons may submit to the Division of Dockets Managment (see **ADDRESSES**), written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Recieved comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 1, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 06–7500 Filed 9–5–06; 4:00 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006D–0347]

Draft Guidance for Industry, Clinical Laboratories, and FDA Staff on In Vitro Diagnostic Multivariate Index Assays; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled "Draft Guidance for Industry, Clinical Laboratories, and FDA Staff on In Vitro Diagnostic Multivariate Index Assays." This draft guidance addresses the definition and regulatory status of a class of in vitro diagnostic devices referred to as In Vitro Diagnostic Multivariate Index Assays (IVDMIAs). The guidance also addresses premarket and postmarket requirements with respect to IVDMIAs. An IVDMIA employs data, derived in part from one or more in vitro assays, and an algorithm that usually, but not necessarily, runs on software, to generate a result that diagnoses a disease or condition or is used in the cure, mitigation, treatment, or prevention of disease.

DATES: Submit written or electronic comments on this draft guidance by December 6, 2006.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled "Draft Guidance for Industry, Clinical Laboratories, and FDA Staff on In Vitro Diagnostic Multivariate Index Assays" to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 240–276–3151. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Courtney Harper, Center for Devices and Radiological Health (HFZ- 440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 240–276–0490, ext. 162.

SUPPLEMENTARY INFORMATION:

I. Background

The definition of a device is set forth at section 201(h) of the Federal Food, Drug and Cosmetic Act (the act) (21 U.S.C. 321(h)). It provides in relevant part: "The term 'device' * * * means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is * * * (2) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals * * *" (21 U.S.C. 321(h)). An IVDMIA is a test system that employs data, derived in part from one or more in vitro assays, and an algorithm that usually, but not necessarily, runs on software, to generate a result that diagnoses a disease or condition or is used in the cure, mitigation, treatment, or prevention of disease. An IVDMIA is

therefore a device within the meaning of the act.

FDA is aware of some confusion about the regulation of IVDMIAs that are developed by and used in a laboratory. We believe this confusion derives in part from FDA's approach to regulation of laboratory-developed tests that use commercially available ASRs and other commercially available, FDA-regulated components. FDA seeks to dispel the existing confusion and clarify its approach to regulation of IVDMIAs with this guidance document.

Some of the apparent confusion is associated with the rules that classify and regulate analyte specific reagents (ASRs) that move in commerce (hereinafter ASR rule) (§§ 864.4020, 809.10(e), and 809.30 (21 CFR parts 864 and 809)). The ASR rule does not extend to tests developed in-house by clinical laboratories using commercially available ASRs and used exclusively by that laboratory, or ASRs created in-house and used exclusively by that laboratory for in-house testing. (November 21, 1997 **Federal Register**, 62 FR 62243, 62249.) While FDA stated in the preamble to the final ASR rule that "clinical laboratories that develop [in-house] tests are acting as manufacturers of medical devices and are subject to FDA jurisdiction under the act," 62 FR 62249, FDA chose not to extend the rule to such tests and it has generally exercised enforcement discretion over laboratory-developed ASRs and laboratory-developed tests that use commercially available and laboratory-developed ASRs.

FDA took this approach because it believed it was regulating "the primary ingredients of most in-house developed tests," and because it believed that laboratories certified as high complexity under the Clinical Laboratory Improvement Amendments, 42 U.S.C. 263a, "have demonstrated expertise and ability to use ASRs in test procedures and analyses." (62 FR 62249 (emphasis added)).

FDA believed it was regulating the primary ingredients of most in-house tests because it was regulating the common elements of in-house tests, including most ASRs (§ 864.4020), general purpose reagents (§ 864.4010), general purpose laboratory equipment (21 CFR 862.2050), other laboratory instrumentation (21 CFR part 864, subpart D), and controls (21 CFR 862.1660). IVDMIAs include elements, as described in the section on "Definition and Regulatory Status of IVDMIAs" of this guidance, that are not among these primary ingredients of in-house tests and that, therefore, raise safety and effectiveness concerns.

Also, as stated previously, FDA decided to exclude laboratory-developed tests from the ASR rule due to its confidence in high-complexity laboratories' ability to use ASRs. The manufacture of an IVDMIA involves steps that are not synonymous with the use of ASRs and that are not within the ordinary "expertise and ability" of laboratories that FDA referred to when it issued the ASR rule. Therefore, IVDMIAs do not fall within the scope of laboratory-developed tests over which FDA has generally exercised enforcement discretion. FDA intends to issue guidance regarding those laboratory-developed tests over which it has in the past generally exercised, and over which it intends to continue to exercise, enforcement discretion. IVDMIAs must meet pre- and post-market device requirements under the act and FDA regulations, including premarket review requirements in the case of class II and III devices.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized will represent the agency's current thinking on IVDMIAs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. To receive "Draft Guidance for Industry, Clinical Laboratories, and FDA Staff on In Vitro Diagnostic Multivariate Index Assays," you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 240–276–3151 to receive a hard copy. Please use the document number 1610 to identify the guidance you are requesting.

CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 807.87 have been approved under OMB control number 0910–0120; the collections of information in §§ 809.10 and 809.30 have been approved under OMB control number 0910–0485; the collections of information in 21 CFR 814.20 have been approved under OMB control number 0910–0231; the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR part 803 have been approved under OMB control number 0910–0437.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 1, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 06–7499 Filed 9–5–06; 4:00 pm]

BILLING CODE 4160–01–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, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Differential Expression of Molecules Associated With Intra-Cerebral Hemorrhage

Description of Technology: Stroke affects 15 million people worldwide each year, and is the number three leading cause of morbidity in the United States. Although most forms of stroke are ischemic in nature, approximately 10–15% of strokes are hemorrhagic. At present, clinical applications for distinguishing between these two forms of stroke do not exist.

The present invention describes a highly predictive, cost-effective diagnostic assay capable of detecting whether an individual has suffered from an intracerebral hemorrhagic stroke and the likelihood of neurological recovery. It comprises a rapid screening device for measuring differential expression patterns of nucleic acid molecules or proteins of at least four hemorrhagic stroke-related genes. Accurate prediction of hemorrhagic stroke will improve rapid diagnosis and aid in determining early treatment regimens.

Applications:

1. Gene expression profile assay for determining hemorrhagic stroke victims.

2. Means of differentiating between hemorrhagic stroke and ischemic stroke thereby optimizing patient response to stroke therapies.

Market:

1. Annually, fifteen billion people suffer from strokes worldwide, and an estimated 700,000 individuals have first-time or recurrent strokes each year in the United States alone.

2. Almost three-fourth of all strokes occur in individuals over 65 years of age.

3. In 2006, the projected indirect and direct costs of stroke are $57.9 billion.

Development Status: This technology requires clinical validation studies.

Inventors: Alison Baird (NINDS) *et al.*

Patent Status: U.S. Provisional Application No. 60/807,027 filed 11 Jul 2006 (HHS Reference No. E–197–2006/0–US–01).

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: Fatima Sayyid, M.H.P.M.; 301/435–4521; *sayyidf@mail.nih.gov.*

Collaborative Research Opportunity: NINDS is also seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this assay for determining hemorrhagic stroke victims. For additional information, please contact: Heather Gunas, J.D., M.P.H; NINDS c/o NCI TTB; 6120 Executive Blvd., Suite 450, Rockville, MD 20852; Phone: 301–451–3944; Fax: 301–402–2117; E-mail: *gunash@mail.nih.gov.*

Diagnosis and Prognosis of Fabry Disease by Detecting Neuronal Apoptosis Inhibitor Protein (NAIP) Expression

Description of Technology: Fabry disease is a severe metabolic disorder that affects the vascular system of multiple tissues and organs. An estimated 1 in 40,000 individuals inherit this rare disease, and suffer from various complications including stroke, renal failure, and cardiac arrest. At present, molecular markers that directly measure cellular dysfunction to not exist, thus, prognosis for Fabry disease therapy can not be assessed.

Available for licensing and commercial development is a rapid diagnostic assay to identify individuals with Fabry disease and an effective mechanism of evaluating enzyme replacement therapy. It provides a quick, inexpensive device for determining expression patterns of the neuronal apoptosis inhibitor protein (NAIP). Peripheral blood white cells of Fabry disease patients are analyzed for elevated levels of the marker NAIP, which is over-expressed in patients suffering from acute strokes. These elevated levels have been found in children with Fabry disease and point to the need for preventive therapies. Additionally, this test can be routinely utilized for evaluation of specific and non-specific therapies that aid in minimizing the complications associated with Fabry disease.

Applications:

1. Rapid diagnostic test to identify person at risk for Fabry disease.

2. Reliable diagnostic test to identify subject response to Fabry disease therapy.

Market: Individuals genetically susceptible to Fabry disease.

Development Status: This technology requires analytic validation.

Inventors: Raphael Schiffmann (NINDS) et al.

Related Publications:

1. DF Moore, H Li, N Jeffries, V Wright, RA Cooper Jr, A Elkahloun, MP Gelderman, E Zudaire, G Blevins, H Yu, E Goldin, AE Baird. Using peripheral blood mononuclear cells to determine a gene expression profile of acute ischemic stroke: a pilot investigation. Circulation. 2005 Jan 18; 111(2):212–221.

2. Y Okada, H Sakai, E Kohiki, E Suga, Y Yanagisawa, K Tanaka, S Hadano, H Osuga, JE Ikeda. A dopamine D4 receptor antagonist attenuates ischemia-induced neuronal cell damage via upregulation of neuronal apoptosis inhibitory protein. J Cereb Blood Flow Metab. 2005 Jul; 25(7):794–806.

3. N Inohara, M Chamaillard, C McDonald, G Nuñez. NOD–LRR proteins: role in host-microbial interactions and inflammatory disease. Annu Rev Biochem. 2005 Jul; 74:355–383.

Patent Status: U.S. Provisional Application No. 60/806,295 filed 30 Jun 2006 (HHS Reference No. E–196–2006/0–US–01).

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: Fatima Sayyid, M.H.P.M.; 301/435–4521; *sayyidf@mail.nih.gov.*

Novel Treatment of Vascular Cognitive Impairment

Description of Technology: Available for licensing are methods and formulations for treating or preventing Vascular Cognitive Impairment (VCI) through mucosal administration of E-selectin, an inducible adhesion molecule on endothelial cells. Vascular dementia is defined as the loss of cognitive function resulting from ischemic, ischemic-hypoxic, or hemorrhagic brain lesions as a result of cerebrovascular diseases and pathologic

changes. Presently no adequate medical treatment exists for VCI.

Cerebrovascular disease causes proinflammatory cytokines such as IL–1 and TNF to induce the expression of E-selectin on human endothelium. E-selectin mediates the adhesion of various leukocytes, including neutrophils, monocytes, eosinophils, natural killer cells, and a subset of T cells to the activated endothelium. Activation of vascular endothelial cells by proinflammatory cytokines is believed to be involved in conversion of the luminal surface of endothelium from anticoagulant and anti-inflammatory to procoagulant and pro-inflammatory. These vascular changes are thought to underlie the development of VCI.

Mucosally administered antigens can inhibit immune responses in an antigen specific fashion by inducing a subset of lymphocytes to produce anti-inflammatory cytokines in the presence of the antigen. This type of tolerance has been termed "bystander suppression". In an animal model of VCI, intranasal administered E-selectin suppressed activation of vessel segments beginning to express E-selectin and thus prevented the development of VCI. Immunosuppression via antigen-specific modulation of the immune response (mucosal tolerance) should have no systemic immunosuppressive effects.

Inventors: John M. Hallenbeck *et al.* (NINDS).

Patent Status: U.S. Provisional Application No. 60/712,359 filed 30 Aug 2005 (HHS Reference No. E–271–2005/0–US–01).

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: Norbert Pontzer, Ph.D., J.D.; 301/435–5502; *pontzern@mail.nih.gov*.

Collaborative Research Opportunity: The NINDS Stroke Branch is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the use of E-selectin for treatment of VCI. For more information, please contact: Laurie Arrants, NINDS Technology Transfer Office, 301–435–3112; *arrantsl@ninds.nih.gov*.

Use of LCAT To Reduce Cholesterol and Prevent Atherosclerosis

Description of Technology: Available for licensing and commercial development is a method of decreasing accumulation of cholesterol in arteries of humans by administering lecithin-cholesterol acyltransferase (LCAT). This method is useful for the therapeutic treatment of subjects at risk for developing atherosclerosis.

High plasma concentration of HDL cholesterol is associated with reduced risk of cardiovascular diseases (such as ischemic stroke and myocardial infarction). In contrast, low levels of HDL are associated with increased risk of atherosclerotic diseases. The plasma protein enzyme LCAT plays a critical role in the metabolism of HDL and it facilitates the removal of cholesterol from the body. Individuals with a mutation in the LCAT gene have low HDL plasma levels and exhibit an increased risk for atherosclerosis.

Therefore, upregulation of LCAT function has been proposed as an HDL–C increasing therapy, and may have atheroprotective effects. This invention provides for several methods of administering LCAT polypeptide to decrease cholesterol accumulation in arteries.

Development Status: Animal data available.

Inventors: Silvia Santamarina-Fojo, Jeffrey M. Hoeg, H. Bryan Brewer (NHLBI).

Relevant Publication: JM Hoeg *et al.* Overexpression of lecithin:cholesterol acyltransferase in transgenic rabbits prevents diet-induced atherosclerosis. Proc Natl Acad Sci USA. 1996 Oct 15;93(21):11448–11453.

Patent Status: U.S. Patent No. 6,635,641 issued on 21 Oct 2003 (HHS Reference No. E–007–1996/0–US–03); PCT Application No. PCT/US96/18159 filed 09 Sep 1996, which was published as WO 1997/17434 on 15 May 1997 (HHS Reference No. E–007–1996/0–PCT–02); Australian Patent No. 728257 issued on 19 Apr 2001; and National Stage filings in Canada and Europe.

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: *NIHOTT@mail.nih.gov*; 301/496–7057.

Devices for Aseptic Lyophilization of Biological Samples

Description of Technology: Biological materials are often lyophilized and stored in small aliquots for long-term preservation as a means of improving stability and expanding shelf life. At present, sterility of solutions cannot be preserved throughout the lyophilization process, and reconstituted samples must be filtered to remove contaminants such as fungi or bacteria, resulting in considerable loss of expensive sample via absorption by the filter. Thus, there exists a need for a device that eliminates microbial contamination throughout the lyophilization process and provides materials that are ready to use following lyophilization.

This technology offers a functional method to prevent microbial contamination during lyophilization and a simple means to prevent contamination. It affords a convenient system for gas venting and exchange utilizing a microcentrifuge tube fitted with a cap incorporating a filter membrane. In a related technology, a unique, cost-effective multi-well plate assembly provides for simultaneous lyophilization of small sample volumes for high-throughput operations. Thus, these technologies are well-suited for researchers concerned about contamination during the lyophilization process. Given the spillage often occurring within centrifugal freeze-dryers, these technologies are also useful even when sterility is not needed, as they prevent contamination from the often-dirty interiors of laboratory centrifugal freeze-dryers, as well as cross-contamination between samples undergoing lyophilization. In addition, by extending shelf-lives, these technologies enable researchers to purchase expensive biomolecules and pharmaceuticals in money-saving bulk quantities. Furthermore, these technologies permit cells to be grown and stored axenically, in small quantities, with or without lyophilization.

Applications:

1. Maximizes the shelf-lives of expensive biomolecules and pharmaceuticals.
2. Makes practical the bulk purchase of expensive biomolecules and pharmaceuticals by extending shelf-lives.
3. Makes possible the axenic storage of cells via aseptic freeze-drying.
4. Makes possible the production and use of small, sterile aliquots of precious materials by eliminating unnecessary filtration steps.
5. Makes possible the sterile growth of cells in small volumes.

Market:

1. Researchers worldwide who utilize sterile, labile compounds.
2. Researchers who utilize microbial, plant, or animal cell cultures.

Development Status: Development is complete and invention has been successfully tested.

Inventors: Geoffrey Kidd (NCI).

Patent Status: U.S. Patent 5,958,778 issued 28 Sep 1999 (HHS Reference No. E–015–1995/2–US–01); U.S. Patent 6,503,455 issued 07 Jan 2003 (HHS Reference No. E–015–1995/2–US–02); U.S. Patent Application 10/238,147 filed 09 Sep 2002 (HHS Reference No. E–304–2003/0–US–01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: *NIHOTT@mail.nih.gov*; 301/496–7057.

Dated: August 29, 2006.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E6–14753 Filed 9–6–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Oligo Microarray for Detection of All Known Mammalian and Avian Pathogenic Viruses

Description of Technology: The spectrum of pathogenic viruses of importance in human disease, agriculture and biology is not only large and diverse, but continually evolving. The identification or isolation of viral pathogens, in correlation with the presence of specific disease phenotypes, is of paramount importance both to diagnosis of disease and the subsequent management or treatment of viral infection. The limitations of current viral detection methods, such as PCR and immunoassays, led to the development of a novel microarray system for specific detection of viruses. The technology offered here for licensing provides a method for high-throughput screening of known pathogenic viruses along with identification of "new" disease-associated viruses.

The novel method is based on a viral microarray containing 10,000 immobilized DNA oligonucleotide features, representing all known mammalian and avian pathogenic viruses (approximately 600). Software was also developed to analyze the viral microarray results. The oligonucleotide features in this system are 60-mer long and distributed across both conserved and non-conserved regions of known viral sequences. This design serves the dual purpose of: (1) Facilitating validation via redundant signals associated with each represented virus and (2) allowing for the discovery of new viruses, which arise due to recombination. In addition, positive and negative controls against human and mouse housekeeping genes are included along with software for analysis of virus microarray results.

Further advantages of the viral microarray include: (a) The use of sample inputs as little as 10ng of either total DNA or RNA extracted from virus infected cells, representing as few as 20 viral particles; (b) detection of viruses of both DNA and RNA classes; (c) a capacity for high-throughput screening of various sample types including serum, saliva and biopsy tissues; and (d) analysis of a large number of samples in parallel on identical arrays.

The detection of viral DNA is unique to this technology, as other available technologies only detect viral genomic RNA or viral mRNA transcripts. Additionally, the viral chip was found to be highly specific and sensitive for detecting different viral genomic sequences in cell lines and multiple viral constructs co-infection in cultured cells.

Applications: (1) Detection and identification of viruses that cause disease; (2) Efficient discovery of new pathogenic viruses; (3) Diagnosis of human and animal disease outbreaks; (4) Identification of viral agents used in bioterrorism.

Development Status: (1) The pre-clinical performance of the viral microarray was evaluated by application of four virally positive infected cell lines (JSC–1-harboring EBV and KSHV, BCBL–1 harboring KSHV, HeLa-harboring HPV18, Cem X 174 harboring SIV). (2) Clinical performance was tested and validated through analysis of total RNA from cold (swab), Japanese Encephalitis, Dengue, Ebola and West Nile virus samples.

Inventors: Cassio S. Baptista (NCI), Xiaolin Wu (NCI), David J. Munroe (NCI).

Patent Status: U.S. Provisional Application No 60/797,334 filed 02 May 2006 (HHS Reference No. E–206–2006/0–US–01).

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: Cristina Thalhammer-Reyero, PhD, MBA; 301/435–4507; *thalhamc@mail.nih.gov*

Collaborative Research Opportunity: The NCI-Laboratory of Molecular Technology is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this oligo microarray for identification and detection of all known mammalian and avian pathogenic viruses. Please contact Betty Tong, PhD at 301–594–4263 or *tongb@mail.nih.gov* for more information.

Novel Monoclonal Antibody Microarray

Description of Technology: Gene expression profiling at the mRNA level has proven to be a powerful and useful tool, however this approach suffers from inherent limitations: (1) The mRNA abundance does not typically correlate well with protein abundance and (2) protein structure, activity, and function can be altered and regulated by post-translational modifications. Thus, there is growing recognition that these approaches should be complemented by profiles of the gene products or proteins themselves. The present invention provides methods for constructing and using a novel Monoclonal Antibody Microarray which allows high-throughput determination of protein expression profiles from serum, tissue, and cultured cells.

The Monoclonal Antibody Microarray consists of more than 1000 different antibodies immobilized on a glass slide, which recognize antigens from several groups of proteins, including cytokines, kinases, apoptotic proteins, growth factor receptors, tumor suppressors, and oncoproteins. Protein samples to be identified and quantified are labeled with fluorescence and hybridized to the antibodies immobilized on the arrays. By differentially labeling two protein samples (dual-color labeling) and co-hybridizing to the same microarray, a direct comparative analysis of protein expression can be performed using as little as 100 μg of total protein. This method allows a large number of samples to be screened in parallel on identical arrays.

Applications: (1) High-throughput analysis of protein expression; (2) Direct measurement of protein expression at

the gene product or post-translational levels.

Development Status: (1) The microarrays' performance was tested by proteomic profiling of two NCI–60 cancer cell lines (Renal UO–31 and Leukemia HL–60), demonstrating a high level of reproducibility. (2) The microarrays' performance was further evaluated by analysis of the protein expression profiles of 12 Borderline ovarian and 9 Adenocarcinoma ovarian tumors using normal ovarian surface epithelial cells as a reference cell line. It was possible to detect 77 proteins that showed statistically significant ($p<0.05$) differences distinguishing Borderline tumors and Adenocarcinoma tumors, demonstrating that the novel microarrays described are useful tools for proteomics.

Inventors: Cassio S. Baptista, Lionel Best, David J. Munroe (NCI).

Patent Status: U.S. Provisional Application No. 60/797,301 filed 02 May 2006 (HHS Reference No. E–207–2006/0–US–01).

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: Cristina Thalhammer-Reyero, PhD, MBA; 301/435–4507; *thalhamc@mail.nih.gov*.

Collaborative Research Opportunity: The NCI-Laboratory of Molecular Technology is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this novel monoclonal antibody microarray. Please contact Betty Tong, PhD at 301–594–4263 or *tongb@mail.nih.gov* for more information.

Dated: August 31, 2006.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E6–14831 Filed 9–6–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Methods for Enhancing Beta Cell Function in Diabetes

Description of Technology: Diabetes results when beta cell performance is compromised through loss of cells or by reduced cell function. Anti-diabetic drugs that stimulate insulin production, such as sulfonylureas and meglitinides, have limited efficacy when beta cell responsiveness is deficient. There exists a critical need, therefore, for new diagnostics and therapeutics that focus on beta cell responsiveness in diabetes.

This technology describes methods for improving pancreatic endocrine function and delaying the onset of diabetes by enhancing beta cell function using ligands and/or regulators of Notch receptors. These methods are directed not only to mature beta cells, but to immature beta cells and to beta cells formed from differentiation of stem cells. This technology also describes isolated pancreatic progenitor cells, and offers an effective method for identifying and isolating these cells using Notch receptor markers.

Applications: (1) Treatment for diabetes that enhances beta cell function or replaces lost beta cells; (2) Isolation and expansion of pancreatic progenitor cells for diabetes therapy; (3) Diagnostic test to monitor beta cell function

Market: (1) Over 20 million people suffer from diabetes in the United States, and approximately 170 million people are affected worldwide. (2) There are an estimated 6.2 million undiagnosed cases of diabetes in the United States.

Development Status: Pre-clinical data are available.

Inventors: Josephine M. Egan, et al. (NIA).

Patent Status: U.S. Provisional Application No. 60/590,281 filed 22 Jul 2004 (HHS Reference No. E–262–2003/0–US–01); PCT Application No. PCT/US2005/026207 filed 22 Jul 2005, which published as WO 2006/023209 on 02 Mar 2006 (HHS Reference No. E–262–2003/0–PCT–02).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Tara L. Kirby, Ph.D.; 301/435–4426; *tarak@mail.nih.gov*.

A Nurr1-Knockout Mouse Model for Parkinson's Disease and Stem Cell Differentiation

Description of Technology: The researchers have generated Nurr1-knockout mice via genomic locus inactivation using homologous recombination.

Transcription factor Nurr1 is an obligatory factor for neurotransmitter dopamine biosynthesis in ventral midbrain. From a neurological and clinical perspective, it suggests an entirely new mechanism for dopamine depletion in a region where dopamine is known to be involved in Parkinson's disease. Activation of Nurr1 may be therapeutically useful for Parkinson's disease patients; therefore, the mice would be useful in Parkinson's disease research.

Additionally, Nurr1 has been shown to be critical for development of midbrain dopaminergic neurons, and thus may contribute to stem cell-based therapies for neurological disorders. Nurr1 is also important for osteoblast differentiation, suggesting a general role in stem cell differentiation and growth.

Applications: (1) Research and drug testing for Parkinson's disease and other neurological disorders; (2) Stem cell research relating to neurological and other disorders and bone formation.

Inventor: Dr. Vera Nikodem (NIDDK).

Relevant Publication: SO Castillo, JS Baffi, M Palkovits, DS Goldstein, IJ Kopin, J Witta, MA Magnuson, VM Nikodem. Dopamine biosynthesis is selectively abolished in substantia nigra/ventral tegmental area but not in hypothalamic neurons in mice with targeted disruption of the Nurr1 gene. Mol Cell Neurosci. 1998 May, 11(1–2):36–46.

Related Publications:

1. MK Lee, H Choi, M Gil, VM Nikodem. Regulation of osteoblast differentiation by Nurr1 in MC3T3-E1 cell line and mouse calvarial osteoblasts. J Cell Biochem. 2006 June 1 [Epub ahead of print, doi:10.1002/jcb.20990].

2. J Jankovic, S Chen, WD Le. The role of Nurr1 in the development of dopaminergic neurons and Parkinson's disease. Prog Neurobiol. 2005 Sep-Oct, 77(1–2):128–138. Epub 2005 Oct 21, doi:10.1016/j.pneurobio.2005.09.001.

Patent Status: HHS Reference No. E–024–1999/0—Research Tool.

Licensing Status: This technology is available under a Biological Materials License.

Licensing Contact: Tara L. Kirby, Ph.D.; 301/435–4426; *tarak@mail.nih.gov.*

Dated: August 31, 2006.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E6–14832 Filed 9–6–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Health and Human Development Special Emphasis Panel; Graduate Training in Demography.

Date: September 19, 2006.

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: Michele C. Hindi-Alexander, PhD, Division of Scientific Review, National Institutes of Health, National Institute for Child Health and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20812–7510, (301) 435–8382, *hindialm@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Love, Money and a Dad for my Kids: Low Income Women and Marriage.

Date: September 21, 2006.

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: Michele C. Hindi-Alexander, PhD, Division of Scientific Review, National Institutes of Health, National Institute for Child Health and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20812–7510, (301) 435–8382, *hindialm@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, 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: August 30, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–7463 Filed 9–6–06; 8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Collaborative Network for Clinical Research on Immune Tolerance.

Date: September 25, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Paul A. Amstad, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–402–7098, *pamstad@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 30, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–7465 Filed 9–6–06; 8:45am]

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 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 a meeting of the Board of Scientific Counselors, NIDCD.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Deafness and Other Communication Disorders, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDCD.

Date: October 27, 2006.

Open: 7:30 a.m. to 8:15 a.m.

Agenda: Reports from Institute staff.

Place: National Institutes of Health, 5 Research Court, 1A07, Rockville, MD 20850.

Closed: 8:15 a.m. to 3 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, 5 Research Court, 1A07, Rockville, MD 20850.

Contact Person: Robert J. Wenthold, PhD, Director, Division of Intramural Research, National Institute on Deafness and Other Communication Disorders, 5 Research Court, Room 2B28, Rockville, MD 20852. 301–402–2829.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: August 29, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–7469 Filed 9–6–06; 8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, RFP NIH–NIDDK–06–05, Liver Tissue and Cell Distribution System (LTCDS).

Date: September 18, 2006.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Paul A. Rushing, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–8895. *rushingp@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: August 29, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–7471 Filed 9–6–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, USRDS Coordinating Center proposal review.

Date: September 25, 2006.

Time: 8:30 a.m. to 10 a.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *Is38oz@nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, USRDS Special Studies Centers Contract Proposals Review.

Date: September 25, 2006.

Time: 10 a.m. to 1:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *Is38oz@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: August 29, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–7472 Filed 9–6–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Notice is hereby given of the second meeting of the Working Group on Chemical Information Resource Coordination under the National Library of Medicine's (NLM) Board of Scientific Counselors, National Center for Biotechnology Information (NCBI).

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The mission of the Working Group on Chemical Information Resource Coordination is to advise the Board of Scientific Counselors, NCBI, on interactions with private sector information providers in the development of the PubChem database. PubChem is a publicly available database that includes information about the biological activities of chemical compounds, and is designed to facilitate more integrated access to these information resources for biomedical researchers. The working group will: (1) Establish a process for retrospective evaluation of the biomedical relevance of compounds entered into PubChem, (2) Ensure the provenance of the data (i.e., whether private data are being improperly deposited into PubChem), (3) Ensuring the high quality of data in PubChem, (4) Monitoring the effect of PubChem on scientific progress, (5) Improving/Integrating interactions with commercial information providers, and (6) Avoiding unnecessary duplication with commercial information providers. This working group supports part of the National Institutes of Health's Roadmap, called the Molecular Libraries Initiative.

Name of Committee: Working Group on Chemical Information Resource Coordination.

Date: October 16, 2006.

Time: 10 a.m. to 3 p.m.

Agenda: Discussion on the NLM/NCBI PubChem Database.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: David J. Lipman, M.D., Director, National Center for Biotechnology Information, National Library of Medicine, NIH, Building 38A, Room 8N803, Bethesda, MD 20894, 301–496–2475.

Any interested person may file written comments with the committee by forwarding the statement 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.

Dated: August 30, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–7466 Filed 9–6–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of 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 a meeting of the Board of Scientific Counselors, National Center for Biotechnology Information.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individuals conducted by the National Library of Medicine, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Center for Biotechnology Information.

Date: October 17, 2006.

Open: 8:30 a.m. to 12 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: 12 p.m. to 2 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Open: 2 p.m. to 5 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: David J. Lipman, MD, Director, Natl Ctr for Biotechnology Information, National Library of Medicine, Department of Health and Human Services, Building 38A, Rom 8N805, Bethesda, MD 20894, 301–435–5985, *dlipman@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo Id, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 30, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–7467 Filed 9–6–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of 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 a meeting of the PubMed Central National Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: PubMed Central National Advisory Committee,

Date: October 26, 2006.

Time: 9:30 a.m. to 4 p.m.

Agenda: Review and Analysis of Systems.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: David J. Lipman, MD, Director, Natl Ctr for Biotechnology Information, National Library of Medicine, Building 38, Room 8N805, Bethesda, MD 20894. 301–435–5985. *dlipman@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.pubmedcentral.nih.gov/about/nac.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93,879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 30, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–7468 Filed 9–6–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Recombinant DNA Advisory Committee, September 20, 2006, 1 p.m. to 5 p.m., National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892 which was published in the **Federal Register** on August 18, 2006, 71 FR 160 page 47821.

The meeting will be held from 12 p.m. to 6 p.m. instead of 1 p.m. to 5 p.m. The meeting is open to the public.

Dated: August 30, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–7464 Filed 9–6–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR06–293 Quick Trial on Imaging and Image-guided Intervention.

Date: September 29, 2006.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Eileen W. Bradley, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5100, MSC 7854, Bethesda, MD 20892. 301–435–1179. *bradleye@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Somatosensory and Chemosensory Systems Study Section.

Date: October 2–3, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington Embassy Row, 2015 Massachusetts Ave., NW., Washington, DC 20036.

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892. 301–435–1255. *kenshalod@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Neurotoxicology and Alcohol Study Section.

Date: October 2–3, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

Contact Person: Joseph G. Rudolph, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892. 301–435–2212. *josephru@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Enabling Bioanalytical and Biophysical Technologies Study Section.

Date: October 2, 2006.

Time: 8:30 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Vonda K. Smith, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892. 301–435–1789. *smithvo@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Surgery, Anesthesia, and Trauma Member Conflict.

Date: October 2, 2006.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Roberto J. Matus, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892 301–435–2204. *matusr@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Neurobiology of Motivated Behavior Study Section.

Date: October 3–4, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Gamil C. Debbas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892. 301–435–1018. *debbasg@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Sensorimotor Integration Study Section.

Date: October 3, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892. 301–435–1250. *bishopj@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Cognitive Neuroscience Study Section.

Date: October 3–4, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Michael A. Steinmetz, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892. 301–435–1247. *steinmem@csr.nih.gov.*

Name of Committee: Respiratory Sciences Integrated Review Group, Lung Injury, Repair, and Remodeling Study Section.

Date: October 3–4, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ghenima Dirami, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2159A, MSC 7818, Bethesda, MD 20892. (301) 594–1321. *diramig@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group, Intercellular Interactions.

Date: October 3–4, 2006.

Time: 8 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Noni Byrnes, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5130, MSC 7840, Bethesda, MD 20892. (301) 435–1023. *byrnesn@crs.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioengineering Research Partnership.

Date: October 3, 2006.

Time: 2 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Pushpa Tandon, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7854, Bethesda, MD 20892. (301) 435–2397. *tandonp@crs.nih.gov.*

Name of Committee: Digestive Sciences Integrated Review Group, Gastrointestinal Mucosal Pathobiology Study Section.

Date: October 4, 2006.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott—Embassy Row, 1600 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Peter J. Perrin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892. (301) 435–0682. *perrinp@crs.nih.gov.*

Name of Committee: Digestive Sciences Integrated Review Group, Xenobiotic and

Nutrient Disposition and Action Study Section.

Date: October 4–5, 2006.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Patricia Greenwel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2174, MSC 7818, Bethesda, MD 20892. (301) 435–1169. *greenwep@crs.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Neural Degenerative Disorders and Glial Biology Study Section.

Date: October 4–5, 2006.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Washington, DC, 1400 M Street, NW., Washington, DC 20005.

Contact Person: Toby Behar, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7850, Bethesda, MD 20892. (301) 435–4433. *behart@crs.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Synthetic and Biological Chemistry A Study Section.

Date: October 4–5, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Kathryn M. Koeller, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4156, MSC 7806, Bethesda, MD 20892. 301–435–2681. *koellerk@csr.nih.gov.*

Name of Committee: Renal and Urological Studies Integrated Review Group, Urologic and Kidney Development and Genitourinary Diseases Study Section.

Date: October 4–5, 2006.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Aftab A. Ansari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892. 301–594–6376. *ansaria@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group, Surgery, Anesthesiology and Trauma Study Section.

Date: October 4–5, 2006.

Time: 1 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Weihua Luo, MD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892. 301–435–1170. *luow@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, MEDI/BMIT Conflict Meeting.

Date: October 4, 2006.

Time: 8 p.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Weihua Luo, MD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892. 301–435–1170. *luow@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 29, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–7470 Filed 9–6–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Social Network Analysis of a Service System for Transition Aged Youth—New

SAMHSA's, Center for Mental Health Services will seek information about the change in the network of social services in one community, Clark County Washington, as a result of a Center for Mental Health Services funded grant initiative, the Options Program. The Options Program was one of 5 funded sites across the country. Each site received four years of funding to build comprehensive supports that help adolescents with serious emotional disturbance and their families make the difficult transition from adolescent to adult functioning through the age of 25. This grant program, called the Partnerships for Youth Transition, aims to remediate some of the most difficult system barriers that interfere with transition system building by providing community leaders and advocates funding for direct services and infrastructure building, technical assistance to help shape the vision, and time to establish programs and interagency relationships. Since no single site in the country has ever successfully built a transition support system we do not know whether combining the resources of this grant, with the resources of the community are sufficient to make significant strides in transition system building. It is imperative to answer this question systematically and rigorously in order to guide future efforts.

There have been 110 agencies identified in Clark County that could potentially serve youth or young adults with serious mental, emotional and behavioral disorders. This study will conduct network analysis by interviewing one key informant from each of these programs about their organization's professional relationship with other social services. The Social Network Questionnaire was previously developed for use in several studies in mental health and homeless services. Questions focus on aspects of professional relationship such as how often clients are referred to another agency and how often staff meet for client planning purposes with staff from another agency, as well as some background information about the agency and the quality of services offered. An additional 10 items focus on whether the program is following guidelines for exemplary practice with transition aged youth. Findings will be compared to data collected prior to program initiation.

The following table summarizes the estimated response burden for this project.

Respondent	Number of respondents	Responses/ respondent	Total responses	Hours per response	Total hour burden
Key informants from social services in Clark County	110	1	110	1.25	137.5

Written comments and recommendations concerning the proposed information collection should be sent by October 10, 2006 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: August 28, 2006.

Anna Marsh,

Director, Office of Program Services.

[FR Doc. E6–14812 Filed 9–6–06; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Center for Substance Abuse Treatment (CSAT) National Advisory Council in September 2006.

The meeting will be open and will include discussion of the Center's policy issues and current administrative, legislative, and program developments.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the CSAT Council Executive Secretary, Ms. Cynthia Graham (see contact information below), to make arrangements to comment or to request special accommodations for persons with disabilities.

Substantive program information, a summary of the meeting, and a roster of Council members may be obtained after the meeting by contacting Ms. Graham or by accessing the SAMHSA Council Web site at *http://www.samhsa.gov*. The transcript for the meeting will also be available on the SAMHSA Council Web site within 3 weeks after the meeting.

Committee Name: Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment National Advisory Council.

Dates/Time: Open: September 20—9 a.m.–5 p.m. Open: September 21—9 a.m.–1 p.m.

Place: 1 Choke Cherry Road, Sugar Loaf and Seneca Conference Rooms, Rockville, Maryland 20857.

Contact: Ms. Cynthia Graham, M.S., Executive Secretary, SAMHSA/CSAT National Advisory Council, 1 Choke Cherry Road, Room 5–1036, Rockville, MD 20857. Telephone: (240) 276–1692. FAX: (240) 276–1690. E-mail: *cynthia.graham@samhsa.hhs.gov*.

Dated: August 31, 2006.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health, Services Administration.

[FR Doc. E6–14809 Filed 9–6–06; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2006–24860]

MARPOL—List of Ports and Terminals Holding Certificates of Adequacy for Reception Facilities

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces the electronic publication of lists of all U.S. ports and terminals holding valid Certificates of Adequacy (COAs). COAs are issued as evidence that a U.S. terminal or port meets the requirements of Annexes I, II, and V of the 1978 Protocol to the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78). The Coast Guard expects that greater knowledge of these facilities will reduce discharge of oil, noxious liquid substances, and garbage into the marine environment.

DATES: This notice is effective on September 7, 2006. The lists at the Web site listed below include all COAs issued and effective as of September 7, 2006.

FOR FURTHER INFORMATION CONTACT: If you have questions regarding this notice, contact Lieutenant Commander Josh McTaggart, U.S. Coast Guard, telephone 202–267–0514 or e-mail *JMcTaggart@comdt.uscg.mil*.

SUPPLEMENTARY INFORMATION: Publication of Certificate of Adequacy (COA) lists is authorized by 33 U.S.C. 1905(d), and is intended to aid owners, operators, and agents of ships to identify ports and terminals that have been certified by the Coast Guard as having facilities adequate for accepting residues and mixtures containing oil or noxious liquid substances (NLSs), or for accepting garbage from seagoing ships. The list of ports and terminals holding COAs is available on the Internet at *http://cgmix.uscg.mil/default.aspx*, by clicking on the Web site link entitled "MARPOL Certificates of Adequacy." Definitions of the terms used in the Web site appear in 33 CFR 158.120.

The Web site contains a list of ports and terminals possessing valid COAs issued under 33 CFR part 158, Subpart B (Criteria for Reception Facilities: Oily Mixtures). The list provides the names, locations, telephone numbers, and quantities of oily waste that these facilities can accept.

The Web site also contains a list of ports and terminals holding COAs issued under 33 CFR part 158, subpart C (Criteria for Certifying That a Port's or Terminal's Facilities Are Adequate for Receiving NLS Residue). The list provides the names, locations, telephone numbers, and types of various NLS waste that these facilities can accept.

Finally, the Web site contains a list of ports and terminals holding valid COAs issued under 33 CFR part 158, subpart D (Criteria for Adequacy of Reception Facilities: Garbage). The list provides the names, locations, and telephone numbers of these ports and terminals.

Dated: August 14, 2006.

J.G. Lantz,

Director of National and International Standards, Assistant Commandant for Prevention.

[FR Doc. E6–14837 Filed 9–6–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice and request for comments.

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 proposed new information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning acquisition and relocation of properties for open space.

SUPPLEMENTARY INFORMATION: FEMA submitted an interim final rule for the Property Acquisition and Relocation for Open Space (proposed 44 CFR Part 80) that will govern property acquisitions

for the creation of open space under all of FEMA mitigation grant programs authorized under both the Robert T. Stafford Disaster Relief and Emergency Assistance Act as amended, and the National Flood Insurance Act of 1968 (42 U.S.C. 4001, *et seq.*), as amended. Acquisition and relocation of property for open space use is one of the most common mitigation activities, and is an eligible activity type authorized for Federal grant funds under all of FEMA mitigation grant programs. This collection of information is necessary to establish uniform requirements for State and local implementation of acquisition activities, and to enforce open space maintenance and monitoring requirements for properties acquired with FEMA mitigation grant funds.

This new collection of information is being submitted with an interim final rule for the Flood Mitigation Assistance (FMA) and Severe Repetitive Loss (SRL) programs (proposed 44 CFR Part 79), and conforming amendment to the Mitigation Planning requirements (44 CFR Part 201) to include program requirements under the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, Public Law 108–264. This Act includes specific requirements for the SRL program on how property values, and consequently the amount offered to a property owner for acquisition, are to be determined. Since all of FEMA mitigation grant programs allow property acquisition activities, FEMA has determined that it is in the best interest of property owners, State and local grant recipients, and FEMA grant managers to establish a uniform set of regulations for acquisition activities that can apply to all FEMA mitigation grant programs. This collection serves as an extension of information specifically for acquisition and relocation activities conducted under FEMA Mitigation grant programs.

Collection of Information

Title: Property Acquisition and Relocation for Open Space.

Type of Information Collection: New Collection.

OMB Number: 1660–New23.

Form Numbers: None.

Abstract: FEMA and State and local recipients of FEMA mitigation grant programs will use the information collected under the Property Acquisition requirements to implement acquisition activities under the terms of grant agreements for acquisition and relocation activities. FEMA and State/local grant recipients will also use the information to monitor and enforce the open space requirements for all properties acquired with FEMA mitigation grants.

Affected Public: State, local, or tribal government and individuals or households.

Estimated Time per Respondent:

ANNUAL BURDEN HOURS

Project/activity (survey, form(s), focus group, etc.)	Number of respondents	Frequency of responses	Burden hours per respondent	Annual responses	Total annual burden hours
	(A)	(B)	(C)	(A×B)	(C×B)
Property Owners Voluntary Participation Statements	2200	1	1	2200	2200
Local Officials Review and Submit Voluntary Participation Statements	500	4.4	1	2200	2200
Local Officials Record Deed Restrictions	500	4.4	3	2200	6600
States Review and Submit Deed Restrictions	56	39.28	4.0	2200	8800
Local Officials Monitoring and Reporting Requirements	500	4.4	0.25	2200	550
State Officials Reporting Requirements	56	1	4.0	56	224
Transfer Certification	**	**	**	**	**
Enforcement Notices	***	**	**	**	**
Total	56		13.25	2,200	20,574

Estimated Cost: The total annual estimated costs to States Officials, Local Officials and individuals/households (Property Owners) using wage rate categories, for information collection associated with the Property Acquisition requirements is $1,018,437.52. Response to this information collection will require no additional investment on the part of participants other than the normal and routine business/operational expenses.

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 November 6, 2006.

ADDRESSES: Interested persons should submit written comments to Chief, Records Management and Privacy, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Kathleen Wissmann, Program Specialist, Mitigation Division, (202) 646–4372 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov.*

Dated: September 1, 2006.

John A. Sharetts-Sullivan,

Chief, Records Management and Privacy Information Resources Management Branch, Information Technology Services Division.

[FR Doc. E6–14820 Filed 9–6–06; 8:45 am]

BILLING CODE 9110–41–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice and request for comments.

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 proposed extension of a currently approved collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning an informal appeals process to allow policyholders to request an appeal for an unsatisfactory decision on flood insurance claims.

SUPPLEMENTARY INFORMATION: Section 205 of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, Public Law 108–264, requires FEMA to establish by regulation a formal process for the appeal of decisions of flood insurance claims issued through the National Flood Insurance Program (NFIP). The appeals process is available after the issuance of the insurer's final claim determination, which is the insurer's written denial, in whole or in part, of the insured's claim. An insured must file an appeal within 60 days after receiving the insurer's final claim determination.

Collection of Information

Title: National Flood Insurance Claims Appeal Process.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 1660–0095.

Form Numbers: None.

Abstract: This information collection implements the mandates of section 205 of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 to establish an appeal process for NFIP policyholders in cases of unsatisfactory decisions on claims, proof of loss, and loss estimates made by any insurance company, agent, adjuster, or FEMA employee or contractor.

Affected Public: Individuals or households and Business or other for profit.

Estimated Total Annual Burden Hours:

ANNUAL BURDEN HOURS

Project/activity (survey, form(s), focus group, worksheet, etc.)	Number of respondents (A)	Frequency of responses (B)	Burden hours per respondent (C)	Annual responses (D) = (A×B)	Total annual burden hours (E) = (C×D)
Appeal Letter	2,000	1	2	2,000	4,000
Total	2,000		2	2,000	4,000

Estimated Cost: Total cost to all respondents combined is estimated at $56,000. with an average cost per respondent of $28.00/appeal.

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 November 6, 2006.

ADDRESSES: Interested persons should submit written comments to Chief, Records Management and Privacy, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Priscilla Scruggs, Section Chief, Mitigation Division, (202) 646–4155 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov.*

Dated: September 1, 2006.

John A. Sharetts-Sullivan,

Chief, Records Management and Privacy Information Resources Management Branch, Information Technology Services Division.

[FR Doc. E6–14822 Filed 9–6–06; 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, Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: 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: Crisis Counseling Assistance and Training Program—Immediate Services Program.

OMB Number: 1660–0085.

Abstract: FEMA requires that the State complete an Immediate Services Program Standard Application for the Crisis Counseling Program that includes the following: (i) The geographical areas within the designated disaster area for which services will be provided; (ii) An estimate of the number of disaster victims requiring assistance; (iii) A description of the State and local resources and capabilities, and an explanation of why these resources cannot meet the need; (iv) A description of response activities from the date of the disaster incident to the date of application; (v) A plan of services to be provided to meet the identified needs; and (vi) A detailed budget, showing the cost of proposed services separately from the cost of reimbursement for any eligible services provided prior to application.

Affected Public: State, local, or tribal government.

Number of Respondents: 56.

Estimated Time per Respondent: 82 hours.

Estimated Total Annual Burden Hours: 1,910 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 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) 395–6874. Comments must be submitted on or before October 10, 2006.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Chief, Records Management, FEMA, 500 C Street, SW., Room 316, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

Dated: August 31, 2006.

John A. Sharetts-Sullivan,

Chief, Records Management and Privacy Information Resources Management Branch, Information Technology Services Division.

[FR Doc. E6–14823 Filed 9–6–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5037–N–59]

Notice of Submission of Proposed Information Collection to OMB; Request for Approval of Advance of Escrow Funds

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.

The information is collected to ensure that escrowed funds are disposed of correctly for completion of offsite facilities, construction changes, construction cost not paid at final endorsement, non-critical repairs and capital needs assessment. The mortgagor uses the data to request withdrawal of escrowed funds for each item through a depository (mortgagee), and the HUD staff must use the information to approve the withdrawal of escrowed funds for each item.

DATES: *Comments Due Date:* October 10, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0018) 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_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm.*

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: Request for Approval of Advance of Escrow Funds.

OMB Approval Number: 2502–0018.

Form Numbers: HUD–92464.

Description of the Need for the Information and Its Proposed Use: The information is collected to ensure that escrowed funds are disposed of correctly for completion of offsite facilities, construction changes, construction cost not paid at final endorsement, non-critical repairs and capital needs assessment. The mortgagor uses the data to request withdrawal of escrowed funds for each item through a depository (mortgagee), and the HUD staff must use the information to approve the withdrawal of escrowed fund for each item.

Frequency of Submission: Monthly.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden:	624	3		0.43		819

Total Estimated Burden Hours: 819.

Status: Reinstatement, with change, of previously approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 31, 2006.

Lillian L. Deitzer,

Department Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E6–14754 Filed 9–6–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5037–N–58]

Notice of Submission of Proposed Information Collection to OMB; Indian Housing Operating Cost Study

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 is a collection of cost data on the costs of operating housing developed by Indian Housing Authorities under provisions of the Housing Act of 1937 and an examination of how these data reflect location differences for the continued operation of this housing. The collected cost data will be used to analyze the AEL factor in the current Indian Housing Block Grant formula.

DATES: *Comments Due Date:* October 10, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–New) 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_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm.*

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: Indian Housing Operating Cost Study.

OMB Approval Number: 2577–New.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: This is a collection of cost data on the costs of operating housing developed by Indian Housing Authorities under provisions or the Housing Act of 1937 and an examination of how these data reflect location differences for the continued operation of this housing. The collected cost data will be used to analyze the AEL factor in the current Indian Housing Block Grant formula.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	261	1.03		3		975

Total Estimated Burden Hours: 975.

Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 30, 2006.

Lillian L. Deitzer,

Department Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E6–14755 Filed 9–6–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Delaware & Lehigh National Heritage Corridor Commission Meeting

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware & Lehigh National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

MEETING DATE AND TIME: Friday, September 8, 2006—1:30 p.m. to 4 p.m.

ADDRESSES: Emrick Technology Center, 2750 Hugh Moore Park Road, Easton, PA 18042.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware & Lehigh National Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988 and extended through Public Law 105–355, November 13, 1998.

FOR FURTHER INFORMATION CONTACT: C. Allen Sachse, Executive Director, Delaware & Lehigh National Heritage Corridor Commission, 2750 Hugh Moore Park Road, Easton PA 18042, (610) 923–3548.

Dated: August 31, 2006.

C. Allen Sachse,

Executive Director, Delaware & Lehigh National Heritage Corridor Commission.

[FR Doc. 06–7483 Filed 9–6–06; 8:45 am]

BILLING CODE 6820–PE–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species.

DATES: Written data, comments or requests must be received by October 10, 2006.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Matson's Laboratory, Milltown, MT, PRT–096048

The applicant requests renewal and amendment of a permit to import samples such as teeth from wood bison (*Bison bison athabascae*) from government-managed herds such as the Mackenzie Sanctuary herd and the Nahanni population in Canada for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: Animal Source Texas, Krum, TX, PRT–120288

The applicant requests a permit to export six live captive-born lemurs (*Lemur catta*) to Leofoo Village Theme Park—Animal Kingdom, Taiwan for the purpose of enhancement of the survival of the species.

Applicant: Southwest Fisheries Science Center, National Marine Fisheries Service, La Jolla, CA, PRT–844694

The applicant requests re-issuance of their permit to import biological samples taken from Kemp's ridley sea turtle (*Lepidochelys kempii*), olive ridley sea turtle (*Lepidochelys olivacea*), hawksbill sea turtle (*Eretmochelys imbricata*), green sea turtle (*Chelonia mydas*), and leatherback sea turtle (*Dermochelys coriacea*), collected in the wild from worldwide locations, for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: Ziccolone and Carrasco Productions, Inc., Las Vegas, NV, PRT–123261

The applicant requests a permit to import five (2 male and 3 female) captive born tigers (*Panthera tigris*) from Mexico to Las Vegas, Nevada for the purpose of enhancement of the species through conservation education, and return them to Mexico within a five-year period.

Dated: August 18, 2006.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E6–14765 Filed 9–6–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Template Safe Harbor Agreement, Draft Environmental Assessment, and Receipt of Applications for Enhancement of Survival Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of applications; request for comments.

SUMMARY: As part of ongoing recovery efforts for the endangered Columbia Basin distinct population segment of the pygmy rabbit (*Brachylagus idahoensis*), this notice advises the public that the U.S. Fish and Wildlife Service (Service or we), in cooperation with the Washington Department of Fish and Wildlife (WDFW), is making available for public review and comment a draft Template Safe Harbor Agreement (Agreement). The proposed Agreement addresses incidental take of Columbia Basin pygmy rabbits (CBPR) that could result from activities associated with ranching, farming, recreation, residential upkeep, conservation programs, and shrub steppe maintenance, restoration, and enhancement on an undeterminable number of non-Federal properties. The area covered by the proposed Agreement (Covered Area) includes portions of 6 counties in central Washington and totals approximately 2,650,000 acres. However, eligible properties that occur within the Covered Area and are most likely to be enrolled under the Agreement would primarily include those that have existing shrub steppe habitat and/or soil conditions that may be capable of supporting the species, either currently or in the foreseeable future. These lands, as well as adjacent properties that may receive intermittent use by CBPRs, such as for exploratory behavior or dispersal between suitable habitats, total approximately 750,000 acres. Implementation of the proposed Agreement would provide the opportunity for interested non-Federal and non-WDFW landowners and managers to voluntarily enroll their lands under the Agreement and receive an enhancement of survival permit pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA). In exchange for the incidental take authority that would be provided by issuance of permits, participants who enroll their lands under this Agreement would implement conservation measures that would be expected to provide a net conservation benefit to the CBPR. The duration of the proposed Agreement is 20 years. The duration of associated permits could be for shorter periods, but would not exceed the duration of the Agreement. More detailed descriptions of the background biological information, Covered Area, proposed covered activities, conservation measures, and expected net conservation benefits are provided in the draft Agreement and in the **SUPPLEMENTARY INFORMATION** section below.

This also announces the receipt and availability for public review and comment three applications for incidental take permits for the enhancement of survival for the CBPR in conjunction with the Agreement. These applications have been received from The Nature Conservancy, Mr. Dave Billingsley and Mr. Peter Lancaster (Applicants). Issuance of these permits would authorize incidental take of CBPRs above the existing baseline conditions of enrolled properties that

may result from the Applicants' proposed activities. Additional applications are expected in the near future from other non-Federal and non-WDFW landowners and managers who propose to enroll their lands under the Agreement. Future applications received by the Service from other prospective participants to the Agreement will be provided for public review in future notices.

In accordance with Service responsibilities pursuant to the National Environmental Policy Act (NEPA), this notice also announces the availability, for public review, of a draft Environmental Assessment (EA) developed in conjunction with the proposed Agreement.

We request comments from the public on the proposed Agreement, current permit applications, and the draft EA, all of which are available for public review and comment. To review the documents, see "Availability of Documents" in the **SUPPLEMENTARY INFORMATION** section below.

DATES: All comments from interested parties must be received on or before October 10, 2006.

ADDRESSES: Written comments concerning this notice should be addressed to Susan Martin, Supervisor, U.S. Fish and Wildlife Service, Upper Columbia Fish and Wildlife Office, 11103 East Montgomery Drive, Spokane, Washington 99206. You may also send comments by facsimile at (509) 891–6748, or by electronic mail at *fw1cbprabbit@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Chris Warren at (509) 893–8020, or Michelle Eames at (509) 893–8010.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Copies of the draft documents and permit applications are available for public inspection, by appointment, during normal business hours at the Upper Columbia Fish and Wildlife Office (see **ADDRESSES**), or they may be viewed on the internet at the following address: *http://www.fws.gov/easternwashington/*. You may also request copies of the documents by contacting the Service's Upper Columbia Fish and Wildlife Office [see **FOR FURTHER INFORMATION CONTACT**]. The Service is furnishing this notice to provide the public, other State and Federal agencies, and tribes an opportunity to review and comment on these documents. All comments received will become part of the public record. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. All comments received from organizations, businesses, or individuals representing organizations or businesses, are available for public inspection in their entirety.

Background

The pygmy rabbit is the smallest rabbit species, and one of only two rabbit species that digs its own burrows, in North America. They are typically found in shrub-steppe habitats that include tall, dense stands of sagebrush (*Artemisia* spp.) and that occur in relatively deep, loose soils suitable for the species' burrowing behavior. Pygmy rabbits are highly dependent on sagebrush for food, particularly during the winter, and, along with their burrows, for shelter and escape throughout the year.

The historic distribution of the pygmy rabbit included portions of Montana, Idaho, Wyoming, Utah, Nevada, California, Oregon, and Washington. The pygmy rabbit has been present within the Columbia Basin, a geographic area that extends from northern Oregon through eastern Washington, for over 100,000 years. This population segment, referred to as the CBPR and which is the subject of the Agreement, historically occurred only in central Washington and is believed to have been disjunct from the remainder of the species' range for at least 10,000 years. The distribution and abundance of the CBPR has declined dramatically since the mid-1990s. Surveys of the last known occupied site, located in southern Douglas County, have not detected any animals since mid-2004, indicating that the population may now be extirpated from the wild.

In 2001, WDFW captured as many of the remaining CBPRs as possible from the last known subpopulation and began a captive breeding program. The Service emergency-listed the CBPR under the ESA in 2001, and fully listed it as endangered in 2003. Major past threats to the CBPR include the loss and fragmentation of suitable shrub-steppe habitats. Major current threats are associated with the extremely small size of the remaining population, which has made it vulnerable to loss of genetic diversity and inbreeding depression. Inbreeding depression was evidenced in the captive population by the poor reproductive performance, declining genetic diversity, increased susceptibility to disease, and, possibly, skeletal abnormalities in the purebred animals. Intercrossing CBPRs with pygmy rabbits of the same taxonomic classification from Idaho helped to restore the genetic diversity and reduce the effects of inbreeding depression in the captive population. The inclusion of intercrossed animals with some minor level of non-Columbia Basin ancestry is considered necessary to achieve Federal recovery objectives for the CBPR in the wild.

WDFW, in conjunction with the Service, proposes to reintroduce captive CBPRs into suitable habitats at two recovery emphasis areas: one in southern Douglas County; and one in northern Grant County, Washington. The Service and WDFW anticipate that, as a likely result of planned reintroduction efforts, CBPRs may become established on non-Federal and/or non-WDFW properties, which prompted development of the proposed Agreement.

The primary objective of the Agreement is to facilitate collaboration between the Service, WDFW, and prospective participants to voluntarily implement conservation measures to benefit the CBPR. An additional objective of the Agreement is to provide incidental take coverage to participants through issuance of enhancement of survival permits, which will relieve them of additional section 9 liability under the ESA if implementation of the conservation measures results in increased numbers or distribution of CBPRs on their enrolled properties.

The proposed Agreement is a "template" in that it establishes general guidelines and identifies minimum management responsibilities for non-Federal/non-WDFW landowners and managers to participate in the Agreement. In addition, the proposed Agreement documents background biological information on the CBPR, ongoing conservation actions and Federal recovery objectives for the species, expected net conservation benefits, and the types of land use activities and eligible properties that may be covered by the Agreement. If the Agreement is signed by the Service and WDFW following public review and comment, the process to consider subsequent permit applications in the future will be significantly streamlined as permit applicants will be able to reference the approved Agreement. NEPA compliance also may be tiered. By streamlining the process and minimizing the time it requires to process additional ESA section 10(a)(1)(A) permit applications consistent with the Agreement, the Service and WDFW anticipate that more private landowners will be likely to participate and implement proactive conservation measures, which will enhance State and Federal recovery efforts for the CBPR.

The proposed Agreement clarifies management responsibilities and expectations of the Service, WDFW, and prospective participants. When signed, the Agreement may serve as the basis for additional enhancement of survival permit applications. To be considered for a permit, each participant will need to complete and submit to the Service a Federal Fish and Wildlife Permit Application Form. An issued permit would authorize incidental take of CBPRs that are above the baseline conditions of their enrolled property.

In addition to submitting a Permit application, prospective participants would also need to develop a Site Plan, in cooperation with the Service, that identifies the specific properties to be enrolled and documents the baseline conditions, existing and proposed future land-use activities, and agreed-upon conservation measures that would be expected to provide a net conservation benefit for the CBPR on the enrolled properties. Each prospective participant and the Service would need to sign the completed Site Plan, which will remain within the scope of, and tiered to, the proposed Agreement.

We anticipate that the proposed Agreement would result in the following benefits to the CBPR: (1) Appropriate habitats will be maintained on enrolled properties and be available for use by CBPRs released at the recovery emphasis areas; (2) habitats on enrolled properties will facilitate dispersal of newly released CBPRs and enhance connectivity of recovery emphasis areas; (3) new subpopulations of CBPRs may form on enrolled properties through natural population expansion; (4) additional wild CBPRs may be located on properties being considered for enrollment and be secured for captive breeding and/or translocation efforts, which will improve the overall recovery outlook for the species; (5) monitoring and future collection of biological information concerning the CBPR (e.g., dispersal, survival, productivity) will be improved through cooperative management efforts on enrolled properties; (6) research and adaptive management for the CBPR can be made more comprehensive if implemented at a broader scale through facilitated access to enrolled properties; and (7) successful implementation of cooperative, voluntary conservation measures will increase public awareness and support for CBPR recovery efforts.

This notice is provided pursuant to section 10(c) of the ESA and NEPA regulations (40 CFR 1506.6). The Service will evaluate the permit applications, associated documents, and comments submitted thereon to determine whether the proposed Agreement and permit applications meet the requirements of NEPA regulations and section 10(a) of the ESA. If it is determined that the requirements are met, the Agreement will be finalized and signed and these permits will be issued to the Applicants for incidental take of the covered species. The final NEPA and permit determinations will not be completed until after the end of the 30-day comment period, and will fully consider all public comments received during the comment period.

Dated: August 14, 2006.

Carolyn A. Bohan,

Acting Deputy Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon.

[FR Doc. E6–14773 Filed 9–6–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein.

Marine Mammals

Permit number	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
121219	Michael J. Wilmet	71 FR 28881; May 18, 2006	August 16, 2006.
123246	Richard J. Edelen	71 FR 31197; June 1, 2006	August 14, 2006.
123490	Gibson D. Lewis	71 FR 31197; June 1, 2006	August 14, 2006.
125092	John W. Hoose, Jr.	71 FR 31197; June 1, 2006	August 14, 2006.
125138	Carl O. Clapp, III	71 FR 31197; June 1, 2006	August 15, 2006.

Dated: August 18, 2006.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E6–14764 Filed 9–6–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–140–1610–DT–009C]

Notice of Availability of the Proposed Roan Plateau Resource Management Plan Amendment/Final Environmental Impact Statement, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 *et seq.*) and the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. 1701 *et seq.*), the Bureau of Land Management (BLM) has prepared a Proposed Resource Management Plan Amendment/Final Environmental Impact Statement (PRMPA/FEIS) for the Roan Plateau planning area.

DATES: The BLM Planning Regulations (43 CFR 1610.5–2) state that any person

who participated in the planning process, and has an interest which is or may be adversely affected, may protest BLM's approval or amendment of a RMP. You must file a protest within 30 days of the date that the Environmental Protection Agency publishes this Notice of Availability in the **Federal Register**. Instructions for filing of protests are described on the inside front cover of the PRMPA/FEIS and in the Supplementary Information section of this notice.

ADDRESSES: To obtain a copy of the document, visit the Web site at *http:www.blm.gov/rmp/co/roanplateau* and follow the instructions, or write to: Roan Plateau Request, Glenwood Springs Field Office, Bureau of Land Management, 50629 Highways 6 & 24, Glenwood Springs, Colorado 81601.

FOR FURTHER INFORMATION CONTACT: Greg Goodenow—Planning and Environmental Coordinator, Steve Bennett—Associate Field Manager, or Jamie Connell—Field Manager at the Glenwood Springs Field Office, Bureau of Land Management, 50629 Highways 6 & 24, Glenwood Springs, Colorado 81601. The Glenwood Springs Field Office telephone number is (970) 947–2800. All three can be reached via e-mail at *colorado_roanplateau@co.blm.gov.*

SUPPLEMENTARY INFORMATION: Copies of the PRMPA/FEIS have been sent to affected Federal, State, tribal, and local government agencies and to interested parties. Copies of the PRMPA/FEIS are available for public inspection at the BLM Glenwood Springs Field Office (50629 Highways 6 & 24, Glenwood Springs, Colorado) or the White River Field Office (73544 Highway 64, Meeker, Colorado, 81641) during normal working hours (7:45 a.m. to 4:30 p.m., except weekends and holidays).

Interested persons may also review the PRMPA/FEIS on the Internet at *http:www.blm.gov/rmp/co/roanplateau.* Comments on the Draft RMP Amendment/EIS received from the public and internal BLM review comments were incorporated into the PRMPA/FEIS. Public comments resulted in the addition of clarifying text, and development of a new alternative with impacts within the range of impacts of the alternatives analyzed in the Roan Plateau Draft RMP Amendment/EIS.

The Roan Plateau Resource Management Plan Amendment (RMPA) and Environmental Impact Statement (EIS) presents options for management of BLM administered lands in the Roan Plateau Planning Area. This includes Naval Oil Shale Reserves (NOSRs) Numbers 1 and 3, for which management was transferred from the U.S. Department of Energy (DOE) to BLM in 1997. The Planning Area, which is in west-central Colorado, includes approximately 73,602 acres of land (Federal surface, Federal mineral estate, or both), and is located in Garfield County with a small portion in southern Rio Blanco County. The Planning Area lies north of Interstate 70 (I–70) between the towns of Rifle and Parachute.

Transfer of NOSRs 1 and 3 from DOE to BLM was effected by the National Defense Authorization Act for Fiscal Year 1998, Public Law 105–85 (the "Transfer Act"). The Roan Plateau RMP Amendment/EIS analyzes options for implementing the Transfer Act, which directed the BLM to enter into leases, as soon as practicable, with one or more private entities for the purpose of exploration, development, and production of petroleum. In addition, the Transfer Act stipulates that the transferred lands are to be managed in accordance with the Federal Land Policy and Management Act (FLPMA) and other laws applicable to public lands.

Five alternatives were published in the Draft RMPA/EIS in November 2004 ranging from leaving 44,267 acres of the 73,602 acre planning area closed to oil and gas leasing (No Action Alternative) to the most development-oriented alternative (Alternative V). All alternatives would have allowed some development, and would have provided some environmental safeguards. Alternative III (Preferred) would have deferred leasing atop the plateau until the lower elevations were substantially developed, and would have provided substantial environmental mitigation atop the plateau. Following the 90-day public comment period (extended to 120 days), BLM continued to work with Cooperating Agencies, including the Colorado Department of Natural Resources (and its agencies the Colorado Division of Wildlife, Colorado Oil and Gas Conservation Commission, the Colorado Geological Survey, and Colorado Division of Parks), Garfield County, Rio Blanco County, City of Rifle, Town of Parachute, and City of Glenwood Springs. As a result of the Cooperating Agency meetings and discussion, the Colorado Department of Natural Resources (CDNR) proposed an innovative approach to oil and gas development atop the plateau intended to accommodate the development of the underlying gas resource while providing substantial levels of natural resource protection. The CDNR approach, which has been adopted by the BLM as the preferred alternative, would mitigate impacts to sensitive resources by requiring phased and clustered development within an Undivided Federal Unit on the upper plateau. Mitigation under the CDNR proposal would also result from limiting the amount of land in a disturbed condition at any one time to approximately 1 percent of the total area of the upper plateau (350 acres).

Alternatives considered represent possible amendments to the current management direction provided by the 1984 Resource Management Plan (RMP) for the Glenwood Springs Resource Area (GSRA), revised in 1988 and amended in 1991, 1996, 1997, 1999, and 2002, and the 1997 White River Resource Area (WRRA) RMP.

The overarching goal of the PRMP/FEIS is to protect key ecological, visual, and recreational values while allowing for the leasing and development of oil and gas resources under strict and performance-based standards:

- The PRMP/FEIS would designate four Areas of Critical Environmental Concern (ACECs), including East Fork Parachute Creek and Trapper/Northwater Creek atop the plateau and Magpie Gulch and Anvil Points along and below the cliffs, with a combined area of 21,034 acres.
- The upper area of the plateau would be identified as the Parachute Creek Watershed Management Area to meet the special management requirements of this particular resource and encompasses 33,575 acres.
- Protection of stream segments found eligible for designation as Wild and Scenic Rivers (WSRs) would also be provided.
- Motorized and mechanized travel would be limited to designated routes throughout the Planning Area, except for over-snow travel by snowmobile with at least 12 inches of snow cover, and an existing area of concentrated OHV use to be designated as the Hubbard Mesa OHV Riding Area.

Instructions for filing a protest with the Director of the BLM regarding the PRMP/FEIS may be found at 43 CFR 1610.5–2. A protest may only raise those issues which were submitted for the record during the planning process. E-mail and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, the BLM will consider the e-mail or faxed protest as an advance copy and it will receive full consideration. If you wish to provide BLM with such advance notification, please direct faxed protests to the attention of the BLM

protest coordinator at 202–452–5112, and e-mails to *Brenda_Hudgens-Williams@blm.gov*. Please direct the follow-up letter to the appropriate address provided below. The protest must contain:

(1) The name, mailing address, telephone number and interest of the person filing the protest;

(2) A statement of the issue or issues being protested;

(3) A statement of the part or parts of the plan amendment (Proposed Plan) being protested;

(4) A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the record; and

(5) A concise statement explaining why the State Director's decision is believed to be wrong.

All protests must be in writing and mailed to one of the following addresses:

Regular Mail: Director (210), Attention: Brenda Williams, P.O. Box 66538, Washington, DC 20035.

Overnight Mail: Director (210), Attention: Brenda Williams, 1620 L Street, NW., Suite 1075, Washington, DC 20036.

Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your protest. Such requests will be honored to the extent allowed by law. All protests from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety. The Director will promptly render a decision on protests. The decision will be in writing and will be sent to the protesting party by certified mail, return receipt requested. The decision of the Director is the final decision of the Department of the Interior.

Dated: May 17, 2006.

Jamie E. Connell,

Field Manager.

This document was received at the Office of the Federal Register on August 31, 2006.

[FR Doc. E6–14695 Filed 9–6–06; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

White-tailed Deer Management Plan/ Environmental Impact Statement, Valley Forge National Historical Park, King of Prussia, PA

AGENCY: National Park Service, Interior.

ACTION: Notice of intent to prepare a White-tailed Deer Management Plan/ Environmental Impact Statement, Valley Forge National Historical Park, King of Prussia, Pennsylvania.

SUMMARY: Under the provisions of the National Environmental Policy Act of 1969, the National Park Service (NPS) will prepare a White-tailed Deer Management Plan/Environmental Impact Statement (EIS) for Valley Forge National Historical Park (NHP), King of Prussia, Pennsylvania. The purpose of this plan and EIS is to support long-term protection, preservation, and restoration of native vegetation and other natural resources within the park. A scoping brochure will be prepared that details the issues identified to date, and possible alternatives to be considered. Brochures may be obtained from Kristina Heister, Natural Resources Manager, Valley Forge NHP or from the Valley Forge NHP Web site (*http://www.nps.gov/vafo*).

DATES: The NPS will accept comments from the public regarding this Notice of Intent until October 10, 2006. In addition, several public scoping meetings will be conducted in the Valley Forge area beginning in Fall 2006. Please check local newspapers, the park Web site or contact Kristina Heister.

ADDRESSES: Information will be available for public review and comment at the Valley Forge NHP library by appointment (Contact *dona_mcdermott@nps.gov*), local public libraries, park Web site at *http://www.nps.gov/vafo*, and the Planning, Environment and Public Comment (PEPC) Web site at *http://parkplanning.nps.gov*.

FOR FURTHER INFORMATION CONTACT: Kristina Heister, Natural Resources Manager, Valley Forge NHP, 1400 North Outer Line Drive, King of Prussia, Pennsylvania 19406, or *kristina_heister@nps.gov*.

SUPPLEMENTARY INFORMATION: A major purpose of Valley Forge National Historical Park is preservation of the "cultural and natural resources that embody and commemorate the Valley Forge experience and the American Revolution." The purpose of this plan and environmental impact statement is to support long-term protection, preservation, and restoration of native vegetation and other natural resources within the park. A deer management plan is needed at this time to address browsing by an increasing number of deer over the past two decades and resulting changes in the species composition, abundance, and distribution of native plant communities and associated wildlife. The plan will also provide opportunities for coordinating management actions with other jurisdictional entities. The plan will develop an informed, scientifically-based approach to deer management that will maintain a white-tailed deer population within the park while ensuring the natural resources that support the purposes of Valley Forge National Historical Park remain in good condition.

A set of objectives further describing the purpose of the plan will be included in the public scoping brochure. A list of preliminary alternatives that will be considered to meet the purpose and need, including continuation of current management (no-action alternative) also will be provided.

Persons commenting on the purpose, need, objectives, preliminary alternatives, or any other issues associated with the plan, may submit comments by any one of several methods (see below). The dates and times of public scoping meetings will be advertised a minimum of 15 days in advance. Notice of the meetings will be posted in local newspapers, libraries, on the park Web site and the Planning, Environment and Public Comment (PEPC) Web site. In addition, a public scoping brochure will be mailed to interested parties.

Comments may be mailed to Natural Resource Management, Valley Forge NHP, 1400 North Outer Line Drive, King of Prussia, Pennsylvania 19406 or sent via the Internet at *http://parkplanning.nps.gov*. Please submit Internet comments as a text file avoiding the use of special characters and any form of encryption. Please put "Deer Management" in the subject line and include your name and return address in your Internet message. If persons commenting do not receive a receipt confirmation from the system, please contact Kristina Heister.

Our practice is to make comments, including names, home addresses, home phone numbers, and e-mail addresses of respondents, available for public review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you wish us to consider withholding this

information you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

Dated: August 30, 2006.

Mary Bomar,

Regional Director, Northeast Region.

[FR Doc. E6–14783 Filed 9–6–06; 8:45 am]

BILLING CODE 4310–DJ–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 014–2006]

Privacy Act of 1974; System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Justice Management Division (JMD), Department of Justice (DOJ), proposes to revise a system of records entitled "Nationwide Joint Automated Booking System (JABS), Justice/DOJ–005," last published April 23, 2001 (66 FR 20478). JABS is an important Department of Justice (Department) information sharing project among its law enforcement components: Bureau of Prisons (BOP), Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI), U.S. Marshals Service (USMS), and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). Additionally, the customs and border security functions within the Border and Transportation Security (BTS) Directorate of the Department of Homeland Security (DHS) are using JABS.

The JABS Program directly supports the President's Homeland Security initiative by automating the booking process and providing a secure mechanism to rapidly and positively identify an individual based on a fingerprint submission to the IAFIS. The JABS Program is a multi-agency initiative that is not restricted to Department of Justice users. In June 2004, the USMS added the Inter-Agency booking functionality to their Automated Booking System (ABS) to provide automated submission of booking packages for Federal law enforcement agencies that routinely bring their suspects to the USMS for booking. The strategic goal of the JABS Program is to facilitate electronic access to IAFIS for any Federal law enforcement agency/office that has a requirement to submit fingerprints to the FBI.

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be given a 30-day period in which to comment on the revised system of records. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires that it be given a 40-day period in which to review the system notice.

Therefore, please submit any comments by October 17, 2006. The public, OMB, and the Congress are invited to send written comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building), (202) 307–1823.

A description of the system of records is provided below.

In accordance with 5 U.S.C. 552a(r), DOJ has provided a report on the revised system to OMB and the Congress.

Dated: August 29, 2006.

Lee J. Lofthus,

Acting Assistant Attorney General for Administration.

JUSTICE/DOJ–005

SYSTEM NAME:

Nationwide Joint Automated Booking System (JABS).

SECURITY CLASSIFICATION:

Sensitive but Unclassified.

SYSTEM LOCATION:

JABS Program Management Office, Department of Justice, Washington, DC 20530 with data collection sites in multiple federal locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Alleged criminal offenders who have been detained, arrested, booked, or incarcerated. The remainder of this notice will refer to all persons covered by the System as "alleged criminal offender" or "arrestee".

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include certain generic or "common" data elements which have been collected by an arresting federal agency at its automated booking station (ABS). An agency may book an alleged criminal offender on behalf of another agency which performed the arrest. Such common data (certain data elements) have been identified by law enforcement as those case and biographical data routinely collected by the law enforcement community during the booking process, *e.g.*, name, date and place of birth, citizenship, hair and eye color, height and weight, occupation, social security number, place, date and time of arrest and jail location, charge, disposition, any other pertinent information related to known activities relevant or unique to the subject. Finally, such data may include electronic fingerprints, mugshots, and pictures of applicable scars, marks, and tattoos.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1324 and 1357(f) and (g); 28 U.S.C. 534, 564, 566; 5 U.S.C. 301 and 44 U.S.C. 3101; 18 U.S.C. 3621, 4003, 4042, 4082, 4086; 26 U.S.C. 7608; and Comprehensive Drug Abuse Prevention and Control Act of 1970 (Pub. L. 91–513), 21 U.S.C. 801 *et seq.* and Reorganization Plan No. 2 of 1973.

PURPOSE:

Nationwide JABS enables the conduct of automated booking procedures by participating law enforcement organizations and provides an automated capability to transmit fingerprint and image data to the Federal Bureau of Investigation's (FBI) Integrated Automated Fingerprint Identification System (IAFIS), Justice/FBI–009 Fingerprint Identification Records Systems (FIRS). JABS maintains a repository of common offender data elements for identification of arrestees by participating federal law enforcement organizations. JABS eliminates repetitive booking of offenders for a single arrest and booking, and thereby eliminates the need for duplicate bookings, i.e., the collection of much the same data by multiple agencies in prisoner processing activities involving such agencies from arrest through incarceration. In addition, JABS standardized booking data elements, enabling cross-agency sharing of booking information, enhancing cooperation among law enforcement agencies, and reducing the threat to law enforcement officials and the public by facilitating the rapid and positive identification of offenders.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Where necessary and/or appropriate, the DOJ may disclose relevant information from the JABS repository and may allow electronic access as follows:

a. To authorized federal law enforcement agencies to input and retrieve booking and arrests data on criminal offenders. In addition, the JABS repository may be electronically accessed by these agencies for other law enforcement purposes such as to learn about the arrest of a fugitive wanted in several jurisdictions, to verify the identity of an arrestee, or to assist in the criminal investigation activities.

b. To other judicial/law enforcement agencies, *i.e.*, courts, probation, and parole agencies, for direct electronic access to JABS to obtain applicable data which will assist them in performing their official duties.

c. To any criminal, civil, or regulatory law enforcement authority (whether federal, state, local, territorial, tribal, or foreign) where the information is relevant to the recipient entity's law enforcement responsibilities.

d. In an appropriate proceeding before a court, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

e. To complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigation or case arising from the matters of which they complained and/or of which they were a victim.

f. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

g. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

h. To the news media and the public, pursuant to 28 CFR 50.2, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

i. To the National Archives and Records Administration (NARA) for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

j. The Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not Applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in computerized media and printed copies. Any paper records kept by individuals will be appropriately secured.

RETRIEVABILITY:

Data may be retrieved by name, identifying number, or other data elements.

SAFEGUARDS:

Nationwide JABS has a combination of technical elements that, together, integrate into a total security infrastructure to ensure access is limited to only pre-authorized users. The key technical design elements of this architecture include: Encrypted user authentication, redundant firewalls, virtual private networks, nonrepudiation, data encryption, anti-virus content inspection, and intrusion detection capabilities. Access to the systems equipment is limited to pre-authorized personnel through physical access safeguards that are enforced 24 hours a day, seven (7) days a week. Facilities and offices which house computer systems are protected at all times by appropriate locks, security guards, and/or alarm systems.

RETENTION AND DISPOSAL:

a. Temporary. Delete from the JABS data base 99 years after the date of the first entry.

b. Fingerprints submitted by law enforcement agencies are removed from the system and destroyed upon the request of the submitting agencies. The destruction of fingerprints under this procedure results in the deletion from the system of all arrest information related to those fingerprints.

c. Fingerprints and related arrest data are removed from the JABS upon receipt of court orders for expunction when accompanied by necessary identifying information.

SYSTEM MANAGER(S) AND ADDRESS(ES):

JABS Program Management Office, U.S. Department of Justice, Washington, DC 20530.

NOTIFICATION PROCEDURE:

Same as "Record Access Procedure."

RECORD ACCESS PROCEDURE:

Inquiries must be addressed in writing and should be sent to the JABS Program Management Office, at above address. Provide name, assigned computer location, and a description of information being sought, including the time frame during which the record(s) may have been generated. Provide verification of identity as instructed in 28 CFR 16.41(d).

CONTESTING RECORDS PROCEDURE:

Same as above.

RECORDS SOURCE CATEGORIES:

The record subject; federal law enforcement personnel; the courts; and medical personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(j)(2) and (k)(2), the Attorney General has exempted records in this system from subsections (c)(3) and (4), (d), (e)(1), (2) and (3), (4)(G) and (H), (e)(5), (e)(8), (f) and (g) of the Privacy Act. Rules were promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c), and (e) and are codified at 28 CFR 16.131.

[FR Doc. E6–14828 Filed 9–6–06; 8:45 am]
BILLING CODE 4410–ET–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

August 31, 2006.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained from *RegInfo.gov* at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs,

Attn: OMB Desk Officer for the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–6974 (these are not a toll-free numbers), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration.

Type of Review: Revision of currently approved collection.

Title: Labor Organization and Auxiliary Reports.

OMB Number: 1215–0188.

Frequency: Annually and Semi-annually.

Type of Response: Reporting and Recordkeeping.

Affected Public: Not-for-profit institutions.

Number of Respondents: 27,849.

REPORTING AND RECORDKEEPING BURDEN HOURS

Forms	Responses	Hours per respondent for reporting	Reporting burden hours	Hours per respondent for recordkeeping	Recordkeeping burden hours	Total hours
LM–1	255	0.83	212	0.08	20	232
LM–2	3,827	146.00	558,742	390.00	1,492,530	2,051,272
LM–3	10,812	52.00	562,224	64.00	691,968	1,254,192
LM–4	6,355	8.00	50,840	2.00	12,710	63,550
LM–10	1,766	0.50	883	0.08	141	1,024
LM–15	354	1.50	531	0.33	117	648
LM–15A	68	0.33	22	0.03	2	24
LM–16	95	0.33	31	0.02	2	33
LM–20	90	0.33	30	0.03	3	33
LM–21	11	0.50	6	0.08	1	7
LM–30	3,494	0.50	1,747	0.08	280	2,027
S–1	179	0.50	90	0.08	14	104
SARF*	543	0.17	92	0.03	16	108
Total	27,849		1,175,450		2,197,804	3,373,254

Note: Some numbers may not add due to rounding.
* Simplified Annual Report Format.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Congress enacted the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), to provide for the disclosure of information on the financial transactions and administrative practices of labor organizations. The statute also provides, under certain circumstances, for reporting by labor organization officers and employees, employers, labor relations consultants, and surety companies. Section 208 of the LMRDA authorizes the Secretary to issue rules and regulations prescribing the form of the required reports. The reporting provisions were devised to implement a basic tenet of the LMRDA: The guarantee of democratic procedures and safeguards within labor organizations that are designed to protect the basic rights of union members. Section 205 of the LMRDA provides that the reports are public information.

The Office of Labor-Management Standards (OLMS) administers the reporting provisions of the LMRDA to the statute (29 U.S.C. 431 *et seq.*) and the implementing and interpreting regulations (29 CFR Chapter IV).

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. E6–14833 Filed 9–6–06; 8:45 am]

BILLING CODE 4510–23–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (06–064)]

NASA Advisory Council; Science Committee; Planetary Protection Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration (NASA) announces a meeting of the Planetary Protection Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The meeting will be held for the purpose of soliciting from the scientific community and other persons scientific and technical information relevant to program planning.

DATES: Thursday, September 28, 2006, 8:30 a.m. to 5:30 p.m., and Friday, September 29, 8:30 a.m. to 5 p.m. Eastern Daylight Time.

ADDRESSES: Marriott Georgetown University Conference Center, 3800 Reservoir Road, NW., Washington, DC 20057.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–4118, or *mnorris@nasa.gov*.

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes the following topics:

- Status of NASA Planetary Exploration Activities/Implementations.
- The COSPAR Assembly in Beijing.
- Special Regions Concept to Mars Planetary Protection Requirements.
- Protection Requirements for Humans on Mars and Lunar Opportunities for Preliminary Preparation.
- Preliminary Protection Future Planning, Responsibilities, and International Cooperation.

The meeting will be open to the public up to the seating capacity of the room. Findings and recommendations developed by the Subcommittee during its meeting will be submitted to the Science Committee of the NAC.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a visitor's register.

Dated: August 30, 2006.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. E6–14841 Filed 9–6–06; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–460; Nuclear Project No. 1 (WNP–1)]

Energy Northwest; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is terminating Construction Permit No. CPPR–134 issued to Washington Public Power Supply System (permittee, now doing business as Energy Northwest) for the Nuclear Project No. 1 (WNP–1). The facility is located at Energy Northwest's site on the Department of Energy's Hanford Reservation in Benton County, Washington, approximately 8 miles north of Richland, Washington.

Environmental Assessment

Identification of Proposed Action

The proposed action is issuance of an Order that would terminate Construction Permit No. CPPR–134 for the partially completed and previously deferred WNP–1 facility. Because the construction permit for Unit 4 (WNP–4) was effectively subsumed in the Unit 1 construction permit on November 27, 1985, the proposed action would terminate NRC oversight at the Unit 1 and Unit 4 site area. The proposed action is in response to Energy Northwest's request dated August 9, 2005, supplemented by letter dated July 7, 2006.

The Need for the Proposed Action

The proposed action is needed to allow the permitee to undertake other activities (aside from the construction and possible future operation of a nuclear power plant) at the WNP–1 and WNP–4 site area. For example, Energy Northwest is investigating the possible use of the WNP–¼ site for an industrial park. An application for an operating license was filed with the NRC for WNP–1; the Operating License Proceeding was terminated by the Atomic Safety and Licensing Board on July 26, 2000. The construction permit for Unit 1 would have expired on June 1, 2011. Energy Northwest requested the termination of the WNP–1 construction permit because it has determined that it will not complete construction of either WNP–1 or WNP–4; it has terminated the construction of the nuclear power plants as well as the maintenance of layup activities such that neither unit can be operated as a utilization facility.

Environmental Impacts of the Proposed Action

The WNP–1 and adjacent WNP–4 sites are located on a portion of the Hanford Reservation in Washington State that the permittee has leased from U.S. Department of Energy. The environmental impacts associated with the construction of the facility have been previously discussed and evaluated in the Final Environmental Statement (FES) prepared as part of the NRC staff's review of the construction permit application, NUREG–75/012, March 1975. Construction was suspended on the partially-completed WNP–1 Project in 1982.

The construction of WNP–1 was approximately 65 percent complete; therefore, most of the construction impacts discussed in the FES have already occurred. This action would terminate the authorization to conduct any of the remaining construction activities described in the FES and would also terminate NRC's oversight for activities at the site area.

Restoration of the site is being conducted in accordance with Washington State Energy Facility Site Evaluation Council (EFSEC) Resolution No. 302 (Resolution). This resolution contains the requirements and schedule for restoration of the WNP–1 and WNP–4 sites, as agreed to by Energy Northwest, Bonneville Power Administration, U.S. Department of Energy, and the State of Washington. This agreement, approved by the four parties in December 2003, stipulated restoration activities in two phases—near term (within 18 to 24 months) and final restoration (within approximately 26 years, or by the end of 2029). The NRC staff assessed the scope of the restoration activities addressed in the Resolution and has determined that the goals and objectives of such activities, when carried out, would achieve an environmentally stable and aesthetically acceptable site. Energy Northwest has stated that all near term activities have been completed.

Near term restoration activities that have been completed at the WNP–1 and WNP–4 site area include: removal of hazardous materials (such as asbestos, mercury vapor lights, transformer mineral oil or polychlorinated biphenyls [PCBs], diesel fuel, lubricants, and solvents); installation of secure access doors or permanent sealing of points of entry to the remaining structures on the sites; relocation of fencing and installation of new fencing to minimize the land area and to reduce unauthorized entry potential such that security patrols are not required; installation of "No Trespassing" signs; elimination of fall hazards; fencing of exterior substations and distribution load centers to minimize the potential for entry; and removal of temporary buildings that are neither safe nor feasible for reuse.

The Unit 1 Containment Building has been cleaned to remove trash, debris, overhead hazards, scaffolding, and formwork. Under the Resolution, this building will remain intact as constructed—no further actions will be needed for the Unit 1 containment at the final restoration phase.

The Unit 4 Containment Building has been cleaned to remove trash, debris, overhead hazards, scaffolding, and formwork. This building was filled with compacted earth to elevation 479′ and a 6″ thick concrete floor was poured at that level. (The ground elevation around the containment and general services buildings at WNP–1 and WNP–4 is approximately 455′ above mean sea level.) Openings in the Unit 4 Containment Building were either sealed or fitted with anti-bird roosting screens; building protrusions were minimized or fitted with anti-bird roosting screens. Provision was made for water drainage. Under the Resolution, this building will remain in its existing condition—no further actions will be needed for the Unit 4 containment at the final restoration phase.

The Unit 1 General Services Building has had concrete roofs poured at elevations 518′ and 543′. Under the Resolution, this building will remain intact as constructed. The upper levels of the Unit 4 General Services Building interior has been cleaned to remove trash, debris, overhead hazards, scaffolding, and formwork. The lower areas of the Unit 4 General Services Building, where no access is required, will not be cleaned. The walls have been demolished to the 501′ elevation. Metal roofing with a (painted polystyrene) coating has been installed at elevations 501′ and 479′ to seal the building. Under the Resolution, both buildings will remain in their current configuration—no further actions will be needed for the Unit 1 or the Unit 4 General Services Building at the final restoration phase.

The interior of the Unit 1 Turbine-Generator Building has been cleaned to remove trash, debris, and overhead hazards. This building will be demolished and removed at the Final Restoration phase. Under the Resolution, the Unit 1 turbine pedestal will remain after demolition and removal of the building.

Construction of the WNP–4 Turbine-Generator Building was halted following completion of the building shell (structural steel, floor slabs, walls, roof, exterior siding, etc.). These elements were demolished in 1990 prior to the restoration agreement with EFSEC. Only the turbine pedestal and portions of the ground floor slab remain. Under the Resolution, the Unit 4 turbine pedestal will remain intact as constructed—no further actions will be needed for the Unit 4 turbine pedestal at the final restoration phase.

The Unit 1 and Unit 4 spray ponds have had separate fences installed around the ponds. The interiors of the Unit 1 and Unit 4 Pump House Buildings have been cleaned to remove trash, debris, overhead hazards, scaffolding, and formwork. Under the Resolution, final restoration for these structures will consist of removal of the buildings and backfilling of the spray ponds.

The Unit 1 and Unit 4 cooling towers have had chain link fences with locked gates installed to secure access to the cooling tower stairwells. Anti-bird screens have been added to minimize access by birds. Under the Resolution, final restoration activities for the Unit 1 and Unit 4 cooling towers will include demolition of the existing structures to grade and removal of the basin slabs.

During the final restoration phase, all slabs and most structures (except for the Containment Buildings, General Services Buildings, and turbine pedestals) will be removed. The landfill will be closed and capped, the large underground circulating water lines will be backfilled, all roads and rail lines will be removed and graded, and all yard areas will be cleaned, contoured, graded and seeded implementing best management practices. After the final restoration activities have been completed, the structures remaining permanently in place at the sites will be limited to the Units 1 and 4 Containment Buildings, General Services Buildings, and turbine pedestals.

The permit issued by the Army Corps of Engineers for the submerged river water intake structure requires that if Energy Northwest decides to abandon the intake structure, Energy Northwest must restore the area to a condition satisfactory to the district engineer. At this time, the river intake structure may be a part of future plans for use of the site and abandonment is not under consideration.

The NRC staff conducted an audit of the site area encompassing WNP–1 and WNP–4 on April 24 and 25, 2006, to determine whether posession of source, byproduct or special nuclear material was controlled as authorized, to determine whether the site area is being maintained in a safe and stable manner, and to assess key environmental aspects of the site. The staff observed selected portions of the Containment Buildings, General Services Buildings, spray ponds, cooling towers, the Unit 1 Turbine-Generator Building, Pump House Buildings, and other site buildings. The staff also observed that erosion controls were being maintained. The staff assessed the effectiveness of the measures already taken under the near term phase of site restoration plan and concluded that restoration activities appear to meet the goals and objectives of Washington State EFSEC Resolution No. 302.

Based on the foregoing, the NRC staff has concluded that the proposed action would have no significant environmental impact. The staff also concluded that there is reasonable assurance that the remaining site restoration activities under the Resolution will achieve an environmentally stable and aesthetically acceptable site for whatever non-nuclear use may conform with local zoning laws and Department of Energy authorizations.

The site area cannot be used for the utilization facility envisioned under CPPR–134. No nuclear fuel was ever received on site. The site area is in an environmentally stable condition that poses no significant hazard to persons onsite. The facility cannot be operated in its present condition. Because this proposed action would only terminate the construction permit, it does not involve any different impacts or involve a significant change to those impacts described and analyzed in the FES. Consequently, an environmental impact statement addressing the proposed action is not required.

Because the proposed construction permit termination Order is for a project that was suspended 24 years ago, the action is judged to be administrative in nature and would have no significant environmental impact. It does not involve any different impacts as described and analyzed in the Staff's FES and will not involve any impacts beyond those already described and analyzed in the FES. The proposed action will terminate the NRC's involvement on the project.

Alternatives to the Proposed Action

The only alternative to the proposed action would be to deny the request, *i.e.*, the "no action" alternative. This alternative would still result in the conduct of the activities prescribed for final restoration in the four-party agreement dated December 3, 2003. This alternative would necessitate continued oversight by NRC of a project that has ceased construction and has no likelihood of completion; that will not be operated as a utilization facility; that has stable environmental conditions; and that continues to be subject to oversight by other regulatory agencies—all with no significant environmental benefit. The environmental impacts of the proposed action and the "no action" alternative are similar.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the FES for WNP–1.

Agencies and Persons Contacted

In accordance with its stated policy, on August 31, 2006, the staff consulted with the Washington State Official, Mr. Richard Cowley, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that this action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for this action.

For further details with respect to this action, see the licensee's request for construction permit termination dated August 9, 2005, supplemented by letter dated July 7, 2006. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agency wide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4029 or 301–415–4737, or send an e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland this 31st day of August 2006.

For the Nuclear Regulatory Commission.

Brian J. Benney,

Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–14774 Filed 9–6–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Meeting on Planning and Procedures; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold a Planning and Procedures meeting on September 18, 2006, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland. The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Monday, September 18, 2006—8:30 a.m.–9:30 a.m.

The Committee will discuss proposed ACNW activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Antonio F. Dias (Telephone: 301/415–6805) between 8:15 a.m. and 5 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 8:15 a.m. and 5:00 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: August 31, 2006.

Michael R. Snodderly,

Branch Chief, ACRS/ACNW.

[FR Doc. 06–7504 Filed 9–5–06; 10:18 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide: Issuance, Availability

The U.S. Nuclear Regulatory Commission (NRC) has issued for public comment a draft of a new guide in the agency's Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide, entitled "Combined License Applications for Nuclear Power Plants (LWR Edition)," is temporarily identified by its task number, DG–1145, which should be mentioned in all related correspondence. This proposed regulatory guide contains guidance for use in submitting combined license (COL) applications in compliance with the Commission's regulations in Title 10 Part 52 of the Code of Federal Regulations (10 CFR Part 52), "Early Site Permits; Design Certifications; and Combined Licenses for Nuclear Power Plants." Specifically, 10 CFR Part 52 governs the issuance of early site permits, standard design certifications, and combined licenses for nuclear power plants.

In February 1972, the NRC initially published Regulatory Guide 1.70, "Standard Format and Content of Safety Analysis Reports for Nuclear Power Plants (LWR Edition)," which the nuclear industry has since used in preparing applications for construction permits and operating licenses for new nuclear power plants. The NRC most recently revised Regulatory Guide 1.70 in November 1978 and, since that time, the Commission has established a new process for licensing new reactors. That process, described in detail in 10 CFR Part 52, allows an applicant to reference an early site permit (ESP), a design certification (DC), both, or neither, in a COL application. The NRC has developed Draft Regulatory Guide DG–1145 to provide guidance to applicants who plan to use this new process.

The NRC initially issued 10 CFR Part 52 in April 1989 to offer alternative licensing (ESP, standard DC, COL, and manufacturing license) processes for new nuclear power plants. More recently, the agency proposed a revision of the rule on March 13, 2006, (71 FR 12782), to clarify the applicability of various requirements to each of the licensing processes. This Draft Regulatory Guide, DG–1145, is based on the proposed revised rule. The specific requirements pertaining to technical requirements for content of applications are contained in proposed 10 CFR 52.79, "Contents of applications, general requirements" and proposed 10 CFR 52.80, "Contents of applications, additional technical information." The final Regulatory Guide will be conformed to the final rule that is adopted by the Commission, and will be issued when that final rule is available.

At this time, the NRC staff is soliciting comments on Draft Regulatory Guide DG–1145. Comments may be accompanied by relevant information or supporting data, and should mention DG–1145 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS). Personal information will not be removed from your comments. You may submit comments by any of the following methods.

Mail comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

E-mail comments to: NRCREP@nrc.gov. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov/cgi-bin/rulemake?source=rg&st=draftrg*. Address questions about our rulemaking

Web site to Carol A. Gallagher at (301) 415–5905 or by e-mail to *CAG@nrc.gov*.

Hand-deliver comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Fax comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 415–5144.

Requests for technical information about Draft Regulatory Guide DG–1145 may be directed to the NRC Project Manager, Eric Oesterle, at (301) 415–1365 or *ERO1@nrc.gov*.

Comments would be most helpful if received by October 21, 2006. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of Draft Regulatory Guide DG–1145 are available through the NRC's public Web site under Draft Regulatory Guides in the Regulatory Guides document collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/*. Electronic copies are also available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html*), under Package Accession #ML061800499.

In addition, Draft Regulatory Guide DG–1145 and other related publicly available documents, including public comments received, can be viewed electronically on computers in the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will make copies of documents for a fee. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *PDR@nrc.gov*.

Please note that the NRC does not intend to distribute printed copies of Draft Regulatory Guide DG–1145, unless specifically requested on an individual basis. Such requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Reproduction and Distribution Services Section; by e-mail to *DISTRIBUTION@nrc.gov*; or by fax to (301) 415–2289. Telephone requests cannot be accommodated.

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(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 1st day of September, 2006.

For the U.S. Nuclear Regulatory Commission.

Charles E. Ader,

Acting Director, Division of Risk Assessment and Special Projects, Office of Nuclear Regulatory Research.

[FR Doc. E6–14865 Filed 9–6–06; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54394; File No. 4–523]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Order Approving and Declaring Effective a Plan for Allocation of Regulatory Responsibilities Between NYSE Arca, Inc. and the National Association of Securities Dealers, Inc.

August 31, 2006.

Notice is hereby given that the Securities and Exchange Commission ("Commission") has issued an Order, pursuant to Sections 17(d)[1] and 11A(a)(3)(B)[2] of the Securities Exchange Act of 1934 ("Act"), granting approval and declaring effective a revised amended and restated plan for the allocation of regulatory responsibilities ("Plan")[3] that was filed pursuant to Rule 17d–2 under the Act[4] by NYSE Arca, Inc.[5] ("NYSE Arca") and the National Association of Securities Dealers, Inc. ("NASD") (together with the NYSE Arca, the "Parties").

Accordingly, NASD shall assume, in addition to the regulatory responsibility it has under the Act, the regulatory responsibilities allocated to it under the Plan. At the same time, NYSE Arca is relieved of those regulatory responsibilities allocated to NASD under the Plan.

I. Introduction

Section 19(g)(1) of the Act,[6] among other things, requires every self-regulatory organization ("SRO") registered as either a national securities exchange or registered securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d)[7] or 19(g)(2)[8] of the Act. Section 17(d)(1) of the Act[9] was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication for those broker-dealers that maintain memberships in more than one SRO ("common members").[10] With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d–1[11] and Rule 17d–2 under the Act.[12] Rule 17d–2 permits SROs to propose joint plans for the allocation of regulatory responsibilities, other than financial responsibility rules, with respect to their common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and

[1] 15 U.S.C. 78q(d).

[2] 15 U.S.C. 78k–1(a)(3)(B).

[3] On January 20, 2006, the Parties submitted an amended and restated 17d–2 plan for review and approval by the Commission. On July 25, 2006, the Parties submitted a revised amended and restated plan ("Plan"), which was noticed for public comment. *See infra* note 13.

[4] 17 CFR 240.17d–2.

[5] NYSE Arca, Inc. was formerly called the Pacific Exchange, Inc. ("PCX"). On March 6, 2006, PCX filed with the Commission a proposed rule change, which was effective upon filing, to change the name of the PCX, as well as several other related entities, to reflect Archipelago Holdings, Inc.'s ("Archipelago") recent acquisition of PCX and the merger of the New York Stock Exchange, Inc. with Archipelago. *See* Securities Exchange Act Release No. 53615 (April 7, 2006), 71 FR 19226 (April 13, 2006).

[6] 15 U.S.C. 78s(g)(1).

[7] 15 U.S.C. 78q(d).

[8] 15 U.S.C. 78s(g)(2).

[9] 15 U.S.C. 78q(d)(1).

[10] *See* Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session 32 (1975).

[11] 17 CFR 240.17d–1. Rule 17d–1 authorizes the Commission to name a single SRO as the designated examining authority ("DEA") to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.

[12] 17 CFR 240.17d–2.

coordination among the SROs, to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system, and is in conformity with the factors set forth in Section 17(d) of the Act. Upon effectiveness of a plan filed pursuant to Rule 17d–2, an SRO is relieved of those regulatory responsibilities for common members that are allocated by the plan to another SRO.

On August 2, 2006, the Commission published notice of the Plan filed by NYSE Arca and NASD.[13] The Commission received no comments on the Plan. The Plan is intended to replace and supersede the current 17d–2 plan between NASD and NYSE Arca and all prior amendments thereto in their entirety,[14] and is intended to reduce regulatory duplication for firms that are common members of NYSE Arca and NASD. The text of the Plan allocates regulatory responsibilities among the Parties with respect to common members. Included in the Plan is an attachment ("NYSE Arca Rules Certification for 17d–2 Agreement with NASD," referred to herein as the "Certification") that lists every NYSE Arca rule and Federal securities law and rule and regulation thereunder for which, under the Plan, NASD would bear responsibility for examining, and enforcing compliance by, common members.

II. Discussion

The Commission finds that the proposed Plan is consistent with the factors set forth in Section 17(d) of the Act[15] and Rule 17d–2(c) thereunder[16] in that the proposed Plan is necessary or appropriate in the public interest and for the protection of investors, fosters cooperation and coordination among SROs, and removes impediments to and fosters the development of the national market system. In particular, the Commission believes that the proposed Plan could reduce unnecessary regulatory duplication by allocating to NASD certain responsibilities for common members that would otherwise be performed by both NYSE Arca and NASD. Accordingly, the proposed Plan promotes efficiency by reducing costs to common members. Furthermore, because NYSE Arca and NASD will coordinate their regulatory functions in accordance with the Plan, the Plan should promote investor protection.

The Commission notes that, under the Plan, NYSE Arca and NASD have allocated regulatory responsibility for all NYSE Arca rules that are substantially similar to NASD rules in that NYSE Arca's rule would not require NASD to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the rule, or a dual member's activity, conduct, or output in relation to such rule ("Common Rules"). These Common Rules are specifically listed in the Certification.[17] In addition, the NASD would assume regulatory responsibility for any provisions of the Federal securities laws and the rules and regulations thereunder that are set forth in the Certification.[18]

The Plan further provides that NASD shall not assume regulatory responsibility, and NYSE Arca will retain full responsibility, for: (1) Surveillance and enforcement with respect to trading activities or practices involving NYSE Arca's own marketplace; (2) registration pursuant to NYSE Arca's applicable rules of associated persons (*i.e.*, registration rules that are not Common Rules); (3) NYSE Arca's duties as a DEA under Rule 17d–1 of the Act;[19] and (4) any rules of NYSE Arca that do not qualify as Common Rules, except that NASD shall be responsible for such rules with respect to any broker-dealer subsidiary of Archipelago. With respect to broker-dealer subsidiaries of Archipelago, apparent violations of any NYSE Arca rules by any broker-dealer subsidiary of Archipelago will be processed by NASD, and NASD will conduct any enforcement proceedings. The effect of these provisions is that regulatory oversight and enforcement responsibilities for Archipelago Securities, L.L.C., which acts as the outbound router for the NYSE Arca Marketplace, will be vested with NASD. These provisions should help avoid any potential conflicts of interest that could arise if NYSE Arca was primarily responsible for regulating its affiliated outbound router.[20]

According to the Plan, NYSE Arca will perform a review of the Certification, at least annually, or more frequently if required by changes in either the rules of NYSE Arca or NASD, to add NYSE Arca rules not included on the then-current list of Common Rules that are substantially similar to NASD rules (*i.e.*, new rules that qualify as Common Rules or existing rules that have been amended so that they now qualify as Common Rules); delete NYSE Arca rules included in the then-current list of Common Rules that are no longer substantially similar to NASD rules (*i.e.*, amended rules that cease to be Common Rules); and confirm that the remaining rules on the list of Common Rules continue to be NYSE Arca rules that are substantially similar to NASD rules. NASD will then confirm in writing whether the rules listed in any updated list are Common Rules as defined in the Plan. The Commission is hereby declaring effective and approving a plan that, among other things, allocates regulatory responsibility to NASD for the oversight and enforcement of all NYSE Arca rules that are substantially similar to the rules of the NASD for common members of NYSE Arca and

[13] See Securities Exchange Act Release No. 54224 (July 27, 2006), 71 FR 43823.

[14] The Parties currently operate pursuant to a 17d-2 plan in which the NASD assumed certain inspection, examination, and enforcement responsibility for common members with respect to certain applicable laws, rules, and regulations (the "current NASD–NYSE Arca 17d–2 plan"). *See* Securities Exchange Act Release Nos. 14095 (October 25, 1977), 42 FR 57198 (November 1, 1977) (File No. 4–267) (notice of 1977 Agreement); 15191 (September 26, 1978), 43 FR 46093 (October 5, 1978) (File No. 4–267) (order granting temporary approval); 15722 (April 12, 1979), 44 FR 23616 (April 20, 1979) (File No. 4–267) (extension of time to file amendments); 15941 (June 21, 1979) (File No. 4–267), SEC Docket, Vol. 17, no. 14, page 995 (July 3, 1979) (further extension of time to file required amendments); 16462 (January 2, 1980), 45 FR 2121 (January 10, 1980) (File No. 4–267) (order granting temporary approval); 16591 (February 20, 1980), 45 FR 12573 (February 26, 1980) (File No. 4–267) (notice of 1980 Amendment); 16719 (April 2, 1980), 45 FR 23841 (April 8, 1980) (File No. 4–267) (order granting temporary approval); and 16858 (May 30, 1980), 45 FR 37927 (June 5, 1980) (File No. 4–267) (approval order).

[15] 15 U.S.C. 78q(d).

[16] 15 U.S.C. 78q(d) and 17 CFR 240.17d–2(c).

[17] NYSE Arca has represented that there are no NYSE Arca rules that are substantially similar to NASD rules that are not included in the Certification. *See* Telephone call between Janet Angstadt, Acting General Counsel, NYSE Arca, and Richard Holley III, Special Counsel, Division of Market Regulation, Commission, on August 24, 2006. Further, the Certification notes that, with respect to several of the NYSE Arca rules, NYSE Arca will be responsible for any significant difference between its rule and the comparable NASD rule, until such time that amendments to such rule(s) may be filed with and approved by the Commission. NYSE Arca has represented that it shortly intends to file the proposed rule changes necessary to conform the entirety of these rules to the corresponding NASD rules. *See id.*

[18] As proposed currently, there is only one Federal securities law rule listed on the Certification—Rule 200 of Regulation SHO, 17 CFR 242.200.

[19] 17 CFR 240.17d–1.

[20] This provision was a condition in the Commission's approval of a proposed rule change submitted by the PCX (the predecessor to NYSE Arca) relating to the acquisition of PCX Holdings, Inc. by Archipelago. *See* Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949 (September 29, 2005) (SR–PCX–2005–90). In that filing, PCX committed to amend the current NASD–NYSE Arca 17d–2 plan within 90 days of the Commission's approval of that filing. The 90-day requirement was subsequently extended three times. *See* Securities Exchange Act Release Nos. 52995 (December 21, 2005), 70 FR 77232 (December 29, 2005); 53545 (March 23, 2006), 71 FR 16183 (March 30, 2006); and 54046 (June 26, 2006), 71 FR 37965 (July 3, 2006).

NASD. Therefore, modifications to the Certification need not be filed with the Commission as an amendment to the Plan, provided that the Parties are only adding to, deleting from, or confirming changes to NYSE Arca rules in the Certification in conformance with the definition of Common Rules provided in the Plan. However, should NYSE Arca or NASD decide to add a NYSE Arca rule to the Certification that is not substantially similar to an NASD rule; delete a NYSE Arca rule from the Certification that is substantially similar to an NASD rule; or leave on the Certification a NYSE Arca rule that is no longer substantially similar to an NASD rule, then such a change would constitute an amendment to the Plan, which must be filed with the Commission pursuant to Rule 17d–2 under the Act and noticed for public comment.

As noted above, NYSE Arca and NASD have also set forth in the Certification the Federal securities laws, and the rules and regulations thereunder, for which NASD will bear responsibility under the Plan for examining, and enforcing compliance by, common members. The Commission notes that any changes to this list of Federal securities laws, and the rules and regulations thereunder, would constitute an amendment to the Plan, which must be filed with the Commission pursuant to Rule 17d–2 under the Act and noticed for public comment.

The Plan also permits NYSE Arca and NASD to terminate the Plan, subject to notice, for various reasons. The Commission notes, however, that while the Plan permits the Parties to terminate the Plan, the Parties cannot by themselves reallocate the regulatory responsibilities set forth in the Plan, since Rule 17d–2 under the Act requires that any allocation or re-allocation of regulatory responsibilities be filed with the Commission.[21]

III. Conclusion

This Order gives effect to the Plan filed with the Commission in File No. 4–523. The Parties shall notify all members affected by the Plan of their rights and obligations under the Plan.

It is therefore ordered, pursuant to Sections 17(d) and 11A(a)(3)(B) of the Act, that the Plan in File No. 4–523, between NYSE Arca and NASD, filed pursuant to Rule 17d–2 under the Act, is approved and declared effective.

[21] The Commission notes that paragraphs 3 and 13 of the Plan reflect the fact that NASD's responsibilities under the Plan will continue in effect until the Commission approves the termination of the Plan.

It is therefore ordered that NYSE Arca is relieved of those responsibilities allocated to the NASD under the Plan in File No. 4–523.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–14784 Filed 9–6–06; 8:45 am]

BILLING CODE 8010–01–P

[22] 17 CFR 200.30–3(a)(34).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54389]

Order Granting an Exemption for Qualified Contingent Trades From Rule 611(a) of Regulation NMS Under the Securities Exchange Act of 1934

August 31, 2006.

I. Introduction

Pursuant to Rule 611(d)[1] of Regulation NMS[2] under the Securities Exchange Act of 1934 ("Exchange Act"), the Securities and Exchange Commission ("Commission"), by order, may exempt from the provisions of Rule 611 of Regulation NMS ("Rule 611" or "Rule"), either unconditionally or on specified terms and conditions, any person, security, transaction, quotation, or order, or any class or classes of persons, securities, quotations, or orders, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.[3] As discussed below, the Commission is exempting each NMS stock component of certain qualified contingent trades (as defined below) from Rule 611(a) of Regulation NMS.

II. Background

The Commission adopted Regulation NMS in June 2005.[4] Rule 611 addresses intermarket trade-throughs of quotations in NMS stocks.[5] The Rule applies only to quotations that are immediately accessible through automatic execution.

[1] 17 CFR 242.611(d).

[2] 17 CFR 242.600 *et seq.*

[3] *See also* 15 U.S.C. 78mm(a)(1) (providing general authority for Commission to grant exemptions from provisions of Exchange Act and rules thereunder).

[4] *See* Securities Exchange Act Release No. 51808 (June 9, 2005). 70 FR 37496 (June 29, 2005) ("Regulation NMS Adopting Release").

[5] An "NMS stock" means any security or class of securities, other than an option, for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan. *See* 17 CFR 242.600(b)(46) and (47).

The Securities Industry Association ("SIA") has requested that the Commission exempt certain qualified contingent trades from Rule 611(a) of Regulation NMS.[6] According to the SIA Exemption Request, a contingent trade "is a multi-component trade involving orders for a security and a related derivative, or, in the alternative, orders for related securities, that are executed at or near the same time."[7] The SIA notes that the economics of a contingent trade are based on the relationship between the prices of the security and the related derivative or security, and that the execution of one order is contingent upon the execution of the other order. The SIA states that the sought-after spread or ratio between the relevant instruments is known and specified at the time of the order, and this spread or ratio stands regardless of the prevailing price at the time of execution. Therefore, the parties to these transactions are focused on the spread or ratio between the transaction prices for each of the component instruments, rather than on the absolute price of any single component instrument. Because the focus of such trades is on the relative prices of the component instruments, the price of a component of a particular trade may or may not correspond to the prevailing market price of the security. For contingent trades, the parties to the trade will not execute one side of the trade without the other component or components being executed in full (or in ratio) and at the specified spread or ratio.[8]

The SIA states that contingent trades play an important role in the investment and trading strategies of investors. They are the mechanism through which large institutional and broker-dealer proprietary traders enter and exit the market for many securities, including those that are involved in a merger, those representing different classes of shares of the same issuer, those with convertible securities that are related to the common stock, and those with actively traded equity derivatives such as options.[9] The SIA believes that, as a general rule, the market view on what constitutes an appropriate spread or

[6] Letter to Nancy M. Morris, Secretary, Commission, from Andrew Madoff, SIA Trading Committee, SIA, dated June 21, 2006 ("SIA Exemption Request").

[7] SIA Exemption Request at 2.

[8] *See* SIA Exemption Request at 2.

[9] *See* SIA Exemption Request at 2. In an appendix to its letter, the SIA provided detailed discussions of three types of contingent trades, namely, a risk or merger arbitrage transaction, a convertible security transaction, and a stock option transaction, and how these trades would be affected by Rule 611. *See* SIA Exemption Request at 8–12.

ratio between related securities is less volatile than the quoted prices for the stocks that are part of these contingent trades and, consequently, contingent trades act as a stabilizing factor in the markets.[10]

To effectively execute a contingent trade, its component orders must be executed in full or in ratio[11] at its predetermined spread or ratio. According to the SIA, parties seeking to effect contingent trades involving NMS stocks in many instances would be able to comply with the Rule, but in other instances—such as trades involving two or more NMS stocks or circumstances in which there was insufficient flexibility to adjust the execution price of the non-NMS stock component of a contingent trade—compliance with Rule 611 would not be possible. In such instances, if the designated price of an NMS stock that was a component order of a proposed contingent trade was inferior to a protected bid or offer, as relevant, the Rule would require the better protected bids or offers to be satisfied prior to the execution of the NMS stock component of the contingent trade, thus preventing the trade from being executed in accordance with the original terms. The SIA believes that, by breaking up one or more components of the contingent trade and requiring that such component(s) be separately executed from the entire trade package and at prices inappropriate for the desired trading strategy, Rule 611 would effectively undermine the contingent aspect of the trade and leave one or more parties to the trade "out of hedge."[12]

Without an exemption from Rule 611, the SIA believes that customers might be unable to complete contingent trades. In particular, dealers might be unable to commit capital to those customers who requested it, which could reduce or eliminate this type of trading activity and remove liquidity from the market. The SIA believes that such a result would disadvantage the market as a whole.[13]

In its exemption request, the SIA states that the requested relief is narrowly drawn, noting that the number of qualified contingent trades is small in comparison to the overall number of trades executed in NMS stocks. It therefore believes that the number of possible exempted trade-throughs would similarly be small. The SIA also noted that the requirement that the NMS stock component of a contingent trade be of block size further reduces the risk that the exemption will used inappropriately for transactions of retail size.[14]

III. Discussion

After careful consideration and for the reasons discussed below, the Commission hereby grants an exemption from Rule 611(a) for any trade-throughs caused by the execution of an order involving one or more NMS stocks (each an "Exempted NMS Stock Transaction") that are components of a qualified contingent trade. A "qualified contingent trade" is a transaction consisting of two or more component orders, executed as agent or principal, where:

(1) At least one component order is in an NMS stock;

(2) All components are effected with a product or price contingency that either has been agreed to by the respective counterparties or arranged for by a broker-dealer as principal or agent;

(3) The execution of one component is contingent upon the execution of all other components at or near the same time;

(4) The specific relationship between the component orders (*e.g.*, the spread between the prices of the component orders) is determined at the time the contingent order is placed;

(5) The component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or since cancelled;[15]

(6) The Exempted NMS Stock Transaction is fully hedged (without regard to any prior existing position) as a result of the other components of the contingent trade;[16] and

(7) The Exempted NMS Stock Transaction that is part of a contingent trade involves at least 10,000 shares or has a market value of at least $200,000.[17]

The Commission notes that a trading center must meet all of the foregoing elements of a qualified contingent trade to qualify for the exemption. The exemption is not restricted to dealers or the over-the-counter market. It can be used by any trading center that meets the terms of the exemption.

Rule 611 requires trading centers to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs, or, if relying on one of the Rule's exceptions, that are reasonably designed to assure compliance with the exception.[18] In addition, a trading center is required to regularly surveil to ascertain the effectiveness of its policies and procedures and to take prompt action to remedy deficiencies.[19] The Rule also includes a number of exceptions, such as intermarket sweep orders[20] and orders executed at "benchmark" prices that were not reasonably determinable at the time the commitment to execute the order was made.[21] Without an exemption, however, qualified contingent trades generally would be subject to the Rule.

As discussed in the Regulation NMS Adopting Release, the Commission previously considered comments favoring a general exception from the Rule for broad categories of transactions, variously described as "contingency" transactions, "arbitrage" transactions, "spread" transactions, and transactions priced with reference to derivatives.[22] It noted, however, that any exception for such a broad category of transactions potentially could unduly detract from the objectives of Rule 611. Therefore, when adopting Regulation NMS, the Commission stated that the most appropriate process to handle suggestions that specific types of transactions should be excluded from the coverage of the Rule would be through the exemptive procedure set forth in paragraph (d) of the Rule.

The Commission recognizes that contingent trades can be useful trading tools for investors and other market participants, particularly those who trade the securities of issuers involved in mergers, different classes of shares of the same issuer, convertible securities, and equity derivatives such as options.

[10] *See* SIA Exemption Request at 2–3.

[11] "In ratio" clarifies that component orders of a contingent trade do not necessarily have to be executed in full, but any partial executions must be in a predetermined ratio.

[12] *See* SIA Exemption Request at 3.

[13] *See* SIA Exemption Request at 4.

[14] *See* SIA Exemption Request at 6.

[15] Transactions involving securities of participants in mergers or with intentions to merge that have been announced would meet this aspect of the requested exemption. Transactions involving cancelled mergers, however, would constitute qualified contingent trades only to the extent they involve the unwinding of a pre-existing position in the merger participants' shares. Statistical arbitrage transactions, absent some other derivative or merger arbitrage relationship between component orders, would not satisfy this element of the definition of a qualified contingent trade.

[16] A trading center may demonstrate that an Exempted NMS Stock Transaction is fully hedged under the circumstances based on the use of reasonable risk-valuation methodologies.

[17] *See* 17 CFR 242.600(b)(9) (defining "block size" with respect to an order as at least 10,000 shares or $200,000 in market value).

[18] *See* 17 CFR 242.611(a)(1).

[19] *See* 17 CFR 242.611(a)(2).

[20] *See* 17 CFR 242.611(b)(5) and (6).

[21] *See* 17 CFR 242.611(b)(7).

[22] Regulation NMS Adopting Release, 70 FR at 37528.

Those who engage in contingent trades can benefit the market as a whole by studying the relationships between the prices of such securities and executing contingent trades when they believe such relationships are out of line with what they believe to be fair value.

Contingent trades therefore are one example of a wide variety of trades that contribute to the efficient functioning of the securities markets and the price discovery process. The Commission believes that qualified contingent trades potentially could become too risky and costly to be employed successfully if they were required to meet the trade-through provisions of Rule 611. Absent an exemption, participants in contingent trades often would need to use the Rule's intermarket sweep order exception and route orders to execute against protected quotations with better prices than an NMS stock component of the contingent trade. Any executions of these routed orders could throw the participants "out of hedge" and necessitate additional transactions in an attempt to correct the imbalance. As a practical matter, the difficulty of maintaining a hedge, and the risk of falling out of hedge, could dissuade participants from engaging in contingent trades, or at least raise the cost of such trades. The elimination or reduction of this trading strategy potentially could remove liquidity from the market. The Commission therefore has determined to exempt qualified exempted trades from Rule 611.

To minimize the effect of an exemption on the objectives of Rule 611, the exemption is narrowly drawn to encompass only those trades most in need of relief to remain part of a viable trading strategy and where execution of the NMS stock component at a trade-through price is reasonably necessary to effect the contingent trade. In particular, elements (1) through (6) of the exemption, as set forth above, require a close connection between any Exempted NMS Stock Transaction and the other components of a qualified contingent trade. This close connection should both significantly limit the number of Exempted NMS Stock Transactions and help assure that the exemption applies only to those trades most in need of flexibility to be executed efficiently. For example, the execution of one component of the transaction must be contingent upon the execution of all other components at or near the same time, and the Exempted NMS Stock Transaction must be fully hedged (without regard to any prior existing position) as a result of the other components of the contingent trade.[23] In addition, there must be a specified relationship between the instruments involved in the component orders. The component orders must bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or since cancelled.[24] The exemption does not apply to contingent trades, such as statistical arbitrage transactions, if their components do not involve instruments with a specified relationship. Finally, the Exempted NMS Stock Transaction must be of block-size, involving at least 10,000 shares or having a market value of at least $200,000. This element further limits the exemption to those transactions where an exemption is likely to be most needed to facilitate the trading strategies of informed customers.

Accordingly, the exemption should provide appropriate relief in those circumstances where compliance with Rule 611 could be most difficult as a practical matter, but also is limited to a small number of transactions that should not unduly undermine the objectives of Rule 611.[25] In this regard, the Commission notes that the exception is premised on an expectation that qualified contingent trades will continue to be used for essentially the same valid trading purposes as they are currently and as described in the SIA Exemption Request. A material change in the nature or frequency of such trades could cause the Commission to reconsider the terms of the exemption.

For the foregoing reasons, the Commission finds that granting an exemption from Rule 611 for qualified contingent trades, as defined above, is necessary and appropriate in the public interest, and is consistent with the protection of investors.

[23] The requirement that an Exempted NMS Stock Transaction be fully hedged should significantly limit the scope of the exemption. For example, a contingent trade would not qualify for the exemption if an NMS stock transaction was the purchase or sale of 50,000 shares, and the only other component was the purchase or sale of a small quantity of options on the NMS stock. A trading center may demonstrate that an Exempted NMS Stock Transaction is fully hedged under the circumstances based on the use of reasonable risk-valuation methodologies.

[24] Transactions involving cancelled mergers would be qualified contingent trades only to the extent that they involve the unwinding of a pre-existing position in the merger participants' shares.

[25] *See* SIA Exemption Request at 5–6 (representing that the number of qualified contingent trades is small in comparison to the overall number of trades executed in NMS stocks and, therefore, the overall number of possible exempted trade-throughs is similarly small).

IV. Conclusion

It is hereby ordered, pursuant to Rule 611(d) of Regulation NMS, that each NMS stock component of qualified contingent trades, as defined above, shall be exempt from Rule 611(a) of Regulation NMS.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Nancy M. Morris,

Secretary.

[FR Doc. E6–14806 Filed 9–6–06; 8:45 am]

BILLING CODE 8010–01–P

[26] 17 CFR 200.30–3(a)(82).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54386; File No. SR–Amex–2006–75]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of a Pilot Program That Increases Position and Exercise Limits for Equity Options and Options on the Nasdaq-100 Tracking Stock

August 30, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 15, 2006, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Amex. The Exchange has filed the proposal 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 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

The Exchange seeks a six-month extension of its pilot program increasing the standard position and exercise limits for options on the QQQQ and equity option classes traded on the Exchange ("Pilot Program"). The text of the proposed rule change is available on the Amex's Web site (*http://*

[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).

www.amex.com), at the Amex's principal office, 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 Amex 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 is requesting to extend its current Pilot Program increasing the standard position and exercise limits for options on the QQQQ and equity option classes traded on the Exchange for a time period of six months from September 1, 2006, through and including March 1, 2007.

In March 2005, the Exchange established the Pilot Program for a six-month period.[5] Under the Pilot Program, position and exercise limits for options on the QQQQ and equity options classes traded on the Exchange were increased to the following levels:

Current equity option contract limit[6]	Pilot program equity option contract limit
13,500	25,000
22,500	50,000
231,500	75,000
60,000	200,000
75,000	250,000
Current QQQQ option contract limit	**Pilot program QQQQ option contract limit**
300,000	900,000

[6] Except when the Pilot Program is in effect.

The standard position limits were last increased on December 31, 1998.[7] Since that time there has been a steady increase in the number of accounts that: (a) Approach the position limit; (b) exceed the position limit; and (c) are granted an exemption to the standard limit. Several member firms have petitioned the options exchanges to either eliminate position limits, or in lieu of total elimination, increase the current levels and expand the available hedge exemptions. A review of available data indicates that the majority of accounts that maintain sizable positions are in those option classes subject to the 60,000 and 75,000 tier limits. There also has been an increase in the number of accounts that maintain sizable positions in the lower three tiers. In addition, overall volume in the options market has continually increased over the past five years. The Exchange believes that the increase in options volume and lack of evidence of market manipulation occurrences over the past twenty years justifies the proposed increases in the position and exercise limits.

The Exchange has not encountered any problems or difficulties relating to the Pilot Program since its inception. The instant proposed rule change makes no substantive change to the Pilot Program other than to extend it for six months through and including March 1, 2007.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[8] in general and furthers the objective of Section 6(b)(5) of the Act[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change would impose no 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 by the Exchange on this proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date of this filing, 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) normally may not become operative prior to 30 days after

[5] *See* Securities Exchange Act Release No. 51316 (March 3, 2005), 70 FR 12251 (March 11, 2005) (notice of filing and immediate effectiveness of File No. SR–Amex–2005–029). The Pilot Program was extended twice and is due to expire on September 1, 2006. *See* Securities Exchange Act Release Nos. 53349 (February 22, 2006), 71 FR 10571 (March 1, 2006) (notice of filing and immediate effectiveness of File No. SR–Amex–2006–07); and 52260 (August 15, 2005), 70 FR 48991 (August 22, 2005) (notice of filing and immediate effectiveness of File No. SR–Amex–2005–082). Telephone conversation between Nyieri Nazarian, Assistant General Counsel, Amex, and Theodore S. Venuti, Attorney, Division of Market Regulation, Commission, on August 16, 2006.

[7] *See* Securities Exchange Act Release No. 40875 (December 31, 1998), 64 FR 1842 (January 12, 1999) (File No. SR–Amex–98–22) (approval of increase in position limits and exercise limits).

[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).

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 provided the Commission with written notice of its intent to file this proposed rule change at least five business days prior to the date of filing the proposed rule change. In addition, the Exchange has requested that the Commission waive the 30-day pre-operative delay. The Commission believes that waiving the 30-day pre-operative delay is consistent with the protection of investors and in the public interest because it will allow the Pilot Program to continue uninterrupted.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the 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–Amex–2006–75 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 No. SR–Amex–2006–75. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. 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–Amex–2006–75 and should be submitted on or before September 28, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Nancy M. Morris,

Secretary.

[FR Doc. E6–14794 Filed 9–6–06; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] *Id.*

[14] For purposes only of waiving the pre-operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54388; File No. SR–BSE–2006–32]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Its Boston Options Exchange Trading Rules Regarding the Extension of a Pilot Program That Increases the Standard Position and Exercise Limits for Certain Options Traded

August 30, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 18, 2006, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the BSE. The Exchange has filed the proposal 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 it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[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).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to amend the rules of the Boston Options Exchange ("BOX"), an options trading facility of the BSE, to extend its current pilot program to increase the standard position and exercise limits for equity option contracts and options on the Nasdaq–100 Index Tracking Stock ("QQQQ") ("Pilot Program"). The text of the proposed rule change is available on the BSE's Web site (*http://www.bostonstock.com*), at the BSE's principal office, 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 BSE 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 Pilot Program provides for an increase to the standard position and exercise limits for equity option contracts and for options on QQQQs for a six-month period.[5] Specifically, the Pilot Program increased the applicable position and exercise limits for equity

[5] The Pilot Program, which commenced on March 3, 2005, was extended on August 15, 2005 and February 22, 2006, and is set to expire on September 1, 2006. *See* Securities Exchange Act Release Nos. 51317 (March 3, 2005), 70 FR 12254 (March 11, 2005) (notice of filing and immediate effectiveness of File No. SR–BSE–2005–10) ("Pilot Program Notice"); 52264 (August 15, 2005), 70 FR 48992 (August 22, 2005) (notice of filing and immediate effectiveness of File No. SR–BSE–2005–37, which extended the Pilot Program); and 53347 (February 22, 2006), 71 FR 10573 (March 1, 2006) (notice of filing and immediate effectiveness of File No. SR–BSE–2006–07, which extended the Pilot Program).

options and options on the QQQQ to the following levels:

Pilot program equity option contract limit[6]	Pilot program equity option contract limit
13,500	25,000
22,500	50,000
31,500	75,000
60,000	200,000
75,000	250,000
Current QQQQ option contract limit	**Pilot program QQQQ option contract limit**
300,000	900,000

The Exchange believes that extending the Pilot Program for six months is warranted due to positive feedback from members and for the reasons cited in the original rule filing that proposed the adoption of the Pilot Program.[7] In addition, BOX has not encountered any problems or difficulties relating to the Pilot Program since its inception. For these reasons, the BSE requests that the Commission extend the Pilot Program for an additional six months, through and including March 1, 2007.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[8] in general, and furthers the objective of Section 6(b)(5) of the Act,[9] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date of this filing, 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) 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 provided the Commission with written notice of its intent to file this proposed rule change at least five business days prior to the date of filing the proposed rule change. In addition, the Exchange has requested that the Commission waive the 30-day pre-operative delay. The Commission believes that waiving the 30-day pre-operative delay is consistent with the protection of investors and in the public interest because it will allow the Pilot Program to continue uninterrupted.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the 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–BSE–2006–32 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 No. SR–BSE–2006–32. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. 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–BSE–2006–32 and should be submitted on or before September 28, 2006.

[6] Except when the Pilot Program is in effect.

[7] *See* Pilot Program Notice, *supra* note 5.

[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] 17 CFR 240.19b–4(f)(6)(iii).

[13] *Id.*

[14] For purposes only of waiving the pre-operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Nancy M. Morris,

Secretary.

[FR Doc. E6–14792 Filed 9–6–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54383; File No. SR–CBOE–2006–75]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Extension of Its Dividend, Merger, and Short Stock Interest Strategies Fee Cap Pilot Program

August 30, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 29, 2006, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared by CBOE. CBOE has designated the proposed rule change as one establishing or changing a due, fee, or other charge, pursuant to Section 19(b)(3)(A)(ii) of the Act[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 persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its Fees Schedule to extend until March 1, 2007, the dividend, merger and short stock interest strategies fee cap program. The text of the proposed rule change is available on CBOE's Web site at *http://www.cboe.com*, at the Office of the Secretary at CBOE, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. 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 currently caps market-maker, firm, and broker-dealer transaction fees associated with dividend, merger and short stock interest strategies, as described in Footnote 13 of the CBOE Fees Schedule ("Strategy Fee Cap"). The Strategy Fee Cap is in effect as a pilot program that is due to expire on September 1, 2006.

The Exchange proposes to extend the Strategy Fee Cap program until March 1, 2007. No other changes are proposed. The Exchange believes that extension of the Strategy Fee Cap program should attract additional liquidity and permit the Exchange to remain competitive for these types of strategies.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(4) of the Act[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other 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 on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and subparagraph (f)(2) of Rule 19b–4 thereunder[8] because it establishes or changes a due, fee, or other charge. 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–2006–75 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–2006–75. 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

[15] 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)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

Room. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2006–75 and should be submitted on or before September 28, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Nancy M. Morris,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54391; File No. SR–NSX–2006–08]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 2 and 3 Thereto to Amend Its Trading Rules to Provide for a Price-Time Priority Market and Other Related Changes

August 31, 2006.

I. Introduction

On June 6, 2006, the National Stock Exchange, Inc. ("NSX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules in order to incorporate a price-time priority automatic execution trading system ("System") to replace the Exchange's current system, the National Securities Trading System ("NSTS"). On June 22, 2006, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on July 6, 2006.[3] The Commission received one comment letter on the proposal.[4]

On August 11, 2006, the Exchange filed Amendment No. 2 to the proposed rule change.[5] On August 18, 2006, the Exchange filed Amendment No. 3 to the proposed rule change.[6] This order approves the proposed rule change, as amended by Amendment No. 1. Simultaneously, the Commission is providing notice of filing of Amendment Nos. 2 and 3 and granting accelerated approval of Amendment Nos. 2 and 3.

II. Description

The Exchange proposes to amend its rules in order to implement a new trading System to replace the Exchange's current NSTS. Specifically, the proposed System would provide a new trading platform and structure for the Exchange with price-time priority execution without any priority of execution distinction made for principal or agency orders.[7] The Exchange proposes to substantially revise Chapter XI (Trading Rules) of its rules in order to incorporate new priority rules and other features within the System. These rules relate to: hours of trading; units of trading; price variations; securities eligible for trading; registration of market makers; obligations of market maker authorized traders; registration of market makers in a security; obligations of market makers; access; authorized traders; orders and modifiers; cross messages; proprietary and agency orders, and modes of order interaction; priority of orders; order execution; trade execution and reporting; clearance and settlement; limitation of liability; clearly erroneous executions; trading halts due to extraordinary market volatility; short sales; locking or crossing quotations in NMS stocks; and riskless principal transactions.[8]

Under proposed NSX Rule 11.11, the System would include a number of new order types, including different types of sweep orders (*e.g.*, Protected Sweep Orders, Full Sweep Orders, Destination Sweep Orders)[9] that direct the Exchange to route an order, or a relevant portion thereof, to away trading centers. In addition, once the relevant compliance date for Regulation NMS under the Act ("Regulation NMS")[10] has been reached, the System would permit orders to be marked as intermarket sweep orders ("ISOs") pursuant to Regulation NMS and also permit incoming ISOs from other trading centers.[11] Proposed NSX Rule 11.12 sets forth restrictions for cross messages ("Crosses") generally, as well as additional requirements for Midpoint Crosses,[12] Clean Crosses,[13] and Cross/Sweeps.[14]

Proposed NSX Rule 11.13 would permit participation in the System via automatic execution or order delivery. To be eligible for the order delivery functionality, a participant would have to demonstrate to the Exchange that it could automatically process an inbound order and respond immediately. Proposed Interpretation and Policy .01 to Rule 11.13 would define "immediately" as having system response times "that generally meet or exceed industry standards," which NSX believes currently to be 100 milliseconds.[15]

In its proposed revisions to Chapter XI of its rules, the Exchange also incorporated a number of provisions relating to Regulation NMS—in addition to ISOs—including proposed NSX Rule 11.22 relating to locking or crossing quotations in NMS stocks. Also, proposed NSX Rule 11.15(d) provides that the System would be operated as an "automated market center" (as defined by Regulation NMS) and would display "automated quotations" (as defined by Regulation NMS) at all times except in the event that a systems malfunction renders the System incapable of displaying automated quotations. In such a case, the Exchange would communicate to ETP Holders its procedures concerning a change from automated to manual quotations.

In addition to substantially revising Chapter XI, the Exchange also made revisions and proposed new rules in other chapters of its rules. Proposed NSX Rule 1.4 details the effective time for certain rules while proposed NSX Rule 1.5 includes new definitions for a number of terms including, among others, "Authorized Trader," "Protected NBBO," "protected quotation," "Sponsored Participants," and "Sponsoring ETP Holder."

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[9] 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. 54044 (June 26, 2006), 71 FR 38452 ("Trading Rules Notice").

[4] *See* letter from Michael A. Barth, Senior Vice President, Exchanges and Market Centers, Order Execution Services Holdings, Inc. ("OES"), to Nancy M. Morris, Secretary, Commission, dated July 19, 2006 ("OES Letter").

[5] The text of Amendment No. 2 is available on NSX's Web site (*http://www.nsx.com*), at the principal office of NSX, and at the Commission's Public Reference Room. *See* Section II, *infra*, for a discussion of Amendment No. 2.

[6] The text of Amendment No. 3 is available on NSX's Web site (*http://www.nsx.com*), at the principal office of NSX, and at the Commission's Public Reference Room. *See* Section II, *infra*, for a discussion of Amendment No. 3.

[7] *See* proposed NSX Rules 11.13 and 11.14.

[8] *See* proposed NSX Rules 11.1–11.23.

[9] *See* proposed NSX Rule 11.11(c)(7).

[10] 17 CFR 242.600 *et seq. See* 17 CFR 242.610 and 17 CFR 242.611.

[11] *See* proposed NSX Rule 11.11(c)(7)(iv) and (c)(8).

[12] *See* proposed NSX Rule 11.12(c).

[13] *See* proposed NSX Rule 11.12(d).

[14] *See* proposed NSX Rule 11.12(f).

[15] *See* Amendment No. 2, *supra*, note 5.

The Trading Rules Notice also included a request by the Exchange for the Commission to approve its wholly-owned subsidiary, NSX Securities, LLC ("NSX Securities"), as a facility of the Exchange. NSX Securities' only function would be to route orders to other securities exchanges, facilities of securities exchanges, automated trading systems, electronic communications networks ("ECNs"), or other brokers or dealers (collectively, "Trading Centers") from the Exchange (such function referred to as the "Outbound Router"). Proposed NSX Rule 2.11 contains the undertakings of NSX Securities including, among other things, that: NSX would regulate the Outbound Router as a facility of the Exchange that is subject to Section 6 of the Act, and would be responsible for filing with the Commission rules and fees relating to the Outbound Router; the NASD would be responsible for regulatory oversight and enforcement as the Outbound Router's Designated Examining Authority ("DEA") pursuant to Rule 17d–1 of the Act; use of NSX Securities by ETP Holders would be optional; and NSX Securities would not engage in any business other than its Outbound Router function, unless approved by the Commission.

On August 11, 2006, the Exchange filed Amendment No. 2 to the proposed rule change, which made certain revisions to the original proposal, as amended by Amendment No. 1. NSX revised proposed NSX Rule 11.13's requirements for order delivery functionality eligibility. Under subsection (b)(2), a User (*i.e.*, an ETP Holder or Sponsored Participant) must demonstrate to the Exchange that the User's system can automatically process inbound orders and respond immediately; new Interpretation and Policy .01 to proposed NSX Rule 11.13 would define "immediately" as having system response times "that generally meet or exceed industry standards," which NSX believes currently to be 100 milliseconds. NSX also amended its rules to make certain revisions relating to cross messages. The Exchange revised proposed NSX Rule 11.12(d) to delete the requirement that a Clean Cross be executed only if neither side of the Cross is for the account of the User entering the Cross, and amended proposed NSX Rule 11.3(b) to permit Cross executions in subpenny increments so long as they improve the Exchange's top of book ("Top of Book") by at least a penny per share, as well as Clean Cross executions in subpenny increments. In addition, the Exchange clarified that its customer priority rules found in NSX Rule 12.6 applied to Cross/Sweep messages.

In Amendment No. 2, NSX also stated that it would review its current regulatory allocation plan with NASD (as permitted by Rule 17d–2 under the Act [16]) to ensure that the NASD, and not the Exchange, has responsibility for such regulatory functions for NSX Securities. NSX also added new proposed NSX Rule 2.11(b) which states that the books, records, premises, officers, agents, directors and employees of NSX Securities as a facility of the Exchange would be deemed to be the books, records, premises, officers, agents, directors and employees of the Exchange for purposes of, and subject to oversight pursuant to, the Act, and that the books and records of NSX Securities as a facility of the Exchange would be subject at all times to inspection and copying by the Exchange and the Commission.

In addition, in Amendment No. 2, NSX revised its rules to reflect the extension of certain compliance dates relating to Regulation NMS. NSX proposed to modify certain rules such that their effectiveness would coincide with the Regulation NMS compliance dates announced by the Commission. The Exchange also modified other rules to include different rule provisions applicable prior to and following the relevant Regulation NMS compliance dates.[17] NSX also proposed a new NSX Rule 11.16(b) which requires the Exchange to, following the compliance date for Rule 611 of Regulation NMS, "identify all trades executed pursuant to an exception or exemption from Rule 611 of Regulation NMS in accordance with specifications approved by the operating committee of the relevant national market system plan for an NMS stock." In addition, the Exchange revised proposed NSX Rule 11.15 to indicate that it intends to take advantage of the self-help provisions of Regulation NMS.

In Amendment No. 2, the Exchange also described its proposed phase-in plan for the new System. According to the Exchange, the System is currently undergoing testing and is scheduled to become operational on or about September 5, 2006. NSX stated that it plans to phase-in the System as follows: first, beginning the week of September 5, 2006, a small group of Nasdaq-listed stocks would be transitioned to the System from NSTS. Several additional groups of Nasdaq-listed stocks would be transitioned to the System over the following five weeks, so that all Nasdaq-listed stocks would have been transitioned to the System by approximately mid-October, 2006. Following the transition of Nasdaq-listed stocks, NSX plans to transition all non-Nasdaq-listed securities to the System. NSX stated that it plans to monitor implementation and adjust the schedule as needed to maintain an orderly transition. Amendment No. 2 also contained a number of non-substantive changes and technical corrections to clarify the original proposal, as amended by Amendment No. 1. Finally, Amendment No. 2 contained a response to the comment letter received on the original proposal, as amended by Amendment No. 1.[18]

On August 18, 2006, the Exchange filed Amendment No. 3 to the proposed rule change. Amendment No. 3 revised proposed NSX Rule 11.16(b) to clarify that trades executed pursuant to both the intermarket sweep order exception of Rule 611(b)(5) or (6) of Regulation NMS and the self-help exception of Rule 611(b)(1) of Regulation NMS would be identified as executed pursuant to the intermarket sweep order exception.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [19] and, in particular, the requirements of Section 6 of the Act [20] and the rules and regulations thereunder. The Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act [21] in that it is designed to prevent fraudulent and manipulative acts and practices, to

[16] 17 CFR 240.17d–2.

[17] For example, NSX revised the proposed definition of "protected quotation" to mean, prior to the compliance date for Rule 611 of Regulation NMS, a bid or offer in a stock that is the best bid or best offer of a national securities exchange or association; provided, however, that the term "protected quotation" would not include a bid or offer in a stock that is subject to the ITS Plan if trading through such bid or offer would be permitted under NSX Rule 14.9(b) or by an exemption available under the securities laws or otherwise granted by the Commission or its staff. Following the compliance date for Rule 611 of Regulation NMS, the definition of "protected quotation" would mean a bid or offer in a stock that (i) is displayed by an automated trading center; (ii) is disseminated pursuant to a national market system plan approved by the Commission; and (iii) is an automated quotation that is the best bid or best offer of a national securities exchange or association.

[18] *See* Section III.B., *infra*.

[19] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78f.

[21] 15 U.S.C. 78f(b)(5).

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.

As previously stated, NSX proposes to replace its current trading system, NSTS, with a new trading System that would provide for price-time priority execution. The Exchange proposes to revise its rules, including Chapter XI (relating to trading rules), in connection with this new market structure.

A. Order Types

Pursuant to proposed NSX Rule 11.11, Users would be able to enter market orders and limit orders into the System with various time-in-force terms and other modifiers. Specific order types permitted by the System include: ITS Orders, Reserve Orders, Odd Lot Orders, Mixed Lot Orders, Post Only Orders, NSX Only Orders, Sweep Orders (including Protected Sweep Orders, Full Sweep Orders, and Destination Sweep Orders), Destination Specific Orders, and, following the compliance date for Rule 611 of Regulation NMS, Incoming Intermarket Sweep Orders.

The Exchange's proposed Sweep Orders would allow a User to "sweep" the market by matching the order for execution in the NSX Book, and simultaneously converting the order into one or more limit orders and routing such orders to away trading centers for execution against quotations in accordance with the terms of the Sweep Order. Specifically, a Protected Sweep Order would only execute against orders in the NSX Book and protected quotations at away trading centers. A Full Sweep Order would execute against the best available quotations in the NSX Book and at away trading centers (automated and manual quotations). A Destination Sweep Order would first be matched for execution against the NSX Book and then routed to a User-specified trading center for execution. The Commission believes that the proposed order types are consistent with the Act. The Commission notes that a number of the proposed order types will have different definitions prior to and following the relevant Regulation NMS compliance dates, which should enable Users to make use of the trading and routing strategies of such order types prior to when full compliance with Rules 610 and 611 of Regulation NMS is required.

Pursuant to proposed NSX Rule 11.12, Users may post a Cross on the System if the price of such trade is better than the best bid and offer on NSX, and (following the compliance date for Rule 611 of Regulation NMS) if it is equal to or better than the Protected NBBO. Crosses must improve each side of the Top of Book by at least one penny a share, except in the cases of Midpoint Crosses and Clean Crosses. A Midpoint Cross may improve the Top of Book by as little as one-half the minimum increment provided in NSX Rule 11.3(a), if it is priced at the midpoint of the Protected NBBO (or, prior to the compliance date for Rule 611 of Regulation NMS, if it is priced at the midpoint of the best bid and offer on the Exchange).[22] A Clean Cross may be executed on the System at a price equal to or better than the Top of Book if (i) it is for at least 5,000 shares and has an aggregate value of at least $100,000, (ii) the size of the Cross is greater than the size of the total interest on NSX at the Cross price, and (iii) following the compliance date for Rule 611 of Regulation NMS, it is at a price equal to or better than the Protected NBBO.[23]

Proposed NSX Rule 11.12(e) requires that all Users entering a Proprietary Cross comply with the Exchange's Customer Priority rule (*i.e.*, the price of the Cross must be better than any customer order the User is holding by at least $0.01). A User may also post a "Cross/Sweep" message that enters a Sweep Order for the account of the User sweeping all protected quotations that are superior to the Cross price, and simultaneously executes the Cross. In connection with any Cross/Sweep, the User must fully disclose the material facts relating to the Sweep Order to any customer for whose account either side of the Cross is being executed.[24] In addition, proposed NSX Rule 11.12(f) makes clear that NSX Rule 12.6, which restricts trading ahead of customer orders, applies to the entire Cross/Sweep transaction. The Commission notes that the User must provide the customer with the benefit of any superior price received by executing such Sweep Order against NSX quotations for the corresponding portion of the Cross.

The Commission finds that the proposed rules relating to cross messages are consistent with the Act and should provide Users flexibility in executing transactions which meet the specified requirements of each type of Cross, while still ensuring that customer priority principles are upheld. The Commission notes that it has approved rules substantially similar to those proposed by the Exchange relating to Clean Crosses.[25]

B. Order Interaction and Order Delivery

Pursuant to proposed NSX Rule 11.13, the System offers two modes of order interaction: (1) Automatic execution and (2) order delivery and automated response. Every User would be eligible to use the automatic execution mode to participate in the System, in which the System would match and execute like-priced orders. However, to be eligible for the order delivery functionality, a User would have to demonstrate to the Exchange that it could automatically process an inbound order and respond immediately. In new Interpretation and Policy .01 to proposed NSX Rule 11.13, NSX defines "immediately" as having system response times "that generally meet or exceed industry standards," which NSX believes currently to be 100 milliseconds. In addition, if the Exchange does not receive a response to an inbound order within 500 milliseconds, the User's displayed order will be cancelled.

The industry standard for such response times will undoubtedly change over time and become shorter and, therefore, the Commission notes that NSX must periodically review inbound order response time to determine what constitutes the current industry standard and update its parameters accordingly. The Commission believes that the Exchange's order delivery functionality, as proposed, is consistent with the Act.

C. Priority of Orders and Order Execution

Proposed NSX Rules 11.14 and 11.15 set forth the priority and execution parameters of the System. Pursuant to NSX Rule 11.14, orders are prioritized on a price-time basis, first by price and then by time.[26] Incoming orders (other than Sweep Orders) are first matched for execution against orders in the NSX Book.[27] Proposed NSX Rule 11.15 reflects the requirements of Rule 611 of Regulation NMS [28] by requiring that, for any execution on NSX to occur during Regular Trading Hours (*i.e.*, between 8:30 a.m. and 3 p.m. Central Time), the price must be equal to or better than the Protected NBBO unless the order is marked as an intermarket sweep order or unless another exception to Rule 611(b) of Regulation NMS is available. Orders that cannot be executed within

[22] *See* proposed NSX Rule 11.12(c).

[23] *See* proposed NSX Rule 11.12(d).

[24] *See* proposed NSX Rule 11.12(f).

[25] *See, e.g.*, Securities Exchange Act Release No. 46568 (September 27, 2002), 67 FR 62276 (October 4, 2002) (approving File No. SR–Amex–2002–23).

[26] *See* proposed NSX Rule 11.14(a).

[27] *See* proposed NSX Rule 11.15(a)(i).

[28] 17 CFR 242.611.

these parameters are eligible for routing to away trading centers for execution at the Protected NBBO.

Unless the terms of the order direct otherwise, any order other than a Sweep Order that cannot be executed on the Exchange would be converted into one or more limit orders, as necessary, to match the price of each protected quotation at the Protected NBBO available at away markets, and these limit orders would be routed to the applicable market for execution against the applicable protected quotation at the Protected NBBO.[29] Unless the terms of the order direct otherwise, any order not executed in full on the Exchange which by its terms is not eligible for routing away, or which is not executed in full when routed away, would be ranked in the NSX Book in accordance with order priority rules of proposed NSX Rule 11.14.[30]

Sweep Orders would be matched for execution in the NSX Book, and simultaneously converted into one or more limit orders and routed to away markets to be matched for execution against quotations in accordance with the terms of the Sweep Order.[31] In addition, pursuant to proposed NSX Rule 11.15(d), NSX intends to operate the System as an "automated market center" within the meaning of Regulation NMS, such that the System would display automated quotations at all times except in the event that a systems malfunction renders it incapable of displaying automated quotations. The Exchange would communicate to its ETP Holders its procedures relating to any change from automated to manual quotations in the event of such a systems malfunction.

The Commission believes that the proposed rules relating to order priority and order execution are consistent with the Act. The Commission believes that the System's price-time priority and automatic execution functionality may encourage Users to participate in the new System, which should promote competition and efficiencies on the new System and in the national market system in general.

D. Outbound Router

In the Trading Rules Notice, NSX requested that the Commission approve its wholly-owned subsidiary, NSX Securities, as a facility of the Exchange. NSX Securities would be subject to several conditions and undertakings which are reflected in proposed NSX Rule 2.11. First, the Exchange would regulate the Outbound Router function of NSX Securities as a facility, subject to Section 6 of the Act. In particular, and without limitation, under the Act, the Exchange would be responsible for filing with the Commission rule changes and fees relating to the Outbound Router function of NSX Securities and NSX Securities would be subject to exchange non-discrimination requirements. Second, NASD, a self-regulatory organization unaffiliated with the Exchange or any of its affiliates, would carry out oversight responsibilities as the Designated Examining Authority designated by the Commission pursuant to Rule 17d–1 of the Act with the responsibility for examining NSX Securities for compliance with the applicable financial responsibility rules.[32] In addition, NSX has stated that it would review its current regulatory allocation agreement with NASD to ensure that the NASD, and not the Exchange, has responsibility for regulatory functions for NSX Securities under such regulatory allocation agreement, including the responsibility to receive regulatory reports from NSX Securities, to examine NSX Securities for compliance, and to enforce compliance by NSX Securities with, specified provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange and the NASD, and to carry out other specified regulatory functions with respect to NSX Securities. Third, an ETP Holder's use of NSX Securities to route orders to another Trading Center would be optional. Any ETP Holder that does not wish to use NSX Securities would be able to utilize other routers to route orders to other trading centers.[33] Fourth, NSX Securities would not engage in any business other than (1) its Outbound Router function and (2) any other activities it may engage in as approved by the Commission. Finally, the books, records, premises, officers, agents, directors and employees of NSX Securities as a facility of the Exchange would be deemed to be the books, records, premises, officers, agents, directors and employees of the Exchange for purposes of, and subject to oversight pursuant to, the Act, and the books and records of NSX Securities as a facility of the Exchange would be subject at all times to inspection and copying by the Exchange and the Commission.

The Commission received one comment letter regarding the proposed rule change, as amended.[34] In its comment letter, OES questioned whether NSX Securities' routing functionality should be part of the Exchange.[35] In addition, OES believed that the Exchange, through its direct affiliation with NSX Securities, would be in direct competition with other broker-dealer participants of NSX that provide similar routing services and would "potentially be positioned to hold unfair competitive advantages through its regulatory and operational positions as a [self-regulatory organization] and an exchange."[36]

In Amendment No. 2, NSX responded to the OES Letter. NSX stated that the undertakings set forth in proposed NSX Rule 2.11 are specifically designed to mitigate potential conflicts of interest the Exchange might have with regard to NSX Securities. NSX noted that, under its proposed rules, an ETP Holder's use of NSX Securities to route orders to another trading center would be optional, and the only function of NSX Securities would be to act as an outbound router unless the Commission approves otherwise. In addition, NSX noted that the Commission has previously approved a similar arrangement between an exchange and an affiliated broker-dealer for outbound routing with substantially similar undertakings.[37]

The Commission notes that, because NSX Securities is a facility of the Exchange, the operation of the router is a function of the Exchange. Although the Commission is concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interests when the exchange is affiliated with one of its members, the Commission believes that it is appropriate and consistent with the Act to permit NSX to own NSX Securities in its capacity as a facility of NSX that routes orders from NSX to other trading centers, in light of the protections afforded by the conditions

[29] *See* proposed NSX Rule 11.15(a)(ii).

[30] *See* proposed NSX Rule 11.15(a)(iii).

[31] *See* proposed NSX Rule 11.15(b).

[32] NSX has stated that NSX Securities is in the process of registering as a broker-dealer, has applied for membership in the NASD, and is applying to become an ETP Holder. *See* Trading Rules Notice at 38479. The Commission expects NSX to complete this process prior to beginning operation of its new System.

[33] For example, an ETP Holder may choose to enter an Immediate-or-Cancel Order, which provides that, if the order is not executable on the System, the order would be cancelled and returned to the ETP Holder, at which time the ETP Holder could choose to route the order to another market. *See* proposed NSX Rule 11.11(b)(1).

[34] 34 OES Letter, *supra* note 4.

[35] *Id.* at 1.

[36] *Id.*

[37] *See* Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949 (September 29, 2005) (relating to the use of Archipelago Securities, LLC as an outbound router for NYSE Arca, Inc. (f/k/a the Pacific Exchange, Inc.)).

described above. Accordingly, the Commission approves the proposed rules regarding NSX Securities.

E. Transition to New System

NSX proposes to phase the new System into its market structure as follows: First, beginning the week of September 5, 2006, a small group of Nasdaq-listed stocks would be transitioned to the System from NSTS. Several additional groups of Nasdaq-listed stocks would be transitioned to the System over the following five weeks, so that all Nasdaq-listed stocks would have been transitioned to the System by mid-October 2006. Following the transition of Nasdaq-listed stocks, NSX would transition all non-Nasdaq-listed securities (*i.e.*, securities listed on the New York Stock Exchange, American Stock Exchange, and other exchanges) to the System. NSX has stated that it plans to monitor this implementation and adjust the schedule as needed to maintain an orderly transition. The Commission believes that the Exchange's phased approach to transitioning from NSTS to the new System should provide it with time to test its System in a real trading environment while only trading a limited number of securities. The Commission believes that this approach is appropriate and should help maintain an orderly transition to the System.

F. Regulation NMS

The Commission believes that the proposed rule change is consistent with the requirements of Regulation NMS.[38] In proposed NSX Rule 11.22, NSX proposes to adopt a rule with regard to locked and crossed markets, as required by Rule 610(d) of Regulation NMS.[39] The Exchange has also designed its proposed rules relating to orders, modifiers, and order execution[40] rules to comply with the requirements of Regulation NMS. These proposed rules include marking certain orders meeting the requirements of Rule 600(b)(30) of Regulation NMS[41] as intermarket sweep orders and accepting orders marked as intermarket sweep orders, which would allow orders so designated to be automatically matched and executed without reference to protected quotations at other trading centers. In addition, as mentioned above in Section III.B., NSX has designed its trading rules so that the Exchange would display only automated quotations and qualify as an automated trading center under Rule 600(b)(3) of Regulation NMS.[42] The Commission believes that NSX's proposed immediate-or-cancel functionality[43] is consistent with Rule 600(b)(3) of Regulation NMS. The Commission also notes that proposed NSX Rule 11.15(d) addresses situations where NSX has reason to believe it is not capable of displaying automated quotations, including communicating to ETP Holders its procedures concerning a change from automated to manual quotations.

G. Other Rules

In addition to the rules described in detail above, the proposed rule change would amend a number of other Exchange rules that address, among other things, the effective time of certain rules, hours of trading, units of trading, price variations, securities eligible for trading, market makers, authorized traders, access, trade execution and reporting, clearance and settlement, limitation of liability, clearly erroneous executions trading halts, short sales, and riskless principal transactions. The Commission believes that these rules are appropriate and consistent with the Act.

IV. Accelerated Approval of Amendment Nos. 2 and 3

As set forth below, the Commission finds good cause to approve Amendment No. 2 to the proposed rule change prior to the thirtieth day after Amendment No. 2 is published for comment in the **Federal Register** pursuant to Section 19(b)(2) of the Act.[44] Many of the revisions in Amendment No. 2 are modeled on existing rules of other exchanges or are intended to clarify the proposal. The Commission believes that accelerating approval of these rules is appropriate because the revisions do not raise new regulatory issues.

In Amendment No. 2, NSX modifies the proposed rule language to reflect the Commission's extension of certain compliance dates relating to Regulation NMS. Specifically, NSX is modifying proposed rules to reflect that such rules would not become effective until the compliance date for the applicable sections of Regulation NMS. The Commission notes that February 5, 2007 represents the beginning of the "Trading Phase" and the final date for full operation of Regulation NMS-compliant trading systems of all automated trading centers, including SRO trading facilities, that intend to qualify their quotations for trade-through protection under Rule 611 of Regulation NMS during the Pilots Stock Phase and All Stocks Phase.[45] Such rules include proposed NSX Rule 1.4(c) (pertaining to the effective time of certain NSX rules, including order execution, locking and crossing quotations in NMS stocks, and display of automated quotations), and proposed NSX Rule 1.5(P)(3) (pertaining to protected quotations). The Commission finds good cause to accelerate approval of these changes prior to the thirtieth day after publication in the **Federal Register**. The Commission believes this is a reasonable approach in light of the extension of Regulation NMS compliance dates and should help to ensure that the appropriate NSX rules are in place at the time that Regulation NMS compliance is required.

In Amendment No. 2, NSX modifies the proposed rule language regarding the requirements for order delivery functionality eligibility. Specifically, NSX is modifying proposed NSX Rule 11.13 to require Users to demonstrate to the Exchange that the User's system can automatically process inbound orders and respond immediately; new Interpretation and Policy .01 to proposed NSX Rule 11.13 would define "immediately" as having system response times "that generally meet or exceed industry standards," which NSX believes currently to be 100 milliseconds. The Commission finds good cause to accelerate approval of this change prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that NSX had originally proposed a response time of 500 milliseconds for Users using the Exchange's order delivery functionality. In Amendment No. 2, NSX modifies its proposal to require immediate responses.

In Amendment No. 2, NSX modifies certain proposed rule language relating to cross messages. Specifically, NSX deletes the requirement from proposed NSX Rule 11.12(d) that a Clean Cross be executed only if neither side of the Cross is for the account of the User entering the Cross, and amends proposed NSX Rule 11.3(b) to permit Cross executions in subpenny increments so long as they improve the Top of Book by at least a penny per share, as well as Clean Cross executions in subpenny increments. In Amendment No. 2, NSX also clarifies that its customer priority rules found in NSX Rule 12.6 applies to Cross/Sweep messages. The Commission finds good cause to accelerate approval of these changes prior to the thirtieth day after

[38] *See supra* note 10.

[39] 17 CFR 242.610(d).

[40] *See* proposed NSX Rules 11.11 and 11.15.

[41] 17 CFR 242.600(b)(30).

[42] 17 CFR 242.600(b)(3).

[43] *See* proposed NSX Rule 11.11(b)(1).

[44] 15 U.S.C. 78s(b)(2).

[45] *See* Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 30038 (May 24, 2006).

publication in the **Federal Register** because they clarify the application of NSX Rule 12.6 to Cross, Clean Cross, and Cross/Sweep messages, all of which were published for comment in the Trading Rules Notice.

In Amendment No. 2, NSX states that it would review its current regulatory allocation plan with NASD (as permitted by Rule 17d–2 under the Act[46]) to ensure that NASD, and not the Exchange, would be responsible for such regulatory functions with respect to NSX Securities. In addition, NSX adds new subsection (b) to proposed NSX Rule 2.11 regarding the Exchange's relationship with NSX Securities for purposes of the Act. The Commission finds good cause to accelerate approval of these changes prior to the thirtieth day after publication in the **Federal Register** because allocation of NSX's regulatory functions with regard to NSX Securities to NASD would be an extension of this current plan permitted under Rule 17d–2 of the Act. In addition, NSX modified its proposed rule language to provide that the books, records, premises, officers, agents, directors and employees of NSX Securities as a facility of the Exchange would be deemed to be the books, records, premises, officers, agents, directors and employees of the Exchange for purposes of, and subject to oversight pursuant to, the Act, and that the books and records of NSX Securities as a facility of the Exchange would be subject at all times to inspection and copying by the Exchange and the Commission. The Commission finds good cause to accelerate approval of these changes prior to the thirtieth day after publication in the **Federal Register** because they are substantially similar to rules relating to the administration of facilities of other national securities exchanges.

In Amendment No. 2, NSX describes a phase-in plan for the new System. The Exchange states that the System is currently undergoing testing and is scheduled to become operational on or about September 5, 2006. NSX would initially transition a small group of Nasdaq-listed stocks to the System, followed by several additional groups of Nasdaq-listed stocks over the next five weeks, leading to the inclusion of all Nasdaq-listed stocks by mid-October. Following the transition of Nasdaq-listed stocks, NSX would transition all non-Nasdaq-listed securities (*i.e.*, New York Stock Exchange, American Stock Exchange, and regional exchange-listed stocks) to the System. The Commission finds good cause to accelerate approval of this change prior to the thirtieth day after publication in the **Federal Register** because the phase-in period should help to ensure that there is an orderly transition to the new System.

In Amendment No. 2, NSX also makes technical corrections to the proposed rule change, for example, fixing incorrect rule citations. These changes are non-substantive and technical in nature and are necessary to clarify the proposal. The Commission finds good cause to accelerate approval of these changes prior to the thirtieth day after publication in the **Federal Register** because they better clarify NSX's proposal.

The Commission also finds good cause to approve Amendment No. 3 to the proposed rule change prior to the thirtieth day after Amendment No. 3 is published for comment in the **Federal Register** pursuant to Section 19(b)(2) of the Act.[47] Amendment No. 3 revises proposed NSX Rule 11.16(b) to clarify that trades executed pursuant to both the intermarket sweep order exception of Rule 611(b)(5) or (6) of Regulation NMS and the self-help exception of Rule 611(b)(1) of Regulation NMS would be identified as executed pursuant to the intermarket sweep order exception. The Commission finds good cause to accelerate approval of this change prior to the thirtieth day after publication in the **Federal Register** because it clarifies the identification of trades which are executed pursuant to both the intermarket sweep order and self-help exceptions of Rule 611(b) of Regulation NMS.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 2 and 3, including whether Amendment Nos. 2 and 3 are 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–NSX–2006–08 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–NSX–2006–08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of NSX. 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–NSX–2006–08 and should be submitted on or before September 28, 2006.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[48] that the proposed rule change (File No. SR–NSX–2006–08), as amended by Amendment No. 1, be, and hereby is, approved, and that Amendment Nos. 2 and 3 to the proposed rule change be, and hereby are,[49] approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Nancy M. Morris,

Secretary.

[FR Doc. E6–14808 Filed 9–6–06; 8:45 am]

BILLING CODE 8010–01–P

[46] 17 CFR 240.17d–2.

[47] 15 U.S.C. 78s(b)(2).

[48] 15 U.S.C. 78s(b)(2).

[49] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54387; File No. SR–Phlx–2006–48]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of a Pilot Program Concerning Option Position Limits

August 30, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 16, 2006, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. The Exchange has filed the proposal 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 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

The Phlx proposes to extend, for a period of six months, through March 1, 2007, a pilot program applicable to Exchange Rule 1001, Position Limits, which increases the standard position and exercise limits for equity option contracts and options on the Nasdaq-100 Index Tracking Stock[5] ("QQQQ") ("Pilot Program"). The text of the proposed rule change is available on the Phlx's Web site (*http://www.phlx.com*), at the Phlx's principal office, 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 Phlx 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 purpose of the proposed rule change is to extend the Pilot Program, which is scheduled to expire September 1, 2006,[6] for an additional six-month period, through March 1, 2007.

Position limits impose a ceiling on the number of option contracts in each class on the same side of the market relating to the same underlying security that can be held or written by an investor or group of investors acting in concert. Exchange Rule 1002 (not proposed to be amended herein) establishes corresponding exercise limits. Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five consecutive business days.

Exchange Rule 1001 subjects equity options to one of five different position limits depending on the trading volume and outstanding shares of the underlying security. Exchange Rule 1002 establishes exercise limits for the corresponding options at the same levels as the corresponding security's position limits.[7]

Standard Position and Exercise Limit

The Pilot Program increases the standard position and exercise limits for equity options traded on the Exchange and for options overlying QQQQ to the following levels:

Standard equity option contract limit [8]	Pilot program equity option contract limit
13,500	25,000
22,500	50,000
31,500	75,000
60,000	200,000
75,000	250,000
Standard QQQQ option contract limit	**Pilot Program QQQQ option contract limit**
300,000	900,000

[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] The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 Shares℠, Nasdaq-100 Trust℠, Nasdaq-100 Index Tracking Stock℠, and QQQ℠ are trademarks or service marks of The NASDAQ Stock Market LLC ("Nasdaq") and have been licensed for use for certain purposes by the Phlx pursuant to a License Agreement ("License") with Nasdaq. The Nasdaq-100 Index® ("Index") is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust℠, or the beneficial owners of Nasdaq-100 Shares℠. Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

[6] *See* Securities Exchange Act Release Nos. 51322 (March 4, 2005), 70 FR 12260 (March 11, 2005) (notice of filing and immediate effectiveness of File No. SR–Phlx–2005–17); 52261 (August 15, 2005), 70 FR 49004 (August 22, 2005) (notice of filing and immediate effectiveness of File No. SR–Phlx–2005–51, which extended the Pilot Program); and 53388 (February 28, 2006), 71 FR 11458 (March 7, 2006) (notice of filing and immediate effectiveness of File No. SR–Phlx–2006–13, which extended the Pilot Program).

[7] Exchange Rule 1002 states, in relevant part, "* * * no member or member organization shall exercise, for any account in which such member or member organization has an interest or for the account of any partner, officer, director or employee thereof or for the account of any customer, a long position in any option contract of a class of options dealt in on the Exchange (or, respecting an option not dealt in on the Exchange, another exchange if the member or member organization is not a member of that exchange) if as a result thereof such member or member organization, or partner, officer, director or employee thereof or customer, acting alone or in concert with others, directly or indirectly, has or will have exercised within any five (5) consecutive business days aggregate long positions in that class (put or call) as set forth as the position limit in Rule 1001, in the case of options on a stock or on an Exchange-Traded Fund Share * * *"

[8] Except when the Pilot Program is in effect.

To date, the Exchange believes that there have been no adverse affects on the market as a result of these increases in the limits for equity option contracts and options overlying QQQQ.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[9] in general, and furthers the objective of Section 6(b)(5) of the Act[10] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and the national market system, and, in general to protect investors and the public interest, by extending the Pilot Program for approximately an additional six months.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[13] However, Rule 19b–4(f)(6)(iii)[14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange provided the Commission with written notice of its intent to file this proposed rule change at least five business days prior to the date of filing the proposed rule change. In addition, the Exchange has requested that the Commission waive the 30-day pre-operative delay. The Commission believes that waiving the 30-day pre-operative delay is consistent with the protection of investors and in the public interest because it will allow the Pilot Program to continue uninterrupted.[15]

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 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–Phlx–2006–48 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 No. SR–Phlx–2006–48. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. 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–Phlx–2006–48 and should be submitted on or before September 28, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–14793 Filed 9–6–06; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] *Id.*

[15] For purposes only of waiving the pre-operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10597 and # 10598]

New Mexico Disaster # NM–00004

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of New Mexico (FEMA–1659–DR), dated 08/30/2006.

Incident: Severe Storms and Flooding.

Incident Period: 07/26/2006 and continuing.

Effective Date: 08/30/2006.

Physical Loan Application Deadline Date: 10/30/2006.

Economic Injury (Eidl) Loan Application Deadline Date: 05/30/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/30/2006, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Dona Ana.

Contiguous Counties (Economic Injury Loans Only): New Mexico: Luna, Otero, Sierra. Texas: El Paso.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.250
Homeowners without credit available elsewhere	3.125
Businesses with credit available elsewhere	7.934
Other (including non-profit organizations) with credit available elsewhere	5.000
Businesses and non-profit organizations without credit available elsewhere	4.000
For Economic Injury:	
Businesses & small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 10597 6 and for economic injury is 10598 0.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E6–14778 Filed 9–6–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10515 and # 10516]

Pennsylvania Disaster Number PA–00004

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 6.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Pennsylvania (FEMA–1649–DR), dated 07/04/2006.

Incident: Severe Storms, Flooding, and Mudslides.

Incident Period: 06/23/2006 through 07/10/2006.

Effective Date: 08/31/2006.

Physical Loan Application Deadline Date: 10/03/2006.

EIDL Loan Application Deadline Date: 04/04/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Pennsylvania, dated 07/04/2006, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 10/03/2006.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E6–14780 Filed 9–6–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Hearing; Region VIII Regulatory Fairness Board

The U.S. Small Business Administration (SBA) Region VIII Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a public hearing on Tuesday, September 26, 2006, at 9 a.m. The meeting will take place at the Colorado District Office, 721 19th Street, Room 426, Maroom Bells Conference Center, Denver, CO 80202–2508. The purpose of the meeting is to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by Federal agencies.

Anyone wishing to attend or to make a presentation must contact Amy McDowell, in writing or by fax, in order to be placed on the agenda. Amy McDowell, Business Development Assistant, SBA, 721 19th Street, Room 426, Denver, CO 80202, phone (303) 844–2607, Ext. 209 and fax (303) 844–6539, e-mail: *Amy.McDowell@sba.gov.*

For more information, see our Web site at *http://www.sba.gov/ombudsman.*

Thomas M. Dryer,

Acting Committee Management Officer.

[FR Doc. E6–14779 Filed 9–6–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Change Notice for RTCA Program Management Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Program Management Committee meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the RTCA Program Management Committee.

DATES: The meeting will be held September 19, 2006 starting at 9 a.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 850, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

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 Program Management Committee meeting. The revised agenda will include:

- September 19:
  - Opening Session (Welcome and Introductory Remarks, Review/Approve Summary of Previous Meeting).
- Publication Consideration/Approval:
  - Final Draft, Change 3 to DO–210, *Minimum Operational Performance Standards (MOPS) for Geosynchronous Orbit Aeronautical Mobile Satellite Services (AMSS) Avionics,* RTCA Paper No. 182–06/PMC–465, prepared by SC–208.
- Discussion:
  - Special Committee Chairman's Reports.
- Request to Revise DO–239–*MOPS for Traffic Information Service Data Link Communications—Discussion.*
- Action Item Review:
- Synthetic Vision Systems (SVS)—Discussion—Possible New Committee Request.
  - SC–147—Traffic Alert & Collision Avoidance System—Discussion—Updates.
  - SC–203—Unmanned Aircraft Systems (UAS)—Discussion—Schedule—Status Review.
  - SC–205–Software Considerations—Discussion—Status.
- Cabin Management Systems—Discussion—Status.
- Closing Session (Other Business, Document Production, Date and Place of Next Meeting, 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.

Dated: Issued in Washington, DC, on August 29, 2006.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 06–7488 Filed 9–6–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Seventh Meeting: RTCA Special Committee 203/Minimum Performance Standards for Unmanned Aircraft Systems and Unmanned Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 203, Minimum Performance Standards for Unmanned Aircraft Systems and Unmanned Aircraft.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 203, Minimum Performance Standards for Unmanned Aircraft Systems and Unmanned Aircraft and Working Groups 1–3.

DATES: The meeting will be held September 26–28, 2006, starting at 9 a.m.

ADDRESSES: The meeting will be held at The MITRE Corporation, 75515 Colshire Dr., Building 2, Main Entrance, Room 1N100, McLean, Virginia 22102–7508.

Note: Workgroup 1 will convene at Northrop Grumman Information Technologies (directly across the street from MITRE) located at: 7575 Colshire Drive, McLean, VA 22102–7508. *On-site contact:* Qudsia Askaryar; telephone (703) 556–1326. You will be required to show a valid photo id (driver's license; passport) upon entrance into the Northrop Grumman facility. Company policy precludes cameras or cell phones that take photos. Dress is business casual.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.* (2) *On-site contact:* Mr. Matthew DeGarmo; telephone (703) 983–7320.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 203 meeting. *The agenda will include:*

- *September 26:*
- Opening Plenary Session (Welcome and Introductory Remarks, Approval of Sixth Plenary Summary).
- Review status and progress of Guidance Material and Considerations for Unmanned Aircraft for Final Review and Comment (FRAC).
- Review SC–203 Progress Since Sixth Plenary: Status from Workgroups 1, 2 and 3.
- Plenary adjourns until September 28 (at adjournment of Plenary, Workgroups 1, 2, and 3 go into session.
- *September 27:*
- Workgroups 1, 2 and 3 in session.
- *September 28:*
- Workgroups 1, 2 and 3 in session until 12 p.m.
- Plenary reconvenes at 1 p.m.
- Approve Guidance Material and Considerations for Unmanned Aircraft for FRAC, if ready.
- Workgroups 1, 2 and 3 Report Outs.
- Closing Plenary Session (Action Item Review, Other Business, Date, Place and Time of Next Plenary, 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.

Dated: Issued in Washington, DC, on August 25, 2006.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 06–7489 Filed 9–6–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 186: Automatic Dependent Surveillance—Broadcast (ADS–B)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 186 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 186: Automatic Dependent Surveillance—Broadcast (ADS–B).

DATES: The meeting will be held September 25–29, 2006 starting at 9 a.m. (unless stated otherwise).

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

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 186 meeting.

- *September 25:*
  - RFG–NRA.
  - RFG–AD.
- *September 26:*
  - RFG–NRA.
  - RFG–AD.
- *September 27:*
  - RFG–NRA.
  - RFG–AD.
- *September 28:*
  - Opening Plenary Session (Chairman's Introductory Remarks, Review of Meeting Agenda, Review/Approval of the Thirty Seventh Meeting Summary, RTCA Paper No. 150–06/SC–186–237).
- SC–186 Activity Reports:
  - WG–1, Operations & Implementation.
  - WG–2, TIS–B.
  - WG–3, 1090 MHz MOPS.
  - WG–4, Application Technical Requirements.
  - WG–5, UAT MOPS.
  - WG–6, ADS–B MASPS.
  - Requirements Focus Group.
- EUROCAE WG–51 Activity Report.
- STP MOPS—Review Status.
  - *Final Review/Approval-Proposed Final Draft—Safety, Performance & Interoperability Requirements Document for ADS–B–NRA Application,* RTCA Paper No. 162–06/SC–186–238.
  - Discussion—TIS–B Management Messages/TIS–B MOPS.
  - Closing Plenary Session (New Business, Other Business, Review Action Items/Work Program, Date, Place and Time of Next Meeting, Adjourn).
- *September 29:*
  - RFG–Plenary Session.

Note: AD—Application Development.

ASAS—Aircraft Surveillance Applications System.

ASSAP—Airborne Surveillance & Separation Assurance Processing.

CDTI—Cockpit Display of Traffic Information.

MOPS—Minimum Operational Performance Standards.

NRA—Non-Radar Airspace.

RFG—Requirements Focus Group.

STP—Surveillance Transmit Processing.

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, August 29, 2006.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 06–7490 Filed 9–6–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: City of Cleveland, Cuyahoga County, OH

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed project in the City of Cleveland, Cuyahoga County, Ohio.

FOR FURTHER INFORMATION CONTACT: Victoria Peters, Office Director, Office of Engineering and Operations, Federal Highway Administration, 200 N. High Street, Room 328, Columbus, Ohio 43215, Telephone: (614) 280–6896.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Ohio Department of Transportation (ODOT), will prepare an EIS for proposed improvements to Interstates 71, 77 and 90, and connecting radial freeways and local roadways, known as the Cleveland Innerbelt. The Cleveland Innerbelt is routed across the Cuyahoga River valley and around the south and east sides of downtown Cleveland, Ohio. The project termini are located approximately at the merge/diverse point of State Route 176, (the Jennings Freeway) and Interstate 71 southwest of downtown, south of the existing Interstate 90/77 Central Interchange on I–77 south of downtown, and east of the Interstate 90/State Route 2 interchange east of downtown along the shore of Lake Erie.

On September 18, 2001 the FHWA issued a Notice of Intent, (66 FR 49448, Sep. 27, 2001), for the Cleveland Innerbelt action, which was in the planning phase of project development, indicating that an Environmental Assessment or EIS would be prepared. Since 2001 project development and public involvement activities have been ongoing. To effectively and efficiently manage the Cleveland Innerbelt Project the FHWA, in cooperation with the ODOT, has decided to prepare an EIS for the proposed Project.

The purpose of the Cleveland Innerbelt Project is to improve the physical condition of the existing bridge decks and roadway pavements, improve the operational performance of the roadway system, improve the safety of the roadway system, and improve the access provided by the roadway system, while supporting community goals and objectives. Alternatives under consideration include: (1) the no-build (Defined as: maintaining/reconstructing the facility in kind); and (2) rehabilitation/upgrading of the existing infrastructure combined with construction of new facilities on modified alignment(s).

Letters describing the proposed Project and soliciting comments will be sent to appropriate Federal, and State, agencies known to have interest in this proposal. Moreover, public involvement activities will continue to facilitate the further development of alternatives, and to identify and quantify the social, economic, and environmental impacts of the proposed Project. A public hearing will be held. Public notice will be given of the time and place of the hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues relating to this proposed Project are addressed, and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed Project and the EIS should be sent to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: August 31, 2006.

Victoria Peters,

Office Director, Office of Engineering and Operations, Federal Highway Administration, Columbus, Ohio.

[FR Doc. E6–14814 Filed 9–6–06; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2003–15818]

Exemption to Allow Werner Enterprises, Inc. To Use Global Positioning System (GPS) Technology To Monitor and Record Drivers' Hours of Service

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Renewal of exemption; request for comments.

SUMMARY: The FMCSA announces its decision to renew Werner Enterprises, Inc.'s (Werner) exemption from the Agency's requirement that drivers of commercial motor vehicles (CMVs) operating in interstate commerce prepare handwritten records of duty status (RODS). Werner has requested that its exemption be renewed so that it may continue its practice of monitoring the hours of service (HOS) of its drivers by means of GPS technology and complementary computer programs. Werner proposes in this application that the terms and conditions of the current exemption remain in place for a second two-year period. The FMCSA believes that with the terms and conditions in place, Werner will maintain a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the requirement for a written RODS.

DATES: This decision is effective September 7, 2006. Comments must be received on or before October 10, 2006.

ADDRESSES: You may submit comments to the DOT Docket Management System (DMS), referencing Docket Number FMCSA–2003–15818, using any of the following methods:

- *Web Site: http://dmses.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building,

400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the Agency name and docket number for this notice. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the Privacy Act heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The DMS is available 24 hours each day, 365 days each year. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477; Apr. 11, 2000). This information is also available at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, MC–PSD, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Telephone: 202–366–4009. E-mail: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

On April 6, 1998, FMCSA published a notice (63 FR 16697) soliciting motor carriers to participate in a "pilot demonstration project" (the Project). The Project was a voluntary program under which motor carriers with GPS technology and related safety-management computer systems would enter into an agreement with the Agency to use such systems to record and monitor drivers' HOS in lieu of the RODS required by 49 CFR 395.8. The Agency stated its belief that GPS technology and certain complementary safety-management computer systems then being used by the motor carrier industry provided at least the same degree of HOS monitoring accuracy as the automatic on-board recorders permitted by 49 CFR 395.15. Although participation in the Project was open to all interested motor carriers, Werner was the only motor carrier to enter into a memorandum of understanding (MOU) with the Agency to allow the use of GPS technology. A copy of the Werner MOU, dated June 10, 1998, is included in the docket referenced at the beginning of this notice.

Following execution of the MOU, FMCSA closely monitored Werner's use of GPS technology. Over the course of the pilot demonstration project, FMCSA conducted on-site reviews of Werner and also investigated a complaint made against Werner. These activities resulted in improvements in Werner's GPS system that increased the accuracy of the RODS of Werner's drivers and thereby improved HOS compliance. In March, 2002, Werner and FMCSA amended the MOU to incorporate various modifications of the GPS system designed to improve Werner's monitoring of its compliance with the HOS rules. A copy of the amended MOU is also in the docket of this notice.

In 2003, FMCSA exercised its authority under 49 U.S.C. 31315(b) to consider Werner for an exemption from its regulation requiring RODS to be maintained in paper form. On December 11, 2003, the Agency gave the public notice and the opportunity to comment on the proposal (68 FR 69117). FMCSA considered the comments and on September 21, 2004, granted Werner an exemption from 49 CFR 395.8 for a two-year period, with terms and conditions similar to those of the amended MOU (69 FR 56474).

Werner's Application for an Exemption Renewal

Werner has applied for renewal of this exemption; a copy of the application has been placed in the docket. Under 49 U.S.C. 31315 and 31136(e), FMCSA may renew an exemption from the HOS requirements in 49 CFR 395.8 for a period of up to two years if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The procedures for requesting an exemption (including renewals) are prescribed in 49 CFR part 381. The FMCSA has evaluated Werner's application for a renewal on its merits and decided to renew the exemption for a two-year period.

Terms and Conditions of the Exemption

System Operation

(a) System defaults must record truck stationary time as "on duty, not driving."

(b) Movements of the vehicle greater than two miles must be recorded as driving time.

(c) Speed (which is determined by time and distance between truck location updates) that is calculated to be below 10 miles per hour (mph) may be considered invalid. In these instances, distance traveled may be divided by average driver mph or average State-to-State mph to derive a rough estimate of the driving time. Werner must discontinue the use of driving time modeling entirely if its GPS provider improves the satellite positioning frequency or incorporates other technology that makes the modeling unnecessary.

(d) With the exception of automatically recording the driver's status as "on duty, not driving" when the driver's fuel card is inserted into the card reader, no system defaults are authorized for routine stops (*i.e.*, deliveries, pickups, rest). Drivers must make the correct duty status entry into the electronic system.

(e) The system must not allow drivers to manipulate the system to conceal driving hours.

Documentation of System Failures

Werner must require each driver to note immediately any failure of the GPS technology or complementary safety management computer systems, and to immediately begin preparing hard-copy driver logs during the period that the technology is inoperative. Werner must maintain a centralized record of each separate failure, including the date, time periods, individual driver or operating division(s) impacted, and type of failure. Upon request by Federal or State enforcement officials, Werner must provide facsimile copies of its RODS for the current day and the previous 7 days for the driver(s) affected by the failure. In the event Werner is unable to produce these facsimile copies within two hours, the driver(s) must manually prepare a driver RODS for the current day and reconstruct his or her duty hours for the previous 7 days. When the system becomes operational, a fax of the missing RODS must be forwarded to the agreed-upon site as soon as possible. Failure to produce either of these two types of documents within two hours constitutes a violation of this exemption and 49 CFR 395.8(a).

Information Required on All CMVs Operated by Werner

Werner must ensure that each CMV it operates has on board and available for review by Federal or State enforcement personnel an information packet containing the following three items:

(a) An instruction sheet describing in detail how HOS data may be retrieved from the on-board GPS equipment;

(b) A supply of blank RODS graph-grids sufficient to record the driver's duty status and other related information for the duration of each trip; and

(c) A copy of the exemption issued by FMCSA authorizing Werner to use GPS technology and complementary computer software programs in lieu of the RODS required by 49 CFR 395.8.

FMCSA Access to Safety Management Information System

Werner must allow FMCSA personnel reasonable access to its safety management information system(s). If FMCSA requests access to the system(s), Agency personnel will determine the scope and nature of the assessment. At a minimum, access to records will include:

(a) Driver records of duty status created by Werner's GPS and related safety management computer systems;

(b) Driver-dispatch "message histories" and detailed position histories associated with driver records of duty status;

(c) Driver payroll records associated with driver records of duty status;

(d) Driver shipping document records; and

(e) Miscellaneous trip expense records.

Reporting of Corrections or Amendments to Records

Werner must furnish upon request information indicating the number of times the "driving" time on driver RODS was changed for each driver, and identifying who authorized each altered record.

Documenting Distance Traveled

Werner must ensure the system for monitoring and recording drivers' HOS has a means of determining that the mileage each driver travels is based on data from the vehicle's electronic control module or other on-board vehicle system, rather than on less accurate methods such as GPS-based (point-to-point) calculations that may underestimate the distance traveled.

Enforcement of Hours of Service While the Exemption Is in Effect

Under the terms and conditions of this exemption, Werner may require its drivers to use the company's GPS technology and complementary safety-management computer systems to record their HOS instead of complying with the requirements of 49 CFR 395.8. The FMCSA will also continue, to the greatest extent practicable, to communicate with State, Provincial, and local enforcement agencies regarding the terms and conditions of the exemption. The FMCSA will also continue its policy of not divulging to any third party proprietary information related to Werner's GPS technology or related safety management computer systems.

In the event FMCSA conducts a compliance review or any other type of motor carrier safety management investigation of Werner, FMCSA will review, using its automated hours-of-service assessment system, 100 percent of the applicable operating division's hours-of-service records for compliance with the maximum driving time limitations set forth in 49 CFR 395.3. The 100 percent sampling would not extend to any other portion of the regulations reviewed. With respect to the investigation of the accuracy of hours-of-service records (49 CFR 395.8(e)), FMCSA reserves the right to sample records in accordance with FMCSA policies applicable to all motor carriers, and Werner retains the right to contest the validity of the sample used.

The Agency does not intend to hold Werner to a higher standard of compliance than the rest of the industry, nor would it treat Werner differently in conducting complaince investigations or other types of investigations. At any time during the exemption period, FMCSA may conduct compliance reviews of Werner, consistent with standard operating policies applicable to all motor carriers. These compliance reviews would result in the assignment of a safety rating, and the Agency could initiate enforcement action against Werner for serious violations.

Werner's drivers and vehicles continue to be subject to roadside inspections conducted by FMCSA or State enforcement personnel during the period of the exemption. The exemption does not preclude States from continuing to enforce applicable State requirements concerning on-duty and driving-time limits. It does, however, preclude States from requiring Werner drivers to prepare and present RODS. 'Werner must ensure that its drivers cooperate with Federal and State enforcement personnel who request information, during roadside inspections, concerning its drivers' hours of service.

Request for Comments

In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA requests public comments on the approval of Werner's request for a renewal of its exemption from the requirements of 49 CFR 395.8. The Agency requests that interested parties submit comments by October 10, 2006. The FMCSA will review all comments received by this date and determine whether the renewal of the exemption is consistent with the requirements of 49 U.S.C. 31315 and 31136(e). The FMCSA believes the requirements for a renewal of an exemption under 49 U.S.C. 31315 and 31136(e) can be satisfied by initially granting the renewal and then requesting and subsequently evaluating comments submitted by interested parties. As indicated above, the Agency previously published a notice of final disposition announcing its decision to exempt Werner from the HOS requirements of 49 CFR 385.8. The decision to renew the exemption is based on the merits, and made only after careful consideration of the comments submitted in response to the April 30, 2003 (68 FR 23174) notice.

Interested parties or organizations possessing information that would otherwise show that Werner's GPS system is not achieving the requisite statutory level of safety should immediately notify FMCSA. The Agency will evaluate any information submitted and, if safety is being compromised or if the continuation of the exemption is not consistent with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA will take immediate steps to revoke the exemption of the driver(s) in question.

Issued on: August 31, 2006.

David H. Hugel,

Deputy Administrator.

[FR Doc. E6–14797 Filed 9–6–06; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No: FTA–2006–25750]

Policy Statement on When High-Occupancy Vehicle (HOV) Lanes Converted to High-Occupancy/Toll (HOT) Lanes Shall Be Classified as Fixed Guideway Miles for FTA's Funding Formulas and When HOT Lanes Shall Not Be Classified as Fixed Guideway Miles for FTA's Funding Formulas

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of policy statement and request for comment.

SUMMARY: This notice describes the terms and conditions on which the Federal Transit Administration (FTA) proposes to classify High-Occupancy Vehicle (HOV) lanes that are converted to High-Occupancy/Toll (HOT) lanes as "fixed guideway miles" for purposes of the transit funding formulas administered by FTA. The notice also describes when HOT lanes would be ineligible for classification as fixed guideway miles in FTA's funding formulas, clarifies which HOT lanes shall not be eligible for reporting as fixed guideway miles in FTA's funding formulas, and seeks comment from interested parties. After consideration of the comments, FTA will issue a second **Federal Register** notice responding to comments received and noting any changes made to the policy statement as a result of comments received.

DATES: Comments must be received by October 10, 2006. Late-filed comments will be considered to the extent practicable.

ADDRESSES: To ensure your comments are not entered more than once into the DOT Docket, please identify your submissions by the following docket number: FTA–2006–25750. Please make your submissions by only one of the following means:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the online instructions for making submissions to the DOT electronic docket site.
- Web Site: *http://dms.dot.gov*. Follow the online instructions for making submissions to the DOT electronic docket site.
- Fax: 1–202–493–2478.
- U.S. Post or Express Mail: Docket Management System, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: To the Docket Management System; Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must make reference to the "Federal Transit Administration" and include the docket number for this notice set forth above. Due to security procedures in effect since October 2001 regarding mail deliveries, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to *http://dms.dot.gov*.

Docket: For access to the DOT docket to read materials relating to this notice, please go to *http://dms.dot.gov* at any time or to the Docket Management System.

FOR FURTHER INFORMATION CONTACT:
David B. Horner, Esq., Chief Counsel, Federal Transit Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. E-mail: *David.Horner@dot.gov*. Telephone: (202) 366–4040; or
Robert J. Tuccillo, Associate Administrator, Office of Budget & Policy, Federal Transit Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. E-mail: *Robert.Tuccillo@dot.gov*. Telephone: (202) 366–4050.
Office hours are from 8:30 a.m. to 6 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Since the early 1980s, transportation officials have sought to manage traffic congestion and increase vehicle occupancy by means of High-Occupancy Vehicle (HOV) lanes—highway lanes reserved for the exclusive use of car pools and transit vehicles. Today, there are over 130 freeway HOV facilities in metropolitan areas in the U.S.,[1] of which approximately 10 have received funding through FTA's Major Capital Investment program and approximately 80 are counted as "fixed guideway miles" for purposes of FTA's formula grant programs.[2] Since 1990, however, HOV mode share in 36 of the 40 largest metropolitan areas has steadily declined,[3] while both excess capacity on HOV lanes and congestion have increased.[4]

An increasing number of metropolitan areas are considering new demand management strategies as alternatives to HOV lanes. One emerging alternative is the variably-priced High-Occupancy/Toll (HOT) lane. HOT lanes combine HOV and pricing strategies by allowing Single-Occupant Vehicles (SOVs) to access HOV lanes by paying a toll. The lanes are "managed" through pricing to maintain free flow conditions even during the height of rush hours.

HOT lanes provide multiple benefits to metropolitan areas that are experiencing severe and worsening congestion and significant transportation funding shortages. First, variably-priced HOT lanes expand mobility options in congested urban areas by providing an opportunity for reliable travel times for users prepared to pay a significant premium for this service. HOT lanes also improve the efficiency of HOV facilities by allowing toll-paying SOVs to utilize excess lane capacity on HOVs. In addition, HOT lanes generate new revenue which can be used to pay for transportation improvements, including enhanced transit service.

In August of 2005, recognizing the advantages of HOT lanes, Congress enacted section 112 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), codified at 23 U.S.C. 166, to authorize States to permit use of HOV lanes by SOVs, so long as the performance of the HOV lanes is continuously monitored and continues to meet specified performance

[1] Office of Operations, Federal Highway Administration, U.S. Department of Transportation.

[2] National Transit Database.

[3] *Journey to Work Trends in the United States and its Major Metropolitan Areas 1960–2000*, Publication No. FHWA–EP–03–058 Prepared for: U.S. Department of Transportation, Federal Highway Administration, Office of Planning, Prepared by: Nancy McGuckin, Consultant, Nanda Srinivasan, Cambridge Systematics, Inc.

[4] Office of Operations, Federal Highway Administration, U.S. Department of Transportation. Demand for highway travel by Americans continues to grow as population increases, particularly in metropolitan areas. Construction of new highway capacity to accommodate this growth in travel has not kept pace. Between 1980 and 1999, route miles of highways increased 1.5 percent while vehicle miles of travel increased 76 percent. The Texas Transportation Institute estimates that, in 2000, the 75 largest metropolitan areas experienced 3.6 billion vehicle-hours of delay, resulting in 5.7 billion gallons in wasted fuel and $67.5 billion in lost productivity. And traffic volumes are projected to continue to grow. The volume of freight movement alone is forecast to nearly double by 2020. Congestion is largely thought of as a big city problem, but delays are becoming increasingly common in small cities and some rural areas as well.

standards. The Department has strongly endorsed the conversion of HOV lanes to variably-priced HOT lanes, most recently in its *Initiative to Reduce Congestion on the Nation's Transportation Network*. It is the Department's policy to encourage jurisdictions to consider "HOV-to-HOT" conversion as a means of congestion relief and possible revenue enhancement.

The ability of HOT lanes to introduce additional traffic to existing HOV facilities, while using pricing and other management techniques to control the number of additional motorists, maintain high service levels and provide new revenue, make HOT lanes an effective means of reducing congestion and improving mobility. For this reason, and given the new authority enacted by Congress to promote "HOV-to-HOT" conversions, many States, transportation agencies and metropolitan areas are seriously considering applying variable pricing to both new and existing roadways. For example, the current long-range transportation plan for the Washington, DC, metropolitan area includes four new HOT lanes along 15 miles of the Capital Beltway in Virginia, and six new variably-priced lanes along 18 miles on the Inter-County Connector in Montgomery and Prince George's Counties in Maryland.[5] Virginia is also exploring the possibility of converting existing HOV lanes along the I–95/395 corridor into HOT lanes.[6] Maryland is considering express toll lanes along I–495, I–95 and I–270, as well as along other facilities.[7] Similarly, in San Francisco, the Metropolitan Transportation Commission's Transportation 2030 Plan advocates development of a HOT network that would convert that region's existing HOV lanes to HOT lanes; [8] Houston's 2025 Regional Transportation Plan includes plans to implement peak period pricing within the managed HOT lanes of the major freeway corridors in the region; [9] and the Miami-Dade, Florida 2030 Transportation Plan includes conversion of existing HOV lanes to reversible HOV/HOT lanes to provide additional capacity to I–95 in Miami-Dade County.[10] Other jurisdictions are exploring the potential for HOT lanes with grants provided by the Department's Value Pricing Pilot Program.[11] These include the Port Authority of New York/New Jersey; San Antonio, Texas; Seattle, Washington; Atlanta, Georgia; and Portland, Oregon.[12]

While an increasing number of metropolitan planning organizations and State departments of transportation are studying the HOT lane concept as a strategy to improve mobility, six HOT lane facilities currently operate in the United States: State Route 91 (SR 91) Express Lanes in Orange County, California; the I–15 FasTrak in San Diego, California; the Katy Freeway QuickRide and the Northwest Freeway (US 290) in Harris County, Texas; I–394 in Minneapolis and St. Paul, Minnesota; and I–25 in Denver, Colorado.

Prior FTA Policy

Since 2002, FTA's policy has been to continue to classify the lanes of an HOV facility converted to HOT lanes as "fixed guideway miles" for funding formula purposes on the condition that the facility meets two requirements: (i) The HOT facility manages SOV use so that it does not impede the free-flow and high speed of transit and high-occupancy vehicles and (ii) toll revenues collected on the facility will be used for mass transit purposes.[13] FTA has considered requiring as an additional condition for eligibility that the lowest toll payable by SOVs on a HOT facility be not less than the fare charged for transit services on the HOT facility.

Proposed FTA Policy

(a) *Purpose of Revised Policy.* The proposed FTA policy described below would help ensure that federal transit funding for congested urban areas is not decreased when existing HOV facilities are converted to variably-priced HOT lanes in an effort by localities to reduce congestion, improve air quality, and maximize throughput using excess HOV lane capacity. The revised FTA policy would also promote a uniform approach by the Department's operating agencies concerning HOV-to-HOT conversions. In particular, FTA policy would be coordinated with the statutes enacted by Congress under section 112 of SAFETEA–LU applicable to the Federal Highway Administration intended to simplify conversion of HOV lanes to HOT lanes. The policy statement would also support the Administration's policy of encouraging HOV-to-HOT conversions.

(b) *Proposed Policy.* FTA would classify HOT lanes as "fixed guideway miles" for purposes of the funding formulas administered under 49 U.S.C. § 5307(b) and 49 U.S.C. § 5309(a)(E), so long as each of the following conditions is satisfied:

(i) *The HOT lanes were previously HOV lanes reported in the National Transit Database as "fixed guideway miles" for purposes of the funding formulas administered by FTA under 49 U.S.C. 5307(b) and 49 U.S.C. 5309(a)(E).* Facilities that were not eligible HOV lanes prior to being converted to HOT lanes would remain ineligible for inclusion as fixed guideway miles in FTA's funding formulas. Therefore, neither non-HOV facilities converted directly to HOT facilities nor facilities constructed as HOT lanes would be eligible for classification as "fixed guideway miles."

(ii) *The HOT lanes are continuously monitored and continue to meet performance standards that preserve free flow traffic conditions as specified in* 23 U.S.C. 166(d). 23 U.S.C. 166(d) provides operational performance standards for an HOV facility converted to a HOT facility. It also requires that the performance of the facility be continuously monitored and that it continue to meet specified performance standards. Due to original project commitments, HOV facilities constructed using capital funds available under 49 U.S.C. 5309(d) or (e) could be required, when converted to HOT lanes, to achieve a higher performance standard than required under 23 U.S.C. 166(d). Standards for operational performance and determining degradation of operational

[5] Letter to U.S. Department of Transportation, August 28, 2006, from National Capital Region Transportation Planning Board.

[6] Letter to U.S. Department of Transportation, August 28, 2006, from National Capital Region Transportation Planning Board.

[7] Letter to U.S. Department of Transportation, August 28, 2006, from National Capital Region Transportation Planning Board.

[8] A Vision for the Future Transportation 2030, February 2005, Chapter 1, Page 6.

[9] 2025 Regional Transportation Plan Houston-Galveston Area, June 2005, Page 31.

[10] Miami-Dade Transportation Plan (to the Year 2030) December 2004, FINAL DRAFT, Page 24.

[11] Federal Highway Administration, U.S. Department of Transportation. The Department's Value Pricing Pilot Program (VPPP), initially authorized by the Intermodal Surface Transportation Efficiency Act as the Congestion Pricing Pilot Program and continued as the VPPP under SAFETEA–LU, encourages implementation and evaluation of value pricing pilot projects, offering flexibility to encompass a variety of innovative applications including areawide pricing, pricing of multiple or single facilities or corridors, single lane pricing, and implementation of other market-based strategies.

[12] Federal Highway Administration, U.S. Department of Transportation.

[13] In a Letter to U.S. Representative Randall Cunningham, dated June 10, 2002, concerning the I–15 FasTrak facility in San Diego, FTA stated: "* * * FTA will recognize, for formula allocation purposes, exclusive fixed guideway transit facilities that permit toll-paying SOVs on an incidental basis (often called high occupancy/toll (HOT) lanes) under the following conditions: the facility must be able to control SOV use so that it does not impede the free flow and high speed of transit and HOV vehicles, and the toll revenues collected must be used for mass transit purposes."

performance for facilities constructed with funds from FTA's New Starts program would be determined by FTA on a case-by-case basis. FTA would require real-time monitoring of traffic flows to ensure on-going compliance with operational performance standards.

(iii) *Program income from the HOT lane facility, including all toll revenue, is used solely for "permissible uses."* "Permissible uses" could mean any of the following uses with respect to any HOT lane facility, whether operated by a public or private entity: (a) Debt service, (b) a reasonable return on investment of any private financing, (c) the costs necessary for the proper operation and maintenance of such facility (including reconstruction and rehabilitation), and (d) if the operating entity annually certifies that the facility is being adequately operated and maintained (including that the permissible uses described in (a), (b) and (c) above, if applicable, are being duly paid), any other purpose relating to a project carried out under Title 49 U.S.C. 5301 et seq. ("transit law"). In cases where the HOT lane facility has received (or receives) funding from FTA and another Federal agency, such that use of the facility's program income is governed by more than one Federal program, FTA's restrictions concerning permissible use would not apply to more than *transit's allocable share* [14] of the facility's program income. FTA would not require recipients to assign priority in payment to any permissible use.

(c) *Transit Fares and Tolls on HOT Lane Facilities.* FTA would not condition reporting of HOT lanes as fixed guideway miles following conversion from HOV lanes or condition any approval or waiver under a Full Funding Grant Agreement on a grantee's adopting transit fare policies or a tolling authority's adopting of tolling policies concerning, respectively, the price of transit services on the HOT lane facility and the tolls payable by SOVs. Instead, FTA would allow grantees and tolling authorities to develop their own fare structures for transit services and tolls, respectively, on HOT lane facilities. Transit fares would remain subject to 49 U.S.C. 5332 (Nondiscrimination) and 49 U.S.C. 5307 (Urbanized area formula grants).

(d) *No Return of Funds under Full Funding Grant Agreements.* In the event that an HOV facility is converted to a HOT facility and the HOV facility has received funds through FTA's New Starts program, FTA would not require the grantee to return such funds so long as the facility complied with the conditions set forth in this guidance.

James S. Simpson,

Administrator.

[FR Doc. E6–14796 Filed 9–6–06; 8:45 am]

BILLING CODE 4910–57–P

[14] *Transit's allocable share* of the facility's program income shall be an amount equal to the facility's total program income, for any period, multiplied by a ratio, (a) the numerator of which shall be the cumulative amount of funds contributed to the facility through a program established by transit law, and (b) the denominator of which shall be the cumulative amount of all Federal funds contributed to the facility, in each case at the time transit's allocable share is calculated.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2006–25324, Notice 2]

Automobili Lamborghini SpA; Bugatti Automobiles S.A.S. and Bugatti Engineering GmbH; Group Lotus Plc; Morgan Motor Company Limited; Maserati; Grant of Applications for a Temporary Exemption From Advanced Air Bag Requirements of FMVSS No. 208

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of applications for temporary exemptions from certain advanced air bag provisions of Federal Motor Vehicle Safety Standard No. 208, *Occupant Crash Protection.*

SUMMARY: This notice grants the Automobili Lamborghini SpA ("Lamborghini"); Bugatti Automobiles S.A.S. and Bugatti Engineering GmbH (collectively, "Bugatti"); Group Lotus Plc ("Lotus"); Morgan Motor Company Limited ("Morgan"); and Maserati SpA ("Maserati") applications for temporary exemption from certain advanced air bag requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection.* The exemptions apply to the Lamborghini Murcielago, the Bugatti Veyron 16.4, the Lotus Elise, the Morgan Aero 8, and the Maserati Coupe/Spyder. In accordance with 49 CFR part 555, the basis for each grant is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard, and the exemption would have a negligible impact on motor vehicle safety.

The exemptions for the Lamborghini Murcielago, the Lotus Elise, and the Morgan Aero 8 are effective September 1, 2006 and will remain in effect until August 31, 2009. The exemption for the Bugatti Veyron 16.4 is effective from September 1, 2006 and will remain in effect until September 1, 2008. The exemption for the Maserati Coupe/Spyder is effective from September 1, 2006 and will remain in effect until December 31, 2007.

In accordance with the requirements of 49 U.S.C. 30113(b)(2), we published a notice of receipt of the applications [1] in the **Federal Register** and asked for public comments.[2] We received comments from four of the petitioners (Lamborghini, Lotus, Morgan, and Maserati), one trade organization, and one individual. Please note that, as was done with the notice of receipt, we are publishing this decision notice for the five applications together to ensure efficient use of agency resources and to facilitate the timely processing of the applications. However, NHTSA considered each application individually, and our decision regarding the temporary exemption for each company is discussed separately below.

DATES: The exemptions from the specified provisions of FMVSS No. 208 for the Lamborghini Murcielago, the Lotus Elise, and the Morgan Aero 8 are effective September 1, 2006 until August 31, 2009. The exemption for the Bugatti Veyron 16.4 is effective from September 1, 2006 until September 1, 2008. The exemption for the Maserati Coupe/Spyder is effective from September 1, 2006 until December 31, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Ed Glancy or Mr. Eric Stas in the Office of the Chief Counsel at the National Highway Traffic Safety Administration (NCC–112), 400 Seventh Street, SW., Room 5215, Washington, DC 20590 (Phone: 202–366–2992; Fax 202–366–3820).

SUPPLEMENTARY INFORMATION

I. Advanced Air Bag Requirements and Small Volume Manufacturers

In 2000, NHTSA upgraded the requirements for air bags in passenger cars and light trucks, requiring what are commonly known as "advanced air bags." [3] The upgrade was designed to meet the goals of improving protection for occupants of all sizes, belted and unbelted, in moderate to high speed crashes, and of minimizing the risks posed by air bags to infants, children,

[1] To view the applications, go to: *http://dms.dot.gov/search/searchFormSimple.cfm* and enter the Docket No. NHTSA–2006–25324.

[2] *See* 71 FR 39386 (July 12, 2006) (Docket No. NHTSA–2006–25324–6).

[3] *See* 65 FR 30680 (May 12, 2000) (Docket No. NHTSA–2000–7013).

and other occupants, especially in low speed crashes.

The advanced air bag requirements were a culmination of a comprehensive plan that the agency announced in 1996 to address the adverse effects of air bags. This plan also included an extensive consumer education program to encourage the placement of children in rear seats. The new requirements were phased in beginning with the 2004 model year.

Small volume manufacturers (i.e., original vehicle manufacturers producing or assembling fewer than 5,000 vehicles annually for sale in the United States) are not subject to the advanced air bag requirements until September 1, 2006, but their efforts to bring their respective vehicles into compliance with these requirements began several years ago. However, because the new requirements were challenging, major air bag suppliers concentrated their efforts on working with large volume manufacturers, and, thus, until recently, small volume manufacturers had limited access to advanced air bag technology. Because of the nature of the requirements for protecting out-of-position occupants, "off-the-shelf" systems could not be readily adopted. Further complicating matters, because small volume manufacturers build so few vehicles, the costs of developing custom advanced air bag systems compared to potential profits discouraged some air bag suppliers from working with small volume manufacturers.

The agency has carefully tracked occupant fatalities resulting from air bag deployment. Our data indicate that the agency's efforts in the area of consumer education and manufacturers' providing depowered air bags were successful in reducing air bag fatalities even before advanced air bag requirements were implemented.

As always, we are concerned about the potential safety implication of any temporary exemptions granted by this agency. In the present case, we are addressing five separate petitions for a temporary exemption from the advanced air bag requirements, each of which is discussed individually below. The petitioners are all manufacturers of very expensive, low volume, exotic sports cars.

II. Overview of Petitions for Economic Hardship Exemption

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR part 555, Lamborghini, Bugatti, Lotus, Morgan, and Maserati have separately petitioned the agency for a temporary exemption from certain advanced air bag requirements of FMVSS No. 208. The basis for each application is that compliance would cause substantial economic hardship [4] to a manufacturer that has tried in good faith to comply with the standard. The agency closely examines and considers the information provided by manufacturers in support of these factors, and, in addition, pursuant to 49 U.S.C. 30113(b)(3)(A), determines whether exemption is in the public interest and consistent with the Safety Act.[5]

A manufacturer is eligible to apply for a hardship exemption if its total motor vehicle production in its most recent year of production did not exceed 10,000 vehicles, as determined by the NHTSA Administrator (49 U.S.C. 30113). In determining whether a manufacturer of a vehicle meets that criterion, NHTSA considers whether a second vehicle manufacturer also might be deemed the manufacturer of that vehicle. The statutory provisions governing motor vehicle safety (49 U.S.C. Chapter 301) do not include any provision indicating that a manufacturer might have substantial responsibility as manufacturer of a vehicle simply because it owns or controls a second manufacturer that assembled that vehicle. However, the agency considers the statutory definition of "manufacturer" (49 U.S.C. 30102) to be sufficiently broad to include sponsors, depending on the circumstances. Thus, NHTSA has stated that a manufacturer may be deemed to be a sponsor and thus a manufacturer of a vehicle assembled by a second manufacturer if the first manufacturer had a substantial role in the development and manufacturing process of that vehicle.

Finally, while 49 U.S.C. 30113(b) states that exemptions from a Safety Act standard are to be granted on a "temporary basis," [6] the statute also expressly provides for renewal of an exemption on reapplication. Manufacturers are nevertheless cautioned that the agency's decision to grant an initial petition in no way predetermines that the agency will repeatedly grant renewal petitions, thereby imparting semi-permanent exemption from a safety standard. Exempted manufacturers seeking renewal must bear in mind that the agency is directed to consider financial hardship as but one factor, along with the manufacturer's on-going good faith efforts to comply with the regulation, the public interest, consistency with Safety Act, generally, as well as, other such matters as provided in the statute.

[4] When considering financial matters involving companies based in the European Union (EU), it is important to recognize that EU and U.S. accounting principles have certain differences in their treatment of revenue, expenses, and profits. Public statements by EU manufacturers relating to financial results should be understood in this context. This agency analyzes claims of financial hardship carefully and in accordance with U.S. accounting principles.

[5] The Safety Act is codified as Title 49, United States Code, Chapter 301.

[6] 49 U.S.C. 30113(b)(1).

III. Lamborghini

Background. Lamborghini is an Italian corporation formed in 1963 to produce high-performance sports cars. This application concerns the Lamborghini Murcielago, a vehicle which was developed in the mid-1990s and which is now scheduled to continue in production until 2009. Originally, Lamborghini planned to begin selling the Murcielago in 1999 and to end production before September 2006. However, because of financial hardship and a change in corporate ownership, the petitioner did not begin sales of the Murcielago until the very end of 2001, and it is now forced to extend the product cycle of this vehicle.

Lamborghini has experienced financial problems for several years. Over the period from 2001 to 2004, the company lost more than $180 million. Lamborghini claims this economic hardship precluded the timely development of a new vehicle that could comply with advanced air bag requirements. With respect to the Murcielago, Lamborghini also has been unable to overcome a number of engineering problems associated with installing advanced air bags in the current vehicle configuration. If the exemption is not granted, the Murcielago model cannot be sold in the U.S. during the period 2006–2009, which the petitioner stated could further delay the introduction of a fully compliant vehicle. Thus, Lamborghini asks for a temporary exemption from the advanced air bag requirements for the Murcielago until it is replaced by a brand new vehicle in 2009.

Eligibility. Lamborghini's total motor vehicle production in the most recent year of production was less than 10,000 vehicles. More specifically, the petitioner reported the following worldwide production and U.S. imports over the past few years:

Lamborghini S.p.A.	Worldwide production	U.S. imports
2002	434 cars	134 cars.
2003	702 cars	423 cars.
2004	2038 cars	645 cars.
2005 (estimate)	1662 cars	665 cars.

However, in 1998, 100 percent of Lamborghini was acquired by Audi, a

large motor vehicle manufacturer (which is in turn 99.9 percent owned by Volkswagen). In discussing its eligibility for hardship relief, Lamborghini asserts that its relationship with Audi is "arm's-length." Lamborghini operates independently, and services provided by Audi or Audi affiliates are paid for by Lamborghini.

In making our determination regarding eligibility, we note that the public comment [7] of the Coalition of Small Volume Auto Manufacturers (COSVAM) raised the issue of whether certain of the petitioners (Bugatti, Lamborghini, Maserati) are eligible for temporary exemptions under part 555, in light of their financial relationships to larger parent companies which are also vehicle manufacturers. Specifically, COSVAM argued that Lamborghini is owned by Audi, a vehicle manufacturer whose sales in the U.S. market exceeds the upper limits for classification as a small volume manufacturer. Accordingly, the commenter argued that Lamborghini should be considered a brand produced by major vehicle manufacturer Audi, thereby making the petitioner ineligible for a temporary exemption under part 555 based upon higher production values.

Lamborghini also submitted a public comment [8] on its own petition, in which it sought to further clarify its relationship with its parent company, arguing that it is similar to that of Ferrari and its parent company (Fiat). According to Lamborghini, the Murcielago does not resemble nor share parts with any vehicle produced by the parent company. The petitioner further stated that the parent company did not assist in the design or engineering of the Murcielago, nor did it have any role in the manufacturing process for that vehicle. In fact, the Murcielago was developed prior to Audi's acquisition of Lamborghini in 1998. Furthermore, Lamborghini argued that it pays for any testing or similar assistance provided by Audi. It also stated that Lamborghini has its own CEO and Board of Directors, and that the company has its own research and development, Sales-Marketing, and After-Sales departments.

The agency examined the relationship between Lamborghini and Audi. Lamborghini S.p.A. is 100% owned by Audi AG (which, in turn is 99.1% owned by Volkswagen AG). We have concluded that Lamborghini is eligible to apply for a temporary exemption based on the following factors. First, there is no similarity of design between the cars produced by Lamborghini and cars produced by Audi. There is no sharing of engines, transmissions, platforms, or interior systems, and production tooling is unique to Lamborghini. Second, Lamborghini has indicated that it has paid for all services or assistance provided by Audi in "arms-length" transactions. Third, cars are imported and sold through separate distribution channels independent of the Audi dealer network. Accordingly, NHTSA concludes that Audi is not a manufacturer of Lamborghini vehicles by virtue of being a sponsor.

Requested exemptions. Lamborghini states that it intends to certify the Murcielago as complying with the rigid barrier belted test requirement using the 50th percentile adult male test dummy set forth in S14.5.1 of FMVSS No. 208. The petitioner states that it previously determined the Murcielago's compliance with rigid barrier unbelted test requirements using the 50th percentile adult male test dummy through the S13 sled test using a generic pulse rather than a full vehicle test. Lamborghini states that it, therefore, cannot at present say with certainty that the Murcielago will comply with the unbelted test requirement under S14.5.2, which is a 20–25 mph rigid barrier test.

As for the Murcielago's compliance with the other advanced air bag requirements, Lamborghini states that it does not know whether the Murcielago will be compliant because to date it has not had the financial ability to conduct the necessary testing.

As such, Lamborghini is requesting an exemption for the Murcielago from the rigid barrier unbelted test requirement with the 50th percentile adult male test dummy (S14.5.2), the rigid barrier test requirement using the 5th percentile adult female test dummy (belted and unbelted, S15), the offset deformable barrier test requirement using the 5th percentile adult female test dummy (S17), the requirements to provide protection for infants and children (S19, S21, and S23) and the requirement using an out-of-position 5th percentile adult female test dummy at the driver position (S25).

Lamborghini is requesting the above exemption for the Murcielago for the period from September 1, 2006 to August 31, 2009.

Economic Hardship. Lamborghini states that over the four-year period from 2001–2004, it lost over $180 million (145 million euros), with yearly losses averaging approximately $47 million (37 million euros). Lamborghini asserts that, notwithstanding engineering impracticability described below, it could not afford to develop an advanced air bag system for the Murcielago and to also engineer its fully compliant replacement by 2009.

Lamborghini initially did not foresee that the Murcielago would still be in production when advanced air bags became mandatory. It was designed in the mid-1990s and was intended to be launched in 1999, with production ending in 2006. Due to financial hardship and changes in ownership, the Murcielago was not offered for sale until late in 2001. Further financial hardship, compounded by shifts in the exchange rate between the U.S. dollar and the euro and the need to amortize costs of developing the Murcielago, necessitate continued production of that vehicle until 2009.

Lamborghini estimates the total cost of an advanced air bag program to be about $24 million (20 million euros). Lamborghini states that the development of an advanced air bag system for the Murcielago's successor can be funded through the Murcielago's continued U.S. sales.

If the exemption is denied and U.S. sales of the Murcielago end on September 1, 2006, Lamborghini projects a loss of $12.7 million (10.6 million euros) for the period between September of 2006 and September of 2009.

Good faith efforts to comply. Once the petitioner realized that the product life of the Murcielago would have to continue beyond September 2006, Lamborghini undertook efforts for development an advanced air bag system. As early as 2001, Lamborghini began contacting air bag manufacturers in an effort to develop a compliant advanced air bag system. It pursued this matter with at least four suppliers. However, none provided a workable solution. The efforts continued until the summer of 2005, at which point Lamborghini concluded that technical constraints prevented development of advanced air bags for the Murcielago. Specifics of the technical difficulties are described in the petition.

Lamborghini argues that an exemption would be in the public interest. The petitioner argues that the number of vehicles affected by an exemption would be very small and will therefore have, at most, a negligible impact on the overall safety of U.S. highways. Further, the petitioner asserts that according to the company's research, the Murcielago is likely to be operated only on a limited basis (an average of 5,000 miles per year). Lamborghini also argues that granting an exemption will assure proper parts and service are available in the U.S. to support existing owners of Lamborghini

[7] Docket No. NHTSA–2006–25324–15.
[8] Docket No. NHTSA–2006–25324–12.

automobiles, thereby benefiting not only Lamborghini customers, but also dealers and service personnel. Finally, it argued that denial of its requested exemption would decrease consumer choice in the high-performance vehicle market.

Summary of Public Comments. The agency received three comments on the Lamborghini petition for a temporary exemption. The first comment was submitted by Lamborghini itself. In its comment, the company stated that its situation is similar to Ferrari's request for a temporary exemption from the advanced air bag provisions of FMVSS No. 208, which the agency granted in a notice published in the **Federal Register** on May 22, 2006 (71 FR 29389) (Docket No. NHTSA–2005–23093). Specifically, Lamborghini presented the following arguments in support of its petition.

Like Ferarri, Lamborghini stated that its product cycles must last longer than the industry average due to the high cost of development and extremely small sales volumes. Lamborghini stated that it did not anticipate continued production of the Murcielago after September 1, 2006, but the company later determined that it would be necessary to continue production of that model. According to Lamborghini, advanced air bag requirements were not anticipated when designing the Murcielago's vehicle platform, which arose from a predecessor vehicle developed circa 1990. However, the petitioner stated that in order to meet the advanced air bag requirements, it would face the unique challenge of needing to completely redesign the vehicle before the end of its life cycle. Lamborghini stated that it made a good faith effort to find a practicable way to comply with the advanced air bag requirements, but it was unable to do so.

As discussed previously, Lamborghini argued that it is an independent manufacturer eligible for an exemption under 49 CFR part 555, despite the fact that the company is owned by Audi (*see* Eligibility section above for details).

Lamborghini stated that its vehicle also incorporates additional active and passive safety systems, including anti-lock brakes (ABS), traction control, four-wheel drive, rollover bars, pretensioners, and upgraded rear fuel system integrity. The petitioner also stated that the vehicle has been subjected to a frontal pole test at 35 mph and a roof crush resistance test at 2.5 times the mass of the vehicle. Furthermore, the company stated that the Murcielago has been equipped with an air bag on-off switch.

In terms of safety impact, Lamborghini argued that it intends to produce only 380 Murcielago vehicles over three years and that these vehicles are not normally used for daily transportation, have substantially lower than average annual usage, and typically are not used to transport children. The company added that its search of NHTSA's Fatality Analysis Reporting System (FARS) database from 1995–2003 and the 2004 Annual Report File[9] (a period covering both the Murcielago and its predecessor vehicle (the Diablo)) showed only one crash involving a Lamborghini, in which the adult female occupant survived. According to Lamborghini, there are no known instances of injury or death to infants, children, or other occupants caused by air bags, the problem giving rise to the advanced air bag rule. The company further argued that given its low sales volume, it would be aware of such fatalities and injuries if they were occurring. Accordingly, the petitioner argued that its requested exemption for these vehicles would have a negligible effect on safety.

In addition, Lamborghini argued that the continued weakening of the U.S. dollar vis-à-vis the euro, when combined with competitive pressure to avoid significant vehicle price increases in the U.S. market, exacerbates the economic hardship problems confronting the company.

The second comment was submitted by Mr. Steven Blodgett, an individual.[10] (We note that Mr. Blodgett's comments applied equally to all five manufacturer-petitioners. Accordingly, this commenter's arguments will be set forth immediately below, but they will not be repeated in subsequent discussions involving the other four manufacturers.) In part, Mr. Blodgett requested a 30-day extension of the 15-day comment period, arguing that the agency has arbitrarily shortened the comment period. The commenter argued that his ability to seek an extension of the comment period has been compromised by the requirement under 49 CFR 553.19 that such requests must be received not later than 15 days before the time stated in the notice. He stated that additional time is required to allow for proper research in order to verify the statements of the manufacturers, as well as their accompanying financial data. Furthermore, he argued that a 60-day comment period is required under 5 CFR 1320.8(d).

Mr. Blodgett also requested that the Office of Management and Budget (OMB) and/or a separate independent contractor be used to evaluate the financial data submitted by the five petitioning manufacturers. The commenter also faulted the manufacturers for petitioning the agency not long before the September 1, 2006 compliance date for the advanced air bag requirements. He further suggested that it is presumptuous for these manufacturers to continue producing vehicles prior to receiving a decision on their applications for temporary exemption, something which should be taken into account when considering the manufacturers' petitions.

Mr. Blodgett objected to the lack of supporting documentation from air bag suppliers to verify that the requirements for which the vehicle manufacturers seek an exemption cannot be met. The commenter expressed his opinion that the government should not be subsidizing uncompetitive businesses through the temporary exemption process and that granting exemptions unfairly penalizes other manufacturers who concomitantly lose market share.

Mr. Blodgett also objected to the agency's decision to combine the five applications for temporary exemption into a single **Federal Register** notice, rather than publishing a separate notice for each petitioner. The commenter argued that this is confusing and is not consistent with the requirements of 49 U.S.C. 30113(b)(2).

The third comment was submitted by the COSVAM. As discussed previously, COSVAM raised the issue of whether certain of the petitioners (Bugatti, Lamborghini, Maserati) are eligible for temporary exemptions under part 555, in light of their financial relationships to larger parent companies which are also vehicle manufacturers (*see* Eligibility section above for details and the agency's decision on that issue).

Agency Decision on Lamborghini Petition. We are granting the Lamborghini petition to be exempted from portions of the advanced air bag regulation required by S14.2 (specifically S14.5.2, S15, S17, S19, S21, S23, and S25). The exemption does not extend to the provision requiring a belted 50th percentile male barrier impact test (S14.5.1(a)). In addition to certifying compliance with S14.5.1(a), Lamborghini must continue to certify to the unbelted 50th percentile male barrier impact test in force prior to September 1, 2006 (S5.1.2(a)). We note that the unbelted sled test in S13 is an acceptable option for that requirement.

[9] The 2004 FARS data file—the Annual Report File—was created in June 2005; however, the 2004 FARS file officially closed in February 2006. This additional time provided the opportunity for submission of important variable data requiring outside sources, which may lead to changes in the final counts. The updated final counts for 2004 will be reflected in the 2005 annual report.

[10] Docket No. NHTSA–2006–25324–13 and –14.

The agency's rationale for this decision is as follows.

The advanced air bag requirements present a unique challenge because they would require Lamborghini to completely redesign its vehicles, in order to overcome the engineering limitations based upon the basic configuration of the Murcielago. While the petitioner was aware of the new requirements for some time, its business plans changed, and it was subsequently determined that the Murcielago's production run would need to be extended beyond 2006, thereby raising the problem of compliance with the advanced air bag requirements.

Lamborghini explained the main engineering challenges precluding incorporation of advanced air bags into the Murcielago at this time, as follows. First, cockpit space limitations imposed by the windshield and passenger compartment height currently prevent the fitting of the six-year-old dummies into the required out-of-position test locations, thereby necessitating a customized procedure. Second, the location of the air conditioning system precludes installation of the passenger air bag module in the top of the instrument panel, and the manufacturer was unable to identify an alternate location for the air bag module. Third, it was not possible to adapt Lamborghini's supplier's bladder technology based upon occupant sensors into the Murcielago's unique seating systems. Fourth, another supplier's sensor system was unable to distinguish between the six-year-old and 5th-percentile female dummies in the Murcielago environment. Fifth, the manufacturer was confronted with cockpit space limitations which precluded placement of occupant sensors in other areas of the seat structure, and it was unable to find suppliers willing to customize their systems to Lamborghini's specifications. Sixth, the top-mounted passenger air bag system designed for the new Lamborghini Gallardo (which will meet the advanced air bag requirements) cannot be retrofitted into the Murcielago.

For a high-speed performance vehicle such as the Murcielago, aerodynamics are a major design consideration, so such vehicles tend to sit very close to the ground and have minimal cockpit space as essential features of their basic design. Any significant increase in cockpit dimensions (as might be required to meet the advanced air bag requirements) would necessitate a total vehicle makeover. Lamborghini has made clear that such a prospect would pose a unique challenge to the company, due to the high cost of development and its extremely small sales volumes.

Based upon the information provided by the petitioner, we understand that Lamborghini made good faith efforts to bring the Murcielago into compliance with the applicable requirements until such time as it became apparent that there was no practicable way to do so. No viable alternatives remain. The petitioner is unable to design a new vehicle by the time the new advanced air bag requirements go into effect on September 1, 2006.

After review of the income statements provided by the petitioner, the agency notes that the company has faced ongoing financial difficulties, having lost over $180 million (145 million euros) over the period from 2001–2004. If the petitioner is forced to discontinue selling the current model in the U.S. market, the resulting loss of sales would cause substantial economic hardship within the meaning of the statute, potentially amounting to the difference between profitability and ongoing losses. According to Lamborghini, absent the exemption, production of the Murcielago would cease in September 2006, because sales in the rest of the world would be insufficient to justify continued production (as the U.S. accounts for 35–40 percent of the market for the Murcielago). However, Lamborghini's problems would be compounded without its requested temporary exemption, because it needs the revenue from sales of the Murcielago over the next three years to finance development of a fully compliant vehicle for delivery to the U.S. market in September 2009. Granting the exemption will allow Lamborghini to earn the resources necessary to bridge the gap in terms of development of a successor vehicle for the Murcielago that meets all U.S. requirements.

While some of the information submitted by Lamborghini has been granted confidential treatment and is not detailed in this document, the petitioner made a comprehensive showing of its good faith efforts to comply with the requirements of S14.2 of FMVSS No. 208, and detailed engineering and financial information demonstrating that failure to obtain the exemption would cause substantial economic hardship. Specifically, the petitioner provided the following:

1. Chronological analysis of Lamborghini's efforts to comply, showing the relationship to the rulemaking history of the advanced air bag requirements.

2. Itemized costs of each component that would have to be modified in order to achieve compliance.

3. Discussion of alternative means of compliance and reasons for rejecting these alternatives.

4. List of air bag suppliers that were approached in hopes of procuring necessary components.

5. Explanations as to why components from newer, compliant vehicle lines could not be borrowed.

6. Corporate income statements and balance sheets for the past three years, and projected income statements and balance sheets if the petition is denied.

We note that Lamborghini is a well-established company with a small, but not insignificant U.S. presence. We believe that the reduction of sales revenue resulting from a denial of the company's requested temporary exemption would have a negative impact not only on Lamborghini's financial circumstances, but it would also negatively affect U.S. employment. Specifically, reduction in sales would also affect Lamborghini dealers, repair specialists, and several small service providers that transport Lamborghini vehicles from the port of entry to the rest of the United States. Traditionally, the agency has concluded that the public interest is served in affording continued employment to the petitioner's U.S. work force. Furthermore, as discussed in previous decisions on temporary exemption applications, the agency believes that the public interest is served by affording consumers a wider variety of motor vehicle choices.

We also note that the Murcielago features several advanced "active" safety features. These features are listed in the petitioner's application.[11] While the availability of these features is not critical to our decision, it is a factor in considering whether the exemption is in the public interest.

We believe that this exemption will have negligible impact on motor vehicle safety because of the limited number of vehicles affected (not more than 380 for the duration of the exemption), and because Lamborghini vehicles are not typically used for daily transportation. Their yearly usage is substantially lower compared to vehicles used for everyday transportation.

In addition, Lamborghini has voluntarily included an air bag on-off switch for passenger air bag suppression for the protection of children being transported in the right front seating position. This will enable the passenger

[11] *See* page 23 of Lamborghini's petition and page 2 of Lamborghini's comments.

air bag to be manually turned off when a child is present, which supports our findings that this exemption would have a negligible impact on motor vehicle safety.

Furthermore, the agency examined the FARS (1995–2004) and the National Automotive Sampling System Crashworthiness Data System (NASS CDS) (1995–2005) for information on the vehicle in question.[12] These data indicate that over that period, there were no NASS CDS cases for the Murcielago and one FARS case for the Murcielago predecessor (injured female passenger). Thus, there were no children or small women involved in crashes of the later Lamborghini Murcielago included in these databases.

We note that, as explained below, prospective purchasers will be notified that the vehicle is exempted from the specified advanced air bag requirements of Standard No. 208. Under § 555.9(b), a manufacturer of an exempted passenger car must affix securely to the windshield or side window of each exempted vehicle a label containing a statement that the vehicle conforms to all applicable Federal motor vehicle safety standards in effect on the date of manufacture "except for Standard Nos. [listing the standards by number and title for which an exemption has been granted] exempted pursuant to NHTSA Exemption No. _____." This label notifies prospective purchasers about the exemption and its subject. Under § 555.9(c), this information must also be included on the vehicle's certification label.

The text of § 555.9 does not expressly indicate how the required statement on the two labels should read in situations where an exemption covers part but not all of a Federal motor vehicle safety standard. In this case, we believe that a statement that the vehicle has been exempted from Standard No. 208 generally, without an indication that the exemption is limited to the specified advanced air bag provisions, could be misleading. A consumer might incorrectly believe that the vehicle has been exempted from all of Standard No. 208's requirements. Moreover, we believe that the addition of a reference to such provisions by number without an indication of its subject matter would be of little use to consumers, since they would not know the subject of those specific provisions. For these reasons, we believe the two labels should read in relevant part, "except for S14.5.2, S15, S17, S19, S21, S23, and S25 (Advanced Air Bag Requirements) of Standard No. 208, Occupant Crash Protection, exempted pursuant to * * *." We note that the phrase "Advanced Air Bag Requirements" is an abbreviated form of the title of S14 of Standard No. 208. We believe it is reasonable to interpret § 555.9 as requiring this language.

Although our response to the supplementary comments provided by the petitioner is reflected above, we would offer the following response to the other public comments received on the Lamborghini petition.

We have decided not to grant Mr. Blodgett's request for extension of time to comment on the five applications contained in our July 12, 2006 **Federal Register** notice announcing receipt of those applications. First, the commenter pointed to requirements under part 553, *Rulemaking Procedures* (specifically paragraph 553.19, *Petitions for extension of time to comment*), which states that persons wishing to request extension of a comment period must do so in writing 15 days prior to expiration of the time stated in the notice. However, the notice of receipt in question was issued under part 555, Temporary Exemption From Motor Vehicle Safety and Bumper Standards, which does not contain any time limitations either for the public comment period or related requests for extension of time. In the present case, the agency decided to shorten the length of the comment period to 15 days, in light of the rapidly approaching deadline for small volume manufacturer compliance with the advanced air bag requirements of FMVSS No. 208. That determination reflected our careful balancing of the need to provide an adequate opportunity for public comment and the need to issue a decision prior to the standard's compliance deadline. Contrary to what Mr. Blodgett's comment suggests, his request for an extension of the comment period was received and considered by the agency, although we decided that it would not be in the public interest to grant that request.[13]

We likewise do not agree with Mr. Blodgett that it is necessary to submit the manufacturers' financial data to OMB or an independent contractor for evaluation. NHTSA routinely evaluates such information in making its determinations, as it has done with prior requests for temporary exemption under part 555. Furthermore, we do not agree with Mr. Blodgett's contention that negative inferences should be drawn from the timing of manufacturers' submission of their part 555 applications or their continuation of manufacturing activities pending the agency's decision. The timing of the submission of a manufacturer's application may be predicated upon good faith efforts to achieve compliance with our safety standards, although in the end, those efforts may prove unsuccessful. Likewise, a company's business decision to continue production of vehicles subject to an application for temporary exemption has no bearing on the agency's decision to grant or deny an application, particularly since it is conceivable that such vehicles could be sold in non-U.S. markets.

We do not believe that vehicle manufacturers seeking an exemption should be required to prove that there are no advanced air bag systems available which would allow their vehicles to comply with FMVSS No. 208, because in essence, that would require the companies to prove a negative. Instead, the companies must demonstrate that they made good faith efforts to comply with the standard and show how they plan to achieve compliance in the future. By statute, manufacturers are entitled to apply for a temporary exemption under part 555, provided that they meet all relevant requirements.

We likewise do not agree with Mr. Blodgett's suggestion that the agency improperly combined the present five part 555 applications in one **Federal**

[12] For fatalities, the agency has a high level of confidence that we would know if one of the petitioners' vehicles had been involved in a fatal crash due to reporting in FARS. However, the agency's ability to track injuries in this context is more limited, primarily because NASS CDS operates differently. NASS CDS is not a census of all vehicle-related injuries, but instead it is a statistical sample which is unlikely to randomly capture air bag-related fatalities. Although the agency's Special Crash Investigations office searches for air bag-related deaths and injuries, there may be lesser injuries that go unreported. This observation applies to all five petitions covered by the notice.

[13] We note further that Mr. Blodgett asserted that, pursuant to 5 U.S.C. 1320.8(d), a 60-day comment period is required on the notice of receipt of an application for temporary exemption. However, 5 CFR part 1320, *Controlling Paperwork Burdens on the Public*, implements the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). Those provisions deal with specified types of collections of information from the public (which require OMB approval and clearance), and the 60-day comment period referenced above is related to such collections of information. Furthermore, in defining the term "information," 5 CFR 1320.3(h)(4) states that that term does not generally include:

> Factors or opinions submitted in response to general solicitation of comments from the public, published in the **Federal Register** or other publications, regardless of the form or format thereof, provided that no person is required to supply specific information pertaining to the commenter, other than that necessary for self-identification, as a condition of the agency's full consideration of the comment.

Thus, the provision pointed to by the commenter is not relevant in the present case.

Register notice or that this somehow increased burdens on commenters. The notice of receipt clearly set forth in its title the companies seeking exemptions and discussed each of the applicants separately. In light of the similarity of the issues to be addressed, we believe that such consolidation was appropriate.

As noted previously, the comments of COSVAM were addressed under the discussion of *Eligibility* above.

In sum, the agency concludes that Lamborghini has demonstrated good faith effort to bring the Murcielago into compliance with the advanced air bag requirements of FMVSS No. 208, and has also demonstrated the requisite financial hardship. Further, we find the exemption to be in the public interest.

In consideration of the foregoing, we conclude that compliance with the advanced air bag requirements of FMVSS No. 208, *Occupant Crash Protection*, would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. We further conclude that granting of an exemption would be in the public interest and consistent with the objectives of traffic safety.

In accordance with 49 U.S.C. 30113(b)(3)(B)(i), Lamborghini Murcielago is granted NHTSA Temporary Exemption No. EX 06–2, from S14.5.2, S15, S17, S19, S23, and S25 of 49 CFR 571.208. The exemption is effective from September 1, 2006 to August 31, 2009.

IV. Bugatti

Background. Bugatti was a manufacturer of high performance motor vehicles from 1909 until the outbreak of World War II. In the past two decades, several attempts were made to revive the marquee. Finally, under the new ownership in 1998, the petitioner began designing a new vehicle called the Veyron 16.4 (Veyron). Only 300 vehicles are to be made (about half of which are expected to be imported to the U.S.), each costing in excess of $1,000,000. Bugatti originally planned to begin selling the vehicle in September of 2003 and to end production before the advanced air bag requirements went into effect. However, significant development issues delayed the start of production until September of 2005. Once this shift in the production schedule became apparent, the petitioner argues that it tried in good faith but could not bring the vehicle into compliance with the advanced air bag requirements, and it would incur substantial economic hardship if it cannot sell approximately 100 vehicles in the U.S. after September 1, 2006.

Eligibility. Bugatti just began producing vehicles and its total production has not reached 100. However, in 1998, Bugatti was acquired by Volkswagen AG (VW), a large motor vehicle manufacturer. According to Bugatti, the Veyron 16.4 does not resemble any vehicle built or sold by any other VW company. The petitioner also states that the Veyron 16.4 was engineered entirely by Bugatti, and that it will similarly be manufactured and marketed solely by Bugatti. Bugatti stated that almost all parts for its vehicle are provided by suppliers that do not provide any parts to any other VW companies. In discussing its eligibility for hardship relief, Bugatti asserts that its relationship with VW is "arm's-length." Bugatti operates independently, and services provided by Bugatti affiliates were paid for by Bugatti.

In making our determination regarding eligibility, we note that the public comment from COSVAM raised the issue of whether certain of the petitioners (Bugatti, Lamborghini, Maserati) are eligible for temporary exemptions under part 555, in light of their financial relationships to larger parent companies which are also vehicle manufacturers. Specifically, COSVAM argued that Bugatti is owned by VW, a vehicle manufacturer whose sales in the U.S. market exceeds the upper limits for classification as a small volume manufacturer. COSVAM further questioned why an otherwise advanced performance vehicle such as the Bugatti Veyron 16.4 would be unable to comply with the requirements of FMVSS No. 208, particularly when other vehicles within its "corporate family" are or will be in compliance. Accordingly, the commenter argued that Bugatti should be considered a brand produced by major vehicle manufacturer VW, thereby making the petitioner ineligible for a temporary exemption under part 555 based upon higher production values.

The agency examined the relationship between Bugatti and VW. We have concluded that Bugatti is eligible to apply for a temporary exemption based on the following factors. First, there is no similarity of design between the cars produced by Bugatti and cars produced by VW. Second, Bugatti operated independently from VW in designing and developing the Veyron 16.4. Third, almost all of the parts used in the Veyron production are obtained from suppliers that do not supply parts to VW. In addition, when Bugatti has used test tracks or other facilities of VW in the course of developing the Veyron, it has reimbursed Volkswagen AG for the costs of those facilities on an "arms-length" basis. Accordingly, NHTSA concludes that VW is not a manufacturer of Bugatti vehicles by virtue of being a sponsor.

Requested exemptions. Bugatti stated its intention to certify compliance of the Veyron model, produced on and after September 1, 2006 for sale in the United States, with rigid barrier belted and unbelted test requirements using the 50th percentile adult male test dummy (S14.5.1 and S14.5.2), the rigid barrier test requirements using the 5th percentile adult female test dummy (belted and unbelted, S15), and the offset deformable barrier test requirement using the 5th percentile adult female test dummy (S17).

As for the other advanced air bag requirements, Bugatti states that it does not know whether the Veyron will be compliant as it has not had the financial ability to conduct the necessary development and testing.

Bugatti is requesting an exemption from the requirements to provide protection for infants and children (S19, S21, and S23) and the requirement using an out-of-position 5th percentile adult female test dummy at the driver position (S25).

Bugatti is requesting the above exemption for the Veyron 16.4 for the period from September 1, 2006 to September 1, 2008.

Economic hardship. Publicly available information and also the financial documents submitted to NHTSA by the petitioner indicate that the Veyron project will result in financial losses whether or not Bugatti obtains a temporary exemption. At the time of the application, Bugatti had spent over $360 million on the Veyron project—the company's only model—with little or no return on its investment. If the exemption is granted, Bugatti projects a net loss of $3.7 million. If the exemption is denied, Bugatti projects a net loss of $22.5 million. Further, denial of the petition would likely preclude the petitioner from developing new, fully compliant vehicles. The petitioner argues that a denial of this petition could ultimately put Bugatti out of business.

Good faith efforts to comply. As stated above, Bugatti originally anticipated that all of the Veyrons destined for the U.S. market would be manufactured prior to September 1, 2006. As such, the company did not believe the vehicles would need to be equipped with advanced air bag systems. However, due to delays in completing the design and engineering of the vehicle, Bugatti did not begin production of the Veyron until the fall of 2005, nearly two years after the anticipated initial start date.

To install an advanced air bag system on the Veyron, modifications would be required to the steering wheel, the seats, the air bag system, the safety belts, the knee bolsters, and the instrument panel. Bugatti sought proposals from several potential suppliers for the development of an advanced air bag system for the Veyron, but received only one proposal. According to the petitioner, the proposal showed that the development and implementation costs for such a system were far beyond its current financial capabilities, particularly when considered in terms of amortizing those costs over a population of just 100 vehicles. The proposal indicated that total development, testing, and implementation of an advanced air bag system for the Veyron would cost over $12 million. More important, development would take at least 24 months, which would have required Bugatti to completely shut down its operations. The petitioner argued this scenario is not feasible for a manufacturer intending to produce a total of 300 vehicles. For further details, see the petition.

Bugatti argues that an exemption would be in the public interest. The petitioner put forth several arguments in favor of a finding that the requested exemption is consistent with the public interest. Specifically, Bugatti asserted that there is consumer demand in the U.S. for the Veyron, and granting this application will allow the demand to be met. Bugatti also states that granting the exemption will "have negligible impact on motor vehicle safety because of the limited number of vehicles sold and because each vehicle is likely to travel on the public roads only infrequently." Further, Bugatti states that it is extremely unlikely that young children would often be passengers in this vehicle, and, therefore, permitting a vehicle to be sold without an air bag designed to protect small children is unlikely to have any adverse impact on safety. Finally, Bugatti indicates that the Veyron, which is equipped with standard air bags, also incorporates many safety features that are not required by the FMVSSs, including anti-lock brakes, electronic stability control, all-wheel drive, run-flat tires, a tire pressure monitoring system (installed ahead of the required date for small volume manufacturers under FMVSS No. 138, *Tire Pressure Monitoring Systems*), and a dynamic rear spoiler that acts as a "parachute brake" during high speed emergency braking.

Summary of Public Comments. The agency received two comments on the Bugatti petition for a temporary exemption. As noted above, the first comment was submitted by Mr. Steven Blodgett (*see* the summary of public comments under Lamborghini for a complete discussion of this comment). Specific to Bugatti, Mr. Blodgett requested the OMB and/or a separate independent contractor be used to evaluate the company's financial data. The commenter also objected to the lack of supporting documentation from air bag suppliers to verify that the requirements for which the vehicle manufacturer seeks an exemption cannot be met. As further factors for consideration by the agency in reviewing the company's temporary exemption request, Mr. Blodgett highlighted what he perceived to be the manufacturer's delay in submitting a part 555 petition from the advanced air bag requirements and its presumed continuation of vehicle production prior to receiving the agency's decision.

The second comment was submitted by the COSVAM. As discussed previously, COSVAM raised the issue of whether certain of the petitioners (Bugatti, Lamborghini, Maserati) are eligible for temporary exemptions under part 555, in light of their financial relationships to larger parent companies which are also vehicle manufacturers (see Eligibility section above for details and the agency's decision on that issue).

Agency Decision on Bugatti Petition. We are granting the Bugatti petition to be exempted from portions of the advanced air bag regulation required by S14.2 (specifically S19, S21, S23, and S25). The extent of the exemption is limited to those provision requiring testing with child dummies (S19, S21 and S23) and the 5th percentile female dummy out-of-position testing (S25). Bugatti must certify to 50th percentile male barrier testing (S14.5.1 and S14.5.2), 5th percentile female barrier testing (S15) and 5th percentile female offset frontal testing (S17). The agency's rationale for this decision is as follows.

The advanced air bag requirements present a unique challenge because they would require Bugatti to undertake a major redesign of its vehicles. Specifically, incorporation of the advanced air bags would require significant modifications to the Veyron's steering wheel, seats, air bag system, safety belts, knee bolsters, and instrument panel. While the petitioner was aware of the new requirements for some time, manufacturing delays required the Veyron 16.4's production run to extend beyond 2006, thereby raising the problem of compliance with the advanced air bag requirements. Bugatti has made clear that such a prospect would pose a unique challenge to the company, due to the high cost of development and its extremely small sales volumes. In addition, in light of the fact that it projects sales of only 100 vehicles per year, the company also faced difficulties in finding a supplier of advanced restraint systems, because such suppliers were focused on large volume manufacturers.

Based upon the information provided by the petitioner, we understand that Bugatti made good faith efforts to try to bring the Veyron 16.4 into compliance with the applicable requirements until such time as it became apparent that there was no practicable way to do so. No viable alternatives remain. The petitioner is unable to redesign its vehicle by the time the new advanced air bag requirements go into effect on September 1, 2006.

After review of the income statements provided by the petitioner, the agency notes that the company has faced ongoing financial difficulties with its manufacturing operations. Even with a temporary exemption, Bugatti projects a net loss of over $3 million for 2006–2009, and without an exemption, that figure would grow to a loss of approximately $23 million. If the petitioner is forced to discontinue selling its current and only model in the U.S. market, the resulting loss of sales would cause substantial economic hardship within the meaning of the statute, potentially driving the company out of business. Bugatti's problems would be compounded without its requested temporary exemption, because it needs the revenue from sales of the Veyron 16.4 over the next two years to finance development of a fully compliant successor vehicle for delivery to the U.S. market. Granting the exemption will allow Bugatti to earn the resources necessary to bridge the gap in terms of development of a successor vehicle for the Veyron 16.4 that meets all U.S. requirements.

While some of the information submitted by Bugatti has been granted confidential treatment and is not detailed in this document, the petitioner made a comprehensive showing of its good faith efforts to comply with the requirements of S14.2 of FMVSS No. 208, and detailed engineering and financial information demonstrating that failure to obtain the exemption would cause substantial economic hardship. Specifically, the petitioner provided the following:

1. Chronological analysis of Bugatti's efforts to comply, showing the relationship to the rulemaking history of the advanced air bag requirements.

2. Itemized costs of each component that would have to be modified in order to achieve compliance.

3. Discussion of alternative means of compliance and reasons for rejecting these alternatives.

4. List of air bag suppliers that were approached in hopes of procuring necessary components (including original equipment manufacturer (OEM) price-volume quotations).

5. Explanations as to why components from newer, compliant vehicle lines could not be borrowed.

6. Corporate income statements and balance sheets for the past three years, and projected income statements and balance sheets if the petition is denied.

We note that, as discussed in previous decisions on temporary exemption applications, the agency believes that the public interest is served by affording consumers a wider variety of motor vehicle choices.

We also note that the Veyron 16.4 features several advanced "active" safety features. These features are listed in the petitioner's application.[14] While the availability of these features is not critical to our decision, it is a factor in considering whether the exemption is in the public interest.

We believe that this exemption will have negligible impact on motor vehicle safety because of the limited number of vehicles affected (not more than 300 for the duration of the exemption), and because Bugatti vehicles are not typically used for daily transportation. Their yearly usage is also expected to be substantially lower compared to vehicles used for everyday transportation.

We note that, as explained below, prospective purchasers will be notified that the vehicle is exempted from the specified advanced air bag requirements of Standard No. 208. Under § 555.9(b), a manufacturer of an exempted passenger car must affix securely to the windshield or side window of each exempted vehicle a label containing a statement that the vehicle conforms to all applicable Federal motor vehicle safety standards in effect on the date of manufacture "except for Standard Nos. [listing the standards by number and title for which an exemption has been granted] exempted pursuant to NHTSA Exemption No. _____." This label notifies prospective purchasers about the exemption and its subject. Under § 555.9(c), this information must also be included on the vehicle's certification label.

The text of § 555.9 does not expressly indicate how the required statement on the two labels should read in situations where an exemption covers part but not all of a Federal motor vehicle safety standard. In this case, we believe that a statement that the vehicle has been exempted from Standard No. 208 generally, without an indication that the exemption is limited to the specified advanced air bag provisions, could be misleading. A consumer might incorrectly believe that the vehicle has been exempted from all of Standard No. 208's requirements. Moreover, we believe that the addition of a reference to such provisions by number without an indication of its subject matter would be of little use to consumers, since they would not know the subject of those specific provisions. For these reasons, we believe the two labels should read in relevant part, "except for S19, S21, S23, and S25 (Advanced Air Bag Requirements) of Standard No. 208, Occupant Crash Protection, exempted pursuant to * * *." We note that the phrase "Advanced Air Bag Requirements" is an abbreviated form of the title of S14 of Standard No. 208. We believe it is reasonable to interpret § 555.9 as requiring this language.

In terms of our response to the comment submitted by Mr. Blodgett, we note that the issues raised in that comment (e.g., extension of the comment period, duration of the comment period, documentation) are identical for all five petitioners. Accordingly, please see our decision for Lamborghini (Section IV of this notice) for the agency's response to this comment submission. As noted previously, the comments of COSVAM were addressed under the discussion of *Eligibility* above.

In sum, the agency concludes that Bugatti has demonstrated good faith effort to bring the Veyron 16.4 into compliance with S14.2 of FMVSS No. 208, and has also demonstrated the requisite financial hardship. Further, we find the exemption to be in the public interest.

In consideration of the foregoing, we conclude that compliance with the requirements of the advanced air bag requirements of FMVSS No. 208, *Occupant Crash Protection*, would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. We further conclude that granting of an exemption would be in the public interest and consistent with the objectives of traffic safety.

In accordance with 49 U.S.C. 30113(b)(3)(B)(i), the Bugatti Veyron 16.4 is granted NHTSA Temporary Exemption No. EX 06–3, from S19, S21, S23, and S25 of 49 CFR 571.208. The exemption is effective from September 1, 2006 to September 1, 2008.

[14] *See* page 9 of Bugatti's petition.

V. Lotus

Background. Lotus, which was founded in 1955, produces small quantities of performance cars. The company has experienced significant financial difficulties for many years. In 1998, Lotus began to develop a fully compliant vehicle for the U.S. market. However, due to lack of capital, the project was cancelled in 2001. The petitioner instead decided to sell a vehicle designed for the European market, the Lotus Elise, in the U.S. Prior to the U.S. launch of the Elise in 2004 (currently Lotus's only U.S. model), Lotus requested and received a part 555 temporary exemption for the bumper standard and certain headlamp requirements (see 69 FR 5658 (Feb. 5, 2004)). Over the last 18 months, the petitioner continued to experience economic hardship. Nevertheless, Lotus has worked on the development of compliant bumpers and headlamps at the cost of $27 million. Compliant headlamp systems have already been put into production, and compliant bumpers likewise will be put into production in advance of the expiration of Lotus's existing temporary exemption on January 1, 2007. However, the petitioner has been unable to develop an advanced air bag system for the Elise (which has both a coupe and a convertible version). According to Lotus, sales of a fully compliant vehicle are slated to begin in 2008, but only if it is able to derive revenue from the U.S. sales of the Elise in the interim.

Eligibility. Lotus produced approximately 5,600 vehicles in 2005. More specifically, the petitioner reported the following worldwide production and U.S. imports over the past few years:

Group Lotus Plc	Worldwide production	U.S. imports
2002	4810 cars	120 cars.
2003	2955 cars	85 cars.
2004	3710 cars	1330 cars.
2005 (estimate).	5518 cars	3390 cars.

The issue of Lotus's eligibility for a financial hardship exemption was previously addressed by NHTSA on three separate occasions.[15] Although Lotus is owned by Proton Holdings Berhad, Lotus remains an operationally independent small volume manufacturer and the material facts regarding its ownership have not changed. Accordingly, NHTSA

[15] *See* 64 FR 61379 (Nov. 10, 1999)(Docket No. NHTSA–1999–6092); 68 FR 10066 (March 3, 2003)(Docket No. NHTSA–2002–13956); 69 FR 5658 (Feb. 5, 2004)(Docket No. NHTSA–2003–16341).

concludes that Lotus is eligible to apply for a hardship exemption.

Requested exemptions. Lotus states that its United States vehicle production on and after September 1, 2006 will comply with the rigid barrier belted test requirement using the 50th percentile adult male test dummy (S14.5.1). The petitioner states that it previously determined the Elise's compliance with rigid barrier unbelted test requirements using the 50th percentile adult male test dummy through the S13 sled test using a generic pulse rather than a full vehicle test. Therefore, Lotus states, it cannot at present say with certainty that the Elise would comply with the unbelted test requirement under S14.5.2, which is a 20–25 mph rigid barrier test.

As for the other advanced air bag requirements, Lotus states that it does not know whether the Elise would be compliant as Lotus has not had the financial ability to conduct the necessary research and development.

As such, Lotus is requesting an exemption for the Elise from the rigid barrier unbelted test requirement with the 50th percentile adult male test dummy (S14.5.2), the rigid barrier test requirement using the 5th percentile adult female test dummy (belted and unbelted, S15), the offset deformable barrier test requirement using the 5th percentile adult female test dummy (S17), the requirements to provide protection for infants and children (S19, S21, and S23) and the requirement using an out-of-position 5th percentile adult female test dummy at the driver position (S25).

Lotus is requesting the above exemption for the Elise for the period from September 1, 2006 to August 31, 2009.

Economic Hardship. Lotus has suffered substantial economic hardship for many years. In the past five years, its losses have totaled almost $125 million. When Lotus successfully petitioned NHTSA for an exemption in 2004, it forecasted profits for fiscal years 2004 and 2005. However, these profits never materialized, and Lotus instead lost $13 million in 2004 and approximately $5 million in 2005.[16]

Lotus asserts that if the exemption is not granted, the company will be forced out of the U.S. market starting in September 2006 until sometime in 2008 for lack of any product to sell. Without an exemption, Lotus predicts losses totaling over $100 million in the next three years. Lotus argues that the cash required for Lotus to maintain a presence in the U.S. and to compensate its dealers for no product would not be sustainable. Further, there would not be funds to develop a new fully compliant vehicle. In short, the company could be forced entirely out of business.

Good faith efforts to comply. Lotus asserts that it has tried in good faith to comply with the advanced air bag requirements. The development work for advanced air bags did not begin until June 2003 because Lotus was not originally planning on selling the Elise in the U.S. Instead, as noted above, a new fully compliant vehicle was intended to be sold in the U.S., but that project was cancelled.

In seeking an advanced air bag system for the Elise, Lotus encountered a number of difficulties and has been unable to acquire an "off-the-shelf" advanced air bag system. First, many existing advanced air bag designs, technical specifications, and tooling are the intellectual property of the original equipment manufacturer (OEM) and not the supplier. Lotus experienced reluctance to allow the transfer of this intellectual property for its use. Second, the passenger air bag size, inflator pressure, venting, and deployment angle in those pre-existing air bag systems have been specifically designed for the original OEM vehicle crash pulse and interior geometry. Therefore, to source a passenger air bag requires reverse engineering, suiting the vehicle's interior package, and modifying the vehicle crash pulse to suit the OEM air bag. Third, the suppression option for compliance was not possible due to the lack of available sensor technology. Instead, to pursue the low risk deployment option, Lotus would need a top mounted passenger air bag. However, to package the top mounted passenger air bag in the Elise would require a complete redesign of a major structural part of the extruded aluminum chassis. At the location where the passenger air bag would need to be situated, there is a major structural cross beam that is bonded into the chassis. New tooling for the instrument panel would also be required, along with a new air bag cover. The air bag cover would require a new unique design to overcome the issues of out-of-position, small occupant air bag deployments. Fourth, advanced air bag occupant classification systems require a compliant seat frame base. The Lotus Elise has a rigid shell seat with only a minimum level of foam; therefore, another technical solution would be required, such as seat frame weight sensors. Currently, this solution is under development by suppliers but is not now available as a production solution.

Lotus argues that an exemption would be in the public interest. First, Lotus asserts that the current Elise standard air bag system does not pose a safety risk. Lotus indicates that it knows of no injuries or deaths to infants, children, or other occupants caused by the Elise's current standard air bag system. Lotus further notes that the passenger seat is fixed in its rearmost position, thereby reducing air bag risks to children.

Second, Lotus argues that denial of the petition would result in loss of jobs within Lotus and by independent dealers and repair specialists in the U.S. because the petitioner would be forced to abandon the U.S. market, which could also compromise the flow of proper parts and service to existing Lotus owners. Lotus also argued that consumer choice would be adversely affected.

Summary of Public Comments. The agency received two comments on the Lotus petition for a temporary exemption. The first comment was submitted by Lotus itself.[17] In its comment, the company stated that its situation is similar to Ferrari's request for a temporary exemption from the advanced air bag provisions of FMVSS No. 208, which the agency granted in a notice published in the **Federal Register** on May 22, 2006 (71 FR 29389) (Docket No. NHTSA–2005–23093). Specifically, Lotus presented the following arguments in support of its petition.

Like Ferarri, Lotus stated that it product cycles must last longer than the industry average due to the high cost of development and extremely small sales volumes. Lotus stated that advanced air bags were not anticipated when the Elise's vehicle platform was designed (in conjunction with its predecessor vehicle (the Elan)), and when the advanced air bag requirements were established, the company originally planned to introduce advanced air bag in the successor vehicle, the Lotus Esprit, and then to use the same technology for its Elise model. However, the company stated that due to unforeseen circumstances, the Esprit successor vehicle was delayed. Lotus stated that once this situation became clear, the company immediately tried to shift its advanced air bag program's focus to the Elise, with subsequent introduction into the Esprit successor. However, Lotus argued that despite its good faith efforts, it is not practicable to comply with the advanced air bag requirements in time to meet the September 1, 2006 deadline.

[16] Lotus also derives profits from engineering consulting for other small volume manufacturers. However, that business has declined. Fluctuations in the value of the dollar have also had a major effect on profits.

[17] Docket No. NHTSA–2006–25324–11.

Lotus argued that it is an independent manufacturer eligible for an exemption under 49 CFR part 555, despite the fact that the company is owned by Proton Holdings Berhad. The petitioner argued that its relationship to its parent company is similar to that of Ferarri and its parent company (Fiat). Lotus also noted that denial of its exemption request would have a negative employment impact on both its U.S. subsidiary and its U.S. dealerships.

In terms of safety impact, Lotus argued that the Elise would be equipped with standard air bags and that these vehicles are not typically used for daily transportation, have substantially lower than average annual usage, and typically are not used to transport children. Accordingly, the petitioner argued that its requested exemption for these vehicles would have a negligible effect on safety. The company added that its search of NHTSA's Fatality Analysis Reporting System (FARS) database from 1995–2003 and 2004 Annual Report File showed no fatal crashes for Lotus vehicles after the 1995 model year, no crashes for Elise vehicles, and no crashes involving children.

In addition, Lotus argued that the continued weakening of the U.S. dollar vis-à-vis the British Pound, when combined with competitive pressure to avoid significant vehicle price increases in the U.S. market, exacerbates the economic hardship problems confronting the company.

As noted above, the second comment was submitted by Mr. Steven Blodgett (*see* the summary of public comments under Lamborghini for a complete discussion of this comment). Specific to Lotus, Mr. Blodgett requested the OMB and/or a separate independent contractor be used to evaluate the company's financial data. The commenter also objected to the lack of supporting documentation from air bag suppliers to verify that the requirements for which the vehicle manufacturer seeks an exemption cannot be met. As further factors for consideration by the agency in reviewing the company's temporary exemption request, Mr. Blodgett highlighted what he perceived to be the manufacturer's delay in submitting a part 555 petition from the advanced air bag requirements and its presumed continuation of vehicle production prior to receiving the agency's decision.

Agency Decision on Lotus Petition. We are granting the Lotus petition to be exempted from portions of the advanced air bag regulation required by S14.2 (specifically S14.5.2, S15, S17, S19, S21, S23, and S25). The exemption does not extend to the provision requiring a belted 50th percentile male barrier impact test (S14.5.1(a)). In addition to certifying compliance with S14.5.1(a), Lotus must continue to certify to the unbelted 50th percentile male barrier impact test in force prior to September 1, 2006 (S5.1.2(a)). We note that the unbelted sled test in S13 is an acceptable option for the requirement. The agency's rationale for this decision is as follows.

The advanced air bag requirements present a unique challenge because they would require Lotus to completely redesign a major structural part of the extruded aluminum chassis in its vehicles. While the petitioner was aware of the new requirements for some time, it was not able to introduce a fully compliant vehicle by September 2006 as originally intended. Accordingly, it was determined that the Elise model, designed for the European market, would need to be sold in the U.S. market in order to generate revenue for a successor vehicle that complies with all U.S. requirements, including the advanced air bag requirements of FMVSS No. 208. Although Lotus immediately engaged in homologation efforts, the company experienced a number of technical challenges precluding incorporation of advanced air bag into the Elise at this time, as follows.

Lotus has been unable to acquire an "off-the-shelf" advanced air bag system. First, many existing advanced air bag designs, technical specifications, and tooling are the intellectual property of the original equipment manufacturer (OEM) and not the supplier. Lotus experienced reluctance to allow the transfer of this intellectual property for its use. Second, the passenger air bag size, inflator pressure, venting, and deployment angle in those pre-existing air bag systems have been specifically designed for the original OEM vehicle crash pulse and interior geometry. Therefore, to source a passenger air bag requires reverse engineering, suiting the vehicles' interior package, and modifying the vehicle crash pulse to suit the OEM air bag. Third, the suppression option for compliance was not possible due to the lack of available sensor technology. Instead, to pursue the low risk deployment option, Lotus would need a top mounted passenger air bag. However, to package the top mounted passenger air bag in the Elise would require a complete redesign of a major structural part of the extruded aluminum chassis. At the location where the passenger air bag would need to be situated, there is a major structural cross beam that is bonded into the chassis. New tooling for the instrument panel would also be required, along with a new air bag cover. The air bag cover would require a new unique design to overcome the issues of out-of-position, small occupant air bag deployments. Fourth, advanced air bag occupant classification systems require a compliant seat frame base. The Lotus Elise has a rigid shell seat with only a minimum level of foam; therefore, another technical solution would be required, such as seat frame weight sensors. Currently, this solution is under development by suppliers but is not now available as a production solution. Lotus has made clear that such a prospect would pose a unique challenge to the company, due to the high cost of development and its extremely small sales volumes.

Based upon the information provided by the petitioner, we understand that Lotus made good faith efforts to bring the Elise into compliance with the applicable requirements until such time as it became apparent that there was no practicable way to do so. No viable alternatives remain. The petitioner is unable to redesign its vehicle by the time the new advanced air bag requirements go into effect on September 1, 2006.

After review of the income statements provided by the petitioner, the agency notes that the company has faced ongoing financial difficulties, having lost over $125 million over the past five years. If the petitioner is forced to discontinue selling the current model in the U.S. market, the resulting loss of sales would cause substantial economic hardship within the meaning of the statute, potentially forcing the company out of business in the U.S. According to Lotus, absent the exemption, the company would have no product to sell in the U.S. until sometime in 2008, and losses could swell to over $100 million in the next three years. However, Lotus's problems would be compounded without its requested temporary exemption, because it needs the revenue from sales of the Elise over the next three years to finance development of a fully compliant vehicle for delivery to the U.S. market. Granting the exemption will allow Lotus to earn the resources necessary to bridge the gap in terms of development of a successor vehicle for the Elise that meets all U.S. requirements.

While some of the information submitted by Lotus has been granted confidential treatment and is not detailed in this document, the petitioner made a comprehensive showing of its good faith efforts to comply with the requirements of S14.2 of FMVSS No. 208, and detailed engineering and

financial information demonstrating that failure to obtain the exemption would cause substantial economic hardship. Specifically, the petitioner provided the following:

1. Chronological analysis of Lotus's efforts to comply, showing the relationship to the rulemaking history of the advanced air bag requirements.
2. Itemized costs of each component that would have to be modified in order to achieve compliance.
3. Discussion of alternative means of compliance and reasons for rejecting these alternatives.
4. List of air bag suppliers that were approached in hopes of procuring necessary components (including OEM price-volume quotations).
5. Explanations as to why components from newer, compliant vehicle lines could not be borrowed.
6. Corporate income statements and balance sheets for the past three years, and projected income statements and balance sheets if the petition is denied.

We note that Lotus is a well-established company with a small, but not insignificant U.S. presence. We believe that the reduction of sales revenue resulting from a denial of the company's requested temporary exemption would have a negative impact not only on Lotus's financial circumstances, but it would also negatively affect U.S. employment. Specifically, reduction in sales would also affect not only employees of Lotus Cars USA, but also Lotus dealers and repair specialists. Traditionally, the agency has concluded that the public interest is served in affording continued employment to the petitioner's U.S. work force. Furthermore, as discussed in previous decisions on temporary exemption applications, the agency believes that the public interest is served by affording consumers a wider variety of motor vehicle choices.

We believe that this exemption will have negligible impact on motor vehicle safety, because Lotus vehicles are not typically used for daily transportation.

The agency examined the FARS (1995–2004) and the National Automotive Sampling System Crashworthiness Data System (NASS CDS) (1995–2005) for information on the vehicle in question. These data indicate that over that period, there were no NASS CDS cases for the Elise and three fatalities in FARS for the Elise predecessor (two adult male and one adult female occupants). There were no children or small women involved in crashes of the later Lotus Elise included in these databases.

We note that, as explained below, prospective purchasers will be notified that the vehicle is exempted from the specified advanced air bag requirements of Standard No. 208. Under § 555.9(b), a manufacturer of an exempted passenger car must affix securely to the windshield or side window of each exempted vehicle a label containing a statement that the vehicle conforms to all applicable Federal motor vehicle safety standards in effect on the date of manufacture "except for Standard Nos. [listing the standards by number and title for which an exemption has been granted] exempted pursuant to NHTSA Exemption No. _____." This label notifies prospective purchasers about the exemption and its subject. Under § 555.9(c), this information must also be included on the vehicle's certification label.

The text of § 555.9 does not expressly indicate how the required statement on the two labels should read in situations where an exemption covers part but not all of a Federal motor vehicle safety standard. In this case, we believe that a statement that the vehicle has been exempted from Standard No. 208 generally, without an indication that the exemption is limited to the specified advanced air bag provisions, could be misleading. A consumer might incorrectly believe that the vehicle has been exempted from all of Standard No. 208's requirements. Moreover, we believe that the addition of a reference to such provisions by number without an indication of its subject matter would be of little use to consumers, since they would not know the subject of those specific provisions. For these reasons, we believe the two labels should read in relevant part, "except for S14.5.2, S15, S17, S19, S21, S23, and S25 (Advanced Air Bag Requirements) of Standard No. 208, Occupant Crash Protection, exempted pursuant to * * *." We note that the phrase "Advanced Air Bag Requirements" is an abbreviated form of the title of S14 of Standard No. 208. We believe it is reasonable to interpret § 555.9 as requiring this language.

Although our response to the supplementary comments provided by the petitioner is reflected above, in terms of our response to the comment submitted by Mr. Blodgett, we note that the issues raised in that comment (*e.g.*, extension of the comment period, duration of the comment period, documentation) are identical for all five petitioners. Accordingly, please see our decision for Lamborghini (Section IV of this notice) for the agency's response to this comment submission.

In sum, the agency concludes that Lotus has demonstrated good faith effort to bring the Elise into compliance with the advanced air bag requirements of FMVSS No. 208, and has also demonstrated the requisite financial hardship. Further, we find the exemption to be in the public interest.

In consideration of the foregoing, we conclude that compliance with the advanced air bag requirements of FMVSS No. 208, *Occupant Crash Protection*, would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. We further conclude that granting of an exemption would be in the public interest and consistent with the objectives of traffic safety.

In accordance with 49 U.S.C. 30113(b)(3)(B)(i), the Lotus Elise is granted NHTSA Temporary Exemption No. EX 06–4, from S14.5.2, S15, S17, S19, S21, S23, and S25 of 49 CFR 571.208. The exemption is effective from September 1, 2006 to August 31, 2009.

VI. Morgan [18]

Background. Founded in 1909, Morgan is a small privately-owned vehicle manufacturer producing approximately 600 specialty sports cars per year. Morgan manufactures several models, but only sells the Aero 8 in the U.S. Morgan intended to produce a vehicle line specific to the U.S. market, with Ford supplying the engine and transmission. However, for technical reasons, the project did not work out, and Morgan temporarily stopped selling vehicles in the U.S. in 2004. In May of 2005, Morgan obtained a temporary exemption from the Bumper Standard and began selling the Aero 8 in the U.S. Morgan now asks for a temporary exemption from advanced air bag requirements because of financial hardship. If its exemption request is granted, the company anticipates importing into the U.S. 25 vehicles in 2006, 250 vehicles in 2007, 250 in 2008, and 200 vehicles in 2009.

Eligibility. Morgan produces approximately 600 vehicles per year. Morgan is an independent company. Accordingly, NHTSA concludes that Morgan is eligible to apply for a hardship exemption.

Requested exemptions. Morgan stated that it intends for its U.S. Aero 8

[18] We note that Morgan submitted a supplement to its application, seeking a temporary exemption from all FMVSS No. 208 air bag requirements for a separate vehicle (*i.e.*, its traditional Roadster model) (*see* Docket No. NHTSA–2006–25324–4 (included with original application)). Although the Morgan Roadster previously had been equipped with standard air bags, the company stated that it has lost its original supplier for air bags for this vehicle and has been unable to find an alternate supplier. Due to the different issues involved, the agency will be addressing the supplemental request involving the Morgan Roadster in a separate **Federal Register** notice.

production on and after September 1, 2006 to comply with the rigid barrier belted test requirement using the 50th percentile adult male test dummy (S14.5.1) and the rigid barrier belted test requirement using the 5th percentile adult female test dummy (S15.1).

Morgan states that the Aero 8's compliance with the rigid barrier unbelted test requirement using the 50th percentile adult male test dummy was determined through the S13 sled test using a generic pulse, rather than a full vehicle test. This petitioner further states that it cannot at present say with certainty that the Aero 8 would comply with the unbelted test requirement under S14.5.2, which is a 20–25 mph rigid barrier test.

As for the other advanced air bag requirements, Morgan states that it does not know whether the Aero 8 would be compliant, as Morgan has not had the financial ability to conduct the necessary development and testing.

Morgan is requesting an exemption for the Aero 8 from the rigid barrier unbelted test requirement with the 50th percentile adult male test dummy (S14.5.2), the rigid barrier unbelted test requirement using the 5th percentile adult female test dummy (S15.2), the offset deformable barrier test requirement using the 5th percentile adult female test dummy (S17), the requirements to provide protection for infants and children (S19, S21, and S23) and the requirement using an out-of-position 5th percentile adult female test dummy at the driver position (S25).

Morgan is requesting the above exemption for the Aero 8 for the period from September 1, 2006 to August 31, 2009.

Economic Hardship. Morgan argues that meeting the advanced air bag requirements is estimated to cost between $3,196,179 and $5,066,938 and is not within the financial capability of the company.[19] Morgan's financial submission indicates the company's losses over the last five years have totaled more than $3.6 million. In its initial petition, Morgan stated that it made a small profit in 2004 for the first time in three years. However, Morgan later supplied the agency with updated financial information for 2004 and 2005, which showed net losses for both of those fiscal years.

Without an exemption, Morgan would be forced once again to withdraw from the U.S. market. With no income from U.S. sales, Morgan asserts that it will not be able to fund an advanced air bag program for a future vehicle or return to profitability. For the period between 2006 and 2009, Morgan projects that the outcome of the agency's decision on its exemption request will amount to the difference between a profit of over $3 million and a loss of over $6 million. Morgan further asserts that if the petition is denied, it could soon become insolvent.

Good faith efforts to comply. Morgan has been working with the air bag supplier Siemens to develop an advanced air bag system for the Aero 8. However, a lack of funds and technical problems precluded the timely implementation of an advanced air bag system for the Aero 8. The minimum time needed to develop an advanced air bag system (provided that there is a source of revenue) is two years. With no other product to sell in the meantime, Morgan needs to rely on Aero 8 sales to finance this project.

Specific technical challenges include the following. Morgan does not have access to necessary sensor technology to pursue the "full suppression" passenger air bag option. Due to the design of the Aero 8 platform dashboard, an entirely new interior solution and design must be developed. Chassis modifications are anticipated due to the originally stiff chassis design.

Morgan argues that an exemption would be in the public interest. Morgan put forth several arguments in favor of a finding that the requested exemption is consistent with the public interest. Specifically, Morgan asserts the current Aero 8's standard air bag system does not pose a safety risk. Morgan knows of no injuries caused by the Aero 8's current standard air bag system. If the exemption is denied and Morgan stops U.S. sales, Morgan's U.S. dealers would unavoidably have numerous lay-offs, resulting in decreased U.S. unemployment. Denial of an exemption would reduce the consumer choice in the specialty sports car market sector into which Morgan cars are offered. The Aero 8 will not be used extensively by owners, and is unlikely to carry small children. Finally, according to Morgan, granting an exemption would assure the continued availability of proper parts and service support for existing Morgan owners. Without an exemption, Morgan would be forced from the U.S. market, and Morgan dealers will find it difficult to support existing customers.

Summary of Public Comments. The agency received two comments related to the Morgan petition for a temporary exemption. The first comment was submitted by Morgan itself.[20] In its comment, the company stated that its situation is similar to Ferrari's request for a temporary exemption from the advanced air bag provisions of FMVSS No. 208, which the agency granted in a notice published in the **Federal Register** on May 22, 2006 (71 FR 29389) (Docket No. NHTSA–2005–23093). Specifically, Morgan presented the following arguments in support of its petition.

Like Ferrari, Morgan stated that its product cycles must last longer than the industry average due to the high cost of development and extremely small sales volumes. Morgan stated that it did not anticipate sale of the Aero 8 in the U.S., but the company later determined that it would be necessary to market this vehicle in the U.S. Once such decision was made, Morgan stated that it made a good faith effort to find a practicable way to comply with the advanced air bag requirements, but it was unable to do so. However, the petitioner stated that in order to meet the advanced air bag requirements, it would face the unique challenge of needing to completely redesign the vehicle before the end of its life cycle.

Morgan stated that its vehicle also incorporates additional active and passive safety systems, including load limiters, electronic brakeforce distribution (EBD), ABS, drag torque control (for stability), and a tire pressure monitoring system (in advance of the compliance date for small volume manufacturers under FMVSS No. 138, *Tire Pressure Monitoring Systems*).

In terms of safety impact, Morgan argued that it intends to produce only 400 Aero 8 vehicles over three years and that these vehicles are not typically used for daily transportation, have substantially lower than average annual usage, and typically are not used to transport children. Accordingly, the petitioner argued that its requested exemption for these vehicles would have a negligible effect on safety. The company added that its search of NHTSA's Fatality Analysis Reporting System (FARS) database from 1995–2003 and 2004 Annual Report File did not show any crashes involving Morgan's vehicle during that timeframe.

In addition, Morgan argued that the continued weakening of the U.S. dollar vis-a-vis the British Pound, when combined with competitive pressure to avoid significant vehicle price increases in the U.S. market, exacerbates the economic hardship problems confronting the company. Morgan also argued that denial of its exemption request would have a negative employment impact on its U.S. dealerships.

[19] When costs for interior redesign, crash cars, and tooling are included, the estimate rises to between $5,648,679 and $7,519,438.

[20] Docket No. NHTSA–2006–25324–9.

As noted above, the second comment was submitted by Mr. Steven Blodgett (*see* the summary of public comments under Lamborghini for a complete discussion of this comment). Specific to Morgan, Mr. Blodgett requested the OMB and/or a separate independent contractor be used to evaluate the company's financial data. The commenter also objected to the lack of supporting documentation from air bag suppliers to verify that the requirements for which the vehicle manufacturer seeks an exemption cannot be met. As further factors for consideration by the agency in reviewing the company's temporary exemption request, Mr. Blodgett highlighted what he perceived to be the manufacturer's delay in submitting a part 555 petition from the advanced air bag requirements and its presumed continuation of vehicle production prior to receiving the agency's decision.

Agency Decision on Morgan Petition. We are granting the Morgan petition to be exempted from portions of the advanced air bag regulation required by S14.2 (specifically S15.2, S17, S19, S21, S23, and S25). The extent of the exemption is limited to those provision requiring an unbelted 5th percentile female barrier impact (S15.2), a belted 5th percentile female offset frontal impact (S17), testing with child dummies (S19, S21 and S23) and the 5th percentile female dummy out-of-position testing (S25). Morgan must certify to 50th percentile male barrier testing (S14.5.1(a) and S14.5.2), and 5th percentile female belted barrier testing (S15.1). The agency's rationale for this decision is as follows.

The advanced air bag requirements present a unique challenge because they would require Morgan to undertake a major redesign of its vehicles, in order to overcome the engineering limitations of the Aero 8. While the petitioner was aware of the new requirements for some time, its business plans to introduce a fully U.S. compliant vehicle did not materialize due to technical problems. As a result, Morgan subsequently determined that it would be necessary to introduce the Aero 8 into the U.S. market in order to finance the development of a fully compliant successor vehicle, thereby raising the problem of compliance with the advanced air bag requirements.

Morgan explained the main engineering challenges precluding incorporation of advanced air bag into the Aero 8 at this time, as follows. The company does not have access to necessary sensor technology to pursue the "full suppression" passenger air bag option. In addition, due to the design of the Aero 8 platform dashboard, an entirely new interior solution and design must be developed, and chassis modifications are anticipated due to the originally stiff chassis design. The petitioner states that it would take approximately two years to resolve these technical issues surrounding advanced air bags, given adequate funding. Morgan has made clear that such a prospect would pose a unique challenge to the company, due to the high cost of development and its extremely small sales volumes.

Based upon the information provided by the petitioner, we understand that Morgan made good faith efforts to bring the Aero 8 into compliance with the applicable requirements until such time as it became apparent that there was no practicable way to do so. The company had a difficult time in gaining access to advanced air bag technology (which presumably reflects suppliers' initial focus on meeting the needs of large volume manufacturers), and this further reduced the lead time available for development. Furthermore, because Morgan is a fully independent company, there was no possibility of technology transfer from a larger parent company. Consequently, no viable alternatives remain. The petitioner is unable to redesign its vehicle by the time the new advanced air bag requirements go into effect on September 1, 2006.

After review of the income statements provided by the petitioner, the agency notes that the company has faced ongoing financial difficulties, experiencing financial losses of about $4 million over the past five years (2001–2005). If the petitioner is forced to discontinue selling the current model in the U.S. market, the resulting loss of sales would cause substantial economic hardship within the meaning of the statute, potentially amounting to the difference between a profit of over $3 million and a loss of over $6 million over the period from 2006–2009. Ultimately, denial of the exemption request could threaten the company's solvency.

According to Morgan, absent the exemption, the company anticipates being forced to withdraw from the U.S. market. However, Morgan's problems would be compounded without its requested temporary exemption, because it needs the revenue from sales of the Aero 8 over the next three years to finance development of a fully compliant vehicle for delivery to the U.S. market. Granting the exemption will allow Morgan to earn the resources necessary to bridge the gap in terms of development of a successor vehicle for the Aero 8 that meets all U.S. requirements.

While some of the information submitted by Morgan has been granted confidential treatment and is not detailed in this document, the petitioner made a comprehensive showing of its good faith efforts to comply with the requirements of S14.2 of FMVSS No. 208, and detailed engineering and financial information demonstrating that failure to obtain the exemption would cause substantial economic hardship. Specifically, the petitioner provided the following:

1. Chronological analysis of Morgan's efforts to comply, showing the relationship to the rulemaking history of the advanced air bag requirements.
2. Itemized costs of each component that would have to be modified in order to achieve compliance.
3. List of air bag suppliers that were approached in hopes of procuring necessary components (including OEM price-volume quotations).
4. Explanations as to why components from newer, compliant vehicle lines could not be borrowed.
5. Corporate income statements and balance sheets for the past three years, and projected income statements and balance sheets if the petition is denied.

We note that reduction of sales revenue resulting from a denial of the company's requested temporary exemption would have a negative impact not only on Morgan's financial circumstances, but it would also negatively affect U.S. employment. Specifically, reduction in sales would also affect Morgan dealers and repair specialists, negatively impacting their ability to provide parts and services to current Morgan owners. Traditionally, the agency has concluded that the public interest is served in affording continued employment to the petitioner's U.S. work force. Furthermore, as discussed in previous decisions on temporary exemption applications, the agency believes that the public interest is served by affording consumers a wider variety of motor vehicle choices.

We also note that the Aero 8 features several advanced "active" safety features. These features are listed in the petitioner's application.[21] While the availability of these features is not critical to our decision, it is a factor in considering whether the exemption is in the public interest.

We believe that this exemption will have negligible impact on motor vehicle safety because of the limited number of

[21] *See* page 12 of Morgan's petition and page 1 of Morgan's comments.

vehicles affected (approximately 400 imported for the duration of the exemption), and because Morgan vehicles are not typically used for daily transportation. Their annual usage (approximately 5,000 miles per year) is substantially lower compared to vehicles used for everyday transportation.

Furthermore, the agency examined the FARS (1995–2004) and the National Automotive Sampling System Crashworthiness Data System (NASS CDS) (1995–2005) for information on the vehicle in question (which began sales in May 2005) or its predecessor vehicle (the Plus 8). These data indicate that over that period, there were no NASS CDS and no FARS cases for the Aero 8 or its predecessor. Thus, there were no children or small women involved in crashes of these Morgan vehicles included in these databases.

We note that, as explained below, prospective purchasers will be notified that the vehicle is exempted from the specified advanced air bag requirements of Standard No. 208. Under § 555.9(b), a manufacturer of an exempted passenger car must affix securely to the windshield or side window of each exempted vehicle a label containing a statement that the vehicle conforms to all applicable Federal motor vehicle safety standards in effect on the date of manufacture "except for Standard Nos. [listing the standards by number and title for which an exemption has been granted] exempted pursuant to NHTSA Exemption No. _____." This label notifies prospective purchasers about the exemption and its subject. Under § 555.9(c), this information must also be included on the vehicle's certification label.

The text of § 555.9 does not expressly indicate how the required statement on the two labels should read in situations where an exemption covers part but not all of a Federal motor vehicle safety standard. In this case, we believe that a statement that the vehicle has been exempted from Standard No. 208 generally, without an indication that the exemption is limited to the specified advanced air bag provisions, could be misleading. A consumer might incorrectly believe that the vehicle has been exempted from all of Standard No. 208's requirements. Moreover, we believe that the addition of a reference to such provisions by number without an indication of its subject matter would be of little use to consumers, since they would not know the subject of those specific provisions. For these reasons, we believe the two labels should read in relevant part, "except for S15.2, S17, S19, S21, S23, and S25 (Advanced Air Bag Requirements) of Standard No. 208, Occupant Crash Protection, exempted pursuant to * * *." We note that the phrase "Advanced Air Bag Requirements" is an abbreviated form of the title of S14 of Standard No. 208. We believe it is reasonable to interpret § 555.9 as requiring this language.

Our response to the supplementary comments provided by the petitioner is reflected above. In terms of our response to the comment submitted by Mr. Blodgett, we note that the issues raised in that comment (*e.g.*, extension of the comment period, duration of the comment period, documentation) are identical for all five petitioners. Accordingly, please see our decision for Lamborghini (Section IV of this notice) for the agency's response to this comment submission.

In sum, the agency concludes that Morgan has demonstrated good faith effort to bring the Aero 8 into compliance with the advanced air bag requirements of FMVSS No. 208, and has also demonstrated the requisite financial hardship. Further, we find the exemption to be in the public interest.

In consideration of the foregoing, we conclude that compliance with the advanced air bag requirements of FMVSS No. 208, *Occupant Crash Protection*, would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. We further conclude that granting of an exemption would be in the public interest and consistent with the objectives of traffic safety.

In accordance with 49 U.S.C. 30113(b)(3)(B)(i), the Morgan Aero 8 is granted NHTSA Temporary Exemption No. EX 06–5, from S15.2, S17, S19, S21, S23, and S25 of 49 CFR 571.208. The exemption is effective from September 1, 2006 to August 31, 2009.

VII. Maserati

Background. Maserati is a small volume Italian automobile manufacturer formed in 1914 that produces performance sports cars and luxury automobiles. Over the years, Maserati has experienced frequent changes in ownership and financial hardship. The exemption is being sought for the Maserati Coupe/Spyder[22] for a period of 16 months.

Eligibility. Maserati produced less than 6,000 vehicles in the most recent year of production. More specifically, the petitioner reported the following worldwide production and U.S. imports over the past few years:

Maserati S.p.A	Worldwide production	U.S. imports
2003	2900 cars	1073 cars.
2004	4722 cars	1747 cars.
2005	5571 cars	2061 cars.

However, Maserati is owned by Fiat, a large vehicle manufacturer. The petitioner stated that there is no similarity of design between the cars produced by Maserati and Fiat, and that Maserati designed and engineered the Coupe/Spyder without the direct involvement of Fiat. In addition, Maserati stated that its vehicles are imported and sold though its own dealer networks, not those of Fiat. In sum, Maserati asserts that its relationship with Fiat is "arm's-length." Maserati operates independently, and services provided by Fiat are paid for by Maserati.

In making our determination regarding eligibility, we note that the public comment of the COSVAM raised the issue of whether certain of the petitioners (Bugatti, Lamborghini, Maserati) are eligible for temporary exemptions under part 555, in light of their financial relationships to larger parent companies which are also vehicle manufacturers. Specifically, COSVAM argued that the Maserati vehicle has been engineered by Ferrari and that the technology for compliance with the requirements of FMVSS No. 208 should be readily available. The commenter asserted that at one point, the two companies shared the same staff for certification (homologation) and that the two companies have a long history of technology sharing. COSVAM stated that the two companies' recent corporate separation was defined in the public record as "administrative rather than technological," and it stated that Maserati continues to use powertrains and other engineering equipment developed by and for Ferrari (which is majority-owned by Fiat S.p.A.). Thus, the commenter expressed doubt as to whether Maserati would be unable to comply with the advanced air bag requirements of FMVSS No. 208. Accordingly, the commenter argued that Maserati should be considered ineligible for a temporary exemption under part 555.

Maserati also submitted a public comment[23] on its own petition, in which it sought to clarify its relationship with its parent company, arguing that it is similar to that of Ferrari which is also majority-owned by Fiat.

[22] The Maserati vehicles in question differ only in that one is a hardtop version (the Coupe) and the other is a convertible softtop version (the Spyder).

[23] Docket No. NHTSA–2006–25324–10.

The agency examined the relationship between Maserati and Fiat (and its subsidiary Ferrari). We have concluded that Maserati is eligible to apply for a temporary exemption based on the following factors. First, there is no similarity of design between the cars produced by Maserati and cars produced by Fiat (or Ferrari), and Maserati has stated that its Coupe/Spyder was designed without assistance from Fiat (or Ferrari). Second, Maserati cars are imported and sold through separate distribution channels independent of Fiat, which does not sell vehicles in the U.S, and of Ferrari. Accordingly, NHTSA concludes that Fiat (and Ferrari) are not manufacturers of Maserati vehicles by virtue of being a sponsor.

Requested exemptions. Maserati stated that it intends for the Coupe/Spyder produced for the United States market on and after September 1, 2006 to comply with the rigid barrier belted and unbelted test requirements using the 50th percentile adult male test dummy (S14.5).

As for the Coupe/Spyder's compliance with the other advanced air bag requirements, Maserati states that it does not know whether the Coupe/Spyder will be compliant as it has not had the financial ability to conduct the necessary development and testing.

Accordingly, Maserati is requesting an exemption from the rigid barrier test requirement using the 5th percentile adult female test dummy (belted and unbelted, S15), the offset deformable barrier test requirement using the 5th percentile adult female test dummy (S17), the requirements to provide protection for infants and children (S19, S21, and S23) and the requirement using an out-of-position 5th percentile adult female test dummy at the driver position (S25).

Maserati is requesting the above exemption for the Coupe/Spyder for the period from September 1, 2006 to December 31, 2007.

Economic hardship. Over the period of 2000–2005, the company lost $385,195,998 (320,996,665 euros).[24] The petitioner argues that an exemption is needed in order to avoid massive disruptions to the Maserati production system and loss of revenue until a fully-compliant model is introduced in early 2008. The exempted vehicles will "bridge the gap" between the current Coupe/Spyder, with standard air bags, and the next version of the model line arriving in 2008 with advanced air bags. The petitioners stated that it does not have the resources to fund advanced air bag development for both the Coupe/Spyder and the successor vehicle due in 2008, and that an advanced air bag system tailored to the one vehicle could not be subsequently used in the other, due to completely different vehicle platforms. Furthermore, even if it were technically possible to install advanced air bags in the Coupe/Spyder, Maserati stated that the added cost on a per-vehicle basis would price the model out of the market. If the exemption is denied, the petitioner anticipates layoffs, negative impacts for Maserati dealers and owners in the U.S., and a delay in introducing a new, fully complaint vehicle.

Good faith efforts to comply. Maserati states that it has been unable to overcome engineering problems associated with installing advanced air bags in the current Coupe/Spyder, a vehicle platform that is soon to go out of production. The design of the current Coupe/Spyder started in 1996, before the advanced air bag rule was promulgated. In the late 1990s, when Maserati decided to re-enter the U.S. market, it made the decision that the Coupe/Spyder would have a life span in the U.S. of five years, from 2002 through 2006. This decision was based on the fact that the model was introduced in Europe in 1997, and that the basic platform would, therefore, have a total life span of nine years. Only in late 2005, Maserati concluded that it had to extend the life span of the Coupe/Spyder, by 16 months beyond the planned 2006 end date, because a fully compliant vehicle is not yet ready.

According to Maserati, it tried, but could not overcome the technical challenges associated with borrowing the advanced air bag system from Maserati's other model, the Quattroporte, because the steering column and steering wheel are incompatible with the electrical system in the Coupe/Spyder. Use of the Quattroporte's passenger air bag would require redesigning the entire Coupe/Spyder dashboard. To position the Quattroporte's sensors in the Coupe/Spyder, it would have been necessary to change the seats. The sensors also could not be packaged in the Coupe/Spyder due to space problems, and the sensor software was incompatible with the Coupe/Spyder's electrical system.

Maserati argues that an exemption would be in the public interest. Maserati put forth several arguments in favor of a finding that the requested exemption is consistent with the public interest. Specifically, Maserati asserts the current Coupe/Spyder's air bag system does not pose a safety risk. Maserati knows of no injuries caused by the Coupe/Spyder's current standard air bag system. If the exemption is denied and Maserati stops U.S. sales, Maserati states that its goodwill with its U.S. dealers would be negatively impacted. Further, Maserati asserts that denial of an exemption would reduce consumer choice in the specialty sports car market sector into which Maserati cars are offered. Masearti asserts that the Coupe/Spyder will not be used extensively by owners, and is unlikely to carry small children. Finally, according to Maserati, granting an exemption would assure the continued availability of proper parts and service support for existing Maserati owners.

Summary of Public Comments. The agency received three comments on the Maserati petition for a temporary exemption. The first comment was submitted by Maserati itself. In its comment, the company stated that its situation is similar to Ferrari's request for a temporary exemption from the advanced air bag provisions of FMVSS No. 208, which the agency granted in a notice published in the **Federal Register** on May 22, 2006 (71 FR 29389) (Docket No. NHTSA–2005–23093). Specifically, Maserati presented the following arguments in support of its petition.

Like Ferarri, Maserati stated that it product cycles must last longer than the industry average due to the high cost of development and extremely small sales volumes. Maserati stated that it did not anticipate continued production of the Coupe/Spyder after September 1, 2006, but the company later determined that it would be necessary to continue production of that model. According to Maserati, advanced air bag requirements were not anticipated when designing the Coupe/Spyder's vehicle platform, which arose from a predecessor vehicle developed circa 1995. However, the petitioner stated that in order to meet the advanced air bag requirements, it would face the unique challenge of needing to completely redesign the vehicle before the end of its life cycle. Maserati stated that it made a good faith effort to find a practicable way to comply with the advanced air bag requirements, but it was unable to do so.

As discussed previously, Maserati argued that it is an independent manufacturer eligible for an exemption under 49 CFR part 555, despite the fact that the company is majority-owned by Fiat. The petitioner argued that its relationship to its parent company is similar to that of Ferarri, which is also majority-owned by Fiat. Maserati also noted that denial of its exemption request would have a negative

[24] The dollar-euro exchange rate used herein is 1 euro = $1.20.

employment impact on both its U.S. subsidiary and its U.S. dealerships.

Maserati stated that in addition to standard air bags, its vehicle also incorporates additional active and passive safety systems, including electronic stability control, ABS, side air bags, and a fixed rollover bar on the convertible. Furthermore, the company stated that the Coupe/Spyder has been equipped with an air bag on-off switch.

In terms of safety impact, Maserati argued that it intends to produce only about 700 Coupe/Spyder vehicles over 16 months and that these vehicles are not typically used for daily transportation, have substantially lower than average annual usage, and typically are not used to transport children. Accordingly, the petitioner argued that its requested exemption for these vehicles would have a negligible effect on safety. The company added that its search of NHTSA's Fatality Analysis Reporting System (FARS) database from 1995–2003 and 2004 Annual Report File showed no accident involving a Maserati vehicle built by the ownership-management post-DeTomaso.[25]

In addition, Maserati argued that the continued weakening of the U.S. dollar vis-a-vis the euro, when combined with competitive pressure to avoid significant vehicle price increases in the U.S. market, exacerbates the economic hardship problems confronting the company.

The second comment was submitted by Mr. Steven Blodgett (see the summary of public comments under Lamborghini for a complete discussion of this comment). Specific to Maserati, Mr. Blodgett requested the OMB and/or a separate independent contractor be used to evaluate the company's financial data. The commenter also objected to the lack of supporting documentation from air bag suppliers to verify that the requirements for which the vehicle manufacturer seeks an exemption cannot be met. As further factors for consideration by the agency in reviewing the company's temporary exemption request, Mr. Blodgett highlighted what he perceived to be the manufacturer's delay in submitting a part 555 petition from the advanced air bag requirements and its presumed continuation of vehicle production prior to receiving the agency's decision.

[25] According to the petitioner, Maserati operated under one corporate ownership-management structure (DeTomaso), which last produced vehicles for sale in the U.S. during model year 1991. The company was subsequently sold to its current leadership, which resumed sales in the U.S. in 2001. According to the petitioner, the two generations of vehicles were significantly different, although both shared the same Maserati name.

The third comment was submitted by COSVAM. As discussed previously, COSVAM raised the issue of whether certain of the petitioners (Bugatti, Lamborghini, Maserati) are eligible for temporary exemptions under part 555, in light of their financial relationships to larger parent companies which are also vehicle manufacturers (see Eligibility section above for details and the agency's decision on that issue).

Agency Decision on Maserati Petition. We are granting the Maserati petition to be exempted from portions of the advanced air bag regulation required by S14.2 (specifically S15, S17, S19, S21, S23, and S25). The exemption does not extent to the provisions requiring 50th percentile male barrier impact tests (S14.5.1(a) and S14.5.2). Thus, Maserati must certify to S14.5.1(a) and S14.5.2. The agency's rationale for this decision is as follows.

The advanced air bag requirements present a unique challenge because they would require Maserati to conduct a major redesign its vehicles, in order to overcome the existing engineering and technical limitations based upon design of the Coupe/Spyder. While the petitioner was aware of the new requirements for some time, its business plans changed, and it was subsequently determined that the Coupe/Spyder's production run would need to be extended beyond 2006 (*i.e.*, for an additional 16 months) because a successor vehicle is not ready, thereby raising the problem of compliance with the advanced air bag requirements. The petitioner requested a temporary exemption in order to prevent a gap in its U.S. product portfolio, thereby maintaining its market position in the U.S. and avoiding financial harm to its dealer network.

Maserati explained the main engineering challenges precluding incorporation of advanced air bag into the Coupe/Spyder at this time, as follows. After examining available options, Maserati determined that its best chance of meeting the advanced air bag requirements would involve borrowing the advanced air bag system from Maserati's other model, the Quattroporte. However, this strategy did not work, because the Quattroporte's steering column and steering wheel are incompatible with the electrical system in the Coupe/Spyder. Furthermore, it was determined that use of the Quattroporte's passenger air bag would require redesigning the entire Coupe/Spyder dashboard and that to position the Quattroporte's sensors in the Coupe/Spyder, it would have been necessary to change the seats. The sensors also could not be packaged in the Coupe/Spyder due to space problems, and the sensor software was incompatible with the Coupe/Spyder's electrical system. Thus, Maserati has made clear that such a prospect would pose a unique challenge to the company, due to the high cost of development and its extremely small sales volumes.

Based upon the information provided by the petitioner, we understand that Maserati made good faith efforts to bring the Coupe/Spyder into compliance with the applicable requirements until such time as it became apparent that there was no practicable way to do so. No viable alternatives remain. The petitioner is unable to redesign its vehicle by the time the new advanced air bag requirements go into effect on September 1, 2006.

After review of the income statements provided by the petitioner, the agency notes that the company has faced ongoing financial difficulties, having lost over $385 million (320 million euros) over the period from 2001–2005. If the petitioner is forced to discontinue selling the current model in the U.S. market, the resulting loss of sales and revenue would cause substantial economic hardship within the meaning of the statute. However, Maserati's problems would be compounded without its requested temporary exemption, because it needs the revenue from sales of the Coupe/Spyder over the next 16 months to finance development of a fully compliant vehicle for delivery to the U.S. market in 2008. Granting the exemption will allow Maserati to earn the resources necessary to bridge the gap in terms of development of a successor vehicle for the Coupe/Spyder that meets all U.S. requirements.

While some of the information submitted by Maserati has been granted confidential treatment and is not detailed in this document, the petitioner made a comprehensive showing of its good faith efforts to comply with the requirements of S14.2 of FMVSS No. 208, and detailed engineering and financial information demonstrating that failure to obtain the exemption would cause substantial economic hardship. Specifically, the petitioner provided the following:

1. Chronological analysis of Maserati's efforts to comply, showing the relationship to the rulemaking history of the advanced air bag requirements.

2. Discussion of alternative means of compliance and reasons for rejecting these alternatives.

3. Explanations as to why components from newer, compliant vehicle lines could not be borrowed.

4. Corporate incomes statements and balance sheets for the past three years.[26]

Although Maserati did not supply OEM price-volume quotation from air bag suppliers in terms of a compliant system for the Coupe/Spyder, we nevertheless believe that such discussions took place, as the company explored the alternatives of either upgrading the existing standard air bag on the Coupe/Spyder or adapting the Quattroporte's advanced air bag system to that vehicle. Neither of these alternatives proved feasible, either developmentally or commercially.

We note that Maserati is a well-established company with a small, but not insignificant U.S. presence. We believe that the reduction of sales revenue resulting from a denial of the company's requested temporary exemption would have a negative impact not only on Maserati's financial circumstances, but it would also negatively affect U.S. employment. Specifically, reduction in sales would also affect Maserati's U.S. subsidiaries, dealers, and repair specialists, which could in turn negatively impact the availability of parts and services to existing Maserati owners. Traditionally, the agency has concluded that the public interest is served in affording continued employment to the petitioner's U.S. work force. Furthermore, as discussed in previous decisions on temporary exemption applications, the agency believes that the public interest is served by affording consumers a wider variety of motor vehicle choices.

We also note that the Coupe/Spyder features several advanced "active" safety features. These features are listed in the petitioner's application.[27] While the availability of these features is not critical to our decision, it is a factor in considering whether the exemption is in the public interest.

We believe that this exemption will have negligible impact on motor vehicle safety because of the limited number of vehicles affected (not more than 700 for the duration of the exemption), and because Maserati vehicles are not typically used for daily transportation. Their annual usage (less than 10,000 miles per year on average) is substantially lower compared to vehicles used for everyday transportation.

In addition, Maserati has voluntarily included an air bag on-off switch for passenger air bag suppression for the protection of children being transported in the right front seating position. This will enable the passenger air bag to be manually turned off when a child is present, which supports our findings that this exemption would have a negligible impact on motor vehicle safety.

Furthermore, the agency examined the FARS (1995–2004) and the National Automotive Sampling System Crashworthiness Data System (NASS CDS) (1995–2005) for information on the vehicle in question. These data indicate that over that period, there were no NASS CDS cases and one FARS case for a model year 1987 Coupe/Spyder (male driver). Thus, there were no children or small women involved in crashes of the Maserati Coupe/Spyder included in these databases.

We note that, as explained below, prospective purchasers will be notified that the vehicle is exempted from the specified advanced air bag requirements of Standard No. 208. Under § 555.9(b), a manufacturer of an exempted passenger car must affix securely to the windshield or side window of each exempted vehicle a label containing a statement that the vehicle conforms to all applicable Federal motor vehicle safety standards in effect on the date of manufacture "except for Standard Nos. [listing the standards by number and title for which an exemption has been granted] exempted pursuant to NHTSA Exemption No. _____." This label notifies prospective purchasers about the exemption and its subject. Under § 555.9(c), this information must also be included on the vehicle's certification label.

The text of § 555.9 does not expressly indicate how the required statement on the two labels should read in situations where an exemption covers part but not all of a Federal motor vehicle safety standard. In this case, we believe that a statement that the vehicle has been exempted from Standard No. 208 generally, without an indication that the exemption is limited to the specified advanced air bag provisions, could be misleading. A consumer might incorrectly believe that the vehicle has been exempted from all of Standard No. 208's requirements. Moreover, we believe that the addition of a reference to such provisions by number without an indication of its subject matter would be of little use to consumers, since they would not know the subject of those specific provisions. For these reasons, we believe the two labels should read in relevant part, "except for S15, S17, S19, S21, S23, and S25 (Advanced Air Bag Requirements) of Standard No. 208, Occupant Crash Protection, exempted pursuant to * * *." We note that the phrase "Advanced Air Bag Requirements" is an abbreviated form of the title of S14 of Standard No. 208. We believe it is reasonable to interpret § 555.9 as requiring this language.

Although our response to the supplementary comments provided by the petitioner is reflected above, we would offer the following response to the other public comments received on the Maserati petition. In terms of our response to the comment submitted by Mr. Blodgett, we note that the issues raised in that comment (*e.g.*, extension of the comment period, duration of the comment period, documentation) are identical for all five petitioners. Accordingly, please see our decision for Lamborghini (Section IV of this notice) for the agency's response to this comment submission. As noted previously, the comments of COSVAM were addressed under the discussion of *Eligibility* above.

In sum, the agency concludes that Maserati has demonstrated good faith effort to bring the Coupe/Spyder into compliance with the advanced air bag requirements of FMVSS No. 208, and has also demonstrated the requisite financial hardship. Further, we find the exemption to be in the public interest.

In consideration of the foregoing, we conclude that compliance with the advanced air bag requirements of FMVSS No. 208, *Occupant Crash Protection,* would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. We further conclude that granting of an exemption would be in the public interest and consistent with the objectives of traffic safety.

In accordance with 49 U.S.C. 30113(b)(3)(B)(i), the Maserati Coupe/Spyder is granted NHTSA Temporary Exemption No. EX 06–6, from S15, S17, S19, S21, S23, and S25 of 49 CFR 571.208. The exemption is effective from September 1, 2006 to December 31, 2007.

Issued on: August 31, 2006.

Nicole R. Nason,

Administrator.

[FR Doc. 06–7487 Filed 9–6–06; 8:45 am]

BILLING CODE 4910–59–P

[26] Because the company is wholly owned by Fiat and does not publish financial statements, Maserati did not include *pro forma* projected statements. Nevertheless, the financial statements for prior years provided by Maserati suggest that the company has a ways to go before achieving profitability on its operations. Given its cumulative losses, the company is not in a position to incur the costs of a new development program to be spread over only 700 units, thereby raising the retail price of the Coupe/Spyder significantly.

[27] *See* page 13 of Maserati's petition and page 1 of Maserati's comments.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2006–25323; Notice 2]

Saleen, Inc.; Response to Application for Temporary Exemption From Certain Provisions of Federal Motor Vehicle Safety Standard No. 208

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant in part and denial in part of application for temporary exemption from certain provisions of Federal Motor Vehicle Safety Standard No. 208, *Occupant Crash Protection.*

SUMMARY: This document grants in part and denies in part the Saleen application for an extension of a temporary exemption from the automatic restraint requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection*, and grants an additional exemption from the advanced air bag requirements of that standard, both for the Saleen S7. The basis for the request was that compliance would cause substantial economic hardship to a low-volume manufacturer that has tried in good faith to comply with the standard. The extension of the exemption from the automatic restraint requirements is effective September 1, 2006 and will remain in effect until August 31, 2007. The exemption from the advanced air bag requirements is effective September 1, 2006 and will remain in effect until August 31, 2009.

FOR FURTHER INFORMATION CONTACT: Ed Glancy or Eric Stas in the Office of Chief Counsel, NCC–112, (Phone: 202–366–2992; Fax 202–366–3820).

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 30113(b), NHTSA may grant a temporary exemption from a motor vehicle safety standard in situations where compliance would cause substantial economic hardship to a low-volume manufacturer that has tried in good faith to comply with the standard. A manufacturer is eligible to apply for an economic hardship exemption if its total motor vehicle production in its most recent year of production does not exceed 10,000, as determined by the NHTSA Administrator (49 U.S.C. 30113(d)). Saleen has manufactured less than 20 Saleen S7's a year between model years 2003 and 2005. The applicant's other line of business consists of altering vehicles. Saleen stated that it produced approximately 1500 Saleen Mustangs in model year 2005. It indicated that sales of these vehicles are expected to increase in 2006. Saleen also stated that it is adding new models such as the 2007 Ford 150-based Saleen S331. Saleen will also be considered an alterer for these new vehicles (other than the S7).

In June 2001, NHTSA granted Saleen a two-year hardship exemption from the automatic restraint requirements of FMVSS No. 208, expiring on April 16, 2003 (66 FR 33298; June 21, 2001). On January 22, 2004, we granted a renewal of the exemption for an additional three years, expiring on September 1, 2006.[1]

In September of 2005, Saleen submitted an application for further exemption from the automatic restraint requirements of FMVSS No. 208, as well as an exemption from the advanced air bag requirements of the standard. Saleen subsequently withdrew the petition, and later resubmitted the application in January of 2006. Saleen then provided supplemental information on May 11, 2006. In its petition, Saleen requested that both the further exemption for the automatic restraint requirements ("basic" air bag requirements) and the exemption for the advanced air bag requirements remain in effect for three years, *i.e.*, until September 1, 2009.

We note that, in 2000, NHTSA upgraded the requirements for air bags in passenger cars and light trucks, requiring what is commonly known as "advanced air bags."[2] The upgrade was designed to meet the goals of improving protection for occupants of all sizes, belted and unbelted, in moderate to high speed crashes, and of minimizing the risks posed by air bags to infants, children, and other occupants, especially in low speed crashes.

The advanced air bag requirements were a culmination of a comprehensive plan that the agency announced in 1996 to address the adverse effects of air bags. This plan also included an extensive consumer education program to encourage the placement of children in rear seats. The new requirements were phased in beginning with the 2004 model year.

Small volume manufacturers are not subject to the advanced air bag requirements until September 1, 2006, but their efforts to bring their respective vehicles into compliance with these requirements began several years ago. However, because the new requirements were challenging, major air bag suppliers concentrated their efforts on working with large-scale manufacturers and thus, until recently, small volume manufacturers had limited access to advanced air bag technology. Because of the nature of the requirements for protecting out-of-position occupants, "off-the-shelf" systems could not be readily adopted. Further complicating matters, because small volume manufacturers build so few vehicles, the costs of developing custom advanced air bag systems compared to potential profits discouraged some air bag suppliers from working with small volume manufacturers.

The agency has carefully tracked occupant fatalities resulting from air bag deployment. Our data indicate that the agency's efforts in the area of consumer education and manufacturers' providing de-powered air bags were successful in reducing air bag fatalities even before advanced air bag requirements were implemented.

As indicated above, Saleen requested not only an exemption from the advanced air bag requirements, but also a continued exemption from the automatic restraint requirements altogether.

On July 12, 2006, NHTSA published in the **Federal Register** (71 FR 39392) a notice of receipt of Saleen's application for temporary exemption, and invited public comments.

II. Saleen's Statement of Need and Good Faith Effort

Saleen stated that its previous exemption extension request was intended to provide sufficient time for Saleen to sell and ship the Saleen S7 vehicles to generate the necessary cash flow to support the development of an air bag system that would be compliant with the advanced air bag requirements. The applicant stated that it intended to produce and sell a total of 36 vehicles by the end of 2003, with production slowly increasing to a rate of 50 vehicles per year. Saleen projected that this sales rate would have generated approximately $12.8 million in annual gross revenue by the end of 2003, which would then increase to approximately $17.8 million in annual gross revenue with the annual production of 50 vehicles. Saleen presented its actual annual sales as 13 vehicles, 8 vehicles, and 14 vehicles, in model years 2003, 2004, and 2005, respectively.

In the January 2006 application, Saleen stated that it intended to sell a total of 25 vehicles in the United States per year, and an additional 10 vehicles in Europe. Maintaining an annual sales level of 35 vehicles, Saleen would

[1] In accordance with 49 CFR 555.8(e), Saleen's original exemption remained in effect until the publication of the 2004 grant notice because the application for renewal was filed more than 60 days prior to the expiration of the exemption.

[2] *See* 65 FR 30680; May 12, 2000.

generate a total of approximately $17.8 million. Saleen subsequently revised these projections stating that it was uncertain whether it would manufacture the Saleen S7 for international sale, as European homologation is pending.

However, Saleen stated that increased sales of its other products in conjunction with the sales of the Saleen S7 will allow it to develop an air bag system that is compliant with FMVSS No. 208 by the end of calendar year 2008 at a cost of approximately $3.8 million. Saleen stated that this timeframe does not account for any delays, and as such, it is requesting a three year exemption, expiring September 1, 2009.

Saleen noted that in its previous application it explained that Saleen's relationship with Ford Motor Company in assisting in the manufacture of the Ford GT, an exotic sports car, would allow Saleen to rely on many of the components from the Ford GT. However, Saleen stated that the Ford GT was not manufactured as complying with the advanced air bag requirements. As such, Saleen stated that it was not able to rely on the advanced air bag technology used in the Ford GT.

Since the original air bag exemption, Saleen stated that it has hired an engineering project manger responsible for air bag development, has been working with engineers at Takata, Autoliv, and Bosch in researching all of the program requirements as well as developing a test plan and component designs for development of a system compliant with the advanced air bag requirement. Saleen also stated that it is working with Kettering University in Flint Michigan for additional research and testing.

III. Saleen's Statement of Public Interest

The applicant put forth several arguments in favor of a finding that the requested exemption is consistent with the public interest. Specifically, Saleen stated that the Saleen S7 is a unique vehicle designed and produced in the United States utilizing many domestic sourced components. If an exemption were granted, Saleen stated that it would be able to maintain its current payroll of 150 full time employees and continue the purchase of domestic sourced components. Further, Saleen stated that the Saleen S7 otherwise conforms to all applicable FMVSSs.

IV. Public Comments

NHTSA received eight comments concerning Saleen's application for a temporary exemption. All were from private individuals, and all favored granting the petition.

Commenters argued that S7 is constructed to provide driver and passenger safety at levels well above those of other passenger vehicles. They cited a fully welded roll cage, aluminum honeycomb passenger compartment, and carbon fiber bodywork. They stated that the vehicle is used in racing applications. They cited the extremely small number of S7's that are produced, and that they are driven very few miles. They cited economic hardship to Saleen if the petition is denied, and stated that jobs would be lost.

V. Agency Decision

NHTSA has decided to grant Saleen's petition in part and deny it in part. In particular, we are granting Saleen a one-year extension of its existing exemption from the automatic restraint requirements of FMVSS 208, and denying its request as to the additional two years. This extension will begin on September 1, 2006 and will remain in effect through August 31, 2007. We are granting Saleen's request for a three year exemption from the standard's advanced air bag requirements. This exemption will begin September 1, 2006, and remain in effect through August 31, 2009.

In discussing this decision, we begin by noting that, in order to grant an economic hardship petition, the agency must, under 49 U.S.C. 30113(b), find both that compliance with a standard would cause substantial economic hardship and that the manufacturer has tried to comply with the standard in good faith, as well as that the exemption is in the public interest and consistent with the Safety Act.[3]

In this case, Saleen has previously received a temporary exemption from FMVSS No. 208's automatic restraint requirements (the standard's "basic" air bag requirements), as well as an extension of that temporary exemption. These previous exemptions covered the period from June 2001 through August 31, 2006.

In granting the first application in June 2001, NHTSA noted that Saleen estimated that it would take up to 20 months to fully develop an automatic restraint system. 66 FR 33298, June 21, 2001. In granting the application for extension of that exemption in January 2004, NHTSA noted that Saleen then anticipated that it would be able to begin developing advanced air bags by July 2004 and expected full compliance with the requirements of FMVSS No. 208 by September 1, 2006. 69 FR 3192, January 22, 2004.

Since this type of exemption is temporary, and given the important safety benefits provided by air bags, in evaluating Saleen's latest application we particularly considered whether a further extension would be in the public interest and consistent with the Safety Act, and whether Saleen has continued to make good faith efforts to comply with this requirement.

In considering this issue, we recognize that Saleen was only able to take limited advantage of the original exemption, granted on June 21, 2001, due to production delays. Sales did not commence until March of 2003, only a few months before the July 1, 2003 expiration date for the original exemption. We also recognize that by September 1, 2006, Saleen faced the need (absent a new temporary exemption) to meet the advanced air bag requirements.

That company indicated in its petition that it considered implementing a "basic" air bag system. However, it determined that "such a system would only provide approximately $500,000.00 in savings, with a resulting estimated development cost of $3,300,000.00." Saleen concluded that this cost was prohibitive, given that the system would be outdated as of September 1, 2006.

While we understand that Saleen prefers for economic reasons to go directly to advanced air bags, NHTSA must also consider the safety benefits provided by "basic" air bags in assessing whether a further extension of the exemption from the "basic" air bag requirements is consistent with the Safety Act and the public interest, and in whether Saleen has made good faith efforts to meet these particular requirements.

Given the facts before us, including the previous exemptions granted to Saleen, and taking account of all of the efforts Saleen has made, we have decided to grant a one year extension of Saleen's exemption from FMVSS No. 208's "basic" air bag requirements, and to deny its request as to the additional two years. We believe that extending this exemption further would not be in the public interest or consistent with the Safety Act. We believe that there is a considerable difference between providing a company such as Saleen some additional time to develop an air bag system, and granting repeated "temporary" exemptions. With the one-year extension, Saleen will have had an exemption for a full six years, and been producing vehicles under it for about four and one-half years.

[3] The Safety Act is codified as Title 49, United States Code, Chapter 301.

As to advanced air bags, and as indicated above, Saleen has hired an engineering project manager responsible for air bag development, has been working with engineers at Takata, Autoliv, and Bosch in researching all of the program requirements as well as developing a test plan and component designs for development of a system compliant with the advanced air bag requirement. Saleen is also working with Kettering University in Flint Michigan for additional research and testing.

We have concluded that Saleen has made good faith efforts to meet the advanced air bag requirements. We note that Saleen's situation in needing additional time to meet the advanced air bag requirements, which apply to low volume manufacturers beginning September 1, 2006, is not unlike that of several other low volume manufacturers.

If the petition were denied, the sale of S7 automobiles would cease immediately. In evaluating Saleen's current situation, the agency finds that to require immediate compliance with Standard No. 208 would cause the petitioner substantial economic hardship. While Saleen also alters motor vehicles, the S7 is the only model that Saleen manufactures.

Traditionally, the agency has found that the public interest is served in affording continued employment to a small volume manufacturer's work force and to those of its U.S.-sourced component suppliers. The agency has also found that the public interest is served by affording the consumers a wider variety of motor vehicles. In this instance, denial of the petition would put in jeopardy the jobs of 150 full time employees at Saleen dedicated to the design, manufacture, and certification of the S7. Denial of the petition could also affect the payrolls of U.S.-sourced component suppliers.

The vehicle in question will be manufactured in extremely limited quantities. Saleen anticipates selling no more than 25 of the vehicles per year in the United States. The current Manufacturer's Suggested Retail Price is $555,000. The vehicles are also driven on an extremely limited basis. Saleen stated that the vehicles generally do not accrue more than 2,000 miles per year. In light of these factors, the agency anticipates that the S7 vehicles will have a negligible impact on the overall safety of U.S. highways. The agency also notes that Saleen has indicated that the vehicle subject to this petition complies with all other applicable Federal motor vehicle safety standards.

We are granting Saleen a three-year exemption from the advanced air bag requirements, beginning September 1, 2006. As indicated above, we are also granting that company an extension of the exemption from the "basic" air bag requirements for the first of the three years. Saleen's ability to utilize the final two years of the exemption from the advanced air bag requirements will be dependent on whether it implements an air bag system that enables the S7 to at least meet FMVSS No. 208's "basic" air bag requirements.

Given the discussion presented above, we conclude that Saleen has made sufficient good faith efforts to comply with FMVSS No. 208 to support these exemptions for the prescribed time periods, that requiring immediate compliance would cause substantial economic hardship, and that the exemptions are in the public interest and consistent with the Safety Act. We note that while this document includes some discussion of those good faith efforts and economic hardship, NHTSA has also considered additional information submitted by Saleen which has been determined to be confidential.

We should caution that manufacturers that receive temporary exemptions should not assume that the agency will necessarily grant extensions. On this basic issue, we note that Saleen cited in its petition a particular sales rate that it needs to sustain in order to continue to fund the development of advanced air bags for implementation by September 1, 2009. See p. 2 of Saleen's petition. The petitioner should not assume that if it is unable to maintain a particular sales rate or for other reasons does not continue to fund the development of advanced air bags, that the agency will then grant an extension of the exemption for advanced air bags provided in this document.

As to the specific paragraphs of FMVSS No. 208 that will be covered by the exemptions, we note that the original exemption for Saleen cited S4.1.5.3 of 49 CFR 571.208. On review, we believe that it would be clearer to cite both S4.1.5.1(a)(1) and S4.1.5.3. The former paragraph requires passenger cars, at each front outboard seating position, to meet specified frontal crash protection requirements "by means that require no action by vehicle occupants." S4.1.5.3 then requires that passenger cars meet that requirement by means of inflatable restraint systems. Since the intent of the exemption is to exempt the S7 from automatic crash protection requirements, we believe that S4.1.5.1(a)(1) should be cited. We note that the S7 is still subject, among other things, to S4.1.5.1(a)(3), which requires it to meet specified performance requirements in a belted crash test. The relevant paragraph for the advanced air bag requirements is S14.2.

We also note that prospective purchasers will be notified that the vehicle is exempted from the air bag requirements of Standard No. 208. Under § 555.9(b), a manufacturer of an exempted passenger car must affix securely to the windshield or side window of each exempted vehicle a label containing a statement that the vehicle conforms to all applicable Federal motor vehicle safety standards in effect on the date of manufacture "except for Standards Nos. [listing the standards by number and title for which an exemption has been granted] exempted pursuant to NHTSA Exemption No. _____." This label notifies prospective purchasers about the exemption and its subject. Under § 555.9(c), this information must also be included on the vehicle's certification label.

In accordance with 49 U.S.C. 30113(b)(3)(B)(i), Saleen S7 is granted NHTSA Temporary Exemption No. EX 06–7, from S4.1.5.1(a)(1) and S4.1.5.3. This exemption is effective September 1, 2006 to August 31, 2007. Saleen S7 is granted NHTSA Temporary Exemption No. EX 06–8, from S14.2 of § 571.208. This exemption is effective September 1, 2006 to August 31, 2009.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

Issued on: August 31, 2006.

Nicole R. Nason,

Administrator.

[FR Doc. E6–14829 Filed 9–6–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA—2006–24058; Notice 1]

Pipeline Safety: Petition for Waiver; TransCanada Pipelines Limited

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice; petition for waiver.

SUMMARY: TransCanada Pipelines Limited, operator of the Portland Natural Gas Transmission System (PNGTS), requests a waiver of compliance from PHMSA regulations for selected gas transmission pipeline segments in Windham, Maine. These

regulations require pipeline operators to confirm or revise the maximum allowable operating pressure (MAOP) of a pipeline after a class location change.

DATES: Persons interested in submitting written comments on the waiver proposed in this notice must do so by October 10, 2006. Comments filed late will be considered as practicable.

ADDRESSES: You may submit written comments by mailing or delivering an original and two copies to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The dockets facility is open from 10 a.m. to 5 p.m., Monday through Friday, except on Federal holidays when the facility is closed. Alternatively, you may submit written comments to the docket electronically at the following Web address: *http://dms.dot.gov.*

All written comments should identify the docket and notice number stated in the heading of this notice. Anyone who wants confirmation of mailed comments must include a self-addressed stamped postcard. To file written comments electronically, after logging on to *http://dms.dot.gov*, click on "Comment/Submissions." You can also read comments and other material in the docket at *http://dms.dot.gov*. General information about our pipeline safety program is available at *http://phmsa.dot.gov.*

Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: James Reynolds by phone at 202–366–2786, by fax at 202–366–4566, by mail at DOT, PHMSA, 400 Seventh Street, SW., Room 2103, Washington, DC, 20590, or by e-mail at *james.reynolds@dot.gov.*

SUPPLEMENTARY INFORMATION: PNGTS requests a waiver from compliance with 49 CFR 192.611 for selected gas transmission pipeline segments in Windham, Maine. Specifically, PNGTS requests a waiver from the requirement to revise the MAOP or upgrade the pipeline segments after a class location change. If this waiver is granted, PNGTS will conduct risk control activities that include: (1) Internal pipeline inspection using geometry and magnetic flux leakage in-line inspection tools; (2) annual close interval cathodic protection surveys; (3) direct current voltage gradient (DCVG) surveys; (4) direct assessment on anomalies; (5) additional aerial patrols; and (6) installation of buried excavation warning tape over the pipeline. PNGTS asserts that these alternative risk control activities will provide an equal or higher level of safety than currently provided by the pipeline safety regulations.

Federal pipeline safety regulations at § 192.611 require a gas pipeline operator to confirm or revise the MAOP of its pipeline if the hoop stress corresponding to the established MAOP of a segment of pipeline is not commensurate with the present class location and the segment is in satisfactory physical condition.

PNGTS's waiver request involves two locations on its 24-inch pipeline in Windham, Maine. Both locations were hydrotested to 1846 pounds per square inch gauge (psig) in December of 1998:

Location 1: Consists of 785 feet of Class 1 pipe, 24-inch outside diameter, 0.343-inch wall, American Petroleum Institute (API) 5L/Grade X70 steel pipe, and 2128 feet of Class 3 pipe, 24-inch outside diameter, 0.494-inch wall, API 5L/Grade X70 steel pipe, for a total length of 2913 feet of pipe.

Location 2: Consists of 4766 feet of Class 1 pipe, 24-inch outside diameter, 0.343-inch wall, and API 5L/Grade X70 steel pipe.

With regard to location 1, PNGTS requests this waiver because the development or conversion of an active gravel pit in an industrial park will change the 785 feet of Class 1 to Class 3 pipe. With regard to location 2, PNGTS requests the waiver because the development of a residential subdivision is expected to change the entire 4766 feet of Class 1 to Class 3 pipe. Therefore, both locations will change from Class 1 to Class 3. The pipelines were constructed during 1998 and 1999 and began operating on March 10, 1999; according to PNGTS, these pipelines are in excellent condition.

PNGTS performs an annual close interval survey (CIS) on 15% to 20% of its pipeline system and in the summer of 2000, PNGTS performed a base line CIS of its entire pipeline system. This CIS revealed zero low potentials or anomalies at the requested waiver locations. PNGTS also performed a baseline high-resolution magnetic flux leakage internal inspection (smart pig) on its mainline in November of 2002. Two minor anomalies were identified during the inspection and were later excavated and investigated during the summer of 2005.

PNGTS's mainline valves (MLV) are equipped with remote controlled valve actuators. Each valve assembly contains an upstream and downstream pressure transmitter that communicates with PNGTS's supervisory control and data acquisition (SCADA) system and Gas Control Center. The primary communication method is through a satellite link with a backup modem system. If PNGTS's SCADA system detects operating pressures outside the pre-established pressure limits, the system activates an alarm which notifies the gas control operator. The gas control operator has the capability of operating the MLV remotely or isolating the pipeline completely.

PNGTS proposes to perform alternative risk control activities rather than lowering the MAOP of the system or replacing the two segments of Class 1 pipe (totaling 5551 feet). PNGTS believes that the following alternative risk control activities are consistent with pipeline safety and will maintain or exceed the margin of safety and environmental protection provided by 49 CFR § 192.611:

1. Perform a cathodic protection CIS on the requested waiver segments. The cathodic protection CIS will be performed annually and include 1000 feet upstream and downstream of the requested waiver segments.

2. Perform a DCVG survey on the requested waiver segments of the pipeline. PNGTS proposes to include an additional 1000 feet of pipeline in its survey. The additional 1000 feet of pipeline is located upstream and downstream of the requested waiver segments.

3. Perform a direct assessment on all anomalies or corrosion indications identified by the internal inspection survey or the cathodic protection CIS. The direct assessment will be performed on the requested waiver segments regardless of size or depth of anomaly indication, and include an additional 1000 feet of pipe upstream and downstream of the requested waiver segments.

4. Perform weekly aerial patrols over the entire PNGTS 24-inch mainline and 12-inch lateral pipeline. Aerial patrols will also observe pipeline surface conditions for indications of construction activity that could affect the safe operation of the pipeline. In addition, and at a minimum, PNGTS will also perform quarterly road crossing patrols and leak surveys using leak detection equipment at all road crossings located within the requested waiver segments and all corresponding

Class 3 locations over the entire length of the requested waiver segments.

5. Install buried excavation warning tape over the pipelines, and throughout the entire requested waiver segments, to further alert excavators of the existence of PNGTS's pipelines.

Finally, PNGTS believes the additional cathodic protection CIS will insure the integrity of the cathodic protection and fusion bond epoxy coating systems, thereby minimizing the risk of future corrosion and maximizing the opportunity for prompt identification of corrosion-related deficiencies.

Authority: 49 U.S.C. 60118(c) and 2015; and 49 CFR 1.53.

Issued in Washington, DC on August 30, 2006.

Jeffrey D. Wiese,

Acting Deputy Associate Administrator for Pipeline Safety.

[FR Doc. E6–14826 Filed 9–6–06; 8:45 am]

BILLING CODE 4910–60–P

Corrections

Federal Register
Vol. 71, No. 173
Thursday, September 7, 2006

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 404

[Docket No. 060824225–6225–01]

RIN 0648–AU82

Northwestern Hawaiian Islands Marine National Monument

Correction

In rule document 06–7235 beginning on page 51134 in the issue of Tuesday, August 29, 2006, make the following correction:

§ 404.4 [Corrected]

On page 51137, in the first column, in § 404.4(b)(1), in the second line, "*nwhi.notifications@commat;noaa.gov*" should read "*nwhi.notifications@noaa.gov*".

[FR Doc. C6–7235 Filed 9–6–06; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Thursday
September 7, 2006

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Income and Currency Gain or Loss With Respect to a Section 987 QBU; Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–208270–86]

RIN 1545–AM12

Income and Currency Gain or Loss With Respect to a Section 987 QBU

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking, notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that provide guidance under section 987 of the Internal Revenue Code (Code) regarding the determination of the items of income or loss of a taxpayer with respect to a section 987 qualified business unit (section 987 QBU) as well as the timing, amount, character and source of any section 987 gain or loss. It withdraws proposed regulations under section 987 that were published in the **Federal Register** on September 25, 1991 (56 FR 48457). These regulations are necessary to provide guidance under section 987. Taxpayers affected by these regulations are corporations and individuals with qualified business units subject to section 987.

DATES: Written or electronic comments must be received by December 6, 2006. Outlines of topics to be discussed at the public hearing scheduled for November 21, 2006, must be received by October 31, 2006.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–208270–86), Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be sent electronically, via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–208270–86).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Sheila Ramaswamy at (202) 622–3870; concerning submissions of comments, Kelly Banks at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by November 6, 2006.

Comments are requested specifically concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application or automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in these proposed regulations is in §§ 1.987–1(b)(1)(ii),1.987–1(b)(2)(ii), 1.987–1(c)(1)(ii), 1.987–1(f), 1.987–3(b)(1), 1.987–9, 1.987–10 and 1.987–11. Section 1.987–1(b)(1)(ii) allows a partner to make an election not to take section 987 gain or loss into account. Section 1.987–1(b)(2)(ii) allows a taxpayer to make an election to group certain QBUs with the same functional currency as a single QBU. Sections 1.987–1(c)(1)(ii) and –3(b)(1) allow a taxpayer to make an election to use a convention for exchange rates. Section 1.987–11(b) allows a taxpayer to elect to apply these regulations to taxable years beginning after the date of publication of a Treasury decision adopting this rule as a final regulation in the **Federal Register**. The preceding elections are to be made pursuant to § 1.987–1(f) by attaching a statement to the taxpayer's tax return describing the election to be made. Section 1.987–9 contains recordkeeping rules to establish a qualified business unit's income and section 987 gain or loss. This collection of information is required to establish the qualified business unit's income, gain, deduction or loss and assets and liabilities as well as exchange rates used for foreign currency translation purposes. Section 1.987–10 provides rules for transitioning to the method provided under the new proposed regulations for determining section 987 gain or loss and provides certain corresponding reporting rules. The collection of information contained in this regulation facilitates the identification of the prior method used by the taxpayer to determine section 987 gain or loss. The collections of information are mandatory. The likely respondents are taxpayers with foreign qualified business units.

Estimated total annual reporting burden: 12,000.

Estimated average annual burden hours per respondent: 12.

Estimated number of respondents: 1,000.

Estimated annual frequency of responses: annually.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books and records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

A. Overview

As part of the Tax Reform Act of 1986, Public Law 99–514, 100 Stat. 2085 (October 22, 1986), 1986–3 CB Vol.1, 1, see § 601.601(d)(2), Congress enacted comprehensive reforms to the tax treatment of foreign currency transactions by adding new subpart J. Those reforms included, among other things, the introduction of the functional currency concept, which generally distinguishes taxpayers on the basis of the primary currency in which they keep their books and records and conduct their business. Reforms also included the addition of the qualified business unit (QBU) concept, which generally provides a basis for allowing a taxpayer with a separate unit that conducts business and keeps books and records in a currency other than the functional currency of the taxpayer to account for the results of operation of the separate unit in the unit's own functional currency. Against that conceptual background, section 988 provides rules for the treatment of transactions in a currency other than the

taxpayer's functional currency. Section 986 generally provides rules for translating into U.S. dollars the earnings and profits and foreign taxes of a foreign corporation whose functional currency is not the U.S. dollar (dollar). Section 987, in turn, generally provides rules for determining and translating income and currency gain and loss with respect to operations of a branch whose functional currency is other than the functional currency of the taxpayer. As discussed below, an already complex area of law was made even more complicated when the entity classification rules under § 301.7701–1 through 301.7701–3 (the "check the box" regulations) were promulgated in 1997.

On September 25, 1991, the IRS and the Treasury Department issued proposed regulations under section 987 (the 1991 proposed regulations). See 56 FR 48457. In light of subsequent IRS experience with taxpayer claims of large non-economic currency losses under section 987, the IRS and the Treasury Department issued Notice 2000–20 (2000–1 CB 851). See § 601.601(d)(2). This notice expressed serious concern that the 1991 proposed regulations had not fully achieved the original goal of facilitating recognition of true economic foreign currency gain and loss under appropriate circumstances and requested comments on this issue and other matters.

This document withdraws the 1991 proposed regulations and provides new proposed regulations based on the "foreign exchange exposure pool" method. The IRS and the Treasury Department believe that this method more accurately reflects foreign currency gain and loss than the 1991 proposed regulations and does so in a manner consistent with statutory authority and legislative intent. These new proposed regulations are designed to prescribe more precisely foreign currency gain and loss that is economically realized, while minimizing or eliminating the realization of non-economic currency gain and loss.

The following background discussion describes section 987, its legislative history, the 1991 proposed regulations, Notice 2000–20, and the general approach that provides the basis for the foreign exchange exposure pool method.

B. The Statute

Section 987 generally provides that in the case of a taxpayer having a QBU with a functional currency other than that of the taxpayer, the taxable income of the taxpayer with respect to the QBU is determined by computing the taxable income or loss of the QBU separately and translating such income or loss at the appropriate exchange rate. Section 987 further requires the taxpayer to make "proper adjustments" (as prescribed by the Secretary) for transfers of property between QBUs having different functional currencies including treating post-1986 remittances from each such unit as made on a pro rata basis out of post-1986 accumulated earnings; treating section 987 gain or loss as ordinary income or loss; and sourcing such gain or loss by reference to the source of the income giving rise to post-1986 accumulated earnings.

C. The Legislative History

1. Prior Law

As described in the applicable legislative history,[1] section 987 was enacted against a background of, and partly in reaction to, perceived shortcomings with prevailing law. The prevailing law at that time was fairly limited. It consisted primarily of two revenue rulings that provided alternative methods for calculating branch taxable income.

Rev. Rul. 75–106 (1975–1 CB 31), see § 601.601(d)(2), provides for the use of a "net worth" method. Under this method, taxable income of a branch of a domestic corporation engaged in business in a foreign country is defined generally as the difference between the branch's opening and closing net worth as reflected on the branch's balance sheets for the taxable year. Under this method, the branch's balance sheet is translated into U.S. dollars. In general, the values of current items (such as cash or cash flows denominated in foreign currency) are translated at the year-end exchange rate, and the values of historical items (such as equipment) are translated at the exchange rate for the period in which the item was acquired or incurred. The translation of an item at the year-end rate causes changes in the item's value due to currency fluctuations to be taken into account annually, and the translation of an item at the historical rate generally precludes recognition of fluctuations in value due to changing exchange rates. In this way, the net worth method was able to identify items considered economically exposed to fluctuations in exchange rates. The total change in net worth identified by the net worth method is equal to the sum of the operating profit or loss of the branch and the exchange gain or loss on current items. However, the net worth method does not identify separate items of income and expense because it is based solely on a balance sheet comparison and does not use a profit and loss statement.

Rev. Rul. 75–107 (1975–1 CB 32), see § 601.601(d)(2), provides for the use of a "profit and loss" method. Under this method, the branch computes taxable income by translating the local currency profit and loss statement (adjusted for U.S. tax principles) into dollars. Any portion of the profit and loss remitted to the home office during the year is translated at the exchange rate on the date of the remittance, and the remainder is translated at the year-end exchange rate. No exchange gain or loss is recognized on a remittance.

The net worth method of Rev. Rul. 75–106 and the profit and loss method of Rev. Rul. 75–107 each suffered from infirmities. The net worth method resulted in the realization of foreign currency gain and loss that was not consistent with the general realization principles of the Code; it also failed to accurately characterize items of income, gain, deduction or loss of the branch. The profit and loss method, in turn, did not take into account foreign currency gain and loss inherent in the assets and liabilities on the balance sheet as part of such method. Both methods failed to account for foreign currency gain or loss in the event of a remittance.

The legislative history states that under section 987, a taxpayer with a QBU whose functional currency is other than the functional currency of the taxpayer will be required to use a profit and loss method, rather than the net worth method (as this method was understood at the time). House Report (1986–3 CB Vol. 2, 479); Senate Report (1986–3 CB Vol. 3, 470); and Conference Report (1986–3 CB Vol. 4, 675). See § 601.601(d)(2). However, this legislative history is not properly read as an explicit rejection of the net worth method in its entirety. Instead, it is more accurately viewed as a rejection of certain aspects of the law prevailing at that time. Importantly, the method provided in section 987 as enacted actually represents a blend of the separate methods, as it has aspects of both a net worth method and a profit and loss method. It also has at least one feature absent from each method—that is, section 987 includes the remittance recognition concept. Consistent with a profit and loss method, sections 987(1) and (2) generally determine the items of income or loss of a QBU based on its profit and loss statement as determined in its functional currency. Such items are then translated into the taxpayer's

[1] H. Rep. No. 99–426, 99th Cong., 1st Sess. (1985); 1986–3 CB Vol 2, 449. S. Rep. No 99–313, 99th Cong., 2d Sess. (1986); 1986–3 CB Vol. 3, 443. H.R. Conf. Rep. No. 99–841, 99th Cong., 2d Sess. (1986); 1986–3 CB Vol. 4, 659. Later citations are to the Cumulative Bulletin. See § 601.601(d)(2).

functional currency at the appropriate rate.[2] Consistent with a net worth method, section 987(3) requires that exchange gain or loss be computed with respect to certain branch assets and liabilities (as prescribed by the Secretary). Unlike either method, section 987(3)(A) provides that exchange gain or loss is recognized upon a remittance.

The blending of features of both a profit and loss method and of a net worth method in section 987 is significant. Together with more specific principles identified in the legislative history, this blending of methods informs the Congressionally stated preference for the profit and loss method. The House Report states:

> A profit and loss method can be viewed as being more consistent with the functional currency concept than a net worth method. Under a profit and loss method, the functional currency is used as the measure of income or loss, so that earnings determined for U.S. tax purposes would bear a close relation to taxable income computed by the foreign jurisdiction. In contrast, a net worth method takes unrealized exchange gains and losses into account. Further, a profit and loss method minimizes the accounting procedures that otherwise would be required to make the item-by-item translations under a net worth method. Finally, in the case of a branch, the net worth method as applied under present law fails to characterize accurately items of income or loss that are subject to special U.S. tax rules. For example, although there are limitations on the deductibility of long-term capital losses, such a loss incurred by a branch would be given tax effect because it would be reflected as an adjustment to the balance sheet.

House Report at 469.

The House and Senate reports are generally uniform in describing Congressional intent with regard to the computations required under section 987 as illustrated by the Senate Report.

> Under the bill, a taxpayer with a branch whose functional currency is a currency other than the U.S. dollar will be required to use the profit and loss method to compute branch income. Thus, the net worth method will no longer be an acceptable method of computing income or loss of a foreign branch for tax purposes, and only realized exchange gains and losses on branch capital will be reflected in taxable income.
>
> For each taxable year, the taxpayer will compute income or loss separately for each qualified business unit in the business unit's functional currency, converting this amount to U.S. dollars using the weighted average exchange rate for the taxable period over which the income or loss accrued. This amount will be included in income without reduction for remittances from the branch during the year. The committee anticipates that regulations will provide rules that will limit the deduction of branch losses to the taxpayer's dollar basis in the branch (that is, the original dollar investment plus subsequent capital contributions and unremitted earnings).
>
> A taxpayer will recognize exchange gain or loss on remittances (without regard to whether or when the remittances are converted to dollars), to the extent the value of the currency at the time of the remittance differs from the value when earned. Remittances of foreign branch earnings (and interbranch transfers involving branches with different functional currencies) after 1986 will be treated as paid pro rata out of post-1986 accumulated earnings of the branch. The committee anticipates that, for purposes of calculating exchange gain or loss on remittances, the value of the currency will be determined by translating the currency at the rate in effect on the date of remittance. Exchange gains and losses on such remittances will be deemed to be ordinary and domestic source.

Senate Report (1986–3 CB Vol. 3, 470). Importantly, the Conference Report modifies the House and Senate reports by stating that a remittance by a QBU "will trigger exchange gain or loss inherent in accumulated earnings or branch capital." Conference Report, 1986–3 CB Vol. 4, 675.

From section 987 and the foregoing legislative history, several principles emerge:

1. A branch profit and loss computation is required in order to properly characterize items of branch income or loss, which is taken into account in the year earned.
2. Exchange gain or loss is recognized upon a remittance, in an amount prescribed by the Secretary.
3. Both branch earnings and branch capital can give rise to exchange gain or loss under section 987.
4. Regulations under section 987 should seek to minimize complexity regarding item-by-item translations.
5. The currency gain or loss taken into account under section 987 is only the economic gain or loss "inherent in" the assets and liabilities of a QBU.

2. Relationship Between Section 986(c) and 987

Comments to the IRS and the Treasury Department have suggested that the computation under section 987 of exchange gain or loss for a branch is intended to operate in the same manner as the computation under section 986(c) of certain exchange gain or loss of a foreign corporation. In general, section 986(c) provides for the recognition of exchange gain or loss only with respect to distributions of previously taxed earnings and profits (as described in section 959 or 1293(c)). The Conference Report includes the following general statement about the translation rules:

> The same translation rule applies to the earnings and profits of a foreign corporation and the income or loss of a branch or other QBU. An entity that uses a nonfunctional currency to measure the results of operation is required to use a profit and loss method to translate income or loss into functional currency. * * * These translation rules apply without regard to the form of enterprise through which the taxpayer conducts business (e.g., sole proprietorship, partnership, or corporation) as long as such form of enterprise rises to the level of a QBU.

Conference Report, 1986–3 CB Vol. 4, 670. See § 601.601(d)(2). The suggestion in comments is to apply this general principle such that section 987 would require the recognition of exchange gain or loss only with respect to branch earnings and not with respect to contributed capital.

Despite the broad statements of principle quoted above, Congress . provided more specific guidance regarding the treatment of branches in this regard. The Conference Report states that a remittance by a QBU "will trigger exchange gain or loss inherent in accumulated earnings or branch capital." Conference Report, 1986–3 CB Vol. 4, 675. See § 601.601(d)(2). Similarly, despite the stated requirement that QBUs must use a notional profit and loss method to determine branch taxable income, the specific method actually provided in section 987 and described in the legislative history represents a blend of a net worth method and a profit and loss method. Accordingly, the IRS and the Treasury Department believe that the more specific statements made by Congress regarding the treatment of branch exchange gain or loss reflect an intention that the methodologies of section 986(c) and section 987 not be identical.

D. The 1991 Proposed Regulations

The 1991 proposed regulations provide generally that the net income of a QBU having a functional currency different than the taxpayer is determined annually. Such determination is based on the profit and loss appearing on the QBU's books and records, adjusted to conform to U.S. tax principles, and translated into the functional currency of the taxpayer using the weighted average exchange rate for the taxable year. The 1991 proposed regulations also provide for the recognition of exchange gain or loss upon a remittance from the QBU's equity pool. In general, the equity pool consists of the undistributed capital and earnings of the QBU, determined in the QBU's functional currency. The 1991 proposed regulations also provide for a basis pool, which consists of the basis

[2] Section 989(b)(4) provides that, "except as provided in regulations," the appropriate exchange rate is the average exchange rate for the taxable year of the QBU.

of the capital and earnings in the equity pool, expressed in the functional currency of the taxpayer. The portion of the basis pool, expressed in the functional currency of the taxpayer, that is attributable to a remittance is generally determined according to the following formula:

$$\frac{\text{Amount remitted in the QBU's functional currency}}{\text{Equity pool in the QBU's functional currency reduced by prior remittances}} \times \text{Basis pool in the taxpayer's functional currency reduced by prior remittances}$$

Section 987 gain or loss is the difference between the value of the remittance from the QBU translated into the taxpayer's functional currency at the spot rate on the date the remittance is made, less the basis associated with the remittance as determined above. One important consequence of the equity pool paradigm is that all branch equity gives rise to exchange gain or loss, regardless of whether or not that equity is held in a form that actually exposes the QBU's owner to currency fluctuations (compare assets such as cash or indebtedness to assets such as equipment).

Under the 1991 proposed regulations, a taxpayer must determine the source and character of section 987 gain or loss for all purposes of the Code, including sections 904(d), 907, and 954, by using the same method the taxpayer uses to allocate and apportion its interest expense under section 861, with certain modifications.

E. Concerns Regarding the 1991 Proposed Regulations; Notice 2000–20

Effective January 1, 1997, the IRS and the Treasury Department issued the check the box regulations implementing new elective entity-classification rules. These regulations made it possible for certain entities with a single owner to be treated for federal income tax purposes as an entity disregarded as separate from its owner (a disregarded entity or DE). As a result, businesses that had previously operated through subsidiaries could operate through structures treated for tax purposes as branches. The effect of the check the box regulations was a dramatic increase in the number of branches resulting from DE elections that are subject to section 987. This increase has greatly exacerbated the already existing problems of the 1991 proposed regulations, especially the ability of taxpayers to trigger non-economic losses (and the corresponding trap for the unwary taxpayer with non-economic gains).

As indicated above, the equity pool paradigm in the 1991 proposed regulations imputes currency gain or loss to all equity of a QBU whether or not the assets of the QBU are economically exposed to changes in the value of the functional currency of the QBU. The IRS has faced many cases in which taxpayers have claimed substantial non-economic exchange losses largely on the basis of the 1991 proposed regulations. An example may be instructive. Assume that a domestic corporation (US Corp) with the dollar as its functional currency forms a foreign corporation in Country X and then elects under the check the box regulations to treat that corporation as a DE. The DE conducts mineral extraction and owns all the necessary equipment. The equipment owned by the DE was contributed by US Corp. The DE has no employees and contracts with a subsidiary of US Corp for the employees needed in the business of extraction. US Corp, as the entity's sole owner, claims that the DE is a QBU for purposes of section 987. The DE has minimal financial assets and conducts no activities other than mineral extraction. US Corp claims that the DE's functional currency is Country X currency. A decline in the value of Country X currency relative to the dollar does not produce any economic loss for US Corp because the assets of the DE are not financial assets subject to currency fluctuation. Nevertheless, US Corp claims under the 1991 proposed regulations that the equity of the DE, which consists almost exclusively of equipment, gives rise to a substantial non-economic exchange loss and that terminating the DE (for example, by another check the box election) triggers recognition of such loss. Taxpayers have claimed similar results under other fact patterns. The IRS and the Treasury Department have serious concerns about these types of transactions.

Although the foregoing example concerns the claiming of non-economic losses, the equity pool approach in the 1991 proposed regulations can also give rise to non-economic gains. Recently, the value of the US dollar has declined against many foreign currencies. It is likely that under these circumstances, taxpayers subject to section 987 may have large non-economic gains built into the equity pool. The IRS and the Treasury Department believe that Congress did not intend for section 987 to generate non-economic foreign currency gains or losses.

In light of the entity-classification rules and the potential for the equity pool paradigm to generate non-economic currency gains and losses, the IRS and the Treasury Department issued Notice 2000–20, 2000–1 CB 851. See § 601.601(d)(2). Among other things, the notice indicated that the IRS and the Treasury Department were concerned that the proposed regulations may not have achieved their original goal of recognizing economic exchange gains and losses under appropriate circumstances. The notice requested comments on this and other issues.

Several comments were received in response to the notice and raised a number of important points. Two of those comments suggested replacing the equity pool paradigm in the 1991 proposed regulations with a paradigm that recognizes exchange gain or loss only on the earnings of a QBU and not its capital. As described above, the IRS and the Treasury Department believe that such an approach is inconsistent with Congressional intent as expressed in the legislative history to section 987. An earnings-only approach also would fail to address the core problem of distinguishing between items that economically give rise to exchange gain and loss and those that do not. Additionally, an earnings-only approach would produce different results for QBUs with the same net assets, depending upon whether the net assets were funded with capital or earnings. Finally, an earnings-only approach fails to take into account any foreign currency exposure on capital and so could disadvantage banks and other financial institutions, much of whose QBUs' capital may be subject to such exposure.

F. The Foreign Exchange Exposure Pool Method

The IRS and the Treasury Department believe that Congress did not intend

section 987 to permit the largely uninhibited recognition of non-economic exchange gain or loss. The 1991 proposed regulations, together with the check the box regulations, have combined to permit taxpayers to trigger non-economic losses with relative ease. Accordingly, the 1991 proposed regulations are withdrawn and are replaced with new proposed regulations that adopt the "foreign exchange exposure pool method." In general, the foreign exchange exposure pool method provides that the income of a QBU that is subject to section 987 ("section 987 QBU") is determined by reference to the items of income, gain, deduction and loss booked to the QBU in its functional currency, adjusted to reflect US tax principles. With certain exceptions, items of income, gain, deduction and loss of a section 987 QBU are translated into the functional currency of the QBU's owner at the average exchange rate for the year. However, the basis of historic assets and deductions for depreciation, depletion, and amortization of such assets are translated at the historic exchange rate. Translating these items at the historic exchange rate differs from the approach taken in the 1991 proposed regulations, which instead uses the average exchange rate. Although using the average exchange rate for translating such items might be simpler than using the historic exchange rate, it leads to the generation of non-economic foreign currency gains or losses described in this preamble.

The foreign exchange exposure pool method uses a balance sheet approach to determine exchange gain or loss, which is then recognized upon a remittance. Use of a balance sheet approach allows taxpayers and the IRS to distinguish between those items whose value fluctuates with respect to changes in the functional currency of the owner and those which do not. Under this method, exchange gain or loss with respect to "marked items" is identified annually but is pooled and deferred until a remittance is made. The IRS and the Treasury Department believe that section 988(c) identifies the items that should be treated as giving rise to exchange gain or loss for purposes of section 987. Accordingly, a marked item is generally defined as an asset or liability that would generate section 988 gain or loss if such asset or liability were held or entered into directly by the owner of the section 987 QBU.

When a section 987 QBU makes a remittance, a portion of the pooled and deferred exchange gain or loss is recognized. In general, the amount taken into account is an amount equal to the product of the owner's portion of the section 987 QBU's net unrecognized exchange gain or loss, multiplied by the owner's remittance proportion. The owner's remittance proportion generally is equal to the quotient of the amount of the remittance, divided by the aggregate basis of the section 987 QBU's gross assets (as reflected on its year-end balance sheet), without reduction for the remittance.

The source and character of exchange gain or loss recognized under section 987 for all purposes of the Code, including sections 904(d), 907 and 954, is determined by reference to the source and character of the income derived from the section 987 QBU's assets.

The IRS and the Treasury Department believe that the foreign exchange exposure pool method is consistent with section 987 and legislative intent for several reasons. First, the foreign exchange exposure pool method uses a profit and loss statement to determine the items of income, gain, deduction and loss of a section 987 QBU in its functional currency. This allows proper characterization of items of income, gain, deduction and loss. Second, exchange gain or loss must be taken into account only with respect to items of branch capital and earnings whose value fluctuates with changes in exchange rates by reference to the owner's functional currency. This comports both with Congressional intent that taxpayers recognize exchange gain or loss (but only economic exchange gain or loss) inherent in branch capital and branch earnings and with authority granted under section 987(3) to identify appropriate translation rates. Third, exchange gain or loss is recognized under section 987 only upon a remittance. Finally, the foreign exchange exposure pool method is an appropriate interpretation of the "blended" approach of section 987—that is, it incorporates certain aspects of the profit and loss method and the net worth method.

Explanation of Provisions

A. Section 1.987 1 Scope, Definitions and Special Rules

1. Scope in General

The proposed regulations provide rules for determining the section 987 taxable income or loss of a taxpayer with respect to a section 987 QBU as well as the timing, amount, character, and source of section 987 gain or loss recognized with respect to such QBU. The proposed regulations do not apply to banks, insurance companies, and similar financial entities (including, solely for this purpose, leasing companies, finance coordination centers, regulated investment companies, and real estate investment trusts). The IRS and the Treasury Department plan to apply the foreign exchange exposure pool method adopted in the proposed regulations to such entities in subsequent guidance but believe it is appropriate to request comments regarding how the rules of the proposed regulations need to be precisely tailored to address issues unique to financial entities. Financial entities are urged to make necessary comments to help tailor the planned extension of the foreign exchange exposure pool method to such entities.

Specifically, in the context of banks, the IRS and the Treasury Department request comments on whether special rules are needed for the global dealing of currencies and securities. Comments are also requested on the relationship of sections 987 and 988 for banks. Finally, comments are requested on whether the use of exchange rate conventions is appropriate for banks and finance entities and, if so, how such conventions should be determined. In the context of insurance companies, the IRS and the Treasury Department request comments on the proper treatment of insurance reserves, surplus, and investment assets held by the separate trades or business of an insurance company. In particular, comments are requested on the proper treatment of stock held in separate accounts of a section 987 QBU of a life insurance company and the related insurance reserves established for those separate accounts. In the context of leasing companies, comments are requested regarding the treatment of stock in other leasing companies recorded on the books and records of a section 987 QBU and how the rules of sections 986 and 987 can be reconciled if stock is treated as a "marked asset" in this setting. Until regulations are issued applying the foreign exchange exposure pool method to financial entities, such entities must comply with section 987 under a reasonable method, consistently applied. For this purpose, reasonable methods include using the method described in the 1991 proposed regulations and a method that imputes section 987 gain or loss to earnings but not capital.

The proposed regulations also do not apply to trusts, estates and S corporations. The IRS and the Treasury Department plan to apply the foreign exchange exposure pool method adopted in the proposed regulations to such entities but believe it is appropriate to request comments

regarding how the rules of the proposed regulations should be applied to such entities. The IRS and the Treasury Department request comments regarding whether principles similar to those applied to partnerships should apply to these entities.

2. Taxpayers Subject to Section 987 and Related Definitions

The IRS and the Treasury Department believe that section 987 should only apply where an individual or corporation (whether foreign or domestic) has activities that constitute a trade or business under § 1.989(a)–1(c) and the trade or business has a functional currency different from the individual or corporation. In such cases, the individual or corporation will be subject to the rules of the proposed regulations if the individual or corporation is the owner of a section 987 QBU. A section 987 QBU is defined in § 1.987–1(b)(2) as an eligible QBU that has a functional currency different from its owner.

An eligible QBU is defined in § 1.987–1(b)(3) of the proposed regulations. Generally, an eligible QBU is an activity of an individual, corporation, partnership or DE that is a trade or business as defined in § 1.989(a)–1(c); maintains separate books and records as defined in § 1.989(a)–1(d) and assets and liabilities used in conducting such activities are reflected on such books and records; and the activities are not subject to the dollar approximate separate transaction (DASTM) rules of § 1.985–3. A corporation is not an eligible QBU. An individual is not a QBU under § 1.989(a)–1(b)(2)(i) and therefore cannot be an eligible QBU. In addition, and as discussed in this preamble, neither a partnership nor a DE is an eligible QBU.

In the case of ownership other than through a partnership (that is, direct ownership), the individual or corporation is treated as the owner of an eligible QBU if the individual or corporation is the tax owner of the assets and liabilities of the eligible QBU. For purposes of determining direct ownership, an individual or corporation will be treated as a direct owner of the assets and liabilities of an eligible QBU if it owns a DE that holds an eligible QBU. In such case, because the DE is not recognized as a separate entity, it cannot be a QBU under section 989 and, therefore, is not treated as an eligible QBU under the proposed regulations. However, the activities of the DE, which are treated for purposes of the Code as carried on directly by its owner, can qualify as an eligible QBU of the DE's owner.

With respect to partnerships, the IRS and the Treasury Department recognize that issues often arise as to whether the international tax provisions of the Code operate on an aggregate or an entity basis. The legislative history of subchapter K of chapter 1 of the Code provides that, for purposes of interpreting Code provisions outside of that subchapter, a partnership may be treated as either an entity separate from its partners or an aggregate of its partners, depending on which characterization is more appropriate to carry out the purpose of the particular section under consideration. H.R. Conf. Rep. No. 2543, 83rd Cong. 2d. Sess. 59 (1954).

In the case of section 987, the calculations under the foreign exchange exposure pool method would differ dramatically based on whether an aggregate or an entity approach is adopted. For example, if the foreign exchange exposure pool method is applied at the entity level, the partnership will make the method's calculations by reference to the partnership's functional currency. Under this approach, any foreign currency gain or loss will be an item of the partnership and will be allocated among the partners in accordance with the partnership agreement, to the extent such allocation is consistent with the provisions of subchapter K. If, in the alternative, the foreign exchange exposure pool method is applied under an aggregate approach, each partner will make its own foreign exchange exposure pool calculations by reference to the partner's functional currency and such amounts will not be subject to separate allocation under subchapter K.

The IRS and the Treasury Department believe that, on balance, an aggregate approach is more appropriate for section 987 purposes. Applying the foreign exchange exposure pool method directly at the partner level will more appropriately preserve the correct amounts of exchange gain or loss. In addition, such approach will measure the foreign currency exposure by reference to the functional currencies of the persons who generally bear the economic risk from such exposure. As a result, the proposed regulations provide that for purposes of applying the foreign exchange exposure pool method each individual or corporation that is a partner in a partnership will be considered to own indirectly an eligible QBU consisting of a portion of the assets and liabilities of the partnership allocated to it under § 1.987–7. If such eligible QBU has a different functional currency from the partner and therefore is a section 987 QBU, the foreign exchange exposure pool method is applied with respect to those assets and liabilities. In addition, the proposed regulations provide rules for converting the items of section 987 taxable income or loss of a section 987 QBU into the functional currency of the partner (when necessary), and rules coordinating this aggregate approach with other provisions of subchapter K.

Section 1.987–1(b)(2)(ii) allows an owner to elect to treat certain section 987 QBUs with the same functional currency as a single section 987 QBU. The purpose of this rule is to simplify section 987 calculations by reducing the number of interbranch transactions that would be considered as "transfers" of assets and liabilities. This election applies only to certain section 987 QBUs of the owner. The IRS and the Treasury Department request comments regarding whether such election should be available to treat section 987 QBUs of owners that are members of a consolidated group as a single section 987 QBU and how this should be technically effectuated.

Section 1.987–1(b)(5) provides that the term "owner" for section 987 purposes does not include an eligible QBU or section 987 QBU of an owner. Under this rule, a tiered ownership structure of eligible QBUs and/or section 987 QBUs will not be respected as distinct tiers of QBUs for purposes of section 987. Rather, tiers of eligible and/or section 987 QBUs will be treated as a "flat" structure, with each QBU in the tier considered as owned directly by the ultimate non-QBU owner. For example, if a domestic corporation is the holder of the interests in a section 987 DE (section 987 DE1) and that DE owns the interests in another section 987 DE (section 987 DE2) for purposes other than U.S. tax law, the structure will not be treated as a tier of QBUs for purposes of section 987. Rather, the domestic corporation will be considered the direct holder of the interests in the section 987 branches of section 987 DE1 and DE2. This flat structure, which is consistent with the general approach taken in the proposed dual consolidated loss regulations (70 FR 29868–29907), is expected to be easier to administer for both taxpayers and the IRS and to provide more appropriate results under the section 987 rules.

3. De Minimis Rule for Certain Indirectly Owned Section 987 QBUs

The IRS and the Treasury Department recognize that it may be administratively burdensome for taxpayers to apply certain aspects of the proposed regulations to section 987 QBUs indirectly owned through

relatively small interests in partnerships. As a result, the proposed regulations provide a *de minimis* election for certain indirectly owned section 987 QBUs. Under this rule, an individual or corporation that owns a section 987 QBU indirectly through a partnership may elect not to take into account the section 987 gain or loss of such section 987 QBU, provided such individual or corporation owns, directly or indirectly, less than five percent of the section 987 partnership. Constructive ownership rules apply for purposes of determining whether the less than five percent ownership threshold is satisfied.

This *de minimis* exception only applies to recognition of section 987 gain or loss with respect to a section 987 QBU. Thus, owners of section 987 QBUs that qualify under the *de minimis* exception must comply with all other aspects of the proposed regulations, including the requirement to take into account the section 987 taxable income or loss with respect to such section 987 QBUs.

An individual or corporation that qualifies for the election (that is, because they owned less than five percent of a section 987 partnership) subsequently may fail to qualify as a result of an increase in their interest in a section 987 partnership. In such a case, taxpayers must begin taking into account the section 987 gain or loss with respect to section 987 QBUs owned through such partnerships. Similarly, taxpayers that were required to take into account section 987 gain or loss with respect to an indirectly owned section 987 QBU may reduce their ownership such that they become eligible for the *de minimis* exception and, as a result, may elect to no longer take into account section 987 gain or loss. The IRS and the Treasury Department recognize that transition issues will arise when interests in section 987 partnerships change such that individuals or corporations no longer qualify (or are able to qualify) for the *de minimis* exception. The IRS and the Treasury Department are considering such transition rules and request comments as to their application.

4. Exchange Rates

Section 1.987–1(c)(1)(i) defines the spot rate as the rate determined under the principles of § 1.988–1(d)(1), (2) and (4) on the relevant day. Section 1.987–1(c)(1)(ii) allows taxpayers to elect to use spot rate conventions that reasonably approximate the spot rate on a particular day. It is anticipated that taxpayers will be able to conform the spot rate convention for section 987 to the spot rate conventions used under FAS 52 for financial accounting purposes. This is intended to simplify the calculations required under section 987.

In a similar attempt to simplify calculations, § 1.987–1(c)(2) defines the yearly average exchange rate as an average exchange rate for the taxable year computed under any reasonable method that is consistently applied.

Finally, § 1.987–1(c)(3) defines the historic exchange rate by reference to the spot rate on the day that assets are transferred to (or acquired by) the section 987 QBU, or on the day that liabilities are assumed (or entered into) by the section 987 QBU. The reference to the spot rate as defined in § 1.987–1(c)(1)(i) and (ii) allows taxpayers to elect to use spot rate conventions for these purposes.

5. Definitions of a Section 987 Marked Item and a Section 987 Historic Item

The definitions of a section 987 marked item and a section 987 historic item are central to the foreign exchange exposure pool method. When taken into account in the context of the calculation of net unrecognized section 987 gain or loss under § 1.987–4, the definitions distinguish those items that generate section 987 gain or loss from those that do not. The IRS and the Treasury Department believe that section 988 identifies those items properly treated as giving rise to exchange gain or loss for purposes of section 987. Thus, a marked item as defined in § 1.987–1(d) is an asset or liability reflected on the books and records of the section 987 QBU that both (1) Would generate section 988 gain or loss if held or entered into directly by the owner of the section 987 QBU and (2) is not a section 988 transaction to the section 987 QBU. It is important to exclude section 988 transactions of a section 987 QBU because section 988 already requires the section 987 QBU to recognize gain or loss from such transactions. Thus, treating such transactions as marked items for purposes of section 987 would result in double counting. Marked items give rise to exchange gain or loss under section 987. Historic items, which are defined in § 1.987–1(e) as items other than marked items, do not give rise to exchange gain or loss under section 987.

6. Elections Under Section 987

Section 1.987–1(f) provides rules for making elections under section 987. In general, the elections made under section 987 must be made by the owner of the section 987 QBU. The elections must be made with respect to a section 987 QBU for the first taxable year in which the election is relevant, and must be made by attaching a statement to a timely filed tax return for such taxable year. Elections under section 987 are treated as methods of accounting and are governed by the general rules regarding changes in methods of accounting.

The IRS and the Treasury Department believe that a reasonable cause standard should be applied to determine whether taxpayers that fail to make a timely election are eligible for an extension of time to file elections pursuant to § 1.987–1(f) of the proposed regulations. As a result, extensions of time under §§ 301.9100–1 through 301.9100–3 will not be granted for filings under the proposed regulations. See § 301.9100–1(d).

Under the reasonable cause standard, if an owner that is permitted to file an election under the proposed regulations fails to make such a filing in a timely manner, the owner is considered to have satisfied the timeliness requirement with respect to such filing if it demonstrates, to the satisfaction of the Area Director, Field Examination, Small Business/Self Employed or the Director, Field Operations, Large and Mid-Size Business (Director) having jurisdiction of the taxpayer's return for the taxable year, that such failure was due to reasonable cause and not willful neglect. Once the owner becomes aware of the failure, the owner must demonstrate reasonable cause and must satisfy the filing requirement by attaching the election to an amended tax return (that amends the tax return to which the election should have been attached). A written statement must be included that explains the reasons for the failure to comply.

In determining whether the taxpayer has reasonable cause, the Director shall consider whether the taxpayer acted reasonably and in good faith. Whether the taxpayer acted reasonably and in good faith will be determined after considering all the facts and circumstances. The Director shall notify the person in writing within 120 days of the filing if it is determined that the failure to comply was not due to reasonable cause or if additional time will be needed to make such determination. If the Director fails to notify the owner within 120 days of the filing, the owner shall be considered to have demonstrated to the Director that such failure was due to reasonable cause and not willful neglect.

The proposed regulations provide that elections under section 987 cannot be revoked without the consent of the Commissioner. In addition, the proposed regulations provide that the

Commissioner will consider allowing revocation of such an election if the taxpayer demonstrates significantly changed circumstances, or other circumstances that demonstrate a substantial non-tax business reason for such revocation. Finally, the IRS and the Treasury Department are considering an exception to the general revocation rule where a section 987 QBU is acquired in certain transactions that do not result in the termination of such QBU. Comments are requested as to whether such an exception is warranted and, if so, the appropriate scope of such an exception.

B. Section 1.987–2 Attribution of Items to an Eligible QBU; the Definition of a Transfer, and Related Rules

1. Attribution of Items to an Eligible QBU

i. Overview

A section 987 QBU is not itself a taxpayer and does not have its own taxable income. Items of income, gain, deduction and loss must nonetheless be attributed to such section 987 QBU for purposes of determining the owner's taxable income. The items of income, gain, deduction and loss attributed to a section 987 QBU are generally determined in the functional currency of the section 987 QBU and then translated into the functional currency of the owner. The aggregate translated amount is the section 987 taxable income or loss of the section 987 QBU. Thus, attribution rules are necessary to determine which items of income, gain, deduction and loss are attributed to the section 987 QBU.

Under section 987(3), assets and liabilities must be attributed to a section 987 QBU in order to determine the amount of section 987 gain or loss of such QBU. In some cases, a section 987 QBU of a taxpayer will not be held through an entity separate from the taxpayer that can legally own assets and incur liabilities. In addition, not all the assets and liabilities of an entity that is separate from the taxpayer may be attributable to a section 987 QBU for purposes of section 987. Moreover, assets and liabilities may constitute a section 987 QBU of a taxpayer even when such assets and liabilities are owned or incurred by separate legal entities. As a result, assets and liabilities of the taxpayer (or of entities owned by the taxpayer that are not themselves taxpayers) must be attributed to the section 987 QBU.

Neither section 987 nor the underlying legislative history provides explicit rules for attributing a taxpayer's items of income, gain, deduction, or loss to a section 987 QBU to determine the QBU's section 987 taxable income or loss. Similarly, no explicit rules are provided in the statute or legislative history for attributing a taxpayer's assets or liabilities to a section 987 QBU to determine the section 987 gain or loss of such QBU.

Other provisions of the Code provide various methods for attributing or allocating a taxpayer's assets and liabilities, or items of income, gain, deduction and loss (items) for particular purposes. These provisions provide complex rules for making such determinations and, in many cases, require a detailed analysis of various factors and relationships involving income, assets, and activities of the taxpayer. For example, section 864(c) and the regulations thereunder provide rules for determining the income, gain, deduction, or loss of a nonresident alien individual or foreign corporation which are treated as effectively connected with the conduct of a trade or business within the United States. Other examples are §§ 1.882–5, 1.861–8 and 1.861–9T through 1.861–13T. These regulations provide rules for the allocation and apportionment of expenses, losses, and other deductions of a taxpayer. Finally, section 884(c)(2) and § 1.884–1(d) and (e) provide rules for determining U.S. assets and U.S. liabilities of a foreign corporation for purposes of the branch profits tax. As discussed below, the IRS and the Treasury Department do not believe these complex methodologies are appropriate for purposes of section 987.

ii. Books and Records Method—General Rule

The IRS and the Treasury Department believe that items should be attributed to an eligible QBU (and, if all or a portion of such eligible QBU has a different functional currency than its owner, to a section 987 QBU of such owner) to the extent they are reflected on the books and records of the eligible QBU (books and records method). The IRS and the Treasury Department believe that using a books and records method for attributing items under section 987 is consistent with other provisions of the Code involving foreign currency transactions. For example, it is consistent with the requirement under section 989(a) that a QBU maintain books and records separate from the taxpayer. It is also consistent with the requirement under section 985(b)(1) that, in order to have a functional currency other than the dollar, a QBU must keep its books and records in such currency. Moreover, the IRS and the Treasury Department believe the books and records method is administrable for both taxpayers and the Commissioner. This is the case because the books and records method should be consistent with the taxpayer's accounting treatment of the items and, unlike the methods discussed above, it does not require a complex and factually intensive analysis of the circumstances and activities of the eligible QBU.

For the reasons described above, the proposed regulations adopt a books and records method for allocating items to an eligible QBU. The proposed regulations provide that, subject to certain exceptions, items are attributable to an eligible QBU to the extent they are reflected on the separate set of books and records of such eligible QBU, as defined in § 1.989(a)–1(d). The proposed regulations make clear that these rules apply solely for purposes of section 987. Thus, for example, the attribution rules contained in the proposed regulations do not apply for purposes of allocating and apportioning interest expense under section 864(e).

iii. Exception for Non-Portfolio Stock, Interests in Partnerships and Certain Acquisition Indebtedness

As discussed above, the IRS and the Treasury Department believe that the assets and liabilities reflected on the books and records of an eligible QBU are a reasonable approximation of the assets and liabilities that are used in the trade or business of the eligible QBU and, therefore, should be taken into account for purposes of section 987. However, the IRS and the Treasury Department believe that certain assets and liabilities should not be attributed to an eligible QBU, even if such assets and liabilities are reflected on the books and records of such QBU. The IRS and the Treasury Department believe that non-portfolio stock and interests in partnerships (and liabilities to acquire such assets), even if reflected on the books and records of the eligible QBU, should not be attributed to such QBU for purposes of section 987. This is consistent with the principle stated above that a section 987 QBU cannot be an owner of another section 987 QBU. Excluding non-portfolio stock is also consistent with the principle that non-portfolio stock cannot be used in, or held for the use in, the conduct of a trade or business in the United States. See § 1.864–4(c)(2)(iii).

As a result, the proposed regulations provide that stock of a corporation (whether domestic or foreign) and an interest in a partnership (whether domestic or foreign) are not considered to be on the books and records of an eligible QBU. The proposed regulations

provide an exception, however, for portfolio stock where the owner of the eligible QBU owns (directly or constructively) less than ten percent of the total voting power or value of the stock of such corporation. The proposed regulations also provide that indebtedness incurred to acquire stock or a partnership interest that is not treated as being reflected on the books and records of an eligible QBU should similarly be excluded from the books and records. Finally, the proposed regulations provide that items of income, gain, deduction and loss arising from ownership of stock, a partnership interest, or related acquisition indebtedness that is excluded from the general books and records rule, shall similarly not be treated as being on the books and records of the eligible QBU.

iv. Coordination With Source Rules Under Section 988

Section 988(a)(3) provides that the source of gain or loss recognized under section 988(a)(1) is determined by reference to the residence of the taxpayer or the QBU of the taxpayer on whose books the asset, liability, or item of income or expense is properly reflected. Section 1.988–4(b)(2) provides that, in general, the determination of whether an asset, liability, or item of income or expense is properly reflected on the books of a QBU is a question of fact. The regulations under section 988 further provide that such items are presumed not to be properly reflected on the books and records for this purpose if inconsistent booking practices are employed with respect to the same or similar items. Finally, the regulations provide that if such items are not properly reflected on the books of the QBU, the Commissioner may allocate the item between or among the taxpayer and its QBUs to properly reflect the source (or realization) of exchange gain or loss.

The IRS and the Treasury Department believe that rules for determining whether items are properly reflected on the books of a QBU for purposes of sourcing section 988 gain or loss should be consistent with the rules for attributing items to an eligible QBU under section 987. As a result, the proposed regulations modify the sourcing rules in the section 988 regulations to provide that the principles of § 1.987–2(b) apply in determining whether an asset, liability, or item of income or expense is properly reflected on the books of a QBU.

2. Certain Assets and Liabilities of Partnerships and DEs Not Attributable to an Eligible QBU

Section 988 applies to certain transactions described in section 988(c) if the transaction is denominated (or determined by reference to) a currency that is not the functional currency of the taxpayer or QBU of the taxpayer. Thus, in order to determine if a transaction is subject to section 988, it must be determined whether a transaction is attributable to the taxpayer or a QBU of the taxpayer.

Under the current section 989 regulations, a partnership is a QBU even if it does not have activities that constitute a trade or business (''*per se* QBU''). As a result, a partnership may have a functional currency different than its partners and section 988 is applied at the partnership level with respect to section 988 transactions properly attributable to the partnership. These regulations propose to amend section 989 to provide that a partnership is no longer a per se QBU of its partners, but instead the activities of such partnership may be treated as a QBU.

As discussed above, the IRS and the Treasury Department will generally apply either an entity or an aggregate approach with respect to partnerships depending on which approach more appropriately carries out the purpose of the particular Code section under consideration. Following the amendments made by the proposed regulations, and because only certain activities of a partnership (and not the partnership itself) can qualify as a section 987 QBU, the IRS and the Treasury Department believe that it is appropriate, in cases where an asset or liability of a partnership is not reflected on the books and records of an eligible QBU of the partnership, to determine whether section 988 applies by reference to the functional currencies of the partners. The IRS and the Treasury Department believe that this rule will have limited application and will apply, for example, where the only activity of a partnership is the incurrence of a liability used to acquire stock that is held by the partnership. The proposed regulations provide examples illustrating the application of this rule.

As discussed above, the proposed regulations provide that a DE itself is not an eligible QBU and, instead, certain activities of the DE will be treated as an eligible QBU of the owner to the extent a separate set of books and records with respect to such activities are maintained. Thus, an issue similar to that discussed above with respect to partnerships will arise where the DE is the local law owner of certain assets or the local law obligor on certain liabilities, which are not reflected on the books and records of an eligible QBU held by the DE. The proposed regulations provide that the determination of whether section 988 (rather than section 987) applies with respect to transactions involving assets and liabilities of a DE that are not attributable to an eligible QBU is determined by reference to the functional currency of the owner of such DE.

3. Definition of a Transfer

i. Overview

Section 987(3) provides, in part, that taxable income of a taxpayer shall be determined by making proper adjustments (as prescribed by the Secretary) for transfers of property between qualified business units of the taxpayer having different functional currencies. Similarly, the legislative history to section 987 refers to contributions to, and remittances from, QBUs. See, H.R. Conf. Rep. No. 841, 99th Cong. 2d. Sess. II 673–76 (1986). However, neither the statute nor the legislative history defines the terms ''transfer,'' ''contribution,'' or ''remittance.''

As noted above, section 987 QBUs can be divisions of an owner that have no legal distinction separate from their owner. Section 987 QBUs can also be owned indirectly through partnerships, where they have legal distinction separate from their owners. Moreover, as a result of the entity classification regulations, a section 987 QBU held through a DE can have legal distinction separate from its owner, even though the section 987 QBU is treated as a division of the owner for federal income tax purposes. As a result, assets and liabilities can be transferred between an owner and a section 987 QBU in a manner that has legal significance (that is, a distribution from a section 987 partnership), or in a manner that has no legal significance because the transfers are simply between divisions of the same legal entity (that is, a transfer involving divisions of a taxpayer that is reflected through accounting entries).

ii. Disregarded Transactions

The definition of a transfer under the proposed regulations includes transactions that are regarded for both legal and tax purposes, and transactions that are regarded for legal purposes, but disregarded as transactions for tax purposes (''disregarded transactions''). For this purpose, the term disregarded transaction is treated as including the

recording of an asset or liability on one set of books and records, if the recording is the result of such asset or liability being removed from another set of books and records of the same person or entity (including a DE or partnership).

The proposed regulations provide that an asset or liability is treated as transferred to or from a section 987 QBU if, as a result of a disregarded transaction, such asset or liability is reflected, or is not reflected, respectively, on the books and records of the section 987 QBU. For example, if an owner of a section 987 DE loans cash to the section 987 QBU held by the section 987 DE, the loan is disregarded for Federal income tax purposes. However, as a result of such disregarded transaction, the loaned cash is reflected on the books and records of the section 987 QBU and, therefore, is treated as transferred to such section 987 QBU.

iii. Certain Contributions to, and Distributions From, Partnerships

The proposed regulations also provide that transfers to and from section 987 QBUs include certain contributions of assets to, or distributions of assets from, a section 987 partnership. For example, an asset contributed by a partner to a section 987 partnership is treated as transferred to an indirectly owned section 987 QBU of the partner if the asset is reflected on the section 987 QBU's books and records following such contribution. The proposed regulations provide similar rules for assumptions of liabilities between a section 987 partnership and its partners.

iv. Certain Acquisitions and Dispositions of Interests in DEs and Partnerships

The proposed regulations also provide that transfers to or from a section 987 QBU may occur as a result of certain acquisitions (including by contribution) and dispositions of interests in DEs and partnerships. For example, if a partner in a section 987 partnership sells a portion of its interest in such partnership, the sale results in a transfer from the partner's indirectly owned section 987 QBU to the extent assets and liabilities are not reflected on the books and records of such QBU as a result of such sale.

v. Change in Form of Ownership

The owner of a section 987 QBU can change its form of ownership in all or a portion of such section 987 QBU. Such changes in form of ownership often occur in a manner that does not affect the operation of the eligible QBU (or its status as an eligible QBU), but rather only changes the owner's interest in its section 987 QBU. For example, a direct owner of a section 987 QBU that is owned through a section 987 DE can change to being an indirect owner of all or a portion of such section 987 QBU, if the interests in the section 987 DE are transferred to a partnership.

Changes in form of ownership of a section 987 QBU can occur through actual or deemed transactions involving the section 987 QBU itself, or actual or deemed transactions involving interests in a section 987 DE or section 987 partnership that owns such QBU. For example, certain conversions of DEs to partnerships, or partnerships to DEs, result in deemed transactions pursuant to Rev. Ruls. 99–5, 1999–1 CB 434, and 99–6, 1999–1 CB 432. See § 601.601(d)(2). Deemed transactions with respect to partnerships also occur pursuant to section 708(b) and the regulations thereunder.

The IRS and the Treasury Department believe that changes in form of ownership should result in a transfer only to the extent such change affects the assets and liabilities attributable to the section 987 QBU of the owner. As a result, the proposed regulations provide that a mere change in form of ownership of a section 987 QBU does not result in a transfer to or from the section 987 QBU. Instead, the proposed regulations provide that the determination of whether a transfer has occurred in such cases should be made under the general transfer rules, discussed above. Moreover, the proposed regulations clarify that deemed transactions (for example, pursuant to Rev. Ruls. 99–5 and 99–6) shall not be taken into account for purposes of determining whether there is a transfer.

vi. General Tax Law Principles

The proposed regulations clarify that general tax law principles, including the circular cash flow, step-transaction, and substance-over-form doctrines apply for purposes of determining whether there is a transfer of an asset or liability to or from a QBU. For example, if a shareholder of a corporation that directly owns a section 987 QBU transfers property to the corporation and the property is recorded on the books and records of the corporation's section 987 QBU, the shareholder is first treated as transferring the property to the corporation, and then the corporation is treated as transferring the property to the section 987 QBU in a disregarded transaction.

4. Adjustments to Items Reflected on the Books and Records

As noted above, a section 987 QBU of a taxpayer may not be an entity separate from the taxpayer that can legally own assets and incur liabilities. As a result, recording (or failing to record) an asset or liability on the books and records may, other than for purposes of section 987, have little significance for tax or legal purposes. In addition, transfers between section 987 QBUs of the same owner that are divisions of the same legal entity may have no legal significance and are accomplished only through journal entries on the books and records of such section 987 QBUs. As a result, the IRS and the Treasury Department are concerned that, in certain circumstances, transfers to or from a section 987 QBU may be structured solely to achieve advantages under section 987, especially given that such transfers may have little or no significance from a legal or business perspective.

In Notice 2000–20, the IRS and the Treasury Department expressed similar concerns in connection with taxpayers taking positions that certain contributions and distributions triggered foreign currency losses prematurely with respect to transactions that were undertaken for tax purposes, but lacked meaningful non-tax economic consequences. The notice provided that the IRS and the Treasury Department believe that circular cash flows and similar transactions lacking economic substance will not result in recognition of foreign currency losses under general tax principles because such transactions are not properly treated as transfers or remittances under section 987.

The IRS and the Treasury Department continue to be concerned about transactions that are undertaken for tax purposes and lack meaningful non-tax economic consequences. As a result, the proposed regulations provide the Commissioner the ability to allocate assets and liabilities, and items of income, gain, deduction and loss, where a principal purpose of recording (or failing to record) an item on the books and records of an eligible QBU (including an eligible QBU owned indirectly through a partnership) is the avoidance of U.S. tax under section 987. The proposed regulations also provide various factors that indicate whether recording (or failing to record) an item on books and records has as a principal purpose the avoidance of U.S. tax under section 987. For example, factors indicating that such tax avoidance was not a principal purpose of recording (or not recording) an item include doing so

for a substantial and bona fide business purpose, or in a manner that is consistent with the economics of the underlying transaction.

5. Translation of Items Transferred to a Section 987 QBU

The proposed regulations provide translation rules for the transfer of assets and liabilities to a section 987 QBU. Under the proposed regulations, if an asset or a liability is transferred to a section 987 QBU, such items are translated into the QBU's functional currency at the spot rate on the day of transfer. No translation is required for assets or liabilities denominated in the functional currency of the section 987 QBU.

The proposed regulations provide special rules for items transferred to a section 987 QBU where such items are denominated in (or determined by reference to) the owner's functional currency. Such items are not translated and instead are carried on the balance sheet in the owner's functional currency since no foreign currency exposure with respect to the owner is created by such items.

6. Interaction With Other Foreign Currency Provisions

The IRS and the Treasury Department are considering whether the attribution and transfer rules provided under the proposed regulations should apply with respect to other foreign currency provisions in the Code. For example, the IRS and the Treasury Department are considering whether the attribution rules under the proposed regulations should apply to determine the functional currency of a QBU under section 985. As a result, comments are requested on the interaction of these rules with other foreign currency provisions.

C. Section 1.987–3 Determination of the Items of Aection 987 Taxable Income or Loss of an Owner of a Section 987 QBU

In general, the term "section 987 taxable income" refers to the items of income, gain, deduction or loss attributed to the section 987 QBU under § 1.987–2(b), translated into the functional currency of the owner. The allocation of expenses such as interest under other provisions are not taken into account for this purpose. Section 987 taxable income is calculated by determining each item of income, gain, deduction or loss in the section 987 QBU's functional currency under § 1.987–3(a), and then translating those items into the owner's functional currency using the exchange rates provided in § 1.987–3(b). Items of income, gain, deduction or loss of a section 987 QBU that are denominated in (or determined by reference to) the functional currency of the owner are not translated and are not treated as section 988 transactions to the section 987 QBU. Transactions denominated in (or determined by reference to) a currency that is neither the functional currency of the owner nor of the section 987 QBU are subject to the generally applicable rules under section 988 determined with respect to the functional currency of the section 987 QBU.

When basis recovery is required with respect to an historic asset, either in computing gain or loss on the sale or exchange of such asset, or in determining cost recovery deductions (such as depreciation or depletion), the proposed regulations require the use of the historical exchange rate associated with the particular asset. Thus, for example, where a section 987 QBU sells an historic asset, the amount realized will be translated into the owner's functional currency using the yearly average exchange rate (or, if properly elected, the spot rate), but the adjusted basis will be translated using the historic exchange rate associated with that asset. The use of different exchange rates for amount realized and adjusted basis is designed to more closely reflect the economic gain or loss to the owner of the section 987 QBU than the 1991 proposed regulations. The same is true for depreciation or other cost recovery deductions that are claimed with respect to historic assets of a section 987 QBU.

Special translation rules are provided with respect to the disposition of marked assets (other than functional currency cash of the section 987 QBU). Generally, the amount realized and basis are translated at the same exchange rates. The purpose of these special rules is to assure that foreign currency gain or loss (as opposed to gain or loss not related to movements in exchange rates) is reflected through the balance sheet calculations of § 1.987–4 and not through the profit and loss calculations of § 1.987–3. Cash is not included in these special rules because the disposition of cash cannot generate profit or loss to the section 987 QBU for purposes of § 1.987–3.

D. Section 1.987–4 Determination of Net Unrecognized Section 987 Gain or Loss of a Section 987 QBU

Section 1.987–4 provides the mechanics for determining "net unrecognized section 987 gain or loss" and, when combined with § 1.987–5, form the mathematical core of the foreign exchange exposure pool method. In summary, § 1.987–4 uses a balance sheet to distinguish the items of a section 987 QBU that give rise to section 987 gain or loss (section 987 marked items) from those that do not (section 987 historic items). This approach avoids the distortions caused by the 1991 proposed regulations that impute section 987 gain or loss to all assets of a section 987 QBU, even those assets the value of which does not fluctuate with currency movements. Generally, annual comparison of the change in the value of section 987 marked items on the opening and closing balance sheets due to changes in exchange rates gives rise to unrecognized section 987 gain or loss. This unrecognized section 987 gain or loss is aggregated with similar amounts determined for prior years (to the extent not previously taken into account) and is taken into account by the owner under the rules of § 1.987–5 upon a remittance by the section 987 QBU.

Under § 1.987–4(a) and (b), net unrecognized section 987 gain or loss is computed annually and is equal to the sum of the "unrecognized section 987 gain or loss for the current taxable year" and the "net accumulated unrecognized section 987 gain or loss for all prior taxable years." A section 987 QBU's net accumulated unrecognized section 987 gain or loss for all prior taxable years is the aggregate of the unrecognized section 987 gain or loss determined under § 1.987–4(d) for all prior taxable years (to which these regulations apply) reduced by the amounts taken into account under § 1.987–5 upon a remittance for all such taxable years. For section 987 QBUs in existence prior to the effective date of these regulations, a section 987 QBU's net accumulated unrecognized section 987 gain or loss includes amounts taken into account under the transition rules of § 1.987–10.

Unrecognized section 987 gain or loss is determined under a seven step calculation. Under the first step in § 1.987–4(d)(1), the "owner functional currency net value" of the section 987 QBU is determined under § 1.987–1(e) at the close of the taxable year in the functional currency of the owner. This is a balance sheet calculation under which the basis (or amount, in the case of a liability) of each section 987 marked item is translated into the owner's functional currency at the spot rate on the last day of the taxable year. Section 987 historic items are translated into the owner's functional currency at the historic exchange rate and, therefore, do not give rise to exchange gain or loss. The amount of liabilities determined in the owner's functional currency is subtracted from the value of the assets

determined in the owner's functional currency to result in the owner functional currency net value of the section 987 QBU at the close of the taxable year. The owner functional currency net value of the section 987 QBU at the close of the preceding taxable year is subtracted from the owner functional currency net value of the section 987 QBU at the close of the current taxable year to yield the change in owner functional currency net value of the section 987 QBU for the taxable year expressed in the owner's functional currency.

Generally, three components are reflected in the change in owner functional currency net value of the section 987 QBU for a taxable year. First, taxable income or loss of the section 987 QBU will result in increases or decreases in net assets, and will therefore affect net value. Second, transfers of assets or liabilities to or from the section 987 QBU will affect net value. Finally, any remaining change in net value (as measured in the owner's functional currency) results from changes in the value of the section 987 QBU's marked assets and liabilities. In order to isolate the change in value due to foreign currency movements with respect to section 987 marked assets and liabilities, the other changes must be reversed out. That is the function of steps 2 through 7 of § 1.987–4(d).

The unrecognized section 987 gain or loss when aggregated with similar amounts for prior years (that were not previously taken into account) yields a pool of "net unrecognized section 987 gain or loss" all or part of which is to be triggered upon a remittance or termination.

E. Section 1.987–5 Recognition of Section 987 Gain or Loss

Section 1.987–5 of the proposed regulations provides the method for determining the amount of section 987 gain or loss a taxpayer must recognize in a taxable year. Generally, the amount of section 987 gain or loss recognized in a taxable year equals the net unrecognized section 987 gain or loss of the section 987 QBU determined under § 1.987–4 on the last day of such taxable year, multiplied by the owner's remittance proportion. The pool of net unrecognized section 987 gain or loss includes both unrecognized section 987 gain or loss on marked items for the current year and unrecognized section 987 gain or loss on marked items for prior years (that has not yet been taken into account). A portion of the § 1.987–4 pool of unrecognized section 987 gain or loss is triggered by a net transfer or "remittance" to the owner by a section 987 QBU during the owner's taxable year. Generally, the owner's remittance proportion is equal to the quotient of the amount of the remittance divided by the aggregate adjusted basis of the section 987 QBU's gross assets (as reflected on its year end balance sheet), without reduction for the remittance.

The 1991 proposed regulations define a remittance as the amount of any transfer from a QBU branch to the extent the amount of transfers during the year does not exceed the year end balance of the equity pool. Transfers are limited in the 1991 proposed regulations by a daily netting rule that takes into account only the amount of property distributed from the QBU branch that exceeds the amount of property transferred by the taxpayer to the QBU branch in a single day. The IRS and the Treasury Department believe that the daily netting rule of the 1991 proposed regulations is not easily administered and causes distortions in the amount of a remittance. For example, taxpayers have taken the position that a remittance followed a short time later by an equal contribution to a QBU branch can trigger recognition of section 987 gain or loss even though there has been no economic change in position of the QBU branch. The IRS and the Treasury Department believe this approach is inappropriate and provides incentives for circular cash flows used to manipulate amounts of remittances. This daily netting rule is eliminated in the proposed regulations to reduce administrative burdens on both the IRS and taxpayers, and to eliminate both taxpayer favorable and taxpayer unfavorable distortions that it can create.

Section 1.987–5(c) of the proposed regulations defines a remittance as the excess of total transfers from the section 987 QBU to the owner determined in the owner's functional currency on an annual basis over total transfers from the owner to the section 987 QBU determined on an annual basis. Solely for purposes of determining the amount of a remittance under § 1.987–5(c), the amount of liabilities transferred from the owner to the section 987 QBU is treated as a transfer of assets from the section 987 QBU to the owner. Similarly, the amount of liabilities transferred from the section 987 QBU to the owner is treated as a transfer of assets from the owner to the section 987 QBU. The IRS and the Treasury Department recognize that section 987 QBUs actively engaged in business may have a significant number of transactions that are treated as transfers to and from the owner pursuant to § 1.987–2(c). It is anticipated that the annual netting rule will help to reduce complexity and administrative burden for taxpayers and the IRS by treating the net amount of transfers as a single annual remittance. For purposes of determining the annual remittance, only assets and liabilities considered transferred pursuant to § 1.987–2(c) will be taken into account.

The remittance is divided by the total adjusted basis of section 987 gross assets, expressed in the functional currency of the owner, reflected on the section 987 QBU balance sheet pursuant to § 1.987–2 (increased by the amount of the remittance) to determine the remittance proportion. The IRS and the Treasury Department considered a number of different measures for determining the amount of section 987 gain or loss triggered upon a remittance. The adjusted basis of gross section 987 QBU assets was selected as the measure because it avoids administrative concerns raised by alternative methods and limits the potential volatility associated with the recognition of section 987 gain or loss. In particular, the adjusted basis of gross section 987 QBU assets measure avoids the significant administrative burdens associated with a section 987 QBU accumulated earnings approach that would require taxpayers to maintain post-1986 accumulated earnings pools for each section 987 QBU. The IRS and the Treasury Department also considered the use of net section 987 QBU assets as a potential measure. Although the net section 987 QBU assets measure does not raise the same administrative burdens as an earnings based approach, the IRS and the Treasury Department were concerned about the volatility of recognizing section 987 gain or loss using a net asset measure. For example, if a section 987 QBU's gross assets are equal to its liabilities, section 987 gain or loss would be deferred. On the other hand, a small amount of income could increase section 987 QBU net assets slightly above zero and all accumulated section 987 gains or losses could be triggered with a very small remittance. The IRS and the Treasury Department believe that gross assets is a reasonable proxy for post-1986 accumulated earnings in this context, can be administered relatively easily, and will reduce the volatility and potential for distortion described in this preamble.

F. Section 1.987–6 Character and Source

Section 987(3)(B) requires that a taxpayer make proper adjustments (as prescribed by the Secretary) for certain transfers of property between QBUs of

the taxpayer, including treating section 987 gain or loss as ordinary income or loss and sourcing such gain or loss by reference to the source of income giving rise to post-1986 accumulated earnings. Section 987 is silent on the method of characterizing section 987 gain or loss for purposes of the Code. Nevertheless, the IRS and the Treasury Department believe that it is necessary to characterize section 987 gain or loss for the proper operation of certain other sections of the Code. For example, the character of section 987 gain must be determined for purposes of determining whether all or a portion of such gain qualifies as subpart F income under section 954. This characterization is necessary to prevent section 987 from being used as a vehicle to avoid the rules of section 954(c)(1)(D) with respect to certain section 988 transactions. In addition, section 987 gain or loss must be characterized for purposes of determining the foreign tax credit limitation under section 904(d). As a result, and pursuant to sections 987(3) and 989(c)(5), the proposed regulations characterize section 987 gain or loss for all purposes of the Code, including for purposes of sections 904(d), 907 and 954.

In accordance with section 987(3)(B), § 1.987–6(a) provides that section 987 gain or loss is ordinary income or loss. Moreover, the IRS and the Treasury Department believe that rules governing the source and character of section 987 gain or loss for other Code sections should be consistent. The IRS and the Treasury Department are concerned, however, that sourcing and characterizing section 987 gain or loss by reference to post-1986 accumulated earnings would give rise to substantial complexity by requiring taxpayers to track the earnings of section 987 QBUs in section 904(d) categories over prolonged periods. The compliance burden would be considerable for taxpayers with large numbers of section 987 QBUs. Accordingly, the IRS and the Treasury Department believe that it is appropriate to use the average tax book value of assets in the year of remittance as determined under § 1.861–9T(g) as a proxy for post-1986 accumulated earnings in the context of section 987.[3] In the context of section 987, use of a single year's assets should generally reflect the activities of a section 987 QBU that give rise to a section 987 QBU's accumulated earnings and will significantly minimize complexity. The tax book value method set forth in § 1.861–9T(g) as applied to section 987 QBUs has been amended to provide greater consistency with the proposed regulations. The modified gross income method described in § 1.861–9T(j) cannot be used to characterize section 987 gain or loss as the IRS and the Treasury Department believe that gross income earned in a single year is not a sufficient proxy for accumulated earnings.

The IRS and the Treasury Department recognize that the characterization rule contained in the proposed regulations applies to provisions other than the international tax rules. In addition, the IRS and the Treasury Department recognize that special considerations may arise in connection with applying this characterization rule to various domestic provisions. For example, special considerations may arise when characterizing section 987 gain or loss for rules that apply to regulated investment companies (RICs) and real estate investment trusts (REITs). The IRS and the Treasury Department are studying the application of the characterization rules to these other provisions and request comments. As a result, the proposed regulations reserve on the method for characterizing and sourcing section 987 gain or loss for purposes of RICs and REITs.

G. Section 1.987–7 Partnership Rules

1. Scope

Section 1.987–7 provides rules for determining a partner's share of the assets and liabilities of an eligible QBU held indirectly through a section 987 partnership. It also provides rules coordinating the application of section 987 with subchapter K of chapter 1 of the Code.

2. Allocation of Assets and Liabilities

In order to apply the foreign exchange exposure pool method at the partner level, as discussed above, each partner must determine its share of the assets and liabilities of an eligible QBU and, to the extent applicable, a section 987 QBU owned indirectly through the section 987 partnership. Section 1.987–7 provides a general rule that requires the allocation of the assets and liabilities of the partnership's eligible QBUs to the partners in a manner that is consistent with the manner in which the partners have agreed to share the economic benefits and burdens corresponding to such assets and liabilities, taking into account the rules and principles of sections 701 through 761 and the regulations thereunder, including section 704(b) and § 1.701–2.

The IRS and the Treasury Department believe that this general rule is appropriate because it will allocate the assets and liabilities consistent with the partners' economic arrangement. The IRS and the Treasury Department recognize that any rule which attempted to allocate the assets and liabilities without regard to such economic arrangement would have the effect of distorting each partner's section 987 gain or loss attributable to its section 987 QBU and, as a result, would be inappropriate. Moreover, the IRS and the Treasury Department are concerned that taxpayers could attempt to inappropriately shift a partner's share of the underlying assets and liabilities of a section 987 QBU owned indirectly through a section 987 partnership to distort the partner's section 987 gain or loss. As a result, the Commissioner may review such allocations to ensure that they are consistent with the economic arrangement of the partners and the principles of subchapter K of Chapter 1 of the Code and the applicable regulations, including section 704(b) and § 1.701–2.

Moreover, the IRS and the Treasury Department are considering whether it would be appropriate, when these regulations are finalized, to provide a safe harbor. Under such a safe harbor, the assets and liabilities of an eligible QBU would be deemed to be allocated in a manner which appropriately reflects each partner's share of the economic benefits and burdens if certain conditions are satisfied. For example, the safe harbor could provide that the assets and liabilities are deemed to be allocated in a manner consistent with each partner's share of the underlying economic benefits and burdens provided the assets, to the extent of a partner's share of partnership capital, are allocated in accordance with such capital and any excess assets (assets in excess of partnership capital) are allocated consistent with the manner in which the partners have agreed to share the economic burden of the liabilities incurred to acquire such assets. The IRS and the Treasury Department request comments as to whether a safe harbor should be included and, if so, what form such safe harbor should take.

3. Coordination with subchapter K

A partner must take into account its share of the items of income, gain, deduction, or loss of its section 987 QBU owned indirectly through a partnership and, under § 1.987–3, must convert such items into its functional

[3] Notably, because section 987 gain or loss may be derived from assets acquired with earnings and capital of a section 987 QBU (or from liabilities entered into by the QBU), using post-1986 accumulated earnings to characterize exchange gain or loss under section 987 may not reflect all items giving rise to such gain or loss.

currency. In addition, a partner must take into account any section 987 gain or loss of the section 987 QBU determined in the partner's functional currency. In both situations, the partner's adjusted basis in its partnership interest must be adjusted in order to avoid the duplication of income or loss attributable to the section 987 QBU. Section 1.987–7 provides a rule regarding the appropriate adjustments which must be made to the partner's adjusted basis in the section 987 partnership to ensure that no such duplication occurs.

A partner is also required under section 752 to adjust its basis in its interest in the section 987 partnership to take into account liabilities of the section 987 partnership. As a result, the proposed regulations provide rules for determining the appropriate adjustments to such basis required under section 752 in the case of an increase or a decrease in such partner's share of the liabilities of the partnership reflected on the books and records of a section 987 QBU. In addition, the proposed regulations provide rules for determining the amount of such liability, as determined in the partner's functional currency, which must be taken into account on the sale or exchange of a partnership interest under section 752(d).

The proposed regulations also clarify, consistent with section 985(a), that a partner's adjusted basis in its partnership interest is determined in the functional currency of the partner. Moreover, the proposed regulations provide that the fluctuations between the partner's functional currency and the functional currency of the section 987 QBU do not affect such partner's adjusted basis in its partnership interest. Instead, such fluctuations are taken into account under the foreign exchange exposure pool method of § 1.987–4.

4. Comments

The proposed regulations do not address the adjustments which would occur under section 752 when there is an assumption by a partnership of a partner's liability that is denominated in a functional currency different from the partner and which, as a result, is subject to section 988 in the hands of the partner. In such cases, the partner will be deemed to receive a distribution of money, under section 752(b), regardless of whether, following the assumption, the liability is reflected on the books and records of the partnership's qualified business unit. In such cases, it is unclear whether the amount of the distribution should be determined by reference to the spot rate (on the date of assumption) or the historic exchange rate (on the date the liability was originally incurred by the partner). In addition, this issue raises concerns as to how section 988 would operate upon such assumption. The IRS and Treasury Department request comments on this issue and whether provisions should be included in section 988 to better coordinate the operation of section 987 and section 988 in this context. In addition, comments are requested on whether provisions should be included in section 988 in order to coordinate the aggregate approach, adopted in these proposed regulations, with respect to certain assets and liabilities that are not reflected on an eligible QBU of the partnership.

In addition to the issues specifically addressed in the proposed regulations, the IRS and the Treasury Department request comments on additional provisions which should be included to coordinate the provisions of section 987 with subchapter K of chapter 1 of the Code. Specifically, comments are requested as to how capital accounts maintained under section 704 should be adjusted to take into account section 987 gain or loss. In addition, comments are requested as to whether section 987 loss should be subject to the limitation provided under section 704(d) and, if so, how such limitation might be applied. Finally, comments are requested as to any other provisions of subchapter K of chapter 1 of the Code on which guidance should be provided.

H. Section 1.987–8 Termination of a Section 987 QBU

1. General termination rules

The proposed regulations set forth circumstances in which a section 987 QBU will terminate. For purposes of § 1.987–5, a termination of a section 987 QBU is treated as a remittance of all the gross assets of the section 987 QBU to its owner. The termination rules recognize that an owner carries on a trade or business through its section 987 QBU and when the owner stops conducting that trade or business through its section 987 QBU, any section 987 gain or loss should be recognized in full. Thus, a termination generally occurs when: (1) The activities of the section 987 QBU cease; (2) substantially all of the assets (as defined in section 368(a)(1)(C)) of the section 987 QBU are transferred to its owner; or (3) the owner of the section 987 QBU ceases to exist.

In addition, a termination occurs when a foreign corporation that is a controlled foreign corporation (CFC) that is the owner of a section 987 QBU ceases to be a CFC because at that point any section 987 gain or loss cannot be subpart F income and may be deferred indefinitely.

2. Exceptions for Certain Section 381 Transactions

Section 987 gain or loss generally arises during the period that an owner has a section 987 QBU. The section 987 gain or loss is analogous in some respects to a tax attribute under section 381. As a result, the proposed regulations provide that a termination does not generally occur when other tax attributes under section 381 are carried over in a liquidation under section 332 or an asset reorganization under section 368(a). However, inbound and outbound liquidations and reorganizations terminate a section 987 QBU because these transactions materially change the circumstances in which section 987 gain or loss is taken into account.

3. Treatment of Inbound Liquidations and Inbound Asset Reorganizations

Although the proposed regulations treat inbound liquidations under section 332 and inbound asset reorganizations under section 368(a) as terminations, the IRS and the Treasury Department are considering whether such treatment is appropriate in all cases.

The IRS and the Treasury Department believe that the better view, taking into account various policies, is to support the treatment of inbound transactions as terminations. For example, such treatment may prevent the importation of a tax attribute that was generated offshore. Concerns over such attribute importation are similar to those that were addressed in § 1.367(b)–3(e) and (f) and section 362(e). In addition, treating inbound asset transactions as terminations is consistent with the results that would obtain if the foreign currency gain or loss attributable to the QBU were taken into account under section 988, rather than section 987.

The IRS and the Treasury Department acknowledge, however, that other policies may support the position that such inbound transactions should not be terminations. One of the reasons the proposed regulations treat certain section 381 transactions as terminations is because amounts taken into account under section 987 (that is, section 987 taxable income or loss, and section 987 gain or loss) generally become subject to a lesser degree of U.S. taxation after the section 381 transaction than was the case before the transaction (that is, when the section 987 QBU goes from being owned by a domestic corporation to being owned by a foreign corporation). This is not the case in

certain inbound transactions because amounts taken into account under section 987 are generally subject to a greater degree of U.S. taxation after the inbound transaction (when the section 987 QBU is owned by a domestic corporation) than was the case before the transaction (when the section 987 QBU was owned by a foreign corporation).

The IRS and the Treasury Department request comments on whether it is appropriate to treat these inbound asset transactions as terminations. Such comments should take into account the policy concerns discussed in this preamble.

4. Section 351 Exchanges and Transactions Within a Consolidated Group

The proposed regulations provide that a termination occurs when the owner of a section 987 QBU transfers the QBU to another corporation in exchange for stock in a transaction qualifying under section 351. The termination occurs because the owner no longer has a section 987 QBU.

The IRS and the Treasury Department are studying ways to apply the intercompany transaction rules of § 1.1502–13 to section 987 transactions within a consolidated group. For example, the IRS and the Treasury Department are considering whether transfers qualifying under section 351 which would trigger a remittance or termination under the proposed regulations should qualify for deferral under § 1.1502–13. The IRS and the Treasury Department request comments on the interplay between § 1.1502–13 and the proposed regulations and the timing of the inclusion of the deferred section 987 gain or loss.

I. Section 1.987–9 Recordkeeping Rules

Given the detailed nature of the calculations required under these regulations, § 1.987–9 articulates the records that taxpayers must keep. A taxpayer must keep such records as are sufficient to establish the section 987 QBU's section 987 taxable income or loss, its section 987 gain or loss, and the transition method used for section 987 QBUs under § 1.987–10. Section 1.987–9(b) lists supplemental records that must be maintained.

J. Section 1.987–10 Transition Rules

The transition rules of § 1.987–10 apply to a taxpayer that is the owner of a section 987 QBU on the transition date. Such a taxpayer must transition to the foreign exchange exposure pool method of these regulations whether or not such taxpayer made determinations required under section 987 in prior years. A taxpayer that failed to make required determinations under section 987 in prior years or that used an unreasonable method in prior years can only use the fresh start transition method of § 1.987–10(c)(4) as described in this preamble. Generally, use of the 1991 proposed section 987 regulations method (see, Examples 1 and 3 of § 1.987–10(d)) or an "earnings only" section 987 method (see, Example 2 of § 1.987–10(d)) will be considered a reasonable method for purposes of § 1.987–10. However, for example, the recognition of section 987 gain or loss with respect to stock under any method, where the gain or loss does not reflect economic gain or loss derived from the movements in exchange rates, will be carefully scrutinized by the IRS and may be considered unreasonable based on the facts and circumstances of the particular case.

The transition date is the first day of the first taxable year to which these section 987 regulations apply.

Comments are requested on the application of these transition rules to partnerships which were, under the current proposed regulations, treated as qualified business units for purposes of section 987. Comments are also requested on the treatment of qualified business units of such partnerships.

Generally, § 1.987–10(c) allows a taxpayer to transition to the foreign exchange exposure pool method set forth in these regulations under one of two methods (the "deferral transition method" or the "fresh start transition method"). Under the conformity rules of § 1.987–10(c)(2), this election must be applied with respect to all members that file a consolidated return with the taxpayer and any controlled foreign corporation as defined in section 957 in which the taxpayer owns more than 50 percent of the voting power or stock (as determined in section 957(a)). This conformity rule is necessary to prevent taxpayers and certain related entities from taking inconsistent positions with respect to qualified business units which have unrecognized section 987 gains and losses. The IRS and the Treasury Department request comments on concerns that may arise by the inclusion of certain controlled foreign corporations in the conformity rule.

Under the deferral transition method of § 1.987–10(c)(3), section 987 gain or loss is determined under the taxpayer's prior section 987 method on the transition date as if all qualified business units of the taxpayer terminated on the last day of the taxable year preceding the transition date. The deemed termination is solely for purposes of measuring section 987 gain or loss in order to transition to the foreign exchange exposure pool method and does not apply for any other purpose. Section 987 gain or loss determined on the deemed termination is not immediately recognized. Rather, it is deferred by treating it as net unrecognized section 987 gain or loss of the relevant section 987 QBU. Such gain or loss will be recognized under the remittance rules of § 1.987–5 for periods after the transition date. The owner of a qualified business unit that is deemed to terminate under these rules is treated as having transferred all of the assets and liabilities attributable to the qualified business unit to a new section 987 QBU on the transition date. In order to avoid double counting, § 1.987–10(c)(3)(ii) provides that the exchange rates used to determine the amount of an asset or liability transferred from the owner to the new section 987 QBU on the transition date (that is, for purposes of making later calculations under § 1.987–4) is determined with reference to the historic exchange rates on the day the asset was acquired or liability entered into by the qualified business unit deemed terminated. That exchange rate is then adjusted to take into account an allocation of section 987 gain or loss determined under the deferral transition method. If the taxpayer is not able to trace an historic exchange rate to a particular asset or liability, then the exchange rate must be determined under a reasonable allocation method, consistently applied, that takes into account an allocation of the aggregate basis and an allocation of the deferred section 987 gain or loss.

Under the fresh start transition method of § 1.987–10(c)(4), on the transition date all qualified business units of the taxpayer subject to section 987 are deemed terminated on the last day of the taxable year preceding the transition date. As under the deferral transition method, this deemed termination is solely for purposes of transitioning to the foreign exchange exposure pool method under section 987 and does not apply for any other purpose. Under the fresh start transition method, no section 987 gain or loss is determined or recognized on such deemed termination. Rather, the exchange rates used to determine the total amount of assets and liabilities deemed transferred from the owner to the section 987 QBU for the section 987 QBU's first taxable year are determined solely with reference to the historic exchange rates on the day the assets were acquired or liabilities entered into

by the qualified business unit that was deemed terminated. Like the deferral transition method, if the taxpayer is not able to trace an exchange rate to a particular asset or liability, then the exchange rate must be determined under a reasonable allocation method, consistently applied, that takes into account the aggregate basis of the QBU's assets (and amount of liabilities). The fresh start method is designed to prevent recognition of non-economic currency gain or loss with respect to unremitted assets that are attributable to the qualified business unit. In the first taxable year when the foreign exchange exposure pool method applies, the deemed contribution of marked assets to a section 987 QBU at the historic exchange rate when originally acquired potentially gives rise to section 987 gain or loss while the historic assets (also translated at the historic exchange rate) will not.

The transition method adopted by the taxpayer must be disclosed in accordance with the rules provided in § 1.987–10(c)(6).

Proposed Effective Date

These regulations are proposed to be effective as follows. These regulations shall generally apply to taxable years beginning one year after the first day of the first taxable year following the date of publication of a Treasury decision adopting this rule as a final regulation in the **Federal Register.** A taxpayer may elect to apply these regulations to taxable years beginning after the date of publication of a Treasury decision adopting this rule as a final regulation in the **Federal Register.** Such election is binding on all members that file a consolidated return with the taxpayer and any controlled foreign corporation, as defined in section 957, in which the taxpayer owns more than 50 percent of the voting power or stock (as determined in section 957(a)). Pending finalization, the IRS and the Treasury Department would consider positions consistent with these proposed regulations to be reasonable constructions of the statute.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information contained in this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The proposed section 987 regulations will generally only affect large United States corporations with business units operating in foreign jurisdictions. Thus, the number of affected small entities will not be substantial and any economic impact on those entities in complying with the collection of information would be minimal. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Public Hearing

Before the proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for November 21, 2006, beginning at 10 a.m. in the Auditorium, Internal Revenue Service, New Carrollton Federal Building, 5000 Ellin Road, Lanham, MD 20706. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit electronic or written comments by December 6, 2006 and an outline of the topics to be discussed and time to be devoted on each topic (a signed original and eight (8) copies) by October 31, 2006. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of the proposed regulations are Jeffrey Dorfman and Theodore Setzer of the Office of Associate Chief Counsel (International).

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG–208270–86) that was published in the **Federal Register** on September 25, 1991 (56 FR 48457) is withdrawn.

Proposed Amendment to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 987, 989(c), 6601 and 7805 * * *

Par. 2. Section 1.861–9T is amended as follows:

1. Paragraph (g)(2)(ii)(A)(*1*) is revised.
2. Paragraph (g)(2)(vi) is added.

The revisions read as follows:

§ 1.861–9T Allocation and apportionment of interest expense (temporary).

* * * * *

(g) * * *

(2) * * *

(ii) * * * (A) * * *

(1) Section 987 QBU. In the case of a section 987 QBU, the tax book value shall be determined by applying the rules of paragraphs (g)(2)(i) and (3) of this section to the beginning of year and end of year functional currency amount of assets. The beginning of year functional currency amount of assets shall be determined by reference to the functional currency amount of assets computed under § 1.987–4(d)(1)(i)(B) and (e) on the last day of the preceding taxable year. The end of year functional currency amount of assets shall be determined by reference to the functional currency amount of assets computed under § 1.987–4(d)(1)(i)(A) and (e) on the last day of the current taxable year. The beginning of year and end of year functional currency amount of assets, as so determined within each grouping must then be averaged as provided in paragraph (g)(2)(i) of this section.

* * * * *

(vi) *Effective date.* Generally, paragraph (g)(2)(ii)(A)(*1*) of this section shall apply to taxable years beginning one year after the first day of the first taxable year following the date of publication of a Treasury decision adopting this rule as a final regulation in the **Federal Register**. If a taxpayer makes an election under § 1.987–11(b), then the effective date of paragraph (g)(2)(ii)(A)(*1*) of this section with respect to the taxpayer shall be consistent with such election.

* * * * *

Par. 3. Section 1.985–1 is amended as follows:

1. Paragraph (d)(2), second sentence; and paragraph (f), *Example 9* and *Example* 10(i), ninth sentence are revised.

2. Paragraph (f), *Example 11* is removed.

3. Paragraph (f), *Example 12* is redesignated as *Example 11.*

4. Paragraph (g) is added.

The revisions and addition read as follows:

§ 1.985–1 Functional currency.

* * * * *

(d) * * *

(2) * * * The amount of income or loss or earnings and profits (or deficit in earnings and profits) of each QBU in its functional currency shall then be translated into the foreign corporation's functional currency under the principles of section 987.

* * * * *

(f) *Examples.* * * *

Example (9). (i) The facts are the same as in *Example (7).* In addition, assume that in 1987 branch A has items of earnings of 100 FC and branch B has items of earnings of 100 LC as determined under section 987. S translates branch A's and branch B's items of earnings and profits into its functional currency under the principles of section 987.

Example (10). (i) * * * Assume that B's items of income of 200 DCs when properly translated under the principles of section 987 is equal to 100 LCs. * * *

* * * * *

(g) *Effective date.* Generally, the revisions to the second sentence of paragraph (d)(2), *Example 9*, and *Example 10* shall apply to taxable years beginning one year after the first day of the first taxable year following the date of publication of a Treasury decision adopting this rule as a final regulation in the **Federal Register**. If a taxpayer makes an election under § 1.987–11(b), then the effective date of these revisions with respect to the taxpayer shall be consistent with such election.

Par 4. Section 1.985–5 is revised to read as follows:

§ 1.985–5 Adjustments required upon change in functional currency.

(a) *In general.* This section applies in the case of a taxpayer, qualified business unit (QBU) or section 987 QBU as defined in § 1.987–1(b)(2) changing from one functional currency (old functional currency) to another functional currency (new functional currency). A taxpayer, QBU, or section 987 QBU subject to the rules of this section shall make the adjustments set forth in the 3-step procedure described in paragraphs (b) through (e) of this section. Except as otherwise provided in this section, the adjustments shall be made on the last day of the taxable year ending before the year of change as defined in § 1.481–1(a)(1). Gain or loss required to be recognized under paragraphs (b), (d)(2), (e)(2), and (e)(4)(iii) of this section is not subject to section 481 and, therefore, the full amount of the gain or loss must be included in income or earnings and profits on the last day of the taxable year ending before the year of change. Except as provided in § 1.985–6, a QBU or section 987 QBU with a functional currency for its first taxable year beginning in 1987 that is different from the currency in which it had kept its books and records for United States accounting and tax accounting purposes for its prior taxable year shall apply the principles of this section for purposes of computing the relevant functional currency items, such as earnings and profits, basis of an asset, and amount of a liability, as of the first day of a taxpayer's first taxable year beginning in 1987. However, a QBU that changes to the dollar pursuant to § 1.985–1(b)(2) after 1987 shall apply § 1.985–7.

(b) *Step 1 Taking into account exchange gain or loss on certain section 988 transactions.* The taxpayer, QBU or section 987 QBU shall recognize or otherwise take into account for all purposes of the Internal Revenue Code the amount of any unrealized exchange gain or loss attributable to a section 988 transaction (as defined in section 988(c)(1)(A), (B), and (C)) that, after applying section 988(d), is denominated in terms of or determined by reference to the new functional currency. The amount of such gain or loss shall be determined without regard to the limitations of section 988(b) (that is, whether any gain or loss would be realized on the transaction as a whole). The character and source of such gain or loss shall be determined under section 988.

(c) *Step 2 Determining the new functional currency basis of property and the new functional currency amount of liabilities and any other relevant items.* Except as otherwise provided in this section, the new functional currency adjusted basis of property and the new functional currency amount of liabilities and any other relevant items (for example, items described in section 988(c)(1)(B)(iii)) shall equal the product of the amount of the old functional currency adjusted basis or amount multiplied by the new functional currency/old functional currency spot exchange rate on the last day of the taxable year ending before the year of change (spot rate).

(d) *Step 3A Additional adjustments that are necessary when a QBU or section 987 QBU changes functional currency*—(1) *QBU changing to a functional currency other than the owner's functional currency*—(i) *Rule.* If a QBU or section 987 QBU changes to a functional currency other than the owner's functional currency, the owner and section 987 QBU shall make the adjustments set forth in either paragraph (d)(1)(ii) or (d)(1)(iii) of this section for purposes of section 987.

(ii) *Where prior to the change the section 987 QBU and owner had different functional currencies.* If the section 987 QBU and the owner had different functional currencies prior to the change, the owner and section 987 QBU shall make the following adjustments in the year of change.

(A) *Determining the owner functional currency net value of the section 987 QBU under § 1.987–4(d)(1)(i)(B)*—(*1*) *Historic items.* For purposes of determining the owner functional currency net value of the section 987 QBU for the year of change under § 1.987–4(d)(1)(i)(B), the owner or section 987 QBU shall first translate the section 987 historic items from the QBU's old functional currency into its owner's functional currency using the historic exchange rate as defined in § 1.987–1(c)(3). The owner or section 987 QBU shall then translate the section 987 historic items as defined in § 1.987–1(e) from the owner's functional currency into the QBU's new functional currency using the spot exchange rate between the section 987 QBU's new functional currency and the owner's functional currency on the last day of the taxable year ending before the year of change.

(*2*) *Marked items.* For purposes of determining the owner functional currency net value of the section 987 QBU for the year of change under § 1.987–4(d)(1)(i)(B), the owner or section 987 QBU shall translate the section 987 QBU's section 987 marked items as defined in § 1.987–1(d) from the section 987 QBU's old functional currency into the QBU's new functional

currency using the new functional currency/old functional currency spot exchange rate on the last day of the taxable year ending before the year of change.

(B) *Net unrecognized section 987 gain or loss.* No adjustment to the owner's net unrecognized section 987 gain or loss is necessary.

(iii) *Where prior to the change the QBU and the taxpayer had the same functional currency.* If a QBU with the same functional currency of the taxpayer is changing to a new functional currency different from the taxpayer, and as a result of the change the taxpayer will be an owner of a section 987 QBU (see § 1.987–1), the taxpayer and section 987 QBU shall become subject to section 987 for the year of change and subsequent years.

(2) *Section 987 QBU changing to the owner's functional currency.* If a section 987 QBU changes its functional currency to its owner's functional currency, the section 987 QBU shall be treated as if it terminated on the last day of the taxable year ending before the year of change. See §§ 1.987–5 and 1.987–8 for the effect of a termination.

(e) *Step 3B Additional adjustments that are necessary when a taxpayer/owner changes functional currency* (1) *Corporations.* The amount of a corporation's new functional currency earnings and profits and the amount of its new functional currency paid-in capital shall equal the product of the old functional currency amounts of such items multiplied by the spot rate. The foreign income taxes and accumulated profits or deficits in accumulated profits of a foreign corporation that were maintained in foreign currency for purposes of section 902 and that are attributable to taxable years of the foreign corporation beginning before January 1, 1987, also shall be translated into the new functional currency at the spot rate.

(2) *Collateral consequences to a United States shareholder of a corporation changing to the United States dollar as its functional currency.* A United States shareholder (within the meaning of section 951(b) or section 953(c)(1)(A)) of a controlled foreign corporation (within the meaning of section 957 or section 953(c)(1)(B)) changing its functional currency to the dollar shall recognize foreign currency gain or loss computed under section 986(c) as if all previously taxed earnings and profits, if any, (including amounts attributable to pre-1987 taxable years that were translated from dollars into functional currency in the foreign corporation's first post-1986 taxable year) were distributed immediately prior to the change. Such a shareholder shall also recognize gain or loss attributable to the corporation's paid-in capital to the same extent, if any, that such gain or loss would be recognized under the regulations under section 367(b) if the corporation was liquidated completely.

(3) *Taxpayers that are not corporations.* [Reserved].

(4) *Adjustments to a section 987 QBU's balance sheet and net accumulated unrecognized section 987 gain or loss when an owner changes functional currency*—(i) *Owner changing to a functional currency other than the section 987 QBU's functional currency.* If an owner changes to a functional currency that differs from the functional currency of its section 987 QBU, the owner shall make the following adjustments in the year of change.

(A) *Determining the owner functional currency net value of the section 987 QBU under § 1.987–4(d)(1)(i)(B)—(1) Historic items.* For purposes of determining the owner functional currency net value of the section 987 QBU for the year of change under § 1.987–4(d)(1)(i)(B), the owner shall first translate the QBU's section 987 historic items into the owner's old functional currency at the historic exchange rate as defined in § 1.987–1(c)(3). The owner shall then translate the section 987 historic items into its new functional currency using the new functional currency/old functional currency spot rate on the last day of the taxable year ending before the year of change.

(2) *Marked items.* For purposes of determining the owner functional currency net value of the section 987 QBU for the year of change under § 1.987–4(d)(1)(i)(B), the owner or section 987 QBU shall translate the QBU's section 987 marked items from the owner's old functional currency into the owner's new functional currency using the new functional currency/old functional currency spot exchange rate on the last day of the taxable year ending before the year of change.

(B) *Translation of net unrecognized section 987 gain or loss.* The owner shall translate any net unrecognized section 987 gain or loss determined under § 1.987–4 from its old functional currency into its new functional currency using the new functional currency/old functional currency spot exchange rate on the last day of the taxable year ending before the year of change.

(ii) *Taxpayer with the same functional currency as its QBU changing to a different functional currency.* If a taxpayer with the same functional currency as its QBU changes to a new functional currency and as a result of the change the taxpayer will be an owner of a section 987 QBU (see § 1.987–1), the taxpayer and section 987 QBU shall become subject to section 987 for the year of change and subsequent years.

(iii) *Owner changing to the same functional currency as the section 987 QBU.* If an owner changes to the same functional currency as its section 987 QBU, such section 987 QBU shall be treated as if it terminated on last day of the taxable year ending before the year of change. See §§ 1.987–5 and 1.987–8 for the effect of a termination.

(f) *Examples.* The provisions of this section are illustrated by the following example:

Example. S, a calendar year foreign corporation, is wholly owned by domestic corporation P. The Commissioner granted permission to change S's functional currency from the LC to the FC beginning January 1, 1993. The LC/FC exchange rate on December 31, 1992, is 1 LC/2 FC. The following shows how S must convert the items on its balance sheet from the LC to the FC.

	LC[1 2]	FC
Assets:		
Cash on hand	40,000	80,000
Accounts Receivable	10,000	20,000
Inventory	100,000	200,000
100,000 FC Bond (100,000 LC historical basis)	[1]50,000	100,000
Fixed assets:		
Property	200,000	400,000
Plant	500,000	1,000,000
Accumulated Depreciation	(200,000)	(400,000)
Equipment	1,000,000	2,000,000

	LC [1] [2]	FC
Accumulated Depreciation	(400,000)	(800,000)
Total Assets	1,300,000	2,600,000
Liabilities:		
Accounts Payable	50,000	100,000
Long-term Liabilities	400,000	800,000
Paid-in-Capital	800,000	1,600,000
Retained Earnings	[2] 50,000	100,000
Total Liabilities and Equity	1,300,000	2,600,000

[1] Under paragraph (b) of this section, S will recognize a 50,000 LC loss (100,000 LC basis—50,000 LC value) on the bond resulting from the change in functional currency. Thus, immediately before the change, S's basis in the FC bond (taking into account the loss) is 50,000 LC.
[2] The amount of S's LC retained earnings reflects the 50,000 LC loss on the bond.

(g) *Effective date.* Generally, this regulation shall apply to taxable years beginning one year after the first day of the first taxable year following the date of publication of a Treasury decision adopting this rule as a final regulation in the **Federal Register.** If a taxpayer makes an election under § 1.987–11(b), then the effective date of this regulation with respect to the taxpayer shall be consistent with such election.

Par. 5. Sections 1.987–1 through 1.987–4 and §§ 1.987–6 through 1.987–11 are added and § 1.987–5 is revised to read as follows:

§ 1.987–1 Scope, definitions and special rules.

(a) *In general.* These regulations provide rules for determining the taxable income or loss of a taxpayer with respect to a section 987 qualified business unit (section 987 QBU) as defined in paragraph (b)(2) of this section. Further, these regulations provide rules for determining the timing, amount, character and source of section 987 gain or loss recognized with respect to a section 987 QBU. This section addresses the scope of these regulations and provides certain definitions and special rules. Section 1.987–2 provides rules for attributing assets and liabilities and items of income, gain, deduction, and loss to an eligible QBU and a section 987 QBU. It also provides rules regarding transfers and the translation of items transferred to a section 987 QBU. Section 1.987–3 provides rules for determining and translating the section 987 taxable income or loss of a taxpayer with respect to a section 987 QBU. Section 1.987–4 provides rules for determining net unrecognized section 987 gain or loss. Section 1.987–5 provides rules regarding the recognition of section 987 gain or loss. Section 1.987–6 provides rules regarding the character and source of section 987 gain or loss. Section 1.987–7 provides rules with respect to partnerships and rules necessary to coordinate the provisions of section 987 with subchapter K. Section 1.987–8 provides rules regarding the termination of a section 987 QBU. Section 1.987–9 provides rules regarding the recordkeeping required under section 987. Section 1.987–10 provides transition rules. Section 1.987–11 provides the effective date of these regulations.

(b) *Scope of section 987 and definitions*—(1) *Taxpayers subject to section 987*—(i) *In general.* Except as provided in paragraphs (b)(1)(ii) and (iii) of this section, an individual or corporation is subject to section 987 if such person is an owner (as defined in paragraphs (b)(4) and (5) of this section) of an eligible QBU (as defined in paragraph (b)(3) of this section) that is a section 987 QBU (as defined in paragraph (b)(2) of this section). Such individual or corporation, and any section 987 QBU owned by such person, must comply with these regulations.

(ii) *De minimis rule for certain indirectly owned section 987 QBUs.* An individual or corporation that owns a section 987 QBU indirectly through a section 987 partnership may elect not to apply these regulations for purposes of taking into account the section 987 gain or loss of such section 987 QBU if the individual or corporation owns, directly or indirectly, less than five percent of either the total capital or the total profits interest in the section 987 partnership as determined on the date of acquisition of such interest or on the date such interest is increased or decreased. For purposes of this paragraph (b)(1)(ii), ownership of a capital or profits interest in a partnership shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c), other than section 267(c)(3). See § 1.987–3 for purposes of determining the section 987 taxable income or loss attributable to such section 987 QBU.

(iii) *Inapplicability to certain entities.* These regulations do not apply to banks, insurance companies and similar financial entities (including, solely for purposes of section 987, leasing companies, finance coordination centers, regulated investment companies and real estate investment trusts). Further, these rules do not apply to trusts, estates and S corporations.

(2) *Definition of a section 987 QBU*—(i) *In general.* A section 987 QBU is an eligible QBU, as defined in paragraph (b)(3) of this section, that has a functional currency different from its owner. The functional currency of an eligible QBU shall be determined under § 1.985–1, taking into account all of the QBU's activities before the application of § 1.987–7.

(ii) *Section 987 QBU grouping election*—(A) *In general.* Except as provided in paragraphs (b)(2)(ii)(B)(*1*) through (*3*) of this section, an owner may elect pursuant to paragraph (f) of this section to treat, solely for purposes of section 987, all section 987 QBUs with the same functional currency as a single section 987 QBU.

(B) *Special grouping rules for section 987 QBUs owned indirectly through a partnership*—(*1*) *In general.* An owner may elect to treat all section 987 QBUs with the same functional currency owned indirectly though a single section 987 partnership as a single section 987 QBU.

(*2*) *Election not available to group section 987 QBUs owned indirectly through different partnerships.* An owner cannot elect to treat multiple section 987 QBUs with the same functional currency as a single section 987 QBU if such QBUs are owned indirectly through different section 987 partnerships.

(*3*) *Election not available to group section 987 QBUs owned directly and indirectly.* An owner cannot elect to treat multiple section 987 QBUs with the same functional currency owned directly, and indirectly through a section 987 partnership, as a single section 987 QBU.

(3) *Definition of an eligible QBU*—(i) *In general.* The term *eligible QBU* means activities of an individual, corporation,

partnership, or an entity disregarded as an entity separate from its owner for U.S. Federal income tax purposes (DE), if—

(A) The activities constitute a trade or business as defined in § 1.989(a)–1(c);

(B) A separate set of books and records is maintained as defined in § 1.989(a)–1(d) with respect to the activities, and assets and liabilities used in conducting such activities are reflected on such books and records under § 1.987–2(b); and

(C) The activities are not subject to the Dollar Approximate Separate Transactions Method (DASTM) rules of § 1.985–3.

(ii) *Exclusion of DEs and certain QBUs.* A DE itself is not an eligible QBU (even though a DE may have activities that qualify as an eligible QBU). In addition, an eligible QBU shall include a QBU defined in § 1.989(a)–1(b) only if the requirements contained in paragraphs (b)(3)(i)(A) through (C) of this section are satisfied with respect to such QBU. Thus, for example, neither a corporation nor a partnership itself is an eligible QBU (even though a corporation and a partnership may have activities that qualify as an eligible QBU).

(4) *Definition of the term "owner".* For purposes of section 987, only an individual or corporation may be an owner of an eligible QBU. An individual or corporation is an owner of an eligible QBU if—

(i) *Direct ownership.* The individual or corporation is the tax owner of the assets and liabilities of an eligible QBU as defined in paragraph (b)(3) of this section; or

(ii) *Indirect ownership.* In the case of an individual or corporation that is a partner in a partnership, the individual or corporation is allocated, under § 1.987–7, all or a portion of the assets and liabilities of an eligible QBU of such partnership.

(5) *Exception with respect to an eligible QBU or section 987 QBU of an owner.* The term *owner* for section 987 purposes does not include an eligible QBU or a section 987 QBU of an owner. For example, a section 987 branch, as defined in paragraph (b)(6)(i) of this section is not an owner of another section 987 branch, regardless of its functional currency.

(6) *Other definitions.* Solely for purposes of section 987, the following definitions shall apply.

(i) *Section 987 branch.* A section 987 branch is an eligible QBU of an individual, partnership, DE, or corporation, all or a portion of which is a section 987 QBU. Assets and liabilities of an eligible QBU of a partnership that are allocated to a partner under § 1.987–7 are considered to be a section 987 QBU of such partner, provided such partner has a functional currency different from that of such eligible QBU.

(ii) *Section 987 partnership.* A section 987 partnership is a partnership that has one or more section 987 branches.

(iii) *Section 987 DE.* A section 987 DE is a DE that has one or more section 987 branches.

(7) *Examples.* The following examples illustrate the principles of paragraph (b) of this section. Except as otherwise provided, the following facts are assumed for purposes of these examples. X is a domestic corporation, has the U.S. dollar as its functional currency, and uses the calendar year as its taxable year. Business A and Business B are eligible QBUs, maintain books and records that are separate from the books and records of the entity that owns such eligible QBUs, and have the euro and the Japanese yen, respectively, as their functional currencies. Finally, DE1 and DE2 are entities that are disregarded as entities separate from their owner for U.S. tax purposes, have no assets or liabilities, and conduct no activities.

Example 1. (i) *Facts.* X owns Business A and the interests in DE1. DE1 maintains a separate set of books and records that are kept in British pounds. DE1 owns British pounds and 100% of the stock of a foreign corporation, FC. DE1 is liable on a pound-denominated obligation to a lender that was incurred to acquire the stock of FC. The FC stock, the pounds, and the liability incurred to acquire the FC stock are recorded on DE1's separate books and records. DE1 has no other assets or liabilities and conducts no activities (other than holding the FC stock and servicing its liability).

(ii) *Analysis.* (A) Pursuant to paragraph (b)(4)(i) of this section, X is the direct owner of Business A because it is the tax owner of the assets and liabilities of such business. Because Business A is an eligible QBU with a functional currency that is different from the functional currency of its owner, X, Business A is a section 987 QBU, as defined in paragraph (b)(2) of this section. As a result, X and its section 987 QBU, Business A, are subject to section 987.

(B) Holding the stock of FC and pounds, and servicing a single liability, does not constitute a trade or business within the meaning of § 1.989(a)–1(c). Because the activities of DE1 do not constitute a trade or business within the meaning of § 1.989(a)–1(c), such activities are not an eligible QBU. In addition, pursuant to paragraph (b)(3)(ii) of this section, DE1 is not an eligible QBU. As a result, neither DE1 nor its activities qualify as a section 987 QBU of X. Therefore, neither the activities of DE1 nor DE2 are subject to section 987. For the foreign currency treatment of payments on DE1's pound-denominated liability, see §§ 1.987–2(b)(4) and 1.988–1(a)(4).

Example 2. (i) *Facts.* X owns the interests in DE1. DE1 owns Business A and the interests in DE2. The only activities of DE1 are Business A activities and holding the interests in DE2. DE2 owns Business B and Business C. For purposes of this example, Business B does not maintain books and records that are separate from its owner, DE2. Instead, the activities of Business B are reflected on the books and records of DE2, which are maintained in Japanese yen. In addition, Business C has the U.S. dollar as its functional currency, maintains books and records that are separate from the books and records of DE2, and is an eligible QBU.

(ii) *Analysis.* (A) Pursuant to paragraph (b)(3)(ii) of this section, DE1 and DE2 are not eligible QBUs. Pursuant to paragraph (b)(3)(i) of this section, the Business B and Business C activities of DE2, and the Business A activities of DE1, are eligible QBUs. Moreover, pursuant to paragraph (b)(4) of this section, DE1 is not the owner of the Business A, Business B, or Business C eligible QBUs, and DE2 is not the owner of the Business B or Business C eligible QBUs. Instead, pursuant to paragraph (b)(4)(i) of this section, X is the direct owner of the Business A, Business B, and Business C eligible QBUs.

(B) Because Business A and Business B are eligible QBUs with functional currencies that are different than the functional currency of X, Business A and Business B are section 987 QBUs as defined in paragraph (b)(2) of this section. Therefore, X, and these QBUs, are subject to section 987. Under paragraph (b)(6)(iii) of this section, DE1 and DE2 are section 987 DEs.

(C) The Business C eligible QBU has the same functional currency as X. Therefore, the Business C eligible QBU is not a section 987 QBU. As a result, X is not subject to section 987 with respect to its Business C eligible QBU.

Example 3. (i) *Facts.* X owns DE1. DE1 owns Business A and Business B. For purposes of this example, assume Business B has the euro as its functional currency.

(ii) *Analysis.* (A) Pursuant to paragraph (b)(3)(ii) of this section, DE1 is not an eligible QBU. Moreover, pursuant to paragraph (b)(4) of this section, DE1 is not the owner of the Business A or Business B eligible QBUs. Instead, pursuant to paragraph (b)(4)(i) of this section, X is the direct owner of the Business A and Business B eligible QBUs.

(B) Business A and Business B constitute two separate eligible QBUs with the euro as their respective functional currency. Accordingly, Business A and Business B are section 987 QBUs of X. X may elect to treat Business A and Business B as a single section 987 QBU pursuant to paragraph (b)(2)(ii)(A) of this section. If such election is made, pursuant to paragraph (b)(4)(i) of this section, X is the direct owner of the Business AB section 987 QBU that includes the activities of both the Business A section 987 QBU and the Business B section 987 QBU. In addition, pursuant to paragraph (b)(4) of this section, DE1 is not treated as the owner of the Business AB section 987 QBU. X, and its AB section 987 QBU, are subject to section 987. Under paragraph (b)(6)(iii) of this section, DE1 is a section 987 DE.

Example 4. (i) *Facts.* X is a partner in P, a partnership. FC, a controlled foreign corporation (as defined in section 957(a)) of

X with the Japanese yen as its functional currency, is the only other partner in P. P owns DE1 and Business A. DE1 owns Business B.

(ii) *Analysis.* (A) Pursuant to paragraph (b)(3)(ii) of this section, P and DE1 are not eligible section 987 QBUs. Moreover, pursuant to paragraph (b)(4) of this section, neither P nor DE1 is the owner of the Business A eligible QBU or the Business B eligible QBU for section 987 purposes. Instead, pursuant to paragraph (b)(4)(ii) of this section, X and FC are indirect owners of the Business A eligible QBU and the Business B eligible QBU to the extent they are allocated assets and liabilities of such businesses under § 1.987–7. Under paragraphs (b)(6)(ii) and (iii) of this section, respectively, P is a section 987 partnership and DE1 is a section 987 DE.

(B) Because Business A and Business B are eligible QBUs with a different functional currency than X, the portions of Business A and Business B allocated to X under § 1.987–7 are section 987 QBUs of X. As a result, X and its section 987 QBUs are subject to section 987.

(C) Because the Business A eligible QBU has a different functional currency than FC, the portion of the Business A eligible QBU that is allocated to FC under § 1.987–7 is a section 987 QBU, and FC and its section 987 QBU are subject to section 987. However, the Business B eligible QBU has the same functional currency as FC. Therefore, the portion of the Business B eligible QBU that is allocated to FC, under § 1.987–7, is not a section 987 QBU. As a result, FC is not subject to section 987 with respect to its Business B eligible QBU.

Example 5. (i) *Facts.* X owns all of the interests in DE1. DE1 owns Business A. DE1 owns all of the interests in DE2. DE2 owns Business B. DE2 owns all of the interests in DE3, an entity disregarded as an entity separate from its owner. DE3 owns Business C, which is an eligible QBU with the Russian ruble as its functional currency.

(ii) *Analysis.* Pursuant to (b)(3)(ii) of this section, DE1, DE2 and DE3 are not eligible QBUs. Pursuant to paragraph (b)(3)(i) of this section, the Business A, Business B and Business C activities are eligible QBUs. Moreover, pursuant to paragraph (b)(4) of this section, X is the direct owner of the Business A, Business B and Business C eligible QBUs. Pursuant to paragraph (b)(5) of this section, an eligible QBU is not an owner of another eligible QBU. Accordingly, the Business A eligible QBU is not the owner of the Business B eligible QBU, and the Business B eligible QBU is not the owner of the Business C eligible QBU. Since the Business A, Business B, and Business C eligible QBUs each has a different functional currency than X, such eligible QBUs are section 987 QBUs of X. As a result, X and its section 987 QBUs are subject to section 987. Under paragraphs (b)(6)(iii) of this section, DE1, DE2 and DE3 are section 987 DEs.

(c) *Exchange rates.* Solely for purposes of section 987, the following definitions shall apply.

(1) *Spot rate*—(i) *In general.* Except as otherwise provided in this section, the *spot rate* means the rate determined under the principles of § 1.988–1(d)(1), (2) and (4) on the relevant day.

(ii) *Election to use a spot rate convention*—(A) *In general.* In lieu of the spot rate determined in paragraph (c)(1)(i) of this section, an owner may elect under paragraph (f) of this section to use a spot rate convention that reasonably approximates the rate in paragraph (c)(1)(i) of this section. A spot rate convention may be determined with respect to a rate at the beginning of a reasonable period, the end of a reasonable period, an average of spot rates for a reasonable period, or by reference to spot and forward rates for a reasonable period. For example, in lieu of the spot rate determined in paragraph (c)(1)(i) of this section, the spot rate for all transactions during a monthly period can be determined pursuant to the following conventions: the spot rate at the beginning of the current month or at the end of the preceding month; the monthly average of daily spot rates for the current or preceding month; or an average of the beginning and ending spot rates for the current or preceding month. Similarly, in lieu of the spot rate determined in paragraph (c)(1)(i) of this section, the spot rate can be determined pursuant to an average of the spot rate and the 30-day forward rate on a day of the preceding month. Use of a spot rate convention that is consistent with the owner's convention used for financial accounting purposes is presumed to reasonably approximate the rate in paragraph (c)(1)(i) of this section. The Commissioner can rebut this presumption if use of such a convention results in a significant distortion of income or loss under the facts and circumstances.

(B) *Election does not apply with respect to section 988 transactions.* The election to use a spot rate convention set forth in paragraph (c)(1)(ii)(A) of this section does not apply to section 988 transactions of a section 987 QBU.

(2) *Yearly average exchange rate.* Notwithstanding § 1.989(b)–1, for purposes of section 987, the yearly average exchange rate is a rate determined by the owner that represents an average exchange rate for the taxable year (or, if the section 987 QBU is sold or terminated prior to the close of the taxable year, such portion of the taxable year) computed under any reasonable method. For example, an owner may determine the yearly average exchange rate based on a daily, monthly or quarterly averaging convention, whether weighted or unweighted, and may take into account forward rates for a period not to exceed three months. The method for determining the yearly average exchange rate must be consistently applied by the taxpayer.

(3) *Historic exchange rate*—(i) *In general.* Except as otherwise provided in these regulations, the historic exchange rate shall be—

(A) In the case of an asset that is transferred to a section 987 QBU, the spot rate as defined in paragraphs (c)(1)(i) and (ii) of this section on the day of transfer;

(B) In the case of an asset that is acquired by a section 987 QBU (other than by a transfer to a section 987 QBU described in paragraph (c)(3)(i)(A) of this section), the spot rate as defined in paragraphs (c)(1)(i) and (ii) of this section on the day the asset is acquired;

(C) In the case of a liability that is entered into by a section 987 QBU, the spot rate as defined in paragraphs (c)(1)(i) and (ii) of this section on the day the liability is entered into; and

(D) In the case of a liability that is transferred to a section 987 QBU, the spot rate as defined in paragraphs (c)(1)(i) and (ii) of this section on the day the liability is transferred.

(ii) *Changed functional currency.* In the case of a section 987 QBU that previously changed its functional currency, § 1.985–5 shall be taken into account in determining the historic exchange rate for an item.

(d) *Section 987 marked item.* A section 987 marked item is an asset (section 987 marked asset) or liability (section 987 marked liability) that—

(1) Is reflected on the books and records of a section 987 QBU under § 1.987–2(b);

(2) Would be a section 988 transaction if such item were held or entered into directly by the owner of the section 987 QBU; and

(3) Is not a section 988 transaction with respect to the section 987 QBU.

(e) *Section 987 historic item*—(1) *In general.* A section 987 historic item is an asset (section 987 historic asset) or liability (section 987 historic liability) that—

(i) Is reflected on the books and records of a section 987 QBU under § 1.987–2(b); and

(ii) Is not a section 987 marked item as defined in paragraph (d) of this section.

(2) *Example.* The following example illustrates the application of paragraphs (d) and (e) of this section:

Example. X is a domestic corporation with the dollar as its functional currency. X owns all the interests in UK DE, a section 987 DE that owns a section 987 branch having the pound as its functional currency. Items reflected on the branch's balance sheet include £100 of cash, $25 of cash, a building

with a basis of £1,000, a truck with a basis of £75, a computer with a basis of £10, a 60 day receivable for ¥15 and a note payable of £500. Under paragraph (d) of this section, the £100 of cash and the £500 note payable are section 987 marked items. The other items are section 987 historic items under this paragraph (e).

(f) *Elections*—(1) *In general.* Elections made under section 987 shall be treated as methods of accounting and, except as otherwise provided in this paragraph (f), are governed by the general rules concerning changes in methods of accounting.

(2) *Persons making the election*—(i) *In general.* Except as provided in paragraphs (f)(2)(ii) and (iii) of this section, elections regarding section 987 shall be made by the owner as defined in paragraph (b)(4) of this section.

(ii) *Controlled foreign corporations.* Where a section 987 QBU is held by a controlled foreign corporation, elections shall be made in accordance with §§ 1.952–2(c)(2)(iv) and 1.964–1(c) by its controlling U.S. shareholders.

(iii) *Foreign corporations that are not controlled foreign corporations.* Where a section 987 QBU is held by a foreign corporation that is not a controlled foreign corporation, elections shall be made in accordance with the principles of § 1.964–1(c) by the majority domestic corporate shareholders.

(3) *When elections must be made.* An election under section 987 must be made with respect to a section 987 QBU for the first taxable year in which the election is relevant in determining the section 987 taxable income or loss, or section 987 gain or loss, of the section 987 QBU.

(4) *Manner of making elections.* Elections shall be made under section 987 by attaching a statement to the timely filed tax return of the owner, or other applicable person, for the first taxable year in which the owner intends the election to be effective. The statement must be dated and titled "Election(s) Under Section 987," must indicate the regulation section that authorizes the election(s), and must clearly describe the election(s) being made. Each section 987 election must remain a part of the books and records of the taxpayer and be available to the IRS upon request.

(5) *Consent of the Commissioner.* Elections made in accordance with the rules of this paragraph (f) shall be considered made with the consent of the Commissioner.

(6) *Failure to make election.* If an owner is permitted to file an election pursuant to this paragraph (f), but fails to make such election in a timely manner, the owner shall be considered to have satisfied the timeliness requirement with respect to such election if the owner is able to demonstrate to the Area Director, Field Examination, Small Business/Self Employed or the Director, Field Operations, Large and Mid-Size Business (Director) having jurisdiction of the taxpayer's return for the taxable year, that such failure was due to reasonable cause and not willful neglect. The previous sentence shall only apply if, once the owner becomes aware of the failure, the owner attaches the election, as well as a written statement setting forth the reasons for the failure to timely comply, to an amended income tax return that amends the return to which the election should have been attached under the rules of this paragraph (f). In determining whether the owner has reasonable cause, the Director shall consider whether the taxpayer acted reasonably and in good faith. Whether the taxpayer acted reasonably and in good faith will be determined after considering all the facts and circumstances. The Director shall notify the owner in writing within 120 days of the filing if it is determined that the failure to comply was not due to reasonable cause, or if additional time will be needed to make such determination. If the Director fails to notify the owner within 120 days of the filing, the owner shall be considered to have demonstrated to the Director that such failure was due to reasonable cause and not willful neglect.

(7) *Revocation of election*—(i) *In general.* Elections under section 987 cannot be revoked without the consent of the Commissioner. The Commissioner will consider allowing the revocation of an election if the taxpayer can demonstrate significantly changed circumstance or such other circumstances that in the judgment of the Commissioner clearly demonstrates a substantial non-tax business reason for revoking the election.

(ii) *Exception in the case of certain acquisitions.* [Reserved].

§ 1.987–2 Attribution of items to a section 987 QBU; the definition of a transfer and related rules.

(a) *Scope and general principles.* Paragraph (b) of this section provides rules for attributing assets and liabilities, and items of income, gain, deduction, and loss, to an eligible QBU and a section 987 QBU. Assets and liabilities are attributed to an eligible QBU, all or a portion of which is a section 987 QBU for purposes of section 987. Items of income, gain, deduction, and loss are attributed to an eligible QBU all or a portion of which is a section 987 QBU for purposes of computing the section 987 taxable income of such section 987 QBU, and of the owner of such section 987 QBU. Paragraph (c) of this section defines a transfer for purposes of section 987. Paragraph (d) of this section provides translation rules for transfers to a section 987 QBU.

(b) *Attribution of items to an eligible QBU*—(1) *General rules.* Except as provided in paragraphs (b)(2) and (3) of this section, items are attributable to an eligible QBU to the extent they are reflected on the separate set of books and records, as defined in § 1.989(a)–1(d), of the eligible QBU. For purposes of this section, the term "item" refers to assets and liabilities, and items of income, gain, deduction, and loss. Items that are attributed to an eligible QBU pursuant to this section must be adjusted to conform to U.S. tax principles as provided in § 1.987–4(e). These attribution rules apply solely for purposes of section 987. For example, the allocation and apportionment of interest expense under section 864(e) is independent of the rules under section 987.

(2) *Exceptions for non-portfolio stock, interests in partnerships, and certain acquisition indebtedness*—(i) *General rule.* Except as provided in paragraph (b)(2)(ii) of this section, the following shall not be considered to be on the books and records of a an eligible QBU:

(A) Stock of a corporation (whether domestic or foreign).

(B) An interest in a partnership (whether domestic or foreign).

(C) A liability that was incurred to acquire the stock or an interest in a partnership described in paragraphs (b)(2)(i)(A) or (B) of this section, respectively.

(D) Income, gain, deduction, or loss arising from the items described in paragraphs (b)(2)(i)(A) through (C) of this section. For example, a section 951 inclusion with respect to stock of a foreign corporation that is described in paragraph (b)(2)(i)(A) of this section shall not be considered to be on the books and records of the eligible QBU.

(ii) *Portfolio stock.* Paragraph (b)(2)(i)(A) of this section shall not apply to stock of a corporation (whether domestic or foreign) reflected on the books and records, within the meaning of paragraph (b)(1) of this section, of an eligible QBU provided the owner of the eligible QBU owns less than 10 percent of the total voting power or value of all classes of stock of such corporation. For purposes of this paragraph (b)(2)(ii), section 318(a) shall be applied in determining ownership, except that in applying section 318(a)(2)(C), the phrase

"10 percent" is used instead of the phrase "50 percent."

(3) *Adjustments to items reflected on the books and records*—(i) *General rule.* If a principal purpose of recording (or failing to record) an item on the books and records of an eligible QBU is the avoidance of U.S. tax under section 987, the Commissioner may allocate any item between or among the eligible QBU, the owner of such eligible QBU, and any other persons, entities (including disregarded entities), or other QBUs within the meaning of § 1.989(a)–1(b) (including eligible QBUs). A transaction may have such a principal purpose even though the tax avoidance purpose is outweighed by other purposes when taken together. For purposes of this paragraph (b)(3)(i), relevant factors for determining whether such U.S. tax avoidance is a principal purpose of recording (or failing to record) an item on the books and records of an eligible QBU shall include, but are not limited to, the factors set forth in paragraphs (b)(3)(ii) and (iii) of this section. The presence or absence of any factor, or of a particular number of factors, is not determinative. Moreover, the weight given to any factor (whether or not set forth in paragraphs (b)(3)(ii) and (iii) of this section) depends on the particular case.

(ii) *Factors indicating no tax avoidance.* For purposes of paragraph (b)(3)(i) of this section, relevant factors which may indicate that the recording (or failing to record) an item on the books and records of an eligible QBU does not have as a principal purpose the avoidance of U.S. tax under section 987 include the recording (or not recording) of an item:

(A) For a significant and bona fide business purpose.

(B) In a manner that is consistent with the economics of the underlying transaction.

(C) In accordance with generally accepted accounting principles (or similar comprehensive body of professional accounting standards).

(D) In a manner that is consistent with the treatment of similar items from year to year.

(E) In accordance with accepted conditions or practices in the particular trade or business of the eligible QBU.

(F) In a manner that is consistent with an explanation of existing internal accounting policies that is evidenced by documentation contemporaneous with the timely filing of a return for the taxable year.

(G) As a result of a transaction between legal entities (that is, the transfer of an asset, or the assumption of a liability), even if such transaction is not regarded for Federal tax purposes (that is, a transaction between a DE and its owner).

(iii) *Factors indicating tax avoidance.* For purposes of paragraph (b)(3)(i) of this section, relevant factors which may indicate that a principal purpose of recording (or failing to record) an item on the books and records of an eligible QBU is the avoidance of U.S. tax under section 987 are—

(A) The presence or absence of an item on the books and records that is disregarded as transitory due to a circular flow of cash or other property;

(B) The presence or absence of an item on the books and records that is the result of one or more transactions that do not have economic substance;

(C) The presence or absence of an item on the books and records that results in the taxpayer (or person related to the taxpayer as defined in section 267(b) or 707(b)) having offsetting positions in the functional currency of a section 987 QBU; and

(D) The absence of any or all of the factors listed in paragraphs (b)(3)(ii)(A) through (E) of this section.

(4) *Assets and liabilities of a partnership or DE that are not attributed to an eligible QBU.* Neither a partnership nor a DE is an eligible QBU and, thus, cannot be a section 987 QBU. See § 1.987–1(b)(2) and (3). As a result, a partnership or DE may own assets and liabilities that are not attributed to an eligible QBU (or a section 987 QBU) as provided under this paragraph (b) and, therefore, are not subject to section 987. For the foreign currency treatment of such assets or liabilities, see § 1.988–1(a)(4).

(c) *Transfers to and from section 987 QBUs*—(1) *In general.* The following rules apply for purposes of determining whether there is a transfer of an asset or a liability from the owner to a section 987 QBU, or from such section 987 QBU to the owner. These rules apply solely for purposes of section 987.

(2) *Disregarded transactions*—(i) *General rule.* Solely for purposes of section 987, an asset or liability shall be treated as transferred to a section 987 QBU if, as a result of a disregarded transaction, such asset or liability is reflected on the books and records of the section 987 QBU within the meaning of paragraph (b) of this section. Similarly, an asset or liability shall be treated as transferred from a section 987 QBU if, as a result of a disregarded transaction, such asset or liability is not reflected on the books and records of the section 987 QBU within the meaning of paragraph (b) of this section.

(ii) *Definition of a disregarded transaction.* For purposes of this section, the term *disregarded transaction* means a transaction that is not regarded for U.S. Federal tax purposes. For purposes of this paragraph (c), a disregarded transaction shall be treated as including the recording of an asset or liability on one set of books and records, if the recording is the result of such asset or liability being removed from another set of books and records of the same person or entity (including a DE or partnership).

(iii) *Items derived from disregarded transactions ignored.* For purposes of section 987, disregarded transactions shall not give rise to items of income, gain, deduction, or loss that must be taken into account in determining section 987 taxable income or loss under § 1.987–3.

(3) *Transfers of assets to and from indirectly owned section 987 QBUs*—(i) *Contributions to partnerships.* Solely for purposes of section 987, an asset shall be treated as transferred to an indirectly owned section 987 QBU if, and to the extent, the asset is contributed to the section 987 partnership that carries on the section 987 QBU provided that immediately following such contribution, the asset is reflected on the books and records of the section 987 QBU within the meaning of paragraph (b) of this section. For purposes of this paragraph (c)(3)(i), deemed contributions under section 752 shall be disregarded.

(ii) *Distributions from partnerships.* Solely for purposes of section 987, an asset shall be treated as transferred from an indirectly owned section 987 QBU if, and to the extent, the section 987 partnership that carries on the section 987 QBU distributes the asset to a partner provided that, immediately prior to such distribution, the asset was reflected on the books and records of such section 987 QBU within the meaning of paragraph (b) of this section. For purposes of this paragraph (c)(3)(ii), deemed distributions under section 752 shall be disregarded.

(4) *Transfers of liabilities to and from indirectly owned section 987 QBUs*—(i) *Assumptions of partner liabilities.* Solely for purposes of section 987, a liability shall be treated as transferred to an indirectly owned section 987 QBU if, and to the extent, the section 987 partnership assumes such liability, provided that immediately following such assumption, the liability is reflected on the books and records of the section 987 QBU within the meaning of paragraph (b) of this section.

(ii) *Assumptions of partnership liabilities.* Solely for purposes of section 987, a liability shall be treated as transferred from an indirectly owned

section 987 QBU if, and to the extent, the owner assumes such liability of the section 987 partnership provided that immediately prior to such assumption, the liability was reflected on the books and records of the section 987 QBU within the meaning of paragraph (b) of this section.

(5) *Acquisitions and dispositions of interests in DEs and partnerships.* Solely for purposes of section 987, an asset or liability shall be treated as transferred to a section 987 QBU if, as a result of an acquisition (including by contribution) or disposition of an interest in a section 987 partnership or section 987 DE, such asset or liability is reflected on the books and records of the section 987 QBU. Similarly, an asset or liability shall be treated as transferred from a section 987 QBU if, as a result of an acquisition or disposition of an interest in a section 987 partnership or section 987 DE, the asset or liability is not reflected on the books and records of the section 987 QBU.

(6) *Changes in form of ownership.* For purposes of this paragraph (c), mere changes in form of ownership of an eligible QBU shall not result in a transfer to or from a section 987 QBU. Instead, the determination of whether a transfer has occurred in such case shall be made under paragraph (c)(5) of this section. For example, a transaction with respect to an eligible QBU that causes a direct owner of the eligible QBU to become an indirect owner of such eligible QBU, shall not, except to the extent provided in paragraph (c)(5) of this section, result in a transfer to or from a section 987 QBU. See for example, Rev. Rul. 99–5 (1999–1 CB 434), Rev. Rul. 99–6 (1999–1 CB 432), see § 601.601(d)(2) of this chapter, and section 708 and the applicable regulations.

(7) *Application of general tax law principles.* General tax law principles, including the circular cash flow, step-transaction, and substance-over-form doctrines, apply for purposes of determining whether there is a transfer of an asset or liability under this paragraph (c).

(8) *Interaction with § 1.988–1(a)(10).* See § 1.988–1(a)(10) for rules regarding the treatment of an intra-taxpayer transfer of a section 988 transaction.

(9) *Examples.* The following examples illustrate the principles of this paragraph (c). For purposes of these examples, it is assumed that X and Y are domestic corporations, have the dollar as their functional currency, and use the calendar year as their taxable year. It is also assumed that Business A and Business B are eligible QBUs, maintain books and records that are separate from the books and records of the entity that owns such eligible QBUs, and have the euro and the yen, respectively, as their functional currencies. Finally, it is assumed that DE1 and DE2 are entities that are disregarded as entities separate from their owner for U.S. tax purposes. For purposes of determining whether any of the transfers in these examples result in remittances, see § 1.987–5.

Example 1. Transfer to a directly owned section 987 QBU. (i) *Facts.* X owns 100 percent of the interests in DE1. DE1 owns Business A. X owns £100 that are not reflected on the books and records of Business A. Business A is in need of additional capital and, as a result, X loans the £100 to DE1 (to be used in Business A) in exchange for a note.

(ii) *Analysis.* (A) The loan from X to DE1 is not regarded for U.S. federal tax purposes and therefore is a disregarded transaction. As a result, the Business A note held by X, and the liability of DE1 under the note, are not taken into account under this section. However, the £100 of cash that was loaned from X to DE1 (and used in Business A) pursuant to the note must be taken into account under this paragraph (c).

(B) The loan of €100 from X to DE1 is a disregarded transaction and, as a result of such disregarded transaction, the €100 is reflected on the books and records of Business A. Therefore, there has been a transfer of €100 from X to Business A. See § 1.988–1(a)(10)(ii) for the application of section 988 to X as a result of the loan.

Example 2. Transfer to a directly owned section 987 QBU. (i) *Facts.* X owns Business A and Business B. X owns equipment that is used in Business A and is reflected on the books and records of Business A. Because Business A has excess manufacturing capacity and X intends to expand the manufacturing capacity of Business B, the equipment formerly used in Business A discontinues being used in Business A and begins being used in Business B. As a result of such equipment being used by Business B, the equipment is removed from the books and records of Business A, and is recorded on the books and records of Business B.

(ii) *Analysis.* As a result of Business B using the equipment formerly used by Business A, the equipment ceases to be reflected on the books and records of Business A, and becomes reflected on the books and records of Business B. As a result, such entries constitute a disregarded transaction. Therefore, there has been a transfer of the equipment from the Business A section 987 QBU to X, and a transfer by X of such equipment to the Business B section 987 QBU.

Example 3. Intercompany sale of property between two section 987 QBUs. (i) *Facts.* X owns DE1 and DE2. DE1 and DE2 own Business A and Business B, respectively. DE1 owns equipment that is used in Business A and is reflected on the books and records of Business A. For business reasons, DE1 sells a portion of the equipment used in Business A to DE2 for cash. The cash used by DE2 to acquire the equipment was generated by Business B and was reflected on Business B's books and records. Following the sale, the cash and equipment will be used in Business A and Business B, respectively. As a result of such sale, the equipment is removed from the books and records of Business A, and is recorded on the books and records of Business B. Similarly, as a result of the sale, the cash is removed from the books and records of Business B, and is recorded on the books and records of Business A.

(ii) *Analysis.* (A) The sale of equipment between DE1 and DE2 is not regarded for Federal tax purposes and therefore is a disregarded transaction. As a result, such sale is not taken into account under this section and does not give rise to an item of income, gain, deduction or loss pursuant to paragraph (c)(2)(iii) of this section. However, the cash and equipment exchanged by DE1 and DE2 in connection with the sale must be taken into account under this paragraph (c).

(B) The sale of the equipment is a disregarded transaction and, as a result of such disregarded transaction, the equipment ceases to be reflected on the books and records of Business A, and becomes reflected on the books and records of Business B. Therefore, there has been a transfer of the equipment from DE1's Business A section 987 QBU owned by X to X, and a subsequent transfer of such equipment from X to DE2's Business B section 987 QBU, owned by X.

(C) As a result of the sale of equipment (that is, the disregarded transaction), the cash proceeds cease to be reflected on the books and records of Business B, and become reflected on the books and records of Business A. Therefore, there has been a transfer of the cash from DE2's Business B section 987 QBU owned by X to X, and a subsequent transfer of such cash from X to DE1's Business A section 987 QBU, owned by X.

Example 4. Transactions between directly and indirectly owned section 987 QBUs. (i) *Facts.* X owns 50% of the interest in P, a partnership. Y owns the other 50% interest in P. P owns 100% of the interests in DE1 and DE2. DE1 owns Business A and DE2 owns Business B. X and Y each have a 50% allocable share of the assets and liabilities of Business A and Business B, as determined under § 1.987–7, that constitute section 987 QBUs. In connection with Business A, DE1 licenses intangible property to both DE2 and X. X enters into the license agreement in a transaction other than in its capacity as a partner of P and, therefore, the license is considered as occurring between P and one who is not a partner within the meaning of section 707(a). DE2 uses the intangible property in Business B. Pursuant to the license agreement, X and DE2 pay a €30 and €50 royalty, respectively, to DE1.

(ii) *Analysis.* (A) The license from DE2 to DE1 is not regarded for U.S. tax purposes and, as a result, royalty payments under the license are disregarded transactions. Thus, neither the payment nor the receipt of the royalty pursuant to the license agreement gives rise to an item of income, gain, deduction or loss pursuant to paragraph (c)(2)(iii) of this section. However, the €50 of cash that is paid from DE2 to DE1 pursuant to the license agreement must be taken into account under this paragraph (c).

(B) As a result of the royalty payment from DE2 to DE1, €50 ceases being reflected on the books and records of Business B, and becomes reflected on the books and records of Business A. Accordingly, there has been a transfer of €25 from the Business B section 987 QBUs of X and Y, to X and Y, respectively. Similarly, there has been a transfer of €25 from X and Y to their respective Business A section 987 QBUs.

(C) The €30 royalty payment from X to DE1 is not a disregarded transaction because it is regarded for U.S. Federal tax purposes. As a result, it gives rise to an item of income and deduction that must be taken into account in computing taxable income or loss of Business A pursuant to § 1.987–3. In addition, the payment does not give rise to a transfer as defined in this paragraph (c).

Example 5. Acquisition of an interest in a partnership. (i) *Facts.* X owns 50% of the interest in P, a partnership. Y owns the other 50% interest in P. P owns Business A. X and Y each have a 50% allocable share of the assets and liabilities of Business A as determined under § 1.987–7, that constitute section 987 QBUs. On December 31, year 1, Z, a domestic corporation with the dollar as its functional currency, contributes cash to P in exchange for a 20% interest in P. The cash Z contributes to P is not used in Business A and is not reflected on Business A's books and records (but is instead reflected on P's books and records). Immediately after Z's contribution of cash to P, Z has a 20% allocable share of the assets and liabilities of Business A as determined under § 1.987–7. In addition, immediately following such contribution X and Y each own a 40% interest in P and have a 40% allocable share of the assets and liabilities of Business A, as determined under § 1.987–7, that constitute section 987 QBUs.

(ii) *Analysis.* (A) As a result of Z's acquisition of an interest in P, a section 987 partnership, 10% of the assets and liabilities of Business A ceased being reflected on the books and records of both X's and Y's section 987 QBUs. As a result, such amounts are treated as if they are transferred from such section 987 QBUs to X and Y.

(B) As a result of Z's acquisition of the interest in P, a section 987 partnership, Z was allocated 20% of the assets and liabilities of Business A. Because Z and Business A have different functional currencies, Z's portion of the Business A assets and liabilities constitutes a section 987 QBU. Moreover, 20% of the assets and liabilities of Business A are reflected on the books and records of Z's section 987 QBU as a result of Z's acquisition of the interest in P. Therefore, 20% of the assets and liabilities of Business A are treated as transferred from Z to Z's section 987 QBU.

Example 6. Conversion of a DE to a partnership through a sale of an interest. (i) *Facts.* X owns 100% of the interests in DE1. DE1 owns Business A. On December 31, year 1, Y acquires 50% of the DE1 interests from X for cash. Immediately after such acquisition, Y has a 50% allocable share of the assets and liabilities of Business A as determined under § 1.987–7.

(ii) *Analysis.* (A) For Federal tax purposes DE1 is converted to a partnership when Y purchases the 50% interest in DE1. Y's purchase of 50% of X's interest in DE1 is treated as the purchase of 50% of Business A, which is treated as held directly by X for Federal tax purposes. Immediately after the deemed purchase of 50% of Business A, X and Y are treated as contributing their respective interests in Business A to a partnership. See Rev. Rul. 99–5 (situation 1), (1999–1 CB 434). See § 601.601(d)(2) of this chapter. For purposes of this paragraph (c), these deemed transactions are not taken into account.

(B) As a result of Y's acquisition of 50% of X's interest in DE1, a section 987 DE, 50% of the assets and liabilities of Business A ceased being reflected on the books and records of X's section 987 QBU. As a result, such amounts are treated as if they are transferred from X's section 987 QBU to X.

(C) As a result of Y's acquisition of 50% of the interest in DE1, a section 987 DE, Y was allocated 50% of the assets and liabilities of Business A. Because Y and Business A have different functional currencies, Y's portion of the Business A assets and liabilities constitutes a section 987 QBU. Moreover, 50% of the assets and liabilities of Business A are reflected on the books and records of Y's section 987 QBU as a result of Y's acquisition of the 50% interest in DE1. Therefore, 50% of the assets and liabilities of Business A are treated as transferred by Y to Y's section 987 QBU.

Example 7. Conversion of a DE to a partnership through a contribution. (i) *Facts.* X owns 100% of the interests in DE1. DE1 owns Business A. On December 31, year 1, Y contributes property to DE1 in exchange for an interest in DE1. The property transferred by Y to DE1 is used in Business A and is reflected on the books and records of Business A. Immediately after such contribution, X and Y each have a 50% allocable share of the assets and liabilities of Business A as determined under § 1.987–7.

(ii) *Analysis.* (A) For Federal tax purposes DE1 is converted to a partnership when Y contributes property to DE1 in exchange for a 50% interest in DE1. Y's contribution is treated as a contribution to a partnership in exchange for an ownership interest in the partnership. X is treated as contributing all of Business A to the partnership in exchange for a partnership interest. See Rev. Rul. 99–5 (situation 2), (1999–1 CB 434). See § 601.601(d)(2) of this chapter. For purposes of this paragraph (c), these deemed transactions are not taken into account.

(B) As a result of Y's acquisition of a 50% interest in DE1, 50% of the assets and liabilities of Business A ceased being reflected on the books and records of X's section 987 QBU, and 50% of the assets contributed by Y to DE1 are reflected on the books and records of such section 987 QBU. As a result, 50% of the Business A assets are treated as if they are transferred from X's section 987 QBU to X. Further, 50% of the assets contributed by Y to DE1 are treated as if they are transferred by X to X's section 987 QBU.

(C) Because Y and Business A have different functional currencies, Y's portion of the Business A assets and liabilities (including the property contributed by Y that is used in Business A) constitutes a section 987 QBU. As a result of Y's acquisition of a 50% interest in DE1, 50% of the assets and liabilities of Business A are reflected on the books and records of Y's section 987 QBU and, therefore, are treated as if they are transferred by Y to such section 987 QBU.

Example 8. Termination of a partnership under section 708(b). (i) *Facts.* X owns 60% of the interest in P, a partnership. Y owns the other 40% interest in P. P owns Business A. X and Y have a 60% and 40% allocable share of the assets and liabilities of Business A, respectively, as determined under § 1.987–7, that constitute section 987 QBUs. On December 31, year 1, X sells a 50% interest in P to Y. After such sale, X and Y own 10% and 90%, respectively, in P. In addition, after such sale, X and Y have a 10% and 90% allocable share of the assets and liabilities of Business A, respectively, as determined under § 1.987–7.

(ii) *Analysis.* (A) X's sale of 50% of the interests in P to Y causes P to terminate pursuant to section 708(b). As a result of such termination, P is treated as if it contributes all of its assets and liabilities to a new partnership in exchange for an interest in the new partnership; and, immediately thereafter, P distributes 10% and 90% of the interests in the new partnership to X and Y, respectively, in liquidation of P. See § 1.708–1(b)(4). For purposes of this paragraph (c), these deemed transactions are not taken into account.

(B) As a result of Y's acquisition of a 50% interest in P from X, 50% of the assets and liabilities of Business A ceased being reflected on the books and records of X's section 987 QBU and become reflected on the books and records of Y's section 987 QBU. As a result, 50% of the Business A assets are treated as if they are transferred from X's section 987 QBU to X. Further, 50% of the Business A assets are treated as if they are transferred by Y to Y's section 987 QBU.

Example 9. Transfer of section 987 QBU to a partnership. (i) *Facts.* X owns Business A. On December 31, year 1, X and Y form P, a partnership. X transfers Business A to P in exchange for a 50% interest in P. Y transfers property to P in exchange for the other 50% interest in P. The property Y transfers to P is not used in Business A and is not reflected on the books and records of Business A (but is instead reflected on the books and records of P). After the formation of P, Business A continues to be an eligible QBU. In addition, after the formation of P, X and Y each have a 50% allocable share of the assets and liabilities of Business A, respectively, as determined under § 1.987–7.

(ii) *Analysis.* As a result of X contributing Business A to P, 50% of the assets and liabilities of Business A ceased being reflected on the books and records of X's section 987 QBU, and became reflected on the books and records of Y's section 987 QBU. As a result, 50% of the Business A assets are treated as if they are transferred from X's section 987 QBU to X. Further, 50% of the Business A assets are treated as if they are transferred from Y to Y's section 987 QBU.

Example 10. Contribution of assets to a corporation. (i) *Facts.* X owns Business A. On

December 31, year 1, X forms Z, a domestic corporation. X and Z do not file a consolidated tax return. X contributes 50% of its Business A assets and liabilities to Z in exchange for 100% of the stock of Z. The Z stock is recorded on the books and records of Business A. After the contribution, X continues to operate Business A, and Business A continues to maintain separate books and records from X.

(ii) *Analysis.* Even though the Z stock is recorded on the books and records of Business A, it is not reflected on the books and records for purposes of section 987 pursuant to paragraph (b)(2) of this section. As a result, there has been a transfer of 50% of the assets and liabilities of Business A to X, and a subsequent transfer of such assets and liabilities to Z. The answer would be the same even if X and Z filed a consolidated return.

Example 11. Transfers pursuant to general tax principles. (i) *Facts.* X owns 100 percent of the stock of Y. Y owns 100 percent of the interests in DE1. DE1 owns Business A. X owns €100. Because Business A is in need of additional capital, X transfers the €100 to Y as a contribution to capital and, as a result of such transfer, Business A records €100 on its separate books and records. Y did not record the €100 on its separate books and records.

(ii) *Analysis.* As a result of the contribution of €100 from X to Y, the €100 is reflected on the books and records of Business A. Pursuant to paragraph (c)(7) of this section, the €100 is treated as if it was transferred first from X to Y. Therefore, the €100 recorded on the books and records of Business A is treated as a transfer from Y to Business A, even though there was no transaction between Y and Business A. See also § 1.988–1(a)(10)(ii) for the application of section 988 to Y as a result of the transaction.

Example 12. Circular transfers. (i) *Facts.* X owns Business A. On December 30, year 1, Business A purports to transfer €100 to X. On January 2, year 2, X purports to transfer €50 to Business A. On January 4, year 2, X purports to transfer another €50 to Business A. As of the end of year 1, X has an unrecognized section 987 loss with respect to Business A, such that a remittance, if respected, would result in recognition of a foreign currency loss under section 987.

(ii) *Analysis.* Because the transfers by Business A are offset by a transfer from X that occurred in close temporal proximity, pursuant to paragraph (c) of this section, the IRS will scrutinize the transaction and may disregard the purported transfers to and from Business A for purposes of section 987.

Example 13. Transfers without economic substance. (i) *Facts.* X owns Business A and Business B. On January 1, year 1, Business A purports to transfer €100 to X. On January 4, year 1, X purports to transfer €100 to Business B. The account in which Business B deposited the €100 is used to pay the operating expenses and other costs of Business A. As of the end of year 1, X has an unrecognized section 987 loss with respect to Business A, such that a remittance, if respected, would result in recognition of a foreign currency loss under section 987.

(ii) *Analysis.* Because Business A continues to have use of the transferred property, pursuant to paragraph (c) of this section, the IRS will scrutinize the transaction and may disregard the €100 purported transfer from Business A to X for purposes of section 987.

Example 14. Offsetting positions in section 987 QBUs. (i) *Facts.* X owns Business A and Business B. Business A and Business B each has the euro as its functional currency. X has not made a grouping election under § 1.987–1(b)(2)(ii). On January 1, year 1, X borrowed €1,000 from a third party lender, recorded the liability with respect to the borrowing on the books and records of Business A, and recorded the €1,000 of borrowed cash on the books and records of Business B. On December 31, year 2, when Business A has $100 of net unrecognized section 987 loss and Business B has $100 of net unrecognized section 987 gain resulting from the change in exchange rates with respect to the liability and the €1,000 cash, X terminates the Business A section 987 QBU.

(ii) *Analysis.* Because Business A and Business B have offsetting positions in the euro, the IRS will scrutinize the transaction to determine if a principal purpose of recording the euro-denominated liability and the borrowed euros on the books and records of Business A and Business B, respectively, was the avoidance of tax under section 987. If such a principal purpose is present, the Commissioner may reallocate the items (that is, the euros and the euro-denominated liability) between Business A, Business B, and X, to reflect the economic substance of the transaction.

Example 15. Offsetting positions with respect to a section 987 QBU and a section 988 transaction. (i) *Facts.* X owns DE1, and DE1 owns Business A. On January 1, year 1, X borrows €1,000 from a third party lender and records the liability with respect to the borrowing on its books and records. X contributes the €1,000 loan proceeds to DE1 and the €1,000 are reflected on the books and records of Business A. On December 31, year 2, when Business A has $100 of net unrecognized section 987 loss resulting from the €1,000 cash received from the borrowing, and the euro-denominated borrowing, if repaid, would result in $100 of gain under section 988, X terminates the Business A section 987 QBU.

(ii) *Analysis.* Because X and Business A have offsetting positions in the euro, the Internal Revenue Service will scrutinize the transaction to determine whether a principal purpose of recording the borrowed euros on the books and records of Business A, or not recording the corresponding euro-denominated liability on the books and records of Business A, was the avoidance of tax under section 987. If such a principal purpose is present, the Commissioner may reallocate the items (that is, the euros and the euro-denominated liability) between Business A and X to reflect the economic substance of the transaction.

(d) *Translation of items transferred to a section 987 QBU*—(1) *In general*—(i) *Assets.* Except as otherwise provided in this section, the adjusted basis of an asset transferred to a section 987 QBU shall be translated into the section 987 QBU's functional currency at the spot rate as defined in § 1.987–1(c)(1)(i) and (ii) on the day of transfer. If the asset transferred is denominated in (or determined by reference to) the functional currency of the section 987 QBU (for example, cash or note denominated in the functional currency of the section 987 QBU), no translation is required.

(ii) *Liabilities.* Except as otherwise provided in this section, a liability of the owner that is transferred to a section 987 QBU, shall be translated into the section 987 QBU's functional currency at the spot rate (as defined in § 1.987–1(c)(1)(i) and (ii)) on the day of transfer. If the liability transferred is denominated in (or determined by reference to) the functional currency of the section 987 QBU, no translation is required.

(2) *Items denominated in the owner's functional currency.* Transactions described in section 988(c)(1)(i) and (ii) and section 988(c)(1)(C) that are denominated in (or determined by reference to) the owner's functional currency and that are attributable to a section 987 QBU under paragraph (b) of this section, shall not be translated and shall be carried on the balance sheet described in § 1.987–4(e) in the owner's functional currency.

§ 1.987–3 Determination of section 987 taxable income or loss of an owner of a section 987 QBU.

(a) *Determination of the section 987 taxable income or loss of an owner of a section 987 QBU.* Except as otherwise provided in this section, the section 987 taxable income or loss of an owner with respect to a section 987 QBU shall be determined in accordance with paragraphs (a)(1) and (a)(2) of this section.

(1) *In general*—(i) *Determination of each item of income, gain, deduction or loss in the section 987 QBU's functional currency.* Except as otherwise provided in this section, the section 987 QBU shall determine each item of income, gain, deduction or loss attributable to such QBU under § 1.987–2(b) in its functional currency under U.S. tax principles.

(ii) *Translation of items into the owner's functional currency.* The owner shall translate each item determined under this paragraph (a)(1) into its functional currency as provided in paragraph (b) of this section.

(2) *Determination in the case of a section 987 QBU owned indirectly through a partnership*—(i) *In general.* Except as otherwise provided in this paragraph (a)(2), the taxable income or loss of a section 987 partnership, and the distributive share of any owner that

is a partner in such partnership, shall be determined in accordance with the provisions of subchapter K of this chapter.

(ii) *Determination of each item of income, gain, deduction or loss in the eligible QBU's functional currency.* Except as otherwise provided in this section, the section 987 partnership shall determine each item of income, gain, deduction or loss reflected on the books and records of each of its eligible QBUs under § 1.987–2(b) in the functional currency of each such QBU.

(iii) *Allocation of items of income, gain, deduction or loss of an eligible QBU.* The section 987 partnership shall allocate the items of income, gain, deduction or loss of each eligible QBU among its partners in accordance with each partner's distributive share of such income, gain, deduction, or loss as determined under subchapter K of this chapter.

(iv) *Translation of items into the owner's functional currency.* To the extent such items are reflected on the books and records of a section 987 QBU of a partner to whom they are allocated, the partner shall adjust the items to conform to U.S. tax principles and translate the items into the partner's functional currency as provided in paragraph (b) of this section.

(b) *Exchange rates to be used in translating items of income, gain, deduction or loss of a section 987 QBU into the owner's functional currency—*(1) *In general.* Except as otherwise provided in this section, the exchange rate to be used by an owner in translating an item of income, gain, deduction, or loss of a section 987 QBU as determined in § 1.987–2(b) into the owner's functional currency shall be the yearly average exchange rate as defined in § 1.987–1(c)(2) for the taxable year. Alternatively, the owner may elect under § 1.987–1(f) to use the spot rate as defined in § 1.987–1(c)(1)(i) and (ii) for the day each item is properly taken into account.

(2) *Exceptions—(i) Depreciation, depletion, and amortization deductions.* The exchange rate to be used by the owner in translating deductions allowable with respect to section 987 historic assets (as defined in § 1.987–1(e)) for depreciation, depletion, and amortization under the pertinent provisions of the Code shall be the historic exchange rate as determined under § 1.987–1(c)(3) for the property to which such deductions are attributable.

(ii) *Gain or loss from the sale of property.* In the case of gain or loss recognized on a sale or other disposition of property that is reflected on the books and records of a section 987 QBU during the taxable year, the following exchange rates shall apply with respect to such sale or other disposition:

(A) *Amount realized—*(*1*) *In general.* Except as otherwise provided in paragraph (b)(2)(ii)(A)(*2*), the exchange rate to be used in translating the amount realized of such property shall be the rate provided in paragraph (b)(1) of this section for the taxable year.

(*2*) *Certain section 987 marked assets.* In the case of a section 987 marked asset (other than cash) that was held on the first day of the taxable year, the exchange rate to be used in translating the amount realized shall be the rate used for such asset in determining the owner functional currency net value of the section 987 QBU under § 1.987–4(d)(1)(i)(B) for the preceding taxable year. However, in the case of a section 987 marked asset (other than cash) transferred to the section 987 QBU or acquired by the section 987 QBU during the taxable year, the exchange rate to be used in translating the amount realized shall be the spot rate, as defined in § 1.987–1(c)(1)(i) and (ii), for the day transferred or acquired.

(B) *Adjusted basis—*(*1*) *In general.* Except as otherwise provided in paragraph (b)(2)(ii)(B)(*2*), the exchange rate to be used in translating the adjusted basis of such property shall be the historic exchange rate as determined under § 1.987–1(c)(3) for such asset.

(*2*) *Certain section 987 marked assets.* In the case of a section 987 marked asset (other than cash) that was held on the first day of the taxable year, the exchange rate to be used in translating its adjusted basis shall be the rate used for such asset in determining the owner functional currency net value of the section 987 QBU under § 1.987–4(d)(1)(i)(B) for the preceding taxable year. However, in the case of a section 987 marked asset (other than cash) transferred to the section 987 QBU or acquired by the section 987 QBU during the taxable year, the exchange rate to be used in translating the adjusted basis of such asset shall be the spot rate, as defined in § 1.987–1(c)(1)(i) and (ii), for the day transferred or acquired.

(*3*) *Gain or loss on the sale, exchange or other disposition of an interest in a section 987 partnership.* For purposes of determining the adjusted basis of a partner's interest in a section 987 partnership and computing gain or loss recognized on the sale, exchange or other disposition of such interest, see § 1.987–7.

(c) *Items of income, gain, deduction or loss that are denominated in the functional currency of the owner.* An item of income, gain, deduction or loss attributable to a section 987 QBU under § 1.987–2(b) that is denominated in (or determined by reference to) the owner's functional currency shall not be translated and shall be taken into account by the section 987 QBU under U.S. tax principles in the owner's functional currency.

(d) *Items of income, gain, deduction or loss that are denominated in a nonfunctional currency (other than the functional currency of the owner).* An item of income, gain, deduction or loss attributable to a section 987 QBU under § 1.987–2(b) that is denominated in (or determined by reference to) a nonfunctional currency (other than the owner's functional currency) shall be translated into the section 987 QBU's functional currency at the spot rate as defined in § 1.987–1(c)(1)(i) and (ii) on the day such item is properly taken into account.

(e) *Section 988 transactions—*(1) *In general.* Except as provided in paragraph (e)(2) of this section, section 988 shall apply to the section 988 transactions attributable to a section 987 QBU under § 1.987–2(b), and the timing of any gain or loss shall be determined under the applicable provisions of the Internal Revenue Code. Such transactions are section 987 historic items as defined in § 1.987–1(e).

(2) *Certain transactions denominated in (or determined by reference to) the owner's functional currency are not section 988 transactions.* Transactions described in section 988(c)(1)(A)(i) and (ii) and section 988(c)(1)(C) that are denominated in (or determined by reference to) the owner's functional currency and that are attributable to a section 987 QBU under § 1.987–2(b) shall not be treated as section 988 transactions to such QBU. Thus, no currency gain or loss shall be recognized by a section 987 QBU under section 988 with respect to such items.

(f) *Examples.* The following examples illustrate the application of this section:

Example 1. (i) U.S. Corp is a domestic corporation with the dollar as its functional currency. U.S. Corp owns French DE, a section 987 DE that has a section 987 branch with the euro as its functional currency. For purposes of paragraph (b)(1) of this section, U.S. Corp uses the yearly average exchange rate under § 1.987–1(c)(2) to translate items of income, gain, deduction or loss where such rate is appropriate. U.S. Corp also properly elects to use a spot rate convention under § 1.987–1(c)(1)(ii) where the spot rate is otherwise required. Under this convention, items booked during a particular month are translated at the average of the spot rates on the first and last day of the preceding month (the "convention rate"). Accordingly, gross sales income is translated at the yearly average exchange rate and under paragraph (b)(2)(ii)(B) of this section the basis of assets

acquired during a month is translated into dollars at the convention rate. Assume that the yearly average exchange rate for 2009 is €1 = $1.05. For the taxable year 2009, French DE sells 1,200 units of inventory for a sales price of €3 per unit. Assume that the purchase price for each inventory unit is €1.50. Thus, French DE's dollar gross sales will be computed as follows:

GROSS SALES

Month	# of units	€	€/$ 2009 ave. exchange rate	$
Jan	100	300	€1=$1.05	315
Feb	200	600	€1=$1.05	630
March	0	0	€1=$1.05	0
April	200	600	€1=$1.05	630
May	100	300	€1=$1.05	315
June	0	0	€1=$1.05	0
July	100	300	€1=$1.05	315
Aug	100	300	€1=$1.05	315
Sept	0	0	€1=$1.05	0
Oct	0	0	€1=$1.05	0
Nov	100	300	€1=$1.05	315
Dec	300	900	€1=$1.05	945
	1,200	3,600		3,780

OPENING INVENTORY AND PURCHASES

Month	# of units	€	€/$ convention exchange rate	$
Opening inventory from 2008	100	150	€1=$1.00	150
Purchases:				
Jan	300	450	€1=$1.00	450
Feb	0	0	€1=$1.05	0
March	0	0	€1=$1.03	0
April	300	450	€1=$1.02	459
May	0	0	€1=$1.04	0
June	0	0	€1=$1.05	0
July	300	450	€1=$1.06	477
Aug	0	0	€1=$1.05	0
Sept	0	0	€1=$1.06	0
Oct	0	0	€1=$1.07	0
Nov	300	450	€1=$1.08	486
Dec	0	0	€1=$1.08	0
Total Purchases	1,200	1,800		1,872

(ii) French DE uses a first in first out method of accounting for inventory (FIFO). Thus, for 2009, French DE is considered to have sold the 100 units of opening inventory ($150), the 300 units purchased in January ($450), the 300 units purchased in April ($459), the 300 units purchased in July ($477) and 200 of the 300 units purchased in November ($324). Thus, French DE's cost of goods sold is $1,860. French DE's opening inventory for 2010 is 100 units of inventory with a dollar basis of $162.

(iii) Accordingly, for purposes of section 987 French DE has gross income in dollars of $1,920 ($3,780–$1,860).

Example 2. (i) The facts are the same as in *Example 1* except that for purposes of paragraph (b)(1) of this section, U.S. Corp properly elects to use a spot rate convention under § 1.987–1(c)(1)(ii) to translate items of income, gain, deduction or loss where such rate is appropriate. Thus, French DE's dollar gross sales will be computed as follows:

GROSS SALES

Sales	# of units	€	€/$ convention exchange rate	$
Jan	100	300	€1=$1.00	300
Feb	200	600	€1=$1.05	630
March	0	0	€1=$1.03	0
April	200	600	€1=$1.02	612
May	100	300	€1=$1.04	312
June	0	0	€1=$1.05	0
July	100	300	€1=$1.06	318
Aug	100	300	€1=$1.05	315
Sept	0	0	€1=$1.06	0
Oct	0	0	€1=$1.07	0
Nov	100	300	€1=$1.08	324
Dec	300	900	€1=$1.08	972

GROSS SALES—Continued

Sales	# of units	€	€/$ convention exchange rate	$
	1,200	3,600	.....	3,783

(ii) As in *Example 1*. French DE's cost of goods sold is $1,860.

(iii) Accordingly, for purposes of section 987 French DE has gross income in dollars of $1,923 ($3,783 − $1,860).

Example 3. The facts are the same as in *Example 1* except that French DE sold raw land on November 1, 2009 for €10,000. The yearly average rate for 2009 was €1=$1.05. The land was purchased on October 16, 2007 for €8,000 when the convention rate was €1=$1.00. Under paragraph (a)(1) of this section, French DE will determine the amount realized and basis in euros. Under paragraph (a)(1)(ii) of this section, the amount realized is translated into dollars at the yearly average exchange rate for 2009 as provided in paragraph (b)(2)(ii)(A) of this section (€10,000 × $1.05 = $10,500) and the basis at the convention rate for 2007 as provided in paragraph (b)(2)(ii)(B) of this section and § 1.987–1(c)(3) €8,000 × $1 = $8,000). Accordingly, the amount of gain reported by U.S. Corp on the sale of the land is $2,500 ($10,500 − $8,000).

Example 4. The facts are the same as in *Example 3* except that U.S. Corp properly elects under paragraph (b)(1) of this section to use the spot rate to translate items of income, gain, deduction or loss. Accordingly, the amount realized will be translated at the convention rate on the day of sale. Assume that the convention rate for November 2009 is €1 = $1.08. Under these facts, the amount realized is $10,800 (€10,000 × $1.08) and the basis on the day of purchase $8,000 (€8,000 × $1.00). The amount of gain reported by U.S. Corp on the sale of the land is $2,800 ($10,800 − $8,000).

Example 5. The facts are the same as in *Example 1* except that on September 15, 2009, French DE provides services to an unrelated customer and receives a cash payment of €2,000 on that day. Under paragraph (b)(1) of this section, U.S. Corp translates the €2,000 item of income into dollars at the yearly average exchange rate of €1 = $1.05. Accordingly, U.S. Corp will report income of $2,100 from providing services.

Example 6. The facts are the same as in *Example 5* except that U.S. Corp properly elects under paragraph (b)(1) of this section to use the spot rate to translate items of income, gain, deduction or loss. Assume that the convention rate for September 2009 is €1 = $1.06. Under these facts, U.S. Corp translates the €2,000 item of income into dollars at the convention rate of €1 = $1.06. Accordingly, U.S. Corp will report income of $2,120 from providing services.

Example 7. The facts are the same as in *Example 1* except that on March 31, 2009, French DE incurs €500 of rental expense, €300 of salary expense and €100 of utilities expense. Under paragraph (b)(1) of this section, U.S. Corp translates these items of expense at the yearly average exchange rate of €1 = $1.05. Accordingly the expenses are translated as follows: rental expense of $525, salary expense of $315 and utilities expense of $105.

Example 8. The facts are the same as in *Example 7* except that U.S. Corp properly elects under paragraph (b)(1) of this section to use the spot rate to translate items of income and expense. Assume that the convention rate for March 2009 is €1 = $1.03. Under these facts, U.S. Corp translates the €500 of rental expense, €300 of salary expense and €100 of utilities expense at the convention rate of €1 = $1.03. Accordingly, the expenses are translated as follows: rental expense of $515, salary expense of $309 and utilities expense of $103.

Example 9. The facts are the same as in *Example 1* except that during 2009, French DE incurred €100 of depreciation expense with respect to a truck. The truck was purchased on January 15, 2008, when the convention rate was €1 = $1.02. Under paragraph (b)(2)(i) of this section, the €100 of depreciation is translated into dollars at the historic exchange rate. Since U.S. Corp has properly elected to use a spot rate convention, depreciation will be translated in accordance with the convention. Accordingly, U.S. Corp translates the €100 of depreciation to equal $102.

Example 10. (i) The facts are the same as in *Example 1* except that on January 12, 2009, French DE performed services for a U.K. person and received £10,000 in compensation. The exchange rate on January 12, 2009, was £1 = €1.25. Under paragraph (d) of this section, French DE will translate such income into euros at the spot rate on January 12, 2009. Accordingly, French DE will take into account €12,500 of income from services in 2009. Under paragraph (b)(1) of this section, U.S. Corp translates the €12,500 item of income into dollars at the yearly average euro to dollar exchange rate. Assume that such exchange rate is €1 = $1.10. Accordingly, U.S. Corp translates the €12,500 income from services to equal $13,750.

(ii) On October 16, 2009, French DE disposes of the £10,000 for €10,000. Under section 988(c)(1)(C), the disposition is a section 988 transaction. Under § 1.988–2(a)(2), French DE will realize a loss of €2,500 (€10,000 amount realized less €12,500 basis). Under paragraph (b)(1) of this section, U.S. Corp translates the €2,500 loss into dollars at the yearly average euro to dollar exchange rate. Assume that such exchange rate is €1 = $1.05. Accordingly, U.S. Corp translates the €2,500 section 988 loss to equal $2,625.

§ 1.987–4 Determination of net unrecognized section 987 gain or loss of a section 987 QBU.

(a) *In general*. The net unrecognized section 987 gain or loss of a section 987 QBU shall be determined by the owner annually as provided in paragraph (b) of this section in the owner's functional currency. Only assets and liabilities reflected on the books and records of the section 987 QBU under § 1.987–2(b) shall be taken into account.

(b) *Calculation of net unrecognized section 987 gain or loss of a section 987 QBU*. Net unrecognized section 987 gain or loss of a section 987 QBU for a taxable year shall equal the sum of—

(1) The section 987 QBU's net accumulated unrecognized section 987 gain or loss for all prior taxable years to which these regulations apply as determined in paragraph (c) of this section; and

(2) The section 987 QBU's unrecognized section 987 gain or loss for the current taxable year as determined in paragraph (d) of this section.

(c) *Net accumulated unrecognized section 987 gain or loss for all prior taxable years*. A section 987 QBU's net accumulated unrecognized section 987 gain or loss for all prior taxable years is the aggregate of the amounts determined under paragraph (d) of this section for all prior years to which these regulations apply, reduced by the amounts taken into account under § 1.987–5 upon a remittance for all such prior taxable years. This amount shall include amounts appropriately considered as net unrecognized exchange gain or loss under the transition rules of § 1.987–10.

(d) *Calculation of unrecognized section 987 gain or loss of a section 987 QBU for a taxable year*. The unrecognized section 987 gain or loss of a section 987 QBU for a taxable year shall be determined under paragraphs (d)(1) through (7) of this section as follows:

(1) *Step 1: Determine the change in the owner functional currency net value of the section 987 QBU for the taxable year* − (i) *In general*. The change in the owner functional currency net value of the section 987 QBU for the taxable year shall equal—

(A) The owner functional currency net value of the section 987 QBU, determined in the functional currency of the owner under paragraph (e) of this section, on the last day of the current taxable year; less

(B) The owner functional currency net value of the section 987 QBU, determined in the functional currency of the owner under paragraph (e) of this section on the last day of the preceding taxable year. This amount shall be zero in the case of the QBU's first taxable year.

(ii) *Year section 987 QBU is terminated.* If a section 987 QBU is terminated under the rules of § 1.987–8 during an owner's taxable year, the owner functional currency net value of the section 987 QBU as provided in paragraph (d)(1)(i)(A) of this section shall be determined on the day the section 987 QBU is terminated.

(2) *Step 2: Increase the aggregate amount determined in step 1 by the assets transferred from the section 987 QBU to its owner*–(i) *In general.* The aggregate amount determined in paragraph (d)(1) of this section shall be increased by the total amount of assets described in paragraph (d)(2)(ii) of this section transferred from the section 987 QBU to the owner during the taxable year translated into the owner's functional currency as provided in paragraph (d)(2)(iii) of this section.

(ii) *Assets transferred from the section 987 QBU to the owner during the taxable year.* The assets transferred from the section 987 QBU to the owner for the taxable year shall equal the aggregate of—

(A) The amount of the section 987 QBU's functional currency and the adjusted basis of any section 987 marked asset (as defined in § 1.987–1(d)) transferred from the section 987 QBU to the owner during the taxable year determined in the functional currency of the section 987 QBU and translated into the owner's functional currency as provided in paragraph (d)(2)(iii)(A) of this section; and

(B) The adjusted basis of any section 987 historic asset (as defined in § 1.987–1(e)) transferred to the owner during the taxable year determined in the functional currency of the section 987 QBU and translated into the owner's functional currency as provided in paragraph (d)(2)(iii)(B) of this section. Such amount shall be adjusted to take into account the proper translation of depreciation, depletion and amortization as provided in § 1.987–3(b)(2)(i).

(iii) *Translation of amounts transferred from the section 987 QBU to the owner.* In the case of a transfer from the section 987 QBU to an owner of any asset the following exchange rates shall be used:

(A) In the case of an amount described in paragraph (d)(2)(ii)(A) of this section, the spot exchange rate, as defined in § 1.987–1(c)(1), on the day of transfer.

(B) In the case of a transfer of a section 987 historic asset, the historic exchange rate for such asset as defined in § 1.987–1(c)(3).

(3) *Step 3: Decrease the aggregate amount determined in steps 1 and 2 by the owner's transfers to the section 987 QBU*—(i) *In general.* The aggregate amount determined in paragraphs (d)(1) and (d)(2) of this section shall be decreased by the total amount of assets transferred from the owner to the section 987 QBU during the taxable year determined in the functional currency of the owner as provided in paragraph (d)(3)(ii) of this section.

(ii) *Total of all amounts transferred from the owner to the section 987 QBU during the taxable year.* The total amount of assets transferred from the owner to the section 987 QBU for the taxable year shall equal the aggregate of—

(A) The total amount of functional currency of the owner transferred to the section 987 QBU during the taxable year; and

(B) The adjusted basis, determined in the functional currency of the owner, of any asset transferred to the section 987 QBU during the taxable year (after taking into account § 1.988–1(a)(10)).

(4) *Step 4: Decrease the aggregate amount determined in steps 1 through 3 by the amount of liabilities transferred from the section 987 QBU to the owner.* The aggregate amount determined in paragraphs (d)(1) through (d)(3) of this section shall be decreased by the aggregate amount of liabilities transferred from the section 987 QBU to the owner. The amount of such liabilities shall be translated into the functional currency of the owner at the spot exchange rate, as defined in § 1.987–1(c)(1), on the day of transfer.

(5) *Step 5: Increase the aggregate amount determined in steps 1 through 4 by amount of liabilities transferred from the owner to the section 987 QBU.* The aggregate amount determined in paragraphs (d)(1) through (d)(4) of this section shall be increased by the aggregate amount of liabilities transferred by the owner to the section 987 QBU. The amount of such liabilities shall be translated into the functional currency of the owner, if required, at the spot exchange rate, as defined in § 1.987–1(c)(1)(i) and (ii), on the day of transfer.

(6) *Step 6: Increase the aggregate amount determined in steps 1 through 5 by the section 987 taxable loss of the section 987 QBU for the taxable year.* In the case of a section 987 taxable loss of the section 987 QBU computed under § 1.987–3 for the taxable year, the aggregate amount determined in paragraphs (d)(1) through (d)(5) of this section shall be increased by such section 987 taxable loss.

(7) *Step 7: Decrease the aggregate amount determined in steps 1 through 5 by the section 987 taxable income of the section 987 QBU for the taxable year.* In the case of section 987 taxable income of the section 987 QBU computed under § 1.987–3 for the taxable year, the aggregate amount determined in paragraphs (d)(1) through (d)(5) of this section shall be decreased by such section 987 taxable income.

(e) *Determination of the owner functional currency net value of a section 987 QBU*—(1) *In general.* The owner functional currency net value of a section 987 QBU on the last day of a taxable year shall equal the aggregate amount of the QBU's functional currency and the basis of each asset on the section 987 QBU's balance sheet on that day, less the aggregate amount of each liability on the section 987 QBU's balance sheet on that day translated, if necessary, into the owner's functional currency as provided in paragraph (e)(2) of this section. Such amount shall be determined as follows:

(i) The owner, or section 987 QBU on behalf of the owner, shall prepare a balance sheet for the relevant date from the section 987 QBU's books and records (within the meaning of § 1.989(a)–1(d)) as recorded in the section 987 QBU's functional currency showing all assets and liabilities reflected on such books and records as provided in § 1.987–2(b). Assets and liabilities denominated in the functional currency of the owner shall be reflected on the balance sheet in the owner's functional currency.

(ii) The owner, or section 987 QBU on behalf of the owner, shall make adjustments necessary to conform the items reflected on the balance sheet described in paragraph (e)(1)(i) of this section to United States generally accepted accounting principles and tax accounting principles.

(iii) The owner, or section 987 QBU on behalf of the owner, shall translate the asset and liability amounts on the adjusted balance sheet described in paragraph (e)(1)(ii) of this section into the functional currency of the owner in accordance with paragraph (e)(2) of this section. Assets and liabilities denominated in the functional currency of the owner are not translated.

(2) *Translation of balance sheet items into the owner's functional currency.* The amount of the section 987 QBU's functional currency, the basis of an asset, or the amount of a liability (other

than an asset or liability reflected on the balance sheet in the functional currency of the owner) shall be translated as follows:

(i) *Section 987 marked item.* A section 987 marked item as defined in § 1.987–1(d) shall be translated into the owner's functional currency at the spot exchange rate as defined in § 1.987–1(c)(1)(i) and (ii) on the last day of the taxable year.

(ii) *Section 987 historic item.* A section 987 historic item as defined in § 1.987–1(e) shall be translated into the owner's functional currency at the historic exchange rate as defined in § 1.987–1(c)(3).

(f) *Examples.* The provisions of this section are illustrated by the following examples. Unless otherwise indicated, all items are assumed to be reflected on the books and records, within the meaning of § 1.987–2(b), of the relevant section 987 QBU.

Example 1. (i) U.S. Corp is a calendar year domestic corporation with the dollar as its functional currency. On July 1, 2009, U.S. Corp establishes Japan Branch that has the yen as its functional currency. Japan Branch is a section 987 QBU of U.S. Corp. U.S. Corp properly elects to use a spot rate convention under § 1.987–1(c)(1)(ii) with respect to Japan Branch. Under this convention, the spot rate for any transaction occurring during a month is the spot rate on the first day of the month. U.S. Corp also elects under § 1.987–3(b)(1) to use this convention to translate items of income, gain, deduction, or loss into dollars. On July 1, 2009, when $1 = ¥100 (or ¥1 = $0.01), U.S. Corp transfers $1,000 to Japan Branch and raw land with a basis of $500. Japan Branch immediately purchases ¥100,000 with the $1,000. On the same day, Japan Branch borrows ¥10,000. Assume that for the taxable year 2009, Japan Branch earns ¥2,000 per month (total of ¥12,000 for the six month period from July 1, 2009, through December 31, 2009) for providing services and incurs ¥333.33 per month (total of ¥2,000 when rounded for the six month period from July 1, 2009, through December 31, 2009) of related expenses. Assume that all items of income earned and expenses incurred by Japan Branch during 2009 are received and paid, respectively, in yen. Further, assume that the ¥12,000 of income when properly translated under the monthly convention equals $109.08 and that the ¥2,000 of related expenses equal $18.18. Thus, Japan Branch's income translated into dollars equals $90.90. Assume that the spot exchange rate on the December 1, 2009, is $1 = ¥120 (¥1 = $0.00833).

(ii) Under paragraph (a) of this section, U.S. Corp must compute the net unrecognized section 987 gain or loss of Japan Branch for 2009. Since this is Japan Branch's first taxable year, the net unrecognized section 987 gain or loss as defined under paragraph (b) of this section is the branch's unrecognized section 987 gain or loss for 2009 as determined in paragraph (d) of this section. The calculation under paragraph (d) of this section is made as follows:

(iii) *Step 1.* Under paragraph (d) of this section, U.S. Corp must determine the change in the owner functional currency net value of Japan Branch for the year 2009 in dollars. The change in the owner functional currency net value of Japan Branch for 2009 is equal to the owner functional currency net value of Japan Branch determined in dollars on the last day of 2009, less the owner functional currency net value of Japan Branch determined in dollars on the last day of the preceding taxable year.

(A) The owner functional currency net value of Japan Branch determined in dollars on the last day of the current taxable year is determined under paragraph (e) of this section. Such amount is the aggregate of the basis of each asset on Japan Branch's balance sheet on December 31, 2009, less the aggregate of the amount of each liability on the Japan Branch's balance sheet on that day, translated into dollars as provided in paragraph (e)(2) of this section.

(B) For this purpose, Japan Branch will show the following assets and liabilities on its balance sheet for December 31, 2009:

(1) Cash of ¥120,000 [($1,000 transferred and immediately converted to ¥100,000) + ¥10,000 borrowed + ¥12,000 income from services − ¥2,000 of expenses].

(2) Raw land with a basis of ¥50,000.

(3) Liabilities of ¥10,000.

(C) Under paragraph (e)(2) of this section, U.S. Corp will translate these items as follows. The cash of ¥120,000 is a section 987 marked asset and the ¥10,000 liability is a section 987 marked liability as defined in § 1.987–1(d). These items are translated into dollars on December 31, 2009, using the spot rate on December 1, 2009 of ¥1 =$ 0.00833. The raw land is a section 987 historic asset as defined in § 1.987–1(e) and is translated into the dollars at the convention rate for the day of transfer (¥1 = $0.01). Thus, the owner functional currency net value of Japan Branch on December 31, 2009, in dollars is $1,416.60 determined as follows:

Asset	Amount in ¥	Translation rate	Amount in $
Cash	[4] 120,000	12/01/09 spot convention rate on 12/31/09 of ¥1=$0.00833.	999.60
Land	50,000	Historic rate on 7/1/09 of ¥1=$0.01	500.00
Total assets			1,499.60
Liability:			
Bank Loan	10,000	12/01/09 spot convention rate on 12/31/09 of ¥1 = $0.00833.	83.30
Total liabilities			83.30
Owner functional currency net value of Japan Branch on December 31, 2009 in dollars.			1,416.30

(D) Under paragraph (d)(1) of this section, the change in owner functional currency net value of Japan Branch for 2009 is equal to the owner functional currency net value of the branch determined in dollars on December 31, 2009 ($1,416.30) less the owner functional currency net value of the branch determined in dollars on the last day of the preceding taxable year. Since this is the first taxable year of Japan Branch, the owner functional currency net value of Japan Branch determined in dollars on the last day of the preceding taxable year is zero under paragraph (d)(1)(i)(B) of this section. Accordingly, the change in owner functional currency net value of Japan Branch for 2009 is $1,416.30.

(iv) *Step 2.* Under paragraph (d)(2) of this section, the aggregate amount determined in paragraph (d)(1) of this section (step 1) is increased by the total amount of assets described in paragraph (d)(2)(ii) of this section transferred from the section 987 QBU to the owner during the taxable year translated into the owner's functional currency as provided in paragraph (d)(2)(iii) of this section. Since no such amounts were transferred under these facts, there is no change in the $1,416.30 determined in step 1.

(v) *Step 3.* Under paragraph (d)(3) of this section, the aggregate amount determined in paragraphs (d)(1) and (2) of this section (steps 1–2) is decreased by the total amount of assets transferred from the owner to the section 987 QBU during the taxable year as determined in paragraph (d)(3)(ii) of this section in dollars. On July 1, 2009, U.S. Corp transferred to Japan Branch $1,000 (which Japan Branch immediately converted into ¥100,000) and raw land with a basis of $500 (equal to ¥50,000 on the day of transfer).

[4] Opening cash of ¥100,000 + ¥10,000 borrowed + ¥12,000 income from services − ¥2,000 expenses.

Thus, the step 2 amount of $1,416.30 is reduced by $1,500.00 to equal ($83.70).

(vi) *Steps 4, 5 and 6.* Since no liabilities were transferred by U.S. Corp to Japan Branch or vice versa, the amount determined after applying paragraphs (d)(1) through (d)(5) of this section is ($83.70). Further, paragraph (d)(6) of this section does not apply since Japan Branch does not have a section 987 taxable loss.

(vii) *Step 7.* Under paragraph (d)(7) of this section, the aggregate amount determined after applying paragraphs (d)(1) through (d)(5) of this section (steps 1–5) is decreased by the section 987 taxable income of Japan Branch of $90.90. Accordingly, the unrecognized section 987 loss of Japan Branch for 2009 is $174.60 (−$83.70−$90.90).

Example 2. (i) U.S. Corp, a calendar year domestic corporation with the dollar as its functional currency, operates in the United Kingdom through UK Branch. UK Branch has the pound as its functional currency and is a section 987 QBU. U.S. Corp properly elects to use a spot rate convention under § 1.987–1(c)(1)(ii). Under this convention, the spot rate for any transaction occurring during a month is the average of the pound spot rate and the 30-day forward rate for pounds on the next-to-last Thursday of the preceding month. Pursuant to § 1.987–3(b)(1), U.S. Corp uses the yearly average exchange rate as defined in § 1.987–1(c)(2) to translate items of income, gain, deduction, or loss into dollars for the taxable year, where appropriate. The yearly average exchange rate for 2009 was £1 = $1.05. The closing balance sheet of UK Branch for the prior year (2008) reflected the following assets and liabilities. With respect to assets, UK Branch held—

(A) Cash of £100;

(B) Plant purchased in May 2007 with an adjusted basis of £1000;

(C) A machine purchased in May 2007 with an adjusted basis of £200;

(D) Inventory of 100 units manufactured in December 2008 with a basis of £100;

(E) Portfolio stock (as defined in § 1.987–2(b)(2)(ii)) in ABC Corporation purchased in September 2008 with a basis of £158; and

(F) $50 acquired in 2008 (and held in a non-interest bearing account).

With respect to liabilities, UK Branch has £50 of long-term debt entered into in 2007 with F Bank, an unrelated bank. The plant, machine, inventory, stock and dollars are section 987 historic assets as defined in § 1.987–1(e). The cash of £100 and long-term debt are section 987 marked items as defined under § 1.987–1(d). Assume the U.S. Corp translated UK Branch's 2008 closing balance sheet as follows:

Assets	Amount in £	Translation Rate	Amount in $
Cash	100	Spot convention rate in Dec. 2008 £1 = $1	100.00
Plant	1,000	Historic rate-2007 May convention rate £1= $0.90	900.00
Machine	200	Historic rate-2007 May convention rate £1= $0.90	180.00
Stock	158	Historic rate-2008 Sept. convention rate £1= $.95	150.00
Inventory	100	Historic rate-2008 Dec. convention rate £1 = $1	100.00
Dollars	$50	Dollars are not translated	50.00
Total assets			1,480.00
Liabilities:			
Bank Loan	£50	Spot convention rate in Dec. 2008 £1 = $1	50.00
Total liabilities			50.00
2008 ending owner functional currency net value (in dollars).			1,430

(ii) UK Branch uses the first in first out method of accounting for inventory. In 2009, UK Branch sold 100 units of inventory for a total of £300 and purchased another 100 units of inventory in December 2009 for £100. Assume that the dollar basis of the inventory purchased in December 2009 when translated at the December 2009 monthly convention rate is $110; that depreciation with respect to the plant is £33 and for the machine £40[5]; and that UK Branch incurred £30 of business expenses during 2009. Assume all items of income earned and expenses incurred during 2009 are received and paid, respectively, in pounds. The yearly average exchange rate for 2009 is £1 = $1.05. Under § 1.987–3, UK Branch's section 987 taxable income or loss is determined as follows:

Item	Amount in £	Translation Rate	Amount in $
Gross receipts	300	2009 yearly ave. rate £1 = $1.05	315.00
Less:			
COGS	(100)	Historic rate-Dec. 2008 convention rate £1= $1	(100.00)
Gross income	200		215.00
Dep:			
Plant	(33)	Historic rate-May 2007 convention rate £1= $0.90	(29.70)
Machine	(40)	Historic rate-May 2007 convention rate £1= $0.90	(36.00)
Other expenses	(30)	2009 yearly ave. rate £1 = $1.05	(31.50)
Total expenses			97.20
Section 987 taxable income			117.80

Accordingly, UK Branch has $117.80 of section 987 taxable income.

(iii) Assume that in December 2009, UK Branch transferred $20 and £30 to U.S. Corp and that U.S. Corp transferred a computer with a basis of $10 to UK Branch. The convention exchange rate for December 2009 is £1 = $1.10. Finally, assume that U.S. Corp's net accumulated unrecognized section 987 gain or loss for all prior taxable years as determined in paragraph (c) of this section is $30.

(iv) The unrecognized section 987 gain or loss of UK Branch for 2009 is determined as follows:

(A) Step 1: *Determine the change in owner functional currency net value of UK Branch.* Under paragraph (d)(1) of this section, the

[5] The depreciation assumptions are for illustrative purposes only and may not be consistent with true depreciation rates.

change in owner functional currency net value for the taxable year must be determined. This amount is equal to the owner functional currency net value of UK Branch determined under paragraph (e) of this section on the last day of 2009, less the owner functional currency net value of UK Branch determined on the last day of 2008. The owner functional currency net value of UK Branch on December 31, 2009, and the change in owner functional currency net value is determined as follows:

Asset	Amount in £	Translation rate	Amount in $
Cash	[6] 240	Spot convention rate in Dec. 2009 £1 = $1.10	264.00
Plant	[7] 967	Historic rate-May 2007 convention rate £1 = $0.90	870.30
Machine	[8] 160	Historic rate-May 2007 convention rate £1 = $0.90	144.00
Inventory	100	Historic rate—Dec. 2009 convention rate £1 = $1.10	110.00
Computer	9	Historic rate—Dec. 2009 convention rate £1 = $1.10	10.00
Stock	158	Historic rate—Sept. 2008 convention rate £1 = $.95	150.00
Dollars	[9] $ 30	Dollars are not translated	30.00
Total assets			1,578.30
Liability:			
Bank Loan	£50	Spot convention rate in Dec. 2009 £1 = $1.10	55.00
Total liabilities			55.00
2009 ending owner functional currency net value (in dollars).			1,523.30
Less: 2008 ending owner functional currency net value (in dollars).			($1,430.00)
Change in owner functional currency net value.			93.30

(B) *Step 2: Increase the aggregate amount described in step 1 by each owner's share of assets transferred by the section 987 QBU to its owners.* Under paragraph (d)(2) of this section, the aggregate amount determined in step 1 must be increased by the total amount of assets described in paragraph (d)(2)(ii) of this section transferred from UK Branch to U.S. Corp during the taxable year, translated into U.S. Corp's functional currency as provided in paragraph (d)(2)(iii) of this section. The amount of assets transferred from UK Branch to U.S. Corp during 2009 is determined as follows:

Asset	Amount in £	Translation rate	Amount in $
£30 currency	30	Spot convention rate in Dec. 2009 £1 = $1.10	33.00
$20 currency	$20	Dollars are not translated	20.00
Total			53.00

(C) *Step 3: Decrease the aggregate amount described in steps 1 and 2 by the owner's transfers to the section 987 QBU.* Under paragraph (d)(3) of this section, the aggregate amount determined in steps 1 and 2 must be decreased by the total amount of all assets transferred from U.S. Corp to UK Branch during the taxable year as determined in paragraph (d)(3)(ii) of this section. The amount of assets transferred from U.S. Corp to UK Branch is determined as follows:

Asset	Amount in £	Translation rate	Amount in $
Computer	£9	Spot convention rate in Dec. 2009 £1 = $1.10	$10.00
Total			10.00

(D) *Step 4: Decrease the aggregate amount determined in steps 1 through 3 by the amount of liabilities transferred by the section 987 QBU to the owner.* Under paragraph (d)(4) of this section, the aggregate amount determined in steps 1 through 3 must be decreased by the aggregate amount of liabilities transferred by UK Branch to U.S. Corp. Under these facts, such amount is $0.

(E) *Step 5: Increase the aggregate amount determined in steps 1 through 4 by the amount of liabilities transferred by the owner to the section 987 QBU.* Under paragraph (d)(5) of this section, the aggregate amount determined in steps 1 through 4 must be increased by the aggregate amount of liabilities transferred by U.S. Corp to UK Branch. Under these facts, such amount is $0.

(F) *Step 6: Increase the aggregate amount determined in steps 1 through 5 by the section 987 taxable loss of the section 987 QBU for the taxable year.* Under paragraph (d)(6) of this section, the aggregate amount determined in steps 1 through 5 must be increased by the section 987 taxable loss of UK Branch. Since UK Branch had no such taxable loss in 2009, paragraph (d)(6) of this section does not apply.

(G) *Step 7: Decrease the aggregate amount determined in steps 1 through 5 by the section 987 taxable income of the section 987 QBU for the taxable year.* Under paragraph (d)(7) of this section, the aggregate amount determined in steps 1 through 5 must be decreased by the section 987 taxable income of UK Branch. The amount of UK Branch's taxable income, as determined above, is $117.80.

(v) *Summary.* Taking steps 1 through 7 into account, the amount of U.S. Corp's unrecognized section 987 gain or loss with

[6] £100 on the closing 2008 balance sheet plus £300 gross receipts less £100 inventory cost, less £30 of additional expenses, less £30 transferred to U.S. Corp.

[7] £1,000 on the closing 2008 balance sheet less £33 depreciation.

[8] £200 on the closing 2008 balance sheet less £40 depreciation.

[9] Dollars are reduced by $20 transferred to U.S. Corp.

respect to UK Branch in 2009 is computed as follows:

Step	Amount in $	Balance
1	+ 93.30	$93.30
2	+ 53.00	146.30
3	− 10.00	136.30
4	− 0	136.30
5	+ 0	136.30
6	+ 0	136.30
7	− 117.80	18.50

Thus, U.S. Corp's unrecognized section 987 gain in 2009 with respect to U.K. Branch is $18.50. As of the end of 2009, before taking into account the recognition of any section 987 gain or loss under § 1.987–5, U.S. Corp's net unrecognized section 987 gain is $48.50 (i.e., $30 accumulated from prior years, plus $18.50 in 2009).

§ 1.987–5 Recognition of section 987 gain or loss.

(a) *Recognition of section 987 gain or loss by the owner of a section 987 QBU.* The taxable income of an owner of a section 987 QBU shall include the owner's section 987 gain or loss recognized with respect to the section 987 QBU for the taxable year. For any taxable year, the owner's section 987 gain or loss recognized with respect to a section 987 QBU shall be equal to—

(1) The owner's net unrecognized section 987 gain or loss of the section 987 QBU determined under § 1.987–4 on the last day of such taxable year (or, if earlier, on the day the section 987 QBU is terminated under § 1.987–8); multiplied by

(2) The owner's remittance proportion for the taxable year, as determined under paragraph (b) of this section.

(b) *Remittance proportion.* The owner's remittance proportion with respect to a section 987 QBU for a taxable year is the quotient, equal to—

(1) The remittance, as determined under paragraph (c) of this section, to the owner from the section 987 QBU for such taxable year; divided by

(2) The total adjusted basis of the gross assets of the section 987 QBU as of the end of the taxable year (or, if terminated prior to the end of such taxable year under § 1.987–8, the day of termination) that are reflected on its year-end balance sheet (or, if terminated prior to the end of such taxable year under § 1.987–8, the balance sheet on the day terminated), translated into the owner's functional currency as provided in § 1.987–4(e)(2) and increased by the amount of the remittance.

(c) *Remittance*—(1) *Definition.* A remittance shall be determined in the owner's functional currency and shall equal the excess, if any, of—

(i) The total of all amounts transferred from the section 987 QBU to the owner during the taxable year, as determined in paragraph (d) of this section; over

(ii) The total of all amounts transferred from the owner to the section 987 QBU during the taxable year, as determined in paragraph (e) of this section.

(2) *Day when a remittance is determined.* An owner's remittance from a section 987 QBU shall be determined on the last day of the owner's taxable year (or, if earlier, on the day the section 987 QBU is terminated under § 1.987–8).

(3) *Termination.* A termination of a section 987 QBU as determined under § 1.987–8 is treated as a remittance of all the gross assets of the section 987 QBU to the owner on the date of such termination. See § 1.987–8(d). Accordingly, the remittance proportion in the case of a termination is 1.

(d) *Total of all amounts transferred from the section 987 QBU to the owner for the taxable year.* For purposes of paragraph (c)(1)(i) of this section, the total of all amounts transferred from the section 987 QBU to the owner for the taxable year shall be determined in the owner's functional currency under § 1.987–4(d)(2) with reference to the adjusted basis of the assets transferred. Solely for this purpose, the amount of liabilities transferred from the owner to the section 987 QBU determined under § 1.987–4(d)(5) shall be treated as a transfer of assets from the section 987 QBU to the owner in an amount equal to the amount of such liabilities.

(e) *Total of all amounts transferred from the owner to the section 987 QBU for the taxable year.* For purposes of paragraph (c)(1)(ii) of this section, the total of all amounts transferred from the owner to the section 987 QBU for the taxable year shall be determined in the owner's functional currency under § 1.987–4(d)(3) with reference to the adjusted basis of the assets transferred. Solely for this purpose, the amount of liabilities transferred from the section 987 QBU to the owner determined under § 1.987–4(d)(4) shall be treated as a transfer of assets from the owner to the section 987 QBU in an amount equal to the amount of such liabilities.

(f) *Determination of owner's adjusted basis in transferred assets*—(1) *In general.* The owner's adjusted basis in an asset received in a transfer from the section 987 QBU (whether or not such transfer is made in connection with a remittance as defined in paragraphs (c) of this section) shall be determined under the rules prescribed in paragraphs (f)(2) through (f)(4) of this section.

(2) *Section 987 marked asset.* The basis of a section 987 marked asset shall be determined in the owner's functional currency and shall be the same as the amount determined under § 1.987–4(d)(2)(ii)(A).

(3) *Section 987 historic asset.* The basis of a section 987 historic asset shall be determined in the owner's functional currency and shall be the same as the amount determined under § 1.987–4(d)(2)(ii)(B).

(4) *Partner's adjusted basis in distributed assets.* See also section 732 and § 1.987–7 for purposes of determining an owner's adjusted basis of an asset distributed from a section 987 QBU owned indirectly through a section 987 partnership.

(g) *Examples.* The following examples illustrate the calculation of section 987 gain or loss under this section:

Example 1. (i) U.S. Corp, a calendar year domestic corporation with the dollar as its functional currency, operates in the U.K. through U.K. DE, an entity disregarded as an entity separate from its owner under §§ 301.7701–1 through 301.7701–3 of this chapter. U.K. DE has a section 987 branch (U.K. section 987 branch) with the pound as its functional currency. During year 2, the following transfers took place between U.S. Corp and U.K. section 987 branch. On January 5, year 2, U.S. Corp transferred to U.K. section 987 branch $300 (which the branch used during the year to purchase services). On March 5, year 2, U.K. section 987 branch transferred a machine to U.S. Corp. Assume that the pound adjusted basis of the machine when properly translated into dollars under §§ 1.987–4(d)(2)(ii)(B) and paragraph (d) of this section is $500. On November 1, year 2, U.K. section 987 branch transferred pound cash to U.S. Corp. Assume

that the dollar amount of the pounds when properly translated under § 1.987–4(d)(2)(ii)(A) and paragraph (d) of this section is $2,300. On December 7, year 2, U.S Corp transferred a truck to U.K. section 987 branch with an adjusted basis of $2,000.

(ii) Assume that at the end of year 2, U.K. section 987 branch holds assets, properly translated into the owner's functional currency pursuant to § 1.987–4(e)(2), consisting of a computer with a pound adjusted basis equivalent to $500, a truck with a pound adjusted basis equivalent to $2,000, and pound cash equivalent to $2,850. In addition, assume that U.K. section 987 branch has a pound liability entered into in year 1 with Bank A. The liability, when translated into the owner functional currency pursuant to § 1.987–4(e)(2), is equivalent to $200. All such assets and liabilities are reflected on the books and records of U.K. section 987 branch. Assume that the net unrecognized section 987 gain for U.K. section 987 branch as determined under § 1.987–4 as of the last day of year 2 is $80.

(iii) U.S. Corp's section 987 gain with respect to U.K. section 987 branch is determined as follows:

(A) *Computation of amount of remittance.* Under paragraphs (c)(1) and (2) of this section, U.S. Corp must determine the amount of the remittance for year 2 in the owner's functional currency (dollars) on the last day of year 2. The amount of the remittance for year 2 is $500, determined as follows:

Transfers from U.K. section 987 branch to U.S. Corp in dollars:

Machine	$500
Cash (U.K. pounds)	2,300
	$2,800

Transfers from U.S. Corp to U.K. section 987 branch in dollars:

Cash (U.S. dollars)	$300
Truck	2,000
	2,300

Computation of amount of remittance:

Aggregate transfers from U.K. section 987 branch to U.S. Corp	$2,800
Less: aggregate transfers from U.S. Corp to U.K. section 987 branch	(2,300)
Total remittance	500

(B) *Computation of branch gross assets plus remittance.* Under paragraph (b)(2) of this section, U.K. section 987 branch must determine the total basis of its gross assets that are reflected on its year-end balance sheet translated into the owner's functional currency, and must increase this amount by the amount of the remittance.

Total basis of U.K. section 987 branch's gross assets at end of year 2 plus remittance in dollars:

Computer	$500
Cash (U.K. pounds)	2,850
Truck	2,000
Total gross assets	5,350
Remittance	500
Total gross assets + remittance	5,850

(C) *Computation of remittance proportion.* Under paragraph (b) of this section, U.K. section 987 branch must compute the remittance proportion as follows:

Amount of remittance	$500
Total basis of U.K. section 987 branch's gross assets at end of Year 2, increased by amount of remittance	5,850
Remittance/gross assets	0.085
Remittance proportion	0.085

(D) *Computation of section 987 gain or loss.* The amount of U.S. Corp's section 987 gain or loss that must be recognized with respect to U.K. section 987 branch is determined under paragraph (a) of this section.

Net unrecognized section 987 gain	$80
Remittance proportion	× 0.085
U.S. Corp's section 987 gain for Year 2:	$6.80

Example 2. U.S. Corp, a calendar year domestic corporation with the dollar as its functional currency, operates in the U.K. through U.K. DE, an entity disregarded as an entity separate from its owner. U.K. DE has a section 987 branch (U.K. section 987 branch) with the pound as its functional currency. During year 2, the following transfers took place between U.S. Corp and U.K. section 987 branch. On March 1, year 2, U.S. Corp transferred to U.K. section 987 branch a computer with a basis of $100. On November 1, year 2, U.K. section 987 branch transferred pounds to U.S. Corp. Assume that the dollar amount of the pounds when properly translated under § 1.987–4(d)(2)(ii)(A) and paragraph (d) of this section is $300. On the same day, U.K. section 987 branch transferred of $20 to U.S. Corp.

(ii) Assume that at the end of year 2, U.K. section 987 branch holds assets translated (as necessary) into the owner functional currency pursuant to § 1.987–4(e)(2) consisting of a plant with a pound adjusted basis equivalent $1,000, pound cash equivalent to $100, a machine with a pound adjusted basis equivalent to $200, portfolio stock (within the meaning of § 1.987–2(b)(2)(ii)) in ABC Corporation with a pound adjusted basis equivalent to $150, inventory of 100 units with an aggregate pound adjusted basis equivalent to $100 and a computer with a pound adjusted basis equivalent to $100. In addition, assume that U.K. section 987 branch has a pound liability that it entered into with Bank A in year 1. When properly translated into dollars pursuant to § 1.987–4(e)(2) the principal amount of the liability is equal to $500. All such assets and liabilities are reflected on the books and records of U.K. section 987 branch. Assume that the net unrecognized 987 gain for U.K. section 987 branch as determined under § 1.987–4 as of the last day of year 2 is $100.

(iii) U.S. Corp's section 987 gain with respect to U.K. section 987 branch is determined as follows:

(A) *Computation of amount of remittance.* Under paragraphs (c)(1) and (2) of this section, U.S. Corp must determine the amount of the remittance for year 2 in the owner's functional currency on the last day of year 2. The amount of the remittance for year 2 is $220 determined as follows:

Transfers from U.K. section 987 branch to U.S. Corp in dollars:

Cash (U.K. pounds)	$300
Cash (U.S. dollars)	20
	320

Transfers from U.S. Corp to U.K. section 987 branch in dollars:

Computer	$100
Computation of amount of remittance:	
Aggregate transfers from U.K. section 987 branch to U.S. Corp	$320
Less: aggregate transfers from U.S. Corp to U.K. branch	($100)
Total remittance:	$220

Computation of amount of remittance:

Aggregate transfers from U.K. section 987 branch to U.S. Corp	$320
Less: aggregate transfers from U.S. Corp to U.K. branch	100
Total remittance:	220

(B) *Computation of branch gross assets plus remittance.* Under paragraph (b)(2) of this section, U.K. section 987 branch must determine the total basis of its gross assets as are reflected on its year-end balance sheet translated into dollars and must increase this amount by the amount of the remittance.

Total pound basis of U.K. section 987 branch's gross assets translated into dollars at end of Year 2:

Plant	$1,000
Cash (U.K. pounds)	100
Inventory	100
Machine	200
Computer	100
Portfolio Stock	150
Total gross assets	1,650
Remittance	220
Total gross assets + remittance	1,870

(C) *Computation of remittance proportion.* Under paragraph (b) of this section, U.K. section 987 branch must compute the remittance proportion as follows:

Amount of remittance	$220
Total basis of U.K. section 987 branch's gross assets at tend of year 2, increased by amount of remittance	1,870
Remittance/gross assets	0.118
Remittance proportion	0.118

(D) *Computation of section 987 gain or loss.* The amount of U.S. Corp's section 987 gain or loss that must be recognized with respect to U.K. section 987 branch is determined under paragraph (a) of this section.

Net unrecognized section 987 gain	$100.00
Remittance proportion	× 0.118

U.S. Corp's section 987 gain for year 2 ..... 11.80

§ 1.987–6 Character and source of section 987 gain or loss.

(a) *Ordinary income or loss.* Section 987 gain or loss is ordinary income or loss for Federal income tax purposes.

(b) *Source and character of section 987 gain or loss*—(1) *In general.* Except as otherwise provided in this section, the owner of a section 987 QBU must determine the source and character of section 987 gain or loss in the year of a remittance under the rules of this paragraph (b) for all purposes of the Internal Revenue Code, including sections 904(d), 907 and 954.

(2) *Method required to characterize and source section 987 gain or loss.* The owner must use the asset method set forth in § 1.861–9T(g) to characterize and source section 987 gain or loss. The modified gross income method described in § 1.861–9T(j) cannot be used.

(3) *Method required to characterize and source section 987 gain or loss with respect to regulated investment companies and real estate investment trusts.* [Reserved].

(c) *Example.* The following example illustrates the application of this section.

Example. CFC is a controlled foreign corporation as defined in section 957 with the Swiss franc (Sf) as its functional currency. CFC holds all the interest in a section 987 DE as defined in § 1.987–1(b)(6)(iii) that has a section 987 branch with significant operations in Germany (German Branch). German Branch has the euro as its functional currency. For the year 2009, CFC recognizes section 987 gain of Sf10,000 under §§ 1.987–4 and 1.987–5. Applying the rules of this section, German Branch has total average assets of Sf1,000,000 which generate income as follows: Sf750,000 of assets that generate foreign source general limitation income under section 904(d)(1)(I), none of which is subpart F income under section 952; and Sf250,000 of assets that generate foreign source passive income under section 904(d)(1)(B), all of which is subpart F income. Under paragraph (b) of this section, Sf7,500 (Sf750,000/Sf1,000,000 × Sf10,000) of the section 987 gain will be treated as foreign source general limitation income which is not subpart F income and Sf2,500 (Sf250,000/Sf1,000,000 × Sf10,000) will be treated as foreign source passive income which is subpart F income. All of the section 987 gain is treated as ordinary income.

§ 1.987–7 Section 987 partnerships.

(a) *In general.* In the case of an owner that is a partner in a section 987 partnership, this section provides rules for determining the owner's share of assets and liabilities of a section 987 QBU owned indirectly, as described in § 1.987–1(b)(4)(ii), through a section 987 partnership. In addition, this section provides rules coordinating these regulations with subchapter K of chapter 1 of the Internal Revenue Code.

(b) *Assets and liabilities of an eligible QBU or a section 987 QBU held indirectly through a partnership.* A partner's share of the assets and liabilities reflected under § 1.987–2(b) on the books and records of an eligible QBU or a section 987 QBU owned indirectly through a partnership shall be determined in a manner that is consistent with the manner in which the partners have agreed to share the economic benefits and burdens (if any), corresponding to the assets and liabilities, taking into account the rules and principles of sections 701 through 761, and the applicable regulations, including section 704(b) and § 1.701–2.

(c) *Coordination with subchapter K*—(1) *Partner's adjusted basis in its partnership interest*—(i) *In general.* Except as provided in this paragraph, a partner's adjusted basis in its section 987 partnership interest shall be maintained in the functional currency of that partner and shall not be adjusted as a result of any fluctuations in the value of the partner's functional currency and the functional currency of any section 987 QBU owned indirectly through the section 987 partnership.

(ii) *Adjustments for section 987 taxable income or loss and section 987 gain or loss*—(A) *Section 987 taxable income or loss.* A partner's share of the items of income, gain, deduction or loss taken into account in calculating section 987 taxable income or loss of a section 987 QBU, determined under § 1.987–3, held indirectly through a section 987 partnership shall be treated as income or loss of the section 987 partnership through which the partner indirectly owns the interest. As a result, the partner's allocable share of the items of income, gain, deduction or loss taken into account in calculating section 987 taxable income or loss of the section 987 QBU shall be taken into account, following conversion into the partner's functional currency, in determining the appropriate adjustments to the partner's adjusted basis in its partnership interest under section 705.

(B) *Section 987 gain or loss.* Solely for purposes of determining the appropriate adjustments to a partner's adjusted basis in its interest in a section 987 partnership under section 705, an individual or corporation that owns a section 987 QBU indirectly through a section 987 partnership shall treat any section 987 gain or loss of such section 987 QBU as gain or loss of the section 987 partnership. Any adjustments to the adjusted basis of a partner's interest in such section 987 partnership required under this paragraph (c)(1)(ii)(B) of this section shall occur prior to determining the effect under the Internal Revenue Code of any sale, exchange, distribution or other event.

(iii) *Adjustments for contributions and distributions.* For purposes of making adjustments to the partner's adjusted basis in its interest in a section 987 partnership, as a result of any contributions or distributions (including deemed contributions and distributions under section 752) between the section 987 partnership and the owner of a section 987 QBU owned indirectly through the partnership, such amounts will be taken into account in the owner's functional currency.

(iv) *Determination of deemed distributions and contributions under section 752*—(A) *Increase in partner's liabilities.* For purposes of determining the amount of any increase in a partner's share of the liabilities of the partnership, or any increase in the partner's individual liabilities by reason of the assumption by such partner of a liability of the partnership, which are reflected on the books and records of a section 987 QBU owned indirectly through such partnership and which are denominated in a functional currency different from the partner's, the amount of such liabilities shall be translated into the functional currency of the partner using the spot rate (as defined in § 1.987–1(c)(1)(i) and (ii)) on the date of such increase.

(B) *Decrease in partner's liabilities.* For purposes of determining the amount of any decrease in a partner's share of the liabilities of the partnership which were reflected on the books and records of a section 987 QBU owned indirectly through such partnership and which are denominated in a functional currency different from the partner's functional currency, the amount of such liabilities shall be translated into the functional currency of the partner using the historic rate (as defined in § 1.987–1(c)(3)) for the date on which such liabilities increased the partner's adjusted basis in its partnership interest under section 752.

(2) *Special rule for determining gain or loss on the sale, exchange or other disposition of an interest in a section 987 partnership.* For purposes of determining the amount realized by a

partner in a section 987 partnership on the sale, exchange, or other disposition of that partner's interest in such partnership, the amount of liabilities reflected on the books and records of a section 987 QBU (in a functional currency different from such partner) from which that partner is relieved as a result of such disposition, and which are included in the amount realized pursuant to section 752(d), shall be translated into the partner's functional currency using the historic exchange rate (as determined under § 1.987–1(c)(3)) for the date on which such liabilities increased the partner's adjusted basis in its partnership interest under section 752.

(d) *Examples.* The purpose of the following examples is to illustrate the application of section 987 to partnerships and their partners. The examples are not meant to be a comprehensive interpretation of the step-by-step computations involved in computing net unrecognized section 987 gain or loss. Thus, for the sake of simplicity, the examples only calculate section 987 gain or loss by reference to certain identified assets and liabilities, rather than by all the assets and liabilities of the section 987 QBU (as is required under these regulations). See § 1.987–4 and the examples therein for step-by-step computations for determining the unrecognized section 987 gain or loss of the owner of a section 987 QBU.

Example 1. Computation of an owner's net unrecognized section 987 gain or loss. (i) *Facts.* PRS is a partnership which owns QBUx, an eligible QBU, operating in the United Kingdom. QBUx has the pound as its functional currency determined under § 1.985–1 taking into account all of QBUx's activities before application of this section. PRS has two equal partners that are domestic corporations, A and B, each with the U.S. dollar as its functional currency. The portions of QBUx allocated to A and B under paragraph (b) of this section are section 987 QBUs of A and B because under § 1.987–1(b)(2), such portions are allocated from an eligible QBU with a different functional currency than A and B, respectively. Assume that PRS has no items of section 987 taxable income or loss for 2007. On January 1, 2007, A and B each contribute $50 to PRS. PRS immediately converts the $100 into £100. The £100 is reflected, in accordance with § 1.987–2(b), on the books and records of QBUx. On January 1, 2007, the spot rate is $1 = £1. On December 31, 2007, the spot rate is $1.50 = £1. Pursuant to § 1.987–3(b)(1), A and B use the yearly average exchange rate, as defined in § 1.987–1(c)(2), to translate items of income, gain, deduction, or loss into dollars for the taxable year. Assume the yearly average exchange rate is $1.25 = £1 ($1 = £.80). Under the PRS partnership agreement, A and B each have an equal interest in all items of partnership income and loss.

(ii) *Calculation of net unrecognized section 987 gain or loss.* Under paragraph (b) of this section, A and B are each allocated 50 from eligible QBUx. This amount is reflected on the balance sheet of the section 987 QBU of A and B, respectively, for purposes of determining the unrecognized section 987 gain or loss under § 1.987–4. Pursuant to § 1.987–4(d), the net unrecognized section 987 gain of A's section 987 QBU and B's section 987 QBU is $25.

Example 2. Computation of owner's net unrecognized section 987 gain or loss. (i) *Facts.* The facts are the same as Example 1, except that in addition to the £100 contributed by A and B, PRS incurred a £50 recourse liability from an unrelated third party on January 1, 2007. The liability and the £50 are both reflected on the books and records of QBUx under § 1.987–2(b). Under section 752, and the regulations thereunder, A and B bear the economic risk of loss with respect to the £50 recourse debt equally.

(ii) *Calculation of net unrecognized section 987 gain or loss.* Under paragraph (b) of this section, A and B are each allocated £75 from QBUx. In addition, under paragraph (b) of this section, A and B are each allocated £25 of the liability of QBUx because the economic burden of such liability, taking into account sections 701 through 761 of the Code, is borne equally by A and B. Under § 1.987–4(d), A and B each have net unrecognized section 987 gain of $25.

(iii) *Determination of partner's adjusted basis in PRS.* Pursuant to paragraph (c)(1)(i) of this section and section 985(a), A and B must determine the adjusted basis in their PRS partnership interests in U.S. dollars. Under sections 722, 752(a) and paragraph (c)(1)(iv)(A) of this section, the adjusted bases in such interests are increased by the U.S. dollar amount of a deemed contribution determined using the spot rate for the date on which such liability was incurred. Therefore, A and B will increase the adjusted basis in their PRS partnership interests by $25.

Example 3. Computation of owner's net unrecognized section 987 gain or loss. (i) *Facts.* The facts are the same as *Example 2*, except as follows: On January 1, 2007, instead of incurring a £50 recourse liability, PRS incurred a £50 nonrecourse liability from an unrelated third party, which was secured by and used to purchase non-depreciable real property located in the United Kingdom. Under the partnership agreement, A and B agree to share all items of partnership income and loss equally, except that A guaranteed the nonrecourse liability and, in addition, the partnership agreement provides that A will be allocated any gain from the sale or exchange of the non-depreciable property. Further, the partnership agreement provides that in the event the partnership liquidates prior to satisfying the liability, the non-depreciable property shall be distributed to A.

(ii) *Calculation of net unrecognized section 987 gain or loss.* Under paragraph (b) of this section, A and B are each allocated £50 from eligible QBUx. In addition, because A bears the economic burden of the nonrecourse liability incurred by PRS and the economic benefits of the non-depreciable property securing such liability, both of which are reflected on the books and records of QBUx under § 1.987–2(b), A is allocated, for purposes of applying § 1.987–4(d), both the £50 liability and the non-depreciable property with an adjusted tax basis of £50. Under § 1.987–4(d), A's net unrecognized section 987 gain is $0, and B's net unrecognized section 987 gain is $25.

(iii) *Determination of partner's adjusted basis in PRS.* Pursuant to paragraph (c)(1)(i) of this section and section 985(a), A and B must determine the adjusted bases in their PRS partnership interests in U.S. dollars. Under sections 722, 752(a) and paragraph (c)(1)(iv) of this section, A's adjusted basis is increased by the U.S. dollar amount of the deemed contribution determined using the spot rate for the date on which such liability was incurred. Therefore, A will increase the adjusted basis in its PRS partnership interest by $50.

Example 4. Computation of owner's share of items of section 987 taxable income. (i) *Facts.* The facts are the same as in Example 1, except that during 2007 PRS earns £50 which are reflected on the books and records of QBUx. In accordance with the partnership agreement, the £50 are allocated equally between A and B.

(ii) *Calculation of section 987 taxable income or loss.* Under § 1.987–3, A and B's allocable share of the taxable income of QBUx, as determined by PRS, and adjusted to conform to U.S. tax principles, is £25 each. Under § 1.987–3, A and B must convert their allocable share of the £25 into U.S. dollars using the yearly average exchange rate for the year, in accordance with § 1.987–1(c)(2). As a result, A and B each take into account as their respective distributive share of PRS income $31.25. Under paragraph (c)(1)(ii)(A) of this section, section 985(a) and section 705, such amounts, as reflected in U.S. dollars, will be taken into account in determining any adjustments to the adjusted bases of A's and B's partnership interests. In addition, such amounts will be taken into account in calculating, under § 1.987–4, the unrecognized section 987 gain or loss of the section 987 QBUs of A and B.

Example 5. Computation of owner's share of items of section 987 taxable income. (i) *Facts.* The facts are the same as in Example 4, except A and B agree to allocate the £50 of income to A. Assume for purposes of this example that such allocation has substantial economic effect as provided under section 704(b).

(ii) *Calculation of section 987 taxable income or loss.* Under § 1.987–3, A and B's allocable share of the taxable income of QBUx, as determined by PRS, and adjusted to conform to U.S. tax principles, is £50 and £0, respectively. Under § 1.987–3, A and B must convert their allocable share into U.S. dollars using the yearly average exchange rate for the year, in accordance with § 1.987–1(c)(2). As a result, A and B must each take into account as their respective distributive share of PRS income $62.50 and $0, respectively. Under paragraph (c)(1)(ii)(A) of this section, section 985(a) and section 705, such amounts, as reflected in U.S. dollars,

will be taken into account in determining any adjustments to the adjusted bases of A's and B's respective partnership interests. In addition, such amounts will be taken into account in calculating, under § 1.987–4, the unrecognized section 987 gain or loss of the section 987 QBUs of A and B.

Example 6. Election by de minimis partner to not take into account section 987 gain or loss. (i) *Facts.* The facts are the same as in *Example 1*, except assume that A owns, directly or indirectly, less than 5% of the total capital and profits interest in PRS and, as a result, is eligible to elect, under § 1.987–1(b)(1)(ii) not to apply the provisions of the regulations under section 987 for purposes of taking into account the section 987 gain or loss of A's section 987 QBU. Assume further that A makes such election. On January 1, 2008, A sells its interest to an unrelated third party, C, for $75.

(ii) *Determination of partner's adjusted basis in PRS.* Pursuant to paragraph (c)(1)(i) of this section and section 985(a), A must determine the adjusted basis of its PRS partnership interest in U.S. dollars. A's basis in PRS is $50, the amount of its contribution to PRS.

(iii) *Sale of partnership interest by A.* Under section 1001, A's amount realized on the sale of the partnership interest to C is $75. A's adjusted basis of its PRS partnership interest is $50, the amount of A's contribution to PRS, unadjusted by the fluctuations between the pound and the U.S. dollar. A's gain on the sale of the partnership interest is $25.

§ 1.987–8 Termination of a section 987 QBU.

(a) *Scope.* This section provides rules regarding the termination of a section 987 QBU. Paragraph (b) of this section provides general rules for determining when a termination occurs. Paragraph (c) of this section provides exceptions to the general termination rules for certain transactions described in section 381(a). Paragraph (d) of this section provides certain effects of terminations. Paragraph (e) of this section contains examples that illustrate the principles of this section.

(b) *In general.* Except as provided in paragraph (c) of this section, a section 987 QBU terminates when—

(1) Its activities cease, such that it no longer meets the definition of an eligible QBU as defined in § 1.987–1(b)(3);

(2) Substantially all (within the meaning of section 368(a)(1)(C)) of the section 987 QBU's assets are transferred from such section 987 QBU to its owner, as provided under § 1.987–2(c). For purposes of this paragraph (b)(2), the amount of assets transferred from the section 987 QBU to its owner as a result of a transaction (for example, a contribution of property to a DE or a partnership) as provided under § 1.987–2(c) shall be reduced by assets that are transferred from the owner to such section 987 QBU, as provided under § 1.987–2(c), pursuant to the same transaction;

(3) A foreign corporation that is a controlled foreign corporation (as defined in section 957) that is the owner of a section 987 QBU ceases to be a controlled foreign corporation; or

(4) The owner of such section 987 QBU ceases to exist (including in connection with a transaction described in section 381(a)).

(c) *Transactions described in section 381(a)*—(1) *Liquidations.* A termination does not occur when the owner of a section 987 QBU ceases to exist in a liquidation described in section 332, except in the following cases:

(i) The distributor is a domestic corporation and the distributee is a foreign corporation.

(ii) The distributor is a foreign corporation and the distributee is a domestic corporation.

(iii) The distributor and the distributee are both foreign corporations and the functional currency of the distributee is the same as the functional currency of the distributor's section 987 QBU.

(2) *Reorganizations.* A termination does not occur when the owner of the section 987 QBU ceases to exist in a reorganization described in section 381(a)(2), except in the following cases:

(i) The transferor is a domestic corporation and the acquiring corporation is a foreign corporation.

(ii) The transferor is a foreign corporation and the acquiring corporation is a domestic corporation.

(iii) The transferor is a controlled foreign corporation immediately before the transfer and the acquiring corporation is a foreign corporation that is not a controlled foreign corporation immediately after the transfer.

(iv) The transferor and the acquiring corporation are foreign corporations and the functional currency of the acquiring corporation is the same as the functional currency of the transferor's section 987 QBU.

(d) *Effect of terminations.* A termination of a section 987 QBU as determined in this section is treated as a remittance of all the gross assets of the section 987 QBU to its owner. As a result, any net unrecognized section 987 gain or loss of the section 987 QBU is recognized. See § 1.987–5. For purposes of the preceding sentence, the amount of net unrecognized section 987 gain or loss is determined as of the date of termination by closing the books and records of the section 987 QBU on that date.

(e) *Examples.* The following examples illustrate the principles of this section:

Example 1. Cessation of operations. (i) *Facts.* DC, a domestic corporation, has a sales office in Country X (Country X Branch) that is a section 987 QBU. DC closes its Country X Branch.

(ii) *Analysis.* The cessation of the activities of the Country X Branch causes a termination of the section 987 QBU under paragraph (b)(1) of this section.

Example 2. Incorporation of section 987 QBU. (i) *Facts.* DC, a domestic corporation, has a branch in Country X (Country X Branch) that is a section 987 QBU. DC transfers all the assets and liabilities of Country X Branch to DS, a domestic corporation, in exchange for stock of DS in a transaction qualifying under section 351.

(ii) *Analysis.* Country X Branch terminates pursuant to paragraph (b)(1) of this section because the Country X Branch ceases to be an eligible QBU of DC.

Example 3. Cessation of controlled foreign corporation status. (i) *Facts.* DC, a domestic corporation, owns all of the stock of FC, a controlled foreign corporation as defined in section 957. FC has a section 987 QBU. FA, a foreign corporation owned solely by foreign persons, purchases all of the FC stock. FC will not constitute a controlled foreign corporation after the transaction.

(ii) *Analysis.* Because FC ceases to qualify as a controlled foreign corporation after the sale of the FC stock, FC's section 987 QBU terminates pursuant to paragraph (b)(3) of this section.

Example 4. Section 332 liquidation. (i) *Facts.* DC, a domestic corporation, operates in Country X through FC, a wholly-owned foreign corporation organized under the laws of Country X. FC also has a branch in Country Y (Country Y Branch) that is a section 987 QBU. Pursuant to a liquidation described in section 332, FC transfers all of its assets and liabilities to DC.

(ii) *Analysis.* FC's liquidation is a termination as provided in paragraph (b)(4) of this section because FC ceases to exist. The exception for certain section 332 liquidations provided under paragraph (c)(1) of this section does not apply because DC is a domestic corporation and FC is a foreign corporation. See paragraph (c)(1)(ii) of this section.

Example 5. Transfers to and from section 987 QBU pursuant to the same transaction. (i) *Facts.* DC1, a domestic corporation, owns Entity A, a DE. Entity A conducts a business in Country X and that business is an eligible QBU and a section 987 QBU (Country X QBU) of DC1. DC2, a domestic corporation, contributes property to Entity A in exchange for a 95% interest in Entity A. The property DC2 contributes to Entity A is used in the business conducted by the Country X QBU and is reflected on its books and records as provided under § 1.987–2(b). Moreover, Entity A is converted to a partnership as a result of the contribution. See Rev. Rul. 99–5 (situation 2), (1999–1 CB 434). See § 601.601(d)(2) of this chapter. Also, as a result of the contribution, and pursuant to § 1.987–2(c)(5), 95% of the assets and liabilities on the books and records of DC1's section 987 QBU are deemed to be transferred from such QBU to DC1, and DC1 is deemed to transfer to such QBU 5% of the

property, as determined under § 1.987–7, contributed by DC2 to Entity A.

(ii) *Analysis.* As a result of the contribution of property from DC2 to Entity A, assets were transferred from DC1's section 987 QBU to DC1. Similarly, assets were transferred from DC1 to its section 987 QBU as a result of the contribution. Accordingly, for purposes of determining whether substantially all the assets of Country X QBU were transferred from DC1's section 987 QBU as provided under paragraph (b)(2) of this section, the assets transferred from DC1's section 987 QBU to DC1 under § 1.987–2(c) are reduced by the amount of assets transferred from DC1 to such section 987 QBU pursuant to the contribution.

§ 1.987–9 Recordkeeping requirements.

(a) *In general.* A taxpayer that is an owner of a section 987 QBU shall keep such reasonable records as are sufficient to establish the QBU's section 987 taxable income or loss and section 987 gain or loss. See section 987 and section 6001 and the applicable regulations.

(b) *Supplemental information.* An owner's obligation to maintain records under section 6001 and paragraph (a) of this section is not satisfied unless the following information is maintained in such records:

(1) The amount of the items of income, gain, deduction or loss attributed to each section 987 QBU of the owner in the functional currency of the section 987 QBU.

(2) The amount of assets and liabilities attributed to each section 987 QBU of the owner in the functional currency of the QBU.

(3) The exchange rates used to translate items of income, gain, deduction or loss of each section 987 QBU into the owner's functional currency. If a spot rate convention is used, the manner in which such convention is determined.

(4) The exchange rates used to translate the assets and liabilities of each section 987 QBU into the owner's functional currency. If a spot rate convention is used, the manner in which such convention is determined.

(5) The amount of the items of income, gain, deduction or loss attributed to each section 987 QBU of the owner translated into the functional currency of the owner.

(6) The amount of assets and liabilities attributed to each section 987 QBU of the owner translated into the functional currency of the owner.

(7) The amount of assets and liabilities transferred by the owner to a section 987 QBU determined in the functional currency of the owner.

(8) The amount of assets and liabilities transferred by the section 987 QBU to the owner determined in the functional currency of the owner.

(9) The amount of the unrecognized section 987 gain or loss for the taxable year.

(10) The amount of the net unrecognized section 987 gain or loss at the close of the taxable year.

(11) If a remittance is made, the average tax book value of assets as determined under § 1.861–9T(g).

(12) The transition information required to be determined under § 1.987–10(c)(2)(v).

(c) *Retention of records.* The records required by this section must be kept at all times available for inspection by the Internal Revenue Service, and shall be retained so long as the contents thereof may become material in the administration of the Internal Revenue Code.

§ 1.987–10 Transition rules.

(a) *Scope*—(1) *In general.* These transition rules shall apply to any taxpayer that is an owner of a section 987 QBU pursuant to § 1.987–1(b)(4) on the transition date (as defined in paragraph (b) of this section). A taxpayer to whom this section applies must transition from the method previously used by such taxpayer to comply with section 987 (the "prior section 987 method") to the method prescribed by these regulations pursuant to the rules set forth in paragraph (c) of this section.

(2) *Limitation where the prior method was unreasonable.* Notwithstanding paragraph (a)(1) of this section, if the prior section 987 method was unreasonable (including the case where the taxpayer failed to make the determinations required under section 987 for any open taxable year), then the taxpayer must apply the rules of paragraph (c)(4) of this section (and cannot apply the rules of paragraph (c)(3) of this section) to transition to the method prescribed by these regulations.

(b) *Transition date.* The transition date is the first day of the first taxable year to which these regulations apply to a taxpayer.

(c) *Transition methods and corresponding rules*—(1) *In general.* Except as provided in paragraph (a)(2) of this section, a taxpayer must transition from its prior method to the method prescribed by these regulations under the "deferral transition method" of paragraph (c)(3) of this section or the "fresh start transition method" of paragraph (c)(4) of this section. If a taxpayer fails to comply with the rules of this section, the Area Director, Field Examination, Small Business/Self Employed or the Director, Field Operations, Large and Mid-Size Business having jurisdiction of the taxpayer's return for the taxable year shall determine the appropriate transition method.

(2) *Conformity rules.* The taxpayer (including all members that file a consolidated return that includes that taxpayer), and any controlled foreign corporation as defined in section 957 in which the taxpayer owns more than 50 percent of the voting power or stock (as determined in section 957(a)), must consistently apply the same transition method for each qualified business unit subject to section 987 owned on the transition date.

(3) *Deferral transition method*—(i) *In general.* Pursuant to the deferral transition method prescribed by this paragraph (c)(3), section 987 gain or loss must be determined on the transition date under the taxpayer's prior section 987 method as if all qualified business units of the taxpayer subject to section 987 (taking into account the conformity rules of paragraph (c)(2) of this section) terminated on the last day of the taxable year preceding the transition date. This deemed termination applies solely for purposes of this section. Any section 987 gain or loss determined with respect to a section 987 QBU under the preceding sentence shall not be recognized on the transition date but shall be considered as net unrecognized section 987 gain or loss of the section 987 QBU in the first taxable year for which these regulations are effective (in addition to any net unrecognized section 987 gain or loss otherwise determined for such taxable year). Recognition of net unrecognized section 987 gain or loss determined under the preceding sentence is governed by § 1.987–5 for periods after the transition date. The owner of a qualified business unit that is deemed to terminate under these rules is treated as having transferred all of the assets and liabilities attributable to such qualified business unit to a new section 987 QBU on the transition date.

(ii) *Translation rates used to determine the amount of assets and liabilities transferred from the owner to the section 987 QBU for the section 987 QBU's first taxable year beginning on the transition date.* The exchange rates used to determine the amount of assets and liabilities transferred from the owner to the section 987 QBU on the transition date (for example, for purposes of making calculations under § 1.987–4) under the deferral transition method in this paragraph (c)(3) shall be determined with reference to the historic exchange rates on the day the assets were acquired or liabilities entered into by the qualified business unit deemed terminated, adjusted to

take into account any gain or loss determined under paragraph (c)(3)(i) of this section. See *Examples 1* and *2* of paragraph (d) of this section.

(4) *Fresh start transition method*—(i) *In general.* Pursuant to the fresh start transition method prescribed by this paragraph (c)(4), on the transition date all qualified business units of the taxpayer subject to section 987 (taking into account the conformity rules of paragraph (c)(2) of this section) are deemed terminated on the last day of the taxable year preceding the transition date. This deemed termination applies solely for purposes of this section. No section 987 gain or loss is determined or recognized on such deemed termination. The owner of a qualified business unit that is deemed to terminate under this method is treated as having transferred all of the assets and liabilities attributable to such qualified business unit to a section 987 QBU on the transition date.

(ii) *Translation rates used to determine the amount of assets and liabilities transferred from the owner to the section 987 QBU for the section 987 QBU's first taxable year on the transition date.* The exchange rates used to determine the amount of assets and liabilities transferred from the owner to the section 987 QBU on the transition date (for example, for purposes of making calculations under § 1.987–4) under the fresh start transition method of this paragraph (c)(4) shall be determined with reference to the historic exchange rates on the day the assets were acquired or liabilities entered into by the qualified business unit deemed terminated. See *Example 3* of paragraph (d) of this section.

(5) *Double counting prohibited.* The transition method used by the taxpayer cannot result in taking into account section 987 gain or loss with respect to an asset or liability attributable to a period prior to the transition date more than once.

(6) *Reporting.* The taxpayer must attach a statement to its return for the first taxable year beginning on the transition date providing the following information:

(i) A description of each qualified business unit to which these rules apply, the qualified business unit's owner and its principal place of business, and a description of the prior method used by the taxpayer to determine section 987 gain or loss with respect to such qualified business unit.

(ii) The transition method used by the taxpayer under paragraph (c) of this section for each qualified business unit.

(iii) If the taxpayer uses the deferral transition method prescribed in paragraph (c)(3) of this section with respect to a qualified business unit, an explanation of the method used to determine section 987 gain or loss.

(iv) If the taxpayer uses the deferral transition method prescribed in paragraph (c)(3) of this section with respect to a qualified business unit, the amount treated as net unrecognized section 987 gain or loss under paragraph (c)(3)(i) of this section.

(v) The method used by the taxpayer for determining the exchange rates used to translate the basis of assets and the amount of liabilities of a section 987 QBU into the functional currency of the owner on the transition date as provided in paragraphs (c)(3)(ii) and (c)(4)(ii) of this section for purposes of applying these regulations.

(d) *Examples.* The principles of this section are illustrated by the following examples:

Example 1. Deferral transition method. (i) U.S. Corp is a domestic corporation with the dollar as its functional currency. U.S. Corp owns UK Branch, a branch with the pound as its functional currency. UK Branch was formed on January 1, 2006. U.S. Corp uses the method prescribed in the 1991 proposed section 987 regulations to determine the section 987 gain or loss of UK Branch. U.S. Corp contributed £6,000 to UK Branch on January 1, 2006. On the same day, UK Branch bought a truck for £4,000 and a computer for £1,000. Assume that the spot rate on January 1, 2006, is £1 = $1. UK Branch had profits determined under § 1.987–1(b)(1)(i) through (iii) of the 1991 proposed section 987 regulations of £250 in each taxable year of 2006, 2007, 2008, and 2009. Assume that the average exchange rates used to translate UK Branch's profits under the 1991 proposed section 987 regulations were as follows: 2006—£1 = $1.10; 2007—£1 = $1.20; 2008—£1 = $1.30; 2009—£1 = $1.40. UK Branch makes no remittances to U.S. Corp in any year. On January 1, 2010, UK Branch transitions to the method provided in §§ 1.987–1 through 1.987–11 of these regulations pursuant to paragraph (a) of this section. U.S. Corp chooses to use the deferral transition method of paragraph (c)(3) of this section in transitioning from its prior section 987 method (the method set forth in the 1991 proposed section 987 regulations) to the method prescribed in the §§ 1.987–1 through 1.987–11 of these regulations. The spot rate on December 31, 2009, is £1 = $2.

(ii) Pursuant to paragraph (c)(3) of this section, U.S. Corp must determine UK Branch's section 987 gain or loss on January 1, 2010 using its prior section 987 method (the method prescribed under the 1991 proposed section 987 regulations), as if UK Branch terminated on December 31, 2009. On December 31, 2009, UK Branch has an equity pool of £7,000 and a basis pool of $7,250 determined under the 1991 proposed section 987 regulations based on the following amounts:

Asset	Amount in £	Translation rate	Amount in $
Cash	£1,000	Spot rate on 1/1/06 of £1=$1	$1,000
Cash	250	Ave. rate for 2006 of £1=$1.10	275
Cash	250	Ave. rate for 2007 of £1=$1.20	300
Cash	250	Ave. rate for 2008 of £1=$1.30	325
Cash	250	Ave. rate for 2009 of £1=$1.40	350
Truck	*4,000	Spot rate on 1/1/06 of £1=$1	4,000
Computer	*1,000	Spot rate on 1/1/06 of £1=$1	1,000
Total assets	7,000		7,250
Liabilities	0		0

*Depreciation not taken into account for purposes of this example.

Accordingly, under § 1.987–3(h)(3)(i) of the 1991 proposed section 987 regulations, UK Branch determines its section 987 gain or loss on December 31, 2009, as follows:

Equity Pool on 12/31/09	£7,000
Multiplied by spot rate on date of deemed termination of £1=$2	×$2
	14,000
Spot Value of Equity Pool	14,000
Less 100% of Basis Pool	(7,250)
Section 987 gain	6,750

(iii) Under paragraph (c)(3)(i) of this section, U.S. Corp does not recognize the $6,750 of section 987 gain determined on the transition date. Instead, the $6,750 will be treated as net unrecognized section 987 gain of UK Branch for 2010 and subsequent years

(in addition to any net unrecognized section 987 gain or loss otherwise determined at the close of 2010 and subsequent years). Recognition of net unrecognized section 987 gain or loss is governed by § 1.987–5.

(iv) Pursuant to paragraph (c)(3)(ii) of this section, when computing the exchange rates used to determine the amount of assets and liabilities transferred from U.S. Corp to UK Branch on the transition date, U.S. Corp must adjust the historic exchange rates attributable to such assets to take into account UK Branch's section 987 gain determined under paragraph (c)(3) of this section. Under these facts, where all of UK Branch's assets are considered to generate deferred section 987 gain, U.S. Corp takes into account this section 987 gain by translating the assets deemed contributed by U.S. Corp to UK Branch on the transition date using the same spot rate it used to determine UK Branch's section 987 gain on the deemed termination date of December 31, 2009. Accordingly, on January 1, 2010, U.S. Corp translates the assets deemed contributed (cash is segregated for ease of illustration) to UK Branch as follows:

Asset	Amount in £	Translation rate	Amount in $
Cash	£1,000	Spot rate on 12/31/09 of £1=$2	$2,000
Cash	250	Spot rate on 12/31/09 of £1=$2	500
Cash	250	Spot rate on 12/31/09 of £1=$2	500
Cash	250	Spot rate on 12/31/09 of £1=$2	500
Cash	250	Spot rate on 12/31/09 of £1=$2	500
Truck	4,000	Spot rate on 12/31/09 of £1=$2	8,000
Computer	1,000	Spot rate on 12/31/09 of £1=$2	2,000
Total assets	7,000		14,000
Liabilities	0		0

Example 2. Deferral transition method. (i) The facts are the same as in *Example 1* except that U.S. Corp and UK Branch use an "earnings only" approach to determine section 987 gain or loss prior to the transition date. Under this approach, U.S. Corp maintains a basis and equity pool for UK Branch's earnings and a separate basis and equity pool for UK Branch's capital. Section 987 gain or loss is only recognized on remittances of earnings (but not with respect to capital) under principles similar to those of the 1991 proposed section 987 regulations. Remittances are first considered as distributed from the earnings equity pool and then from the capital equity pool. For purposes of this example, this method is assumed to be a reasonable section 987 method and does not violate § 1.987–10(a)(2).

(ii) Using principles similar to those set forth in § 1.987–2 of the 1991 proposed section 987 regulations, the earnings equity pool of UK Branch is £1,000 (£250 earned in each taxable year of 2006, 2007, 2008 and 2009) and the corresponding earnings basis pool is $1,250 ($275 in 2006, $300 in 2007, $325 in 2008 and $350 in 2009). The capital equity pool is £6,000 and the corresponding capital basis pool is $6,000 (contributed cash of £6,000 translated to equal $6,000—which U.S. Corp can trace to contributed cash remaining of £1,000 with a translated basis equal to $1,000; a truck of £4,000 with a translated basis equal to $4,000; and a computer of £1,000 with a translated basis equal to $1,000).

(iii) Pursuant to paragraph (c)(3)(i) of this section, U.S. Corp must determine UK Branch's section 987 gain or loss on January 1, 2010, using its prior section 987 method (the "earnings only" method), as if UK Branch terminated on December 31, 2009. Using principles similar to § 1.987–3(h) of the 1991 proposed section 987 regulations with respect to the earnings equity and basis pool, U.S. Corp would determine $750 of section 987 gain as follows:

Earnings Equity Pool on 12/31/09	£1,000
Multiplied by spot rate on date of deemed termination of £1=$2	× $2
	$2,000
Spot Value of Earnings Equity Pool	$2,000
Less 100% of Earnings Basis Pool	($1,250)
Section 987 gain	$750

(iv) Under paragraph (c)(3)(i) of this section, U.S. Corp does not recognize the $750 of section 987 gain determined on the transition date. Instead, the $750 will be treated as net unrecognized section 987 gain of UK Branch for 2010 and subsequent years (in addition to any net unrecognized section 987 gain or loss otherwise determined at the close of 2010 and subsequent years). Recognition of net unrecognized section 987 gain or loss is governed by § 1.987–5.

(v) Pursuant to paragraph (c)(3)(ii) of this section, when computing the exchange rates used to determine the amount of assets and liabilities transferred from U.S. Corp to UK Branch on the transition date, U.S. Corp must adjust the historic exchange rates attributable to such assets to take into account UK Branch's section 987 gain determined under paragraph (c)(3) of this section. Under these facts, U.S. Corp may reasonably take into account UK Branch's section 987 gain by translating those UK Branch's assets that generated such gain using the same spot rate it used to determine UK Branch's section 987 gain on the termination date of December 31, 2009 and by determining the translation rate of other assets by reference to the traced basis of such assets. Accordingly, on January 1, 2010, U.S. Corp translates the deemed contributions to UK Branch as follows:

Asset	Amount in £	Translation rate	Amount in $
Contributed Cash	£1,000	Spot rate on 1/1/06 of £1=$1	$1,000
Cash	250	Spot rate on 12/31/09 of £1=$2	500
Cash	250	Spot rate on 12/31/09 of £1=$2	500
Cash	250	Spot rate on 12/31/09 of £1=$2	500
Cash	250	Spot rate on 12/31/09 of £1=$2	500
Truck	4,000	Spot rate on 1/1/06 of £1=$1	4,000
Computer	1,000	Spot rate on 1/1/06 of £1=$1	1,000
Total assets	7,000		8,000
Liabilities	0		0

(vi) If UK Branch was not able to trace historic dollar basis as set forth in paragraph (v) of this *Example 2*, when translating the assets deemed contributed to UK Branch on January 1, 2010, under paragraph (c)(3)(ii) of this section, U.S. Corp would be required to use exchange rates that take into account a reasonable allocation of the aggregate historic basis and the $750 of deferred section 987 gain to the UK Branch assets.

Example 3. Fresh start transition method. (i) The facts are the same as in *Example 1*,

except that U.S. Corp chooses to use the fresh start transition method of paragraph (c)(4) of this section in transitioning from the 1991 proposed regulations to the method prescribed in the current regulations. Pursuant to paragraph (c)(4)(i) of this section, UK Branch is deemed to terminate on December 31, 2009. However, no section 987 gain or loss will be determined or recognized. On January 1, 2010, when translating the assets deemed contributed to UK Branch, U.S. Corp will use the historic exchange rates existing on the date the assets were acquired by UK Branch pursuant to paragraph (c)(4)(ii) of this section. Accordingly, U.S. Corp translates the assets deemed contributed (cash is segregated for ease of illustration) to UK Branch as follows:

Asset	Amount in £	Translation rate	Amount in $
Contributed Cash	£1000	Spot rate on 1/1/06 of £1=$1	$1,000
Cash	250	Ave. rate for 2006 of £1=$1.10	275
Cash	250	Ave. rate for 2004 of £1=$1.20	300
Cash	250	Ave. rate for 2005 of £1=$1.30	325
Cash	250	Ave. rate for 2006 of £1=$1.40	350
Truck	4000	Spot rate on 1/1/06 of £1=$1	4,000
Computer	1000	Spot rate on 1/1/06 of £1=$1	1,000
Total assets	7000		7,250
Liabilities	0		0

(ii) If UK Branch was not able to trace historic dollar basis as set forth in paragraph (i) of this *Example 3*, when translating the assets deemed contributed to UK Branch on January 1, 2010, under paragraph (c)(3)(ii) of this section, U.S. Corp would be required to use exchange rates that take into account a reasonable allocation of the aggregate historic basis of the UK Branch assets.

§ 1.987–11 Effective date.

(a) *In general.* Except as otherwise provided in this section, these regulations shall apply to taxable years beginning one year after the first day of the first taxable year following the date of publication of a Treasury decision adopting this rule as a final regulation in the **Federal Register**.

(b) *Election to apply these regulations to taxable years beginning after the date of publication of a Treasury decision adopting this rule as a final regulation in the* **Federal Register**. A taxpayer may elect to apply these regulations to taxable years beginning after the date of publication of a Treasury decision adopting this rule as a final regulation in the **Federal Register**. Such election shall be binding on all members that file a consolidated return with the taxpayer and any controlled foreign corporation, as defined in section 957, in which the taxpayer owns more than 50 percent of the voting power or stock (as determined in section 957(a)). An election made under this paragraph shall be made in accordance with § 1.987–1(f).

Par. 6. Section 1.988–1 is amended by:

1. Adding paragraphs (a)(3) and (a)(4).
2. Revising paragraph (a)(10)(ii).
3. Adding two sentences to the end of paragraph (i).

The additions and revision read as follows:

§ 1.988–1 Certain definitions and special rules.

* * * * *

(a) * * *

(3) *Certain transactions of a section 987 QBU denominated in the functional currency of the owner are not treated as section 988 transactions.* Transactions described in § 1.987–3(e)(2) (regarding certain transactions that are denominated in the functional currency of the owner of a section 987 QBU) are not treated as section 988 transactions to a section 987 QBU. Thus, no currency gain or loss shall be recognized by a section 987 QBU under section 988 with respect to such items.

(4) *Treatment of assets and liabilities of a partnership or DE that are not attributed to an eligible QBU*—(i) *Scope.* This paragraph (a)(4) applies to assets and liabilities of a partnership, or of an entity disregarded as an entity separate from its owner for U.S. Federal income tax purposes (DE), that are not attributable to an eligible QBU (within the meaning of § 1.987–1(b)(3)) as provided under § 1.987–2(b).

(ii) *Partnerships.* For purposes of applying section 988 and the applicable regulations to transactions involving the assets and liabilities described in paragraph (a)(4)(i) of this section that are held by a partnership, the owners of the partnership (within the meaning of § 1.987–1(b)(4)) shall be treated as owning their share of such assets and liabilities. Section 1.987–7(b) shall apply for purposes of determining an owner's share of such assets or liabilities.

(iii) *Disregarded entities.* For purposes of applying section 988 and the applicable regulations to transactions involving the assets and liabilities described in paragraph (a)(4)(i) of this section that are held by a DE, the owner of the DE (within the meaning of § 1.987–1(b)(4)) shall be treated as owning all of such assets and liabilities.

(iv) *Example.* The following example illustrates the application of paragraph (a)(4) of this section:

Example. Liability held through a partnership. (i) *Facts.* P, a foreign partnership, has two equal partners, X and Y. X is a domestic corporation with the dollar as its functional currency. Y is a foreign corporation that has the yen as its functional currency. On January 1, year 1, P borrowed yen and issued a note to the lender that obligated P to pay interest and repay principal to the lender in yen. Also on January 1, year 1, P used the yen it borrowed from the lender to acquire 100% of the stock of F, a foreign corporation, from an unrelated person. P also holds an eligible section 987 QBU (within the meaning of § 1.987–1(b)(3)) that has the yen as its functional currency. P maintains one set of books and records. The assets and liabilities of the eligible QBU are reflected on the P books and records as provided under § 1.987–2(b). The F stock held by P, and the yen liability incurred to acquire the F stock, are also recorded on the books and records of P, but are not reflected on such books and records for purposes of section 987 pursuant to § 1.987–2(b)(2)(i)(A) and (C), respectively.

(ii) *Analysis.* X's portion of the assets and liabilities of the eligible QBU owned by P is a section 987 QBU. Y's portion of the assets and liabilities of the eligible QBU owned by P is not a section 987 QBU because Y and the eligible QBU have the same functional currency. Because the F stock and yen-denominated liability incurred to acquire such stock are not reflected on the books and records of the eligible QBU, they are not subject to section 987. In addition, because the F stock and the yen-denominated liability incurred to acquire such stock are held by P (but not attributable to P's eligible QBU), X and Y are treated as owning their share of such stock and liability, determined under § 1.987–7(b), for purposes of applying section 988. As a result, P's becoming the obligor under the portion of the yen-denominated note that is treated as being an obligation of X is a section 988 transaction pursuant to paragraphs (a)(1)(ii), (a)(2)(ii) and (a)(3) of this section. Similarly, the disposition of yen on payments of interest and principal on the liability, to the extent such yen are treated as

owned by X, are section 988 transactions under paragraphs (a)(1)(i) and (a)(3) of this section. P's becoming the obligor under Y's portion of the yen-denominated note, and Y's portion of the yen disposed of in connection with payments on such note, are not section 988 transactions because Y has the yen as its functional currency.

(5) [Reserved].

* * * * *

(10) * * *

(ii) *Certain transfers.* (A) Exchange gain or loss with respect to nonfunctional currency or any item described in paragraph (a)(2) of this section entered into with another taxpayer shall be realized upon a transfer (as defined under § 1.987–2(c)) of such currency or item from an owner to a section 987 QBU or from a section 987 QBU to the owner where as a result of such transfers the currency or other such item—

(*i*) Loses its character as nonfunctional currency or an item described in paragraph (a)(2) of this section; or

(*ii*) Where the source of the exchange gain or loss could be altered absent the application of this paragraph (a)(10)(ii).

(B) Such exchange gain or loss shall be computed in accordance with § 1.988–2 (without regard to § 1.988–2(b)(8) as if the nonfunctional currency or item described in paragraph (a)(2) of this section had been sold or otherwise transferred at fair market value between unrelated taxpayers. For purposes of the preceding sentence, a taxpayer must use a translation rate that is consistent with the translation conventions of the section 987 QBU to which or from which, as the case may be, the item is being transferred. In the case of a gain or loss incurred in a transaction described in this paragraph (a)(10)(ii) that does not have a significant business purpose, the Commissioner, may defer such gain or loss.

* * * * *

(i) * * * Generally, the revisions to paragraphs (a)(3), (a)(4), (a)(5), and (a)(10)(ii) of this section shall apply to taxable years beginning one year after the first day of the first taxable year following the date of publication of a Treasury decision adopting this rule as a final regulation in the **Federal Register**. If a taxpayer makes an election under § 1.987–11(b), then the effective date of the revisions to paragraphs (a)(3), (a)(4), and (a)(10)(ii) of this section with respect to the taxpayer shall be consistent with such election.

Par. 7. Section 1.988–4 is amended by revising paragraph (b)(2) to read as follows:

§ 1.988–4 Source of gain or loss realized on a section 988 transfer.

* * * * *

(b) * * *

(2) *Proper reflection on the books of the taxpayer or qualified business unit*—(i) *In general.* For purposes of paragraph (b)(1) of this section, the principles of § 1.987–2(b) shall apply in determining whether an asset, liability, or item of income or expense is reflected on the books of a qualified business unit.

(ii) *Effective date.* Generally, paragraph (b)(2)(i) of this section shall apply to taxable years beginning one year after the first day of the first taxable year following the date of publication of a Treasury decision adopting this rule as a final regulation in the **Federal Register**. If a taxpayer makes an election under § 1.987–11(b), then the effective date of paragraph (b)(2)(i) with respect to the taxpayer shall be consistent with such election.

* * * * *

Par. 8. Section 1.989(a)–1 is amended as follows:

1. The last sentence of paragraph (b)(2)(i) is revised.

2. Paragraph (b)(4) is added.

The revision and addition reads as follows:

§ 1.989(a)–1 Definition of a qualified business unit.

(b) * * *

(2) * * *

(i) *Persons*—* * * A trust or estate is a QBU of the beneficiary.

* * * * *

(4) *Effective date.* Generally, the revisions to paragraph (b)(2)(i) of this section shall apply to taxable years beginning one year after the first day of the first taxable year following the date of publication of a Treasury decision adopting this rule as a final regulation in the **Federal Register**. If a taxpayer makes an election under § 1.987–11(b), then the effective date of the revisions to paragraph (b)(2)(i) of this section with respect to the taxpayer shall be consistent with such election.

* * * * *

§ 1.989(c)–1 [Removed]

Par. 9. Section 1.989(c)–1 is removed.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

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September 7, 2006

Part III

State Justice Institute

Grant Guideline; Notice

STATE JUSTICE INSTITUTE

Grant Guideline

AGENCY: State Justice Institute.
ACTION: Proposed Grant Guideline.

SUMMARY: This Guideline sets forth the administrative, programmatic, and financial requirements attendant to Fiscal Year 2007 State Justice Institute grants, cooperative agreements, and contracts.

DATES: September 7, 2006.

FOR FURTHER INFORMATION CONTACT: Kevin Linskey, Executive Director, State Justice Institute, 1650 King St. (Suite 600), Alexandria, VA 22314, (703) 684–6100 X201.

SUPPLEMENTARY INFORMATION: Pursuant to the State Justice Institute Act of 1984, 42 U.S.C. 10701, *et seq.*, as amended, the Institute is authorized to award grants, cooperative agreements, and contracts to State and local courts, nonprofit organizations, and others for the purpose of improving the quality of justice in the State courts of the United States.

Pending appropriations legislation passed by the House (H.R. 5672) would appropriate $2,000,000 for SJI in fiscal year (FY) 2007; the Senate-passed version of the bill proposes to appropriate $4,500,000.

Regardless of the final amount provided to SJI for FY 2007, the Institute's Board of Directors intends to solicit grant applications across the range of grant programs available.

The following Grant Guideline is adopted by the State Justice Institute for FY 2007:

Table of Contents

I. The Mission of the State Justice Institute

The Institute was established by Pub. L. 98–620 to improve the administration of justice in the State courts of the United States. Incorporated in the State of Virginia as a private, nonprofit corporation, the Institute is charged, by statute, with the responsibility to:

- Direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;
- Foster coordination and cooperation with the Federal judiciary;
- Promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and
- Encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

To accomplish these broad objectives, the Institute is authorized to provide funds to State courts, national organizations which support and are supported by State courts, national judicial education organizations, and other organizations that can assist in improving the quality of justice in the State courts.

The Institute is supervised by a Board of Directors appointed by the President, with the consent of the Senate. The Board is statutorily composed of six judges; a State court administrator; and four members of the public, no more than two of whom can be of the same political party.

Through the award of grants, contracts, and cooperative agreements, the Institute is authorized to perform the following activities:

A. Support research, demonstrations, special projects, technical assistance, and training to improve the administration of justice in the State courts;

B. Provide for the preparation, publication, and dissemination of information regarding State judicial systems;

C. Participate in joint projects with Federal agencies and other private grantors;

D. Evaluate or provide for the evaluation of programs and projects to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving the quality of justice in the State courts;

E. Encourage and assist in furthering judicial education; and,

F. Encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services.

II. Eligibility for Award

The Institute is authorized by Congress to award grants, cooperative agreements, and contracts to the following entities and types of organizations:

A. *State and local courts and their agencies* (42 U.S.C. *10705(b)(1)(A)).* Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court or its designated agency or council. The latter shall receive all Institute funds awarded to such courts and be responsible for assuring proper administration of Institute funds, in accordance with section VII.C.2. of this Guideline.

B. *National nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments* (42 U.S.C. 10705(b)(1)(B)).

C. *National nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments* (42 U.S.C. 10705(b)(1)(C)). An applicant is considered a national education and training applicant under section 10705(b)(1)(C) if:

1. The principal purpose or activity of the applicant is to provide education and training to State and local judges and court personnel; and

2. The applicant demonstrates a record of substantial experience in the field of judicial education and training.

D. *Other eligible grant recipients* (42 U.S.C. 10705 (b)(2)(A)–(D)).

1. Provided that the objectives of the project can be served better, the Institute is also authorized to make awards to:

a. Nonprofit organizations with expertise in judicial administration;

b. Institutions of higher education;

c. Individuals, partnerships, firms, corporations (for-profit organizations must waive their fees); and

d. Private agencies with expertise in judicial administration.

2. The Institute may also make awards to State or local agencies and institutions other than courts for services that cannot be adequately provided through nongovernmental arrangements (42 U.S.C. 10705(b)(3)).

E. *Inter-agency Agreements.* The Institute may enter into inter-agency agreements with Federal agencies (42 U.S.C. 10705(b)(4)) and private funders to support projects consistent with the purposes of the State Justice Institute Act.

III. Scope of the Program

SJI is offering five types of grants in FY 2007: Project Grants, Technical Assistance (TA) Grants, Curriculum Adaptation and Training (CAT) Grants, Scholarships, and Partner Grants. Effective immediately, SJI will no longer award Continuation Grants to extend

previous or future Project or Partner Grants.

A. Project Grants

Project Grants are intended to support innovative education and training, research and evaluation, demonstration, and technical assistance projects that can improve the administration of justice in State courts nationwide. Project Grants may ordinarily not exceed $300,000; however, grants in excess of $200,000 are apt to be rare, and awarded only to support projects likely to have a significant national impact. Grant periods for Project Grants ordinarily may not exceed 36 months. No Continuation Grants will be awarded.

Applicants for Project Grants will be required to contribute a cash match of not less than 50% of the total cost of the proposed project. In other words, grant awards by SJI must be matched at least dollar for dollar by grant applicants. Applicants may contribute the required cash match directly or in cooperation with third parties.

Prospective applicants should carefully review Section VI.8. (matching requirements) and Section VI.16.a. (non-supplantation) of the guidelines prior to beginning the application process. If questions arise, applicants are strongly encouraged to consult with the Institute.

As set forth in Section I., the Institute is authorized to fund projects addressing a broad range of program areas. Though the Board is likely to favor Project Grant applications focused on the Special Interest program categories described below, potential applicants are also encouraged to bring to the attention of the Institute innovative projects outside those categories. Funds will not be made available for the ordinary, routine operation of court systems or programs in any of these areas.

1. Special Interest Program Categories

The Institute is interested in funding both innovative programs and programs of proven merit that can be replicated in other jurisdictions. The Institute is especially interested in funding projects that:

- Formulate new procedures and techniques, or creatively enhance existing procedures and techniques;
- Address aspects of the State judicial systems that are in special need of serious attention;
- Have national significance by developing products, services, and techniques that may be used in other States; and
- Create and disseminate products that effectively transfer the information and ideas developed to relevant audiences in State and local judicial systems, or provide technical assistance to facilitate the adaptation of effective programs and procedures in other State and local jurisdictions.

A project will be identified as a Special Interest project if it meets the four criteria set forth above and it falls within the scope of the Board-designated Special Interest program categories listed below.

The order of listing does not imply any ordering of priorities among the categories.

a. *Court Budgeting.* Unlike the legislative and executive branches, the judiciary seems to weather regular periods of budgetary feast and famine. This has proven very disruptive to court staffing, services, technology investment, and professional education and development. The Institute is interested in pursuing "how to" projects that focus on "best practices" regarding budget structure and formulation, sources of revenue, inter-branch relations, and other methods that contribute to stabilizing court budgets and improving their long-term financial prospects.

b. *Courts and the Media.* Recent repeated public attacks on courts have gone largely unanswered, because judges were unwilling and/or courts were unable to respond effectively. No one is better prepared than a judge to describe decision-making on the bench within the law and the Constitution. The Institute is interested in projects that explore the role of judge as public commentator within ethical and professional bounds. The Institute is also interested in judicial education or other programs that prepare judges and court officials to serve as spokesmen in short notice, high profile circumstances, especially in situations where courts lack dedicated press secretaries. Finally, the Institute is interested in promoting initiatives that improve relations between the judiciary and the media, since much of the recent rancor between the two seems based on unfamiliarity with one another's duties, responsibilities, and limitations. In particular, the Institute is interested in proposals that focus on cultivating trust and open communication between the Third Branch and the Fourth Estate on a day-to-day basis, because dialogue between strangers is rarely started and never sustained in a crisis.

c. *Elder Issues.* This category includes research, demonstration, evaluation, and education projects designed to improve management of guardianship, probate, fraud, Americans with Disability Act, and other types of elder-related cases. The Institute is particularly interested in projects that would develop and evaluate judicial branch education programs addressing elder law and related issues.

d. *Performance Standards and Outcome Measures.* This category includes projects that will develop and measure performance standards and outcomes for all aspects of court operations. The Institute is particularly interested in projects that take the National Center for State Courts' "CourTools" to the next level. Other initiatives designed to further professionalize court staff and operations, or to objectively evaluate the costs and benefits and cost-effectiveness of problem solving courts, are also welcome.

e. *Defending the Institution.* The perils facing courts today include attacks on our system of justice and judges and catastrophes natural and manmade. The Institute is seeking proposals to address each.

Attacks on courts and judges have increased. These attacks are often not scrutinized because many citizens in this country lack education or knowledge about the role of the courts in our system of government. The Institute remains interested in supporting the creation of public education projects that would develop and test materials that judges and court leaders can use to inform community groups and constituencies about the nature and importance of Federalism, separation and balance of powers, and judicial independence. In addition, as mentioned above, projects that would improve the relationship between courts and the media are encouraged.

Catastrophes, natural and manmade, can destroy the ability of our courts to help provide law and order. The Board is interested in: (1) Continuity of operations proposals that go beyond planning and table top exercises to include "no notice" drills and "red team" exercises involving all personnel integral to court operations, including those from outside agencies such as sheriffs' offices, (2) innovative and secure court security information-sharing projects that piggyback on, or otherwise exploit, existing capabilities and technologies (because new resources for new systems are apt to be limited), and (3) piloting a low cost "virtual" 24/7 threat center netting Federal, State, and local court security first responders with analysts conducting real-time threat assessments (replacing costly "bricks and mortar" proposals).

Though "Managing Self-Represented Litigation", "Application of Technology

in the Courts", and "Children and Families in Court" are no longer listed as Special Interest program categories, the SJI Board retains a keen interest in these areas and would welcome ground breaking proposals in all three.

Project Grant application procedures can be found in section IV.A.

B. Technical Assistance (TA) Grants

TA Grants are intended to provide State or local courts, particularly small, rural, or impoverished urban courts or regional court associations, with sufficient support to obtain expert assistance to diagnose a problem, develop a response to that problem, and implement any needed changes. TA Grants may not exceed $30,000, and shall only cover the cost of obtaining the services of expert consultants. Examples of expenses not covered by TA Grants include the salaries, benefits, travel, or training costs of full- or part-time court employees. Grant periods for TA Grants ordinarily may not exceed 24 months. In calculating project duration, applicants are cautioned to fully consider the time required to issue a request for proposals, negotiate a contract with the selected provider, and execute the project. The SJI Board intends to reserve up to $250,000 for TA Grants. Sufficient funds will be reserved each quarter to assure the availability of TA Grants throughout the year.

Applicants for TA Grants will be required to contribute a match of not less than 50% of the grant amount requested, of which 20% must be cash. In other words, a grantee seeking a $30,000 TA grant must provide a $15,000 match, of which up to $12,000 can be in-kind and not less than $3,000 must be cash. Applicants considering cash matches well in excess of $3,000 should consider applying for Project Grants and are strongly urged to consult with the Institute prior to applying. The Institute may waive the match and cash match requirements in extraordinary circumstances (see section VI.A.8.).

TA Grant application procedures can be found in section IV.B.

C. Curriculum Adaptation and Training (CAT) Grants

CAT Grants are intended to: (1) Enable courts and regional or national court associations to modify and adapt model curricula, course modules, or conference programs to meet States' or local jurisdictions' educational needs; train instructors to present portions or all of the curricula; and pilot-test them to determine their appropriateness, quality, and effectiveness, or (2) conduct judicial branch education and training programs, led by either expert or in-house personnel, designed to prepare judges and court personnel for recently adopted innovations, reforms, and/or new technologies by grantee courts. CAT Grants may not exceed $20,000. Grant periods for CAT Grants ordinarily may not exceed 12 months. The SJI Board intends to reserve up to $100,000 for CAT Grants.

Applicants for CAT Grants will be required to contribute a match of not less than 50% of the grant amount requested, of which 20% must be cash. In other words, a grantee seeking a $20,000 CAT grant must provide a $10,000 match, of which up to $8,000 can be in-kind and not less than $2,000 must be cash. Applicants considering cash matches well in excess of $2,000 should consider applying for Project Grants and are strongly urged to consult with the Institute prior to applying. The Institute may waive the match and cash match requirements in extraordinary circumstances (see section VI.A.8.).

CAT Grant application procedures can be found in section IV.C.

D. Scholarships for Judges and Court Managers

Scholarships are intended to enhance the skills, knowledge, and abilities of State court judges and court managers by enabling them to attend out-of-State, or to enroll in online, educational and training programs sponsored by national and State providers that they could not otherwise attend or take online because of limited State, local, and personal budgets. Scholarships may not exceed $1,500. The SJI Board intends to reserve up to $250,000 for scholarships. Sufficient funds will be reserved each quarter to assure the availability of scholarships throughout the year.

Scholarship application procedures can be found in section IV.D.

E. Partner Grants

Partner Grants are intended to allow SJI and Federal, State, or local agencies or foundations, trusts, or other private entities to combine financial resources in pursuit of common interests. Though many, if not most, Partner Grants will fall under the Special Interest program categories cited in section III.A., proposals addressing other emerging or high priority court-related problems will be considered on a case-by-case basis. SJI and its financial partners may set any level for Partner Grants, subject to the entire amount of the grant being available at the time of the award; applicants for Partner Grants may request any amount of funding. Grant periods for Partner Grants ordinarily may not exceed 36 months. Absent extraordinary circumstances, no grant will continue for more than five years.

Partner Grants are subject to the same cash match requirement as Project Grants. In other words, grant awards by SJI must be matched at least dollar for dollar. Applicants may contribute the required cash match directly or in cooperation with third parties (note: a Federal third party may contribute no more than 49% of the total cost of a project and only to purchase a service, not as a grantee's match).

Partner Grant application procedures can be found in section IV.E.

IV. Applications

A. Project Grants

An application for a Project Grant must include an application form; budget forms (with appropriate documentation); a project abstract and program narrative; a disclosure of lobbying form, when applicable; and certain certifications and assurances (see below). See Appendix B for the Project Grant application forms. For a summary of the application process, visit the Institute's Web site (*www.statejustice.org*) and click on On-Line Tutorials, then Project Grant.

1. Forms

a. *Application Form (Form A).* The application form requests basic information regarding the proposed project, the applicant, and the total amount of funding requested from the Institute. It also requires the signature of an individual authorized to certify on behalf of the applicant that the information contained in the application is true and complete; that submission of the application has been authorized by the applicant; and that if funding for the proposed project is approved, the applicant will comply with the requirements and conditions of the award, including the assurances set forth in Form D.

b. *Certificate of State Approval (Form B).* An application from a State or local court must include a copy of Form B signed by the State's Chief Justice or Chief Judge, the director of the designated agency, or the head of the designated council. The signature denotes that the proposed project has been approved by the State's highest court or the agency or council it has designated. It denotes further that if the Institute approved funding for the project, the court or the specified designee will receive, administer, and be accountable for the awarded funds.

c. *Budget Form (Form C).* Applicants must submit a Form C. In addition to Form C, applicants must provide a

detailed budget narrative providing an explanation of the basis for the estimates in each budget category (see subsection A.4. below).

If funds from other sources are required to conduct the project, either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

d. *Assurances (Form D).* This form lists the statutory, regulatory, and policy requirements with which recipients of Institute funds must comply.

e. *Disclosure of Lobbying Activities.* Applicants other than units of State or local government are required to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts (see section VI.A.7.).

2. Project Abstract

The abstract should highlight the purposes, goals, methods, and anticipated benefits of the proposed project. It should not exceed 1 single-spaced page on 8½ by 11 inch paper.

3. Program Narrative

The program narrative for an application may not exceed 25 double-spaced pages on 8½ by 11 inch paper. Margins must be at least 1 inch, and type size must be at least 12-point and 12 cpi. The pages should be numbered. This page limit does not include the forms, the abstract, the budget narrative, and any appendices containing resumes and letters of cooperation or endorsement. Additional background material should be attached only if it is essential to impart a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

The program narrative should address the following topics:

a. *Project Objectives.* The applicant should include a clear, concise statement of what the proposed project is intended to accomplish. In stating the objectives of the project, applicants should focus on the overall programmatic objective (e.g., to enhance understanding and skills regarding a specific subject, or to determine how a certain procedure affects the court and litigants) rather than on operational objectives (e.g., provide training for 32 judges and court managers, or review data from 300 cases).

b. *Program Areas to Be Covered.* The applicant should note the Special Interest category or categories that are addressed by the proposed project (see section III.A.).

c. *Need for the Project.* If the project is to be conducted in any specific location(s), the applicant should discuss the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through the use of existing programs, procedures, services, or other resources.

If the project is not site-specific, the applicant should discuss the problems that the proposed project would address, and why existing programs, procedures, services, or other resources cannot adequately resolve those problems. The discussion should include specific references to the relevant literature and to the experience in the field.

d. *Tasks, Methods and Evaluations.* (1) *Tasks and Methods.* The applicant should delineate the tasks to be performed in achieving the project objectives and the methods to be used for accomplishing each task. For example:

(a) For research and evaluation projects, the applicant should include the data sources, data collection strategies, variables to be examined, and analytic procedures to be used for conducting the research or evaluation and ensuring the validity and general applicability of the results. For projects involving human subjects, the discussion of methods should address the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and protecting others who are not the subjects of research but would be affected by the research. If the potential exists for risk or harm to human subjects, a discussion should be included that explains the value of the proposed research and the methods to be used to minimize or eliminate such risk.

(b) For education and training projects, the applicant should include the adult education techniques to be used in designing and presenting the program, including the teaching/learning objectives of the educational design, the teaching methods to be used, and the opportunities for structured interaction among the participants; how faculty would be recruited, selected, and trained; the proposed number and length of the conferences, courses, seminars, or workshops to be conducted and the estimated number of persons who would attend them; the materials to be provided and how they would be developed; and the cost to participants.

(c) For demonstration projects, the applicant should include the demonstration sites and the reasons they were selected, or if the sites have not been chosen, how they would be identified and their cooperation obtained; and how the program or procedures would be implemented and monitored.

(d) For technical assistance projects, the applicant should explain the types of assistance that would be provided; the particular issues and problems for which assistance would be provided; how requests would be obtained and the type of assistance determined; how suitable providers would be selected and briefed; how reports would be reviewed; and the cost to recipients.

(2) *Evaluation.* Every project must include an evaluation plan to determine whether the project met its objectives. The evaluation should be designed to provide an objective and independent assessment of the effectiveness or usefulness of the training or services provided; the impact of the procedures, technology, or services tested; or the validity and applicability of the research conducted. In addition, where appropriate, the evaluation process should be designed to provide ongoing or periodic feedback on the effectiveness or utility of the project in order to promote its continuing improvement. The plan should present the qualifications of the evaluator(s); describe the criteria that would be used to evaluate the project's effectiveness in meeting its objectives; explain how the evaluation would be conducted, including the specific data collection and analysis techniques to be used; discuss why this approach would be appropriate; and present a schedule for completion of the evaluation within the proposed project period.

The evaluation plan should be appropriate to the type of project proposed. For example:

(a) An evaluation approach suited to many research projects is a review by an advisory panel of the research methodology, data collection instruments, preliminary analyses, and products as they are drafted. The panel should be comprised of independent researchers and practitioners representing the perspectives affected by the proposed project.

(b) The most valuable approaches to evaluating educational or training programs reinforce the participants' learning experience while providing useful feedback on the impact of the program and possible areas for improvement. One appropriate evaluation approach is to assess the acquisition of new knowledge, skills, attitudes, or understanding through participant feedback on the seminar or training event. Such feedback might include a self-assessment of what was

learned along with the participant's response to the quality and effectiveness of faculty presentations, the format of sessions, the value or usefulness of the material presented, and other relevant factors. Another appropriate approach would be to use an independent observer who might request both verbal and written responses from participants in the program. When an education project involves the development of curricular materials, an advisory panel of relevant experts can be coupled with a test of the curriculum to obtain the reactions of participants and faculty as indicated above.

(c) The evaluation plan for a demonstration project should encompass an assessment of program effectiveness (e.g., how well did it work?); user satisfaction, if appropriate; the cost-effectiveness of the program; a process analysis of the program (e.g., was the program implemented as designed, and/or did it provide the services intended to the targeted population?); the impact of the program (e.g., what effect did the program have on the court, and/or what benefits resulted from the program?); and the replicability of the program or components of the program.

(d) For technical assistance projects, applicants should explain how the quality, timeliness, and impact of the assistance provided would be determined, and develop a mechanism for feedback from both the users and providers of the technical assistance.

Evaluation plans involving human subjects should include a discussion of the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and protecting others who are not the subjects of the evaluation but would be affected by it. Other than the provision of confidentiality to respondents, human subject protection issues ordinarily are not applicable to participants evaluating an education program.

e. *Project Management.* The applicant should present a detailed management plan, including the starting and completion date for each task; the time commitments to the project of key staff and their responsibilities regarding each project task; and the procedures that would ensure that all tasks are performed on time, within budget, and at the highest level of quality. In preparing the project time line, Gantt Chart, or schedule, applicants should make certain that all project activities, including publication or reproduction of project products and their initial dissemination, would occur within the proposed project period. The management plan must also provide for the submission of Quarterly Progress and Financial Reports within 30 days after the close of each calendar quarter (i.e., no later than January 30, April 30, July 30, and October 30).

Applicants should be aware that the Institute is unlikely to approve a limited extension of the grant period without very good cause. Therefore, the management plan should be as realistic as possible and fully reflect the time commitments of the proposed project staff and consultants.

f. *Products.* The program narrative in the application should contain a description of the products to be developed (e.g., training curricula and materials, audiotapes, videotapes, DVDs, computer software, CD–ROM disks, articles, guidelines, manuals, reports, handbooks, benchbooks, or books), including when they would be submitted to the Institute. The budget should include the cost of producing and disseminating the product to each in-State SJI library (see Appendix A), State chief justice, State court administrator, and other appropriate judges or court personnel.

(1) *Dissemination Plan.* The application must explain how and to whom the products would be disseminated; describe how they would benefit the State courts, including how they could be used by judges and court personnel; identify development, production, and dissemination costs covered by the project budget; and present the basis on which products and services developed or provided under the grant would be offered to the courts community and the public at large (i.e., whether products would be distributed at no cost to recipients, or if costs are involved, the reason for charging recipients and the estimated price of the product) (see section VI.A.11.b.). Ordinarily, applicants should schedule all product preparation and distribution activities within the project period.

A copy of each product must be sent to the library established in each State to collect the materials developed with Institute support (see Appendix A). Applicants proposing to develop web-based products should provide for sending a hard-copy document to the SJI-designated libraries and other appropriate audiences to alert them to the availability of the Web site or electronic product (i.e., a written report with a reference to the Web site).

Fifteen (15) copies of all project products must be submitted to the Institute, along with an electronic version in .html or .pdf format.

(2) *Types of Products and Press Releases.* The type of product to be prepared depends on the nature of the project. For example, in most instances, the products of a research, evaluation, or demonstration project should include an article summarizing the project findings that is publishable in a journal serving the courts community nationally, an executive summary that would be disseminated to the project's primary audience, or both. Applicants proposing to conduct empirical research or evaluation projects with national import should describe how they would make their data available for secondary analysis after the grant period (see section VI.A.14.a.).

The curricula and other products developed through education and training projects should be designed for use outside the classroom so that they may be used again by the original participants and others in the course of their duties.

In addition, recipients of project grants must prepare a press release describing the project and announcing the results, and distribute the release to a list of national and State judicial branch organizations. SJI will provide press release guidelines and a list of recipients to grantees at least 30 days before the end of the grant period.

(3) *Institute Review.* Applicants must submit a final draft of all written grant products to the Institute for review and approval at least 30 days before the products are submitted for publication or reproduction. For products in a videotape or CD–ROM format, applicants must provide for Institute review of the product at the treatment, script, rough-cut, and final stages of development, or their equivalents. No grant funds may be obligated for publication or reproduction of a final grant product without the written approval of the Institute (see section VI.A.11.e.).

(4) *Acknowledgment, Disclaimer, and Logo.* Applicants must also include in all project products a prominent acknowledgment that support was received from the Institute and a disclaimer paragraph based on the example provided in section VI.A.11.a.2. of the Guideline. The "SJI" logo must appear on the front cover of a written product, or in the opening frames of a video, unless the Institute approves another placement.

g. *Applicant Status.* An applicant that is not a State or local court and has not received a grant from the Institute within the past three years should state whether it is either a national non-profit organization controlled by, operating in conjunction with, and serving the

judicial branches of State governments, or a national non-profit organization for the education and training of State court judges and support personnel (see section II.). If the applicant is a nonjudicial unit of Federal, State, or local government, it must explain whether the proposed services could be adequately provided by non-governmental entities.

h. *Staff Capability.* The applicant should include a summary of the training and experience of the key staff members and consultants that qualify them for conducting and managing the proposed project. Resumes of identified staff should be attached to the application. If one or more key staff members and consultants are not known at the time of the application, a description of the criteria that would be used to select persons for these positions should be included. The applicant also should identify the person who would be responsible for managing and reporting on the financial aspects of the proposed project.

i. *Organizational Capacity.* Applicants that have not received a grant from the Institute within the past three years should include a statement describing their capacity to administer grant funds, including the financial systems used to monitor project expenditures (and income, if any), and a summary of their past experience in administering grants, as well as any resources or capabilities that they have that would particularly assist in the successful completion of the project.

Unless requested otherwise, an applicant that has received a grant from the Institute within the past three years should describe only the changes in its organizational capacity, tax status, or financial capability that may affect its capacity to administer a grant.

If the applicant is a non-profit organization (other than a university), it must also provide documentation of its 501(c) tax-exempt status as determined by the Internal Revenue Service and a copy of a current certified audit report. For purposes of this requirement, "current" means no earlier than two years prior to the present calendar year.

If a current audit report is not available, the Institute will require the organization to complete a financial capability questionnaire, which must be signed by a Certified Public Accountant. Other applicants may be required to provide a current audit report, a financial capability questionnaire, or both, if specifically requested to do so by the Institute.

j. *Statement of Lobbying Activities.* Non-governmental applicants must submit the Institute's Disclosure of Lobbying Activities Form, which documents whether they, or another entity that is a part of the same organization as the applicant, have advocated a position before Congress on any issue, and identifies the specific subjects of their lobbying efforts (see Appendix B).

k. *Letters of Cooperation or Support.* If the cooperation of courts, organizations, agencies, or individuals other than the applicant is required to conduct the project, the applicant should attach written assurances of cooperation and availability to the application, or send them under separate cover. To ensure sufficient time to bring them to the Board's attention, letters of support sent under separate cover must be received by the deadlines set below in subsection A.5.

4. Budget Narrative

The budget narrative should provide the basis for the computation of all project-related costs. When the proposed project would be partially supported by grants from other funding sources, applicants should make clear what costs would be covered by those other grants. Additional background information or schedules may be attached if they are essential to obtaining a clear understanding of the proposed budget. Numerous and lengthy appendices are strongly discouraged.

The budget narrative should cover the costs of all components of the project and clearly identify costs attributable to the project evaluation. Under OMB grant guidelines incorporated by reference in this Guideline, grant funds may not be used to purchase alcoholic beverages.

a. *Justification of Personnel Compensation.* The applicant should set forth the percentages of time to be devoted by the individuals who would staff the proposed project, the annual salary of each of those persons, and the number of work days per year used for calculating the percentages of time or daily rates of those individuals. The applicant should explain any deviations from current rates or established written organizational policies. If grant funds are requested to pay the salary and related costs for a current employee of a court or other unit of government, the applicant should explain why this would not constitute a supplantation of State or local funds in violation of 42 U.S.C. 10706(d)(1). An acceptable explanation may be that the position to be filled is a new one established in conjunction with the project or that the grant funds would support only the portion of the employee's time that would be dedicated to new or additional duties related to the project.

b. *Fringe Benefit Computation.* The applicant should provide a description of the fringe benefits provided to employees. If percentages are used, the authority for such use should be presented, as well as a description of the elements included in the determination of the percentage rate.

c. *Consultant/Contractual Services and Honoraria.* The applicant should describe the tasks each consultant would perform, the estimated total amount to be paid to each consultant, the basis for compensation rates (e.g., the number of days multiplied by the daily consultant rates), and the method for selection. Rates for consultant services must be set in accordance with section VII.I.2.c. Prior written Institute approval is required for any consultant rate in excess of $800 per day; Institute funds may not be used to pay a consultant more than $1,100 per day. Honorarium payments must be justified in the same manner as consultant payments.

d. *Travel.* Transportation costs and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established travel policy, then travel rates must be consistent with those established by the Institute or the Federal Government (a copy of the Institute's travel policy is available upon request). The budget narrative should include an explanation of the rate used, including the components of the per diem rate and the basis for the estimated transportation expenses. The purpose of the travel should also be included in the narrative.

e. *Equipment.* Grant funds may be used to purchase only the equipment necessary to demonstrate a new technological application in a court or that is otherwise essential to accomplishing the objectives of the project. Equipment purchases to support basic court operations ordinarily will not be approved. The applicant should describe the equipment to be purchased or leased and explain why the acquisition of that equipment is essential to accomplish the project's goals and objectives. The narrative should clearly identify which equipment is to be leased and which is to be purchased. The method of procurement should also be described. Purchases of automated data processing equipment must comply with section VII.I.2.b.

f. *Supplies.* The applicant should provide a general description of the supplies necessary to accomplish the goals and objectives of the grant. In

addition, the applicant should provide the basis for the amount requested for this expenditure category.

g. *Construction.* Construction expenses are prohibited except for the limited purposes set forth in section VI.A.16.b. Any allowable construction or renovation expense should be described in detail in the budget narrative.

h. *Telephone.* Applicants should include anticipated telephone charges, distinguishing between monthly charges and long distance charges in the budget narrative. Also, applicants should provide the basis used to calculate the monthly and long distance estimates.

i. *Postage.* Anticipated postage costs for project-related mailings, including distribution of the final product(s), should be described in the budget narrative. The cost of special mailings, such as for a survey or for announcing a workshop, should be distinguished from routine operational mailing costs. The bases for all postage estimates should be included in the budget narrative.

j. *Printing/Photocopying.* Anticipated costs for printing or photocopying project documents, reports, and publications should be included in the budget narrative, along with the bases used to calculate these estimates.

k. *Indirect Costs.* Recoverable indirect costs are limited to no more than 75% of a grantee's direct personnel costs, i.e. salaries plus fringe benefits (see section VII.I.4.).

Applicants should describe the indirect cost rates applicable to the grant in detail. If costs often included within an indirect cost rate are charged directly (e.g., a percentage of the time of senior managers to supervise project activities), the applicant should specify that these costs are not included within its approved indirect cost rate. These rates must be established in accordance with section VII.I.4. If the applicant has an indirect cost rate or allocation plan approved by any Federal granting agency, a copy of the approved rate agreement must be attached to the application.

l. *Match.* Applicants that do not contemplate making matching contributions continuously throughout the course of the project or on a task-by-task basis must provide a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions would be made (see sections VI.A.8., and VII.E.1.).

5. Submission Requirements

a. Every applicant must submit an original and three copies of the application package consisting of Form A; Form B, if the application is from a State or local court, or a Disclosure of Lobbying Form, if the applicant is not a unit of State or local government; Form C; the Application Abstract; the Program Narrative; the Budget Narrative; and any necessary appendices.

Letters of application may be submitted at any time. Applications will be considered on a rolling basis. Applications received less than 30 days before a quarterly Board meeting will be considered at the next Board meeting. Please mark Project Application on the application package envelope and send it to: State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314.

Receipt of each application will be acknowledged by letter or email.

b. Applicants submitting more than one application may include material that would be identical in each application in a cover letter. This material will be incorporated by reference into each application and counted against the 25-page limit for the program narrative. A copy of the cover letter should be attached to each copy of the application.

B. Technical Assistance (TA) Grants

1. Application Procedures

For a summary of the application procedures for TA Grants, visit the Institute's Web site (*www.statejustice.org*) and click On-Line Tutorials, then Technical Assistance Grant.

In lieu of formal applications, applicants for TA Grants may submit, at any time, an original and three copies of a detailed letter describing the proposed project. Letters from individual trial or appellate courts must be signed by the presiding judge or manager of that court. Letters from State court systems must be signed by the Chief Justice or State Court Administrator. Letters from regional court associations must be signed by the president of the association.

2. Application Format

Although there is no prescribed form for the letter, or a minimum or maximum page limit, letters of application should include the following information:

a. *Need for Funding.* What is the critical need facing the applicant? How would the proposed technical assistance help the applicant meet this critical need? Why cannot State or local resources fully support the costs of the required consultant services?

b. *Project Description.* What tasks would the consultant be expected to perform, and how would they be accomplished? Which organization or individual would be hired to provide the assistance, and how was this consultant selected? If a consultant has not yet been identified, what procedures and criteria would be used to select the consultant (applicants are expected to follow their jurisdictions' normal procedures for procuring consultant services)? What specific tasks would the consultant(s) and court staff undertake? What is the schedule for completion of each required task and the entire project? How would the applicant oversee the project and provide guidance to the consultant, and who at the court or regional court association would be responsible for coordinating all project tasks and submitting quarterly progress and financial status reports?

If the consultant has been identified, the applicant should provide a letter from that individual or organization documenting interest in and availability for the project, as well as the consultant's ability to complete the assignment within the proposed time frame and for the proposed cost. The consultant must agree to submit a detailed written report to the court and the Institute upon completion of the technical assistance.

c. *Likelihood of Implementation.* What steps have been or would be taken to facilitate implementation of the consultant's recommendations upon completion of the technical assistance? For example, if the support or cooperation of specific court officials or committees, other agencies, funding bodies, organizations, or a court other than the applicant would be needed to adopt the changes recommended by the consultant and approved by the court, how would they be involved in the review of the recommendations and development of the implementation plan?

d. *Support for the Project from the State Supreme Court or its Designated Agency or Council.* If a State or local court submits a request for technical assistance, it must include written concurrence on the need for the technical assistance. This concurrence may be a copy of SJI Form B (see Appendix B) signed by the Chief Justice of the State Supreme Court or the Chief Justice's designee, or a letter from the State Chief Justice or designee. The concurrence may be submitted with the applicant's letter or under separate cover prior to consideration of the application. The concurrence also must specify whether the State Supreme Court would receive, administer, and account for the grant funds, if awarded,

or would designate the local court or a specified agency or council to receive the funds directly.

3. Budget and Matching State Contribution

A completed Form E, "Line-Item Budget Form" (see Appendix C), and budget narrative must be included with the letter requesting technical assistance. The estimated cost of the technical assistance services should be broken down into the categories listed on the budget form rather than aggregated under the Consultant/Contractual category.

The budget narrative should provide the basis for all project-related costs, including the basis for determining the estimated consultant costs, if compensation of the consultant is required (e.g., the number of days per task times the requested daily consultant rate). Applicants should be aware that consultant rates above $800 per day must be approved in advance by the Institute, and that no consultant will be paid more than $1,100 per day from Institute funds. In addition, the budget should provide for submission of two copies of the consultant's final report to the Institute.

Recipients of TA Grants do not have to submit an audit report but must maintain appropriate documentation to support expenditures (see section VI.A.3.).

4. Submission Requirements

Letters of application may be submitted at any time. Applications will be considered on a rolling basis. Applications received less than 30 days before a quarterly Board meeting will be considered at the next Board meeting.

If the support or cooperation of agencies, funding bodies, organizations, or courts other than the applicant would be needed in order for the consultant to perform the required tasks, written assurances of such support or cooperation should accompany the application letter. Support letters also may be submitted under separate cover; however, to ensure that there is sufficient time to bring them to the attention of the Board's Technical Assistance Grant Committee, letters sent under separate cover must be received by the same date as the technical assistance request being supported.

C. Curriculum Adaptation and Training (CAT) Grants

1. Application Procedures

For a summary of the application procedures for CAT Grants, visit the Institute's Web site (*www.statejustice.org*) and click on On-Line Tutorials, then Curriculum Adaptation and Training Grant.

In lieu of formal applications, applicants should submit an original and three photocopies of a detailed letter.

2. Application Format

Although there is no prescribed format for the letter, or a minimum or maximum page limit, letters of application should include the following information: a. For adaptation of a curriculum:

(1) *Project Description.* What is the title of the model curriculum to be adapted and who originally developed it? Why is this education program needed at the present time? What are the project's goals? What are the learning objectives of the adapted curriculum? What program components would be implemented, and what types of modifications, if any, are anticipated in length, format, learning objectives, teaching methods, or content? Who would be responsible for adapting the model curriculum? Who would the participants be, how many would there be, how would they be recruited, and from where would they come (e.g., from a single local jurisdiction, from across the State, from a multi-State region, from across the nation)?

(2) *Need for Funding.* Why are sufficient State or local resources unavailable to fully support the modification and presentation of the model curriculum? What is the potential for replicating or integrating the adapted curriculum in the future using State or local funds, once it has been successfully adapted and tested?

(3) *Likelihood of Implementation.* What is the proposed timeline, including the project start and end dates? On what date(s) would the judicial branch education program be presented? What process would be used to modify and present the program? Who would serve as faculty, and how were they selected? What measures would be taken to facilitate subsequent presentations of the program? [**Note:** Ordinarily, an independent evaluation of a curriculum adaptation project is not required; however, the results of any evaluation should be included in the final report.]

(4) *Expressions of Interest by Judges and/or Court Personnel.* Does the proposed program have the support of the court system or association leadership, and of judges, court managers, and judicial branch education personnel who are expected to attend? [**Note:** Applicants may demonstrate this by attaching letters of support.]

(5) *Chief Justice's Concurrence.* Local courts should attach a concurrence form signed by the Chief Justice of the State or his or her designee. (See Appendix B, Form B.)

b. For training assistance:

(1) *Need for Funding.* What is the court reform or initiative prompting the need for training? How would the proposed training help the applicant implement planned changes at the court? Why cannot State or local resources fully support the costs of the required training?

(2) *Project Description.* What tasks would the trainer(s) be expected to perform, and how would they be accomplished? Which organization or individual would be hired, if in-house personnel are not the trainers, to provide the training, and how was the trainer selected? If a trainer has not yet been identified, what procedures and criteria would be used to select the trainer? [**Note:** Applicants are expected to follow their jurisdictions' normal procedures for procuring consultant services.] What specific tasks would the trainer and court staff or regional court association members undertake? What presentation methods will be used? What is the schedule for completion of each required task and the entire project? How would the applicant oversee the project and provide guidance to the trainer, and who at the court or affiliated with the regional court association would be responsible for coordinating all project tasks and submitting quarterly progress and financial status reports?

If the trainer has been identified, the applicant should provide a letter from that individual or organization documenting interest in and availability for the project, as well as the trainer's ability to complete the assignment within the proposed time frame and for the proposed cost. The trainer must agree to submit a detailed written report to the court and the Institute upon completion of the technical assistance.

(3) *Likelihood of Implementation.* What steps have been or would be taken to coordinate the implementation of the new reform, initiative, etc. and the training to support the same? For example, if the support or cooperation of specific court or regional court association officials or committees, other agencies, funding bodies, organizations, or a court other than the applicant would be needed to adopt the reform and initiate the training proposed, how would they be involved in the review of the recommendations and development of the implementation plan?

(4) *Support for the Project from the State Supreme Court or its Designated Agency or Council.* If a State or local court submits an application, it must include written concurrence on the need for the technical assistance. This concurrence may be a copy of SJI Form B (see Appendix B) signed by the Chief Justice of the State Supreme Court or the Chief Justice's designee, or a letter from the State Chief Justice or designee. The concurrence may be submitted with the applicant's letter or under separate cover prior to consideration of the application. The concurrence also must specify whether the State Supreme Court would receive, administer, and account for the grant funds, if awarded, or would designate the local court or a specified agency or council to receive the funds directly.

4. Budget and Matching State Contribution

Applicants should attach a copy of budget Form E (see Appendix C) and a budget narrative (see subsection A.4. above) that describes the basis for the computation of all project-related costs and the source of the match offered.

5. Submission Requirements

Letters of application may be submitted at any time. Applications will be considered on a rolling basis. Applications received less than 30 days before a quarterly Board meeting will be considered at the next Board meeting.

For curriculum adaptation requests, applicants should allow at least 60 days between the Board meeting and the date of the proposed program to allow sufficient time for needed planning. For example, a court that plans to conduct an education program in June 2007 should submit its application no later than 30 days before the Board's winter (March) meeting.

D. Scholarships

1. Limitations

An applicant may apply for a scholarship for only one educational program during any given application cycle. Applicants may not receive more than one scholarship in a three-year period unless the course specifically assumes multi-year participation or the course is part of a graduate degree program in judicial studies in which the applicant is currently enrolled (neither exception should be taken as a commitment on the part of the SJI Board to approve serial scholarships).

Scholarship funds may be used only to cover the costs of tuition, transportation, and reasonable lodging expenses (not to exceed $150 per night, including taxes). Transportation expenses may include round-trip coach airfare or train fare. Scholarship recipients are strongly encouraged to take advantage of excursion or other special airfares (e.g., reductions offered when a ticket is purchased 21 days in advance of the travel date) when making their travel arrangements. Recipients who drive to a program site may receive $.445/mile up to the amount of the advanced-purchase round-trip airfare between their homes and the program sites. Funds to pay tuition, transportation, and lodging expenses in excess of $1,500 and other costs of attending the program—such as conference fees, meals, materials, transportation to and from airports, and local transportation (including rental cars)—at the program site must be obtained from other sources or borne by the scholarship recipient. Scholarship applicants are encouraged to check other sources of financial assistance and to combine aid from various sources whenever possible.

A scholarship is not transferable to another individual. It may be used only for the course specified in the application unless the applicant's request to attend a different course that meets the eligibility requirements is approved in writing by the Institute. Decisions on such requests will be made within 30 days after the receipt of the request letter.

2. Eligibility Requirements

For a summary of the scholarship award process, visit the Institute's Web site at *www.statejustice.org* and click on On-Line Tutorials, then Scholarship.

a. *Recipients.* Scholarships can be awarded only to full-time judges of State or local trial and appellate courts; full-time professional, State, or local court personnel with management responsibilities; and supervisory and management probation personnel in judicial branch probation offices. Senior judges, part-time judges, quasi-judicial hearing officers including referees and commissioners, administrative law judges, staff attorneys, law clerks, line staff, law enforcement officers, and other executive branch personnel are not eligible to receive a scholarship.

b. *Courses.* A scholarship can be awarded only for: (1) A course presented in a State other than the one in which the applicant resides or works, or (2) an online course. The course must be designed to enhance the skills of new or experienced judges and court managers; or be offered by a recognized graduate program for judges or court managers. The annual or mid-year meeting of a State or national organization of which the applicant is a member does not qualify as an out-of-State educational program for scholarship purposes, even though it may include workshops or other training sessions.

Applicants are encouraged not to wait for the decision on a scholarship to register for an educational program they wish to attend.

3. Forms

a. *Scholarship Application—Form S1 (Appendix D).* The Scholarship Application requests basic information about the applicant and the educational program the applicant would like to attend. It also addresses the applicant's commitment to share the skills and knowledge gained with local court colleagues and to submit an evaluation of the program the applicant attends. The Scholarship Application must bear the original signature of the applicant. Faxed or photocopied signatures will not be accepted.

b. *Scholarship Application Concurrence—Form S2 (Appendix D).* Judges and court managers applying for scholarships must submit the written concurrence of the Chief Justice of the State's Supreme Court (or the Chief Justice's designee) on the Institute's Judicial Education Scholarship Concurrence form (see Appendix D). The signature of the presiding judge of the applicant's court cannot be substituted for that of the Chief Justice or the Chief Justice's designee. Court managers, other than elected clerks of court, also must submit a letter of support from their immediate supervisors.

4. Submission Requirements

Scholarship applications must be submitted during the periods specified below:

January 1 and February 23, 2007, for programs beginning between April 1 and June 30, 2007;

April 2 and May 25, 2007 for programs beginning between July 1 and September 30, 2007;

July 2 and August 24, 2007 for programs beginning between October 1 and December 31, 2007; and

October 1 and November 30, 2007 for programs beginning between January 1 and March 31, 2008.

No exceptions or extensions will be granted. Applications sent prior to the beginning of an application period will be treated as having been sent one week after the beginning of that application period. All the required items must be received for an application to be considered. If the Concurrence form or letter of support is sent separately from

the application, the postmark date of the last item to be sent will be used in applying the above criteria.

All applications should be sent by mail or courier (not fax or e-mail) to: Scholarship Program Coordinator, State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314.

E. Partner Grants

SJI and its funding partners may meld, pick and choose, or waive their application procedures, grant cycles, or grant requirements to expedite the award of jointly-funded grants targeted at emerging or high priority problems confronting State and local courts. As often as not, SJI may solicit brief proposals from potential grantees to shop among fellow financial partners as a first step. Should SJI be chosen as the lead grant manager, Project Grant application procedures will apply to the proposed Partner Grant. As with Project Grants, Partner Grants will be targeted at initiatives likely to have a significant national impact.

V. Application Review Procedures

A. Preliminary Inquiries

The Institute staff will answer inquiries concerning application procedures. The staff contact will be named in the Institute's letter or e-mail acknowledging receipt of the application.

B. Selection Criteria

1. Project Grant Applications

a. Project Grant applications will be rated on the basis of the criteria set forth below. The Institute will accord the greatest weight to the following criteria:

(1) The soundness of the methodology;

(2) The demonstration of need for the project;

(3) The appropriateness of the proposed evaluation design;

(4) If applicable, the key findings and recommendations of the most recent evaluation and the proposed responses to those findings and recommendations;

(5) The applicant's management plan and organizational capabilities;

(6) The qualifications of the project's staff;

(7) The products and benefits resulting from the project, including the extent to which the project will have long-term benefits for State courts across the nation;

(8) The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions;

(9) The reasonableness of the proposed budget; and

(10) The demonstration of cooperation and support of other agencies that may be affected by the project.

(11) The proposed project's relationship to one of the Special Interest categories set forth in section III.A.

b. In determining which projects to support, the Institute will also consider whether the applicant is a State court, a national court support or education organization, a non-court unit of government, or other type of entity eligible to receive grants under the Institute's enabling legislation (see section II.); the availability of financial assistance from other sources for the project; the amount of the applicant's match; the extent to which the proposed project would also benefit the Federal courts or help State courts enforce Federal constitutional and legislative requirements; and the level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

2. Technical Assistance (TA) Grant Applications

TA Grant applications will be rated on the basis of the following criteria:

a. Whether the assistance would address a critical need of the applicant;

b. The soundness of the technical assistance approach to the problem;

c. The qualifications of the consultant(s) to be hired, or the specific criteria that will be used to select the consultant(s);

d. The commitment of the court or association to act on the consultant's recommendations; and

e. The reasonableness of the proposed budget.

The Institute also will consider factors such as the level and nature of the match that would be provided, diversity of subject matter, geographic diversity, the level of appropriations available to the Institute in the current year, and the amount expected to be available in succeeding fiscal years.

3. Curriculum Adaptation and Training (CAT) Grant Applications

CAT Grant applications will be rated on the basis of the following criteria:

a. For curriculum adaptation projects:

(1) The goals and objectives of the proposed project;

(2) The need for outside funding to support the program;

(3) The appropriateness of the approach in achieving the project's educational objectives;

(4) The likelihood of effective implementation and integration of the modified curriculum into ongoing educational programming; and

(5) Expressions of interest by the judges and/or court personnel who would be directly involved in or affected by the project.

b. For training assistance:

(1) Whether the training would address a critical need of the court or association;

(2) The soundness of the training approach to the problem;

(3) The qualifications of the trainer(s) to be hired, or the specific criteria that will be used to select the trainer(s);

(4) The commitment of the court or association to the training program; and

(5) The reasonableness of the proposed budget.

The Institute will also consider factors such as the reasonableness of the amount requested, compliance with match requirements, diversity of subject matter, geographic diversity, the level of appropriations available in the current year, and the amount expected to be available in succeeding fiscal years.

4. Scholarships

Scholarships will be approved only for programs that either (1) enhance the skills of judges and court managers; or (2) are part of a graduate degree program for judges or court personnel. Scholarships will be awarded on the basis of:

a. The date on which the application and concurrence (and support letter, if required) were sent ("first come, first serve");

b. The unavailability of State or local funds or scholarship funds from another source to cover the costs of attending the program, or participating online;

c. The absence of educational programs in the applicant's State addressing the topic(s) covered by the educational program for which the scholarship is being sought;

d. Geographic balance among the recipients;

e. The balance of scholarships among educational providers and programs;

f. The balance of scholarships among the types of courts and court personnel (trial judge, appellate judge, trial court administrator) represented; and

g. the level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

The postmark or courier receipt will be used to determine the date on which the application form and other required items were sent.

5. Partner Grants

It seems probable that the selection criteria for Partner Grants will be driven by the collective priorities of the "bankers' roundtable" that forms

around this grant-making opportunity and the collective assessments of roundtable participants regarding the needs and capabilities of court and court-related organizations. Having settled on priorities, SJI and its financial partners will likely contact the courts or court-related organizations most acceptable as pilots, laboratories, consultants, or the like. Should SJI be chosen as the lead grant manager, Project Grant application review procedures will apply to the proposed Partner Grant.

C. Review and Approval Process

1. Project Grant Applications

The Institute's Board of Directors will review the applications competitively. The Institute staff will prepare a narrative summary and a rating sheet assigning points for each relevant selection criterion. The staff will present the narrative summaries and rating sheets to the Board for its review. The Board will review all application summaries and decide which projects it will fund. The decision to fund a project is solely that of the Board of Directors.

The Chairman of the Board will sign approved awards on behalf of the Institute.

2. Technical Assistance (TA) and Curriculum Adaptation and Training (CAT) Grant Applications

The Institute staff will prepare a narrative summary of each application and a rating sheet assigning points for each relevant selection criterion. The Board of Directors has delegated its authority to approve TA and CAT Grants to the committee established for each program. The committee will review the applications competitively.

The Chairman of the Board will sign approved awards on behalf of the Institute.

3. Scholarships

A committee of the Institute's Board of Directors will review scholarship applications quarterly. The Board of Directors has delegated its authority to approve scholarships to the committee established for the program. The committee will review the applications competitively. In the event of a tie vote, the Chairman will serve as the tie-breaker.

The Chairman of the Board will sign approved awards on behalf of the Institute.

4. Partner Grants

SJI's internal process for the review and approval of Partner Grants will depend upon negotiations with fellow financiers. SJI may use its procedures, a partner's procedures, a mix of both, or entirely unique procedures. All Partner Grants will have to be approved by the Board of Directors on whatever schedule makes sense at the time.

D. Return Policy

Unless a specific request is made, unsuccessful applications will not be returned. Applicants are advised that Institute records are subject to the provisions of the Federal Freedom of Information Act, 5 U.S.C. 552.

E. Notification of Board Decision

1. The Institute will send written notice to applicants concerning all Board decisions to approve, defer, or deny their respective applications. For all applications (except scholarships), the Institute also will convey the key issues and questions that arose during the review process. A decision by the Board to deny an application may not be appealed, but it does not prohibit resubmission of a proposal based on that application in a subsequent funding cycle. The Institute will also notify the State court administrator when grants are approved by the Board to support projects that will be conducted by or involve courts in that State.

2. The Institute intends to notify each scholarship applicant of the Board committee's decision within 30 days after the close of the relevant application period.

F. Response to Notification of Approval

With the exception of those approved for scholarships, applicants have 30 days from the date of the letter notifying them that the Board has approved their application to respond to any revisions requested by the Board. If the requested revisions (or a reasonable schedule for submitting such revisions) have not been submitted to the Institute within 30 days after notification, the approval may be rescinded and the application presented to the Board for reconsideration. In the event an issue will only be resolved after award, such as the selection of a consultant, the final award document will include a Special Condition that will require additional grantee reporting and Institute review and approval. Special Conditions, in the form of incentives or sanctions, may also be used in situations where past poor performance by a grantee necessitates increased grant oversight.

VI. Compliance Requirements

The State Justice Institute Act contains limitations and conditions on grants, contracts, and cooperative agreements awarded by the Institute. The Board of Directors has approved additional policies governing the use of Institute grant funds. These statutory and policy requirements are set forth below.

A. Recipients of Project Grants

1. Advocacy

No funds made available by the Institute may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities (42 U.S.C. 10706(b)).

2. Approval of Key Staff

If the qualifications of an employee or consultant assigned to a key project staff position are not described in the application or if there is a change of a person assigned to such a position, the recipient must submit a description of the qualifications of the newly assigned person to the Institute. Prior written approval of the qualifications of the new person assigned to a key staff position must be received from the Institute before the salary or consulting fee of that person and associated costs may be paid or reimbursed from grant funds.

3. Audit

Recipients of project and continuation grants must provide for an annual fiscal audit which includes an opinion on whether the financial statements of the grantee present fairly its financial position and its financial operations are in accordance with generally accepted accounting principles (see section VII.K. for the requirements of such audits). Scholarship recipients, Curriculum Adaptation and Training Grants, and Technical Assistance Grants are not required to submit an audit, but they must maintain appropriate documentation to support all expenditures.

4. Budget Revisions

Budget revisions among direct cost categories that: (a) Transfer grant funds to an unbudgeted cost category, or (b) individually or cumulatively exceed five percent of the approved original budget or the most recently approved revised budget require prior Institute approval. Failure to comply with these requirements could result in the termination of a grantee's award.

5. Conflict of Interest

Personnel and other officials connected with Institute-funded programs must adhere to the following requirements:

a. No official or employee of a recipient court or organization shall participate personally through decision,

approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which Institute funds are used, where, to his or her knowledge, he or she or his or her immediate family, partners, organization other than a public agency in which he or she is serving as officer, director, trustee, partner, or employee or any person or organization with whom he or she is negotiating or has any arrangement concerning prospective employment, has a financial interest.

b. In the use of Institute project funds, an official or employee of a recipient court or organization shall avoid any action which might result in or create the appearance of:

(1) Using an official position for private gain; or

(2) affecting adversely the confidence of the public in the integrity of the Institute program.

c. Requests for proposals or invitations for bids issued by a recipient of Institute funds or a subgrantee or subcontractor will provide notice to prospective bidders that the contractors who develop or draft specifications, requirements, statements of work, and/or requests for proposals for a proposed procurement will be excluded from bidding on or submitting a proposal to compete for the award of such procurement.

6. Inventions and Patents

If any patentable items, patent rights, processes, or inventions are produced in the course of Institute-sponsored work, such fact shall be promptly and fully reported to the Institute. Unless there is a prior agreement between the grantee and the Institute on disposition of such items, the Institute shall determine whether protection of the invention or discovery shall be sought. The Institute will also determine how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, February 18, 1983, and statement of Government Patent Policy).

7. Lobbying

a. Funds awarded to recipients by the Institute shall not be used, indirectly or directly, to influence Executive Orders or similar promulgations by Federal, State or local agencies, or to influence the passage or defeat of any legislation by Federal, State or local legislative bodies (42 U.S.C. 10706(a)).

b. It is the policy of the Board of Directors to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner. Consistent with this policy and the provisions of 42 U.S.C. 10706, the Institute will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application.

8. Matching Requirements

All grantees other than scholarship recipients are required to provide a match. A match is the portion of project costs not borne by the Institute. Match includes both cash and in-kind contributions. Cash match is the direct outlay of funds by the grantee or a third party to support the project. Examples of cash match are the dedication of funds to support a new employee or purchase new equipment to carry out the project or the application of project income (e.g., tuition or the proceeds of sales of grant products) generated during the grant period to grant costs.

In-kind match consists of contributions of time and/or services of current staff members, space, supplies, etc., made to the project by the grantee or others (e.g., advisory board members) working directly on the project or that portion of the grantee's Federally approved indirect cost rate that exceeds the Guideline's limit of permitted charges (75% of salaries and benefits).

Under normal circumstances, allowable match may be incurred only during the project period. When appropriate, and with the prior written permission of the Institute, match may be incurred from the date of the Board of Directors' approval of an award. Match does not include the time of participants attending an education program. The amount and nature of required match depends on the type grant (see section III.).

The grantee is responsible for ensuring that the total amount of match proposed is actually contributed. If a proposed contribution is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement (see section VII.E.1.).

The Board of Directors looks favorably upon any unrequired match contributed by applicants when making grant decisions.

The match requirement may be waived in exceptionally rare circumstances upon the request of the Chief Justice of the highest court in the State or the highest ranking official in the requesting organization and approval by the Board of Directors (42 U.S.C. 10705(d)). The Board of Directors encourages all applicants to provide the maximum amount of cash and in-kind match possible, even if a waiver is approved. The amount and nature of match are criteria in the grant selection process (see section V.B.1.b.).

9. Nondiscrimination

No person may, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by Institute funds. Recipients of Institute funds must immediately take any measures necessary to effectuate this provision.

10. Political Activities

No recipient may contribute or make available Institute funds, program personnel, or equipment to any political party or association, or the campaign of any candidate for public or party office. Recipients are also prohibited from using funds in advocating or opposing any ballot measure, initiative, or referendum. Officers and employees of recipients shall not intentionally identify the Institute or recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office (42 U.S.C. 10706(a)).

11. Products

a. *Acknowledgment, Logo, and Disclaimer.* (1) Recipients of Institute funds must acknowledge prominently on all products developed with grant funds that support was received from the Institute. The "SJI" logo must appear on the front cover of a written product, or in the opening frames of a video product, unless another placement is approved in writing by the Institute. This includes final products printed or otherwise reproduced during the grant period, as well as reprintings or reproductions of those materials following the end of the grant period. A camera-ready logo sheet is available from the Institute upon request.

(2) Recipients also must display the following disclaimer on all grant products: "This [document, film, videotape, etc.] was developed under [grant/cooperative agreement] number SJI-[insert number] from the State

Justice Institute. The points of view expressed are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute."

b. *Charges for Grant-Related Products/Recovery of Costs.* (1) When Institute funds fully cover the cost of developing, producing, and disseminating a product (e.g., a report, curriculum, videotape, or software), the product should be distributed to the field without charge. When Institute funds only partially cover the development, production, or dissemination costs, the grantee may, with the Institute's prior written approval, recover its costs for developing, producing, and disseminating the material to those requesting it, to the extent that those costs were not covered by Institute funds or grantee matching contributions.

(2) Applicants should disclose their intent to sell grant-related products in the application. Grantees must obtain the written prior approval of the Institute of their plans to recover project costs through the sale of grant products. Written requests to recover costs ordinarily should be received during the grant period and should specify the nature and extent of the costs to be recouped, the reason that such costs were not budgeted (if the rationale was not disclosed in the approved application), the number of copies to be sold, the intended audience for the products to be sold, and the proposed sale price. If the product is to be sold for more than $25, the written request also should include a detailed itemization of costs that will be recovered and a certification that the costs were not supported by either Institute grant funds or grantee matching contributions.

(3) In the event that the sale of grant products results in revenues that exceed the costs to develop, produce, and disseminate the product, the revenue must continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act that have been approved by the Institute (see section VII.G.).

c. *Copyrights.* Except as otherwise provided in the terms and conditions of an Institute award, a recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

d. *Distribution.* In addition to the distribution specified in the grant application, grantees shall send:

(1) Fifteen (15) copies of each final product developed with grant funds to the Institute, unless the product was developed under either a Technical Assistance or a Curriculum Adaptation and Training Grant, in which case submission of 2 copies is required;

(2) An electronic version of the product in .html or .pdf format to the Institute; and

(3) One copy of each final product developed with grant funds to the library established in each State to collect materials prepared with Institute support. A list of the libraries is contained in Appendix A. Labels for these libraries are available on the Institute's Web site, *www.statejustice.org.*

(4) Bound copies of products, rather than hard copies in ring binders, to SJI depository libraries, where possible and cost-effective. Grantees that develop web-based electronic products must send a hard-copy document to the SJI-designated libraries and other appropriate audiences to alert them to the availability of the Web site or electronic product. Recipients of Technical Assistance and Curriculum Adaptation and Training Grants are not required to submit final products to State libraries.

(5) A press release describing the project and announcing the results to a list of national and State judicial branch organizations provided by the Institute.

e. *Institute Approval.* No grant funds may be obligated for publication or reproduction of a final product developed with grant funds without the written approval of the Institute. Grantees shall submit a final draft of each written product to the Institute for review and approval. The draft must be submitted at least 30 days before the product is scheduled to be sent for publication or reproduction to permit Institute review and incorporation of any appropriate changes required by the Institute. Grantees must provide for timely reviews by the Institute of videotape, DVD or CD–ROM products at the treatment, script, rough cut, and final stages of development or their equivalents.

f. *Original Material.* All products prepared as the result of Institute-supported projects must be originally-developed material unless otherwise specified in the award documents. Material not originally developed that is included in such products must be properly identified, whether the material is in a verbatim or extensive paraphrase format.

12. Prohibition Against Litigation Support

No funds made available by the Institute may be used directly or indirectly to support legal assistance to parties in litigation, including cases involving capital punishment.

13. Reporting Requirements

a. Recipients of Institute funds other than scholarships must submit Quarterly Progress and Financial Status Reports within 30 days of the close of each calendar quarter (that is, no later than January 30, April 30, July 30, and October 30). The Quarterly Progress Reports shall include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period. Failure to comply with the requirements of this provision could result in the termination of a grantee's award.

b. The quarterly Financial Status Report must be submitted in accordance with section VII.H.2. of this Guideline. A final project Progress Report and Financial Status Report shall be submitted within 90 days after the end of the grant period in accordance with section VII.L.1. of this Guideline.

14. Research

a. *Availability of Research Data for Secondary Analysis.* Upon request, grantees must make available for secondary analysis a diskette(s) or data tape(s) containing research and evaluation data collected under an Institute grant and the accompanying code manual. Grantees may recover the actual cost of duplicating and mailing or otherwise transmitting the data set and manual from the person or organization requesting the data. Grantees may provide the requested data set in the format in which it was created and analyzed.

b. *Confidentiality of Information.* Except as provided by Federal law other than the State Justice Institute Act, no recipient of financial assistance from SJI may use or reveal any research or statistical information furnished under the Act by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained.

Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

c. *Human Subject Protection.* Human subjects are defined as individuals who are participants in an experimental procedure or who are asked to provide information about themselves, their attitudes, feelings, opinions, and/or experiences through an interview, questionnaire, or other data collection technique. All research involving human subjects shall be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, the Institute must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.

15. State and Local Court Applications

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. The Supreme Court or its designee shall receive, administer, and be accountable for all funds awarded on the basis of such an application (42 U.S.C. 10705(b)(4)).

16. Supplantation and Construction.

To ensure that funds are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used for the following purposes:

a. To supplant State or local funds supporting a program or activity (such as paying the salary of court employees who would be performing their normal duties as part of the project, or paying rent for space which is part of the court's normal operations);

b. To construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or

c. Solely to purchase equipment.

17. Suspension or Termination of Funding

After providing a recipient reasonable notice and opportunity to submit written documentation demonstrating why fund termination or suspension should not occur, the Institute may terminate or suspend funding of a project that fails to comply substantially with the Act, the Guideline, or the terms and conditions of the award (42 U.S.C. 10708(a)).

18. Title to Property

At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the recipient court, organization, or individual that purchased the property if certification is made to and approved by the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

B. Recipients of Technical Assistance (TA) and Curriculum Adaptation and Training (CAT) Grants

Recipients of TA and CAT Grants must comply with the requirements listed in section VI.A. (except the requirements pertaining to audits in subsection A.3. above and product dissemination and approval in subsection A.11.d. and e. above) and the reporting requirements below:

1. Technical Assistance (TA) Grant Reporting Requirements

Recipients of TA Grants must submit to the Institute one copy of a final report that explains how it intends to act on the consultant's recommendations, as well as two copies of the consultant's written report.

2. Curriculum Adaptation and Training (CAT) Grant Reporting Requirements

Recipients of CAT Grants must submit one copy of the agenda or schedule, outline of presentations and/or relevant instructor's notes, copies of overhead transparencies, power point presentations, or other visual aids, exercises, case studies and other background materials, hypotheticals, quizzes, and other materials involving the participants, manuals, handbooks, conference packets, evaluation forms, and suggestions for replicating the program, including possible faculty or the preferred qualifications or experience of those selected as faculty, developed under the grant at the conclusion of the grant period, along with a final report that includes any evaluation results and explains how the grantee intends to present the educational program in the future, as well as two copies of the consultant's or trainer's report.

C. Scholarship Recipients

1. Scholarship recipients are responsible for disseminating the information received from the course to their court colleagues locally and, if possible, throughout the State (*e.g.*, by developing a formal seminar, circulating the written material, or discussing the information at a meeting or conference).

Recipients also must submit to the Institute a certificate of attendance at the program, an evaluation of the educational program they attended, and a copy of the notice of any scholarship funds received from other sources. A copy of the evaluation must be sent to the Chief Justice of the scholarship recipient's State. A State or local jurisdiction may impose additional requirements on scholarship recipients.

2. To receive the funds authorized by a scholarship award, recipients must submit a Scholarship Payment Voucher (Form S3) together with a tuition statement from the program sponsor, a transportation fare receipt (or statement of the driving mileage to and from the recipient's home to the site of the educational program), and a lodging receipt.

Scholarship Payment Vouchers must be submitted within 90 days after the end of the course which the recipient attended.

3. Scholarship recipients are encouraged to check with their tax advisors to determine whether the scholarship constitutes taxable income under Federal and State law.

D. Partner Grants

The compliance requirements for Partner Grant recipients will depend upon the agreements struck between the grant financiers and between lead financiers and grantees. Should SJI be the lead, the compliance requirements for Project Grants will apply.

VII. Financial Requirements

A. Purpose

The purpose of this section is to establish accounting system requirements and offer guidance on procedures to assist all grantees, subgrantees, contractors, and other organizations in:

1. Complying with the statutory requirements for the award, disbursement, and accounting of funds;
2. Complying with regulatory requirements of the Institute for the financial management and disposition of funds;
3. Generating financial data to be used in planning, managing, and controlling projects; and
4. Facilitating an effective audit of funded programs and projects.

B. References

Except where inconsistent with specific provisions of this Guideline, the following circulars are applicable to Institute grants and cooperative agreements under the same terms and conditions that apply to Federal grantees. The circulars supplement the requirements of this section for accounting systems and financial record-keeping and provide additional guidance on how these requirements may be satisfied (circulars may be obtained on the OMB Web site at *www.whitehouse.gov/omb*).

1. *Office of Management and Budget (OMB) Circular A–21,* Cost Principles for Educational Institutions.
2. *Office of Management and Budget (OMB) Circular A–87,* Cost Principles for State and Local Governments.
3. *Office of Management and Budget (OMB) Circular A–88,* Indirect Cost Rates, Audit and Audit Follow-up at Educational Institutions.
4. *Office of Management and Budget (OMB) Circular A–102,* Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.
5. *Office of Management and Budget (OMB) Circular A–110,* Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.
6. *Office of Management and Budget (OMB) Circular A–122,* Cost Principles for Non-profit Organizations.
7. *Office of Management and Budget (OMB) Circular A–128,* Audits of State and Local Governments.
8. *Office of Management and Budget (OMB) Circular A–133,* Audits of Institutions of Higher Education and Other Non-profit Institutions.

C. Supervision and Monitoring Responsibilities

1. Grantee Responsibilities

All grantees receiving awards from the Institute are responsible for the management and fiscal control of all funds. Responsibilities include accounting for receipts and expenditures, maintaining adequate financial records, and refunding expenditures disallowed by audits.

2. Responsibilities of State Supreme Court

a. Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council.

b. The State Supreme Court or its designee shall receive all Institute funds awarded to such courts; be responsible for assuring proper administration of Institute funds; and be responsible for all aspects of the project, including proper accounting and financial record-keeping by the subgrantee. These responsibilities include:

(1) *Reviewing Financial Operations.* The State Supreme Court or its designee should be familiar with, and periodically monitor, its subgrantees' financial operations, records system, and procedures. Particular attention should be directed to the maintenance of current financial data.

(2) *Recording Financial Activities.* The subgrantee's grant award or contract obligation, as well as cash advances and other financial activities, should be recorded in the financial records of the State Supreme Court or its designee in summary form. Subgrantee expenditures should be recorded on the books of the State Supreme Court or evidenced by report forms duly filed by the subgrantee. Matching contributions provided by subgrantees should likewise be recorded, as should any project income resulting from program operations.

(3) *Budgeting and Budget Review.* The State Supreme Court or its designee should ensure that each subgrantee prepares an adequate budget as the basis for its award commitment. The State Supreme Court should maintain the details of each project budget on file.

(4) *Accounting for Match.* The State Supreme Court or its designee will ensure that subgrantees comply with the match requirements specified in this Guideline (see section VI.A.8.).

(5) *Audit Requirement.* The State Supreme Court or its designee is required to ensure that subgrantees meet the necessary audit requirements set forth by the Institute (see sections K. below and VI.A.3.).

(6) *Reporting Irregularities.* The State Supreme Court, its designees, and its subgrantees are responsible for promptly reporting to the Institute the nature and circumstances surrounding any financial irregularities discovered.

D. Accounting System

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls and for ensuring that an adequate system exists for each of its subgrantees and contractors. An acceptable and adequate accounting system:

1. Properly accounts for receipt of funds under each grant awarded and the expenditure of funds for each grant by category of expenditure (including matching contributions and project income);
2. Assures that expended funds are applied to the appropriate budget category included within the approved grant;
3. Presents and classifies historical costs of the grant as required for budgetary and evaluation purposes;
4. Provides cost and property controls to assure optimal use of grant funds;
5. Is integrated with a system of internal controls adequate to safeguard the funds and assets covered, check the accuracy and reliability of the accounting data, promote operational efficiency, and assure conformance with any general or special conditions of the grant;
6. Meets the prescribed requirements for periodic financial reporting of operations; and
7. Provides financial data for planning, control, measurement, and evaluation of direct and indirect costs.

E. Total Cost Budgeting and Accounting

Accounting for all funds awarded by the Institute must be structured and executed on a Total Project Cost basis. That is, total project costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget serve as the foundation for fiscal administration and accounting. Grant applications and financial reports require budget and cost estimates on the basis of total costs.

1. Timing of Matching Contributions

Matching contributions need not be applied at the exact time of the obligation of Institute funds. Ordinarily, the full matching share must be obligated during the award period; however, with the written permission of the Institute, contributions made following approval of the grant by the Institute's Board of Directors but before the beginning of the grant may be counted as match. Grantees that do not contemplate making matching contributions continuously throughout the course of a project, or on a task-by-

task basis, are required to submit a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions will be made. If a proposed cash or in-kind match is not fully met, the Institute may reduce the award amount accordingly to maintain the ratio of grant funds to matching funds stated in the award agreement.

2. Records for Match

All grantees must maintain records that clearly show the source, amount, and timing of all matching contributions. In addition, if a project has included, within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of those contributions in the same manner as it does Institute funds and required matching shares. For all grants made to State and local courts, the State Supreme Court has primary responsibility for grantee/subgrantee compliance with the requirements of this section (see subsection C.2. above).

F. Maintenance and Retention of Records

All financial records, including supporting documents, statistical records, and all other information pertinent to grants, subgrants, cooperative agreements, or contracts under grants, must be retained by each organization participating in a project for at least three years for purposes of examination and audit. State Supreme Courts may impose record retention and maintenance requirements in addition to those prescribed in this section.

1. Coverage

The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, canceled checks, and related documents and records. Source documents include copies of all grant and subgrant awards, applications, and required grantee/subgrantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, subgrant or contract, whether they are employed full-time or part-time. Time and effort reports are required for consultants.

2. Retention Period

The three-year retention period starts from the date of the submission of the final expenditure report.

3. Maintenance

Grantees and subgrantees are expected to see that records of different fiscal years are separately identified and maintained so that requested information can be readily located. Grantees and subgrantees are also obligated to protect records adequately against fire or other damage. When records are stored away from the grantee's/subgrantee's principal office, a written index of the location of stored records should be on hand, and ready access should be assured.

4. Access

Grantees and subgrantees must give any authorized representative of the Institute access to and the right to examine all records, books, papers, and documents related to an Institute grant.

G. Project-Related Income

Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income and must be reported to the Institute (see subsection H.2. below). The policies governing the disposition of the various types of project-related income are listed below.

1. Interest

A State and any agency or instrumentality of a State, including institutions of higher education and hospitals, shall not be held accountable for interest earned on advances of project funds. When funds are awarded to subgrantees through a State, the subgrantees are not held accountable for interest earned on advances of project funds. Local units of government and nonprofit organizations that are grantees must refund any interest earned. Grantees shall ensure minimum balances in their respective grant cash accounts.

2. Royalties

The grantee/subgrantee may retain all royalties received from copyrights or other works developed under projects or from patents and inventions, unless the terms and conditions of the grant provide otherwise.

3. Registration and Tuition Fees

Registration and tuition fees may be considered as cash match with the prior written approval of the Institute. Estimates of registration and tuition fees, and any expenses to be offset by the fees, should be included in the application budget forms and narrative.

4. Income From the Sale of Grant Products

If the sale of products occurs during the project period, the income may be treated as cash match with the prior written approval of the Institute. The costs and income generated by the sales must be reported on the Quarterly Financial Status Reports and documented in an auditable manner. Whenever possible, the intent to sell a product should be disclosed in the application or reported to the Institute in writing once a decision to sell products has been made. The grantee must request approval to recover its product development, reproduction, and dissemination costs as specified in section VI.A.11.b.

5. Other

Other project income shall be treated in accordance with disposition instructions set forth in the grant's terms and conditions.

H. Payments and Financial Reporting Requirements

1. Payment of Grant Funds

The procedures and regulations set forth below are applicable to all Institute grant funds and grantees.

a. *Request for Advance or Reimbursement of Funds.* Grantees will receive funds on a "check-issued" basis. Upon receipt, review, and approval of a Request for Advance or Reimbursement by the Institute, a check will be issued directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs. The Request for Advance or Reimbursement, along with the instructions for its preparation, will be included in the official Institute award package.

b. *Termination of Advance and Reimbursement Funding.* When a grantee organization receiving cash advances from the Institute:

(1) Demonstrates an unwillingness or inability to attain program or project goals, or to establish procedures that will minimize the time elapsing between cash advances and disbursements, or cannot adhere to guideline requirements or special conditions;

(2) Engages in the improper award and administration of subgrants or contracts; or

(3) Is unable to submit reliable and/or timely reports; the Institute may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee shall then be made by check to reimburse the grantee

for actual cash disbursements. In the event the grantee continues to be deficient, the Institute may suspend reimbursement payments until the deficiencies are corrected. In extreme cases, grants may be terminated.

c. *Principle of Minimum Cash on Hand.* Grantees should request funds based upon immediate disbursement requirements. Grantees should time their requests to ensure that cash on hand is the minimum needed for disbursements to be made immediately or within a few days.

2. Financial Reporting

a. *General Requirements.* To obtain financial information concerning the use of funds, the Institute requires that grantees/subgrantees submit timely reports for review.

b. *Due Dates and Contents.* A Financial Status Report is required from all grantees, other than scholarship recipients, for each active quarter on a calendar-quarter basis. This report is due within 30 days after the close of the calendar quarter. It is designed to provide financial information relating to Institute funds, State and local matching shares, project income, and any other sources of funds for the project, as well as information on obligations and outlays. A copy of the Financial Status Report, along with instructions for its preparation, is included in each official Institute Award package. If a grantee requests substantial payments for a project prior to the completion of a given quarter, the Institute may request a brief summary of the amount requested, by object class, to support the Request for Advance or Reimbursement.

3. Consequences of Non-Compliance With Submission Requirement

Failure of the grantee to submit required financial and progress reports may result in suspension or termination of grant payments.

I. Allowability of Costs

1. General

Except as may be otherwise provided in the conditions of a particular grant, cost allowability is determined in accordance with the principles set forth in OMB Circulars A–21, Cost Principles Applicable to Grants and Contracts with Educational Institutions; A–87, Cost Principles for State and Local Governments; and A–122, Cost Principles for Non-profit Organizations. No costs may be recovered to liquidate obligations incurred after the approved grant period. Circulars may be obtained on the OMB Web site at *www.whitehouse.gov/omb.*

2. Costs Requiring Prior Approval

a. *Pre-agreement Costs.* The written prior approval of the Institute is required for costs considered necessary but which occur prior to the start date of the project period.

b. *Equipment.* Grant funds may be used to purchase or lease only that equipment essential to accomplishing the goals and objectives of the project. The written prior approval of the Institute is required when the amount of automated data processing (ADP) equipment to be purchased or leased exceeds $10,000 or software to be purchased exceeds $3,000.

c. *Consultants.* The written prior approval of the Institute is required when the rate of compensation to be paid a consultant exceeds $800 a day. Institute funds may not be used to pay a consultant more than $1,100 per day.

d. *Budget Revisions.* Budget revisions among direct cost categories that (i) transfer grant funds to an unbudgeted cost category or (ii) individually or cumulatively exceed five percent (5%) of the approved original budget or the most recently approved revised budget require prior Institute approval (see section VIII.A.1.).

3. Travel Costs

Transportation and per diem rates must comply with the policies of the grantee. If the grantee does not have an established written travel policy, then travel rates must be consistent with those established by the Institute or the Federal Government. Institute funds may not be used to cover the transportation or per diem costs of a member of a national organization to attend an annual or other regular meeting of that organization.

4. Indirect Costs

These are costs of an organization that are not readily assignable to a particular project but are necessary to the operation of the organization and the performance of the project. The cost of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs. Although the Institute's policy requires all costs to be budgeted directly, it will accept indirect costs if a grantee has an indirect cost rate approved by a Federal agency as set forth below. However, recoverable indirect costs are limited to no more than 75% of a grantee's direct personnel costs (salaries plus fringe benefits).

a. *Approved Plan Available.* (1) A copy of an indirect cost rate agreement or allocation plan approved for a grantee during the preceding two years by any Federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars must be submitted to the Institute.

(2) Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally included in overhead pools, e.g., accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

b. *Establishment of Indirect Cost Rates.* To be reimbursed for indirect costs, a grantee must first establish an appropriate indirect cost rate. To do this, the grantee must prepare an indirect cost rate proposal and submit it to the Institute within three months after the start of the grant period to assure recovery of the full amount of allowable indirect costs. The rate must be developed in accordance with principles and procedures appropriate to the type of grantee institution involved as specified in the applicable OMB Circular.

c. *No Approved Plan.* If an indirect cost proposal for recovery of indirect costs is not submitted to the Institute within three months after the start of the grant period, indirect costs will be irrevocably disallowed for all months prior to the month that the indirect cost proposal is received.

J. Procurement and Property Management Standards

1. Procurement Standards

For State and local governments, the Institute has adopted the standards set forth in Attachment O of *OMB Circular A–102.* Institutions of higher education, hospitals, and other non-profit organizations will be governed by the standards set forth in Attachment O of *OMB Circular A–110.*

2. Property Management Standards

The property management standards as prescribed in Attachment N of *OMB Circulars A–102 and A–110* apply to all Institute grantees and subgrantees except as provided in section VI.A.18. All grantees/subgrantees are required to be prudent in the acquisition and management of property with grant funds. If suitable property required for the successful execution of projects is already available within the grantee or subgrantee organization, expenditures of grant funds for the acquisition of new property will be considered unnecessary.

K. Audit Requirements

1. Implementation

Each recipient of a Project Grant must provide for an annual fiscal audit. This requirement also applies to a State or local court receiving a subgrant from the State Supreme Court. The audit may be of the entire grantee or subgrantee organization or of the specific project funded by the Institute. Audits conducted in accordance with the Single Audit Act of 1984 and *OMB Circular A–128*, or *OMB Circular A–133*, will satisfy the requirement for an annual fiscal audit. The audit must be conducted by an independent Certified Public Accountant, or a State or local agency authorized to audit government agencies. Grantees must send two copies of the audit report to the Institute. Grantees that receive funds from a Federal agency and satisfy audit requirements of the cognizant Federal agency must submit two copies of the audit report prepared for that Federal agency to the Institute in order to satisfy the provisions of this section.

2. Resolution and Clearance of Audit Reports

Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each grantee must have policies and procedures for acting on audit recommendations by designating officials responsible for: (1) Follow-up, (2) maintaining a record of the actions taken on recommendations and time schedules, (3) responding to and acting on audit recommendations, and (4) submitting periodic reports to the Institute on recommendations and actions taken.

3. Consequences of Non-Resolution of Audit Issues

Ordinarily, the Institute will not make a subsequent grant award to an applicant that has an unresolved audit report involving Institute awards.

Failure of the grantee to resolve audit questions may also result in the suspension or termination of payments for active Institute grants to that organization.

L. Close-Out of Grants

1. Grantee Close-Out Requirements

Within 90 days after the end date of the grant or any approved extension thereof (see subsection L.2. below), the following documents must be submitted to the Institute by grantees (other than scholarship recipients):

a. *Financial Status Report.* The final report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award by the Institute. Final payment requests for obligations incurred during the award period must be submitted to the Institute prior to the end of the 90-day close-out period. Grantees on a check-issued basis, who have drawn down funds in excess of their obligations/expenditures, must return any unused funds as soon as it is determined that the funds are not required. In no case should any unused funds remain with the grantee beyond the submission date of the final Financial Status Report.

b. *Final Progress Report.* This report should describe the project activities during the final calendar quarter of the project and the close-out period, including to whom project products have been disseminated; provide a summary of activities during the entire project; specify whether all the objectives set forth in the approved application or an approved adjustment have been met and, if any of the objectives have not been met, explain why not; and discuss what, if anything, could have been done differently that might have enhanced the impact of the project or improved its operation.

These reporting requirements apply at the conclusion of every grant other than a scholarship.

2. Extension of Close-Out Period

Upon the written request of the grantee, the Institute may extend the close-out period to assure completion of the grantee's close-out requirements. Requests for an extension must be submitted at least 14 days before the end of the close-out period and must explain why the extension is necessary and what steps will be taken to assure that all the grantee's responsibilities will be met by the end of the extension period.

VIII. Grant Adjustments

All requests for programmatic or budgetary adjustments requiring Institute approval must be submitted by the project director in a timely manner (ordinarily 30 days prior to the implementation of the adjustment being requested). All requests for changes from the approved application will be carefully reviewed for both consistency with this Guideline and the enhancement of grant goals and objectives. Failure to submit adjustments in a timely manner may result in the termination of a grantee's award.

A. Grant Adjustments Requiring Prior Written Approval

The following grant adjustments require the prior written approval of the Institute:

1. Budget revisions among direct cost categories that (a) transfer grant funds to an unbudgeted cost category or (b) individually or cumulatively exceed five percent (5%) of the approved original budget or the most recently approved revised budget (see section VII.I.2.d.).

2. A change in the scope of work to be performed or the objectives of the project (see subsection D. below).

3. A change in the project site.

4. A change in the project period, such as an extension of the grant period and/or extension of the final financial or progress report deadline (see subsection E. below).

5. Satisfaction of special conditions, if required.

6. A change in or temporary absence of the project director (see subsections F. and G. below).

7. The assignment of an employee or consultant to a key staff position whose qualifications were not described in the application, or a change of a person assigned to a key project staff position (see section VI.A.2.).

8. A change in or temporary absence of the person responsible for managing and reporting on the grant's finances.

9. A change in the name of the grantee organization.

10. A transfer or contracting out of grant-supported activities (see subsection H. below).

11. A transfer of the grant to another recipient.

12. Preagreement costs (see section VII.I.2.a.).

13. The purchase of automated data processing equipment and software (see section VII.I.2.b.).

14. Consultant rates (see section VII.I.2.c.).

15. A change in the nature or number of the products to be prepared or the manner in which a product would be distributed.

B. Requests for Grant Adjustments

All grantees must promptly notify their SJI program managers, in writing, of events or proposed changes that may require adjustments to the approved project design. In requesting an adjustment, the grantee must set forth the reasons and basis for the proposed adjustment and any other information the program manager determines would help the Institute's review.

C. Notification of Approval/Disapproval

If the request is approved, the grantee will be sent a Grant Adjustment signed by the Executive Director or his or her designee. If the request is denied, the grantee will be sent a written explanation of the reasons for the denial.

D. Changes in the Scope of the Grant

Major changes in scope, duration, training methodology, or other significant areas must be approved in advance by the Institute. A grantee may make minor changes in methodology, approach, or other aspects of the grant to expedite achievement of the grant's objectives with subsequent notification of the SJI program manager.

E. Date Changes

A request to change or extend the grant period must be made at least 30 days in advance of the end date of the grant. A revised task plan should accompany a request for an extension of the grant period, along with a revised budget if shifts among budget categories will be needed. A request to change or extend the deadline for the final financial report or final progress report must be made at least 14 days in advance of the report deadline (see section VII.L.2.).

F. Temporary Absence of the Project Director

Whenever an absence of the project director is expected to exceed a continuous period of one month, the plans for the conduct of the project director's duties during such absence must be approved in advance by the Institute. This information must be provided in a letter signed by an authorized representative of the grantee/subgrantee at least 30 days before the departure of the project director, or as soon as it is known that the project director will be absent. The grant may be terminated if arrangements are not approved in advance by the Institute.

G. Withdrawal of/Change in Project Director

If the project director relinquishes or expects to relinquish active direction of the project, the Institute must be notified immediately. In such cases, if the grantee/subgrantee wishes to terminate the project, the Institute will forward procedural instructions upon notification of such intent. If the grantee wishes to continue the project under the direction of another individual, a statement of the candidate's qualifications should be sent to the Institute for review and approval. The grant may be terminated if the qualifications of the proposed individual are not approved in advance by the Institute.

H. Transferring or Contracting Out of Grant-Supported Activities

No principal activity of a grant-supported project may be transferred or contracted out to another organization without specific prior approval by the Institute. All such arrangements must be formalized in a contract or other written agreement between the parties involved. Copies of the proposed contract or agreement must be submitted for prior approval of the Institute at the earliest possible time. The contract or agreement must state, at a minimum, the activities to be performed, the time schedule, the policies and procedures to be followed, the dollar limitation of the agreement, and the cost principles to be followed in determining what costs, both direct and indirect, will be allowed. The contract or other written agreement must not affect the grantee's overall responsibility for the direction of the project and accountability to the Institute.

State Justice Institute Board of Directors

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Kevin Linskey, Executive Director (ex officio).

Kevin Linskey,

Executive Director.

Appendix A—SJI Libraries: Designated Sites and Contacts

Alabama

Supreme Court Library

Mr. Timothy A. Lewis, State Law Librarian, Alabama Supreme Court, Judicial Building, 300 Dexter Avenue, Montgomery, AL 36104, (334) 242–4347, *director@alalinc.net*

Alaska

Anchorage Law Library

Ms. Cynthia S. Fellows, State Law Librarian, Alaska State Court Law Library, 303 K Street, Anchorage, AK 99501, (907) 264–0583, *cfellows@courts.state.ak.us*

Arizona

Supreme Court Library

Ms. Lani Orosco, Staff Assistant, Arizona Supreme Court, Staff Attorney's Office, Library, 1501 W. Washington, Suite 445, Phoenix, AZ 85007, (602) 542–5028, *lorosco@supreme.sp.state.az.us*

Arkansas

Administrative Office of the Courts

Mr. James D. Gingerich, Director, Administrative Office of the Courts, Supreme Court of Arkansas, Justice Building, 625 Marshall Street, Little Rock, AR 72201, (501) 682–9400, *jd.gingerich@mail.state.ar.us*

California

Administrative Office of the Courts

Mr. William C. Vickrey, Administrative Director of the Courts, Administrative Office of the Courts, 455 Golden Gate Avenue, San Francisco, CA 94102, (415) 865–4235, *william.vickrey@jud.ca.gov*

Colorado

Supreme Court Library

Ms. Linda Gruenthal, Deputy Supreme Court Law Librarian, 2 East 14th Avenue, Denver, CO 80203, (303) 837–3720, *cscltech@state.co.us*

Connecticut

State Library

Ms. Denise D. Jernigan, Law Librarian, Connecticut State Library, 231 Capitol Avenue, Hartford, CT 06106, (860) 757–6598, *djernigan@cslib.org*

Delaware

Administrative Office of the Courts

Mr. Michael E. McLaughlin, Deputy Director, Administrative Office of the Courts, Carvel State Office Building, 820 North French Street, 11th Floor, P.O. Box 8911, Wilmington, DE 19801, (302) 577–8481 *michael.mclaughlin@state.de.us*

District of Columbia

Executive Office, District of Columbia Courts

Ms. Anne B. Wicks, Executive Officer, District of Columbia Courts, 500 Indiana Avenue, NW., Suite 1500, Washington, DC 20001, (202) 879–1700, *Wicksab@dcsc.gov*

Florida

Administrative Office of the Courts

Ms. Elisabeth H. Goodner, State Courts Administrator, Office of the State Courts Administrator, Florida Supreme Court, Supreme Court Building, 500 South Duval Street, Tallahassee, FL 32399, (850) 922–5081, *goodnerl@flcourts.org*

Georgia

Administrative Office of the Courts

Mr. David Ratley, Director, Administrative Office of the Courts, 244 Washington Street, S.W., Suite 300, Atlanta, GA 30334, (404) 656–5171, *ratleydl@gaaoc.us*

Hawaii

Supreme Court Library

Ms. Ann Koto, State Law Librarian, The Supreme Court Law Library, 417 South King St., Room 119, Honolulu, HI 96813, (808) 539–4964, *Ann.S.Koto@courts.state.hi.us*

Idaho

AOC Judicial Education Library/State Law Library

Mr. Richard Visser, State Law Librarian, Idaho State Law Library, Supreme Court Building, 451 West State St., Boise, ID 83720, (208) 334–3316, *lawlibrary@isc.state.id.us*

Illinois

Supreme Court Library

Ms. Brenda Larison, Supreme Court of Illinois Library, 200 East Capitol Avenue, Springfield, IL 62701–1791, (217) 782–2425, *blarison@court.state.il.us*

Indiana

Supreme Court Library

Ms. Terri L. Ross, Supreme Court Librarian, Supreme Court Library, State House, Room 316, Indianapolis, IN 46204, (317) 232–2557, *tross@courts.state.in.us*

Iowa

Administrative Office of the Court

Dr. Jerry K. Beatty, Director of Judicial Branch Education, Iowa Judicial Branch, Iowa Judicial Branch Building, 1111 East Court Avenue, Des Moines, IA 50319, (515) 242–0190, *jerry.beatty@jb.state.ia.us*

Kansas

Supreme Court Library

Mr. Fred Knecht, Law Librarian, Kansas Supreme Court Library, Kansas Judicial Center, 301 S.W. 10th Avenue, Topeka, KS 66612, (785) 296–3257, *knechtf@kscourts.org*

Kentucky

State Law Library

Ms. Vida Vitagliano, Cataloging and Research Librarian, Kentucky Supreme Court Library, 700 Capitol Avenue, Suite 200, Frankfort, KY 40601, (502) 564–4185, *vidavitagliano@mail.aoc.state.ky.us*

Louisiana

State Law Library

Ms. Carol Billings, Director, Louisiana Law Library, Louisiana Supreme Court Building, 400 Royal Street, New Orleans, LA 70130, (504) 310–2401, *cbillings@lasc.org*

Maine

State Law and Legislative Reference Library

Ms. Lynn E. Randall, State Law Librarian, 43 State House Station, Augusta, ME 04333, (207) 287–1600, *lynn.randall@legislature.maine.gov*

Maryland

State Law Library

Mr. Steve Anderson, Director, Maryland State Law Library, Court of Appeal Building, 361 Rowe Boulevard, Annapolis, MD 21401, (410) 260–1430, *steve.anderson@courts.state.md.us*

Massachusetts

Middlesex Law Library

Ms. Linda Hom, Librarian, Middlesex Law Library, Superior Court House, 40 Thorndike Street, Cambridge, MA 02141, (617) 494–4148, *midlawlib@yahoo.com*

Michigan

Michigan Judicial Institute

Dawn F. McCarty, Director, Michigan Judicial Institute, P.O. Box 30205, Lansing, MI 48909, (517) 373–7509, *mccartyd@courts.mi.gov*

Minnesota

State Law Library (Minnesota Judicial Center)

Ms. Barbara L. Golden, State Law Librarian, G25 Minnesota Judicial Center, 25 Rev. Dr. Martin Luther King Jr. Boulevard, St. Paul, MN 55155, (612) 297–2089, *barb.golden@courts.state.mn.us*

Mississippi

Mississippi Judicial College

Hon. Leslie G. Johnson, Executive Director, Mississippi Judicial College, P.O. Box 8850, University, MS 38677, (662) 915–5955, *lwleslie@olemiss.edu*

Montana

State Law Library

Ms. Judith Meadows, State Law Librarian, State Law Library of Montana, P.O. Box 203004, Helena, MT 59620, (406) 444–3660, *jmeadows@state.mt.us*

Nebraska

Administrative Office of the Courts

Mr. Philip D. Gould, Director, Judicial Branch Education, Administrative Office of the Courts/Probation, 521 South 14th St., Suite 200, Lincoln, NE 68508–2707, (402) 471–3072 (office)/(402) 471–3071 (fax), *pgould@nsc.state.ne.us*

Nevada

National Judicial College

Mr. Randall Snyder, Law Librarian, National Judicial College, Judicial College Building, MS 358, Reno, NV 89557, (775) 327–8278, *snyder@judges.org*

New Hampshire

New Hampshire Law Library

Ms. Mary Searles, Technical Services Law Librarian, New Hampshire Law Library, Supreme Court Building, One Noble Drive, Concord, NH 03301–6160, (603) 271–3777, *msearles@courts.state.nh.us*

New Jersey

New Jersey State Library

Mr. Thomas O'Malley, Supervising Law Librarian, New Jersey State Law Library, 185 West State Street, P.O. Box 520, Trenton, NJ 08625–0250, (609) 292–6230, *tomalley@njstatelib.org*

New Mexico

Supreme Court Library

Mr. Thaddeus Bejnar, Librarian, Supreme Court Library, Post Office Drawer L, Santa Fe, NM 87504, (505) 827–4850

New York

Supreme Court Library

Ms. Barbara Briggs, Law Librarian, Syracuse Supreme Court Law Library, 401 Montgomery Street, Syracuse, NY 13202, (315) 671–1150, *bbriggs@courts.state.ny.us*

North Carolina

Supreme Court Library

Mr. Thomas P. Davis, Librarian, North Carolina Supreme Court Library, 500 Justice Building, 2 East Morgan Street, Raleigh, NC 27601, (919) 733–3425, *tpd@sc.state.nc.us*

North Dakota

Supreme Court Library

Ms. Marcella Kramer, Assistant Law Librarian, Supreme Court Law Library, 600 East Boulevard Avenue, Dept. 182, 2nd Floor, Judicial Wing, Bismarck, ND 58505–0540, (701) 328–2229, *mkramer@ndcourts.com*

Northern Mariana Islands

Supreme Court of the Northern Mariana Islands

Ms. Margarita M. Palacios, Director of Courts, Supreme Court of the Commonwealth of the Northern Mariana Islands, P.O. Box 502165, Saipan, MP 96950, (670) 235–9700, *supremecourt@saipan.com*

Ohio

Supreme Court Library

Mr. Ken Kozlowski, Director, Law Library, Supreme Court of Ohio, 65 South Front Street, 11th Floor, Columbus, OH 43215–

3431, (614) 387–9666, *kozlowsk@sconet.state.oh.us*

Oklahoma

Administrative Office of the Courts

Mr. Howard W. Conyers, State Court Administrator, Administrative Office of the Courts, 1915 North Stiles Avenue, Suite 305, Oklahoma City, OK 73105, (405) 521–2450, *conyersh@oscn.net*

Oregon

Administrative Office of the Courts

Ms. Kingsley W. Click, State Court Administrator, Oregon Judicial Department, Supreme Court Building, 1163 State Street, Salem, OR 97301, (503) 986–5500, *kingsley.w.click@ojd.state.or.us*

Pennsylvania

State Library of Pennsylvania

Ms. Kathleen Kline, Collection Management Librarian, State Library of Pennsylvania, Bureau of State Library, 333 Market Street, Harrisburg, PA 17126–1745, (717) 787–5718, *kakline@state.pa.us*

Puerto Rico

Office of Court Administration

Alfredo Rivera-Mendoza, Esq., Director, Area of Planning and Management, Office of Court Administration, P.O. Box 917, Hato Rey, PR 00919

Rhode Island

Roger Williams University

Ms. Gail Winson, Director of Law Library/ Associate Professor of Law, Roger Williams University, School of Law Library, 10 Metacom Avenue, Bristol, RI 02809, 401/ 254–4531, *gwinson@law.rwu.edu*

South Carolina

Coleman Karesh Law Library (University of South Carolina School of Law)

Mr. Steve Hinckley, Director, Coleman Karesh Law Library, University of South Carolina, Main and Green Streets, Columbia, SC 29208, (803) 777–5944, *hinckley@law.sc.edu*

South Dakota

State Law Library

Librarian, South Dakota State Law Library, 500 East Capitol, Pierre, South Dakota 57501, (605) 773–4898, *donnis.deyo@ujs.state.sd.ud*

Tennessee

Tennessee State Law Library

Hon. Cornelia A. Clark, Executive Director, Administrative Office of the Courts, 511 Union Street, Suite 600, Nashville, TN 37219 (615) 741–2687, *cclark@tscmail.state.tn.us*

Texas

State Law Library

Mr. Marcelino A. Estrada, Director, State Law Library, P.O. Box 12367, Austin, TX 78711, (512) 463–1722, *tony.estrada@sll.state.tx.us*

U.S. Virgin Islands

Library of the Territorial Court of the Virgin Islands (St. Thomas)

Librarian, The Library, Territorial Court of the Virgin Islands, Post Office Box 70, Charlotte Amalie, St. Thomas, Virgin Islands 00804

Utah

Utah State Judicial Administration Library

Ms. Jessica Van Buren, Utah State Library, 450 South State Street, P.O. Box 140220, Salt Lake City, UT 84114–0220, (801) 238–7991 *jessicavb@e-mail.utcourts.gov*

Vermont

Supreme Court of Vermont

Mr. Paul J. Donovan, Law Librarian, Vermont Department of Libraries, 109 State Street, Pavilion Office Building, Montpelier, VT 05609, (802) 828–3268 *paul.donovan@dol.state.vt.us*

Virginia

Administrative Office of the Courts

Ms. Gail Warren, State Law Librarian, Virginia State Law Library, Supreme Court of Virginia, 100 North Ninth Street, 2nd Floor Richmond, VA 23219–2335 (804) 786–2075, *gwarren@courts.state.va.us*

Washington

Washington State Law Library

Ms. Kay Newman, State Law Librarian, Washington State Law Library, Temple of Justice, P.O. Box 40751, Olympia, WA 98504–0751, (360) 357–2136 *kay.newman@courts.wa.gov*

West Virginia

Supreme Court of Appeals Library

Ms. Kaye Maerz, State Law Librarian, West Virginia Supreme Court of Appeals Library, 1900 Kanawha Boulevard East, Building 1, Room E–404, Charleston, WV 25305 (304) 558–2607, *klm@courts.state.wv.us*

Wisconsin

State Law Library

Ms. Jane Colwin, State Law Librarian, State Law Library, 120 M.L.K. Jr. Boulevard, Madison, WI 53703, (608) 261–2340, *jane.colwin@wicourts.gov*

Wyoming

Wyoming State Law Library

Ms. Kathy Carlson, Law Librarian, Wyoming State Law Library, Supreme Court Building, 2301 Capitol Avenue, Cheyenne, WY 82002 (307) 777–7509, *Kcarls@state.wy.us*

National

American Judicature Society

Ms. Deborah Sulzbach, Acquisitions Librarian, Drake University, Law Library, Opperman Hall, 2507 University Avenue, Des Moines, IA 50311–4505, (515) 271–3784, *deborah.sulzbach@drake.edu*

National Center for State Courts

Ms. Joan Cochet, Library Specialist, National Center for State Courts, 300 Newport Avenue, Williamsburg, VA 23185–4147, (757) 259–1826 *library@ncsc.dni.us*

JERITT

Dr. Maureen E. Conner, Executive Director, The JERITT Project, Michigan State University, 1407 S. Harrison Road, Suite 330 Nisbet, East Lansing, MI 48823–5239, (517) 353–8603, (517) 432–3965 (fax), *connerm@msu.edu* Web site: *http://jeritt.msu.edu*

BILLING CODE 6820–SC–P

Appendix B

STATE JUSTICE INSTITUTE
APPLICATION

1. APPLICANT
a. Applicant Name _____
_____
b. Organization Unit _____
c. Street/P.O. Box _____
d. City _____
e. State _____ f. Zip Code _____
g. Phone Number _____
h. Fax Number _____
i. Web Site Address _____
j. Name & Phone Number of Contact Person
_____
k. Title _____
l. E-Mail Address _____

2. TYPE OF APPLICANT (Check appropriate box)

- ☐ State Court
- ☐ National organization operating in conjunction with State court
- ☐ National State court support organization
- ☐ College or university
- ☐ Other non-profit organization or agency
- ☐ Individual
- ☐ Corporation or partnership
- ☐ Other Unit of government
- ☐ Other _____ (specify) _____

3. PROPOSED START DATE _____

4. PROJECT DURATION (Months) _____

5. APPLICANT FINANCIAL CONTACT
a. Applicant Name _____
_____
b. Organization Unit _____
c. Street/P.O. Box _____
d. City _____
e. State _____ f. Zip Code _____
g. Phone Number _____
h. Fax Number _____
i. Web Site Address _____
j. Name & Phone Number of Contact Person
_____
k. Title _____
l. E-Mail Address _____

6. IF THIS APPLICATION HAS BEEN SUBMITTED TO OTHER FUNDING SOURCES, PLEASE PROVIDE THE FOLLOWING INFORMATION:
Source _____
Date Submitted _____
Amount Sought _____
Disposition (if any) or Current Status _____
_____

7. a. AMOUNT REQUESTED FROM SJI $ _____
b. AMOUNT OF MATCH
Cash match $ _____
Non-cash Match $ _____
c. TOTAL MATCH $ 0
d. OTHER CASH $ _____
e. TOTAL PROJECT COST $ 0

8. TITLE OF PROPOSED PROJECT

9. CONGRESSIONAL DISTRICT OF: _____ _____
Name of Representative; District Number — Project (if different than applicant): Name of Representative; District Number

10. CERTIFICATION

On behalf of the applicant, I hereby certify that to the best of knowledge the information in this application is true and complete. I have read the attached assurances (Form D) and understand that if this application is approved for funding, the award will be subject to those assurances. I certify that the applicant will comply with the assurances if the application is approved, and that I am lawfully authorized to make these representations on the behalf of the applicant.

_____ _____ _____
SIGNATURE OF RESPONSIBLE OFFICIAL OF APPLICANT — TITLE — DATE
(For applications from State and local courts, Form B, Certificate of State Approval, must be attached)

FOR INSTITUTE USE ONLY

11. a. APPLICATION NUMBER _____ b. CONCEPT PAPER NUMBER _____ c. GRANT MUNBER _____	12. DATE RECEIVED	13. DATE OF ACTION

Form A 08/06

STATE JUSTICE INSTITUTE
INSTRUCTIONS FOR SJI APPLICATION FORM A

1. a-l Legal **name of applicant** (court, entity or individual); **name of the organizational unit**, if any, that will conduct the project; complete **address** of the applicant, including phone and fax numbers and website addresses; and name, phone number, title, and e-mail address of a **contact person** who can provide further information about this application.

2. □ **State court** includes all appellate, general jurisdiction, limited jurisdiction, and special jurisdiction courts, as well as all offices that are supervised by or report for administrative purposes to the chief or presiding justice or judge, or his or her designee.

   □ **National organizations operating in conjunction with State court** include national non-profit organization controlled by, operating in conjunction with, and serving State courts.

   □ **National state court organizations** include national non-profit organizations with primary mission of supporting, serving, or educating judges and other personnel of the judicial branch of State government.

   □ **College or university** includes all institutions of higher education.

   □ **Other non-profit organization or agency** includes those non-profit organizations and private agencies not included in sub-paragraphs (b)-(d).

   □ **Individual** means a person not applying in conjunction with or on behalf of an entity identified in one of the other categories.

   □ **Corporation or partnership** includes for-profit and not-for-profit entities not falling within one of the other categories.

   □ **Other unit of government** includes any governmental agency, office, or organization that is not a State or local court.

3. The **proposed start date** of the project should be the earliest feasible date on which applicant will be able to begin project activities following the date of award. (example 08/01/2006)

4. **Project duration** refers to the number of months the applicant estimates will be needed to complete all project tasks after the proposed start date.

5. a-l The **applicant financial contact** is the court or organization employee that will administer and account for any monies awarded.

6. If this application or an application requesting support for the same project or an essentially similar project has been previously submitted to another funding source (Federal or private), enter the name of the **source**, the **date** of submission, the **amount** of funding sought, and the **disposition** (if any).

7. a. Insert the **amount requested** from the State Justice Institute to conduct the project.

b. The **amount of match** is the amount, if any, to be contributed to the project by the applicant, a unit of State or local government, or private sources. See 42 U.S.C. 10705 (d).

Cash match refers to funds directly contributed by the applicant, a unit of State or local government or private sources to support the project.

Non-cash match refers to in-kind contributions by the applicant, a unit of State or local government or private sources to support the project.

c. **Total match** refers to the sum of the cash and in-kind contributions to the project.

d. **Other cash** refers to other funds, such as funds from a federal agency, that cannot serve as a match but can be used for a project.

e. **Total project cost** represents the sum of the amount requested from the Institute and all contributions to the project.

8. The **title of the proposed project** should reflect the objectives of the activities to be conducted.

9. Enter the name of the applicant's Congressional Representative and the number of the applicant's **Congressional district**, along with the number of the Congressional district(s) in which most of the project activities will take place and the name(s) of the Representative from those districts. If the project activities are not site-specific (for example, a series of training workshops that will bring together participants from around the State, the country, or from a particular region), enter *Statewide*, *national*, or *regional*, as appropriate, in the space provided.

10. **Signature** and title of a duly authorized representative of the applicant and the **date** the application was signed.

(Form B)

STATE JUSTICE INSTITUTE

Certificate of State Approval

The _____
Name of State Supreme Court or Designated Agency or Council

has reviewed the application entitled _____

prepared by _____,
Name of Applicant

approves its submission to the State Justice Institute, and

☐ agrees to receive and administer and be accountable for all funds awarded by the Institute pursuant to the application.

☐ designates _____
Name of Trial or Appellate Court or Agency

as the entity to receive, administer, and be accountable for all funds awarded by the Institute pursuant to the application.

_____ _____
Signature *Date*

_____
Name

_____
Title

INSTRUCTIONS

The State Justice Act requires that:

Each application for funding by a State or local court shall be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council, which shall receive, administer, and be accountable for all funds awarded by the Institute to such courts. 42 U.S.C. 10705(b)(4).

FORM B should be signed by the Chief Judge or Chief Justice of the State Supreme Court, or by the director of the designated agency or chair of the designated council.

The term "State Supreme Court" refers to the court of last resort of a State. "Designated agency or council" refers to the office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer, and be accountable for those funds.

STATE JUSTICE INSTITUTE

PROJECT BUDGET

(TABULAR FORMAT)

Applicant: _____

Project Title _____

For Project Activity from _____ **to** _____

Total Amount Requested for Project from SJI $ _____

ITEM	SJI FUNDS	STATE FUNDS	FEDERAL FUNDS	APPLICANT FUNDS	OTHER FUNDS	IN-KIND SUPPORT	TOTAL
Personnel							0
Fringe Benefits							0
Consultant / Contractual							0
Travel							0
Equipment							0
Supplies							0
Telephone							0
Postage							0
Printing / Photocopying							0
Audit							0
Other (specify)							0
Direct Costs	0	0	0	0	0	0	0
Indirect Costs							0
Total	0	0	0	0	0	0	0

Remarks:

Form C 5/95 *(Instructions on reverse side)*

01853

Application Budget Instructions

In addition to Form C, applicants must provide a detailed budget narrative that explains the basis for the estimates in each budget category (see Guideline section IV. A.4.). If the applicant is requesting indirect costs and has an indirect cost rate that has been approved by a Federal agency, the basis for that rate, together with a copy of the letter or other official document stating that it has been approved, should be attached. Recoverable indirect costs are limited to no more than 75% of personnel and fringe benefit costs.

If matching funds from other sources are being sought, the source, current status of the request, and anticipated decision date must be provided.

STATE JUSTICE INSTITUTE

ASSURANCES

The applicant hereby assures and certifies that it possesses legal authority to apply for the award, and that if funds are awarded by the State Justice Institute pursuant to this application, it will comply with all applicable provisions of law and the regulations, policies, guidelines and requirements of the Institute as they relate to the acceptance and use of Institute funds pursuant to this application. The applicant further assures and certifies with respect to this application, that:

1. No person will, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by Institute funds, and that the applicant will immediately take any measures necessary to effectuate this assurance.

2. In accordance with 42 U.S.C. 10706(a), funds awarded to the applicant by the Institute will not be used, directly or indirectly, to influence the issuance, amendment, or revocation of any Executive order or similar promulgation by Federal, State or local agencies, or to influence the passage or defeat of any legislation or constitutional amendment by any Federal, State or local legislative body.

3. In accordance with 42 U.S.C. 10706(a) and 10707(c):

   a. It will not contribute or make available Institute funds, project personnel, or equipment to any political party or association, to the campaign of any candidate for public or party office, or to influence the passage or defeat of any ballot measure, initiative, or referendum;

   b. No officer or employee of the applicant will intentionally identify the Institute or the applicant with any partisan or nonpartisan political activity or the campaign of any candidate for public or party office; and,

   c. No officer or employee of the applicant will engage in partisan political activity while engaged in work supported in whole or in part by the Institute.

4. In accordance with 42 U.S.C. 10706(b), no funds awarded by the Institute will be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities.

5. In accordance with 42 U.S.C. 10706(d), no funds awarded by the Institute will be used to supplant State or local funds supporting a program or activity; to construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or to solely purchase equipment for a court system.

6. It will provide for an annual fiscal audit of the project.

7. It will give the Institute, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award.

8. In accordance with 42 U.S.C. 10708 (b) (as amended), research or statistical information that is furnished during the course of the project and that is identifiable to any specific individual, shall not be used or revealed for any purpose other than the purpose for which it was obtained. Such information and copies thereof shall be immune from legal process, and shall not be offered as evidence or used for any purpose in any action suit, or other judicial, legislative, or administrative proceeding without the consent of the person who furnished the information.

9. All research involving human subjects will be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, the Institute must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.

10. All products prepared as the result of the project will be originally-developed material unless otherwise specifically provided for in the award documents, and that material not originally developed that is included in such projects must by properly identified, whether the material is in a verbatim or extensive paraphrase format.

11. No funds will be obligated for publication or reproduction of a final product developed with Institute funds without the written approval of the Institute. The recipient will submit a final draft of each such product to the Institute for review and approval prior to submitting that product for publication or reproduction.

12. The following statement will be prominently displayed on all products prepared as a result of the project:
    This [document, film, videotape, etc.] was developed under a [grant, cooperative agreement, contract] from the State Justice Institute. Points of view expressed herein are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute.

13. THE "SJI" logo will appear on the front cover of a written product or in the opening frames of a video production produced with SJI funds, unless another placement is approved in writing by the Institute.

14. Except as otherwise provided in the terms and conditions of an Institute award, the recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, non-exclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

15. It will submit quarterly progress and financial reports within 30 days of the close of each calendar quarter during the funding period (that is, no later than January 30, April 30, July 30, and October 30); that progress reports will include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period; and that financial reports will contain the information requested on the financial report form included in the award documents.

16. At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the court, organization or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

17. The person signing the application is authorized to do so on behalf of the applicant and to obligate the applicant to comply with the assurances enumerated above.

DISCLOSURE OF LOBBYING ACTIVITIES

The State Justice Institute Act prohibits grantees from using funds awarded by the Institute to directly or indirectly influence the passage or defeat of any legislation by Federal, State of local legislative bodies. 42 U.S.C. 10706 (a). It also is the policy of the Institute to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner.

Consistent with this policy and the provisions of 42 U.S.C. 10706 (a), the Institute will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application. As a means of implementing that prohibition, SJI requires organizations submitting applications to the Institute to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts. This form must be submitted with your application.

Name of Applicant: _____

Title of Application: _____

_____

☐ **Yes** ☐ **No** **Has the applicant (or an entity that is part of the same organization as the applicant) directly or indirectly advocated a position before Congress on any issue within the past five years?**

SPECIFIC SUBJECTS OF LOBBYING EFFORTS

If you answered **YES** above, please list the specific subjects on which your organization (or another entity that is part of your organization) has directly or indirectly advocated a position before Congress within the past five years. If necessary, you may continue on the back of this form or on an attached sheet.

Subject	Year
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

STATEMENT OF VERIFICATION

I declare under penalty of perjury that the information contained in this disclosure statement is correct and that I am authorized to make this verification on behalf of the applicant.

_____

Signature **Name (Typed)**

_____

Title **Date**

Appendix C

(Form E)

STATE JUSTICE INSTITUTE

LINE-ITEM BUDGET FORM

For Curriculum Adaptation and Training and Technical Assistance Grant Requests*

Category	SJI Funds	Cash Match	In-Kind Match
Personnel	$_____	$_____	$_____
Fringe Benefits	$_____	$_____	$_____
Consultant/Contractual	$_____	$_____	$_____
Travel	$_____	$_____	$_____
Equipment	$_____	$_____	$_____
Supplies	$_____	$_____	$_____
Telephone	$_____	$_____	$_____
Postage	$_____	$_____	$_____
Printing/Photocopying	$_____	$_____	$_____
Audit	$_____	$_____	$_____
Other	$_____	$_____	$_____
Indirect Costs (%)	$_____	$_____	$_____
TOTAL	$ 0	$ 0	$ 0

PROJECT TOTAL $ 0

Financial assistance has been or will be sought for this project from the following other sources:

_____

_____

* Curriculum Adaptation and Training Grant requests, and Technical Assistance Grant requests should also include a budget narrative explaining the basis for each line-item listed above.

Form E revised 08/2006

Appendix D

SJI Scholarship Application

This application does not serve as a registration for the course. Please contact the education provider.

APPLICANT INFORMATION:

1. Applicant Name: _____
(Last) (First) (M.I.)

2. Position: _____

3. Name of Court: _____

4. Address: _____
Street/P.O. Box

_____
City State Zip Code

5. Telephone No. _____

6. Email Address: _____

7. Congressional District: _____

PROGRAM INFORMATION:

☐ On-site ☐ Online

8. Course Name: _____

9. Course Dates: _____

10. Course Provider: _____

11. Location Offered: _____

ESTIMATED EXPENSES:

Please note: Scholarships are limited to tuition (excluding the conference fee), reasonable lodging up to $150 per night (including taxes), and transportation expenses to and from the site of the course, up to a maximum of $1,500.

Tuition: $ _____

Transportation: $ _____
(Airfare, train fare, or, if you plan to drive, an amount equal to the approximate distance and mileage rate.)

Lodging: $ _____

Total Amount Requested: $ 0.00

Are you seeking/have you received a scholarship for this course from another source?

☐ Yes ☐ No If so, please specify the source(s) and amount(s) _____

_____

Form S1 (9/05)

SJI SCHOLARSHIP APPLICATION PAGE 2

ADDITIONAL INFORMATION:

Please attach a current resume or professional summary, and provide the information requested below. (You may attach additional pages if necessary.)

1. Please describe your need to acquire the skills and knowledge taught in this course.

2. Please describe how will taking this course benefit you, your court, and the State's courts generally.

3. Is there an educational program currently available through your State on this topic?

4. Are State or local funds available to support your attendance at the proposed course? If so, what amount(s) will be provided?

5. How long have you served as a judge or court manager? _____

6. How long do you anticipate serving as a judge or court manager, assuming reelection or reappointment?

☐ 0–1 year ☐ 2–4 years ☐ 5–7 years ☐ 8–10 years ☐ 11+ years

7. What continuing professional education programs have you attended in the past year? Please indicate which were mandatory (M) and which were non-mandatory (V).

STATEMENT OF APPLICANT'S COMMITMENT

If a scholarship is awarded, I will share the skills and knowledge I have gained with my court colleagues locally, and if possible, Statewide, and I will submit an evaluation of the educational program to the State Justice Institute and to the Chief Justice of my State.

_____ _____

Signature Date

Please return this form and Form S-2 to:

Scholarship Coordinator, State Justice Institute, 1650 King Street, Suite 600, Alexandria Virginia 22314

SJI Scholarship Application

Concurrence

I, _____,
Name of Chief Justice (or Chief Justice's Designee)

have reviewed the application for a scholarship to attend the program entitled

_____,

prepared by _____.
Name of Applicant

and concur in its submission to the State Justice Institute. The applicant's participation in the program would benefit the State; the applicant's absence to attend the program would not present an undue hardship to the court; public funds are not available to enable the applicant to attend this course; and receipt of a scholarship would not diminish the amount of funds made available by the State for judicial branch education.

_____
Signature

_____
Name

_____
Title

_____
Date

Form S2 (9/98)

[FR Doc. 06–7398 Filed 9–6–06; 8:45 am]
BILLING CODE 6820–SC–C

Federal Register

Thursday,
September 7, 2006

Part IV

Department of Commerce

Bureau of Industry and Security

15 CFR Parts 740, 743, 772 and 774
December 2005 Wassenaar Arrangement Plenary Agreement Implementation; Final Rule

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740, 743, 772 and 774

[Docket No. 060807211–6211–01]

RIN 0694–AD 73

December 2005 Wassenaar Arrangement Plenary Agreement Implementation: Categories 1, 2, 3, 5 Part I (Telecommunications), 5 Part II (Information Security), 6, 8, and 9 of the Commerce Control List; Wassenaar Reporting Requirements; Definitions; and Certain New or Expanded Export Controls

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) maintains the Commerce Control List (CCL), which identifies items subject to Department of Commerce export controls. This final rule revises the Export Administration Regulations (EAR) to implement changes made to the Wassenaar Arrangement's List of Dual-Use Goods and Technologies (Wassenaar List), and Statements of Understanding maintained and agreed to by governments participating in the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement, or WA.) The Wassenaar Arrangement advocates implementation of effective export controls on strategic items with the objective of improving regional and international security and stability. To accommodate the changes to the Wassenaar List, this rule revises the EAR by amending certain entries that are controlled for national security reasons in Categories 1, 2, 3, 5 Part I (Telecommunications), 5 Part II (Information Security), 6, 8, and 9, and by amending the EAR Definitions.

The purpose of this final rule is to make the necessary changes to the CCL, definitions of terms used in the EAR, and Wassenaar reporting requirements to implement Wassenaar List revisions that were agreed upon in the December 2005 Wassenaar Arrangement Plenary Meeting. In addition, this rule adds Croatia, Estonia, Latvia, Lithuania, South Africa, and Malta to the list of Wassenaar participating states in the EAR, which brings the total number of participating states to 40.

This rule also adds or expands unilateral U.S. controls and national security controls on certain items to make them consistent with the amendments made to implement the Wassenaar Arrangement's decisions.

DATES: *Effective Date:* This rule is effective September 7, 2006.

FOR FURTHER INFORMATION CONTACT: For questions of a general nature contact Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce at (202) 482–2440 or E-Mail: *scook@bis.doc.gov*.

For questions of a technical nature contact:

Category 1: Bob Teer 202–482–4749.

Category 2: George Loh 202–482–3570.

Category 3: Brian Baker 202–482–5534.

Category 5 Part 1: Joe Young 202–482–4197.

Category 5 Part 2: Joe Young 202–482–4197.

Category 6: Chris Costanzo 202–482–0718.

Categories 7 and 8: Dan Squire 202–482–3710.

Category 9: Gene Christensen 202–482–2984.

Comments regarding the collections of information associated with this rule, including suggestions for reducing the burden, should be sent to OMB Desk Officer, New Executive Office Building, Washington, DC 20503—Attention: David Rostker; and to the Office of Administration, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 6883, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

In July 1996, the United States and thirty-three other countries gave final approval to the establishment of a new multilateral export control arrangement, called the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement or WA). The Wassenaar Arrangement contributes to regional and international security and stability by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, thus preventing destabilizing accumulations of such items. Participating states have committed to exchange information on exports of dual-use goods and technologies to non-participating states for the purposes of enhancing transparency and assisting in developing common understandings of the risks associated with the transfers of these items.

Addition of Croatia, Estonia, Latvia, Lithuania, Malta, and South Africa

In April–June 2005, consultations resulted in decisions to admit Croatia, Estonia, Latvia, Lithuania and Malta to the Wassenaar Arrangement as new Participating States, and in December 2005 at the Plenary meeting, South Africa was added as a new Participating State. To reflect this change, this rule adds Croatia, Estonia, Latvia, Lithuania, Malta, and South Africa to the list of Wassenaar Arrangement Participating States in Supplement No. 1 to Part 743 of the EAR.

Expansion or New Export Controls

New or expanded anti-terrorism (AT) controls imposed by this rule. This rule imposes a unilateral U.S. license requirement to export and reexport commodities (and related software and technology) controlled under ECCNs 1E998, 2B006.b.1.d, 2D001, 2E001, 2E002, 2E201, 5A001.f, 5A002.a.9, 5D001, 5D002 , 5E001, 5E002, 6A006.b, 6D003.f, 6E003.f, 9A012.b, 9B010, 9E001, 9E003.a.11 for AT reasons to Cuba, Iran, North Korea, Sudan and Syria, in addition to the national security controls imposed to implement the Wassenaar Arrangement's decisions, because under Section 6(j) of the Export Administration Act of 1979 a license is required for items that could make a significant contribution to the military potential of such country or could enhance the ability of such country to support acts of international terrorism. There is a general policy of denial for applications to terrorism supporting countries, as set forth in Part 742 of the EAR. In addition, certain of these countries are also subject to embargoes, as set forth in Part 746 of the EAR and Supplement No. 1 to Part 736 of the EAR for Syria. A license is also required for the export and reexport of these items to specially designated terrorists and foreign terrorist organizations, as set forth in Part 744 of the EAR; license applications to these parties are reviewed under a general policy of denial.

New or expanded significant items (SI) controls imposed by this rule. Through the adoption of revisions by WA, this rule imposes foreign policy controls pursuant to section 6 of the Export Administration Act of 1979, as amended to export and reexport technology required for the development, production or overhaul of commercial aircraft engines controlled under ECCN 9E003.a.11 for SI reasons to all countries, except Canada, in addition to the national security controls imposed to implement the Wassenaar

Arrangement's decisions. Applications to export and reexport this technology will be reviewed on a case-by-case basis to determine whether the export or reexport is consistent with U.S. national security and foreign policy interests. For designated terrorism-supporting countries or embargoed countries, the applicable licensing policies are found in Parts 742 and 746 of the EAR, and Supplement No. 1 to Part 736 of the EAR for Syria.

New or expanded NS Column 2 controls imposed by this rule. This rule imposes a license requirement under section 742.4(a) of the EAR for exports and reexports of commodities (and related software and technology) described in ECCNs 2B006.b.1.d, 5A001.f, 6A006.b, to destinations that are not Country Group A:1 destinations, or that are not cooperating countries (see Supplement No. 1 to Part 740 of the EAR). These destinations have an "X" indicated in NS column 2 on the Commerce Country Chart of Supplement No. 1 to Part 738 of the EAR. The purpose of the controls is to ensure that these items do not make a contribution to the military potential of such destination countries that would prove detrimental to the national security of the United States. For designated terrorism-supporting countries or embargoed countries, the applicable licensing policies are found in Parts 742 and 746 of the EAR, and Supplement No. 1 to Part 736 of the EAR for Syria.

New or expanded NS Column 1 controls imposed by this rule. This rule imposes a license requirement under section 742.4(a) of the EAR for exports and reexports to all destinations, except Canada, of commodities (and related software and technology) described in ECCNs 2D001, 2E001, 2E002, 5A002.a.9, 5D002, 5E002, 6D003.f, 6E003.f, 9A012.b, 9B010, 9D001 and 9D002 (only software for the development and production of equipment classified under ECCN 9B010), 9E001 (only technology for the development of equipment under ECCNs 9A012 and 9B010), and 9E003.a.11. These destinations have an "X" indicated in NS column 1 on the Commerce Country Chart of Supplement No. 1 to Part 738. The purpose of the controls is to ensure that these items do not make a contribution to the military potential of any other country or combination of countries that would prove detrimental to the national security of the United States. For designated terrorism-supporting countries or embargoed countries, the applicable licensing policies are found in Parts 742 and 746 of the EAR, and Supplement No. 1 to Part 736 of the EAR for Syria.

The licensing policy for national security controlled items exported or reexported to any country except a country in Country Group D:1 (see Supplement No. 1 to Part 740 of the EAR) is to approve license applications unless there is a significant risk that the items will be diverted to a country in Country Group D:1. The general policy for exports and reexport of items to Country Group D:1 is to approve license applications when BIS determines, on a case-by-case basis, that the items are for civilian use or would otherwise not make a significant contribution to the military potential of the country of destination that would prove detrimental to the national security of the United States.

Revisions to the Commerce Control List

This rule revises a number of entries on the Commerce Control List (CCL) to implement the December 2005 agreed revisions to the Wassenaar List of Dual-Use Goods and Technologies. This rule also revises language to provide a complete or more accurate description of controls. A description of the specific amendments to the CCL pursuant to the December 2005 Wassenaar Agreement is provided below. The ECCNS affected, as described below, are 1C008, 1C998, 1E001, 1E998, 2B002, 2B006, 2E201, 3A001, 3B001, 3B991, 3E001, 5A001, 5A002, 5A991, 5D001, 5D991, 6A006, 6D003, 6E003, 8A002, 9A001, 9A012, 9B010 (New), 9D001, 9D002, 9D004, 9E001, 9E002, and 9E003.

Category 1—Materials, Chemicals, "Microorganisms," and Toxins

ECCN 1C008 is amended by removing and reserving 1C008.c.1, because foreign availability has been proven, and continued national security control cannot be justified any longer.

ECCN 1C998 is added to continue antiterrorism (AT) controls on polyether ether ketone (PEEK), which was removed from 1C008.c.1. Therefore, the materials no longer controlled under ECCN 1C008 continue to be controlled for AT reasons under ECCN 1C998 for exports and reexports to designated terrorism-supporting countries, as set forth in Parts 742 and 746 of the EAR, and as indicated in AT Column 1 of the Commerce Country Chart in Supplement No. 1 to Part 738 of the EAR.

ECCN 1E001 is amended by revising the heading to exclude control of development and production technology for ECCNs 1B999, 1C995, 1C996, 1C997, 1C998, and 1C999, because none of these technologies are controlled on the Wassenaar List of Dual-Use Goods and Technologies.

Note: This rule adds technology for commodities controlled by ECCNs 1B999, 1C995, 1C996, 1C997, and 1C999 to ECCN 1E998, which is controlled for antiterrorism reasons (AT:1).

ECCN 1E998 is added to maintain AT controls on technology for the development or production of materials that were controlled under 1C008.c.1 and are now controlled by ECCN 1C998. In addition, references to ECCNs 1B999, 1C995, 1C996, 1C997, and 1C999 have been moved from ECCN 1E001 to ECCN 1E998 to maintain AT controls on technology for the development or production of processing equipment and materials described in these ECCNs.

Category 2—Materials Processing

ECCN 2B002 is amended by adding to the heading "(see List of Items Controlled)," and adding parameters for control of numerically controlled machine tools using a Magnetorheological finishing (MRF) process.

Note: MRF tools are mostly used for optical components; therefore optical parameters were selected to describe the capability of the machines. One set of such parameters are form and finish; form referring to the shape of the optic and finish to the surface roughness. A form value describes how close the actual shape of the optic is to the design and finish value describes how smooth the surface is. MRF tools, such as interferometers and profilers are typically used to measure form, while profilometers and scatterometers are used to measure finish.

ECCN 2B006 is amended by:

a. Revising the NP paragraph in the License Requirements section, to except 2B006.b.1.d from NP controls because electronic assemblies do not appear under the Nuclear Suppliers Group Annex item 1.B.3;

b. Adding paragraph 2B006.b.1.d to control electronic assemblies specially designed to provide feedback capability in systems controlled by 2B006.b.1.c; and

c. Revising the Note to 2B006.b.1.

Note: The combination of control and decontrol lead to the possibility of an ineffective control. These revisions together will enhance the effectiveness of control by explicitly controlling certain specially designed components. Equipment under 2B006 is controlled for national security reasons (NS:2), nuclear nonproliferation reasons (NP:1), and antiterrorism reasons (AT:1); Related software for the development, production, or use of 2B006 commodities is controlled for national security reasons (NS:1) and antiterrorism reasons (AT:1) under ECCN 2D001; related technology for the development or production of 2B006

commodities is controlled for national security reasons (NS:1) and antiterrorism reasons (AT:1) under ECCNs 2E001 and 2E002 respectively; related technology for the use of 2B006 commodities is controlled for nuclear proliferation reasons (NP:1) and antiterrorism reasons (AT:1) under ECCN 2E201.

ECCN 2E201 is amended by:

a. Revising the heading to remove ECCN 2B008, because no international export control regime has controlled "use" technology for this ECCN;

b. Adding to the end of the heading the phrase "for NP reasons" to assure that ECCN 2E201 only controls use technology for NP controlled portions of the ECCNs listed in the heading; and

c. Revising the NP paragraph in the License Requirements section to remove the reference to 2B008.

Category 3—Electronics

ECCN 3A001 is amended by:

a. Revising the CIV paragraph in the License Exception section by replacing reference to 3A001.a.3.b with 3A001.a.3, because this rule moves 3A001.a.3.b to 3A001.a.3; and removing the reference to 3A001.a.3.c, because this rule deletes this paragraph.

b. Removing 3A001.a.3.c (interconnects), because they cannot be effectively controlled, as they are now integrated into mass market products.

c. Incorporating 3A001.a.3.b into 3A001.a.3 to revise the format of 3A001.a.3.

d. Revising the Note 2 to 3A001.b.2 to avoid incorrect interpretation that it is only relevant if the device spans more than one entire range.

e. Adding the word "Discrete" before 3A001.b.3, which reads "Microwave transistors having any of the following:" to add clarification.

f. Revising the Note to 3A001.b.3 (Microwave transistors) to add clarification and avoid misinterpretation.

g. Revising the operation frequency for microwave sold state amplifiers and microwave assemblies/modules containing microwave amplifiers from "3 GHz" to "3.2 GHz" in 3A001.b.4.f. This change was made for consistency with the parameter in 3A001.b.2.a (MMIC amplifiers), 3A001.b.3.a (transistors) and 3A001.b.4.a (solid state amplifiers).

h. Revising Note 2 to 3A001.b.4 to avoid incorrect interpretation that it is only relevant if the device spans more than one entire range.

i. Adding a Technical Note to 3A001.b.4.f.3 to eliminate ambiguity in the case of amplifiers having performance both above and below the frequency threshold.

ECCN 3A991 is amended by:

a. Revising 3A991.c, because the rule entitled, "December 2004 Wassenaar Arrangement Plenary Agreement Implementation: Categories 1, 2, 3, 4, 5 Part I (telecommunications), 6, 7, 8, and 9 of the Commerce Control List; Wassenaar Reporting Requirements; Definitions; and Certain New or Expanded Export Controls" that was published in the **Federal Register** on July 15, 2005 (70 FR 41094) modified the 3A001.a.5 entry for analog-to-digital converters by revising the total conversion time in ns to output rate in million words per second, however, the 3A991.c entry was not appropriately adjusted to conform with this revision. Therefore, this rule revises the output rate to millions of words per second in 3A991.c.

b. Removing 3A991.j.2 (rechargeable cells and batteries) because it was erroneously created, and is a duplicate entry to 3A001.e.1.b. Because of this removal, paragraph 3A991.j.1 will become 3A991.j to conform with the structure format of the CCL.

ECCN 3B001 is amended by:

a. Removing 3B001.a.1.a, because certain EPI tools are not a critical technology in the semiconductor manufacturing process and are not a key enabler in the production of semiconductors.

b. Revising the formula for minimum resolvable feature size in the technical note following 3B001.f.1.b by replacing the "Fm" with "nm" to conform with the corresponding entry in the Wassenaar Arrangement's List of Dual-Use Goods and Technologies.

Note: For equipment no longer controlled under ECCN 3B001.a.1.a, related software controlled under 3D001 and 3D002, and related technology controlled under 3E001, there remains a license requirement under ECCNs 3B991.b.1.d.1, 3D991, and 3E991, respectively, for exports and reexports to designated terrorism-supporting countries, as set forth in Parts 742 and 746 of the EAR and as indicated in AT Column 1 of the Commerce Country Chart.

ECCN 3B991 is amended by:

a. Revising the "unit" paragraph in the List of Items Controlled section to provide instructions to input dollar value in the unit block on a license application for components and accessories;

b. Redesignating paragraphs 3B991.b.1.d.1 and 3B991.b.1.d.2 as 3B991.b.1.d.2 and 3B991.b.1.d.3 respectively;

c. Adding a new paragraph 3B991.b.1.d.1 to maintain AT controls for stored program controlled equipment for epitaxial growth capable of producing a silicon layer with a thickness uniform to less than 2.5% across a distance of 200 mm or more (previously controlled under ECCN 3B001.a.1.a).

ECCN 3E001 is amended by:

a. Removing the text in the CIV paragraph of the License Exception section and replacing it with "N/A", as it is no longer necessary because of the agreed upon deletions in 3A001 by the Wassenaar Arrangement; and

b. Revising the heading to add exceptions from this technology control over commodities in ECCN 3C992, because this technology is not controlled on the Wassenaar List of Dual-Use Goods and Technologies.

Note: This rule adds ECCN 3C992 to the heading of ECCN 3E991 to maintain antiterrorism (AT:1) controls on the technology for the development , production or use of commodities described in ECCN 3C992.

Note: The equipment no longer controlled under ECCNs 3A001.a.3.c and 3B001.a.1.a, related software under ECCNs 3D001 and 3D002, and related technology under ECCNs 3E001 continues to be controlled for antiterrorism reasons under ECCNs 3A991.a.3, 3B991.b.1.d.1, 3D991, and 3E991 respectively, for exports and reexports to designated terrorism-supporting countries, as set forth in Parts 742 and 746 of the EAR and as indicated in AT Column 1 of the Commerce Country Chart. Also note, that technology for the development and production of microprocessor microcircuits, micro computer microcircuits and microcontroller microcircuits having a composite theoretical performance (CTP) of 530 MTOPS or more and an arithmetic logic unit with an access width of 32 bits or more continue to be controlled for national security reasons under ECCN 3E002.

ECCN 3E991 is amended by revising the heading to add technology controls for development, production, or use of specific processing equipment described in 3A991, and materials controlled by 3C992 (positive resists designed for semiconductor lithography * * *), because this technology warrants anti-terrorism (AT) controls.

Category 5—Part I—Telecommunications

ECCN 5A001 is amended by:

a. Adding the phrase ", as follows (see List of Items Controlled)" to the heading.

b. Revising the License Requirements section to reflect that there is a license requirement for jamming equipment described in newly added paragraph 5A001.f to countries that have an "X" in NS Column 2 of the Commerce Country Chart in Supplement No.1 of Part 738.

Note: 5A001.f is eligible for License Exceptions LVS, GBS, and CIV, if the criteria

in Part 740 of the EAR for the license exception authorizing the export or reexport has been met and none of the license exception restrictions of § 740.2 apply to the transaction.

Note: Related software for the development, production, or use of this equipment is controlled for national security reasons (NS:1) and antiterrorism reasons (AT:1) under ECCN 5D001, and related technology for the development, production, or use of this equipment is controlled for national security reasons (NS:1) and antiterrorism reasons (AT:1) under ECCN 5E001.

c. Adding "or antennae" to the Unit paragraph of the List of Items Controlled section.

d. Revising the second note following 5A001.a.3 to add the phrase "designed or modified for use" to conform with the corresponding entry in the Wassenaar Arrangement's List of Dual-Use Goods and Technologies.

e. Adding the phrase "not controlled in 5A001.b.4" to 5A001.b.3 to avoid overlapping controls with the new parameters in 5A001.b.4.

f. Revising 5A001.b.4 (radio equipment employing ultra-wideband modulation techniques) so that it would be independent of the modulation technique employed in ultra-wideband (UWB) (i.e., not limited to "time modulation" (TM)). Today, in addition to TM–UWB, Direct Sequence-Spread Spectrum (DS–SS) and Multi-Band Orthogonal Frequency Division Multiplex (MB–OFDM) have appeared as different modulation techniques for UWB. Because of the emergence of DS–SS and MB–OFDM, the previously standing text of 5A001.b.4 and 5A002.a.6, were limited to TM–UWB, which created a loophole.

g. Adding a Technical Note 2 for 5A001.b.6, because the bandwidth of audio-coding (20–22,000 Hz) overlaps the bandwidth of voice-coding (300–3,400 Hz), and the scope of control in the context of 5A001.b.6 is only adopted to "voice coding." It is necessary to clearly indicate that "voice coding" controlled in 5A001.b.6 is a voice-coding technique that uses voice-coding algorithms that are based on peculiar human voice characteristics.

h. Adding a descriptor "Radio" to make it "Radio direction finding equipment" in 5A001.e; changing the "Instantaneous bandwidth" from "1 MHz or more" to "10 MHz or more" in 5A001.e.1; and replacing the parallel processing parameter with the capability to find a line of bearing (LOB) to non-cooperating radio transmitters with a signal duration of less than 1 ms in 5A001.e.3.

Note: In 2004, the Wassenaar Expert's Group determined that ECCN 7A007 was not navigation or avionics equipment and belonged instead in Category 5 Part 1; it was determined that the equipment controlled by that ECCN should be placed in a revised paragraph 5A001.e. In the course of the discussion, it was also found that the level of the ECCN 7A007 control was set so high as to not control systems of potential concern. In addition, the ECCN 7A007 control text is technology-specific.

Previously, the text in 5A001.e was found to only control one specific, highly-advanced system. The revised text of ECCN 5A001.e is written in an effort to set forth provisions that control systems of concern and support a level playing field in the global marketplace. Advanced DF systems, which can direction-find against short-duration signals and frequency-hopping radios are of particular concern because they can be used by military forces of countries of concern to locate and target advanced tactical communications equipment.

Because the system accuracy of a direction finder is directly related to the antenna geometry of the direction finder, and thus does not imply a high degree of know-how, this revision is based on the control parameter "Instantaneous bandwidth", which is the decisive factor for direction finding against frequency-hopping radios and signals of the short duration type.

i. Adding paragraph 5A001.f to control sophisticated cellular phone jamming equipment. Equipment of this type is capable of selectively jamming cellular phone communications, which can pose a national security threat.

ECCN 5A991 is amended by:

a. Adding the definition of 'Asynchronous transfer mode' ('ATM') to the related definitions paragraph of the List of Items Controlled section; and

b. Replacing the double quotes with single quotes around the term 'Asynchronous transfer mode' ('ATM') in paragraph 5A991.c.12, to signify that the definition is found in the related definitions section of 5A991 and no longer in Part 772 of the EAR.

ECCN 5D001 is amended by:

a. Moving 5D001.c.1 into 5D001.c;

b. Deleting the reserved paragraph 5D001.c.2; and

c. Removing 5D001.c.3, because consensus was reached to delete 5D001c3 controlling the source code specially designed for dynamic adaptive routing. This technology has become widely available due to the recent expansion of packet telecommunication networks, such as the internet.

Note: The software removed from ECCN 5D001.c.3, and related technology under ECCN 5E001 continue to be controlled for antiterrorism (AT:1) reasons under ECCNs 5D991 and 5E991 respectively, for exports and reexports to designated terrorism-supporting countries, as set forth in Parts 742 and 746 of the EAR and as indicated in AT Column 1 of the Commerce Country Chart.

ECCN 5D991 is amended by revising the heading and the "items" paragraph in the List of Items Controlled section to add reference to the software removed from 5D001.c.3 ("Software", other than in machine-executable form, specially designed for "dynamic adaptive routing").

Category 5—Part 2—Information Security

ECCN 5A002 is amended by:

a. Adding a sentence to the "Related Controls" paragraph of the List of Items Controlled section to note that 5A002 does not control commodities eligible for the Cryptography Note (Category 5 Part 2 Note 3).

b. Adding the phrase "not controlled in 5A002.a.6." to 5A002.a.5 to avoid overlapping controls with the new parameters in 5A002.a.6.

c. Adding new control parameters to 5A002.a.6, including adding networked identification code to the type of codes that could be generated using cryptographic techniques. Also adding control characteristics for systems using ultra-wideband modulation techniques, *i.e.*, A bandwidth exceeding 500 MHz; or a "fractional bandwidth" of 20% or more.

Note: Following WA agreement reached on revised text for 5A001.b.3 and 5A001.b.4 in Category 5 Part 1, to control new ultra wideband techniques that had appeared on the market, agreement was reached by WA on consequential changes in 5A002.a.5 & 5A002.a.6.in Category 5 Part 2.

d. Adding paragraph 5A002.a.9 to add controls for quantum cryptography because it represents advancement in cryptography that can improve information security in two important ways: (1) It may be used in conjunction with digital cryptography to securely distribute shared keys for a digital symmetric algorithm and (2) it may make for a fast and highly secure "one-time-pad" cipher. A Technical Note that describes quantum cryptography is also added to this paragraph.

Note: This equipment under ECCN 5A002.a.9 is controlled for encryption items (EI) reasons, national security reasons (NS:1) and antiterrorism reasons (AT:1). Related software for the development, production, and use of this equipment is controlled for encryption items (EI) reasons, national security reasons (NS:1), and antiterrorism reasons (AT:1) under ECCN 5D002; related technology for the development, production, and use of this equipment is controlled for encryption items (EI) reasons, national security reasons (NS:1), and antiterrorism reasons (AT:1) under ECCN 5E002.

e. Adding a new paragraph c.4 to the Note at the top of the items paragraph in the List of Items Controlled section of

5A002 to clarify that model-based simulation software that is specially designed and limited to protect libraries, design attributes, or associated data for the design of semiconductor devices or integrated circuits, is not controlled under the corresponding software entry ECCN 5D002. The Note describes software for which the underlying encryption functionality is for specific purposes such as protection of intellectual property, and the underlying encryption functionality (including the protected libraries, design attributes or associated data) is not directly accessible to the end-user.

f. Moving an existing nota bene ("NB") so that it immediately follows the text of Note d to ECCN 5A002, to conform with the corresponding entry in the Wassenaar Arrangement's List of Dual-Use Goods and Technologies.

Category 6—Sensors

ECCN 6A006 is amended by:

a. Revising the heading to add newly controlled "underwater electric field sensors;"

b. Revising "6A006.c" to read "6A006.d" in the LVS paragraph in the License Exceptions section, because magnetic compensation systems, as well as compensation systems for underwater electric field sensors are now controlled under 6A006.d;

c. Revising the "Related Controls" paragraph in the List of Items Controlled section to add an exemption from control for instruments controlled by 6A006 that are used for "fishery applications," such as research on fish reproduction.

d. Redesignating 6A006.b (magnetic gradiometers) as 6A006.c;

e. Adding a new paragraph 6A006.b to control Underwater Electric Field Sensors, because they now have civil applications, such as underwater exploration, salvage, and biological and medical sciences, and no longer are strictly used in military applications, such as detection of submarines and underwater mines.

ECCN 6D003 is amended by:

a. Revising 6D003.f from reading "Magnetometers." to read "Magnetic and Electric Field Sensors" in conformance with new paragraph 6A006.b.

b. Revising 6D003.f.1 and 6D003.f.2 by adding "and electric field" in conformance with new paragraph 6A006.b.

ECCN 6E003 is amended by revising the title of 6E003.f from "Magnetometers" to read "Magnetic and Electric Field Sensors."

Note: Equipment under 6A006 is controlled for national security reasons (NS:2) and antiterrorism reasons (AT:1); Related software for magnetic and electric field sensors is controlled for national security reasons (NS:1) and antiterrorism reasons (AT:1) under ECCN 6D003; and related technology for magnetic and electric field sensors is controlled for national security reasons (NS:1) and antiterrorism reasons (AT:1) under ECCN 6E003.

Category 8—Marine

ECCN 8A002 is amended by adding a decontrol note in 8A002.f for digital cameras specially designed for consumer purposes, other than those employing electronic image multiplication techniques. This note was added because of the foreign availability of digital cameras.

Category 9—Propulsion Systems, Space Vehicles and Related Equipment

ECCN 9A001 is amended by:

a. Revising the "unit" paragraph in the List of Items Controlled section to read "number" instead of "Equipment in number; parts and accessories in $ value."

b. Revising paragraph 2 in the Note to 9A001.a, because it was discovered that the International Civil Aviation Organization (ICAO) issues a document equivalent to a civil Type Certificate that the participating members of Wassenaar found acceptable for export control purposes. Reference to that document has been added to paragraph 2.a within the Note to 9A001.a. The approval of the design of certain types of aircraft, engines and propellers is signified by the issue of a Type Certificate. In general there will be a Type Certificate Data Sheet (TCDS) associated with each Type Certificate issued. The TCDS records the basis of certification, the designation of each approved variant and general information concerning the design.

ECCN 9A012 is amended by:

a. Revising the heading to add double quotes around the term "unmanned aerial vehicles" to indicate that this is a term now defined in Part 772. Also, adding the abbreviation "UAV" to the heading.

b. Revising the heading to add associated systems, equipment, and components, because Wassenaar has agreed to expand this ECCN entry. It was determined that it would be prudent for the control of conventional arms to place export controls on the associated systems, equipment, and components used for remote controlling or guidance of the UAV or to convert a manned aircraft to an UAV.

c. Revising the Related Controls paragraph of the List of Items Controlled section to add a reference to section 744.3 "Restrictions on Certain Rocket Systems (including ballistic missile systems and space launch vehicles and sounding rockets) and Unmanned Air Vehicles (including cruise missile systems, target drones and reconnaissance drones) End-Uses."

d. Redesignating paragraphs 9A012.a and 9A012.b as 9A012.a.1 and 9A012.a.2.

e. Adding a new paragraph 9A012.b for associated systems, equipment and components.

Note: Related software for the development and production of equipment controlled under ECCN 9A012 is controlled for national security reasons (NS:1) and antiterrorism reasons (AT:1) under ECCN 9D001 and 9D002 respectively; software specially designed or modified for the "use" of full authority digital electronic engine controls (FADEC) for propulsion systems controlled by 9A012 is controlled for antiterrorism reasons (AT:1) under ECCN 9D003; and related technology for the development of this equipment is controlled for national security reasons (NS:1) and antiterrorism reasons (AT:1) under ECCN 9E001.

ECCN 9B010 is added to control "equipment specially designed for the production of "UAVs" and associated systems, equipment and components controlled by 9A012."

The Participating States of the Wassenaar Arrangement agreed to control equipment, software and technology for the conversion of aircraft for UAV operation, because of attempts by countries of concern to acquire such conversion capability for conventional arms and terrorism purposes.

Note: Equipment under 9B010 is controlled for national security reasons (NS:1) and antiterrorism reasons (AT:1); Related software for the development and production of this equipment is controlled for national security reasons (NS:1) and antiterrorism reasons (AT:1) under ECCN 9D001 and 9D002 respectively; software specially designed or modified for the "use" of full authority digital electronic engine controls (FADEC) for propulsion systems controlled by 9B010 is controlled for antiterrorism reasons (AT:1) under ECCN 9D003; and related technology for the development and production of this equipment is controlled for national security reasons (NS:1) and antiterrorism reasons (AT:1) under ECCN 9E001 and 9E002 respectively.

ECCNs 9D001 and 9D002 have been amended by revising the License Requirement section in each to add ECCN 9B010 to the NS paragraph.

ECCN 9D004 is amended by adding a new paragraph 9D004.e to control "software" specially designed or modified for the "use" of "UAVs" and associated systems, equipment and components controlled by 9A012.

ECCN 9E001 has been amended by:

a. Revising the heading to include 9A012; and

b. Adding 9A012 and 9B010 to the NS paragraph in the License Requirement section.

ECCN 9E002 is amended by removing the License Requirement Note that refers to Wassenaar reporting requirements in section 743.1 of the EAR, because this ECCN is not eligible for License Exceptions GBS, CIV, TSR, LVS, CTP, or GOV and therefore does not require Wassenaar reporting.

ECCN 9E003 is amended by revising 9E003.a.11 to remove the qualifiers, (*i.e.*, "wide chord" and "without part-span support"), so that "technology" "required" for the "development" or "production" of all types of hollow fan blades for gas turbine engines are controlled for NS:1, SI, and AT:1 reasons. The advantage of using this type of blade is weight saving, stress reduction and an element of foreign object damage protection.

Section 740.11 and Supplement No. 1 to Section 740.11—License Exception GOV

This rule amends section 740.11 (a)(2)(vi)(G) to add 9A011 as it relates to ECCN 9D001 software, and to add a new paragraph (a)(2)(vi)(H) to cover software controlled by ECCN 9D002, specially designed or modified for the "production" of equipment controlled by ECCN 9A011. These items may not be exported or reexported for official international safeguard use by the International Atomic Energy Agency (IAEA) and the European Atomic Energy Community (EURATOM) under License Exception GOV to destinations other than Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom.

Supplement No. 1 to section 740.11 is amended to:

a. Add 6D001 (specially designed for the "production" or "development" of equipment in 6A008.1.3 or 6B008) and 6D003.a to paragraphs (a)(1)(vii)(D) and (b)(1)(vii)(D), which relate to 6E001 technology;

b. Add ECCN 9A011 to (a)(1)(vi)(G) that relates to 9D001 software;

c. Add a new paragraph (a)(1)(vi)(H) to cover software controlled by ECCN 9D002, specially designed or modified for the "production" of equipment controlled by ECCN 9A011;

d. Add to paragraph (a)(1)(vii)(G) 9A011, 9D001 and 9D002 as they relate to the development and production of 9A011, and as they relate to ECCN 9E001; and

e. Add a new paragraph (a)(1)(vii)(H) to cover technology controlled by ECCN 9E002 for the production of equipment in 9A011.

Therefore, 6E001 technology for the development of software in ECCNs 6D001 (specially designed for the "production" or "development" of equipment in 6A008.1.3 or 6B008) and 6D003; 9D001 for the development of equipment controlled by 9A011; 9D002 specially designed or modified for the production of equipment controlled by 9A011, 9D001 or 9D002 for the development or production of 9A011; and 9E002 for the production of equipment in 9A011, which are listed on the Wassenaar Arrangement's Very Sensitive List, are no longer eligible for License Exception GOV when consigned to and for the official use of any agency of a cooperating government within the territory of any cooperating government, or when consigned to and for the official use of a diplomatic or consular mission of a cooperating government located in any country in Country Group B of Supplement No. 1 to Part 740 of the EAR.

Section 740.17 "License Exception ENC"

This rule amends the introductory paragraph and paragraphs (a), (b)(1), and (b)(2) to state that newly controlled quantum cryptography items described in 5A002.a.9 of the Commerce Control List (CCL) in Supplement No. 1 to Part 774 of the EAR are eligible for License Exception ENC. Paragraph (a) of Section 740.17 of the EAR authorizes certain exports, reexports, and technical assistance to countries listed in Supplement No. 3 to Part 740 of the EAR under License Exception ENC. The countries in Supplement No. 3 to Part 740 represent the European Union's "license-free zone" and include: Austria, Australia, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, Netherlands, New Zealand, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom. Paragraph (b) of Section 740.17 of the EAR authorizes exports and reexports destined to U.S. subsidiaries under License Exception ENC and, for other end-users, exports and reexports to countries not listed in Supplement No. 3 to Part 740 of the EAR. (This rule renames this Paragraph (b) to make clear the scope of this paragraph.) Paragraph (b)(1) of Section 740.17 of the EAR authorizes exports and reexports of encryption items for U.S. subsidiaries. Paragraph (b)(2) of Section 740.17 of the EAR authorizes exports and reexports of encryption commodities and software to non-government end-users in countries not listed in Supplement No. 3 to Part 740 of the EAR under License Exception ENC. Quantum cryptography items are not eligible for export or reexport to "government end-users" under License Exception ENC outside the countries listed in Supplement No. 3 to Part 740 of the EAR, because of the provisions of § 740.17(b)(3)(i)(B) and § 740.17(b)(2)(iii)(E) of the EAR. To receive written authorization from the Bureau of Industry and Security (BIS) to export your encryption items under License Exception ENC, you must submit an encryption review request to BIS and the ENC Encryption Request Coordinator. For guidance on applying for authorization under License Exception ENC go to BIS's Web page *http://www.bis.doc.gov/encryption/enc.htm*.

Section 743.1 "Wassenaar Arrangement"

§ 743.1 is amended by:

- Deleting ECCN 2B003 from the Note to paragraph (c)(1)(ii) to conform to the Wassenaar Sensitive List. This relates to Wassenaar reporting requirements for ECCNS 2D001, 2E001, and 2E002.
- Removing 5A001.b.5 from paragraph (c)(1)(v), because BIS does not need to require reporting for commodities that are not eligible for License Exceptions GBS, CIV, TSR, LVS, CTP, or GOV. BIS can get the necessary information to fulfill U.S. obligations for reporting to the Wassenaar Arrangement from license application data.
- Adding 5A001.b.5 under the 5B001.a in paragraph (c)(1)(v), because 5B001.a is specially designed for 5A001.b.5, is eligible for license exception and is on the Wassenaar Arrangement's Sensitive List.
- Adding 5D001.a entry in paragraph (c)(1)(v), because software for the development or production of equipment, components, or accessories classified under 5B001.a is on the Wassenaar Arrangement's Sensitive List and is eligible for License Exceptions CIV and TSR. This addition is necessary in order for the United States to fulfill its reporting obligations to the Wassenaar Arrangement.
- Adding 6A002.a.1.a, 6A002.a.1.b, 6A002.a.2.a (changing 350 uA/Im to 700 uA/Im in 6A002.a.2.a.3.a), 6A002.a.3, 6A002.c, 6A002.e; 6A003.b.3, 6A003.b.4, and 6A006.a to paragraph (c)(1)(vi), because these commodities are on the Wassenaar Arrangement's Sensitive List and are eligible for license exception under the EAR. This addition is necessary in order for the United

States to fulfill its reporting obligations to the Wassenaar Arrangement.

• Revising 6A006.g to 6A006.d in paragraph (c)(1)(vi), because this paragraph has moved under ECCN 6A006.

• Removing 6D003.a from paragraph (c)(1)(vi), because that ECCN is not eligible for License Exceptions LVS, GBS, CIV, APP, TSR, or GOV.

• Removing 6A006.h from paragraph (c)(1)(vi), because this paragraph has been removed from 6A006 by agreement of the Wassenaar Arrangement.

• Adding a note to paragraph (c)(1)(vi) to clarify the reporting requirement for 6A002.a.3.

• Redesignating paragraphs (c)(1)(vii) and (c)(1)(viii) as paragraphs (c)(1)(viii) and (c)(1)(ix), in order to add a new paragraph (c)(1)(vii) to cover Category 7: 7D002; 7D003.c, d.1 to d.4, and d.7; 7E001; and 7E002, because these commodities are on the Wassenaar Arrangement's Sensitive List and are eligible for license exception under the EAR. This addition is necessary in order for the United States to fulfill its reporting obligations to the Wassenaar Arrangement.

• Adding 9D001 (for 9B001.b and 9E003 as described in this paragraph), 9D002 (for 9B001.b), 9D004.a, 9D004.c, 9E001 for technology controlled for NS reasons, 9E002, 9E003.a.2, a.3.b, a.3.c, a.4, a.5, a.8, and a.9 to newly designated paragraph (c)(1)(ix), because these commodities are on the Wassenaar Arrangement's Sensitive List and are eligible for license exception under the EAR. This addition is necessary in order for the United States to fulfill its reporting obligations to the Wassenaar Arrangement.

This rule revises the title to Supplement No. 1 to Part 743 of the EAR from "Wassenaar Arrangement Member Countries" to "Wassenaar Arrangement Participating States," because this is the term used by the Wassenaar Arrangement to address its members.

In addition, this rule adds Croatia, Estonia, Latvia, Lithuania, Malta, and South Africa to the list of Wassenaar Arrangement Participating States in Supplement No. 1 to Part 743 of the EAR, because they were recently admitted to the Wassenaar Arrangement.

Definitions in Part 772

This rule removes the definition for "Asynchronous transfer mode" ("ATM") from section 772.1 of the EAR, and moves it to the related definitions paragraph in the List of Items Controlled section of ECCN 5A991, because the term is only referred to in 5A991.c.12.

This rule adds a reference to Category 2 in the definition for "Electronic assembly," because of the addition of controls on electronic assemblies in 2B006.b.1.

This rule removes the definition for "time-modulated ultra-wideband," because the Wassenaar Arrangement agreed to remove it from 5A001.b.4 and 5A002.a.6, and instead use the undefined term "ultra-wideband modulation techniques."

This rule adds the definition for "unmanned aerial vehicle" ("UAV") to section 772.1, which is used in ECCNs 9A012 and newly added ECCN 9B010. In addition, UAVs are addressed in section 744.3 of the EAR.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001; 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 3, 2006, 71 FR 44551 (August 7, 2006), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Saving Clause

Shipments of items removed from license exception eligibility or eligibility for export without a license as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on September 7, 2006, pursuant to actual orders for export to a foreign destination, may proceed to that destination under the previous license exception eligibility or without a license so long as they have been exported from the United States before October 10, 2006. Any such items not actually exported before midnight, on October 10, 2006, require a license in accordance with this regulation.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves two collections of information subject to the PRA. One of the collections has been approved by OMB under control number 0694–0088, "Multi-Purpose Application," and carries a burden hour estimate of 58 minutes for a manual or electronic submission. The other of the collections has been approved by OMB under control number 0694–0106, "Reporting and Recordkeeping Requirements under the Wassenaar Arrangement," and carries a burden hour estimate of 21 minutes for a manual or electronic submission. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to the Office of Administration , Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 6883, Washington, DC 20230.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 743

Administrative practice and procedure, Reporting and recordkeeping requirements.

15 CFR Part 772

Exports.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

■ Accordingly, Parts 740, 743, 772 and 774 of the Export Administration Regulations (15 CFR Parts 730–799) are amended as follows:

PART 740—[AMENDED]

■ 1. The authority citation for Part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 901–911, Pub. L. 106–387; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

■ 2. Section 740.11 is amended by revising (a)(2)(vi)(G) and adding a paragraph (a)(2)(vi)(H) to read as follows:

§ 740.11 Governments, International Organizations, and International Inspections Under the Chemical Weapons Convention (GOV).

* * * * *

(a) * * *

(2) * * *

(vi) * * *

(G) Controlled by 9D001, specially designed or modified for the "development" of equipment or "technology" controlled by 9A011, 9E003.a.1, or 9E003.a.3.a; and

(H) Controlled by 9D002, specially designed or modified for the "production" of equipment controlled by 9A011.

* * * * *

■ 3. Supplement No. 1 to 740.11 is amended by:

■ a. Revising paragraphs (a)(1)(vi)(F) and (a)(1)(vi)(G), as set forth below;

■ b. Adding paragraphs (a)(1)(vi)(H) and (b)(1)(vi)(H), as set forth below; and

■ c. Revising paragraphs (a)(1)(vii)(D), (a)(1)(vii)(G), (a)(1)(vii)(H), (b)(1)(vi)(F), (b)(1)(vi)(G), (b)(1)(vii)(D), and (b)(1)(vii)(H) to read as follows:

Supplement No. 1 to Section 740.11—Additional Restrictions on Use of License Exception GOV

(a) * * *

(1) * * *

(vi) * * *

(F) Controlled by 8D001, specially designed for the "development" or "production" of equipment controlled by 8A001.b, 8A001.d, or 8A002.o.3.b;

(G) Controlled by 9D001, specially designed or modified for the "development" of equipment or "technology" controlled by 9A011, 9E003.a.1, or 9E003.a.3.a; and

(H) Controlled by 9D002,specially designed or modified for the "production" of equipment controlled by 9A011;

(vii) * * *

(D) Controlled by 6E001 for the "development" of equipment or "software" in 6A001.a.1.b.1, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.3, 6A001.a.2.a.5, 6A001.a.2.a.6, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.e, 6A001.a.2.f, 6A002.a.1.c, 6A008.1.3, 6B008, 6D001 (specially designed for the "production" or "development" of equipment in 6A008.1.3 or 6B008), or 6D003.a as described in paragraph (a)(1) of this Supplement; and

* * * * *

(G) Controlled by 9E001 for the "development" of equipment or "software" in 9A011, 9D001 for the "development" of 9A011, or 9D002 for the "production" of 9A011; and

(H) Controlled by 9E002 for the "production" of equipment in 9A011; and

* * * * *

(b) * * *

(1) * * *

(vi) * * *

(F) Controlled by 8D001, specially designed for the "development" or "production" of equipment controlled by 8A001.b, 8A001.d, or 8A002.o.3.b;

(G) Controlled by 9D001, specially designed or modified for the "development" of equipment or "technology" controlled by 9A011, 9E003.a.1, or 9E003.a.3.a; and

(H) Controlled by 9D002, specially designed or modified for the "production" of equipment controlled by 9A011;

(vii) * * *

(D) Controlled by 6E001 for the "development" of equipment or "software" in 6A001.a.1.b.1, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.3, 6A001.a.2.a.5, 6A001.a.2.a.6, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.e, 6A001.a.2.f, 6A002.a.1.c, 6A008.1.3, 6B008, 6D001 (specially designed for the "production" or "development" of equipment in 6A008.1.3 or 6B008), or 6D003.a as described in paragraph (a)(1) of this Supplement; and

* * * * *

(H) Controlled by 9E002 for the production of 9A011; and

* * * * *

■ 4. Section 740.17 is amended by:

■ a. Revising the phrase "by ECCNs 5A002.a.1, .a.2, .a.5, and .a.6, 5B002, and 5D002" to read "by ECCNs 5A002.a.1, .a.2, .a.5, .a.6, and .a.9, 5B002, and 5D002" in the introductory paragraph;

■ b. Revising the heading of paragraph (b) to read as set forth below; and

■ c. Revising the phrase "ECCNs 5A002.a.1, .a.2, .a.5, or .a.6," to read "ECCNs 5A002.a.1, .a.2, .a.5, .a.6, or .a.9," in paragraphs (a) introductory text, (b)(1) introductory text, and (b)(2) introductory text.

§ 740.17 Encryption Commodities and Software (ENC).

* * * * *

(b) *Exports and reexports for U.S. subsidiaries and to countries not listed in Supplement No. 3 to this part.*

* * * * *

PART 743—[AMENDED]

■ 5. The authority citation for Part 743 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; Pub. L. 106–508; 50 U.S.C. 1701 *et seq.*; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

■ 6. Section 743.1 is amended by:

■ a. Revising the note to paragraph (c)(1)(ii), as set forth below;

■ b. Revising paragraphs (c)(1)(v), and (c)(1)(vi), as set forth below;

■ c. Redesignating paragraphs (c)(1)(vii) and (viii) as (viii) and (ix);

■ d. Adding a new paragraph (c)(1)(vii) as set forth below; and

■ e. Revising newly designated paragraphs (c)(1)(viii) and (c)(1)(ix) to read as follows:

§ 743.1 Wassenaar Arrangement.

* * * * *

(c) * * *

(1) * * *

(ii) * * *

Note to paragraph (c)(1)(ii): *Reports for 2D001*, are for "software", other than that controlled by 2D002, specially designed for the "development" or "production" of the equipment in 2B001.a or .b (changing 6μm to 5.1μm in 2B001.a.1 and 2B001.b.1.a; and adding "a positioning accuracy with "all compensations available" equal to or less (better) than 5.1μm along any linear axis" to the existing text for 2B001.b.2) of the Commerce Control List (CCL).

Reports for 2E001, are for "technology" according to the General Technology Note for "development" of "software" as described in this paragraph for 2D001, or for the equipment in 2B001.a or .b (changing 6μm to 5.1μm in 2B001.a.1 and 2B001.b.1.a; and adding "a positioning accuracy with "all compensations available" equal to or less (better) than 5.1μm along any linear axis" to the existing text for 2B001.b.2) of the CCL.

Reports for 2E002, are for "technology" according to the General Technology Note for "production" of the equipment in 2B001.a or .b (changing 6μm to 5.1μm in 2B001.a.1 and 2B001.b.1.a; and adding "a positioning accuracy with "all compensations available" equal to or less (better) than 5.1μm along any linear axis" to the existing text for 2B001.b.2) of the CCL.

* * * * *

(v) *Category 5:* 5A001.b.3; 5B001.a (items specially designed for 5A001.b.3 and b.5); 5D001.a (specially designed for the "development" or "production" of equipment, function, or features in 5A001.b.3 or 5B001.a as described in this paragraph) and 5D001.b (specially designed or modified to support "technology" under 5E001.a as described in this paragraph); and 5E001.a (for the "development" or "production" of equipment, function, features, or "software" in 5A001.b.3,

5B001.a, 5D001.a or 5D001.b as described in this paragraph);

(vi) *Category 6:* 6A001.a.1.b (changing 10 kHz to 5 kHz and adding the text "or a sound pressure level exceeding 224 dB (reference 1 μPa at 1 m) for equipment with an operating frequency in the band from 5 kHz to 10 kHz inclusive" to the existing text in 6A001.a.1.b.1) , and .a.2.d; 6A002.a.1.a, 6A002.a.1.b, 6A002.a.2.a (changing 350 uA/Im to 700 uA/Im in 6A002.a.2.a.3.a), 6A002.a.3, 6A002.b, 6A002.c, 6A002.e; 6A003.b.3, 6A003.b.4; 6A004.c and .d; 6A006.a, 6A006.d (excluding compensators which provide only absolute values of the earth's magnetic field as output (i.e., the frequency bandwidth of the output extends from DC to at least 0.8 Hz); 6A008.d, .h, and .k; 6D001 (for 6A004.c and .d and 6A008.d, .h, and .k); 6E001 (for equipment and software listed in this paragraph); and 6E002 (for equipment listed in this paragraph);

Note to paragraph (c)(1)(vi): The reporting requirement for 6A002.a.3 excludes the following "focal plane arrays":

a. Platinum Silicide having less than 10,000 elements;

b. Iridium Silicide;

c. Indium Antimonide or Lead Selenide having less than 256 elements;

d. Indium Arsenide;

e. Lead Sulphide;

f. Indium Gallium Arsenide;

g. Mercury Cadmium Telluride, as follows:

1. 'Scanning Arrays' having any of the following:

a. 30 elements or less; or

b. Incorporating time delay-and-integration within the element and having 2 elements or less;

2. 'Staring Arrays' less than 256 elements;

Technical Notes:

'Scanning Arrays' are defined as "focal plane arrays" designed for use with a scanning optical system that images a scene in a sequential manner to produce an image.

'Staring Arrays' are defined as "focal plane arrays" designed for use with a non-scanning optical system that images a scene.

h. Gallium Arsenide or Gallium Aluminum Arsenide quantum well having less than 256 elements;

(vii) *Category 7:* 7D002; 7D003.c, d.1 to d.4, and d.7; 7E001; and 7E002;

(viii) *Category 8:* 8A001.c; 8A002.b (for 8A001.b, .c, .d), .h, .j, .o.3, and .p; 8D001 (for commodities listed in this paragraph); 8D002; 8E001 (for commodities listed in this paragraph); and 8E002.a; and

(ix) *Category 9:* 9B001.b, 9D001 (for 9B001.b and 9E003 as described in this paragraph), 9D002 (for 9B001.b), 9D004.a, 9D004.c, 9E001 for technology controlled for NS reasons, 9E002, 9E003.a.2, a.3.b, a.3.c, a.4, a.5, a.8, and a.9.

* * * * *

■ 7. Supplement No. 1 to Part 743 is amended by:

■ a. Revising the heading of the Supplement to read as set forth below; and

■ b. Adding Croatia, Estonia, Latvia, Lithuania, Malta, and South Africa in alphabetical order.

Supplement No. 1 to Part 743—Wassenaar Arrangement Participating States

* * * * *

PART 772—[AMENDED]

■ 8. The authority citation for Part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

■ 9. Section 772.1 is amended as follows:

■ a. By removing the definition "Asynchronous transfer mode" ("ATM") and the separate entry for the acronym "ATM."

■ b. By revising the phrase "(Cat 3, 4, and 5)" to read "(Cat 2, 3, 4, and 5) in the definition "Electronic assembly."

■ c. By removing the definition "time-modulated ultra-wideband."

■ d. By adding the definition "unmanned aerial vehicles" ("UAVs") in alphabetic order after the definition for "United States airline," to read as follows:

§ 772.1 Definitions of Terms as Used in the Export Administration Regulations (EAR).

* * * * *

Unmanned aerial vehicle ("UAV"). (Cat 9) Any "aircraft" capable of initiating flight and sustaining controlled flight and navigation without any human presence on board. In addition, according to section 744.3 of the EAR, unmanned air vehicles, which are the same as "unmanned aerial vehicles," include, but are not limited to, cruise missile systems, target drones and reconnaissance drones.

* * * * *

PART 774—[AMENDED]

■ 10. The authority citation for Part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

Supplement No. 1 to Part 774 [Amended]

■ 11. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Materials, Chemicals, Microorganisms, and Toxins, Export Control Classification Number (ECCN) 1C008 is amended by revising the "items" paragraph in the List of Items Controlled section, to read as follows:

1C008 Non-fluorinated polymeric substances, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. Non-fluorinated polymeric substances, as follows:

a.1. Bismaleimides;

a.2. Aromatic polyamide-imides;

a.3. Aromatic polyimides;

a.4. Aromatic polyetherimides having a glass transition temperature (Tg) exceeding 513K (240 °C).

Note: 1C008.a does not control non-fusible compression molding powders or molded forms.

b. Thermoplastic liquid crystal copolymers having a heat distortion temperature exceeding 523 K (250 °C) measured according to ISO 75–3 (2004), or national equivalents, with a load of 1.82 N/mm^2 and composed of:

b.1. Any of the following:

b.1.a. Phenylene, biphenylene or naphthalene; or

b.1.b. Methyl, tertiary-butyl or phenyl substituted phenylene, biphenylene or naphthalene; and

b.2. Any of the following acids:

b.2.a. Terephthalic acid;

b.2.b. 6-hydroxy-2 naphthoic acid; *or*

b.2.c. 4-hydroxybenzoic acid;

c. Polyarylene ether ketones, as follows:

c.1. [RESERVED]

c.2. Polyether ketone ketone (PEKK);

c.3. Polyether ketone (PEK);

c.4. Polyether ketone ether ketone ketone (PEKEKK)

d. Polyarylene ketones;

e. Polyarylene sulphides, where the arylene group is biphenylene, triphenylene or combinations thereof;

f. Polybiphenylenethersulphone having a glass transition temperature (Tg) exceeding 513 K (240 °C).

Technical Note: The glass transition temperature (Tg) for 1C008 materials is determined using the method described in ISO 11357–2 (1999) or national equivalents.

■ 12. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Materials, Chemicals, Microorganisms, and Toxins, is amended by adding Export Control Classification Number (ECCN) 1C998 after ECCN 1C997 and before ECCN 1C999, to read as follows:

1C998 Non-fluorinated polymeric substances, not controlled by 1C008, as follows (see List of Items Controlled).

License Requirements

Reason for Control: AT

Control(s)	Country chart
AT applies to entire entry	AT Column 1.

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: Kilograms
Related Controls: N/A
Related Definitions: N/A
Items:
a. Polyether ether ketone (PEEK);
b. [RESERVED].

■ 13. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Materials, Chemicals, Microorganisms, and Toxins, Export Control Classification Number (ECCN) 1E001 is amended by revising the heading, to read as follows:

1E001 "Technology" according to the General Technology Note for the "development" or "production" of items controlled by 1A001.b, 1A001.c, 1A002, 1A003, 1A004, 1A005, 1A101, 1B (except 1B999), or 1C (except 1C355, 1C980 to 1C984, 1C988, 1C990, 1C991, 1C992, 1C995 to 1C999).

* * * * *

■ 14. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Materials, Chemicals, Microorganisms, and Toxins, Export Control Classification Number (ECCN) 1E998 is added after 1E994, to read as follows:

1E998 "Technology" for the "development" or "production" of processing equipment controlled by 1B999, and materials controlled by 1C995, 1C996, 1C997, 1C998, and 1C999.

License Requirements

Reason for Control: AT

Control(s)	Country chart
AT applies to entire entry	AT Column 1.

License Exceptions

CIV: N/A
TSR: N/A

List of Items Controlled

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items:
The list of items controlled is contained in the ECCN heading.

■ 15. Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B002 is amended by revising the heading and the "items" paragraph in the List of Items Controlled section to read as follows:

2B002 Numerically controlled machine tools using a magnetorheological finishing (MRF) process equipped to produce non-spherical surfaces and having any of the following characteristics (See List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:
a. Finishing the form to less (better) than 1.0 μm; *or*
b. Finishing to a roughness less (better) than 100 nm rms.

■ 16. Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B006 is amended by revising the heading, the License Requirement section, and the "unit" and the "items" paragraphs in the List of Items Controlled section to read as follows:

2B006 Dimensional inspection or measuring systems, equipment, and "electronic assemblies", as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, NP, AT

Control(s)	Country chart
NS applies to entire entry ...	NS Column 2.
NP applies to 2B006.a and .b, except 2B006.b.1.d.	NP Column 1.
AT applies to entire entry	AT Column 1.

* * * * *

List of Items Controlled

Unit: Equipment in number, electronic assemblies in $ value
Related Controls: * * *
Related Definitions: * * *
Items:
a. Computer controlled or "numerically controlled" co-ordinate measuring machines (CMM), having a three dimensional length (volumetric) maximum permissible error of indication (MPEE) at any point within the operating range of the machine (i.e., within the length of axes) equal to or less (better) than (1.7 + L/1,000) μm (L is the measured length in mm) tested according to ISO 10360–2 (2001);
b. Linear and angular displacement measuring instruments, as follows:
b.1. Linear displacement measuring instruments having any of the following:

Technical Note: For the purpose of 2B006.b.1 "linear displacement" means the change of distance between the measuring probe and the measured object.

b.1.a. Non-contact type measuring systems with a "resolution" equal to or less (better) than 0.2 μm within a measuring range up to 0.2 mm;
b.1.b. Linear voltage differential transformer systems having all of the following characteristics:
b.1.b.1. "Linearity" equal to or less (better) than 0.1% within a measuring range up to 5 mm; *and*
b.1.b.2. Drift equal to or less (better) than 0.1% per day at a standard ambient test room temperature ±1 K; *or*
b.1.c. Measuring systems having all of the following:
b.1.c.1. Containing a "laser"; *and*
b.1.c.2. Maintaining, for at least 12 hours, over a temperature range of ±1 K around a standard temperature and at a standard pressure, all of the following:
b.1.c.2.a. A "resolution" over their full scale of 0.1 μm or less (better); *and*
b.1.c.2.b. A "measurement uncertainty" equal to or less (better) than (0.2 + L/2,000) μm (L is the measured length in mm);
b.1.d. "Electronic assemblies" specially designed to provide feedback capability in systems controlled by 2B006.b.1.c.

Note: 2B006.b.1 does not control measuring interferometer systems, with an automatic control system that is designed to use no feedback techniques, containing a "laser" to measure slide movement errors of machine-tools, dimensional inspection machines or similar equipment.

b.2. Angular displacement measuring instruments having an "angular position deviation" equal to or less (better) than 0.00025 °;

Note: 2B006.b.2 does not control optical instruments, such as autocollimators, using collimated light (*e.g.*, laser light) to detect angular displacement of a mirror.

c. Equipment for measuring surface irregularities, by measuring optical scatter as a function of angle, with a sensitivity of 0.5 nm or less (better).

■ 17. Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2E201 is amended by revising the heading and the License Requirement section to read as follows:

2E201 "Technology" according to the General Technology Note for the "use" of equipment or "software" controlled by 2A225, 2A226, 2B001, 2B006, 2B007.b, 2B007.c, 2B201, 2B204, 2B206, 2B207, 2B209, 2B225 to 2B232, 2D002, 2D201 or 2D202 for NP reasons.

License Requirements

Reason for Control: NP, CB, AT

Control(s)	Country chart
NP applies to entire entry	NP Column 1.
CB applies to "technology" for valves controlled by 2A226 that meet or exceed the technical parameters in 2B350.g.	CB Column 2.
AT applies to entire entry	AT Column 1.

* * * * *

■ 18. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A001 is amended revising the "CIV" paragraph in the License Exceptions section, and the "items" paragraph in the List of Items Controlled section, to read as follows:

3A001 Electronic components, as follows (see List of Items Controlled).

* * * * *

License Exceptions

LVS: * * *
GBS: * * *
CIV: Yes for 3A001.a.3, a.4, a.7, and a.11.

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

a. General purpose integrated circuits, as follows:

Note 1: The control status of wafers (finished or unfinished), in which the function has been determined, is to be evaluated against the parameters of 3A001.a.

Note 2: Integrated circuits include the following types:

"Monolithic integrated circuits";
"Hybrid integrated circuits";
"Multichip integrated circuits";
"Film type integrated circuits", including silicon-on-sapphire integrated circuits;
"Optical integrated circuits".

a.1. Integrated circuits, designed or rated as radiation hardened to withstand any of the following:

a.1.a. A total dose of 5×10^3 Gy (Si), or higher;

a.1.b. A dose rate upset of 5×10^6 Gy (Si)/s, or higher; *or*

a.1.c. A fluence (integrated flux) of neutrons (1 MeV equivalent) of 5×10^{13} n/cm^2 or higher on silicon, or its equivalent for other materials;

Note: 3A001.a.1.c does not apply to Metal Insulator Semiconductors (MIS).

a.2. "Microprocessor microcircuits", "microcomputer microcircuits", microcontroller microcircuits, storage integrated circuits manufactured from a compound semiconductor, analog-to-digital converters, digital-to-analog converters, electro-optical or "optical integrated circuits" designed for "signal processing", field programmable logic devices, neural network integrated circuits, custom integrated circuits for which either the function is unknown or the control status of the equipment in which the integrated circuit will be used in unknown, Fast Fourier Transform (FFT) processors, electrical erasable programmable read-only memories (EEPROMs), flash memories or static random-access memories (SRAMs), having any of the following:

a.2.a. Rated for operation at an ambient temperature above 398 K (125 °C);

a.2.b. Rated for operation at an ambient temperature below 218 K (−55 °C); *or*

a.2.c. Rated for operation over the entire ambient temperature range from 218 K (−55 °C) to 398 K (125 °C);

Note: 3A001.a.2 does not apply to integrated circuits for civil automobile or railway train applications.

a.3. "Microprocessor microcircuits", "micro-computer microcircuits" and microcontroller microcircuits, manufactured from a compound semiconductor and operating at a clock frequency exceeding 40 MHz;

Note: 3A001.a.3 includes digital signal processors, digital array processors and digital coprocessors.

a.4. Storage integrated circuits manufactured from a compound semiconductor;

a.5. Analog-to-digital and digital-to-analog converter integrated circuits, as follows:

a.5.a. Analog-to-digital converters having any of the following:

a.5.a.1. A resolution of 8 bit or more, but less than 10 bit, an output rate greater than 500 million words per second;

a.5.a.2 A resolution of 10 bit or more, but less than 12 bit, with an output rate greater than 200 million words per second;

a.5.a.3. A resolution of 12 bit with an output rate greater than 50 million words per second;

a.5.a.4. A resolution of more than 12 bit but equal to or less than 14 bit with an output rate greater than 5 million words per second; *or*

a.5.a.5. A resolution of more than 14 bit with an output rate greater than 1 million words per second.

a.5.b. Digital-to-analog converters with a resolution of 12 bit or more, and a "settling time" of less than 10 ns;

Technical Notes:

1. A resolution of n bit corresponds to a quantization of 2n levels.

2. The number of bits in the output word is equal to the resolution of the analogue-to-digital converter.

3. The output rate is the maximum output rate of the converter, regardless of architecture or oversampling. Vendors may also refer to the output rate as sampling rate, conversion rate or throughput rate. It is often specified in megahertz (MHz) or mega samples per second (MSPS).

4. For the purpose of measuring output rate, one output word per second is equivalent to one Hertz or one sample per second.

a.6. Electro-optical and "optical integrated circuits" designed for "signal processing" having all of the following:

a.6.a. One or more than one internal "laser" diode;

a.6.b. One or more than one internal light detecting element; *and*

a.6.c. Optical waveguides;

a.7. Field programmable logic devices having any of the following:

a.7.a. An equivalent usable gate count of more than 30,000 (2 input gates);

a.7.b. A typical "basic gate propagation delay time" of less than 0.1 ns; *or*

a.7.c. A toggle frequency exceeding 133 MHz;

Note: 3A001.a.7 includes: Simple Programmable Logic Devices (SPLDs), Complex Programmable Logic Devices (CPLDs), Field Programmable Gate Arrays (FPGAs), Field Programmable Logic Arrays (FPLAs), and Field Programmable Interconnects (FPICs).

N.B.: Field programmable logic devices are also known as field programmable gate or field programmable logic arrays.

a.8. [RESERVED]

a.9. Neural network integrated circuits;

a.10. Custom integrated circuits for which the function is unknown, or the control status of the equipment in which the integrated circuits will be used is unknown to the manufacturer, having any of the following:

a.10.a. More than 1,000 terminals;

a.10.b. A typical "basic gate propagation delay time" of less than 0.1 ns; *or*

a.10.c. An operating frequency exceeding 3 GHz;

a.11. Digital integrated circuits, other than those described in 3A001.a.3 to 3A001.a.10 and 3A001.a.12, based upon any compound semiconductor and having any of the following:

a.11.a. An equivalent gate count of more than 3,000 (2 input gates); *or*

a.11.b. A toggle frequency exceeding 1.2 GHz;

a.12. Fast Fourier Transform (FFT) processors having a rated execution time for an N-point complex FFT of less than $(N \log_2 N)/20{,}480$ ms, where N is the number of points;

Technical Note: When N is equal to 1,024 points, the formula in 3A001.a.12 gives an execution time of 500 μs.

b. Microwave or millimeter wave components, as follows:

b.1. Electronic vacuum tubes and cathodes, as follows:

Note 1: 3A001.b.1 does not control tubes designed or rated for operation in any frequency band which meets all of the following characteristics:

(a) Does not exceed 31.8 GHz; and
(b) Is "allocated by the ITU" for radiocommunications services, but not for radiodetermination.

Note 2: 3A001.b.1 does not control non-"space-qualified" tubes which meet all the following characteristics:

(a) An average output power equal to or less than 50 W; and
(b) Designed or rated for operation in any frequency band which meets all of the following characteristics:
(1) Exceeds 31.8 GHz but does not exceed 43.5 GHz; and

(2) Is "allocated by the ITU" for radio-communications services, but not for radio-determination.

b.1.a. Traveling wave tubes, pulsed or continuous wave, as follows:

b.1.a.1. Operating at frequencies exceeding 31.8 GHz;

b.1.a.2. Having a cathode heater element with a turn on time to rated RF power of less than 3 seconds;

b.1.a.3. Coupled cavity tubes, or derivatives thereof, with a "fractional bandwidth" of more than 7% or a peak power exceeding 2.5 kW;

b.1.a.4. Helix tubes, or derivatives thereof, with any of the following characteristics:

b.1.a.4.a. An "instantaneous bandwidth" of more than one octave, and average power (expressed in kW) times frequency (expressed in GHz) of more than 0.5;

b.1.a.4.b. An "instantaneous bandwidth" of one octave or less, and average power (expressed in kW) times frequency (expressed in GHz) of more than 1; *or*

b.1.a.4.c. Being "space qualified";

b.1.b. Crossed-field amplifier tubes with a gain of more than 17 dB;

b.1.c. Impregnated cathodes designed for electronic tubes producing a continuous emission current density at rated operating conditions exceeding 5 A/cm^2;

b.2. Microwave monolithic integrated circuits (MMIC) power amplifiers having any of the following:

b.2.a. Rated for operation at frequencies exceeding 3.2 GHz up to and including 6 GHz and with an average output power greater than 4W (36 dBm) with a "fractional bandwidth" greater than 15%;

b.2.b. Rated for operation at frequencies exceeding 6 GHz up to and including 16 GHz and with an average output power greater than 1W (30 dBm) with a "fractional bandwidth" greater than 10%;

b.2.c. Rated for operation at frequencies exceeding 16 GHz up to and including 31.8 GHz and with an average output power greater than 0.8W (29 dBm) with a "fractional bandwidth" greater than 10%;

b.2.d. Rated for operation at frequencies exceeding 31.8 GHz up to and including 37.5 GHz;

b.2.e. Rated for operation at frequencies exceeding 37.5 GHz up to and including 43.5 GHz and with an average output power greater than 0.25W (24 dBm) with a "fractional bandwidth" greater than 10%; *or*

b.2.f. Rated for operation at frequencies exceeding 43.5 GHz.

Note 1: 3A001.b.2 does not control broadcast satellite equipment designed or rated to operate in the frequency range of 40.5 to 42.5 GHz.

Note 2: The control status of the MMIC whose rated operating frequency includes frequencies listed in more than one frequency range, as defined by 3A001.b.2.a through 3A001.b.2.f, is determined by the lowest average output power control threshold.

Note 3: Notes 1 and 2 following the Category 3 heading for A. Systems, Equipment, and Components mean that 3A001.b.2. does not control MMICs if they are specially designed for other applications, e.g., telecommunications, radar, automobiles.

b.3. Discrete microwave transistors having any of the following:

b.3.a. Rated for operation at frequencies exceeding 3.2 GHz up to and including 6 GHz and having an average output power greater than 60W (47.8 dBm);

b.3.b. Rated for operation at frequencies exceeding 6 GHz up to and including 31.8 GHz and having an average output power greater than 20W (43 dBm);

b.3.c. Rated for operation at frequencies exceeding 31.8 GHz up to and including 37.5 GHz and having an average output power greater than 0.5W (27 dBm);

b.3.d. Rated for operation at frequencies exceeding 37.5 GHz up to and including 43.5 GHz and having an average output power greater than 1W (30 dBm); *or*

b.3.e. Rated for operation at frequencies exceeding 43.5 GHz.

Note: The control status of a transistor whose rated operating frequency includes frequencies listed in more than one frequency range, as defined by 3A001.b.3.a through 3A001.b.3.e, is determined by the lowest average output power control threshold.

b.4. Microwave solid state amplifiers and microwave assemblies/modules containing microwave amplifiers having any of the following:

b.4.a. Rated for operation at frequencies exceeding 3.2 GHz up to and including 6 GHz and with an average output power greater than 60W (47.8 dBm) with a "fractional bandwidth" greater than 15%;

b.4.b. Rated for operation at frequencies exceeding 6 GHz up to and including 31.8 GHz and with an average output power greater than 15W (42 dBm) with a "fractional bandwidth" greater than 10%;

b.4.c. Rated for operation at frequencies exceeding 31.8 GHz up to and including 37.5 GHz;

b.4.d. Rated for operation at frequencies exceeding 37.5 GHz up to and including 43.5 GHz and with an average output power greater than 1W (30 dBm) with a "fractional bandwidth" greater than 10%;

b.4.e. Rated for operation at frequencies exceeding 43.5 GHz; *or*

b.4.f. Rated for operation at frequencies above 3.2 GHz and all of the following:

b.4.f.1. An average output power (in watts), P, greater than 150 divided by the maximum operating frequency (in GHz) squared [$P > 150\ W*GHz^2\ f_{GHz}^2$];

b.4.f.2. A fractional bandwidth of 5% or greater; *and*

b.4.f.3. Any two sides perpendicular to one another with length d (in cm) equal to or less than 15 divided by the lowest operating frequency in GHz [$d \leq 15\ cm*GHz/f_{GHz}$].

Technical Note: 3.2 GHz should be used as the lowest operating frequency (f_{GHz}) in the formula in 3A001.b.4.f.3., for amplifiers that have a rated operation range extending downward to 3.2 GHz and below [$d \leq 15cm*GHz/3.2\ f_{GHz}$].

N.B.: MMIC power amplifiers should be evaluated against the criteria in 3A001.b.2.

Note 1: 3A001.b.4. does not control broadcast satellite equipment designed or rated to operate in the frequency range of 40.5 to 42.5 GHz.

Note 2: The control status of an item whose rated operating frequency includes frequencies listed in more than one frequency range, as defined by 3A001.b.4.a through 3A001.b.4.e, is determined by the lowest average output power control threshold.

b.5. Electronically or magnetically tunable band-pass or band-stop filters having more than 5 tunable resonators capable of tuning across a 1.5:1 frequency band (f_{max}/f_{min}) in less than 10 µs having any of the following:

b.5.a. A band-pass bandwidth of more than 0.5% of center frequency; *or*

b.5.b. A band-stop bandwidth of less than 0.5% of center frequency;

b.6. [RESERVED]

b.7. Mixers and converters designed to extend the frequency range of equipment described in 3A002.c, 3A002.e or 3A002.f beyond the limits stated therein;

b.8. Microwave power amplifiers containing tubes controlled by 3A001.b and having all of the following:

b.8.a. Operating frequencies above 3 GHz;

b.8.b. An average output power density exceeding 80 W/kg; *and*

b.8.c. A volume of less than 400 cm^3;

Note: 3A001.b.8 does not control equipment designed or rated for operation in any frequency band which is "allocated by the ITU" for radio-communications services, but not for radio-determination.

c. Acoustic wave devices, as follows, and specially designed components therefor:

c.1. Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices (*i.e.*, "signal processing" devices employing elastic waves in materials), having any of the following:

c.1.a. A carrier frequency exceeding 2.5 GHz;

c.1.b. A carrier frequency exceeding 1 GHz, but not exceeding 2.5 GHz, and having any of the following:

c.1.b.1. A frequency side-lobe rejection exceeding 55 dB;

c.1.b.2. A product of the maximum delay time and the bandwidth (time in µs and bandwidth in MHz) of more than 100;

c.1.b.3. A bandwidth greater than 250 MHz; *or*

c.1.b.4. A dispersive delay of more than 10 µs; *or*

c.1.c. A carrier frequency of 1 GHz or less, having any of the following:

c.1.c.1. A product of the maximum delay time and the bandwidth (time in µs and bandwidth in MHz) of more than 100;

c.1.c.2. A dispersive delay of more than 10 µs; *or*

c.1.c.3. A frequency side-lobe rejection exceeding 55 dB and a bandwidth greater than 50 MHz;

c.2. Bulk (volume) acoustic wave devices (*i.e.*, "signal processing" devices employing elastic waves) that permit the direct processing of signals at frequencies exceeding 1 GHz;

c.3. Acoustic-optic "signal processing" devices employing interaction between acoustic waves (bulk wave or surface wave) and light waves that permit the direct processing of signals or images, including spectral analysis, correlation or convolution;

d. Electronic devices and circuits containing components, manufactured from "superconductive" materials specially designed for operation at temperatures below the "critical temperature" of at least one of the "superconductive" constituents, with any of the following:

d.1. Current switching for digital circuits using "superconductive" gates with a product of delay time per gate (in seconds) and power dissipation per gate (in watts) of less than 10^{-14} J; *or*

d.2. Frequency selection at all frequencies using resonant circuits with Q-values exceeding 10,000;

e. High energy devices, as follows:

e.1. Batteries and photovoltaic arrays, as follows:

Note: 3A001.e.1 does not control batteries with volumes equal to or less than 27 cm^3 (*e.g.*, standard C-cells or R14 batteries).

e.1.a. Primary cells and batteries having an energy density exceeding 480 Wh/kg and rated for operation in the temperature range from below 243 K (−30 °C) to above 343 K (70 °C);

e.1.b. Rechargeable cells and batteries having an energy density exceeding 150 Wh/kg after 75 charge/discharge cycles at a discharge current equal to C/5 hours (C being the nominal capacity in ampere hours) when operating in the temperature range from below 253 K (−20 °C) to above 333 K (60 °C);

Technical Note: Energy density is obtained by multiplying the average power in watts (average voltage in volts times average current in amperes) by the duration of the discharge in hours to 75% of the open circuit voltage divided by the total mass of the cell (or battery) in kg.

e.1.c. "Space qualified" and radiation hardened photovoltaic arrays with a specific power exceeding 160 W/m^2 at an operating temperature of 301 K (28 °C) under a tungsten illumination of 1 kW/m^2 at 2,800 K (2,527 °C);

e.2. High energy storage capacitors, as follows:

e.2.a. Capacitors with a repetition rate of less than 10 Hz (single shot capacitors) having all of the following:

e.2.a.1. A voltage rating equal to or more than 5 kV;

e.2.a.2. An energy density equal to or more than 250 J/kg; *and*

e.2.a.3. A total energy equal to or more than 25 kJ;

e.2.b. Capacitors with a repetition rate of 10 Hz or more (repetition rated capacitors) having all of the following:

e.2.b.1. A voltage rating equal to or more than 5 kV;

e.2.b.2. An energy density equal to or more than 50 J/kg;

e.2.b.3. A total energy equal to or more than 100 J; *and*

e.2.b.4. A charge/discharge cycle life equal to or more than 10,000;

e.3. "Superconductive" electromagnets and solenoids specially designed to be fully charged or discharged in less than one second, having all of the following:

Note: 3A001.e.3 does not control "superconductive" electromagnets or solenoids specially designed for Magnetic Resonance Imaging (MRI) medical equipment.

e.3.a. Energy delivered during the discharge exceeding 10 kJ in the first second;

e.3.b. Inner diameter of the current carrying windings of more than 250 mm; *and*

e.3.c. Rated for a magnetic induction of more than 8 T or "overall current density" in the winding of more than 300 A/mm^2;

f. Rotary input type shaft absolute position encoders having any of the following:

f.1. A resolution of better than 1 part in 265,000 (18 bit resolution) of full scale; *or*

f.2. An accuracy better than ±2.5 seconds of arc.

■ 19. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A991 is amended revising the "items" paragraph in the List of Items Controlled section, to read as follows:

3A991 Electronic devices and components not controlled by 3A001.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. "Microprocessor microcircuits", "microcomputer microcircuits", and microcontroller microcircuits having any of the following:

a.1. A "composite theoretical performance" ("CTP") of 6,500 million theoretical operations per second (MTOPS) or more and an arithmetic logic unit with an access width of 32 bit or more;

a.2. A clock frequency rate exceeding 25 MHz; *or*

a.3. More than one data or instruction bus or serial communication port that provides a direct external interconnection between parallel "microprocessor microcircuits" with a transfer rate of 2.5 Mbyte/s.

b. Storage integrated circuits, as follows:

b.1. Electrical erasable programmable read-only memories (EEPROMs) with a storage capacity;

b.1.a. Exceeding 16 Mbits per package for flash memory types; *or*

b.1.b. Exceeding either of the following limits for all other EEPROM types:

b.1.b.1. Exceeding 1 Mbit per package; *or*

b.1.b.2. Exceeding 256 kbit per package and a maximum access time of less than 80 ns;

b.2. Static random access memories (SRAMs) with a storage capacity:

b.2.a. Exceeding 1 Mbit per package; *or*

b.2.b. Exceeding 256 kbit per package and a maximum access time of less than 25 ns;

c. Analog-to-digital converters having any of the following:

c.1. A resolution of 8 bit or more, but less than 12 bit, with an output rate greater than 100 million words per second;

c.2. A resolution of 12 bit with an output rate greater than 5 million words per second;

c.3. A resolution of more than 12 bit but equal to or less than 14 bit with an output rate greater than 500 thousand words per second; *or*

c.4. A resolution of more than 14 bit with an output rate greater than 500 thousand words per second.

d. Field programmable logic devices having either of the following:

d.1. An equivalent gate count of more than 5000 (2 input gates); *or*

d.2. A toggle frequency exceeding 100 MHz;

e. Fast Fourier Transform (FFT) processors having a rated execution time for a 1,024 point complex FFT of less than 1 ms.

f. Custom integrated circuits for which either the function is unknown, or the control status of the equipment in which the integrated circuits will be used is unknown to the manufacturer, having any of the following:

f.1. More than 144 terminals; *or*

f.2. A typical "basic propagation delay time" of less than 0.4 ns.

g. Traveling wave tubes, pulsed or continuous wave, as follows:

g.1. Coupled cavity tubes, or derivatives thereof;

g.2. Helix tubes, or derivatives thereof, with any of the following:

g.2.a. An "instantaneous bandwidth" of half an octave or more; *and*

g.2.b. The product of the rated average output power (expressed in kW) and the maximum operating frequency (expressed in GHz) of more than 0.2;

g.2.c. An "instantaneous bandwidth" of less than half an octave; *and*

g.2.d. The product of the rated average output power (expressed in kW) and the maximum operating frequency (expressed in GHz) of more than 0.4;

h. Flexible waveguides designed for use at frequencies exceeding 40 GHz;

i. Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices (*i.e.*, "signal processing" devices employing elastic waves in materials), having either of the following:

i.1. A carrier frequency exceeding 1 GHz; *or*

i.2. A carrier frequency of 1 GHz or less; *and*

i.2.a. A frequency side-lobe rejection exceeding 55 Db;

i.2.b. A product of the maximum delay time and bandwidth (time in microseconds and bandwidth in MHz) of more than 100; *or*

i.2.c. A dispersive delay of more than 10 microseconds.

j. Primary cells and batteries having an energy density exceeding 350 Wh/kg and rated for operation in the temperature range from below 243 K (−30 °C) to above 343 K (70 °C);

Note: 3A991 .j does not control batteries with volumes equal to or less than 27 cm^3 (*e.g.*, standard C-cells or UM–2 batteries).

Technical Note: Energy density is obtained by multiplying the average power in watts (average voltage in volts times average current in amperes) by the duration of the discharge in hours to 75 percent of the open circuit voltage divided by the total mass of the cell (or battery) in kg.

k. "Superconductive" electromagnets or solenoids specially designed to be fully charged or discharged in less than one minute, having all of the following:

Note: 3A991.k does not control "superconductive" electromagnets or solenoids designed for Magnetic Resonance Imaging (MRI) medical equipment.

k.1. Maximum energy delivered during the discharge divided by the duration of the discharge of more than 500 kJ per minute;

k.2. Inner diameter of the current carrying windings of more than 250 mm; *and*

k.3. Rated for a magnetic induction of more than 8T or "overall current density" in the winding of more than 300 A/mm^2.

l. Circuits or systems for electromagnetic energy storage, containing components manufactured from "superconductive" materials specially designed for operation at temperatures below the "critical temperature" of at least one of their "superconductive" constituents, having all of the following:

l.1. Resonant operating frequencies exceeding 1 MHz;

l.2. A stored energy density of 1 MJ/M^3 or more; *and*

l.3. A discharge time of less than 1 ms;

m. Hydrogen/hydrogen-isotope thyratrons of ceramic-metal construction and rate for a peak current of 500 A or more;

n. Digital integrated circuits based on any compound semiconductor having an equivalent gate count of more than 300 (2 input gates).

■ 20. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3B001 is amended revising the "items" paragraph in the List of Items Controlled section, to read as follows:

3B001 Equipment for the manufacturing of semiconductor devices or materials, as follows (see List of Items Controlled), and specially designed components and accessories therefor.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. Equipment designed for epitaxial growth, as follows:

a.1. Equipment capable of producing a layer of any material other than silicon with a thickness uniform to less than ±2.5% across a distance of 75 mm or more;

a.2. Metal organic chemical vapor deposition (MOCVD) reactors specially designed for compound semiconductor crystal growth by the chemical reaction between materials controlled by 3C003 or 3C004;

a.3. Molecular beam epitaxial growth equipment using gas or solid sources;

b. Equipment designed for ion implantation, having any of the following:

b.1. A beam energy (accelerating voltage) exceeding 1 MeV;

b.2. Being specially designed and optimized to operate at a beam energy (accelerating voltage of less than 2 keV);

b.3. Direct write capability; *or*

b.4. A beam energy of 65 keV or more and a beam current of 45 mA or more for high energy oxygen implant into a heated semiconductor material "substrate";

c. Anisotropic plasma dry etching equipment, as follows:

c.1. Equipment with cassette-to-cassette operation and load-locks, and having any of the following:

c.1.a. Designed or optimized to produce critical dimensions of 180 nm or less with ±5% 3 sigma precision; *or*

c.1.b. Designed for generating less than 0.04 particles/cm^2 with a measurable particle size greater than 0.1μm in diameter;

c.2. Equipment specially designed for equipment controlled by 3B001.e. and having any of the following:

c.2.a. Designed or optimized to produce critical dimensions of 180 nm or less with ±5% 3 sigma precision; *or*

c.2.b. Designed for generating less than 0.04 particles/cm^2 with a measurable particle size greater than 0.1 μm in diameter;

d. Plasma enhanced CVD equipment, as follows:

d.1. Equipment with cassette-to-cassette operation and load-locks, and designed according to the manufacturer's specifications or optimized for use in the production of semiconductor devices with critical dimensions of 180 nm or less;

d.2. Equipment specially designed for equipment controlled by 3B001.e. and designed according to the manufacturer's specifications or optimized for use in the production of semiconductor devices with critical dimensions of 180 nm or less;

e. Automatic loading multi-chamber central wafer handling systems, having all of the following:

e.1. Interfaces for wafer input and output, to which more than two pieces of semiconductor processing equipment are to be connected; *and*

e.2. Designed to form an integrated system in a vacuum environment for sequential multiple wafer processing;

Note: 3B001.e. does not control automatic robotic wafer handling systems not designed to operate in a vacuum environment.

f. Lithography equipment, as follows:

f.1. Align and expose step and repeat (direct step on wafer) or step and scan (scanner) equipment for wafer processing using photo-optical or X-ray methods, having any of the following:

f.1.a. A light source wavelength shorter than 245 nm; *or*

f.1.b. Capable of producing a pattern with a minimum resolvable feature size of 180 nm or less;

Technical Note: The minimum resolvable feature size is calculated by the following formula:

$$MRF = \frac{(\text{an exposure light source wavelength in nm})}{\text{numerical aperture}} \times (\text{K factor})$$

Where the K factor = 0.45

MRF = minimum resolvable feature size.

f.2. Equipment specially designed for mask making or semiconductor device processing using deflected focused electron beam, ion beam or "laser" beam, having any of the following:

f.2.a. A spot size smaller than 0.2 μm;

f.2.b. Being capable of producing a pattern with a feature size of less than 1 μm; *or*

f.2.c. An overlay accuracy of better than ±0.20 μm (3 sigma);

g. Masks and reticles designed for integrated circuits controlled by 3A001;

h. Multi-layer masks with a phase shift layer.

Note: 3B001.h. does not control multi-layer masks with a phase shift layer designed for the fabrication of memory devices not controlled by 3A001.

■ 21. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3B991 is amended revising the "units" and "items" paragraphs in the List of Items Controlled section, to read as follows:

3B991 Equipment not controlled by 3B001 for the manufacture of electronic components and materials, and specially designed components and accessories therefor.

* * * * *

List of Items Controlled

Unit: Equipment in number, and components and accessories in $ value

Related Controls: * * *

Related Definitions: * * *

Items:

a. Equipment specially designed for the manufacture of electron tubes, optical elements and specially designed components therefor controlled by 3A001 or 3A991;

b. Equipment specially designed for the manufacture of semiconductor devices, integrated circuits and "electronic assemblies", as follows, and systems incorporating or having the characteristics of such equipment:

Note: 3B991.b also controls equipment used or modified for use in the manufacture of other devices, such as imaging devices, electro-optical devices, acoustic-wave devices.

b.1. Equipment for the processing of materials for the manufacture of devices and components as specified in the heading of 3B991.b, as follows:

Note: 3B991 does not control quartz furnace tubes, furnace liners, paddles, boats (except specially designed caged boats), bubblers, cassettes or crucibles specially designed for the processing equipment controlled by 3B991.b.1.

b.1.a. Equipment for producing polycrystalline silicon and materials controlled by 3C001;

b.1.b. Equipment specially designed for purifying or processing III/V and II/VI semiconductor materials controlled by 3C001, 3C002, 3C003, or 3C004, except crystal pullers, for which see 3B991.b.1.c below;

b.1.c. Crystal pullers and furnaces, as follows:

Note: 3B991.b.1.c does not control diffusion and oxidation furnaces.

b.1.c.1. Annealing or recrystallizing equipment other than constant temperature furnaces employing high rates of energy transfer capable of processing wafers at a rate exceeding 0.005 m^2 per minute;

b.1.c.2. "Stored program controlled" crystal pullers having any of the following characteristics:

b.1.c.2.a. Rechargeable without replacing the crucible container;

b.1.c.2.b. Capable of operation at pressures above 2.5×10^5 Pa; *or*

b.1.c.2.c. Capable of pulling crystals of a diameter exceeding 100 mm;

b.1.d. "Stored program controlled" equipment for epitaxial growth having any of the following characteristics:

b.1.d.1. Capable of producing a silicon layer with a thickness uniform to less than ±2.5% across a distance of 200 mm or more;

b.1.d.2. Capable of producing a layer of any material other than silicon with a thickness uniformity across the wafer of equal to or better than ±3.5%; *or*

b.1.d.3. Rotation of individual wafers during processing;

b.1.e. Molecular beam epitaxial growth equipment;

b.1.f. Magnetically enhanced 'sputtering' equipment with specially designed integral load locks capable of transferring wafers in an isolated vacuum environment;

b.1.g. Equipment specially designed for ion implantation, ion-enhanced or photo-enhanced diffusion, having any of the following characteristics:

b.1.g.1. Patterning capability;

b.1.g.2. Beam energy (accelerating voltage) exceeding 200 keV;

b.1.g.3 Optimized to operate at a beam energy (accelerating voltage) of less than 10 keV; *or*

b.1.g.4. Capable of high energy oxygen implant into a heated "substrate";

b.1.h. "Stored program controlled" equipment for the selective removal (etching) by means of anisotropic dry methods (*e.g.*, plasma), as follows:

b.1.h.1. Batch types having either of the following:

b.1.h.1.a. End-point detection, other than optical emission spectroscopy types; *or*

b.1.h.1.b. Reactor operational (etching) pressure of 26.66 Pa or less;

b.1.h.2. Single wafer types having any of the following:

b.1.h.2.a. End-point detection, other than optical emission spectroscopy types;

b.1.h.2.b. Reactor operational (etching) pressure of 26.66 Pa or less; *or*

b.1.h.2.c. Cassette-to-cassette and load locks wafer handling;

Notes: 1. "Batch types" refers to machines not specially designed for production processing of single wafers. Such machines can process two or more wafers simultaneously with common process parameters, *e.g.*, RF power, temperature, etch gas species, flow rates.

2. "Single wafer types" refers to machines specially designed for production processing of single wafers. These machines may use automatic wafer handling techniques to load a single wafer into the equipment for processing. The definition includes equipment that can load and process several wafers but where the etching parameters, *e.g.*, RF power or end point, can be independently determined for each individual wafer.

b.1.i. "Chemical vapor deposition" (CVD) equipment, *e.g.*, plasma-enhanced CVD (PECVD) or photo-enhanced CVD, for semiconductor device manufacturing, having either of the following capabilities, for deposition of oxides, nitrides, metals or polysilicon:

b.1.i.1. "Chemical vapor deposition" equipment operating below 10^5 Pa; or

b.1.i.2. PECVD equipment operating either below 60 Pa (450 millitorr) or having automatic cassette-to-cassette and load lock wafer handling;

Note: 3B991.b.1.i does not control low pressure "chemical vapor deposition" (LPCVD) systems or reactive "sputtering" equipment.

b.1.j. Electron beam systems specially designed or modified for mask making or semiconductor device processing having any of the following characteristics:

b.1.j.1. Electrostatic beam deflection;

b.1.j.2. Shaped, non-Gaussian beam profile;

b.1.j.3. Digital-to-analog conversion rate exceeding 3 MHz;

b.1.j.4. Digital-to-analog conversion accuracy exceeding 12 bit; *or*

b.1.j.5. Target-to-beam position feedback control precision of 1 micrometer or finer;

Note: 3B991.b.1.j does not control electron beam deposition systems or general purpose scanning electron microscopes.

b.1.k. Surface finishing equipment for the processing of semiconductor wafers as follows:

b.1.k.1. Specially designed equipment for backside processing of wafers thinner than 100 micrometer and the subsequent separation thereof; *or*

b.1.k.2. Specially designed equipment for achieving a surface roughness of the active surface of a processed wafer with a two-sigma value of 2 micrometer or less, total indicator reading (TIR);

Note: 3B991.b.1.k does not control single-side lapping and polishing equipment for wafer surface finishing.

b.1.l. Interconnection equipment which includes common single or multiple vacuum chambers specially designed to permit the integration of any equipment controlled by 3B991 into a complete system;

b.1.m. "Stored program controlled" equipment using "lasers" for the repair or trimming of "monolithic integrated circuits" with either of the following characteristics:

b.1.m.1. Positioning accuracy less than ±1 micrometer; *or*

b.1.m.2. Spot size (kerf width) less than 3 micrometer.

b.2. Masks, mask "substrates", mask-making equipment and image transfer equipment for the manufacture of devices and components as specified in the heading of 3B991, as follows:

Note: The term "masks" refers to those used in electron beam lithography, X-ray lithography, and ultraviolet lithography, as well as the usual ultraviolet and visible photo-lithography.

b.2.a. Finished masks, reticles and designs therefor, except:

b.2.a.1. Finished masks or reticles for the production of unembargoed integrated circuits; *or*

b.2.a.2. Masks or reticles, having both of the following characteristics:

b.2.a.2.a. Their design is based on geometries of 2.5 micrometer or more; *and*

b.2.a.2.b. The design does not include special features to alter the intended use by means of production equipment or "software";

b.2.b. Mask "substrates" as follows:

b.2.b.1. Hard surface (*e.g.*, chromium, silicon, molybdenum) coated "substrates" (*e.g.*, glass, quartz, sapphire) for the preparation of masks having dimensions exceeding 125 mm × 125 mm; *or*

b.2.b.2. "Substrates" specially designed for X-ray masks;

b.2.c. Equipment, other than general purpose computers, specially designed for computer aided design (CAD) of semiconductor devices or integrated circuits;

b.2.d. Equipment or machines, as follows, for mask or reticle fabrication:

b.2.d.1. Photo-optical step and repeat cameras capable of producing arrays larger than 100 mm × 100 mm, or capable of producing a single exposure larger than 6 mm × 6 mm in the image (*i.e.*, focal) plane, or capable of producing line widths of less than 2.5 micrometer in the photoresist on the "substrate";

b.2.d.2. Mask or reticle fabrication equipment using ion or "laser" beam lithography capable of producing line widths of less than 2.5 micrometer; *or*

b.2.d.3. Equipment or holders for altering masks or reticles or adding pellicles to remove defects;

Note: 3B991.b.2.d.1 and b.2.d.2 do not control mask fabrication equipment using photo-optical methods which was either commercially available before the 1st January, 1980, or has a performance no better than such equipment.

b.2.e. "Stored program controlled" equipment for the inspection of masks, reticles or pellicles with:

b.2.e.1. A resolution of 0.25 micrometer or finer; *and*

b.2.e.2. A precision of 0.75 micrometer or finer over a distance in one or two coordinates of 63.5 mm or more;

Note: 3B991.b.2.e does not control general purpose scanning electron microscopes

except when specially designed and instrumented for automatic pattern inspection.

b.2.f. Align and expose equipment for wafer production using photo-optical or X-ray methods, *e.g.*, lithography equipment, including both projection image transfer equipment and step and repeat (direct step on wafer) or step and scan (scanner) equipment, capable of performing any of the following functions:

Note: 3B991.b.2.f does not control photo-optical contact and proximity mask align and expose equipment or contact image transfer equipment.

b.2.f.1. Production of a pattern size of less than 2.5 micrometer;

b.2.f.2. Alignment with a precision finer than ±0.25 micrometer (3 sigma);

b.2.f.3. Machine-to-machine overlay no better than ±0.3 micrometer; or

b.2.f.4. A light source wavelength shorter than 400 nm;

b.2.g. Electron beam, ion beam or X-ray equipment for projection image transfer capable of producing patterns less than 2.5 micrometer;

Note: For focused, deflected-beam systems (direct write systems), see 3B991.b.1.j or b.10.

b.2.h. Equipment using "lasers" for direct write on wafers capable of producing patterns less than 2.5 micrometer.

b.3. Equipment for the assembly of integrated circuits, as follows:

b.3.a. "Stored program controlled" die bonders having all of the following characteristics:

b.3.a.1. Specially designed for "hybrid integrated circuits';

b.3.a.2. X-Y stage positioning travel exceeding 37.5 × 37.5 mm; and

b.3.a.3. Placement accuracy in the X-Y plane of finer than ±10 micrometer;

b.3.b. "Stored program controlled" equipment for producing multiple bonds in a single operation (*e.g.*, beam lead bonders, chip carrier bonders, tape bonders);

b.3.c. Semi-automatic or automatic hot cap sealers, in which the cap is heated locally to a higher temperature than the body of the package, specially designed for ceramic microcircuit packages controlled by 3A001 and that have a throughput equal to or more than one package per minute.

Note: 3B991.b.3 does not control general purpose resistance type spot welders.

b.4. Filters for clean rooms capable of providing an air environment of 10 or less particles of 0.3 micrometer or smaller per 0.02832 m^3 and filter materials therefor.

■ 22. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3E001 is amended revising the heading and CIV paragraph in the License Exceptions section, to read as follows:

3E001 "Technology" according to the General Technology Note for the "development" or "production" of equipment or materials controlled by 3A (except 3A292, 3A980, 3A981, 3A991 or 3A992), 3B (except 3B991 or 3B992) or 3C (except 3C992).

* * * * *

License Exceptions

CIV: N/A

TSR: * * *

* * * * *

■ 23. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3E991 is amended revising the heading, to read as follows:

3E991 "Technology" for the "development", "production", or "use" of electronic devices or components controlled by 3A991, general purpose electronic equipment controlled by 3A992, or manufacturing and test equipment controlled by 3B991 or 3B992, or materials controlled by 3C992.

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■ 24. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 5—Telecommunications and "Information Security", Part I—Telecommunications, Export Control Classification Number (ECCN) 5A001 is amended by revising the Heading, the License Requirements section and the "items" paragraph in the List of Items Controlled section, to read as follows:

5A001 Telecommunications systems, equipment, and components, as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, AT

Control(s)	*Country chart*
NS applies to 5A001.a, and .e.	NS Column 1.
NS applies to 5A001.b, .c, .d, and .f.	NS Column 2.
AT applies to entire entry	AT Column 1.

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

* * * * *

List of Items Controlled

Unit: Equipment or antennae in number; cable and fiber in meters/feet, components and accessories in $ value

Related Controls: * * *

Related Definitions: * * *

Items:

a. Any type of telecommunications equipment having any of the following characteristics, functions or features:

a.1. Specially designed to withstand transitory electronic effects or electromagnetic pulse effects, both arising from a nuclear explosion;

a.2. Specially hardened to withstand gamma, neutron or ion radiation; *or*

a.3. Specially designed to operate outside the temperature range from 218 K (−55 °C) to 397 K (124 °C).

Note: 5A001.a.3 applies only to electronic equipment.

Note: 5A001.a.2 and 5A001.a.3 do not apply to equipment designed or modified for use on board satellites.

b. Telecommunication transmission equipment and systems, and specially designed components and accessories therefor, having any of the following characteristics, functions or features:

b.1 Being underwater communications systems having any of the following characteristics:

b.1.a. An acoustic carrier frequency outside the range from 20 kHz to 60 kHz;

b.1.b. Using an electromagnetic carrier frequency below 30 kHz; *or*

b.1.c. Using electronic beam steering techniques;

b.2. Being radio equipment operating in the 1.5 MHz to 87.5 MHz band and having any of the following characteristics:

b.2.a. Incorporating adaptive techniques providing more than 15 dB suppression of an interfering signal; *or*

b.2.b. Having all of the following:

b.2.b.1. Automatically predicting and selecting frequencies and "total digital transfer rates" per channel to optimize the transmission; *and*

b.2.b.2. Incorporating a linear power amplifier configuration having a capability to support multiple signals simultaneously at an output power of 1 kW or more in the frequency range of 1.5 MHz or more but less than 30 MHz, or 250 W or more in the frequency range of 30 MHz or more but not exceeding 87.5 MHz, over an "instantaneous bandwidth" of one octave or more and with an output harmonic and distortion content of better than −80 dB;

b.3. Being radio equipment employing "spread spectrum" techniques, including "frequency hopping" techniques, not controlled in 5A001.b.4., having any of the following characteristics:

b.3.a. User programmable spreading codes; *or*

b.3.b. A total transmitted bandwidth which is 100 or more times the bandwidth of any one information channel and in excess of 50 kHz;

Note: 5A001.b.3.b does not control radio equipment specially designed for use with civil cellular radio-communications systems.

Note: 5A001.b.3 does not control equipment operating at an output power of 1.0 Watt or less.

b.4. Being radio equipment employing ultra-wideband modulation techniques, having user programmable channelizing codes, scrambling codes, or network identification codes, having any of the following characteristics:

b.4.a.A bandwidth exceeding 500 MHz; *or*

b.4.b.A "fractional bandwidth" of 20% or more;

b.5. Being digitally controlled radio receivers having all of the following:

b.5.a. More than 1,000 channels;

b.5.b. A "frequency switching time" of less than 1 ms;

b.5.c. Automatic searching or scanning of a part of the electromagnetic spectrum; *and*

b.5.d. Identification of the received signals or the type of transmitter; *or*

Note: 5A001.b.5 does not control radio equipment specially designed for use with civil cellular radio-communications systems.

b.6. Employing functions of digital "signal processing" to provide voice coding output at rates of less than 2,400 bit/s.

Technical Notes: 1. For variable rate voice coding, 5A001.b.6 applies to the voice coding output of continuous speech.

2. For the purpose of 5A001.b.6, "voice coding" is defined as the technique to take samples of human voice and then convert these samples of human voice and then convert these samples into a digital signal taking into account specific characteristics of human speech.

c. Optical fiber communication cables, optical fibers and accessories, as follows:

c.1. Optical fibers of more than 500 m in length specified by the manufacturer as being capable of withstanding a proof test tensile stress of 2×10^9 N/m^2 or more;

Technical Note: Proof Test: on-line or off-line production screen testing that dynamically applies a prescribed tensile stress over a 0.5 to 3 m length of fiber at a running rate of 2 to 5 m/s while passing between capstans approximately 150 mm in diameter. The ambient temperature is a nominal 293 K (20 °C) and relative humidity 40%. Equivalent national standards may be used for executing the proof test.

c.2. Optical fiber cables and accessories designed for underwater use.

Note: 5A001.c.2 does not control standard civil telecommunication cables and accessories.

N.B. 1: For underwater umbilical cables, and connectors thereof, see 8A002.a.3.

N.B. 2: For fiber-optic hull penetrators or connectors, see 8A002.c.

d. "Electronically steerable phased array antennae" operating above 31.8 GHz.

Note: 5A001.d does not control "electronically steerable phased array antennae" for landing systems with instruments meeting ICAO standards covering microwave landing systems (MLS).

e. Radio direction finding equipment operating at frequencies above 30 MHz and having all of the following characteristics, and specially designed components therefor:

e.1. "Instantaneous bandwidth" of 10 MHz or more; and

e.2. Capable of finding a line of bearing (LOB) to non-cooperating radio transmitters with a signal duration of less than 1 ms.

f. Jamming equipment specially designed or modified to intentionally and selectively interfere with, deny, inhibit, degrade or seduce cellular mobile telecommunication services, having any of the following characteristics, and specially designed components therefore:

f.1. Simulating the functions of Radio Access Network (RAN) equipment; or

f.2. Detecting and exploiting specific characteristics of the mobile telecommunications protocol employed (*e.g.*, GSM).

N.B.: For GNSS jamming equipment see the Munitions List.

■ 25. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 5—Telecommunications and "Information Security", Part I—Telecommunications, Export Control Classification Number (ECCN) 5A991 is amended by revising the "related definitions" and the "items" paragraphs in the List of Items Controlled section, to read as follows:

5A991 Telecommunication equipment, not controlled by 5A001.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: (1) "Asynchronous transfer mode" ("ATM") is a transfer mode in which the information is organized into cells; it is asynchronous in the sense that the recurrence of cells depends on the required or instantaneous bit rate. (2) "Bandwidth of one voice channel" is data communication equipment designed to operate in one voice channel of 3,100 Hz, as defined in CCITT Recommendation G.151. (3) "Communications channel controller" is the physical interface that controls the flow of synchronous or asynchronous digital information. It is an assembly that can be integrated into computer or telecommunications equipment to provide communications access. (4) "Datagram" is a self-contained, independent entity of data carrying sufficient information to be routed from the source to the destination data terminal equipment without reliance on earlier exchanges between this source and destination data terminal equipment and the transporting network. (5) "Fast select" is a facility applicable to virtual calls that allows data terminal equipment to expand the possibility to transmit data in call set-up and clearing "packets" beyond the basic capabilities of a virtual call. (6) "Gateway" is the function, realized by any combination of equipment and "software", to carry out the conversion of conventions for representing, processing or communicating information used on one system into the corresponding, but different conventions used in another system. (7) "Integrated Services Digital Network" (ISDN) is a unified end-to-end digital network, in which data originating from all types of communication (*e.g.*, voice, text, data, still and moving pictures) are transmitted from one port (terminal) in the exchange (switch) over one access line to and from the subscriber. (8) "Packet" is a group of binary digits including data and call control signals that is switched as a composite whole. The data, call control signals, and possible error control information are arranged in a specified format.

Items:

a. Any type of telecommunications equipment, not controlled by 5A001.a, specially designed to operate outside the temperature range from 219 K (−54 °C) to 397 K (124 °C).

b. Telecommunication transmission equipment and systems, and specially designed components and accessories therefor, having any of the following characteristics, functions or features:

Note: Telecommunication transmission equipment:

a. Categorized as follows, or combinations thereof:

1. Radio equipment (*e.g.*, transmitters, receivers and transceivers);

2. Line terminating equipment;

3. Intermediate amplifier equipment;

4. Repeater equipment;

5. Regenerator equipment;

6. Translation encoders (transcoders);

7. Multiplex equipment (statistical mutiplex included);

8. Modulators/demodulators (modems);

9. Transmultiplex equipment (see CCITT Rec. G701);

10. "Stored program controlled" digital crossconnection equipment;

11. "Gateways" and bridges;

12. "Media access units"; *and*

b. Designed for use in single or multi-channel communication via any of the following:

1. Wire (line);

2. Coaxial cable;

3. Optical fiber cable;

4. Electromagnetic radiation; or

5. Underwater acoustic wave propagation.

b.1. Employing digital techniques, including digital processing of analog signals, and designed to operate at a "digital transfer rate" at the highest multiplex level exceeding 45 Mbit/s or a "total digital transfer rate" exceeding 90 Mbit/s;

Note: 5A991.b.1 does not control equipment specially designed to be integrated and operated in any satellite system for civil use.

b.2. Modems using the "bandwidth of one voice channel" with a "data signaling rate" exceeding 9,600 bits per second;

b.3. Being "stored program controlled" digital cross connect equipment with "digital transfer rate" exceeding 8.5 Mbit/s per port.

b.4. Being equipment containing any of the following:

b.4.a. "Network access controllers" and their related common medium having a "digital transfer rate" exceeding 33 Mbit/s; *or*

b.4.b. "Communication channel controllers" with a digital output having a "data signaling rate" exceeding 64,000 bit/s per channel;

Note: If any uncontrolled equipment contains a "network access controller", it cannot have any type of telecommunications interface, except those described in, but not controlled by 5A991.b.4.

b.5. Employing a "laser" and having any of the following characteristics:

b.5.a. A transmission wavelength exceeding 1,000 nm; *or*

b.5.b. Employing analog techniques and having a bandwidth exceeding 45 MHz;

Note: 5A991.b.5.b does not control commercial TV systems.

b.5.c. Employing coherent optical transmission or coherent optical detection

techniques (also called optical heterodyne or homodyne techniques);

b.5.d. Employing wavelength division multiplexing techniques; *or*

b.5.e. Performing "optical amplification";

b.6. Radio equipment operating at input or output frequencies exceeding:

b.6.a. 31 GHz for satellite-earth station applications; *or*

b.6.b. 26.5 GHz for other applications;

Note: 5A991.b.6. does not control equipment for civil use when conforming with an International Telecommunications Union (ITU) allocated band between 26.5 GHz and 31 GHz.

b.7. Being radio equipment employing any of the following:

b.7.a. Quadrature-amplitude-modulation (QAM) techniques above level 4 if the "total digital transfer rate" exceeds 8.5 Mbit/s;

b.7.b. QAM techniques above level 16 if the "total digital transfer rate" is equal to or less than 8.5 Mbit/s; *or*

b.7.c. Other digital modulation techniques and having a "spectral efficiency" exceeding 3 bit/s/Hz;

Notes: 1. 5A991.b.7 does not control equipment specially designed to be integrated and operated in any satellite system for civil use.

2. 5A991.b.7 does not control radio relay equipment for operation in an ITU allocated band:

a. Having any of the following:

a.1. Not exceeding 960 MHz; *or*

a.2. With a "total digital transfer rate" not exceeding 8.5 Mbit/s; *and*

b. Having a "spectral efficiency" not exceeding 4 bit/s/Hz.

b.8. Providing functions of digital "signal processing" as follows:

b.8.a. Voice coding at rates less than 2,400 bit/s;

b.8.b. Employing circuitry that incorporates "user-accessible programmability" of digital "signal processing" circuits exceeding the limits of 4A003.b.

c. "Stored program controlled" switching equipment and related signaling systems, having any of the following characteristics, functions or features, and specially designed components and accessories therefor:

Note: Statistical multiplexers with digital input and digital output which provide switching are treated as "stored program controlled" switches.

c.1. "Data (message) switching" equipment or systems designed for "packet-mode operation" and assemblies and components therefor, n.e.s.

c.2. Containing "Integrated Services Digital Network" (ISDN) functions and having any of the following:

c.2.a. Switch-terminal (*e.g.*, subscriber line) interfaces with a "digital transfer rate" at the highest multiplex level exceeding 192,000 bit/s, including the associated signaling channel (*e.g.*, 2B+D); *or*

c.2.b. The capability that a signaling message received by a switch on a given channel that is related to a communication on another channel may be passed through to another switch.

Note: 5A991.c does not preclude the evaluation and appropriate actions taken by the receiving switch or unrelated user message traffic on a D channel of ISDN.

c.3. Routing or switching of "datagram" packets;

c.4. Routing or switching of "fast select" packets;

Note: The restrictions in 5A991.c.3 and c.4 do not apply to networks restricted to using only "network access controllers" or to "network access controllers" themselves.

c.5. Multi-level priority and pre-emption for circuit switching;

Note: 5A991.c.5 does not control single-level call preemption.

c.6. Designed for automatic hand-off of cellular radio calls to other cellular switches or automatic connection to a centralized subscriber data base common to more than one switch;

c.7. Containing "stored program controlled" digital cross connect equipment with "digital transfer rate" exceeding 8.5 Mbit/s per port.

c.8. "Common channel signaling" operating in either non-associated or quasi-associated mode of operation;

c.9. "Dynamic adaptive routing";

Note: 5A991.c.10 does not control packet switches or routers with ports or lines not exceeding the limits in 5A991.c.10.

c.10. Being packet switches, circuit switches and routers with ports or lines exceeding any of the following:

c.10.a. A "data signaling rate" of 64,000 bit/s per channel for a "communications channel controller"; *or*

Note: 5A991.c.10.a does not control multiplex composite links composed only of communication channels not individually controlled by 5A991.b.1.

c.10.b. A "digital transfer rate" of 33 Mbit/s for a "network access controller" and related common media;

c.11. "Optical switching";

c.12. Employing "Asynchronous Transfer Mode" ("ATM") techniques.

d. Optical fibers and optical fiber cables of more than 50 m in length designed for single mode operation;

e. Centralized network control having all of the following characteristics:

e.1. Receives data from the nodes; *and*

e.2. Process these data in order to provide control of traffic not requiring operator decisions, and thereby performing "dynamic adaptive routing";

Note: 5A991.e does not preclude control of traffic as a function of predictable statistical traffic conditions.

f. Phased array antennae, operating above 10.5 GHz, containing active elements and distributed components, and designed to permit electronic control of beam shaping and pointing, except for landing systems with instruments meeting International Civil Aviation Organization (ICAO) standards (microwave landing systems (MLS)).

g. Mobile communications equipment, n.e.s., and assemblies and components therefor; or

h. Radio relay communications equipment designed for use at frequencies equal to or exceeding 19.7 GHz and assemblies and components therefor, n.e.s.

■ 26. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 5—Telecommunications and "Information Security", Part I—Telecommunications, Export Control Classification Number (ECCN) 5D001 is amended by revising the "items" paragraph in the List of Items Controlled section, to read as follows:

5D001 "Software", as described in the List of Items Controlled.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. "Software" specially designed or modified for the "development", "production" or "use" of equipment, functions or features controlled by 5A001 or 5B001.

b. "Software" specially designed or modified to support "technology" controlled by 5E001.

c. Specific "software" specially designed or modified to provide characteristics, functions or features of equipment controlled by 5A001 or 5B001.

d. "Software" specially designed or modified for the "development" of any of the following telecommunication transmission or switching equipment:

d.1. Equipment employing digital techniques, including designed to operate at a "total digital transfer rate" exceeding 15 Gbit/s;

Technical Note: For switching equipment the "total digital transfer rate" is measured at the highest speed port or line.

d.2. Equipment employing a "laser" and having any of the following:

d.2.a. A transmission wavelength exceeding 1750 nm; *or*

d.2.b. Employing analog techniques and having a bandwidth exceeding 2.5 GHz;

Note: 5D001.d.2.b. does not control "software" specially designed or modified for the "development" of commercial TV systems.

d.3. Equipment employing "optical switching"; *or*

d.4. Radio equipment employing quadrature-amplitude-modulation (QAM) techniques above level 256.

■ 27. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 5—Telecommunications and "Information Security", Part I—Telecommunications, Export Control Classification Number (ECCN) 5D991 is amended by revising the heading and "items" paragraph in the List of Items Controlled section, to read as follows:

5D991 "Software" specially designed or modified for the "development", "production" or "use" of equipment controlled by 5A991 and 5B991, and

dynamic adaptive routing software as described in the List of Items Controlled.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. "Software", other than in machine-executable form, specially designed for "dynamic adaptive routing".

b. [RESERVED]

■ 28. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 5—Telecommunications and "Information Security", Part 2—Information Security, Export Control Classification Number (ECCN) 5A002 is amended by revising the "related controls" and the "items" paragraphs in the List of Items Controlled section, to read as follows:

5A002 Systems, equipment, application specific "electronic assemblies", modules and integrated circuits for "information security", as follows (see List of Items Controlled), and other specially designed components therefor.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: 5A002 does not control the items listed in paragraphs (a) through (f) in the Note in the items paragraph of this entry. These items are instead controlled under ECCN 5A992. 5A002 does not control commodities eligible for the Cryptography Note (Category 5 Part 2 Note 3).

Related Definitions: * * *

Items:

Note: 5A002 does not control the following. However, these items are instead controlled under 5A992:

(a) "Personalized smart cards":

(1) Where the cryptographic capability is restricted for use in equipment or systems excluded from control paragraphs (b) through (f) of this Note; *or*

(2) For general public-use applications where the cryptographic capability is not user-accessible and it is specially designed and limited to allow protection of personal data stored within.

N.B.: If a "personalized smart card" has multiple functions, the control status of each function is assessed individually.

(b) Receiving equipment for radio broadcast, pay television or similar restricted audience broadcast of the consumer type, without digital encryption except that exclusively used for sending the billing or program-related information back to the broadcast providers.

(c) Equipment where the cryptographic capability is not user-accessible and which is specially designed and limited to allow any of the following:

(1) Execution of copy-protected "software";

(2) Access to any of the following:

(a) Copy-protected contents stored on read-only media; *or*

(b) Information stored in encrypted form on media (e.g., in connection with the protection of intellectual property rights) where the media is offered for sale in identical sets to the public;

(3) Copying control of copyright protected audio/video data; or

(4) Encryption and/or decryption for protection of libraries, design attributes, or associated data for the design of semiconductor devices or integrated circuits;

(d) Cryptographic equipment specially designed and limited for banking use or money transactions;

N.B.: The term "money transactions" includes the collection and settlement of fares or credit functions.

(e) Portable or mobile radiotelephones for civil use (*e.g.*, for use with commercial civil cellular radio communications systems) that are not capable of end-to-end encryption.

(f) Cordless telephone equipment not capable of end-to-end encryption where the maximum effective range of unboosted cordless operation (*e.g.*, a single, unrelayed hop between terminal and home basestation) is less than 400 meters according to the manufacturer's specifications.

Technical Note: Parity bits are not included in the key length.

a. Systems, equipment, application specific "electronic assemblies", modules and integrated circuits for "information security", as follows, and other specially designed components therefor: .

N.B.: For the control of global navigation satellite systems receiving equipment containing or employing decryption (*e.g.*, GPS or GLONASS) see 7A005.

a.1. Designed or modified to use "cryptography" employing digital techniques performing any cryptographic function other than authentication or digital signature having any of the following:

Technical Notes:

1. Authentication and digital signature functions include their associated key management function.

2. Authentication includes all aspects of access control where there is no encryption of files or text except as directly related to the protection of passwords, Personal Identification Numbers (PINs) or similar data to prevent unauthorized access.

3. "Cryptography" does not include "fixed" data compression or coding techniques.

Note: 5A002.a.1 includes equipment designed or modified to use "cryptography" employing analog principles when implemented with digital techniques.

a.1.a. A "symmetric algorithm" employing a key length in excess of 56-bits; *or*

a.1.b. An "asymmetric algorithm" where the security of the algorithm is based on any of the following:

a.1.b.1. Factorization of integers in excess of 512 bits (*e.g.*, RSA);

a.1.b.2. Computation of discrete logarithms in a multiplicative group of a finite field of size greater than 512 bits (*e.g.*, Diffie-Hellman over Z/pZ); *or*

a.1.b.3. Discrete logarithms in a group other than mentioned in 5A002.a.1.b.2 in excess of 112 bits (*e.g.*, Diffie-Hellman over an elliptic curve);

a.2. Designed or modified to perform cryptanalytic functions;

a.3. [RESERVED]

a.4. Specially designed or modified to reduce the compromising emanations of information-bearing signals beyond what is necessary for health, safety or electromagnetic interference standards;

a.5. Designed or modified to use cryptographic techniques to generate the spreading code for "spread spectrum" systems, not controlled in 5A002.a.6., including the hopping code for "frequency hopping" systems;

a.6. Designed or modified to use cryptographic techniques to generate channelizing codes, scrambling codes or network identification codes, for systems using ultra-wideband modulation techniques, having any of the following characteristics:

a.6.a. A bandwidth exceeding 500 MHz; *or*

a.6.b. A "fractional bandwidth" of 20% or more;

a.7. [RESERVED]

a.8. Communications cable systems designed or modified using mechanical, electrical or electronic means to detect surreptitious intrusion;

a.9. Designed or modified to use "quantum cryptography."

Technical Notes:

1. 'Quantum cryptography' A family of techniques for the establishment of a shared key for "cryptography" by measuring the quantum-mechanical properties of a physical system (including those physical properties explicitly governed by quantum optics, quantum field theory, or quantum electrodynamics).

2. "Quantum cryptography" is also known as quantum key distribution (QKD).

■ 29. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 6—Sensors, Export Control Classification Number (ECCN) 6A006 is amended by revising the heading, the "LVS" paragraph in the License Exceptions section, and the "related controls" and "items" paragraphs in the List of Items Controlled section, to read as follows:

6A006 "Magnetometers", "magnetic gradiometers", "intrinsic magnetic gradiometers", underwater electric field sensors, and compensation systems, and specially designed components therefor, as follows (see List of Items Controlled).

* * * * *

License Exceptions

LVS: $1500, N/A for 6A006.a.1; "Magnetometers" and subsystems defined in 6A006.a.2 using optically pumped or nuclear precession (proton/Overhauser) having a "noise level" (sensitivity) lower (better) than 2 pT rms per square root Hz; and 6A006.d.

GBS: * * *

CIV: * * *

List of Items Controlled

Unit: * * *

Related Controls: See also 6A996. This entry does not control instruments specially designed for fishery applications or

biomagnetic measurements for medical diagnostics.

Related Definitions: * * *

Items:

a. "Magnetometers" and subsystems, as follows:

a.1. Using "superconductive" (SQUID) "technology" and having any of the following characteristics:

a.1.a. SQUID systems designed for stationary operation, without specially designed subsystems designed to reduce in-motion noise, and having a "noise level" (sensitivity) equal to or lower (better) than 50 fT (rms) per square root Hz at a frequency of 1 Hz; *or*

a.1.b. SQUID systems having an in-motion-magnetometer "noise level" (sensitivity) lower (better) than 20 pT (rms) per square root Hz at a frequency of 1 Hz and specially designed to reduce in-motion noise;

a.2. Using optically pumped or nuclear precession (proton/Overhauser) "technology" having a "noise level" (sensitivity) lower (better) than 20 pT (rms) per square root Hz;

a.3. Using fluxgate "technology" having a "noise level" (sensitivity) equal to or lower (better) than 10 pT (rms) per square root Hz at a frequency of 1 Hz;

a.4. Induction coil "magnetometers" having a "noise level" (sensitivity) lower (better) than any of the following:

a.4.a. 0.05 nT rms/square root Hz at frequencies of less than 1 Hz;

a.4.b. 1×10^{-3} nT rms/square root Hz at frequencies of 1 Hz or more but not exceeding 10 Hz; *or*

a.4.c. 1×10^{-4} nT rms/square root Hz at frequencies exceeding 10 Hz;

a.5. Fiber optic "magnetometers" having a "noise level" (sensitivity) lower (better) than 1 nT rms per square root Hz;

b. Underwater electric field sensors having a "noise level" (sensitivity) lower (better) than 8 nanovolt per meter per square root Hz when measured at 1 Hz.

c. "Magnetic gradiometers" as follows:

c.1. "Magnetic gradiometers" using multiple "magnetometers" controlled by 6A006.a;

c.2. Fiber optic "intrinsic magnetic gradiometers" having a magnetic gradient field "noise level" (sensitivity) lower (better) than 0.3 nT/m rms per square root Hz;

c.3. "Intrinsic magnetic gradiometers", using "technology" other than fiber-optic "technology", having a magnetic gradient field "noise level" (sensitivity) lower (better) than 0.015 nT/m rms per square root Hz; *and*

d. Compensation systems for magnetic and Underwater Electric Field Sensors resulting in a performance equal to or better than the control parameters of 6A006.a, 6A006.b, and 6A006.c.

■ 30. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 6—Sensors, Export Control Classification Number (ECCN) 6D003 is amended by revising the "items" paragraph in the List of Items Controlled section, to read as follows:

6D003 Other "software", as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. Acoustics "software", as follows:

a.1. "Software" specially designed for acoustic beam forming for the "real time processing" of acoustic data for passive reception using towed hydrophone arrays;

a.2. "Source code" for the "real time processing" of acoustic data for passive reception using towed hydrophone arrays;

a.3. "Software" specially designed for acoustic beam forming for the "real time processing" of acoustic data for passive reception using bottom or bay cable systems;

a.4. "Source code" for the "real time processing" of acoustic data for passive reception using bottom or bay cable systems.

b. Optical sensors. None.

c. Cameras. None.

d. Optics. None.

e. Lasers. None

f. Magnetic and Electric Field Sensors "software", as follows:

f.1. "Software" specially designed for magnetic and electric field compensation systems for magnetic sensors designed to operate on mobile platforms;

f.2. "Software" specially designed for magnetic and electric field anomaly detection on mobile platforms;

g. Gravimeters. "Software" specially designed to correct motional influences of gravity meters or gravity gradiometers;

h. Radar "software", as follows:

h.1. Air Traffic Control "software" application "programs" hosted on general purpose computers located at Air Traffic Control centers and capable of any of the following:

h.1.a. Processing and displaying more than 150 simultaneous "system tracks"; *or*

h.1.b. Accepting radar target data from more than four primary radars;

h.2. "Software" for the design or "production" of radomes which:

h.2.a. Are specially designed to protect the "electronically steerable phased array antennae" controlled by 6A008.e.; *and*

h.2.b. Result in an antenna pattern having an "average side lobe level" more than 40 dB below the peak of the main beam level.

Technical Note: "Average side lobe level" in 6D003.h.2.b is measured over the entire array excluding the angular extent of the main beam and the first two side lobes on either side of the main beam.

■ 31. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 6—Sensors, Export Control Classification Number (ECCN) 6E003 is amended by revising the "items" paragraph in the List of Items Controlled section, to read as follows:

6E003 Other "technology", as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. Acoustics. None.

b. Optical sensors. None.

c. Cameras. None.

d. Optics, "technology", as follows:

d.1. Optical surface coating and treatment "technology" "required" to achieve uniformity of 99.5% or better for optical coatings 500 mm or more in diameter or major axis length and with a total loss (absorption and scatter) of less than 5×10^{-3};

N.B.: See also 2E003.f.

d.2. Optical fabrication "technology" using single point diamond turning techniques to produce surface finish accuracies of better than 10 nm rms on non-planar surfaces exceeding 0.5 m^2;

e. Lasers. "Technology" "required" for the "development", "production" or "use" of specially designed diagnostic instruments or targets in test facilities for "SHPL" testing or testing or evaluation of materials irradiated by "SHPL" beams;

f. Magnetic and Electric Field Sensors. None.

g. Gravimeters. None.

h. Radar. None.

■ 32. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 8—Marine, Export Control Classification Number (ECCN) 8A002 is amended by revising the "items" paragraph in the List of Items Controlled section, to read as follows:

8A002 Systems and equipment, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. Systems and equipment, specially designed or modified for submersible vehicles, designed to operate at depths exceeding 1,000 m, as follows:

a.1. Pressure housings or pressure hulls with a maximum inside chamber diameter exceeding 1.5 m;

a.2. Direct current propulsion motors or thrusters;

a.3. Umbilical cables, and connectors therefor, using optical fiber and having synthetic strength members;

b. Systems specially designed or modified for the automated control of the motion of submersible vehicles controlled by 8A001 using navigation data and having closed loop servo-controls:

b.1. Enabling a vehicle to move within 10 m of a predetermined point in the water column;

b.2. Maintaining the position of the vehicle within 10 m of a predetermined point in the water column; *or*

b.3. Maintaining the position of the vehicle within 10 m while following a cable on or under the seabed;

c. Fiber optic hull penetrators or connectors;

d. Underwater vision systems, as follows:

d.1. Television systems and television cameras, as follows:

d.1.a. Television systems (comprising camera, monitoring and signal transmission equipment) having a limiting resolution when measured in air of more than 800 lines and specially designed or modified for remote operation with a submersible vehicle;

d.1.b. Underwater television cameras having a limiting resolution when measured in air of more than 1,100 lines;

d.1.c. Low light level television cameras specially designed or modified for underwater use containing all of the following:

d.1.c.1. Image intensifier tubes controlled by 6A002.a.2.a; *and*

d.1.c.2. More than 150,000 "active pixels" per solid state area array;

Technical Note: Limiting resolution in television is a measure of horizontal resolution usually expressed in terms of the maximum number of lines per picture height discriminated on a test chart, using IEEE Standard 208/1960 or any equivalent standard.

d.2. Systems, specially designed or modified for remote operation with an underwater vehicle, employing techniques to minimize the effects of back scatter, including range-gated illuminators or "laser" systems;

e. Photographic still cameras specially designed or modified for underwater use below 150 m having a film format of 35 mm or larger, and having any of the following:

e.1. Annotation of the film with data provided by a source external to the camera;

e.2. Automatic back focal distance correction; *or*

e.3. Automatic compensation control specially designed to permit an underwater camera housing to be usable at depths exceeding 1,000 m;

f. Electronic imaging systems, specially designed or modified for underwater use, capable of storing digitally more than 50 exposed images;

Note: 8A002.f does not control digital cameras specially designed for consumer purposes, other than those employing electronic image multiplication techniques.

g. Light systems, as follows, specially designed or modified for underwater use:

g.1. Stroboscopic light systems capable of a light output energy of more than 300 J per flash and a flash rate of more than 5 flashes per second;

g.2. Argon arc light systems specially designed for use below 1,000 m;

h. "Robots" specially designed for underwater use, controlled by using a dedicated computer, having any of the following:

h.1. Systems that control the "robot" using information from sensors which measure force or torque applied to an external object, distance to an external object, or tactile sense between the "robot" and an external object; *or*

h.2. The ability to exert a force of 250 N or more or a torque of 250 Nm or more and using titanium based alloys or "fibrous or filamentary" "composite" materials in their structural members;

i. Remotely controlled articulated manipulators specially designed or modified for use with submersible vehicles, having any of the following:

i.1. Systems which control the manipulator using the information from sensors which measure the torque or force applied to an external object, or tactile sense between the manipulator and an external object; *or*

i.2. Controlled by proportional master-slave techniques or by using a dedicated computer, and having 5 degrees of freedom of movement or more;

Note: Only functions having proportional control using positional feedback or by using a dedicated computer are counted when determining the number of degrees of freedom of movement.

j. Air independent power systems, specially designed for underwater use, as follows:

j.1. Brayton or Rankine cycle engine air independent power systems having any of the following:

j.1.a. Chemical scrubber or absorber systems specially designed to remove carbon dioxide, carbon monoxide and particulates from recirculated engine exhaust;

j.1.b. Systems specially designed to use a monoatomic gas;

j.1.c. Devices or enclosures specially designed for underwater noise reduction in frequencies below 10 kHz, or special mounting devices for shock mitigation; *or*

j.1.d. Systems specially designed:

j.1.d.1. To pressurize the products of reaction or for fuel reformation;

j.1.d.2. To store the products of the reaction; *and*

j.1.d.3. To discharge the products of the reaction against a pressure of 100 kPa or more;

j.2. Diesel cycle engine air independent systems, having all of the following:

j.2.a. Chemical scrubber or absorber systems specially designed to remove carbon dioxide, carbon monoxide and particulates from recirculated engine exhaust;

j.2.b. Systems specially designed to use a monoatomic gas;

j.2.c. Devices or enclosures specially designed for underwater noise reduction in frequencies below 10 kHz or special mounting devices for shock mitigation; *and*

j.2.d. Specially designed exhaust systems that do not exhaust continuously the products of combustion;

j.3. Fuel cell air independent power systems with an output exceeding 2 kW having any of the following:

j.3.a. Devices or enclosures specially designed for underwater noise reduction in frequencies below 10 kHz or special mounting devices for shock mitigation; *or*

j.3.b. Systems specially designed:

j.3.b.1. To pressurize the products of reaction or for fuel reformation;

j.3.b.2. To store the products of the reaction; *and*

j.3.b.3. To discharge the products of the reaction against a pressure of 100 kPa or more;

j.4. Stirling cycle engine air independent power systems, having all of the following:

j.4.a. Devices or enclosures specially designed for underwater noise reduction in frequencies below 10 kHz or special mounting devices for shock mitigation; *and*

j.4.b. Specially designed exhaust systems which discharge the products of combustion against a pressure of 100 kPa or more;

k. Skirts, seals and fingers, having any of the following:

k.1. Designed for cushion pressures of 3,830 Pa or more, operating in a significant wave height of 1.25 m (Sea State 3) or more and specially designed for surface effect vehicles (fully skirted variety) controlled by 8A001.f; *or*

k.2. Designed for cushion pressures of 6,224 Pa or more, operating in a significant wave height of 3.25 m (Sea State 5) or more and specially designed for surface effect vehicles (rigid sidewalls) controlled by 8A001.g;

l. Lift fans rated at more than 400 kW specially designed for surface effect vehicles controlled by 8A001.f or 8A001.g;

m. Fully submerged subcavitating or supercavitating hydrofoils specially designed for vessels controlled by 8A001.h;

n. Active systems specially designed or modified to control automatically the sea-induced motion of vehicles or vessels controlled by 8A001.f, 8A001.g, 8A001.h or 8A001.i;

o. Propellers, power transmission systems, power generation systems and noise reduction systems, as follows:

o.1. Water-screw propeller or power transmission systems, as follows, specially designed for surface effect vehicles (fully skirted or rigid sidewall variety), hydrofoils or small waterplane area vessels controlled by 8A001.f, 8A001.g, .8A001.h or 8A001.i:

o.1.a. Supercavitating, super-ventilated, partially-submerged or surface piercing propellers rated at more than 7.5 MW;

o.1.b. Contrarotating propeller systems rated at more than 15 MW;

o.1.c. Systems employing pre-swirl or post-swirl techniques for smoothing the flow into a propeller;

o.1.d. Light-weight, high capacity (K factor exceeding 300) reduction gearing;

o.1.e. Power transmission shaft systems, incorporating "composite" material components, capable of transmitting more than 1 MW;

o.2. Water-screw propeller, power generation systems or transmission systems designed for use on vessels, as follows:

o.2.a. Controllable-pitch propellers and hub assemblies rated at more than 30 MW;

o.2.b. Internally liquid-cooled electric propulsion engines with a power output exceeding 2.5 MW;

o.2.c. "Superconductive" propulsion engines, or permanent magnet electric propulsion engines, with a power output exceeding 0.1 MW;

o.2.d. Power transmission shaft systems, incorporating "composite" material components, capable of transmitting more than 2 MW;

o.2.e. Ventilated or base-ventilated propeller systems rated at more than 2.5 MW;

o.3. Noise reduction systems designed for use on vessels of 1,000 tons displacement or more, as follows:

o.3.a. Systems that attenuate underwater noise at frequencies below 500 Hz and consist of compound acoustic mounts for the acoustic isolation of diesel engines, diesel

generator sets, gas turbines, gas turbine generator sets, propulsion motors or propulsion reduction gears, specially designed for sound or vibration isolation, having an intermediate mass exceeding 30% of the equipment to be mounted;

o.3.b. Active noise reduction or cancellation systems, or magnetic bearings, specially designed for power transmission systems, and incorporating electronic control systems capable of actively reducing equipment vibration by the generation of anti-noise or anti-vibration signals directly to the source;

p. Pumpjet propulsion systems having a power output exceeding 2.5 MW using divergent nozzle and flow conditioning vane techniques to improve propulsive efficiency or reduce propulsion-generated underwater-radiated noise.

q. Self-contained, closed or semi-closed circuit (rebreathing) diving and underwater swimming apparatus.

Note: 8A002.q does not control an individual apparatus for personal use when accompanying its user.

■ 33. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment, Export Control Classification Number (ECCN) 9A001 is amended by revising the "unit" and "items" paragraphs in the List of Items Controlled section, to read as follows:

9A001 Aero gas turbine engines incorporating any of the "technologies" controlled by 9E003.a, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Number

Related Controls: * * *

Related Definitions: * * *

Items:

a. Incorporating any of the technologies controlled by 9E003.a.; *or*

Note: 9A001.a. does not control aero gas turbine engines which meet all of the following:

1. Certified by the civil aviation authority in a country listed in Supplement No. 1 to Part 743; *and*

2. Intended to power non-military manned aircraft for which one of the following has been issued by a Participating State listed in Supplement No. 1 to Part 743 for the aircraft with this specific engine type.

a. A civil Type Certificate; *or*

b. An equivalent document recognized by the International Civil Aviation Organization (ICAO).

b. Designed to power an aircraft designed to cruise at Mach 1 or higher for more than 30 minutes.

■ 34. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment, Export Control Classification Number (ECCN) 9A012 is amended by revising the "heading;" and the "related controls" and the "items" paragraphs in the List of Items Controlled section, to read as follows:

9A012 Non-military "unmanned aerial vehicles," ("UAVs"), associated systems, equipment and components as follows. (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: See the U.S. Munitions List Category VIII (22 CFR Part 121). Also see section 744.3 of the EAR.

Related Definitions: * * *

Items:

a. "UAVs" having any of the following:

a.1. An autonomous flight control and navigation capability (e.g., an autopilot with an Inertial Navigation System); *or*

a.2. Capability of controlled flight out of the direct visual range involving a human operator (e.g., televisual remote control).

b. Associated systems, equipment and components as follows:

b.1. Equipment specially designed for remotely controlling the "UAVs" controlled by 9A012.a.;

b.2. Guidance or control systems, other than those controlled in Category 7, specially designed for integration into "UAVs" controlled by 9A012.a.;

b.3. Equipment and components specially designed to convert a manned "aircraft" to a "UAV" controlled by 9A012.a.

Note: 9A012 does not control model aircraft.

■ 35. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment, Export Control Classification Number (ECCN) 9B010 is added following ECCN 9B009, to read as follows:

9B010 Equipment specially designed for the production of "UAVs" and associated systems, equipment and components controlled by 9A012.

License Requirements

Reason for Control: NS, AT

Control(s)	Country chart
NS applies to entire entry ...	NS Column 1.
AT applies to entire entry	AT Column 1.

License Exceptions

LVS: N/A

GBS: N/A

CIV: N/A

List of Items Controlled

Unit: Equipment in number; parts and accessories in $ value

Related Controls: N/A

Related Definitions: N/A

Items:

The list of items controlled is contained in the ECCN heading.

■ 36. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment, Export Control Classification Number (ECCN) 9D001 is amended by revising the License Requirement section, to read as follows:

9D001 "Software" specially designed or modified for the "development" of equipment or "technology" controlled by 9A (except 9A018, 9A990 or 9A991), 9B (except 9B990 or 9B991) or 9E003.

License Requirements

Reason for Control: NS, MT, AT

Control(s)	Country chart
NS applies to "software" for items controlled by 9A001 to 9A003, 9A012, 9B001 to 9B010, 9E003.	NS Column 1.
MT applies to "software" for equipment controlled by 9A106.a and .b, or 9B116 for MT reasons.	MT Column 1.
AT applies to entire entry	AT Column 1.

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

* * * * *

■ 37. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment, Export Control Classification Number (ECCN) 9D002 is amended by revising the License Requirement section, to read as follows:

9D002 "Software" specially designed or modified for the "production" of equipment controlled by 9A (except 9A018, 9A990, or 9A991) or 9B (except 9B990 or 9B991).

License Requirements

Reason for Control: NS, MT, AT

Control(s)	Country chart
NS applies to "software" for equipment controlled by 9A001 to 9A003, 9A012, 9B001 to 9B010, or 9E003.	NS Column 1.
MT applies to "software" for equipment controlled by 9B116 for MT reasons.	MT Column 1.
AT applies to entire entry	AT Column 1.

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

* * * * *

■ 38. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment, Export Control Classification Number (ECCN) 9D004 is amended by revising the "items" paragraph in the List of Items Controlled section, to read as follows:

9D004 Other "software", as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. 2D or 3D viscous "software" validated with wind tunnel or flight test data required for detailed engine flow modelling;

b. "Software" for testing aero gas turbine engines, assemblies or components, specially designed to collect, reduce and analyze data in real time, and capable of feedback control, including the dynamic adjustment of test articles or test conditions, as the test is in progress;

c. "Software" specially designed to control directional solidification or single crystal casting;

d. "Software" in "source code", "object code" or machine code required for the "use" of active compensating systems for rotor blade tip clearance control.

Note: 9D004.d does not control "software" embedded in uncontrolled equipment or required for maintenance activities associated with the calibration or repair or updates to the active compensating clearance control system.

e. "Software" specially designed or modified for the "use" of "UAVs" and associated systems, equipment and components controlled by 9A012.

■ 39. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment, Export Control Classification Number (ECCN) 9E001 is amended by revising the Heading and the License Requirement section, to read as follows:

9E001 "Technology" according to the General Technology Note for the "development" of equipment or "software" controlled by 9A001.c, 9A004 to 9A012, 9B (except 9B990 or 9B991), or 9D (except 9D990 or 9D991).

License Requirements

Reason for Control: NS, MT, AT

Control(s)	*Country chart*
NS applies to "technology" for items controlled by 9A001.c, 9A012, 9B001 to 9B010, 9D001 to 9D004 for NS reasons.	NS Column 1.
MT applies to "technology" for items controlled by 9B001, 9B002, 9B003, 9B004, 9B005, 9B007, 9B105, 9B106, 9B116, 9B117, 9D001, 9D002, 9D003, and 9D004 for MT reasons.	MT Column 1.
AT applies to entire entry	AT Column 1.

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

* * * * *

■ 40. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment, Export Control Classification Number (ECCN) 9E003 is amended by revising the items paragraph of the List of Items Controlled section, to read as follows:

9E003 Other "technology", as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. "Technology" "required" for the "development", "production" of any of the following gas turbine engine components or systems:

a.1. Gas turbine blades, vanes or tip shrouds made from directionally solidified (DS) or single crystal (SC) alloys having (in the 001 Miller Index Direction) a stress-rupture life exceeding 400 hours at 1,273 K (1,000 °C) at a stress of 200 MPa, based on the average property values;

a.2. Multiple domed combustors operating at average burner outlet temperatures exceeding 1,813 K (1,540 °C) or combustors incorporating thermally decoupled combustion liners, non-metallic liners or non-metallic shells;

a.3. Components manufactured from any of the following:

a.3.a. Organic "composite" materials designed to operate above 588 K (315 °C);

a.3.b. Metal "matrix" "composite", ceramic "matrix", intermetallic or intermetallic reinforced materials controlled by 1C007; *or*

a.3.c. "Composite" material controlled by 1C010 and manufactured with resins controlled by 1C008.

a.4. Uncooled turbine blades, vanes, tip-shrouds or other components designed to operate at gas path temperatures of 1,323 K (1,050 °C) or more;

a.5. Cooled turbine blades, vanes or tip-shrouds, other than those described in 9E003.a.1, exposed to gas path temperatures of 1,643 K (1,370 °C) or more;

a.6. Airfoil-to-disk blade combinations using solid state joining;

a.7. Gas turbine engine components using "diffusion bonding" "technology" controlled by 2E003.b;

a.8. Damage tolerant gas turbine engine rotating components using powder metallurgy materials controlled by 1C002.b;

a.9. Full authority digital electronic engine control (FADEC) for gas turbine and combined cycle engines and their related diagnostic components, sensors and specially designed components;

a.10. Adjustable flow path geometry and associated control systems for:

a.10.a. Gas generator turbines;

a.10.b. Fan or power turbines;

a.10.c. Propelling nozzles; *or*

Note 1: Adjustable flow path geometry and associated control systems in 9E003.a.10 do not include inlet guide vanes, variable pitch fans, variable stators or bleed valves for compressors.

Note 2: 9E003.a.10 does not control "development" or "production" "technology" for adjustable flow path geometry for reverse thrust.

a.11. Hollow fan blades;

b. "Technology" "required" for the "development" or "production" of any of the following:

b.1. Wind tunnel aero-models equipped with non-intrusive sensors capable of transmitting data from the sensors to the data acquisition system; *or*

b.2. "Composite" propeller blades or propfans capable of absorbing more than 2,000 kW at flight speeds exceeding Mach 0.55;

c. "Technology" "required" for the "development" or "production" of gas turbine engine components using "laser", water jet, ECM or EDM hole drilling processes to produce holes having any of the following sets of characteristics:

c.1. All of the following:

c.1.a. Depths more than four times their diameter;

c.1.b. Diameters less than 0.76 mm; *and*

c.1.c. Incidence angles equal to or less than 25 °; *or*

c.2. All of the following:

c.2.a. Depths more than five times their diameter;

c.2.b. Diameters less than 0.4 mm; *and*

c.2.c. Incidence angles of more than 25 °;

Technical Note: For the purposes of 9E003.c, incidence angle is measured from a plane tangential to the airfoil surface at the point where the hole axis enters the airfoil surface.

d. "Technology" "required" for the "development" or "production" of helicopter power transfer systems or tilt rotor or tilt wing "aircraft" power transfer systems;

e. "Technology" for the "development" or "production" of reciprocating diesel engine ground vehicle propulsion systems having all of the following:

e.1. A box volume of 1.2 m^3 or less;

e.2. An overall power output of more than 750 kW based on 80/1269/EEC, ISO 2534 or national equivalents; *and*

e.3. A power density of more than 700 kW/m^3 of box volume;

Technical Note: Box volume: the product of three perpendicular dimensions measured in the following way:

Length: The length of the crankshaft from front flange to flywheel face;

Width: The widest of the following:

a. The outside dimension from valve cover to valve cover;

b. The dimensions of the outside edges of the cylinder heads; or

c. The diameter of the flywheel housing.

Height: The largest of the following:

a. The dimension of the crankshaft centerline to the top plane of the valve cover (or cylinder head) plus twice the stroke; or

b. The diameter of the flywheel housing.

f. "Technology" "required" for the "production" of specially designed components, as follows, for high output diesel engines:

f.1. "Technology" "required" for the "production" of engine systems having all of the following components employing ceramics materials controlled by 1C007:

f.1.a Cylinder liners;

f.1.b. Pistons;

f.1.c. Cylinder heads; *and*

f.1.d. One or more other components (including exhaust ports, turbochargers, valve guides, valve assemblies or insulated fuel injectors);

f.2. "Technology" "required" for the "production" of turbocharger systems, with single-stage compressors having all of the following:

f.2.a. Operating at pressure ratios of 4:1 or higher;

f.2.b. A mass flow in the range from 30 to 130 kg per minute; *and*

f.2.c. Variable flow area capability within the compressor or turbine sections;

f.3. "Technology" "required" for the "production" of fuel injection systems with a specially designed multifuel (e.g., diesel or jet fuel) capability covering a viscosity range from diesel fuel (2.5 cSt at 310.8 K (37.8 °C)) down to gasoline fuel (0.5 cSt at 310.8 K (37.8 °C)), having both of the following:

f.3.a. Injection amount in excess of 230 mm^3 per injection per cylinder; *and*

f.3.b. Specially designed electronic control features for switching governor characteristics automatically depending on fuel property to provide the same torque characteristics by using the appropriate sensors;

g. "Technology" "required" for the development" or "production" of high output diesel engines for solid, gas phase or liquid film (or combinations thereof) cylinder wall lubrication, permitting operation to temperatures exceeding 723 K (450 °C), measured on the cylinder wall at the top limit of travel of the top ring of the piston.

h. "Technology" not otherwise controlled in 9E003.a.1 through a.10 and currently used in the "development", "production", or overhaul of hot section parts and components of civil derivatives of military engines controlled on the U.S. Munitions List.

Dated: August 28, 2006.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 06–7385 Filed 9–6–06 8:45 am]

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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html.* Some laws may not yet be available.

H.R. 4646/P.L. 109–273

To designate the facility of the United States Postal Service located at 7320 Reseda Boulevard in Reseda, California, as the "Coach John Wooden Post Office Building". (Aug. 17, 2006; 120 Stat. 773)

H.R. 4811/P.L. 109–274

To designate the facility of the United States Postal Service located at 215 West Industrial Park Road in Harrison, Arkansas, as the "John Paul Hammerschmidt Post Office Building". (Aug. 17, 2006; 120 Stat. 774)

H.R. 4962/P.L. 109–275

To designate the facility of the United States Postal Service located at 100 Pitcher Street in Utica, New York, as the "Captain George A. Wood Post Office Building". (Aug. 17, 2006; 120 Stat. 775)

H.R. 5104/P.L. 109–276

To designate the facility of the United States Postal Service located at 1750 16th Street South in St. Petersburg, Florida, as the "Morris W. Milton Post Office". (Aug. 17, 2006; 120 Stat. 776)

H.R. 5107/P.L. 109–277

To designate the facility of the United States Postal Service located at 1400 West Jordan Street in Pensacola, Florida, as the "Earl D. Hutto Post Office Building". (Aug. 17, 2006; 120 Stat. 777)

H.R. 5169/P.L. 109–278

To designate the facility of the United States Postal Service located at 1310 Highway 64 NW. in Ramsey, Indiana, as the "Wilfred Edward 'Cousin Willie' Sieg, Sr. Post Office". (Aug. 17, 2006; 120 Stat. 778)

H.R. 5540/P.L. 109–279

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H.R. 4/P.L. 109–280

Pension Protection Act of 2006 (Aug. 17, 2006; 120 Stat. 780)

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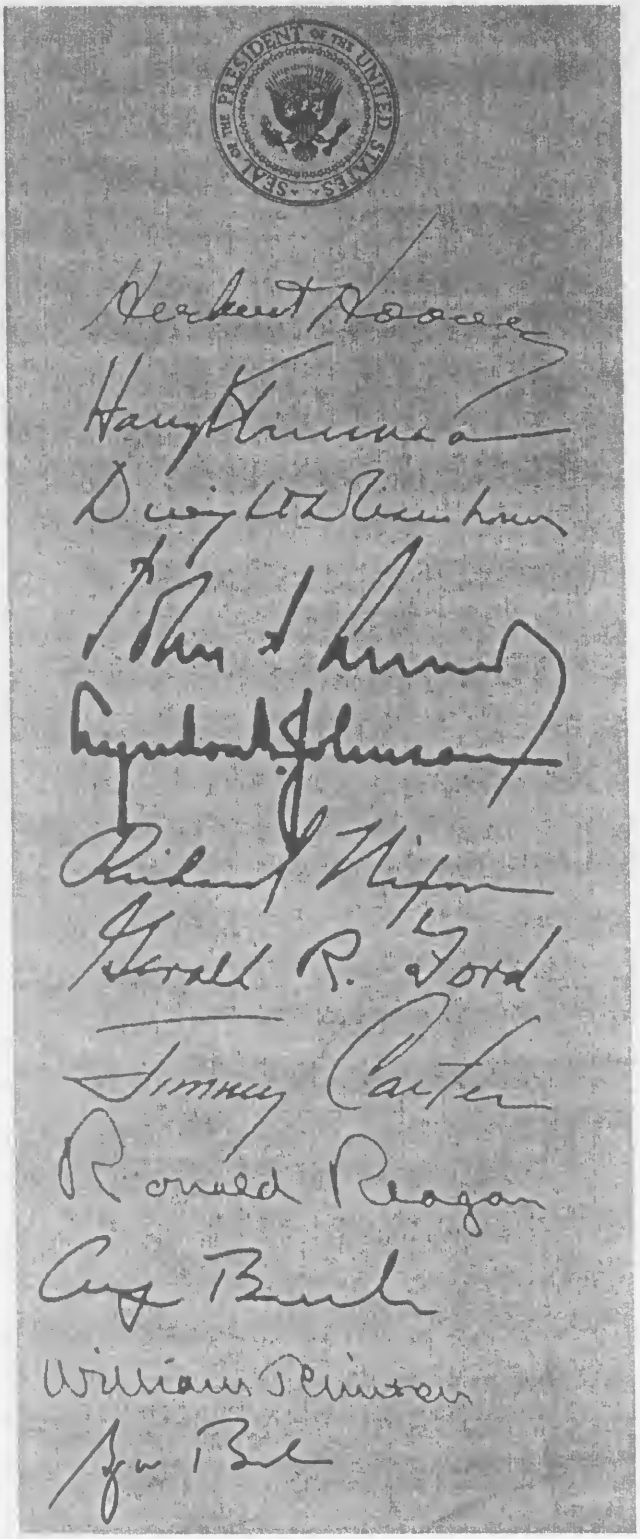

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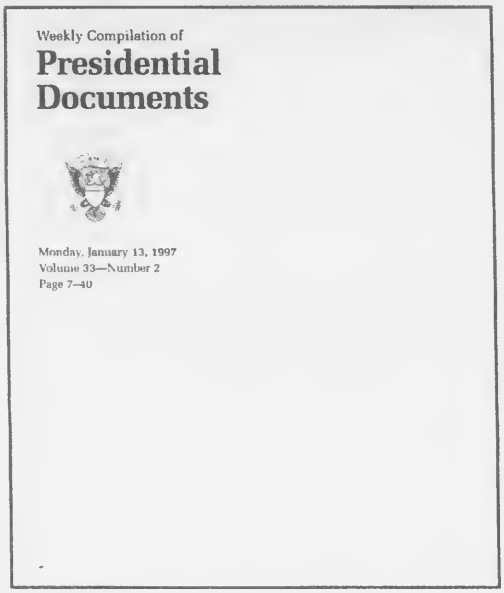

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