3–17–09 Tuesday
Vol. 74 No. 50 Mar. 17, 2009

Pages 11275–11460

Federal Register

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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, March 17, 2009
9:00 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 925 and 944

[Doc. No. AMS–FV–08–0106; FV09–925–1 IFR]

Grapes Grown in a Designated Area of Southeastern California and Imported Table Grapes; Relaxation of Handling Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule relaxes the handling requirements prescribed under the California table grape marketing order (order) and the table grape import regulation. The order regulates the handling of table grapes grown in a designated area of southeastern California and is administered locally by the California Desert Grape Administrative Committee (committee). The import regulation is authorized under section 8e of the Agricultural Marketing Agreement Act of 1937 and regulates the importation of table grapes into the United States. This rule relaxes the one-quarter pound minimum bunch size requirement for the 2009 season for grapes packed in containers holding 2 pounds net weight or less. Under the relaxation, up to 20 percent of the weight of such containers may consist of single, unattached stems or clusters of at least five berries each. This action provides California desert grape handlers and importers the flexibility to respond to a marketing opportunity on a test basis for one season to meet consumer needs.

DATES: Effective March 20, 2009; comments received by May 18, 2009 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Jennifer Garcia, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or e-mail: *Jennifer.Garcia@ams.usda.gov* or *Kurt.Kimmel@ams.usda.gov.*

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@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 925, as amended (7 CFR part 925), regulating the handling of grapes grown in a designated area of southeastern California, 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.''

This rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including table grapes, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. 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.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

This rule relaxes the minimum bunch size requirement for the 2009 season for grapes packed in containers holding 2 pounds net weight or less. Under the relaxation, up to 20 percent of the weight of such containers may consist of single clusters weighing less than one-quarter pound, but with at least five berries each. This action provides California desert grape handlers and importers the flexibility to respond to a marketing opportunity on a test basis for one season to meet consumer needs. The committee met on November 14, 2008, and unanimously recommended the change for California desert grapes. The change in the import regulation is required under section 8e of the Act.

Section 925.52(a)(1) of the order provides authority to regulate the

handling of any grade, size, quality, maturity, or pack of any and all varieties of grapes during the season. Section 925.53 provides authority for the committee to recommend to USDA changes to regulations issued pursuant to § 925.52. Section 925.55 specifies that when grapes are regulated pursuant to § 925.52, such grapes must be inspected by the Federal or Federal-State inspection service to ensure they meet applicable requirements.

Section 925.304(a) of the order's rules and regulations requires grapes to meet the minimum grade requirements of U.S. No. 1 Table, or U.S. No. 1 Institutional, or to meet all the requirements of U.S. No. 1 Institutional, except that a tolerance of 33 percent is provided for off-size bunches. The requirements for the U.S. No. 1 Table and U.S. No. 1 Institutional grades are set forth in the United States Standards for Grades of Table Grapes (European or Vinifera Type) (7 CFR 51.880 through 51.914) (Standards). The regulatory period runs from April 10 through July 10 each year.

Currently, U.S. No. 1 Table grade grapes must meet a minimum bunch size requirement of one-quarter pound. Recently, there has been interest in packing grapes in individual consumer packages known as clamshells. These containers, used most commonly to pack strawberries, are made of a clear, rigid plastic and typically hold a half pound or a pound of fruit. Some retailers prefer these containers because they are of the same net weight, and can be scanned at check-out. This is particularly convenient for retailers that do not have facilities for weighing produce, such as convenience stores and fast food outlets. Some consumers also prefer the convenience of prepackaged individual portions of fruit.

To meet changing market requirements, California grape handlers would like to be able to pack clamshells containing 2 pounds net weight or less. However, current bunch size requirements make it difficult. Grape bunches normally range in weight from one-quarter pound to 3 pounds. Portions of bunches, weighing less than one-quarter pound, would have to be used to fill the new packages to the weights desired by buyers.

Thus, the committee unanimously recommended relaxing the one-quarter pound minimum bunch size requirement for the 2009 season for U.S. No. 1 Table grade grapes packed in clamshells containing 2 pounds net weight or less. Under the relaxation, up to 20 percent of the weight of such containers may consist of single clusters weighing less than one-quarter pound, but with at least five berries each. This change will provide handlers with the flexibility to respond to a marketing opportunity on a test basis for one season to meet consumer needs. Section 925.304(a) is modified accordingly.

Under section 8e of the Act, minimum grade, size, quality, and maturity requirements for table grapes imported into the United States are established under Table Grape Import Regulation 4 (7 CFR 944.503) (import regulation). Section 944.503(a)(1) specifies the minimum bunch size requirement for U.S. No. 1 Table grade grapes as set forth in the Standards. The change to the order's minimum bunch size requirement for the 2009 season requires a corresponding change to the minimum bunch size requirement for imported table grapes. Similar to the domestic industry, this change will allow importers the flexibility to respond to a marketing opportunity on a test basis for one season to meet consumer needs. Section 944.503(a)(1) is revised accordingly.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial 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.

There are approximately 14 handlers of southeastern California grapes who are subject to regulation under the order and about 50 grape producers in the production area. In addition, there are approximately 123 importers of grapes. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000 and small agricultural producers are defined as those whose annual receipts are less than $750,000. Nine of the 14 handlers subject to regulation have annual grape sales of less than $7,000,000. Based on data from the National Agricultural Statistics Service and the committee, the average crop value for 2008 is about $53,040,000. Dividing this figure by the number of producers (50) yields an average annual producer revenue estimate of about $1,060,800, which is above the SBA threshold of $750,000. Based on the foregoing, it may be concluded that a majority of grape handlers and none of the producers may be classified as small entities. The average importer receives $2.8 million in revenue from the sale of grapes. Therefore, it may be concluded that the majority of importers may be classified as small entities.

This rule revises § 925.304(a) of the rules and regulations of the California desert grape order and § 944.503(a)(1) of the table grape import regulation. This rule relaxes the one-quarter pound minimum bunch size requirement for the 2009 season for U.S. No. 1 Table grade grapes packed in small consumer packages containing 2 pounds net weight or less. Under the relaxation, up to 20 percent of the weight of each clamshell container may consist of single clusters weighing less than one-quarter pound, but with at least five berries each. Authority for the change to the California desert grape order is provided in §§ 925.52(a)(1) and 925.53. Authority for the change to the table grape import regulation is provided in section 8e of the Act.

Regarding the impact of this rule on affected entities, this rule provides both California desert grape handlers and importers the flexibility to respond to a marketing opportunity on a test basis for one season to meet consumer needs. Handlers and importers will be able to provide buyers in the retail sector more packaging choices. The relaxation may result in increased shipments of consumer-sized grape packs, which would have a positive impact on producers, handlers, and importers.

There is general agreement in the industry for the need to relax the minimum bunch size requirement for grapes packed in clamshells to allow for more packaging options. One suggestion was to relax the minimum bunch size requirement for U.S. No. 1 Table grade grapes packed in clamshells containing net weights of 2, 3, and 4 pounds. The committee discussed this alternative and decided that there is not a problem with clamshells containing net weights of 3 and 4 pounds meeting the minimum requirements at this time. Ultimately, the committee unanimously agreed that the relaxation for grapes packed in clamshells containing 2 pounds net weight or less was appropriate as a test for one season.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide

increased opportunities for citizen access to Government information and services, and for other purposes.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large grape handlers or importers. 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, 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 grape industry and all interested persons were invited to attend the meeting and participate in committee deliberations. Like all committee meetings, the November 14, 2008, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Also, the World Trade Organization, the Chilean Technical Barriers to Trade inquiry point for notifications under the U.S-Chile Free Trade Agreement, the embassies of Argentina, Brazil, Canada, Chile, Italy, Mexico, Peru, and South Africa, and known grape importers were notified of this action.

Finally, interested persons are invited to submit comments on this rule, including the regulatory and informational impacts of this action on small businesses.

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/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on relaxing the handling requirements currently prescribed under the marketing order for grapes grown in southeastern California and for grapes imported into the United States. Any comments received will be considered prior to finalization of this rule.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this rule.

After consideration of all relevant material presented, including the committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This action relaxes the handling requirements currently in effect for grapes grown in a designated area of southeastern California and for grapes imported into the United States for the 2009 season; (2) California desert grape handlers are aware of this action which was unanimously recommended by the committee at a public meeting; (3) the shipping season begins on April 10, 2009, and handlers and importers need sufficient time to prepare for the upcoming season; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects

7 CFR Part 925

Grapes, Marketing agreements and orders, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

■ For the reasons set forth in the preamble, 7 CFR parts 925 and 944 are amended as follows:

■ 1. The authority citation for 7 CFR parts 925 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

§ 925.304 [Amended]

■ 2. Section 925.304 is amended by revising paragraph (a) introductory text to read as follows:

§ 925.304 California Desert Grape Regulation 6.

* * * * *

(a) *Grade, size, and maturity.* Except as provided in paragraphs (a)(1) and (a)(2) of this section, such grapes shall meet the minimum grade and size requirements of U.S. No. 1 Table, as set forth in the United States Standards for Grades of Table Grapes (European or Vinifera Type 7 CFR 51.880 through 51.914), or shall meet all the requirements of U.S. No. 1 Institutional with the exception of the tolerance percentage for bunch size. Such tolerance shall be 33 percent instead of 4 percent as is required to meet U.S. No. 1 Institutional grade. Grapes meeting these quality requirements may be marked ''DGAC No. 1 Institutional'' but shall not be marked ''Institutional Pack.'' In addition, during the period April 10 through July 10, 2009, U.S. No. 1 Table grade grapes may be packed in individual consumer packages containing 2 pounds net weight or less: *Provided*, That not more than 20 percent of the weight of such containers may consist of single clusters weighing less than one-quarter pound, but with at least five berries each.

* * * * *

PART 944—FRUITS; IMPORT REQUIREMENTS

■ 3. In § 944.503, paragraph (a)(1) introductory text is revised to read as follows:

§ 944.503 Table Grape Import Regulation 4.

(a)(1) Pursuant to section 8e of the Act and Part 944—Fruits, Import Regulations, the importation into the United States of any variety of Vinifera species table grapes, except Emperor, Calmeria, Almeria, and Ribier varieties, is prohibited unless such grapes meet the minimum grade and size requirements specified in 7 CFR 51.884 for U.S. No. 1 Table, as set forth in the United States Standards for Grades of Table Grapes (European or Vinifera Type, 7 CFR 51.880 through 51.914), or shall meet all the requirements of U.S. No. 1 Institutional with the exception of the tolerance for bunch size. Such tolerance shall be 33 percent instead of 4 percent as is required to meet U.S. No. 1 Institutional grade. Grapes meeting these quality requirements shall not be marked ''Institutional Pack'', but may be marked ''DGAC No. 1 Institutional.'' In addition, during the period April 10 through July 10, 2009, U.S. No. 1 Table grade grapes may be packed in individual consumer packages containing 2 pounds net weight or less: *Provided,* That not more than 20 percent of the weight of such containers may consist of single clusters weighing less than one-quarter pound, but with at least five berries each.

* * * * *

Dated: March 12, 2009.

David R. Shipman,

Acting Administrator.

[FR Doc. E9–5731 Filed 3–16–09; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 97

[Docket No. 30657; Amdt. No. 3313]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective March 17, 2009. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 17, 2009.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs are available online free of charge. Visit nfdc.faa.gov to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on March 6, 2009.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs.

FDC date	State	City	Airport	FDC No.	Subject
02/20/09	SC	NEWBERRY	NEWBERRY COUNTY	9/6480	NDB RWY 22, AMDT 6.
02/23/09	MD	FREDERICK	FREDERICK MUNI	9/6582	ILS OR LOC RWY 23, AMDT 5B.
02/27/09	NY	BATAVIA	GENESEE COUNTY	9/7308	ILS OR LOC RWY 28, AMDT 6.
03/03/09	ID	CALDWELL	CALDWELL INDUSTRIAL	9/7641	NDB RWY 30, AMDT 1.
03/03/09	ID	CALDWELL	CALDWELL INDUSTRIAL	9/7642	RNAV (GPS) RWY 30, AMDT 1.
03/03/09	ID	CALDWELL	CALDWELL INDUSTRIAL	9/7643	RNAV (GPS) RWY 12, AMDT 1.
03/03/09	CA	MODESTO	MODESTO CITY-CO-HARRY SHAM FLD.	9/7694	ILS OR LOC/DME RWY 28R, AMDT 14.
03/03/09	KS	WICHITA	BEECH FACTORY	9/7696	VOR/DME RNAV RWY 36, ORIG.
03/03/09	KS	WICHITA	BEECH FACTORY	9/7697	VOR/DME RNAV RWY 18, ORIG.

[FR Doc. E9–5661 Filed 3–16–09; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD–2008–HA–0029; 0720–AB22]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)/TRICARE: Inclusion of TRICARE Retail Pharmacy Program in Federal Procurement of Pharmaceuticals

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: Section 703 of the National Defense Authorization Act for Fiscal Year 2008 (NDAA–08) states with respect to any prescription filled on or after the date of enactment of the NDAA, the TRICARE Retail Pharmacy Program shall be treated as an element of the DoD for purposes of procurement of drugs by Federal agencies under section 8126 of title 38, United States Code (U.S.C.), to the extent necessary to ensure pharmaceuticals paid for by the DoD that are provided by network retail pharmacies under the program to eligible covered beneficiaries are subject to the pricing standards in such section 8126. NDAA–08 was enacted on January 28, 2008. The statute requires implementing regulations. This final rule is to implement section 703 of the NDAA–08.

DATES: *Effective Date:* This final rule is effective May 26, 2009.

FOR FURTHER INFORMATION CONTACT: Rear Admiral Thomas McGinnis, Chief, Pharmacy Operations Directorate, TRICARE Management Activity, telephone 703–681–2890.

SUPPLEMENTARY INFORMATION:

A. Background

Section 703 of the National Defense Authorization Act for Fiscal Year 2008 (NDAA–08) (Pub. L. 110–181) enacted 10 U.S.C. 1074g(f). It provides that with respect to any prescription filled on or after the date of enactment of the NDAA, the TRICARE Retail Pharmacy Program shall be treated as an element of the DoD for purposes of procurement of drugs by Federal agencies under section 8126 of title 38, United States Code (U.S.C.), to the extent necessary to ensure pharmaceuticals paid for by the DoD that are provided by network retail pharmacies under the program to eligible covered beneficiaries are subject to the pricing standards in such section 8126. NDAA–08 was enacted on January 28, 2008. The statute requires implementing regulations.

The Veterans Health Care Act (VHCA) of 1992, codified at 38 U.S.C. 8126, established Federal Ceiling Prices (FCPs) of covered pharmaceuticals (requiring a minimum 24% discount off non-Federal average manufacturing prices—''non-FAMP'') procured by the four designated agencies covered in the Act: Department of Veterans Affairs (VA), DoD, Coast Guard, and the Public Health Service/Indian Health Service. The non-FAMP is the average price paid to the manufacturer by wholesalers (or, if there are insufficient wholesale sales, others who purchase directly from the manufacturer) for drugs distributed to non-federal purchasers, taking into account any cash discounts or similar reductions given to those purchasers. The VA administers the VHCA discount program on behalf of the four specified agencies. The DoD consulted closely with the VA in the development of this final rule and also, consistent with 10 U.S.C. 1073, consulted with the Departments of Health and Human Services and Homeland Security.

The TRICARE Pharmacy Benefits Program operates under the authority of 10 U.S.C. 1074g. It provides outpatient drugs to TRICARE beneficiaries through Military Treatment Facility (MTF) pharmacies, the TRICARE mail order pharmacy program (TMOP), and a TRICARE Retail Pharmacy program consisting of TRICARE Retail Pharmacy Network and retail non-network pharmacies. As implemented, the new statutory requirement will only apply to pharmaceuticals paid for by DoD and provided to eligible beneficiaries through the TRICARE Retail Pharmacy Network. There are approximately 60,000 retail pharmacies in the Retail Pharmacy Network. Section 1074g requires DoD to establish a Uniform Formulary of pharmaceutical agents, selected based on clinical and cost effectiveness, as evaluated by the DoD Pharmacy and Therapeutics (P&T) Committee, reviewed by the Beneficiary Advisory Panel, and decided by the Director, TRICARE Management Activity (TMA). The Uniform Formulary has three tiers: Tier 1 contains generic drugs; Tier 2 brand name Uniform Formulary drugs; and Tier 3 non-Formulary drugs. Drugs in all three tiers are covered by the TRICARE Pharmacy Benefits Program, but cost sharing and other program differences encourage the use of generic drugs and Uniform Formulary brand name drugs.

The TRICARE Retail Pharmacy Network is managed under a single Pharmacy Benefits Manager contract,

linked to the DoD Pharmacy Benefits Office, and enabled by a management information system to verify beneficiary eligibility, check for potential drug interactions, and authorize payment for the pharmaceuticals used to fill the beneficiary's prescription. The management information system also records data on all prescriptions filled through the Retail Pharmacy Network, permitting an accurate accounting of all retail network pharmaceuticals paid for by DoD under the TRICARE Pharmacy Benefits Program. Since the beginning of the Federal Ceiling Price program, outpatient pharmaceuticals provided by DoD through MTF pharmacies have been subject to FCPs, as have those under the TMOP program since it began. Implementation of similar applicability to the TRICARE Retail Pharmacy Network component of the Program is the subject of this final regulation.

B. Provisions of the Proposed Rule

The proposed rule, published for public comment July 25, 2008, proposed to add a new paragraph (q) to 32 CFR 199.21. Paragraph (q)(1) repeated the new statutory requirement. Paragraph (q)(2) provided that an agreement by a manufacturer to honor the FCPs in the Retail Pharmacy Network component of the Pharmacy Benefits Program is a condition of inclusion of a drug on the Uniform Formulary. Further, it stated that a drug not under such an agreement would require preauthorization to be provided through the Retail Pharmacy Network. In addition, it indicated that drugs covered by this requirement are TRICARE Retail Pharmacy Network provided drugs that are covered by the VA's FCP program, except any prescription for which the TRICARE Pharmacy Benefits Program is the second payer. While DoD proposed in this rulemaking to enter into voluntary agreements with manufacturers that would make prescriptions filled on or after the date of enactment of NDAA–08 subject to FCPs, the Department solicited comment regarding any other appropriate and legally permissible implementation approach and/or date from which to begin making prescriptions filled in the Retail Pharmacy Network subject to FCPs. DoD was specifically interested in the legal justification, including under section 703 of NDAA–08, for any alternative implementation approaches and/or dates that commenters may propose.

Proposed paragraph (q)(3) established refund procedures to, in the words of the statute, ''ensure that pharmaceuticals paid for by the DoD that are provided by pharmacies under the program to eligible covered beneficiaries under this section are subject to the pricing standards'' of the FCP program. The refund procedures will, to the extent practicable, incorporate common industry practices for implementing pricing agreements between manufacturers and large pharmacy benefit plan sponsors. Such procedures shall provide the manufacturer at least 70 days from the date of submission by TMA to the manufacturer (initially expected to be on a quarterly basis) of the TRICARE pharmaceutical utilization data needed to calculate the refund before the refund payment is due. The basis of the refund will be the difference between the average non-federal price of the drug sold by the manufacturer to wholesalers, as represented by the most recent annual non-FAMP (reported to VA) and the FCP or, in the discretion of the manufacturer, the difference between FCP and direct commercial contract sales prices specifically attributable to TRICARE paid pharmaceuticals, determined for each applicable National Drug Code (NDC) listing. Further, this paragraph of the proposed rule provided that a refund due under the statute is subject to the overpayment recovery procedures of § 199.11 of the TRICARE regulation.

Finally, proposed paragraph (q)(4) stated that in the case of the failure of a manufacturer of a covered drug to make or honor an agreement to ensure that DoD pays no more than the FCP for covered drugs provided through the TRICARE Retail Pharmacy Network component of the program, the Director, TMA, in addition to other actions referred to in the rule, may take any other action authorized by law.

C. Public Comments

The proposed rule was published in the **Federal Register** July 25, 2008, for a 60-day comment period. DoD received 16 public comments. Most of these were from or on behalf of the pharmaceutical industry. Several were from or on behalf of the retail pharmacy sector. Significant comments are discussed below.

1. Statutory Requirement (Paragraph (q)(1))

a. Statutory Interpretation

Comments: A number of comments by or on behalf of the pharmaceutical industry expressed the view that 10 U.S.C. 1074g(f), which was added by section 703(a) of NDAA–08, does not require that prescriptions filled in the TRICARE Retail Pharmacy Network are subject to Federal Ceiling Prices. Rather, they say, it authorizes DoD to use procedures of the TRICARE Pharmacy Benefits Program to encourage drug manufacturers to enter into agreements to apply FCPs to Retail Pharmacy Network prescriptions. Some commenters said the statute only establishes a general ''goal'' of applying FCPs and that the references in the preamble to the proposed rule to voluntary agreements with manufacturers should be taken to signal that the statute has no effect absent a manufacturer's agreement. On the other hand, commenters representing retail pharmacies strongly supported the interpretation that FCPs now apply equally in all three TRICARE Pharmacy Benefits Program venues.

Response: DoD does not agree with the interpretation of the statute recommended by the pharmaceutical industry representatives. 10 U.S.C 1074g(f) provides:

> (f) *Procurement of pharmaceuticals by TRICARE retail pharmacy program.* With respect to any prescription filled on or after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2008, the TRICARE retail pharmacy program shall be treated as an element of the Department of Defense for purposes of the procurement of drugs by Federal agencies under section 8126 of title 38 to the extent necessary to ensure that pharmaceuticals paid for by the Department of Defense that are provided by pharmacies under the program to eligible covered beneficiaries under this section are subject to the pricing standards in such section 8126.

Setting aside the start date issue, which will be discussed below, DoD interprets the statute as follows. First, DoD interprets the phrase, ''the pricing standards in such section 8126'' to mean Federal Ceiling Prices. This is based on the text of 38 U.S.C. 8126(a) and (b), which provide that ''[e]ach manufacturer of covered drugs shall enter into a master agreement with the Secretary [of Veterans Affairs] under which'' ''with respect to each covered drug of the manufacturer procured by'' the Department of Veterans Affairs, the Department of Defense, the Public Health Service, or the Coast Guard, ''that is purchased under depot contracting systems or listed on the Federal Supply Schedule, the manufacturer has entered into and has in effect a pharmaceutical pricing agreement with the Secretary * * * under which the price charged * * * may not exceed 76 percent of the non-Federal average manufacturer price.'' The end result of the pricing calculations required by section 8126 is referred to as the Federal Ceiling Price.

Second, DoD interprets the phrase ''treated as an element of the Department of Defense for purposes of

the procurement of drugs by Federal agencies under section 8126'' to mean treated the same as a covered drug directly procured by DoD. The phrase does not require that the retail pharmacy actually was involved in a procurement by a Federal agency under section 8126 or that the retail pharmacy was acting as an agent of a Federal agency. An interpretation that would require such an actual procurement by DoD is unsupportable because the words ''shall be treated as'' would be rendered meaningless, as would the entire section since any such actual procurement was undisputedly already covered within section 8126. In addition, DoD interprets this phrase as precluding an interpretation of the statute that would apply FCPs to what the retail pharmacy may be paid by DoD. In referring to the procurement of drugs by Federal agencies under section 8126, the statute is addressing manufacturers' prices, which are the focus of section 8126. Retail pharmacies are specifically excluded from the definition of ''manufacturer'' in 38 U.S.C. 8126(h)(4).

Third, DoD interprets the phrase ''pharmaceuticals paid for by the Department of Defense that are provided by pharmacies under the program to eligible covered beneficiaries under this section'' to mean pharmaceuticals paid for through the TRICARE Retail Pharmacy Program. More specifically, DoD interprets the provision as limited to the TRICARE Retail Pharmacy Network because prescriptions filled by non-network retail pharmacies are not subject to the pre-screening and authorization process incorporated into the information systems referred to in 10 U.S.C. 1074g and relied upon by DoD to document DoD payment for the specific prescriptions covered and because of legislative history on this point, specifically, a Conference Report statement (discussed below).

Fourth, DoD interprets ''any prescription filled'' to mean all prescriptions filled, regardless of whether the drugs are on the TRICARE Uniform Formulary or are non-formulary drugs. Provisions of the rule making a manufacturer's agreement to honor Federal Ceiling Prices in the Retail Pharmacy Network a condition for Uniform Formulary status in no way suggests that the statutory provision has such a limited scope.

Taken together, DoD interprets 10 U.S.C. 1074g(f) to mean that all TRICARE Retail Pharmacy Network prescriptions shall be treated the same as drugs procured directly by DoD for purposes of the Federal Ceiling Price program to the extent necessary to ensure that pharmaceuticals provided under those prescriptions are subject to Federal Ceiling Prices. Stated even more simply, DoD interprets 10 U.S.C. 1074g(f) to mean that all covered drug TRICARE Retail Pharmacy Network prescriptions are subject to Federal Ceiling Prices.

This interpretation is almost a verbatim restatement of the primary statement of legislative history concerning 10 U.S.C. 1074g(f). The Conference Report accompanying the legislation described it as a provision ''that would require that any prescription filled * * * through the TRICARE retail pharmacy network will be covered by the federal pricing limits applicable to covered drugs under section 8126 of title 38, United States Code.'' H. Conf. Rept. 110–477, p. 938. This simplified restatement of the statutory requirement has been added to paragraph (q)(1).

Comment: Some commenters representing the pharmaceutical industry recommended that instead of establishing regulatory requirements for benchmark pricing, DoD should pursue voluntary negotiations with manufacturers to reduce costs. Some commenters said that applying Federal Ceiling Prices in the Retail Pharmacy Program would hurt millions of other Americans because drug companies will raise prices to make up their reduced profits from DoD sales, and that retail refunds will cause DoD to push patients to retail pharmacies where their co-payments are higher. On the other hand, comments from the retail pharmacy sector expressed approval for equalizing ingredient costs across all TRICARE Pharmacy Benefits Program venues.

Response: While there are many policy arguments for and against various potential strategies for reducing the dramatically increasing costs of the TRICARE Pharmacy Program, the issue in this rule making is implementing the statutory requirement of section 703, under which all covered TRICARE Retail Pharmacy Network prescriptions are subject to Federal Ceiling Prices. DoD will continue voluntary negotiations concerning prices, but does not have the authority to agree to prices above Federal Ceiling Prices. It may be noteworthy that over the past 20 years, Congress has enacted and DoD has implemented through regulations (32 CFR 199.14) a long series of payment reforms for TRICARE, including payment limits for acute care hospitals, psychiatric hospitals, hospital outpatient services, partial hospitalization programs, substance abuse treatment programs, ambulatory surgery centers, skilled nursing facilities, residential treatment centers, hospice programs, home health agencies, physicians and other individual health care professionals, durable medical equipment, and military treatment facility and mail order program pharmaceuticals. The last significant segment of the TRICARE program to be covered by payment reform is the $4.5 Billion Retail Pharmacy Network program.

b. Relationship Between 10 U.S.C. 1074g(f) and the Master Agreements Under 38 U.S.C. 8126

Comment: A number of comments from or on behalf of the pharmaceutical industry expressed the view that section 1074g(f) has no relationship to the VA Master Agreements under 38 U.S.C. 8126 and that therefore the final rule would also have no relationship. Some of these commenters also stated that under section 8126(g), their Master Agreement rights and obligations were frozen as of November 4, 1992, and cannot be enlarged by any subsequent enactment, including 10 U.S.C. 1074g(f).

Response: DoD does not agree with this opinion, but has endeavored to construct a rule that could stand on common ground between the view that the Master Agreements encompass the TRICARE Retail Pharmacy Network and the view that they utterly do not. This disagreement has some history. As noted above, section 8126 includes ''depot contracting systems'' within the scope of Federal Ceiling Price coverage. The term ''depot'' is defined in section 8126(h)(3) to include ''a centralized commodity management system through which covered drugs procured by an agency'' are ''delivered directly from the commercial source to the entity using such covered drugs.'' Pharmacy Benefits Program reforms adopted by DoD in response to 10 U.S.C. 1074g included restructured management of the Retail Pharmacy Program, including the establishment of a Retail Pharmacy Network of pharmacies linked to DoD through the Pharmacy Data Transaction Service required by section 1074g(e). This led to: A 2002 determination by the Secretary of Veterans Affairs that the restructuring, when completed, would make drugs provided by the Retail Pharmacy Network subject to Federal Ceiling Prices; a 2004 Dear Manufacturer letter from the Department of Veterans Affairs requiring manufacturers to refund to DoD costs above the FCPs; and a legal challenge in a case called *Coalition for Common Sense in Government Procurement* v. *Secretary of Veterans Affairs*, 464 F. 3d 1306 (Fed.Cir. 2006). In that case, the Federal Circuit Court of

Appeals set aside the VA's action on the grounds that it should have been taken through notice and comment rulemaking; the Court did not reach the merits of the Secretary's interpretation of the ''depot'' definition as covering the TRICARE Retail Pharmacy Network.

Fifteen days after the Court decision, the Conference Report on the National Defense Authorization Act for Fiscal Year 2007 (NDAA–07) explained that the House-Senate Conference Committee considered but did not adopt a Senate-passed provision, which was quite similar to section 703 of NDAA–08, to ''clarify'' the underlying issue of the Secretary's interpretation of section 8126: ''The conferees concluded that there is no need for additional legislation at this time because prescriptions dispensed by the Department of Defense Retail Pharmacy Program qualify for discounted prices under section 8126.'' H. Conf. Rept. 109–702, p. 772. In other words, the conferees on NDAA–07 agreed with the determination of the Secretary of Veterans Affairs. It is a reasonable inference that the comparable conferees for NDAA–08, in again considering a Senate-passed provision, decided to enact into law an affirmation of the determination of the Secretary of Veterans Affairs and the full Congress agreed.

With respect to the section 8126(g) argument, DoD understands the VA view to be that section 8126 already encompassed coverage of a depot contracting system such as the TRICARE Retail Pharmacy Network program, and that therefore it is not limited by section 8126(g), and DoD agrees with that view. Thus, there is a basis to conclude that Congress affirmed the determination of the Secretary of Veterans Affairs that the TRICARE Retail Pharmacy Network program was already covered by 38 U.S.C. 8126, and required that determination to be implemented as of the date of enactment of NDAA–08. This issue, however, remains a matter of controversy. The determination of the Secretary of Veterans Affairs, with which DoD has always strongly agreed, has never been withdrawn, nor has it been further acted upon, and there was no judicial resolution.

Based on this history, DoD decided to propose a rule that would allow the agencies and pharmaceutical companies to ''agree to disagree'' on that issue and seek common ground on a regulation centered on incentives within the TRICARE Pharmacy Benefits Program and encouraging voluntary, separate agreements between manufacturers and DoD, independent of the Master Agreements, under which manufacturers would agree to make TRICARE Retail Pharmacy Network prescriptions subject to Federal Ceiling Prices. That DoD considers these to be voluntary agreements does not indicate that DoD believes there is no legal obligation in the background. It means that, as with most laws, voluntary action consistent with the law is far preferable to reliance on enforcement action. It also means that, if there is voluntary agreement, whatever uncertainties there are about the existence or scope of potential enforcement actions can be set aside as moot. DoD contacts with pharmaceutical companies led DoD to believe that most companies might find this approach acceptable. Therefore, both the proposed and final rule focus primarily on DoD program elements and DoD market share for implementing the requirement that covered TRICARE Retail Pharmacy Network prescriptions are subject to Federal Ceiling Prices. The only reference in the rule to any matter outside the scope of the TRICARE program is the reservation by DoD of rights to pursue as a remedy (paragraph (q)(4)) ''any other action authorized by law.'' The scope of any such other actions is a matter that need not and, because it potentially involves agencies other than DoD, cannot be settled in this rule making.

c. Relationship Between the FCP Statutory Requirement and Other Statutory Requirements of 10 U.S.C. 1074g

Comment: Several commenters addressed the relationship between the new subsection (f) of section 1074g, which established the requirement that covered Retail Pharmacy Network prescriptions shall be subject to FCPs, and other provisions of the statute, such as the requirement (in subsection (a)(2)(A)) that the Uniform Formulary shall assure the availability of pharmaceutical agents in the complete range of therapeutic classes and the requirement (in subsection (a)(2)(D)) that no pharmaceutical agent may be excluded from the Uniform Formulary except upon the recommendation of the Pharmacy and Therapeutics Committee. Some commenters argued that there are limitations on the applicability of FCPs. Several comments from representatives of retail pharmacies expressed agreement with the policy of the statute and the proposed rule in making Retail Pharmacy Network prescriptions subject to FCPs, noting that this would equalize ingredient prices between retail pharmacies and the TRICARE Mail Order Pharmacy program, and thus eliminate any need for TRICARE policies that encourage use of TMOP over retail pharmacies. Another commenter noted a prior statute that referred to ''best business practices of the private sector'' and suggested this limited the applicability of Federal Ceiling Prices.

Response: DoD interprets the interaction of section 1074g(f) and these provisions of 1074g(a) to be that cost-effectiveness determinations of the P&T Committee are now based on both a relative standard and a fixed standard. The relative standard is the cost-effectiveness of the drug relative to other drugs in the class. The fixed standard is that a drug cannot be considered cost effective if its price exceeds the maximum price allowed by law, the FCP. Thus, the P&T Committee will recommend Tier 3 (non-Formulary) status for any drug not covered by a manufacturer's agreement to honor FCPs for Retail Pharmacy Network prescriptions. However, there is a potential conflict with the requirement to ensure that all pharmacy classes are represented on the Uniform Formulary in the event that no drug in a class is covered by a manufacturer's agreement to honor FCPs. To deal with that possibility, even though remote, DoD has added a subparagraph to this part of the final rule to state that the requirement for Tier 2 status to be conditioned on a manufacturer's agreement to honor FCPs for Retail Pharmacy Network prescriptions may, upon the recommendation of the P&T Committee, be waived to ensure that at least one drug in the drug class is included on the Uniform Formulary (Tier 1 or Tier 2). It must be understood, however, that any such waiver does not waive the statutory requirement that Retail Network Pharmacy prescriptions are subject to FCPs, only the usual regulatory requirement of exclusion from the Uniform Formulary of drugs not covered by agreements.

Based on these interpretations of the statute, the TMA will ask manufacturers to sign agreements to honor FCPs in Retail Pharmacy Network prescriptions. On or soon after the effective date of the final rule, separate from the usual practice of individual drug class reviews of both clinical and cost effectiveness, the P&T Committee will determine whether drugs are or are not covered by such agreements. A drug that is on the Uniform Formulary and is covered by such an agreement will be continued on the Uniform Formulary for the time being, pending the next review of the drug class. A drug that is on the Uniform Formulary (Tier 2) but not covered by such an agreement will be recommended for Tier 3, subject to the requirement for maintaining

representation on Tiers 1 or 2 for all drug classes. A drug that is on Tier 3 that is covered by such an agreement will be subject to review at a later time to determine if it should be changed to Tier 2.

Regarding the issue of preserving incentives for use of TMOP, as permitted by 10 U.S.C. 1074g, copayment amounts are currently lower in TMOP than in retail pharmacies for the purpose of encouraging TMOP use. Possible future changes to this are outside the scope of this rule making process. With respect to the comment about the prior statute that referred to ''best business practices of the private sector,'' this reference was in section 703 of the National Defense Authorization Act for Fiscal Year 1999, Public Law 104–261. The reference was in the context of a requirement for DoD to submit a plan to Congress for redesign of the military pharmacy system. This predates the primary statute that now governs the TRICARE Pharmacy Benefits Program, 10 U.S.C. 1074g, as well as the 2008 amendment on Federal Ceiling Prices. Whatever might be associated with the general notion of best business practices of the private sector, it does not limit the applicability of the later enacted statutory specification that all covered TRICARE Retail Pharmacy Network prescriptions are subject to Federal Ceiling Prices.

d. Start Date for FCP Coverage of Prescriptions Filled

Comments: All commenters representing the pharmaceutical industry argued that the final rule should state that only prescriptions filled on or after the effective date of the final rule are subject to FCPs, and that prescriptions filled on or after the effective date of the statute (January 28, 2008) and prior to the effective date of the final rule should not be subject to FCPs. In support of this position, these commenters cited legal precedents generally disfavoring retroactive application of regulations unless there is very clear legal requirement for retroactive application, including *Bowen* v. *Georgetown Univ. Hosp.,* 488 U.S. 204, 208 (1988). They argued that the fact that the statute required regulations to be issued supports the view that implementation of the statute was conditioned on the regulations; the fact that they could not be issued instantaneously, as Congress seemed to expect, does not obviate the need for regulations before the statutory requirement could apply. They further argued that because 10 U.S.C. 1074g(f) does not expressly address refunds, a refund requirement can only be established by regulation and by a contract or agreement, which cannot be retroactive. Also in response to the request in the proposed rule for legal justification, including under section 703 of NDAA–08, for any alternative implementation dates commenters may propose, a number of commenters argued that the statutory phrase, ''[w]ith respect to any prescription filled on or after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2008,'' should be construed as precluding any applicability to prescriptions filled prior to that date, not as requiring applicability as of that date. On the other hand, comments from representatives of retail pharmacies strongly supported the provision of the proposed rule incorporating the statutory date of applicability of FCPs in the retail network of January 28, 2008.

Response: The legal standard applicable to a question regarding impermissible retroactivity of a regulation is well summarized in *National Mining Ass'n* v. *Dept. of Labor,* 292 F.3d 849, 859 (D.C. Cir. 2002):

> The general legal principles governing retroactivity are relatively easy to state, although not as easy to apply. An agency may not promulgate retroactive rules absent express congressional authority. *Bowen* v. *Georgetown Univ. Hosp.,* 488 U.S. 204, 208 (1988). A provision operates retroactively when it ''impairs rights a party possessed when he acted, increases a party's liability for past conduct, or imposes new duties with respect to transactions already completed.'' *Landgraf* v. *USI Film Prods.,* 511 U.S. 244, 280, (1994). In the administrative context, a rule is retroactive if it '''takes away or impairs vested rights acquired under existing law, or creates a new obligation, imposes a new duty, or attaches a new disability in respect to transactions or considerations already past.''' *Nat'l Mining Ass'n* v. *United States Dep't of Interior,* 177 F.3d 1, 8 (D.C. Cir. 1999) (quoting *Ass'n of Accredited Cosmetology Sch.* v. *Alexander,* 979 F.2d 859, 864 (D.C. Cir. 1992)). The critical question is whether a challenged rule establishes an interpretation that ''changes the legal landscape.'' Id. (quoting *Health Ins. Ass'n of Am., Inc.* v. *Shalala,* 23 F.3d 412, 423 (D.C. Cir. 1994)).

The rule does not create any retroactive obligation on drug companies. Paragraph (q)(1) simply restates the statute. The statute applies according to its terms and the regulation cannot modify those terms. The major provision of the regulation that ''changes the legal landscape'' is paragraph (q)(2). It requires an agreement from manufacturers to honor the statute as a condition of DoD Uniform Formulary status and unrestricted availability through the TRICARE Retail Pharmacy Network. This paragraph is prospective; a refusal to agree will not affect a drug's formulary status prior to the effective date of the final rule. If a drug company does not want to maintain formulary status and refuses to sign an agreement to honor the statute, the regulation does not say anything that would affect the legal rights and obligations of the parties—i.e., ''change the legal landscape''—with respect to prescriptions filled between the dates of January 28, 2008, and the effective date of the final rule.

The question of ''retroactivity'' of the regulation should not be confused with the effective date of the statute. The statute commands that ''[w]ith respect to any prescription filled on or after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2008,'' which was January 28, 2008, ''the TRICARE retail pharmacy program shall be treated as an element of the Department of Defense for purposes of the procurement of drugs by Federal agencies under'' 38 U.S.C. 8126 ''to the extent necessary to ensure that pharmaceuticals paid for by the Department of Defense that are provided by pharmacies under the program * * * are subject to the pricing standards in such section 8126.'' The statute changed the legal landscape, and did so prospectively. The fact that the statute also requires implementing regulations does not mean that the statute has no legal effect until implementing regulations are issued. On the contrary, the statute by its express terms requires that all prescriptions filled on or after the date of enactment ''shall'' be treated so as to ''ensure'' that they are subject to Federal Ceiling Prices. The Conference Report accompanying the proposed legislation reinforces that express statutory requirement:

> Inclusion of TRICARE retail pharmacy program in federal procurement of pharmaceuticals (sec. 703)
>
> * * * * *
>
> The Senate amendment contained a provision (sec. 701) that would require that any prescription filled on or after October 1, 2007 through the TRICARE retail pharmacy network will be covered by the federal pricing limits applicable to covered drugs under section 8126 of title 38, United States Code.
>
> The House recedes with an amendment that would change the implementation date from October 1, 2007 to the date of enactment of this Act.

H. Conf. Rept. 110–477, p. 938. The date of enactment is clearly established as the ''implementation date'' of the statutory requirement. The fact that conforming regulatory modifications are also required by section 703(b) does not

alter the fact that the statutory command to apply Federal Ceiling Prices to all covered drugs in Retail Pharmacy Network prescriptions filled on or after January 28, 2008 applies according to its explicit terms.

Therefore, with respect to prescriptions filled on or after January 28, 2008, drug companies had a right to payment at the Federal Ceiling Price and no more. The transaction of pharmaceuticals moving from manufacturer to patient, if not completed through the filling of a prescription before January 28, became subject to a new obligation: the transaction ''shall be treated'' as a DoD purchase under 38 U.S.C. 8126 ''to the extent necessary to ensure'' that the Federal Ceiling Price applies. With respect to the applicability of FCPs. the rule does not change that legal landscape, nor does it add to or subtract from that obligation. Under the statute, with respect to any covered TRICARE Retail Pharmacy Network prescriptions filled on or after January 28, 2008, if a manufacturer received more than the Federal Ceiling Price, the transaction produced an overpayment and an overpayment requires a refund.

The fact of the overpayment is purely a function of the statutory effective date, and has nothing to do with the date the Department of Defense asks for the refund of the overpayment or of the Uniform Formulary status of the drug. Separate from mandating the applicability of Federal Ceiling Prices to all prescriptions filled on or after January 28, the statute also commanded the Secretary of Defense to ''modify the regulations under'' the TRICARE Pharmacy Benefits Program ''to implement the requirements of'' the new subsection 1074g(f). The rule, when it becomes effective, will implement the requirements through means including agreements between manufacturers and DoD. Those agreements will call on manufacturers to honor the statute. Honoring the statute includes refunding any overpayments that accrued on or after January 28. Nothing in the rule and nothing in the agreements will operate to change the legal landscape that was created, effective January 28, by the statute.

Concerning the argument that the ''with respect to any prescription filled on or after the date of the enactment'' clause of the statute should be construed as only precluding any applicability to prescriptions filled prior to that date, not as requiring applicability as of that date, DoD does not believe that is a credible interpretation. Had Congress intended that FCPs would apply only ''with respect to any prescription filled on or after the date of promulgation of regulations under section 703(b) of the National Defense Authorization Act for Fiscal Year 2008,'' Congress would have said that. The words chosen by Congress are quite different and cannot be dismissed as imprecise drafting. Further, as noted above, the legislative history, in the form of the Conference Report, unequivocally refers to the date of enactment of the statute as the ''implementation date'' for ensuring that prescriptions filled through the TRICARE Retail Pharmacy Network shall be subject to Federal Ceiling Prices.

DoD interprets section 703 as precluding any start date for applying FCPs to covered Retail Pharmacy Network prescriptions filled other than the date of enactment, January 28, 2008. The only legal authority DoD has found that would allow it to disregard the overpayment and/or waive the refund is the Federal Debt Collection Act and related statutes. In an effort to find an acceptable resolution, DoD has added to the final rule provisions to address requests for compromise or waiver of overpayment refunds under those authorities. These provisions are discussed below.

Comment: In addition to the legal arguments, a number of commenters advanced several practical arguments and what they considered to be fairness arguments. One was the need to recalculate non-FAMPs if manufacturers' commercial sales into retail distribution between the statutory enactment date and the regulatory effective date have to be reclassified as DoD sales. Another practical problem was that if refunds are required for prescriptions filled throughout 2008, by the time refund demands are made, manufacturers will be forced to review and evaluate stale utilization data to determine the accuracy of the data. Another concern expressed was that companies already accounted for 2008 sales as commercial sales and reported profits based on regular commercial prices, and should not have to redo financial statements and accounting and profit reports, which would be costly and burdensome, especially for small companies. Commenters also cited a contemporaneous statement in the Congressional Record from Senator Nelson which they said was to the effect that section 703 was not intended to modify any existing agreements with drug companies, and that existing Uniform Formulary Voluntary Agreements for Retail Refunds (UF–VARRs) for amounts higher than FCPs, or other agreements pertaining to drugs dispensed in military hospitals and through TMOP, would be breached by a demand for an additional refund under the statute. In relation to this breach of contract argument, some commenters cited *Winstar Corp.* v. *United States,* 518 U.S. 839 (1996), for the proposition that the government's contract obligations cannot be reduced by subsequent legislation. Further, commenters argued that in the case of a drug that had previously been moved to Tier 3 because the manufacturer refused to offer a refund, it would be unfair to now require a refund for a time period for which the drug was on Tier 3.

Response: DoD does not agree with all of these arguments, but believes some may have merit in relation to particular drugs. First, with respect to recalculating non-FAMPs, DoD understands that the Department of Veterans Affairs has addressed that concern, as it relates to the 2008 annual non-FAMP reports, by advising manufacturers that there is no need for reclassification of 2008 sales data to redesignate commercial sales as DoD sales because of section 1074g(f). Second, DoD believes all drug manufacturers were promptly aware of the enactment of section 703 and were thus on notice regarding the statutory date for applying FCPs to prescriptions filled. This situation is not like the *Winstar* case. In that case, the legislation purported to reduce the government's contract obligation after the contractors had already performed their part of the bargain. In this case, the statute changed nothing regarding transactions completed before January 28, 2008. And the companies were on notice as of that date that covered prescriptions filled on or after that date in the TRICARE Retail Pharmacy Network were subject to FCPs. Third, with respect to Senator Nelson's statement, what he said was that with respect to the ''section of the bill that would require that prescriptions dispensed through the TRICARE retail pharmacy program be procured at or below Federal ceiling prices,'' ''it is the intent of the language and the intent of the conferees not to modify the current master agreements.'' (153 Cong. Rec. S–15,613–14, Dec. 14, 2007.) DoD's consistent position, both prior to and since the enactment of section 703, has been that the law does not require an amendment to the master agreements between the VA and drug manufacturers. But DoD does not believe there is any legislative history, including Senator Nelson's statement, suggesting a statutory implementation

date other than January 28, 2008, or making any point regarding UF–VARRs.

However, DoD agrees there may be merit to some of the other concerns that in particular circumstances concerning stale utilization data, prior incentive pricing agreements between DoD and drug manufacturers, and other situations, there may be a reasonable basis to waive or compromise a refund for prescriptions filled between January 28, 2008 and the effective date of the final rule. The proposed rule included a paragraph ((q)(3)) stating that a refund due under paragraph (q) is subject to section 199.11 of the TRICARE regulation, which is the section of the regulation addressing overpayments recovery, including administration of procedures under the Federal Debt Collection Act and related laws for compromise or waiver of overpayment refunds. DoD has revised this provision of paragraph (q) to address specifically a request for waiver or compromise of a refund amount in the context of section 1074g(f) and the new 32 CFR 199.21(q). It provides that a manufacturer may request waiver or compromise of a refund amount and that during the pendency of any request for waiver or compromise, a manufacturer's written agreement to honor FCPs for covered Retail Pharmacy Network prescriptions shall be deemed to exclude the matter that is the subject of the request for waiver or compromise. Further, during the pendency of any such request, the matter that is the subject of the request shall not be considered a failure of a manufacturer to make or honor an agreement for purposes of the remedies paragraph of the regulation. In other words, a manufacturer can request a waiver or compromise of a refund DoD believes is owing on any grounds the manufacturer believes appropriate, and the matter that is the subject of the request will not be considered noncompliance with any provision of the regulation while the request is pending. This provision for waiver or compromise is available at any time, but DoD intends that it especially be available to address and resolve in a reasonable way issues arising from the period between the date of enactment of the statute and the effective date of the regulation.

Thus, to give one possible example, a company might propose that if it agrees that for all of its covered drugs, all TRICARE retail pharmacy network prescriptions will prospectively be priced at or below Federal Ceiling Prices, it might further propose to compromise refunds for prescriptions filled during the period beginning January 28, 2008, and ending on the date this final rule becomes effective. One formulation for such a compromise could be to propose a date that is in between January 28, 2008, and the effective date of the final rule, proposing that DoD waive collection of refunds for prescriptions filled prior to that date, and for the company promptly to pay refunds for prescriptions filled on or after that date. (This example is merely illustrative and does not commit the Department of Defense to any response.)

Comment: One commenter said that DoD's failure to meet the statutory deadline for issuing implementing regulations, which was December 31, 2007, did not give DoD the right to make drug manufacturers bear the cost of DoD's delay.

Response: Nothing in the final rule requires manufacturers to bear the cost of DoD's delay in issuing final regulations. As noted above, section 1074g(f) requires that all covered TRICARE Retail Pharmacy Network prescriptions are subject to Federal Ceiling Prices, beginning with prescriptions filled on or after the date of enactment. Drug manufacturers were aware of the law and were on notice of their obligations. It is not clear how they were somehow prejudiced by the delay in issuing regulations. In some ways they benefited by the delay because it deferred the due date of the refund necessary to resolve the statutory overpayment. Nonetheless, the final rule provides any company that believes it has been prejudiced in some way to apply for a waiver or compromise of the refund necessary for prescriptions filled between the date of enactment and the effective date of the regulation to be subject to FCPs. DoD will consider all such applications and their supporting rationale.

Comment: One commenter said there are constitutional limitations on laws that alter rights under existing contracts, and that this reinforced the need for not applying FCPs to prescriptions filled before the effective date of the regulation.

Response: The existing contract rights referred to by this commenter are not identified. If the commenter is referring to the Master Agreements with VA, DoD does not believe they are altered by section 703. If the commenter means existing UF–VARRs, DoD does not believe section 1074g(f) is dependent on such an agreement. DoD is unaware of any constitutional or legal right of a vendor to sell its goods or services to the Federal government at a price dictated by the vendor. The law set a ceiling price for covered prescriptions filled in the TRICARE Retail Pharmacy Network, beginning on the date of enactment. A company that thought the statute breached an existing contract had the ability to mitigate the alleged contract damages by canceling the agreement. Even now, a company that does not wish to provide its drugs to the TRICARE Pharmacy Benefits Program is not forced to do so. If a company believes it has incurred some contract damages based on the enactment of section 1074g(f), it can take action to mitigate those damages and apply to DoD to waive or compromise any refund required by that law.

Comment: Several commenters argued that applicability of Federal Ceiling Prices to prescriptions filled on or after the date of enactment but before the effective date of regulations and agreements would violate Health and Human Services regulations as 42 CFR 1001.952(h)(4), which require that in order to be within a safe harbor from anti-kickback rules, a ''rebate'' must be ''disclosed in writing to the buyer at the time of sale of the initial purchase to which the discount applies,'' and that this can only be achieved after regulations and agreements are in effect. Some commenters also said applicability of Federal Ceiling Prices to prescriptions filled on or after the date of enactment but before the effective date of regulations and agreements would be contrary to the Sarbanes-Oxley Act of 2002 and accounting principles for recording anticipated payment liabilities.

Response: DoD disagrees. Under section 1074g(f), DoD is the buyer in a sales transaction that occurs when the prescription is filled for a covered beneficiary by a retail network pharmacy. As of the date of enactment, DoD and the manufacturer both had written notice that Federal Ceiling Prices apply. Further, the statute clearly indicated that FCPs applied to prescriptions filled on or after the effective date, giving companies and their accountants notice of the anticipated payment liability. Nevertheless, if there were a case in which a manufacturer is charged with an illegal kickback or some other violation as a result of a refund under section 1074g(f), DoD would welcome a request to waive or compromise the refund under paragraph (q)(3)(iii) of the regulation.

Comment: Some commenters went further than arguing that FCPs only start to apply when the final rule becomes effective, and argued that they only start to apply when an agreement between DoD and the manufacturer becomes effective. In support of this position they stated that because the statute says

''the TRICARE retail pharmacy program shall be treated as an element of the Department of Defense for purposes of the procurement of drugs by Federal agencies,'' some agreement in the nature of a procurement contract has to be made before the statute has any effect.

Response: DoD disagrees. As noted previously, DoD interprets 10 U.S.C. 1074g(f) to mean that for all covered drugs, TRICARE Retail Pharmacy Network prescriptions are subject to Federal Ceiling Prices. DoD interprets the statutory phrase ''treated as an element of the Department of Defense for purposes of the procurement of drugs by Federal agencies under section 8126 of title 38 to the extent necessary to ensure that pharmaceuticals paid for by'' DoD in the Retail Pharmacy Network ''are subject to'' FCPs to mean treated the same as a covered drug directly procured by DoD vis-à-vis the applicability of FCPs; the phrase does not require that there be some other transaction comparable to a direct procurement by a Federal agency under section 8126. The transaction of a covered drug prescription filled in the Retail Pharmacy Network is all that is required. Further, as previously noted, DoD interprets the phrase, ''[w]ith respect to any prescription filled on or after the date of the enactment'' to mean that FCPs apply with respect to any prescription filled on or after the date of the enactment.

2. Manufacturer Written Agreement (Paragraph (q)(2))

a. Agreement in General

Comment: Some commenters expressed the view that an agreement between DoD and a manufacturer is necessary for the manufacturer to have any requirement to pay refunds to DoD for amounts received for drugs dispensed under prescriptions filled in the TRICARE Retail Pharmacy Network. These commenters said a manufacturer's agreement to pay refunds must be met with contractual consideration from DoD in the form of Uniform Formulary status or something similar, comparable to the current Uniform Formulary Voluntary Agreements for Retail Refunds (UF–VARRs). They also argued that if a drug is not included on Tier 2, the manufacturer would have no obligation to refund to DoD any amount it received above the FCP for that drug dispensed under prescriptions filled in the TRICARE Retail Pharmacy Network.

Response: DoD does not agree with this view. As noted above, DoD interprets 10 U.S.C. 1074g(f) to mean that all covered TRICARE Retail Pharmacy Network prescriptions are subject to Federal Ceiling Prices. This means that if a manufacturer was paid more than the FCP for a covered drug that was provided through the TRICARE Retail Pharmacy Network, the transaction resulted in an overpayment in what DoD paid the pharmacy and in what the manufacturer received from the pharmacy (directly or through an intermediary). To resolve the overpayment, the manufacturer must pay DoD a refund of the amount above the FCP. If the amount above the FCP was the difference between FCP and the average commercial price for the drug sold to buyers other than the Federal government—represented by the non-Federal Average Manufacturer's Price (non-FAMP)—then the refund amount is the difference between the non-FAMP and FCP. DoD interprets the statute as establishing the fact of an overpayment and the need for a refund. These things are not dependent on the agreement to exist; they exist by operation of law under the statute. The purpose of the agreement, therefore, is simply to acknowledge the existence of the obligation and promise to meet it. This is a change from the UF–VARRs, which are not premised on a statutory requirement that prescriptions filled in the Retail Pharmacy Network are subject to FCPs.

However, as noted above, DoD wishes to emphasize voluntary compliance by manufacturers. To this end, DoD has included in the new regulatory provision for waiver or compromise of refunds, discussed above, a waiver criteria (subparagraph (q)(3)(iii)(C)) premised on a written request by the manufacturer for voluntary removal of a drug from coverage in the TRICARE Pharmacy Benefits Program. Thus if there were ever a case in which a manufacturer was really involuntarily involved with DoD in relation to drugs sold into the normal commercial market, the manufacturer could request voluntary exclusion of a drug from coverage in the TRICARE Pharmacy Benefits Program and waiver of the refund obligation. This reinforces the voluntariness of drug manufacturers' participation in the commercial transaction covered by section 1074g(f), a transaction that features sales by the company and payment by DoD through the TRICARE Retail Pharmacy Network.

b. Product-by-Product Review

Comment: A number of pharmaceutical industry commenters agreed with the proposed rule's approach of product-by-product review of drugs for compliance with Federal Ceiling Prices, rather than requiring a manufacturer to agree to provide all covered drugs produced by the manufacturer as a condition for any of the manufacturer's drugs to be included on the Uniform Formulary.

Response: This is another area where DoD is seeking an accommodation with drug companies. DoD believes it has statutory authority to require a manufacturer to agree to provide all covered drugs produced by the manufacturer as a condition for any of the manufacturer's drugs to be included on the Uniform Formulary because the statute applies to all covered drugs. However, DoD chooses in this rule at this time to follow a product-by-product approach for Uniform Formulary status. DoD urges pharmaceutical companies to honor Federal Ceiling Prices for all covered drugs and thereby preserve eligibility for each drug for the Uniform Formulary, as well as show their compliance with the law.

c. Relationship Between Federal Ceiling Prices and Uniform Formulary Status

Comment: A number of pharmaceutical industry representatives recommended that because non-compliance with Federal Ceiling Prices generally disqualifies a covered drug for Uniform Formulary status, compliance with Federal Ceiling Prices should automatically qualify a covered drug for Uniform Formulary status. These comments indicated that Uniform Formulary status is a necessary quid-pro-quo for a company's agreement to honor FCPs.

Response: DoD does not agree. Under 10 U.S.C. 1074g(a), Uniform Formulary (Tier 2) status is based on the relative clinical and cost effectiveness of drugs within a drug class. Under section 1074g(f), all covered TRICARE Retail Pharmacy Network prescriptions are subject to Federal Ceiling Prices. Both requirements apply. A company's obligation to honor FCPs is not dependent on Uniform Formulary placement. Further, there are drugs that at their particular Federal Ceiling Prices are not cost-effective within their respective drug classes. Subject to the judgment of the Pharmacy and Therapeutics Committee and the other steps in the statutory and regulatory process, such drugs are likely to be classified as non-Formulary drugs. However, during the initial period of implementation of this final rule, DoD anticipates that drugs currently on the Uniform Formulary that become covered by manufacturer agreements to honor FCPs in the Retail Pharmacy Network will remain on the Uniform Formulary in Tier 2, pending the next

periodic review of the drug class involved.

Comment: A number of commenters asked how the requirement for an agreement to honor FCPs would affect drugs previously placed on the Uniform Formulary or in non-Formulary status, as well as newly approved drugs.

Response: For covered drugs, continuation on the Uniform Formulary is conditioned on the manufacturer signing an agreement to honor Federal Ceiling Prices for that drug. If there is currently in effect a UF–VARR at a price above the FCP, that agreement fails to achieve the statutory requirement; DoD anticipates canceling it. For a drug previously placed in Tier 3, if the manufacturer signs an agreement to honor FCPs, it will be eligible for reclassification to Tier 2 upon the next review by the P&T Committee of the drug class involved. That will not necessarily occur when the initial adjustments to the Uniform Formulary are made upon the final rule becoming effective. For newly approved drugs, DoD will continue its current practice of scheduling P&T Committee review at the next practicable quarterly meeting.

Comment: A number of commenters suggested that the requirement for a manufacturer's agreement to honor FCPs for TRICARE Retail Pharmacy Network prescriptions as a condition for Tier 2 status should be waived by DoD if a drug is more cost-effective, or if a weighted average of prices in all three venues is no higher than the FCP, or if otherwise in the best interests of beneficiaries. Also, some commenters suggested that the Uniform Formulary process should not be changed to leverage drug manufacturers to agree to honor FCPs in the retail network, and that the process of P&T Committee and Beneficiary Advisory Panel review by drug class should not be usurped and should continue unchanged. These commenters said the beneficiaries should not have to pay higher copays or bother with preauthorization because the drug company does not comply with the law.

Response: DoD has modified the final rule to provide for a waiver if necessary to ensure that each drug class is represented on the Uniform Formulary. Beyond this, DoD does not see a need for further waiver. As noted above, DoD interprets the statute as now establishing for determining cost-effectiveness a relative standard and a fixed standard and the fixed standard must be met, except as noted. With respect to protecting beneficiary interests, preauthorization procedures ensure that beneficiaries will continue to have access to whatever drugs they need. Also, the P&T Committee and Beneficiary Advisory Panel will continue to be involved in the process.

With respect to the argument that beneficiaries should not be inconvenienced by the refusal of drug companies to honor FCPs as required by law, DoD believes this will very much be the exception to the norm. To minimize inconvenience to beneficiaries, DoD has added a new paragraph (q)(5) to provide beneficiary transition provisions. It provides that in cases in which a pharmaceutical is removed from the uniform formulary or designated for preauthorization, the Director, TMA may for transitional time periods determined appropriate by the Director or for particular circumstances authorize the continued availability of the pharmaceutical in the retail pharmacy network or in MTF pharmacies for some or all beneficiaries as if the pharmaceutical were still on the uniform formulary.

d. Preauthorization for Retail Pharmacy Network Prescriptions for Drugs for Which the Manufacturer Refuses To Agree To Honor Federal Ceiling Prices

Comment: A number of commenters argued that DoD should delete the provisions of the proposed rule that made a manufacturer's agreement to honor FCPs in the Retail Pharmacy Network a precondition for the availability of that drug through retail network pharmacies without preauthorization under section 199.21(k) of the current regulation. They argued that this preauthorization requirement conflicts with 10 U.S.C. 1074g and the current scope of the preauthorization provisions of paragraph (k) of the regulation, which are intended to promote broad beneficiary access to clinically appropriate drugs. These comments noted that under the current regulation, non-formulary drugs are generally available in retail pharmacies, and the only statutory reference to preauthorization (in 10 U.S.C. 1074g(a)(4)) is to assure clinical appropriateness. They also argued that the preauthorization requirement would delay beneficiary access to needed pharmaceutical agents, and should have exceptions for emergencies and other clinical needs.

Response: These comments misunderstand the current statute and regulation as they apply to preauthorization. First, the statute does not require that non-Formulary (Tier 3) drugs be provided in the Retail Pharmacy Network. It requires (in paragraph (a)(5) of section 1074g) only that non-Formulary drugs are available through one of the three pharmacy venues. Non-Formulary drugs are and will remain available in the TRICARE Mail Order Pharmacy Program (TMOP). Second, the current paragraph (k) of the regulation is not limited to preauthorization for medical necessity, but rather provides that: ''Selected pharmaceutical agents may be subject to prior authorization or utilization review requirements to assure medical necessity, clinical appropriateness and/or cost effectiveness.'' The new requirement for preauthorization for non-Formulary drugs for which manufacturers refuse to honor FCPs as required by law is entirely consistent with the current law and regulation, as well as with the policy of assuring beneficiary access to needed pharmaceutical agents.

In the case of a beneficiary presenting a prescription in a retail network pharmacy for a drug that is on Tier 3 because of the refusal of the manufacturer to honor Federal Ceiling Prices, there are several possible outcomes. First, the pharmacist may consult with the prescribing physician and the physician may change the prescription to a Uniform Formulary drug, which can be provided immediately at the Tier 2 co-payment. Second, if the beneficiary has a valid clinical need for that non-Formulary drug without delay, preauthorization will be granted. This will take care of emergency needs for pharmaceuticals and other cases of immediate clinical need. However, depending on the circumstances, the beneficiary may be advised that any refills will need to be obtained from TMOP. Third, if there is no urgency, the beneficiary may be advised to submit the prescription to TMOP. This approach is consistent with the statutory requirement that non-Formulary agents be made available in at least one venue, and also with the statutory requirement that all covered Retail Pharmacy Network prescriptions are subject to FCPs. Moreover, it continues DoD policy of meeting beneficiary needs, even in cases in which drug manufacturers fail to honor the law—a circumstance DoD expects to be very rare. The concern expressed by manufacturers for unencumbered beneficiary access to needed pharmaceuticals is admirable, and it should provide sufficient motivation for the manufacturers to accept the ceiling price set by law.

Comment: Commenters on behalf of retail pharmacies argued forcefully that preauthorization requirements for drugs not covered by manufacturer agreements to honor FCPs apply equally to prescriptions in the Retail Pharmacy

Network and TMOP. The rationale for this is to increase the incentive on pharmaceutical manufacturers to honor FCPs and to avoid the shifting of prescriptions from retail pharmacies to TMOP. These commenters believe retail pharmacies better meet beneficiary needs and that to require preauthorization in retail pharmacies but not in TMOP would be unfair and contrary to the ''uniform formulary'' requirement of law. They argued that rather than adopt a procedure disadvantageous to retail pharmacies, DoD should make sure pharmaceutical companies comply with the legal requirement to honor Federal Ceiling Prices in the Retail Pharmacy Network.

Response: DoD's focus is on assuring that beneficiaries receive the pharmaceuticals they need and that the requirements of the law are faithfully executed. While there is some merit to this suggestion, DoD believes the best approach for now is to preserve the option of referring some prescriptions to TMOP when that is the most direct means to both provide the pharmaceuticals needed by the beneficiary and assure the applicability of FCPs. DoD believes it is not unfair or contrary to the uniform formulary provisions of 10 U.S.C. 1074g to have differences in co-payments or preauthorization requirements among the three venues while maintaining the same formulary listing of drugs in all three venues. These differences are all consistent with statutory purposes. DoD agrees with retail pharmacy representative commenters that the right outcome is for all manufacturers to comply with the obligation to honor FCPs in the Retail Pharmacy Network. DoD's expectation is that there will not be many drugs that will be subject to this preauthorization requirement.

e. Covered Drugs

Comment: A number of commenters recommended that DoD exclude from the regulation drugs covered by section 340B of the Public Health Service Act. Section 340B limits the cost of covered outpatient drugs to certain federal grantees, federally-qualified health center look-alikes and qualified disproportionate share hospitals. The rationale for this comment is that these prescriptions should not be covered by double discounts. A number of commenters also requested clarification on how DoD would report utilization data involving 340B sales or whether DoD would exclude all pharmacies eligible for the 340B program.

Response: DoD agrees and has revised the rule accordingly in paragraph (q)(2)(iii)(E). With respect to pharmacies that dispense only prescriptions covered by the 340B program, those pharmacies will be excluded from DoD's utilization data reported to manufacturers. Regarding other pharmacies that are eligible to participate in the 340B program but also fill other prescriptions, DoD will incorporate into the process appropriate procedures to identify and exclude 340B covered prescriptions.

Comment: A number of commenters requested clarification that a covered drug for purposes of this regulation is a covered drug under 38 U.S.C. 8126.

Response: The final rule includes clarifying language to this effect.

Comment: A number of commenters recommended expansion of the exceptions for covered drugs to allow a broad process for drug manufacturers to obtain exemptions for particular drugs.

Response: DoD does not agree. The statute commands that all covered TRICARE Retail Pharmacy Network prescriptions are subject to FCPs. DoD has established a limited waiver of the condition for Uniform Formulary placement when necessary to preserve representation of all drug classes on the Uniform Formulary, and has established a process under section 199.11 for waiver or compromise of refunds in appropriate circumstances. There is also an authority for any other exception, consistent with law, established by the Director, TMA. This is intended for special circumstances, analogous to the 340B program. DoD does not see a need for another procedure for individual drug products to avoid FCPs.

3. Refund Procedures (Paragraph (q)(3))

a. Refund Procedures in General

Comment: A number of commenters requested further information and/or specification in the regulation regarding the details of the refund procedures referred to in the rule. They argued that much more detail needed to be included in the rule for manufacturers to be expected to decide whether they wanted to sign agreements. Another comment urged that all refund procedures be published in the **Federal Register** for public comment under 41 U.S.C. 418b.

Response: The only definite requirement in the regulation for a manufacturer's agreement to be a condition for Uniform Formulary placement and Retail Pharmacy Network availability without preauthorization is a simple agreement to honor Federal Ceiling Prices in the Retail Pharmacy Network. DoD prefers to also include in the agreement refund procedures, but has revised the final rule (in paragraph (q)(3)(i)) to clarify that these things need not be in the same document. Thus, if there are issues that need to be resolved with respect to refund procedure details, these need not interfere with a manufacturer's ability to agree to follow the law and thereby maintain eligibility for Uniform Formulary status. Again, as noted above, DoD does not interpret 10 U.S.C. 1074g(f) as making the applicability of FCPs or the collection of refunds for amounts above FCPs subject to the existence or terms of an agreement between DoD and the manufacturer. Therefore, any disputes or problems regarding refund procedure details can be resolved appropriately without disturbing rights or obligations under the law. Moreover, such details can best be addressed outside the formalities of the rulemaking process. DoD will continue to provide means to answer specific manufacturers' questions regarding refund procedures, Uniform Formulary procedures, and the like. Such means include the following Web site: *http://tricare.mil/tma/Pharmacy.aspx.* DoD supports incorporating into the manufacturer written agreements effective refund procedures consistent with best commercial practice. Absent such agreement, the standard collection procedures of the existing TRICARE Regulation (section 199.11) are available.

Regarding the 41 U.S.C. 418b argument, DoD believes that although section 1074g(f) requires that the TRICARE Retail Pharmacy Network ''shall be treated as'' an element of the Department of Defense for purposes of the ''procurement of drugs by Federal agencies'' under 38 U.S.C. 8126 ''to the extent necessary to ensure that'' pharmaceuticals dispensed are subject to FCPs, this does not result in any legal requirement, or even an inference, to also treat the transaction as if it were a procurement for purposes of various procurement statutes. Thus, DoD does not view refund procedure agreements as falling within the scope of a ''procurement policy, regulation, procedure, or form'' subject to 41 U.S.C. 418b. In addition, especially while DoD seeks to work with manufacturers on implementing practical and smooth procedures for sharing utilization data, resolving issues and problems, facilitating Uniform Formulary placement consistent with the law and regulations, and facilitating a positive relationship, DoD does not see the advantage of chiseling into regulatory stone a detailed set of procedures which will then become too hard to adapt or improve.

b. Specific Refund Procedures

Comment: Specific refund procedure issues included whether the current Uniform Formulary Voluntary Agreements for Retail Refunds (UF–VARRs) template will be used; whether the non-FAMPs and FCPs that will be used for the refunds are those applicable to the year in which the prescription was filled or the year in which the refund is due or the year in which the agreement was signed; whether UF–VARRs currently in effect would be cancelled; whether transferred ownership would require a new agreement; whether DoD would change any VA determinations of non-FAMP or FCP; the guidance VA and the Centers for Medicare and Medicaid Services (CMS) would provide on reporting transactions covered by section 1074g(f) for purposes of non-FAMP, best price, and other calculations; whether DoD will maintain manufacturer pricing data in confidence; how DoD will deal with ''penny pricing'' on an FCP or various data anomalies in the VA's processes; whether drug companies will have the right to audit DoD utilization data; and whether in any quarterly utilization period there will be an exclusion of prescriptions filled significantly before that quarter.

Response: The rule has been clarified to specify that the FCPs that apply are those in effect in the year in which the prescription is filled. The non-FAMP that applies will be the one that gave rise to the applicable FCP. DoD believes the UF–VARR process has been effective and intends to use that as a base line for refund procedures under the regulation, but intends to continue to work with industry on refinements and improvements. Thus, these procedures are not part of this regulation. DoD anticipates that current UF–VARRs that do not meet the statutory requirement will be canceled, but they are not cancelled by this regulation. In cases of transferred ownership of a drug, DoD will look to the parties to advise DoD of the transfer and its effect on existing relationships. DoD will not change any VA determinations of non-FAMPs or FCPs; DoD will accept VA determinations. This includes deferring to VA determinations on penny pricing and the VA procedures for resolution of data anomalies and relief from unfair calculations. DoD is already under legal obligation to maintain manufacturer pricing data in confidence and will comply with that obligation. DoD cannot speak for VA and CMS but has consulted with those agencies and will do everything possible to facilitate responses to manufacturers' questions to those agencies. With respect to the audit question, the dispute resolution process provides the manufacturer the opportunity to dispute any utilization on which its data and DoD's data are in conflict. All pertinent pricing information is already in the hands of the manufacturer. Thus, DoD sees no need for routine manufacturer audits of DoD utilization data, other than what might be appropriate in a dispute resolution context. Other details will be worked out consistent to the extent practicable with common industry practices for implementing pricing agreements between manufacturers and large pharmacy benefit plan sponsors.

c. Dispute Resolution Procedures

Comment: Several commenters representing the pharmaceutical industry urged that in cases in which drug companies dispute DoD utilization reports, the companies are not required to pay refunds pending the outcome of the dispute resolution process. At the conclusion of the dispute resolution process, refund amounts would then include interest charges from the original payment due date. These commenters pointed out that this would be a change from the current DoD standard procedure under the Uniform Formulary Voluntary Agreement for Retail Refunds (UF–VARRs), but would be consistent with the current practice under Medicaid rebate agreements.

Response: DoD agrees to this proposal and has added a new paragraph (q)(3)(iv) to defer refund payments pending resolution of disputes over the accuracy of the utilization data.

d. Overpayments Recovery

Comment: A number of commenters questioned the portion of the proposed rule stating that a refund due under the new paragraph (q) is subject to section 199.11 of the TRICARE Regulation. That section governs overpayments recovery. These commenters recommended that refund procedures should be negotiated between DoD and manufacturers, rather than handled under section 199.11.

Response: As noted above, DoD interprets section 1074g(f) as requiring that all prescriptions for covered drugs in the Retail Pharmacy Network are subject to Federal Ceiling Prices. To the extent the ingredient costs for the prescriptions paid for in the Retail Pharmacy Network exceed the FCP, the prescription transaction produced an overpayment to the manufacturer, giving rise to a DoD right to a refund. There are existing statutes that govern refunds of government payments that exceed the legally authorized purposes, circumstances, or amounts. TRICARE's implementing regulations under these statutes are at section 199.11. This does not preclude mutually agreeable refund procedures, but section 199.11 is a necessary baseline of authority and procedures.

4. Remedies (Paragraph (q)(4))

Comment: A number of comments from or on behalf of the pharmaceutical industry urged revision to the proposed rule provision that in the case of the failure of a manufacturer of a covered drug ''to make or honor an agreement'' to honor FCPs in the Retail Pharmacy Network, the Director of TMA, in addition to other actions referred to in this paragraph (q), may take ''any other action authorized by law.'' These comments argued that agreements to honor FCPs in the retail network should be completely voluntary, so there should be no ''remedy'' or ''penalty'' for failure to make such an agreement. Some commenters described this provision as purporting to give the Director of TMA arbitrary power or unlimited discretion.

Response: As discussed above, while DoD wants to emphasize voluntary compliance, the statute unambiguously commands that all covered Retail Pharmacy Network prescriptions are subject to Federal Ceiling Prices. As a result, DoD has no reason to and expressly does not waive the right to pursue any action authorized by law. This in no way is arbitrary, unlimited, or unreasonable because it is strictly limited to authorities under the law.

Comment: A comment from the retail pharmacy sector urged DoD to revise the final rule to state that a failure of a manufacturer to honor FCPs in the Retail Pharmacy Program is a violation of 38 U.S.C. 8126 and bars the manufacturer from eligibility to sell pharmaceuticals to the referenced Federal agencies and in Medicaid.

Response: It is DoD's view that a failure of a manufacturer to comply with 10 U.S.C. 1074g(f) does also constitute a failure to comply with 38 U.S.C. 8126. However, as noted above, there are no judicial rulings on this point and the state of the law is not settled on it. In any event, it is outside any regulatory authority of the Department of Defense to make rules or issue legally controlling interpretations regarding 38 U.S.C. 8126. Thus, this matter is not addressed in this rule. This rule only addresses matters within the regulatory authority of the Department of Defense.

D. Provisions of the Final Rule

Like the proposed rule, the final rule adds to section 199.21 of the TRICARE regulation a new paragraph (q) regarding

pricing standards for the retail pharmacy program. Paragraph (1)(i) repeats the statutory requirement, virtually verbatim. Paragraph (1)(ii) has been added to state in simpler terms DoD's interpretation of the statute as requiring that all covered drug TRICARE Retail Pharmacy Network prescriptions are subject to Federal Ceiling Prices under 38 U.S.C. 8126.

Paragraph (2) provides that a written agreement by a manufacturer to honor Federal Ceiling Prices in the retail pharmacy network as required by the statute is with respect to a particular covered drug a condition for inclusion of that drug on the Uniform Formulary (Tier 2) and for the availability of that drug through retail network pharmacies without preauthorization. A covered drug not under such an agreement requires preauthorization to be provided through a retail network pharmacy. This preauthorization requirement does not apply to other points of service. The final rule has been modified a bit to clarify that a covered drug for this purpose is a drug that is a covered drug under 38 U.S.C. 8126. A covered drug does not include a drug that is not a covered drug under 38 U.S.C. 8126; a drug provided under a prescription that is not covered by 10 U.S.C. 1074g(f); a drug that is not provided through a TRICARE retail network pharmacy; any pharmaceutical for which the TRICARE Pharmacy Benefits Program is the second payer; and any other exception, consistent with law, established by the Director, TMA. The final rule adds to the list of non-covered drugs for this purpose any drug provided under a prescription and dispensed by a pharmacy under the Section 340B program.

The final rule adds a new paragraph (q)(2)(iv) stating that the requirement for a manufacturer's agreement to honor FCPs in the Retail Pharmacy Network as a precondition to Uniform Formulary (Tier 2) placement may, upon the recommendation of the P&T Committee, be waived by the Director, TMA if necessary to ensure that at least one drug in the applicable drug class is included on the Uniform Formulary. Any such waiver, however, does not waive the statutory requirement that all covered TRICARE Retail Pharmacy Network prescriptions are subject to Federal Ceiling Prices; it only waives the exclusion from the Uniform Formulary of drugs not covered by agreements.

Paragraph (q)(3) addresses refund procedures. Paragraph (q)(3)(i) states that refund procedures to ensure that pharmaceuticals paid for by DoD that are provided by retail network pharmacies under the Pharmacy Benefits Program are subject to Federal Ceiling Prices shall be established. Such procedures may be established as part of the agreement referred to above, or in a separate agreement, or pursuant to section 199.11. This paragraph of the final rule has been revised somewhat from the proposed rule. The options for procedures to be addressed in a separate agreement between the manufacturer and DoD or to be adopted under the overpayment recovery rules of section 199.11 are added in the final rule to ensure that any problems regarding specific refund procedures need not get in the way of manufacturers agreeing to honor FCPs and thereby preserve eligibility for their drugs for Uniform Formulary Tier 2 placement. Paragraph (q)(3)(ii) provides that the refund procedures shall, to the extent practicable, incorporate common industry practices for implementing pricing agreements between manufacturers and large pharmacy benefit plan sponsors. The procedures will provide the manufacturer at least 70 days from the date of the submission of the TRICARE pharmaceutical utilization data needed to calculate the refund before the refund payment is due. The basis of the refund will be the difference between the average non-federal price of the drug sold by the manufacturer to wholesalers, as represented by the most recent annual non-Federal average manufacturing prices (non-FAMP) (reported to the Department of Veterans Affairs (VA)) and the corresponding FCP or, in the discretion of the manufacturer, the difference between the FCP and direct commercial contract sales prices specifically attributable to the reported TRICARE paid pharmaceuticals, determined for each applicable NDC listing. The current annual FCP and the non-FAMP on which it was based will be those applicable during the calendar year in which the prescription was filled.

As under the proposed rule, paragraph (q)(3)(iii) provides that a refund due under the law is subject to section 199.11 of the TRICARE regulation, the section that governs recovery of overpayments. The final rule provision has been revised to clarify that the refund amount will be treated, in the vernacular of section 199.11, as an erroneous payment. The final rule has also been revised to elaborate that the applicability of section 199.11 brings with it a procedure for a manufacturer to request waiver or compromise of a refund amount due under the statute. During the pendency of any request for such a waiver or compromise, a manufacturer's written agreement to honor FCPs shall be deemed to exclude the matter that is the subject of the request for waiver or compromise so that the agreement, if otherwise sufficient, will continue to be sufficient for purposes of satisfying the precondition to Uniform Formulary Tier 2 placement. Also, during the pendency of any such request, the matter that is the subject of the request shall not be considered a failure of a manufacturer to honor an agreement for purposes of remedies for noncompliance. The final rule is further revised to state that a request for waiver may also be premised on the voluntary removal by the manufacturer in writing of a drug from coverage in the TRICARE Pharmacy Benefit Program. This change further protects a manufacturer from involuntary involvement in the program.

One other change to the refund procedures paragraph is that a new paragraph (q)(3)(iv) has been added to state that in the case of disputes by the manufacturer of the accuracy of TMA's utilization data, a refund obligation as to the amount in dispute will be deferred pending good faith efforts to resolve the dispute. If the dispute is not resolved within 60 days, the Director, TMA will issue an initial administrative decision and provide the manufacturer with opportunity to request reconsideration or appeal consistent with procedures under the TRICARE regulation. When the dispute is ultimately resolved, any refund owed relating to the amount in dispute will be subject to an interest charge consistent with the normal regulatory practice.

Paragraph (q)(4) provides that in the case of the failure of a manufacturer of a covered drug to make or honor an agreement under paragraph (q), the Director, TMA, in addition to other actions referred to in the paragraph, may take any other action authorized by law. This paragraph is unchanged from the proposed rule.

Finally, a new paragraph (q)(5) has been added. It provides that in cases in which a pharmaceutical is removed from the Uniform Formulary or designated for preauthorization, the Director, TMA may for transitional time periods determined appropriate by the Director or for particular circumstances authorize the continued availability of the pharmaceutical in the retail pharmacy network or in MTF pharmacies for some or all beneficiaries as if the pharmaceutical were still on the Uniform Formulary.

E. Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review''

Executive Order (EO) 12866 requires that a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined primarily as one that would result in an effect of $100 million or more in any one year. The DoD has examined the economic, legal, and policy implications of this final rule and has concluded that it is an economically significant regulatory action under section 3(f)(1) of the EO. The economic impact of applying Federal Ceiling Prices to the TRICARE Retail Pharmacy Network is in the form of reducing the prices of drugs paid for by DoD in the retail pharmacy component of the TRICARE Pharmacy Benefits Program, making them comparable to the prices paid by DoD in the Military Treatment Facility and Mail Order Pharmacy components of the program.

A recent Government Accountability Office Report, ''DoD Pharmacy Program: Continued Efforts Needed to Reduce Growth in Spending at Retail Pharmacies,'' April 2008 (GAO–08–327), found that DoD's drug spending ''more than tripled from $1.6 billion in fiscal year 2000 to $6.2 billion in fiscal year 2006'' and that retail pharmacy spending ''drove most of this increase, rising almost nine-fold from $455 million to $3.9 billion and growing from 29 percent of overall drug spending to 63 percent.'' DoD concurs in these findings. The principal economic impact of this final rule is to moderate somewhat the rate of growth in the retail pharmacy component of the program.

DoD has estimated the reduced spending associated applying Federal Ceiling Prices to the Retail Pharmacy Network. DoD funds the Military Health System through two separate mechanisms. One is the Defense Health Program (DHP) appropriation, which pays for health care for all beneficiaries except those who are also eligible for Medicare. DoD-funded health care for DoD beneficiaries who are also eligible for Medicare is paid for by way of an accrual fund called the Medicare-Eligible Retiree Health Care Fund (MERHCF) under 10 U.S.C. Chapter 56. Funds are paid into the MERHCF from military personnel appropriations and the general U.S. treasury. The FY–2009 budget approved by the President and Congress incorporated savings of $352 million in the Defense Health Program appropriation. DoD estimated cost reductions from applying Federal Ceiling Prices to the TRICARE Retail Pharmacy Network in Fiscal Years 2010 through 2015 appear in the following table. It should be noted that these estimates have been updated from those available at the time the proposed rule was issued. The estimates included with the proposed rule were the standing out-year budget estimates developed several years ago from an FY–2003 utilization and cost baseline. New estimates are from an FY–2007 utilization and cost baseline. The significant increase in retail utilization and costs between 2003 and 2007 results in a significant increase in overall budget impact of implementing section 1074g(f). Finally, it should be noted that the budget estimates include amounts DoD would have expected to receive from voluntary refunds under the current Uniform Formulary Voluntary Agreements for Retail Refunds (UF–VARRs). In FY–2010, for example, even if FCPs were not required by the statute, DoD would have expected the UF–VARR program to produce Defense Health Program refunds of $100 million to $150 million of the projected $761 million in reduced spending.

MILLIONS OF DOLLARS

FY–2010 DHP Reduced Spending ..	761
FY–2010 MERHCF Reduced Spending	910
FY–2011 DHP Reduced Spending ..	842
FY–2011 MERHCF Reduced Spending	1,007
FY–2012 DHP Reduced Spending ..	919
FY–2012 MERHCF Reduced Spending	1,099
FY–2013 DHP Reduced Spending ..	993
FY–2013 MERHCF Reduced Spending	1,188
FY–2014 DHP Reduced Spending ..	1,072
FY–2014 MERHCF Reduced Spending	1,282
FY–2015 DHP Reduced Spending ..	1,177
FY–2015 MERHCF Reduced Spending	1,408

As a frame of reference, total TRICARE Pharmacy Benefits Program spending is estimated to be $8 billion in FY–2009.

Congressional Review Act, 5 U.S.C. 801, et seq.

Under the Congressional Review Act, a major rule may not take effect until at least 60 days after submission to Congress of a report regarding the rule. A major rule is one that would have an annual effect on the economy of $100 million or more or have certain other impacts. This final rule is a major rule under the Congressional Review Act. As noted above, applying Federal Ceiling Prices to the TRICARE Retail Pharmacy Network will reduce DoD spending on pharmaceuticals by more than $100 million per year.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

This rule does not contain a Federal mandate that may result in the expenditure by State, local and tribunal governments, in aggregate, or by the private sector, of $100 million or more (adjusted for inflation) in any one year. The economic impact of this regulation, described above, is not in the form of a mandated expenditure by a State, local, or tribal government or the private sector, but by reduced Federal expenditures.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. DoD does not anticipate that this regulation will result in changes that would impact small entities, including retail pharmacies, whose reimbursements are not affected by the final rule. In addition, drugs newly subject to implementation of Federal Ceiling Prices under the final rule represent less than 2% of manufacturers' prescription drug sales. Therefore, this final rule is not expected to result in significant impacts on a substantial number of small entities.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

This final rule contains information collection requirements subject to the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3511). This consists of responding to the periodic TMA report of the TRICARE prescription utilization data needed to calculate the refund. This information collection has been approved with OMB Control Number 0720–0032. No person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

Executive Order 13132, ''Federalism''

This final rule does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on the States; the relationship between the National Government and the States; or the distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 199

Claims, Health care, Health insurance, Military personnel, Pharmacy benefits.

■ Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

■ 1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. Section 199.21 is amended by adding a new paragraph (q), to read as follows:

§ 199.21. Pharmacy benefits program.

* * * * *

(q) *Pricing standards for retail pharmacy program*—(1) *Statutory requirement.* (i) As required by 10 U.S.C. 1074g(f), with respect to any prescription filled on or after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2008, the TRICARE retail pharmacy program shall be treated as an element of the DoD for purposes of the procurement of drugs by Federal agencies under 38 U.S.C. 8126 to the extent necessary to ensure pharmaceuticals paid for by the DoD that are provided by pharmacies under the program to eligible covered beneficiaries under this section are subject to the pricing standards in such section 8126.

(ii) Under subparagraph (q)(1)(i) of this section, all covered drug TRICARE retail pharmacy network prescriptions are subject to Federal Ceiling Prices under 38 U.S.C. 8126.

(2) *Manufacturer written agreement.* (i) A written agreement by a manufacturer to honor the pricing standards required by 10 U.S.C. 1074g(f) and referred to in paragraph (q)(1) of this section for pharmaceuticals provided through retail network pharmacies shall with respect to a particular covered drug be a condition for:

(A) Inclusion of that drug on the uniform formulary under this section; and

(B) Availability of that drug through retail network pharmacies without preauthorization under paragraph (k) of this section.

(ii) A covered drug not under an agreement under paragraph (q)(2)(i) of this section requires preauthorization under paragraph (k) of this section to be provided through a retail network pharmacy under the Pharmacy Benefits Program. This preauthorization requirement does not apply to other points of service under the Pharmacy Benefits Program.

(iii) For purposes of this paragraph (q)(2), a covered drug is a drug that is a covered drug under 38 U.S.C. 8126, but does not include:

(A) A drug that is not a covered drug under 38 U.S.C. 8126;

(B) A drug provided under a prescription that is not covered by 10 U.S.C. 1074g(f);

(C) A drug that is not provided through a retail network pharmacy under this section;

(D) A drug provided under a prescription which the TRICARE Pharmacy Benefits

Program is the second payer under paragraph (m) of this section;

(E) A drug provided under a prescription and dispensed by a pharmacy under section 340B of the Public Health Service Act; or

(F) Any other exception for a drug, consistent with law, established by the Director, TMA.

(iv) The requirement of this paragraph (q)(2) may, upon the recommendation of the Pharmacy and Therapeutics Committee, be waived by the Director, TMA if necessary to ensure that at least one drug in the drug class is included on the Uniform Formulary. Any such waiver, however, does not waive the statutory requirement referred to in paragraph (q)(1) that all covered TRICARE retail network pharmacy prescriptions are subject to Federal Ceiling Prices under 38 U.S.C. 8126; it only waives the exclusion from the Uniform Formulary of drugs not covered by agreements under this paragraph (q)(2).

(3) *Refund procedures.* (i) Refund procedures to ensure that pharmaceuticals paid for by the DoD that are provided by retail network pharmacies under the pharmacy benefits program are subject to the pricing standards referred to in paragraph (q)(1) of this section shall be established. Such procedures may be established as part of the agreement referred to in paragraph (q)(2), or in a separate agreement, or pursuant to § 199.11.

(ii) The refund procedures referred to in paragraph (q)(3)(i) of this section shall, to the extent practicable, incorporate common industry practices for implementing pricing agreements between manufacturers and large pharmacy benefit plan sponsors. Such procedures shall provide the manufacturer at least 70 days from the date of the submission of the TRICARE pharmaceutical utilization data needed to calculate the refund before the refund payment is due. The basis of the refund will be the difference between the average non-Federal price of the drug sold by the manufacturer to wholesalers, as represented by the most recent annual non-Federal average manufacturing prices (non-FAMP) (reported to the Department of Veterans Affairs (VA)) and the corresponding FCP or, in the discretion of the manufacturer, the difference between the FCP and direct commercial contract sales prices specifically attributable to the reported TRICARE paid pharmaceuticals, determined for each applicable NDC listing. The current annual FCP and the annual non-FAMP from which it was derived will be applicable to all prescriptions filled during the calendar year.

(iii) A refund due under this paragraph (q) is subject to section 199.11 of this part and will be treated as an erroneous payment under that section.

(A) A manufacturer may under § 199.11 of this part request waiver or compromise of a refund amount due under 10 U.S.C. 1074g(f) and this paragraph (q).

(B) During the pendency of any request for waiver or compromise under subparagraph (q)(3)(iii)(A) of this section, a manufacturer's written agreement under paragraph (q)(2) shall be deemed to exclude the matter that is the subject of the request for waiver or compromise. In such cases the agreement, if otherwise sufficient for the purpose of the condition referred to in paragraph (q)(2), will continue to be sufficient for that purpose. Further, during the pendency of any such request, the matter that is the subject of the request shall not be considered a failure of a manufacturer to honor an agreement for purposes of paragraph (q)(4).

(C) In addition to the criteria established in § 199.11 of this section, a request for waiver may also be premised on the voluntary removal by the manufacturer in writing of a drug from coverage in the TRICARE Pharmacy Benefit Program.

(iv) In the case of disputes by the manufacturer of the accuracy of TMA's utilization data, a refund obligation as to the amount in dispute will be deferred pending good faith efforts to resolve the dispute in accordance with procedures established by the Director, TMA. If the dispute is not resolved within 60 days, the Director, TMA will issue an initial administrative decision and provide the manufacturer with opportunity to request reconsideration or appeal consistent with procedures under § 199.10 of this part. When the dispute is ultimately resolved, any refund owed relating to the amount in dispute will be subject to an interest charge from the

date payment of the amount was initially due, consistent with § 199.11 of this part.

(4) *Remedies.* In the case of the failure of a manufacturer of a covered drug to make or honor an agreement under this paragraph (q), the Director, TMA, in addition to other actions referred to in this paragraph (q), may take any other action authorized by law.

(5) *Beneficiary transition provisions.* In cases in which a pharmaceutical is removed from the uniform formulary or designated for preauthorization under paragraph (q)(2) of this section, the Director, TMA may for transitional time periods determined appropriate by the Director or for particular circumstances authorize the continued availability of the pharmaceutical in the retail pharmacy network or in MTF pharmacies for some or all beneficiaries as if the pharmaceutical were still on the uniform formulary.

Dated: March 10, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–5702 Filed 3–16–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG–2008–0155]

RIN 1625–AA01

Anchorage Regulations; Port of New York; Correction

AGENCY: Coast Guard, DHS.

ACTION: Final rule; correction.

SUMMARY: The Coast Guard is correcting the preamble to a final rule that appeared in the **Federal Register** of March 11, 2009 (74 FR 10484). The preamble incorrectly referred to Department of Homeland Security Management Directive 5100.1, instead of Department of Homeland Security Management Directive 0023.1.

DATES: Effective April 10, 2009.

FOR FURTHER INFORMATION CONTACT: LT Edward Munoz, Chief, Waterways Management Division, telephone 718–354–2353.

SUPPLEMENTARY INFORMATION: In FR Doc. E9–5095 appearing on page 10484 of the **Federal Register** of Wednesday, March 11, 2009, the following correction is made:

1. On page 10486, in the second column, correct the ''Environment'' section to read: ''We have analyzed this rule under Department of Homeland Security Directive 0023.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph 34(f), of the Instruction. This rule involves a regulation reducing the size of an anchorage ground.

Under figure 2–1, paragraph (34)(f), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.''

Dated: March 12, 2009.

Steve G. Venckus,

Chief, Office of Regulations and Administrative Law.

[FR Doc. E9–5757 Filed 3–16–09; 8:45 am]

BILLING CODE 4910–15–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2009–17 and CP2009–24; Order No. 187]

Domestic Mail Product

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding Express Mail & Priority Mail Contract 4 to the competitive product list. This action is consistent with changes in a recent law governing postal operations. Republication of the lists of market dominant and competitive products is also consistent with new requirements in the law.

DATES: Effective March 17, 2009 and is applicable beginning March 10, 2009.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION: *Regulatory History,* 74 FR 9316 (March 2, 2009).

The Postal Service seeks to add a new product identified as Express Mail & Priority Mail Contract 4 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

I. Background

On February 20, 2009, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Express Mail & Priority Mail Contract 4 to the Competitive Product List.[1] The Postal Service asserts that the Express Mail & Priority Mail Contract 4 product is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). This Request has been assigned Docket No. MC2009–17.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract has been assigned Docket No. CP2009–24.

In support of its Request, the Postal Service filed the following materials: (1) A redacted version of the Governors' Decision authorizing the new product which also includes an analysis of Express Mail & Priority Mail Contract 4 and certification of the Governors' vote;[2] (2) a redacted version of the contract which, among other things, provides that the contract will expire 3 years from the effective date, which is proposed to be 1 day after the Commission issues all regulatory approvals;[3] (3) requested changes in the Mail Classification Schedule product list;[4] (4) a Statement of Supporting Justification as required by 39 CFR 3020.32;[5] and (5) certification of compliance with 39 U.S.C. 3633(a).[6]

In the Statement of Supporting Justification, Kim Parks, Manager, Sales and Communications, Expedited Shipping, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to coverage of institutional costs, and will increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. Request, Attachment D, at 1. W. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department, certifies that the contract complies with 39 U.S.C. 3633(a). *See id.* Attachment E.

The Postal Service filed much of the supporting materials, including the unredacted Governors' Decision and the

[1] Request of the United States Postal Service to Add Express Mail & Priority Mail Contract 4 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, February 20, 2009 (Request).

[2] Attachment A to the Request. The analysis that accompanies the Governors' Decision notes, among other things, that the contract is not risk free, but concludes that the risks are manageable.

[3] Attachment B to the Request.

[4] Attachment C to the Request.

[5] Attachment D to the Request.

[6] Attachment E to the Request.

unredacted contract, under seal. In its Request, the Postal Service maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide prices, terms, conditions, and financial projections, should remain confidential. *Id.* at 2–3.

In Order No. 184, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.[7]

On March 3 and 10, 2009, the Postal Service filed errata to correct certain cost and revenue data.[8]

II. Comments

Comments were filed by the Public Representative.[9] No filings were submitted by other interested parties. The Public Representative states that the Postal Service's filing complies with applicable Commission rules of practice and procedure, and concludes that the Express Mail & Priority Mail Contract 4 agreement comports with the requirements of title 39. Public Representative Comments at 4. He further states that the agreement appears beneficial to the general public. *Id.* at 1.

The Public Representative notes that the Postal Service has provided adequate justification for maintaining confidentiality in this case. *Id.* at 3. He also points out several contractual provisions that he believes are mutually beneficial to the parties and general public. *Id.*

III. Commission Analysis

The Commission has reviewed the Request, the contract, the financial analysis filed under seal, and the comments filed by the Public Representative.

Statutory requirements. The Commission's statutory responsibilities in this instance entail assigning Express Mail & Priority Mail Contract 4 to either the Market Dominant Product List or to the Competitive Product List. 39 U.S.C. 3642. As part of this responsibility, the Commission also reviews the proposal for compliance with the Postal Accountability and Enhancement Act (PAEA) requirements. This includes, for proposed competitive products, a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

Product list assignment. In determining whether to assign Express Mail & Priority Mail Contract 4 as a product to the Market Dominant Product List or the Competitive Product List, the Commission must consider whether

> the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.

39 U.S.C. 3642(b)(1). If so, the product will be categorized as market dominant. The competitive category of products shall consist of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those who use the product, and the likely impact on small business concerns. 39 U.S.C. 3642(b)(3).

The Postal Service asserts that its bargaining position is constrained by the existence of other shippers who can provide similar services, thus precluding it from taking unilateral action to increase prices without the risk of losing volume to private companies. Request, Attachment D, para. (d). The Postal Service also contends that it may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. *Id.* It further states that the contract partner supports the addition of the contract to the Competitive Product List to effectuate the negotiated contractual terms. *Id.* at para. (g). Finally, the Postal Service states that the market for expedited delivery services is highly competitive and requires a substantial infrastructure to support a national network. It indicates that large carriers serve this market. Accordingly, the Postal Service states that it is unaware of any small business concerns that could offer comparable service for this customer. *Id.* at para. (h).

No commenter opposes the proposed classification of Express Mail & Priority Mail Contract 4 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Express Mail & Priority Mail Contract 4 is appropriately classified as a competitive product and should be added to the Competitive Product List.

Cost considerations. The Postal Service presents a financial analysis showing that Express Mail & Priority Mail Contract 4 results in cost savings while ensuring that the contract covers its attributable costs, does not result in subsidization of competitive products by market dominant products, and increases contribution from competitive products.

Based on the data submitted, the Commission finds that Express Mail & Priority Mail Contract 4 should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of the proposed Express Mail & Priority Mail Contract 4 indicates that it comports with the provisions applicable to rates for competitive products.

Other considerations. The Postal Service shall promptly notify the Commission of the scheduled termination date of the agreement.

If the agreement terminates earlier than anticipated, the Postal Service shall inform the Commission prior to the new termination date. The Commission will then remove the product from the Mail Classification Schedule at the earliest possible opportunity.

In conclusion, the Commission approves Express Mail & Priority Mail Contract 4 as a new product. The revision to the Competitive Product List is shown below the signature of this Order and is effective upon issuance of this order.

IV. Ordering Paragraphs

It is Ordered:

1. Express Mail & Priority Mail Contract 4 (MC2009–17 and CP2009–24) is added to the Competitive Product List as a new product under Negotiated Service Agreements, Domestic.

2. The Postal Service shall notify the Commission of the scheduled termination date and update the Commission if the termination date occurs prior to that date, as discussed in this order.

3. The Secretary shall arrange for the publication of this order in the **Federal Register**.

By the Commission.

Steven W. Williams,

Secretary.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure; Postal Service.

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[7] PRC Order No. 184, Notice and Order Concerning Express Mail & Priority Mail Contract 4 Negotiated Service Agreement, February 24, 2009 (Order No. 184).

[8] Notice of the United States Postal Service of Filing Under Seal of Errata to Documentation, March 3, 2009; Notice of the United States Postal Service of Filing Under Seal of Second Errata to Documentation, March 10, 2009.

[9] Public Representative Comments in Response to United States Postal Service Request to Add Express Mail & Priority Mail Contract 4 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, March 5, 2009 (Public Representative Comments).

■ For the reasons stated in the preamble, under the authority at 39 U.S.C. 503, the Postal Regulatory Commission amends 39 CFR part 3020 as follows:

PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise Appendix A to subpart A of part 3020—Mail Classification to read as follows:

Appendix A to Subpart A of Part 3020—Mail Classification Schedule

Part A—Market Dominant Products

1000 Market Dominant Product List
First-Class Mail
  Single-Piece Letters/Postcards
  Bulk Letters/Postcards
  Flats
  Parcels
  Outbound Single-Piece First-Class Mail International
  Inbound Single-Piece First-Class Mail International
Standard Mail (Regular and Nonprofit)
  High Density and Saturation Letters
  High Density and Saturation Flats/Parcels
  Carrier Route
  Letters
  Flats
  Not Flat-Machinables (NFMs)/Parcels
Periodicals
  Within County Periodicals
  Outside County Periodicals
Package Services
  Single-Piece Parcel Post
  Inbound Surface Parcel Post (at UPU rates)
  Bound Printed Matter Flats
  Bound Printed Matter Parcels
  Media Mail/Library Mail
Special Services
  Ancillary Services
  International Ancillary Services
  Address List Services
  Caller Service
  Change-of-Address Credit Card Authentication
  Confirm
  International Reply Coupon Service
  International Business Reply Mail Service
  Money Orders
  Post Office Box Service
Negotiated Service Agreements
  HSBC North America Holdings Inc. Negotiated Service Agreement
  Bookspan Negotiated Service Agreement
  Bank of America corporation Negotiated Service Agreement
  The Bradford Group Negotiated Service Agreement
  Inbound International
  Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services

Market Dominant Product Descriptions

First-Class Mail
[Reserved for Class Description]
  Single-Piece Letters/Postcards
  [Reserved for Product Description]
  Bulk Letters/Postcards
  [Reserved for Product Description]
  Flats
  [Reserved for Product Description]
  Parcels
  [Reserved for Product Description]
  Outbound Single-Piece First-Class Mail International
  [Reserved for Product Description]
  Inbound Single-Piece First-Class Mail International
  [Reserved for Product Description]
Standard Mail (Regular and Nonprofit)
[Reserved for Class Description]
  High Density and Saturation Letters
  [Reserved for Product Description]
  High Density and Saturation Flats/Parcels
  [Reserved for Product Description]
  Carrier Route
  [Reserved for Product Description]
  Letters
  [Reserved for Product Description]
  Flats
  [Reserved for Product Description]
  Not Flat-Machinables (NFMs)/Parcels
  [Reserved for Product Description]
Periodicals
[Reserved for Class Description]
  Within County Periodicals
  [Reserved for Product Description]
  Outside County Periodicals
  [Reserved for Product Description]
Package Services
[Reserved for Class Description]
  Single-Piece Parcel Post
  [Reserved for Product Description]
  Inbound Surface Parcel Post (at UPU rates)
  [Reserved for Product Description]
  Bound Printed Matter Flats
  [Reserved for Product Description]
  Bound Printed Matter Parcels
  [Reserved for Product Description]
  Media Mail/Library Mail
  [Reserved for Product Description]
Special Services
[Reserved for Class Description]
  Ancillary Services
  [Reserved for Product Description]
  Address Correction Service
  [Reserved for Product Description]
  Applications and Mailing Permits
  [Reserved for Product Description]
  Business Reply Mail
  [Reserved for Product Description]
  Bulk Parcel Return Service
  [Reserved for Product Description]
  Certified Mail
  [Reserved for Product Description]
  Certificate of Mailing
  [Reserved for Product Description]
  Collect on Delivery
  [Reserved for Product Description]
  Delivery Confirmation
  [Reserved for Product Description]
  Insurance
  [Reserved for Product Description]
  Merchandise Return Service
  [Reserved for Product Description]
  Parcel Airlift (PAL)
  [Reserved for Product Description]
  Registered Mail
  [Reserved for Product Description]
  Return Receipt
  [Reserved for Product Description]
  Return Receipt for Merchandise
  [Reserved for Product Description]
  Restricted Delivery
  [Reserved for Product Description]
  Shipper-Paid Forwarding
  [Reserved for Product Description]
  Signature Confirmation
  [Reserved for Product Description]
  Special Handling
  [Reserved for Product Description]
  Stamped Envelopes
  [Reserved for Product Description]
  Stamped Cards
  [Reserved for Product Description]
  Premium Stamped Stationery
  [Reserved for Product Description]
  Premium Stamped Cards
  [Reserved for Product Description]
  International Ancillary Services
  [Reserved for Product Description]
  International Certificate of Mailing
  [Reserved for Product Description]
  International Registered Mail
  [Reserved for Product Description]
  International Return Receipt
  [Reserved for Product Description]
  International Restricted Delivery
  [Reserved for Product Description]
  Address List Services
  [Reserved for Product Description]
  Caller Service
  [Reserved for Product Description]
  Change-of-Address Credit Card Authentication
  [Reserved for Product Description]
  Confirm
  [Reserved for Product Description]
  International Reply Coupon Service
  [Reserved for Product Description]
  International Business Reply Mail Service
  [Reserved for Product Description]
  Money Orders
  [Reserved for Product Description]
  Post Office Box Service
  [Reserved for Product Description]
Negotiated Service Agreements
[Reserved for Class Description]
  HSBC North America Holdings Inc. Negotiated Service Agreement
  [Reserved for Product Description]
  Bookspan Negotiated Service Agreement
  [Reserved for Product Description]
  Bank of America Corporation Negotiated Service Agreement
  The Bradford Group Negotiated Service Agreement

Part B—Competitive Products

Competitive Product List
Express Mail
  Express Mail
  Outbound International Expedited Services
  Inbound International Expedited Services
  Inbound International Expedited Services 1 (CP2008–7)
  Inbound International Expedited Services 2 (MC2009–10 and CP2009–12)
Priority Mail
  Priority Mail
  Outbound Priority Mail International
  Inbound Air Parcel Post
Parcel Select
Parcel Return Service
International
  International Priority Airlift (IPA)
  International Surface Airlift (ISAL)
  International Direct Sacks—M-Bags
  Global Customized Shipping Services

Inbound Surface Parcel Post (at non-UPU rates)
Canada Post—United States Postal service Contractual Bilateral Agreement for Inbound Competitive Services (MC2009–8 and CP2009–9)
International Money Transfer Service
International Ancillary Services
Special Services
Premium Forwarding Service
Negotiated Service Agreements
Domestic
Express Mail Contract 1 (MC2008–5)
Express Mail Contract 2 (MC2009–3 and CP2009–4)
Express Mail Contract 3 (MC2009–15 and CP2009–21)
Express Mail & Priority Mail Contract 1 (MC2009–6 and CP2009–7)
Express Mail & Priority Mail Contract 2 (MC2009–12 and CP2009–14)
Express Mail & Priority Mail Contract 3 (MC2009–13 and CP2009–17)
Express Mail & Priority Mail Contract 4 (MC2009–17 and CP2009–24)
Parcel Return Service Contract 1 (MC2009–1 and CP2009–2)
Priority Mail Contract 1 (MC2008–8 and CP2008–26)
Priority Mail Contract 2 (MC2009–2 and CP2009–3)
Priority Mail Contract 3 (MC2009–4 and CP2009–5)
Priority Mail Contract 4 (MC2009–5 and CP2009–6)
Outbound International
Global Direct Contracts (MC2009–9, CP2009–10, and CP2009–11)
Global Expedited Package Services (GEPS) Contracts
GEPS 1 (CP2008–5, CP2008–11, CP2008–12, and CP2008–13, CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23, and CP2008–24)
Global Plus Contracts
Global Plus 1 (CP2008–9 and CP2008–10)
Global Plus 2 (MC2008–7, CP2008–16 and CP2008–17)
Inbound International
Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6, CP2008–14 and CP2008–15)
International Business Reply Service Competitive Contract 1 (MC2009–14 and CP2009–20)
Competitive Product Descriptions
Express Mail
[Reserved for Group Description]
Express Mail
[Reserved for Product Description]
Outbound International Expedited Services
[Reserved for Product Description]
Inbound International Expedited Services
[Reserved for Product Description]
Priority
[Reserved for Product Description]
Priority Mail
[Reserved for Product Description]
Outbound Priority Mail International
[Reserved for Product Description]
Inbound Air Parcel Post
[Reserved for Product Description]
Parcel Select
[Reserved for Group Description]
Parcel Return Service
[Reserved for Group Description]
International
[Reserved for Group Description]
International Priority Airlift (IPA)
[Reserved for Product Description]
International Surface Airlift (ISAL)
[Reserved for Product Description]
International Direct Sacks—M-Bags
[Reserved for Product Description]
Global Customized Shipping Services
[Reserved for Product Description]
International Money Transfer Service
[Reserved for Product Description]
Inbound Surface Parcel Post (at non-UPU rates)
[Reserved for Product Description]
International Ancillary Services
[Reserved for Product Description]
International Certificate of Mailing
[Reserved for Product Description]
International Registered Mail
[Reserved for Product Description]
International Return Receipt
[Reserved for Product Description]
International Restricted Delivery
[Reserved for Product Description]
International Insurance
[Reserved for Product Description]
Negotiated Service Agreements
[Reserved for Group Description]
Domestic
[Reserved for Product Description]
Outbound International
[Reserved for Group Description]

Part C—Glossary of Terms and Conditions [Reserved]

Part D—Country Price Lists for International Mail [Reserved]

[FR Doc. E9–5672 Filed 3–16–09; 8:45 am]
BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2009–18 and CP2009–25; Order No. 188]

Domestic Mail Product

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding a new product identified as Express Mail & Priority Mail Contract 5 to the Competitive Product List. This action is consistent with changes in a recent law governing postal operations and a recent Postal Service request. Republication of the lists of market dominant and competitive products is also consistent with new requirements in the law.

DATES: Effective March 17, 2009 and is applicable beginning March 10, 2009.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov*.

SUPPLEMENTARY INFORMATION: *Regulatory History,* 74 FR 9317 (March 3, 2009).

The Postal Service seeks to add a new product identified as Express Mail & Priority Mail Contract 5 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

I. Background

On February 20, 2009, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Express Mail & Priority Mail Contract 5 to the Competitive Product List.[1] The Postal Service asserts that the Express Mail & Priority Mail Contract 5 product is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). This Request has been assigned Docket No. MC2009–18.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract has been assigned Docket No. CP2009–25.

In support of its Request, the Postal Service filed the following materials: (1) A redacted version of the Governors' Decision authorizing the new product which also includes an analysis of Express Mail & Priority Mail Contract 5 and certification of the Governors' vote;[2] (2) a redacted version of the contract which, among other things, provides that the contract will expire 3 years from the effective date, which is proposed to be 1 day after the Commission issues all regulatory approvals;[3] (3) requested changes in the Mail Classification Schedule product list;[4] (4) a Statement of Supporting Justification as required by 39 CFR 3020.32;[5] and (5) certification of compliance with 39 U.S.C. 3633(a).[6]

In the Statement of Supporting Justification, Kim Parks, Manager, Sales and Communications, Expedited Shipping, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to coverage of institutional costs, and will increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. Request, Attachment D, at 1. W. Ashley Lyons, Manager, Corporate Financial

[1] Request of the United States Postal Service to Add Express Mail & Priority Mail Contract 5 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, February 20, 2009 (Request).

[2] Attachment A to the Request. The analysis that accompanies the Governors' Decision notes, among other things, that the contract is not risk free, but concludes that the risks are manageable.

[3] Attachment B to the Request.

[4] Attachment C to the Request.

[5] Attachment D to the Request.

[6] Attachment E to the Request.

Planning, Finance Department, certifies that the contract complies with 39 U.S.C. 3633(a). *See id.,* Attachment E.

The Postal Service filed much of the supporting materials, including the unredacted Governors' Decision and the unredacted contract, under seal. In its Request, the Postal Service maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide prices, terms, conditions, and financial projections, should remain confidential. *Id.* at 2–3.

In Order No. 185, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.[7]

II. Comments

Comments were filed by the Public Representative.[8] No filings were submitted by other interested parties. The Public Representative states that the Postal Service's filing complies with applicable Commission rules of practice and procedure, and concludes that the Express Mail & Priority Mail Contract 5 agreement comports with the requirements of title 39. Public Representative Comments at 4. He further states that the agreement appears beneficial to the general public. *Id.* at 1.

The Public Representative notes that the Postal Service has provided adequate justification for maintaining confidentiality in this case. *Id.* at 3. He also points out several contractual provisions that he believes are mutually beneficial to the parties and general public. *Id.*

III. Commission Analysis

The Commission has reviewed the Request, the contract, the financial analysis provided under seal that accompanies it, and the comments filed by the Public Representative.

Statutory requirements. The Commission's statutory responsibilities in this instance entail assigning Express Mail & Priority Mail Contract 5 to either the Market Dominant Product List or to the Competitive Product List. 39 U.S.C. 3642. As part of this responsibility, the Commission also reviews the proposal for compliance with the Postal Accountability and Enhancement Act (PAEA) requirements. This includes, for proposed competitive products, a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

Product list assignment. In determining whether to assign Express Mail & Priority Mail Contract 5 as a product to the Market Dominant Product List or the Competitive Product List, the Commission must consider whether

> the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.

39 U.S.C. 3642(b)(1). If so, the product will be categorized as market dominant. The competitive category of products shall consist of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those who use the product, and the likely impact on small business concerns. 39 U.S.C. 3642(b)(3).

The Postal Service asserts that its bargaining position is constrained by the existence of other shippers who can provide similar services, thus precluding it from taking unilateral action to increase prices without the risk of losing volume to private companies. Request, Attachment D, para. (d). The Postal Service also contends that it may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. *Id.* It further states that the contract partner supports the addition of the contract to the Competitive Product List to effectuate the negotiated contractual terms. *Id.* at para. (g). Finally, the Postal Service states that the market for expedited delivery services is highly competitive and requires a substantial infrastructure to support a national network. It indicates that large carriers serve this market. Accordingly, the Postal Service states that it is unaware of any small business concerns that could offer comparable service for this customer. *Id.* at para. (h).

No commenter opposes the proposed classification of Express Mail & Priority Mail Contract 5 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Express Mail & Priority Mail Contract 5 is appropriately classified as a competitive product and should be added to the Competitive Product List.

Cost considerations. The Postal Service presents a financial analysis showing that Express Mail & Priority Mail Contract 5 results in cost savings while ensuring that the contract covers its attributable costs, does not result in subsidization of competitive products by market dominant products, and increases contribution from competitive products.

Based on the data submitted, the Commission finds that Express Mail & Priority Mail Contract 5 should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of the proposed Express Mail & Priority Mail Contract 5 indicates that it comports with the provisions applicable to rates for competitive products.

Other considerations. The Postal Service shall promptly notify the Commission of the scheduled termination date of the agreement. If the agreement terminates earlier than anticipated, the Postal Service shall inform the Commission prior to the new termination date. The Commission will then remove the product from the Mail Classification Schedule at the earliest possible opportunity.

In conclusion, the Commission approves Express Mail & Priority Mail Contract 5 as a new product. The revision to the Competitive Product List is shown below the signature of this Order and is effective upon issuance of this Order.

IV. Ordering Paragraphs

It Is Ordered:

1. Express Mail & Priority Mail Contract 5 (MC2009–18 and CP2009–25) is added to the Competitive Product List as a new product under Negotiated Service Agreements, Domestic.

2. The Postal Service shall notify the Commission of the scheduled termination date and update the Commission if termination occurs prior to that date, as discussed in this order.

3. The Secretary shall arrange for the publication of this order in the **Federal Register**.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure, Postal Service.

By the Commission.

[7] PRC Order No. 185, Notice and Order Concerning Express Mail & Priority Mail Contract 5 Negotiated Service Agreement, February 24, 2009 (Order No. 185).

[8] Public Representative Comments in Response to United States Postal Service Request to Add Express Mail & Priority Mail Contract 5 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, March 4, 2009 (Public Representative Comments).

Issued March 10, 2009.

Steven W. Williams,

Secretary.

■ For the reasons stated in the preamble, under the authority at 39 U.S.C. 503, the Postal Regulatory Commission amends 39 CFR part 3020 as follows:

PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise Appendix A to subpart A of part 3020—Mail Classification to read as follows:

Appendix A to Subpart A of Part 3020—Mail Classification Schedule

Part A—Market Dominant Products

1000 Market Dominant Product List
First-Class Mail
Single-Piece Letters/Postcards
Bulk Letters/Postcards
Flats
Parcels
Outbound Single-Piece First-Class Mail International
Inbound Single-Piece First-Class Mail International
Standard Mail (Regular and Nonprofit)
High Density and Saturation Letters
High Density and Saturation Flats/Parcels
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Flats
Not Flat-Machinables (NFMs)/Parcels
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Bound Printed Matter Flats
Bound Printed Matter Parcels
Media Mail/Library Mail
Special Services
Ancillary Services
International Ancillary Services
Address List Services
Caller Service
Change-of-Address Credit Card Authentication
Confirm
International Reply Coupon Service
International Business Reply Mail Service
Money Orders
Post Office Box Service
Negotiated Service Agreements
HSBC North America Holdings Inc. Negotiated Service Agreement
Bookspan Negotiated Service Agreement
Bank of America Corporation Negotiated Service Agreement
The Bradford Group Negotiated Service Agreement
Inbound International
Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services
Market Dominant Product Descriptions
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Single-Piece Letters/Postcards
[Reserved for Product Description]
Bulk Letters/Postcards
[Reserved for Product Description]
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[Reserved for Product Description]
Parcels
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Restricted Delivery
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Shipper-Paid Forwarding
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Signature Confirmation
[Reserved for Product Description]
Special Handling
[Reserved for Product Description]
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Stamped Cards
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International Registered Mail
[Reserved for Product Description]
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[Reserved for Product Description]
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Caller Service
[Reserved for Product Description]
Change-of-Address Credit Card Authentication
[Reserved for Product Description]
Confirm
[Reserved for Product Description]
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International Business Reply Mail Service
[Reserved for Product Description]
Money Orders
[Reserved for Product Description]
Post Office Box Service
[Reserved for Product Description]
Negotiated Service Agreements
[Reserved for Class Description]
HSBC North America Holdings Inc. Negotiated Service Agreement
[Reserved for Product Description]
Bookspan Negotiated Service Agreement
[Reserved for Product Description]
Bank of America Corporation Negotiated Service Agreement
The Bradford Group Negotiated Service Agreement

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Inbound International Expedited Services 2 (MC2009–10 and CP2009–12)
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Priority Mail
Outbound Priority Mail International
Inbound Air Parcel Post
Parcel Select
Parcel Return Service
International
International Priority Airlift (IPA)
International Surface Airlift (ISAL)

International Direct Sacks—M-Bags
Global Customized Shipping Services
Inbound Surface Parcel Post (at non-UPU rates)
Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services (MC2009–8 and CP2009–9)
International Money Transfer Service
International Ancillary Services
Special Services
Premium Forwarding Service
Negotiated Service Agreements
Domestic
Express Mail Contract 1 (MC2008–5)
Express Mail Contract 2 (MC2009–3 and CP2009–4)
Express Mail Contract 3 (MC2009–15 and CP2009–21)
Express Mail & Priority Mail Contract 1 (MC2009–6 and CP2009–7)
Express Mail & Priority Mail Contract 2 (MC2009–12 and CP2009–14)
Express Mail & Priority Mail Contract 3 (MC2009–13 and CP2009–17)
Express Mail & Priority Mail Contract 4 (MC2009–17 and CP2009–24)
Express Mail & Priority Mail Contract 5 (MC2009–18 and CP2009–25)
Parcel Return Service Contract 1 (MC2009–1 and CP2009–2)
Priority Mail Contract 1 (MC2008–8 and CP2008–26)
Priority Mail Contract 2 (MC2009–2 and CP2009–3)
Priority Mail Contract 3 (MC2009–4 and CP2009–5)
Priority Mail Contract 4 (MC2009–5 and CP2009–6)
Outbound International
Global Direct Contracts (MC2009–9, CP2009–10, and CP2009–11)
Global Expedited Package Services (GEPS) Contracts
GEPS 1 (CP2008–5, CP2008–11, CP2008–12, and CP2008–13, CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23, and CP2008–24)
Global Plus Contracts
Global Plus 1 (CP2008–9 and CP2008–10)
Global Plus 2 (MC2008–7, CP2008–16 and CP2008–17)
Inbound International
Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6, CP2008–14 and CP2008–15)
International Business Reply Service Competitive Contract 1 (MC2009–14 and CP2009–20)
Competitive Product Descriptions
Express Mail
[Reserved for Group Description]
Express Mail
[Reserved for Product Description]
Outbound International Expedited Services
[Reserved for Product Description]
Inbound International Expedited Services
[Reserved for Product Description]
Priority
[Reserved for Product Description]
Priority Mail
[Reserved for Product Description]
Outbound Priority Mail International
[Reserved for Product Description]
Inbound Air Parcel Post
[Reserved for Product Description]
Parcel Select
[Reserved for Group Description]
Parcel Return Service
[Reserved for Group Description]
International
[Reserved for Group Description]
International Priority Airlift (IPA)
[Reserved for Product Description]
International Surface Airlift (ISAL)
[Reserved for Product Description]
International Direct Sacks—M-Bags
[Reserved for Product Description]
Global Customized Shipping Services
[Reserved for Product Description]
International Money Transfer Service
[Reserved for Product Description]
Inbound Surface Parcel Post (at non-UPU rates)
[Reserved for Product Description]
International Ancillary Services
[Reserved for Product Description]
International Certificate of Mailing
[Reserved for Product Description]
International Registered Mail
[Reserved for Product Description]
International Return Receipt
[Reserved for Product Description]
International Restricted Delivery
[Reserved for Product Description]
International Insurance
[Reserved for Product Description]
Negotiated Service Agreements
[Reserved for Group Description]
Domestic
[Reserved for Product Description]
Outbound International
[Reserved for Group Description]

Part C—Glossary of Terms and Conditions
[Reserved]

Part D—Country Price Lists for International Mail [Reserved]

[FR Doc. E9–5755 Filed 3–16–09; 8:45 am]
BILLING CODE 7710–FW–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 09–17; FCC 09–19]

Implementation of the DTV Delay Act

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document completes the most essential remaining actions necessitated by the delay in the DTV transition deadline. In the DTV Delay Act, Congress extended the DTV transition deadline from February 17, 2009, to June 12, 2009, in an effort to provide consumers additional time to prepare for the transition from analog to digital broadcasting. The Act directed the Commission to take any actions ''necessary or appropriate to implement the provisions, and carry out the purposes'' of the Act, and to do so within 30 days. This document implements procedures and prescribes timing for stations to transition early, while providing viewers who are not prepared with a lifeline of analog service and both on-air and off-air educational information about the transition. The document also adjusts the consumer education requirements placed on broadcasters to eliminate any unnecessary burden after the transition while ensuring that on the most meaningful information is provided to viewers before they transition, and addresses other issues.

DATES: Effective March 13, 2009.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For more information, please contact Lyle Elder, *Lyle.Elder@fcc.gov,* at 202–418–2120; or Evan Baranoff, *Evan.Baranoff@fcc.gov,* at 202–418–7142, of the Policy Division, Media Bureau; or Eloise Gore, *Eloise.Gore@fcc.gov,* at 202–418–7200, of the Media Bureau. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams on (202) 418–2918, or via the Internet at *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third Report and Order,* FCC 09–19, adopted and released on March 13, 2009. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC, 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Summary of the Report and Order

I. Introduction

1. In this Report and Order, the third in response to the Congressional extension of the digital television (DTV)

transition deadline, we take the next actions necessary to implement the ''DTV Delay Act,'' which was enacted into law on February 11, 2009.[1] In the DTV Delay Act, Congress extended the DTV transition deadline from February 17, 2009, to June 12, 2009, in an effort to provide consumers additional time to prepare for the transition from analog to digital broadcasting.[2] The Act directed the Commission to take any actions ''necessary or appropriate to implement the provisions, and carry out the purposes'' of the Act, and to do so within 30 days.[3] The Commission has already taken steps to comply with the DTV Delay Act directive. We issued a series of public notices (PNs) establishing and implementing the early transition process for stations that transitioned on February 17, 2009.[4] The first Report and Order in the DTV Delay Act docket extended the analog license terms and adjusted the construction permits for the full power television stations subject to the DTV Delay Act.[5] The Second Report and Order, 74 FR 8868 (February 27, 2009) (''Omnibus Order''), and Notice of Proposed Rulemaking, 74 FR 8889 (February 27, 2009) (''NPRM'')[6] addressed the remaining time-sensitive actions necessitated by the delay in the transition deadline.[7] The companion NPRM sought comment on the procedures for early analog termination and issues relating to DTV transition consumer education, and we address those issues in the instant Order.

2. The actions taken thus far, and again in this Order, balance consumers' need for time and information with broadcasters' need for flexibility. This balance is implicit in the DTV Delay Act, which extended the deadline for the transition expressly to provide the American public with more time to prepare for the transition to digital television, while allowing broadcasters to complete their transitions prior to June 12, 2009, subject to such rules as the Commission finds necessary or appropriate. This Order implements procedures and prescribes timing for stations to transition early while providing viewers who are not prepared with a lifeline of analog service and both on-air and off-air educational information about the transition. The Order also adjusts the consumer education requirements placed on broadcasters to eliminate any unnecessary burden after the transition while ensuring that the most meaningful information is provided to viewers before the stations complete their transition, and addresses other issues.

II. Executive Summary

3. This Report and Order takes the following actions to implement the DTV Delay Act:

Analog Service Terminations

- In the *Omnibus Order,* we revised our analog service termination and reduction procedures to require stations that have not terminated analog service to file a binding notice of their proposed analog service termination date by March 17, 2009.
- Stations that notify us by March 17, 2009 may proceed with their planned terminations without specific individual approval, with limited exceptions.
- We adopt the Analog Service Termination Notification form, which must be filed by every station that has not yet terminated analog service.
- Stations generally may not terminate analog service before April 16, 2009.
- Noncommercial educational stations may terminate before April 16, but not before March 27, if they certify in their analog termination form that they need to terminate before April 16 due to significant financial hardship.
- We require all stations that terminate before June 12, 2009, to air viewer notifications for the 30 days prior to their transition. These viewer notifications are based on those required in the *Third DTV Periodic Report and Order,* but also require information about service loss from stations predicted to lose more than 2 percent of their analog viewers.
- Major network affiliates may terminate analog service prior to June 12, 2009, provided at least 90 percent of their analog viewers will receive continuing full analog service from another major network affiliate through June 12, 2009.
- If a major network affiliate elects to terminate prior to June 12 and more than 10 percent of its viewers will not continue to have full analog service from another major network affiliate, the station must undertake specified public interest measures, and so certify on the Analog Service Termination Notification form: (1) At least 90 percent of the population in its Grade B analog contour must receive some analog service from a major network affiliate through June 12 (either ''enhanced nightlight'' or some combination of enhanced nightlight and full analog service from a major network affiliate); and (2) it will comply with the other public interest conditions set forth herein, including walk-in help centers, consumer referral telephone numbers, and DTV education and outreach.
- We permit all stations to terminate analog service at any time of day on their final day of analog service and require that they notify the Commission on the Analog Service Termination Notification form of the approximate time they will terminate.

DTV Consumer Education Initiative

- We amend the DTV Consumer Education Initiative requirements to ensure that consumers will receive the information they need to make proper preparations for the digital transition of the stations on which they rely for television service:
  - Beginning April 1, 2009, if the FCC's Signal Loss Report predicts that 2 percent or more of the population in a station's Grade B analog service contour will not receive the station's digital signal, the station must air service loss notices. These notices are in addition to the existing consumer education requirements.

[1] DTV Delay Act, Public Law 111–4, 123 Stat. 112 (2009) (*''DTV Delay Act''*).

[2] *See, e.g.*, 155 Cong. Rec. E240–02.

[3] DTV Delay Act sec. 4(c). In addition, the DTV Delay Act amends the Digital Television and Public Safety Act of 2005 (''DTV Act''), Public Law 109–171, 120 Stat. 4 (2006), to direct the Commission to ''take such actions as are necessary (1) to terminate all licenses for full-power television stations in the analog television service, and to require the cessation of broadcasting by full-power stations in the analog television service, by June 13, 2009; and (2) to require by June 13, 2009, * * * all broadcasting by full-power stations in the digital television service, occur only on channels between channels 2 and 36, inclusive, or 38 and 51, inclusive (between frequencies 54 and 698 megahertz, inclusive).'' 47 U.S.C. 309 Note. The statutory deadline for Commission action is March 13, 2009.

[4] *FCC Announces Procedures Regarding Termination of Analog Television Service On or After February 17, 2009,* Public Notice, FCC 09–6 (Feb. 5, 2009) (*''February 5th PN''*); *FCC Releases Lists of Stations Whose Analog Operations Terminate Before February 17, 2009 or that Intend to Terminate Analog Operations on February 17, 2009,* Public Notice, DA 09–221 (MB Feb. 10, 2009) (*''February 10th PN''*); *FCC Requires Public Interest Conditions for Certain Analog TV Terminations on February 17, 2009,* Public Notice, FCC 09–7 (Feb. 11, 2009) (*''February 11th PN''*); *FCC Releases Lists of TV Stations' Responses to Requirements for Analog Termination on February 17, 2009,* Public Notice, DA 09–245 (MB Feb. 13, 2009) (*''February 13th PN''*).

[5] *Implementation of the DTV Delay Act,* MB Docket No. 09–17, Report and Order and *Sua Sponte* Order on Reconsideration, FCC 09–9 (rel. Feb. 13, 2009), 74 FR 7654 (February 19, 2009) (*''First DTV Delay Order''*).

[6] *Implementation of the DTV Delay Act,* MB Docket No. 09–17, Second Report and Order and Notice of Proposed Rulemaking, FCC 09–11, para 19 (rel. Feb. 20, 2009) (*''Omnibus Order''* or *''NPRM''*).

[7] One of those actions was the adoption of rules for the Option Two 100-Day Countdown, which was subsequently temporarily waived. *Temporary Waiver of 100-Day Countdown Requirement,* Public Notice, FCC 09–15 (Mar. 3, 2009). As discussed in Section III.C.6, *infra,* we implement revised final rules for the countdown in this Order.

○ Beginning April 1, 2009, all stations must include information about the use of antennas as part of their consumer education campaign, including information concerning a station's change from the VHF to UHF bands.

○ Beginning April 1, 2009, all stations must include information in their consumer education campaigns to inform and remind viewers about the importance of periodically using the rescan function of their digital televisions and digital converter boxes.

○ Beginning April 1, 2009, as part of its DTV consumer education campaign, every station must air notices providing the location and operating hours of walk-in DTV help centers in the station's market area; the FCC Call Center telephone number and TTY number; and the station's telephone number for receiving consumer referrals and calls from local viewers.

• We eliminate the requirement for most stations to continue broadcasting DTV transition educational information after they have terminated analog service.

• A station that has filed a request for an extension of the deadline for construction of its full, authorized post-transition digital facility, including a request for phased transition, or is operating under such an extension, must continue its DTV consumer education campaign until it completes construction and commences operation of its full, authorized post-transition digital facility.

• We amend the 100-Day Countdown requirement and require broadcasters subject to the Option Two consumer education rules to air a 60-day countdown to the date of their individual termination of analog service.

• We require broadcasters subject to the Option Two and Three consumer education rules to air a new, up-to-date 30 minute informational video before they transition. This video must include locally specific information, including information about the transition dates of all stations in the market.

• We revise Form 388, the DTV Quarterly Activity Station Report, to reflect the changes we have made to the *DTV Consumer Education Initiative* broadcaster rules in this Report and Order.

Other Issues

• We extend until December 14, 2009, the deadline for accepting DTS ''waiver policy'' proposals to permit a station to use DTS if doing so will enable it to continue to serve its existing analog viewers who would otherwise lose service as a result of its transition to digital service.

• We reconsider in part, *sua sponte,* the extension for ''phased transitions,'' as described in the *Omnibus Order,* and provide more time for stations facing ''unique technical challenges'' to complete construction.

III. Discussion

A. Analog Service Terminations

4. As discussed in detail in the *Omnibus Order,* we revised our analog service termination and reduction procedures [8] to require stations that have not terminated analog service [9] to file a binding notice of their proposed analog service termination date by March 17, 2009.[10] In this Section, we discuss the implementation of the Analog Service Termination Notification form, which must be filed by every station that did not terminate analog service on or before February 17, 2009. We conclude that stations filing to terminate analog service prior to June 12, 2009, may not specify a date earlier than April 16, 2009, except in the case of a noncommercial educational station (''NCE'') facing significant financial hardship, and may not change the date they select to any other early (*i.e.*, pre-June 12) termination date barring equipment failure, natural disaster, or another unforeseeable emergency. We also adopt requirements to assure that viewers are notified of early transitions and retain access to some analog service through June 12, 2009. Finally, we adopt our proposed post-transition analog service and consumer outreach requirements for the subset of early terminators that are major network affiliates in areas where all major network affiliate analog service will be discontinued prior to June 12, 2009.

5. The *Third DTV Periodic Report and Order, 72 FR 37310 (July 9, 2007),* permitted stations to transition without prior Commission approval during the final months before the transition, but they were required to make a showing with their notification to the Commission that the analog service termination was ''necessary to achieve their transition.'' Consistent with this requirement, stations that seek to transition early must provide us with sufficient information in the Analog Service Termination Notification to enable us to determine whether an early analog termination is necessary and in the public interest. We will allow stations that notify us in a timely manner to proceed with their planned terminations without specific individual approval, with limited exceptions. As discussed in the *Omnibus Order*, we cannot forecast and deploy resources to prepare and assist consumers based on rolling, uncoordinated notifications. We believe that allowing any or all stations to terminate or substantially reduce analog service under the existing *Third DTV Periodic Report and Order* procedures would squander the time given to us and the country by the delay enacted by Congress.

6. A number of commenters oppose the Commission's decision to revise the early analog termination procedures at all, and the specific proposals made in the NPRM. In its comments, the Association of Public Television Stations (''APTS'') focuses largely on the argument for permitting NCE stations to transition before April 16, which is addressed in Section II.A.4, below. APTS also argues more generally, however, that stations should be permitted to terminate at any time before June 12, because a ''gradual, rolling cessation of analog works relatively well and benefits the public.'' [11] It argues that this approach provides a steady supply of information to the Commission, while minimizing viewer disruption, and that ''so far it has worked.'' [12] Some individual stations also oppose the imposition of new requirements for early termination, even when they do not object to terminating analog service on April 16 or later.[13] McGraw-Hill opposes the extension of viewer notification requirements beyond 30 days, arguing that longer periods of notice could ''adversely

[8] We make no amendments to the Pre-Transition Digital Termination procedures adopted in the *Third DTV Periodic Report and Order. Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television,* MB Docket 07–91, Report and Order, 23 FCC Rcd 2994, 3045, para 133. (*''Third DTV Periodic Report and Order''.*)

[9] Although the Omnibus Order referred to ''all'' stations, we take this opportunity to clarify that this filing requirement is limited to full-power television stations that are still broadcasting in analog (excluding analog nightlight service). Those stations that terminated analog television service on or before February 17, 2009 do not need to file this form.

[10] *DTV Delay Act Omnibus Order,* FCC 09–11 at paras 26–32. The rule changes herein apply to analog service terminations and substantial reductions to analog service. In general, a ''substantial'' reduction is one that would affect more than 10 percent of the population in a station's service area, as represented by the predicted Grade B contour. References to ''termination'' here are intended to apply to such substantial reductions as well as to terminations.

[11] APTS Comments at 6. *See also* MATC Comments.

[12] APTS Comments at 6.

[13] KET Comments at 2–3; OSU Comments at 3–7.

impact a smooth transition'' and spur increased viewer complaints to stations.[14] Even where commenters do not argue that a longer notification period would create problems, they contend that a 30-day notice period, as adopted in the *Third DTV Periodic Report and Order*, is ''sufficient to make viewers * * * aware of the final date for the termination of analog operations.'' [15] While there is less universal opposition to the proposed requirement to air crawls for seven days before analog termination, the general consensus among commenters is that the existing levels of pre-transition viewer notification are sufficient.[16]

7. While we appreciate broadcasters' objections to the changes we are making in our procedures, we find it necessary to adopt new requirements and procedures associated with early transitions to assure that viewers are fully prepared and equipped to receive digital television signals and give up analog service. Our experience in preparing for the partial transition on February 17, as well as the early market-wide transitions in Wilmington, North Carolina and Hawaii, have demonstrated the importance of on-the-ground consumer outreach, the availability of coupons to defray the cost of DTV converter boxes, and the availability of the boxes themselves. Testimony in the recent Commission en banc hearings underscores the time needed by retailers, manufacturers, NTIA, pay TV services, local and national outreach organizations, and our own outreach staff to plan for both equipment availability and consumer education.[17] This experience convinces us that more than 30 days are needed to plan and execute the intensified outreach efforts necessary in an area with stations transitioning early to assure consumer readiness. Indeed, more than 60 days is preferable. However, we recognize that some stations have legitimate needs to transition early and that Congress required us to balance the consumer need for time and information with the broadcaster need for flexibility. Therefore, we adopt the procedures and requirements described here to implement this balanced approach.

8. For stations that elect to transition on June 12, the final day of the transition, we impose no additional requirements for viewer notification. Stations that will transition early may do so on the day of their choosing; they must, however, run daily viewer notifications for 30 days prior to transitioning, as required under the *Third DTV Periodic Report and Order* early termination procedures, containing the information described in this Order. Additionally, as discussed in detail below, affiliates of ABC, CBS, FOX, and NBC (''major network affiliates'') that are transitioning early must either (1) certify that at least one major network affiliate will continue to provide full analog service to their viewers through June 12, 2009, or (2) certify that their viewers will receive some continuing ''enhanced nightlight'' analog service, and that they will operate or support and publicize a walk-in help center and a consumer referral telephone number, and provide certain specific information about the transition in the on-air and other DTV educational efforts they undertake. These requirements are very similar to those we imposed on many major network affiliates that transitioned early on February 17, 2009. We conclude that these requirements are necessary and appropriate to implement the DTV Delay Act's provisions and carry out its purposes. They retain stations' flexibility to choose a transition date prior to June 12, while also addressing the needs and helping to ensure the readiness of viewers in their markets. We also retain the right to revise any station's proposed early termination if we find it in the public interest to do so.

1. Statutory Authority

9. We reaffirm our conclusion that the Commission has authority to modify the *Third DTV Periodic Report and Order's* early termination procedures as necessary to implement and carry out the purposes of the DTV Delay Act.[18] In their joint comments, NAB and MSTV (''NAB'') and others disagree with that finding, arguing that Section 4(a) of the Act plainly requires that broadcasters be allowed to cease analog broadcasting under the procedures ''in effect on the date of enactment of this Act,'' and prevents the Commission from modifying those procedures.[19] On the contrary, we conclude that Section 4(a) is ambiguous and reasonably can be interpreted to ratify the termination procedures that were in effect on the date of enactment of the Act without restricting the Commission's authority to modify them.[20]

10. Based on examination of the Act's text, legislative history, and structure, we cannot conclude that Section 4(a) plainly expresses Congress's intention to restrict FCC authority to modify its early termination procedures. Section 4(a) states that:

> [n]othing in this Act is intended to prevent a licensee of a television broadcast station from terminating the broadcasting of such station's analog television signal * * * prior to the [transition deadline] so long as such prior termination is conducted in accordance with the Federal Communications Commission's requirements in effect on the date of enactment of this Act, including the flexible procedures established in the [*Third DTV Periodic Report and Order*].[21]

NAB maintains that this language ''specifically allows stations to cease analog broadcasting under the existing requirements.'' [22] Although NAB's reading may be plausible, we do not agree that it is the only or even the most reasonable interpretation of the statutory text. The text clearly disavows any Congressional intent to override the Commission's existing termination procedures. It is silent, however, regarding whether the Commission may change those procedures. Had Congress intended to give broadcasters an affirmative right to terminate analog transmissions early in accordance with the procedures established in the *Third DTV Periodic Report and Order* and prevent the Commission from changing those procedures, it could easily have done so. Congress certainly knew how to use broad ''notwithstanding'' language, as it used such language elsewhere in the DTV Delay Act.[23] We

[14] McGraw-Hill Comments at 3.

[15] Sunbelt Comments at 4.

[16] *See, e.g.*, Barry Comments at 4, note 1 (proposing to air 30 days worth of notices before transitioning on April 16); *see also*, Joseph Belisle Comments (''It is a mistake to adopt onerous, endless, unworkable procedures for early termination of analog television service.'').

[17] Written testimony of Cathy Seidel, Bureau Chief, Consumer and Governmental Affairs at 6–7; Written testimony of Eloise Gore, Associate Bureau Chief, Media Bureau at 3; Mark Lloyd, Vice President for Strategic Initiatives, Leadership Conference on Civil Rights and Leadership Conference on Civil Rights Education Fund at 5.

[18] *Omnibus Order,* FCC 09–11 at para 30.

[19] DTV Delay Act sec. 4(a). *See* NAB and MSTV Joint Comments at 17–20 (''NAB Comments''); APTS Comments at 2–4; Richard B. Brittain Comments; KET Comments at 5, 8–9; OSU Comments at 6; ZGS Comments at 4.

[20] *See generally Bell Atlantic Tel. Cos.* v. *FCC,* 131 F.3d 1044, 1049 (D.C. Cir. 1997) (Under the *Chevron* doctrine, if a statute is silent or ambiguous as to the precise question at issue, then a reasonable agency interpretation of the statute merits judicial deference).

[21] DTV Delay Act sec. 4(a).

[22] NAB Comments at 18.

[23] DTV Delay Act sec. 4(c) (''[n]otwithstanding any other provision of law, the Federal Communications Commission * * * shall, not later than 30 days after the date of enactment of this Act, * * * adopt or review its rules, regulations, or orders to take such other actions as may be necessary or appropriate to implement the provisions, and carry out the purposes, of this Act.''). *Cf. Central Bank of Denver* v. *First Interstate Bank,* 511 U.S. 164, 176–77 (1994) (although ''Congress knew how to impose aiding and abetting liability when it chose to do so,'' it did not use the words ''aid'' and ''abet'' in the statute, and hence did not impose aiding and abetting liability).

believe that the use of narrower language in Section 4(a) signals a more modest disavowal of intent to override existing procedures.

11. Contrary to NAB's argument, neither Section 4(a)'s title (''Permissive Early Termination Under Existing Requirements'') nor the legislative history make plain the meaning of the statutory text; the title is only ''a short-hand reference to the general subject matter involved,'' [24] and the two floor statements cited by NAB merely indicate the expectation that broadcasters would be allowed to terminate early, without mentioning a freeze or other limitation on FCC authority.[25] Further, the Act's structure does not support NAB's reading. On the contrary, rather than restricting the agency's general rulemaking authority, Section 4(c) grants the Commission expansive new authority.[26] We find it difficult to square NAB's crabbed reading of Section 4(a) as enshrining the FCC's existing termination procedures with Section 4(c)'s grant of expansive new authority to implement the DTV Delay Act and carry out its purposes.[27]

12. Considering the DTV Delay Act's text, legislative history and structure, and consistent with Supreme Court precedent, we have concluded that Section 4(a) ratifies the *Third DTV Periodic Report and Order's* early termination procedures without restricting the Commission's authority to modify those procedures.[28] We remain persuaded that this interpretation is the most reasonable one. As discussed above, we think that Section 4(a) is most reasonably read as a disavowal of intent to override the Commission's early termination procedures then in effect. Had Congress not ratified those procedures, the DTV Delay Act could be interpreted to prohibit early termination altogether, for its purpose arguably would be undermined if most broadcasters chose to terminate before June 12.[29] We reject NAB's argument that our construction prefers Section 4(c)'s general terms over Section 4(a)'s specific ones.[30] Rather, our reading harmonizes and gives full effect to both Section 4(a) and Section 4(c), which reflects Congress's recognition that implementing the DTV Delay Act and carrying out its purposes within the short time available ''would require extraordinary and immediate action by the Commission and others.'' [31]

2. Analog Service Termination Form

13. In the *Omnibus Order,* we required all full-power television stations that had not terminated their analog service as of February 17, 2009, to decide on a firm date by which they intend to terminate their regular analog television service and to notify us of that date no later than Tuesday, March 17, 2009.[32] We imposed this requirement because we have found that the opportunity for advance planning contributes significantly to a smoother transition. We now announce that this notification must be made via the Commission's Informal Filing Form after the release of this Order, but not later than 5:30 PM Eastern Daylight Time on March 17, 2009.[33] In this notification (the ''March 17 filing''), stations must commit to terminating on a date no earlier than April 16, 2009,[34] to give all parties at least 30 days from the notification date to prepare and educate consumers. Any station that does not properly file this notification will not be permitted to terminate their analog service prior to June 12, 2009, except in the case of equipment failure, natural disaster, or other unforeseeable emergency.

14. The analog termination advance notice procedures adopted in this proceeding supersede the provisions of Section 73.1615.[35] Stations may rely on the provisions of Section 73.1615 for brief terminations or reductions of service for technical reasons. They may not, however, rely on this provision to terminate analog service altogether, even in the days immediately prior to June 12, 2009. Barring Commission action, a station may only terminate analog service on the date it elects to do so on the analog service termination form.

15. We impose no requirements in this section on stations that notify the Commission of their intent to continue providing full analog service [36] until June 12, 2009.[37] Continuing to broadcast in analog will give the viewers of these stations the maximum possible opportunity to prepare for digital broadcasting. The Commission recognizes the central importance of this goal; therefore, stations that file an analog service termination form to elect

[24] *Trainmen* v. *Baltimore & Ohio Railroad,* 331 U.S. 519, 528 (1947) (titles of acts or sections can provide only limited interpretive aid).

[25] *See* NAB Comments at 18 n.39, citing Statement of Rep. Boucher, Cong. Rec. H585 (Jan. 27, 2009) ''[w]e fully anticipate that the FCC will be very flexible in applying'' the provision allowing stations to cease analog broadcasting early); Statement of Sen. Hutchinson, Cong. Rec. at S1051 (Jan 29, 2009) (explaining that the delay of the DTV transition date ''is voluntary,'' which ''was very important'' because ''many broadcast companies have made the investment for digital transmission'' and the bill allows them ''to go'' digital). To the extent that NAB suggests that the FCC's modifications of the early termination procedures deprive broadcasters of the flexibility that Congress intended, we disagree for the reasons set forth elsewhere in this Order and our previous Order. We believe that our actions afford stations the flexibility that they need to choose a termination date prior to June 12 while also taking into account the needs and readiness of viewers in their markets.

[26] DTV Delay Act sec. 4(c) (authorizing the FCC ''[n]otwithstanding any other provision of law'' to ''adopt or revise its rules, regulations, or orders or take such other actions as may be necessary or appropriate to implement the provisions, and carry out the purposes, of this Act.).

[27] *Verizon California, Inc.* v. *FCC,* 2009 WL 304745 (D.C. Cir. 2009) (context and purpose of statute properly considered in determining meaning).

[28] *DTV Delay Act Second Report and Order and NPRM,* FCC 09–11 at para 30 n. 59 and accompanying text, citing *Zemel* v. *Rusk,* 381 U.S. 1, 9–13 (1965) (Secretary of State had statutory authority to impose new area restrictions on passports in 1961 under the Passport Act of 1926 because Congress had ratified the Secretary's authority to impose such restrictions in 1952 by enacting passport legislation without tampering with the rulemaking authority granted to the Secretary in the 1926 Act), and *City of New York* v. *FCC,* 486 U.S. 57 (1988) (Congressional ratification of FCC preemption of state and local cable technical standards). None of the comments specifically address the Commission's reliance on ratification precedents in the *DTV Delay Act Second Report and Order.*

[29] *Cf. Omnibus and Order and NPRM,* FCC 09–11 at para 1 (''In the DTV Delay Act, Congress extended the DTV transition deadline from February 17, 2009 to June 12, 2009 in an effort to provide consumers additional time to prepare for the transition from analog to digital broadcasting.''), citing Cong. Rec. H895 (daily ed. Feb. 4, 2009).

[30] NAB Comments at 18–19.

[31] *Omnibus Order and NPRM,* FCC 09–11 at para 69. Finally, we note that NAB's argument that modification of FCC procedures is not permissible simply because sec. 4(a) does not expressly foreclose it, NAB Comments at 19, is inapposite because we do not rely on sec. 4(a)'s silence for authority here. As explained above, we have both general rulemaking authority and expansive new authority under sec. 4(c) of the DTV Delay Act.

[32] *Omnibus Order,* FCC 09–11 at para 26.

[33] Notice to the Commission must be provided electronically through the Commission's Consolidated Database System \(''CDBS'') using the Informal Application filing form. To access the CDBS electronic filing system in order to file an analog termination or reduction notification, go to the Media Bureau's Web site at: *http://www.fcc.gov/mb/cdbs.html.* Instructions as to how to file these notifications are as follows: After logging into the CDBS, select the last option from main menu ''Additional non-form Filings.'' From the next menu select ''Silent STA/Notification of Suspension.'' From the pre-form menu select: ''Notification of analog termination or reduction.'' No fee is required. For additional information, contact Hossein Hashemzadeh, *Hossein.Hashemzadeh@fcc.gov,* of the Media Bureau, Video Division, at (202) 418–1658.

[34] *But see* Pre-April 16 Terminations by Noncommercial Educational Stations Certifying Significant Financial Hardship, *infra.*

[35] 47 CFR 73.1615.

[36] For the purposes of this Order, we define ''full'' analog service or programming to mean the normally scheduled programming that the station aired prior to transitioning to digital-only broadcasting.

[37] All stations must conform to the DTV Consumer Education Initiative rules, however, including those adopted in this Order, unless they are specifically exempted from doing so.

an early transition date may later revoke this notification and delay their transition to June 12, 2009. This revocation filing may be submitted at any time up to five days prior to the elected transition date, although a shorter notice period is permissible in the case of equipment failure, natural disaster, or other unforeseeable emergency. In filing such a revocation, a station must certify that continuation of full analog service will not result in interference to the signal of any other station that has been approved to commence early post-transition operations. It must also certify that it will provide notice to viewers of this revocation at least four times daily, with at least one notice in primetime, over the five days prior to and including the day it originally elected to terminate analog service.

3. Early Analog Service Termination Viewer Notifications

16. Pursuant to the *Third DTV Periodic Report and Order,* stations that transition early are required to provide additional viewer notifications in order to ensure that their viewers are prepared.[38] In that Order, we required that stations provide viewer notifications for at least 30 days prior to their termination of analog service, and we retain that requirement here. These notifications must air at least four times a day, including at least once in primetime, for the 30-day period prior to the planned service reduction or termination. They must include: (1) The station's call sign and community of license; (2) the fact that the station is planning to reduce or terminate its analog operations before the transition date; (3) the firm date of the reduction or termination; (4) what viewers can do to continue to receive the station, *i.e.,* how and when the station's digital signal can be received; [39] (5) information about the availability of digital-to-analog converter boxes in their service area; and (6) the street address, e-mail address (if available), and phone number of the station where viewers may register comments or request information. In addition to the requirements described in the *Third DTV Periodic Report and Order,* stations terminating early must also provide service loss information, pursuant to Section III.C.2, below, if that section would require notice to viewers. As noted throughout this Order, these notifications are in addition to the requirements of the *DTV Consumer Education Initiative* rules, including those adopted in this Order.[40]

17. We also asked in the NPRM whether we should require major network affiliates, or even all stations, that terminate analog service prior to June 12 to run seven days of hourly crawls, as we required of stations that terminated on February 17, 2009.[41] NAB opposed this requirement, arguing that 30 days of notices prior to the transition will be sufficient to educate viewers ahead of time, and pointing to widespread consumer annoyance with the appearance of the crawls during programming.[42] We agree with NAB that there is no need for additional pre-termination notifications in the form of crawls. When stations terminated on February 17, there was an extremely short period of time available to notify viewers of the impending change. The DTV Delay Act was enacted on February 11, and the extensive news coverage may have led many viewers to believe that they did not need to prepare for the digital transition, even if one of their local stations was going to transition six days later. With only six days, there was no way to run notices for thirty days. As a result, we found that an extremely intensive educational effort for the short period remaining was the only way to reach viewers as completely as a long term notice campaign. Now, stations will have time to run the full thirty days of viewer notifications.[43] Under the present circumstances, we conclude that there is no need for additional pre-termination notifications in the form of crawls.

4. Pre-April 16 Terminations by Noncommercial Educational Stations Certifying Significant Financial Hardship

18. We will allow NCEs to terminate analog service before April 16, if such termination is necessary as a result of significant financial hardship. Stations must certify in their analog termination form (described above) that they need to terminate before April 16 due to significant financial hardship and must comply with the viewer notification requirement. NCEs making this certification may terminate before April 16, but not before March 27.

19. In the *NPRM,* we tentatively concluded that stations may terminate no earlier than April 16, 2009, so that stations terminating analog service early could adequately prepare and educate their viewers. We received several comments, including from APTS and many NCE stations, asking for permission to terminate before April 16, asserting significant financial hardship.[44]

20. The Commission has consistently recognized that NCE stations face unique financial difficulties and has afforded them additional flexibility to assist them in making their transition.[45] APTS notes that many NCE stations continued broadcasting in analog after their planned termination date of February 17 at the Commission's urging, with the expectation that they would be able to terminate soon thereafter.[46] We are also sensitive to the ''unplanned expenses'' (such as costs for electricity, equipment maintenance, additional tower rent, renegotiating tower leases, rescheduling tower crews and storing new equipment until it can be installed) which are incurred by stations keeping analog transmitters on the air after their originally planned termination dates.[47] Although all stations may face such unplanned expenses, they are likely to fall particularly hard on NCE stations because of their unique financial difficulties, such as their reliance on government funding. We are aware that NCEs, unlike commercial stations, may have budgetary restrictions that prevent them from obtaining additional funding to address these expenses.[48]

[38] *Third DTV Periodic Report and Order,* 23 FCC Rcd at 3050, para 117.

[39] Alternatively, the notification could describe how to get service from another station affiliated with the same network if the station's digital signal will not cover the entire area that is within the station's Grade B analog contour.

[40] The revisions to our rules are shown in the regulatory text to this document.

[41] *February 5th PN.*

[42] NAB Comments at 22.

[43] Certain noncommercial stations, discussed, *infra,* may not have the full 30 days.

[44] *See* APTS Comments at 2–5; *see also* WPT Comments at 2 (saying the following stations need to terminate early [April 5] due to ''drastic technical and financial pressures'': WHLA-TV, WHRM-TV, WHWC-TV, and WPNE(TV), WHA-TV); St. Lawrence Comments at 2 (saying the following stations need to terminate early [March 15] due to a ''severe budgetary crisis'': WPBS and WNPI); WQED at 2 (saying that WQED needs to terminate early [April 1] because of a ''severe budgetary crisis''); WJCT Comments at 2 (saying WJCT is ''facing severe economic constraints'' and needs to terminate early [April 6]); MSU Comments at 2 (saying KOZK and KOZJ planned to terminate analog early [April 2] to address ''serious financial and equipment considerations'').

[45] For example, in the *Third DTV Periodic Report and Order,* the Commission afforded NCE stations a reduced service requirement if their circumstances warranted this additional flexibility. *See, e.g., Third DTV Periodic Report and Order,* 23 FCC Rcd at 3041, para 97; and *Second DTV Periodic Report and Order,* 19 FCC Rcd at 18311–18319, paras 80–87. In addition, NCE stations received a later use-or-lose deadline in the *Second DTV Periodic Report and Order* and, in the *Fifth Report and Order,* we noted the unique financial difficulties faced by NCE stations and reiterated our view that these stations warranted additional flexibility. *Fifth Report and Order,* 12 FCC at 12852, para 104.

[46] APTS Comments at 5.

[47] *Id.* at 4.

[48] *See, e.g.* , Mid-South Comments at 2 (facing a 15 percent cut in state funding); WNYPBA

Accordingly, we will permit NCE stations to terminate analog service prior to April 16, and as early as March 27, provided they comply with the viewer notification requirement, discussed below. We find that stations may not terminate analog service without notifying viewers on air for at least 10 days prior to termination, except in the case of equipment failure, natural disaster, or other unforeseeable emergency. We will not, however, reinstate analog termination notifications filed with the Commission under the prior procedures, nor will NCE stations' comments filed in response to the NPRM satisfy the March 17, 2009 notification requirement.[49] NCE stations must file their binding analog service termination notification by March 17, 2009.[50] NCE stations terminating on or after April 16 should follow the analog termination procedures discussed above.

21. *Viewer Notification Requirement.* We require NCE stations that need to terminate analog television service before April 16 to broadcast the equivalent of 30 days' worth of viewer notifications regarding the station's imminent termination of its analog service.[51] We find that this viewer notification requirement is necessary to protect viewer expectations and to carry out the purpose of the analog termination procedures. The 30 days' worth of viewer notifications must include the information discussed above.[52] To comply with this requirement, stations must adequately and clearly communicate the required information, and make particular note that the date on which the station is terminating is prior to the new nationwide date of June 12, 2009.

5. Early Analog Service Terminations by Major Network Affiliates

22. As we discussed in the *February 11th* PN, the early analog terminations of certain stations poses a significant risk of substantial public harm.[53] The presence of ABC, CBS, FOX, and NBC network stations and affiliates in a market is critical to ensuring that over-the-air viewers have access to local news and public affairs, because these ''major network affiliates'' are the primary source of local broadcast news and public affairs programming in most communities. No commenter disagreed with this point. Indeed, while some commenters, including NAB, opposed additional early termination requirements as a general matter,[54] no commenter specifically objected to imposing such additional requirements on major network affiliates that transition early. We will allow major network affiliates to terminate analog service prior to June 12 under the following conditions that ensure fulfillment of their public interest responsibilities. First, as discussed above, they must identify the date on which they plan to transition in their March 17 notification to the Commission. Second, major network affiliates must certify either that at least 90 percent of the population in their Grade B analog contour will receive full analog service from another major network affiliate until June 12, 2009, or that they will comply with the additional public interest related conditions. The additional public interest conditions are necessary to ameliorate any potential harms of early termination by assuring that viewers who will lose regular analog service from all of their major network affiliates before June 12 will continue to have some essential analog service through June 12 and will have access to local assistance from their stations no later than the time that the last major network affiliate terminates full analog programming.

23. A major network affiliate which cannot certify that 90 percent of its viewers will receive full analog service from another major network affiliate through June 12, 2009, but wishes to terminate early, must certify in its March 17 filing that: (1) At least 90 percent of the population in its Grade B analog contour will receive some major network affiliate analog service (enhanced nightlight or some combination of full service and enhanced nightlight) [55] until June 12, 2009; and (2) it will comply with the other public interest conditions described below.[56] The station's enhanced nightlight and public interest obligations begin when more than 10 percent of the population in the station's Grade B analog contour no longer receives analog service from a major network affiliate, if that day is before June 12. Under most circumstances, this will be the day on which the last major network affiliate in a market terminates analog service early.

24. As discussed in more detail below, the ''90 percent served'' condition will help to ensure that a major network affiliate's early termination does not pose a significant risk of substantial public harm because most viewers will continue to receive some analog service, and the public interest conditions carry out the DTV Delay Act's purposes by facilitating consumer readiness in communities where the primary sources of local broadcast news and public affairs programming are all terminating early. Any major network affiliate that properly certifies may terminate on its chosen date without the need for action by the Commission.[57] A major network affiliate that does not: (1) Certify that a major network affiliate will provide full analog service to at least 90 percent of the population in its service area; (2) certify that it will comply with the public interest related conditions (including the analog service requirements); or (3) demonstrate extreme technical or financial difficulties by filing a showing of extraordinary exigent circumstances; must continue providing full analog

Comments at 2 (facing a 50 percent cut in state funding); and APTS comments at 5 (''Requiring stations to continue analog transmissions for a month or more beyond what they had budgeted would have profound negative implications on their financial futures.'')

[49] *Omnibus Order* at, para 26.

[50] *Implementation of the DTV Delay Act,* MB Docket No. 09–17, Second Report and Order and Notice of Proposed Rulemaking, FCC 09–11, para 26 (rel. Feb. 20, 2009).

[51] Notifications must be aired 120 times, on a daily basis, including 30 times in primetime, distributed evenly during the 30-day period. Therefore, if the viewer notifications begin, for example, 10 days before the station's termination, the station must broadcast notifications 120 times, including 30 times in primetime, distributed evenly during the 10-day period; *i.e.* , the station must broadcast notifications every day on-air at least 12 times a day, including at least three times in primetime, for the 10-day period.

[52] We note that these viewer notifications are in addition to, and separate from, the notification requirements established in the Commission's *DTV Consumer Education Initiative* proceeding. *See DTV Consumer Education Initiative,* MB Docket No. 07–148, Report and Order, 23 FCC Rcd 4134 (2008); Order on Reconsideration and Further Notice of Proposed Rulemaking, 23 FCC Rcd 7272 (2008) (collectively, ''*DTV Consumer Education Orders*'').

[53] *February 11th PN.*

[54] NAB focused on the importance of flexibility, which is retained by our procedures, and objected to the imposition of additional pre-transition viewer notification obligations for early terminators, which we declined to impose. In particular, NAB focused on the dangers of viewer fatigue as a result of additional on-air early transition notifications. NAB Comments at 21, 22, 24. The obligations on major network affiliates all apply after termination of their analog signal, and more to NAB's point about viewer fatigue, do not require any on-air notifications to digital viewers. The major networks or major network affiliates that filed comments with the Commission either had no comment about these requirements, or supported them. [FOX, Lima, Griffin, no comment; McGraw-Hill ''generally supports the procedures proposed in the *NPRM* for binding early analog terminations.'']

[55] *See* definition of Enhanced Nightlight, *infra.*

[56] These public interest conditions are based on the requirements established in the *February 11th Public Notice.*

[57] Stations that are not major network affiliates are not held to these responsibilities. The Media Bureau will issue a Public Notice listing the stations and their early transition dates as soon as possible after the certifications are submitted and reviewed.

service until June 12, 2009 (except in the case of equipment failure, natural disaster, or other unforeseeable emergency).

a. Early Terminations By Major Network Affiliates That Certify Continuing Full Analog Service by Another Major Network Affiliate

25. As discussed above, a major network affiliate may terminate early by certifying that at least 90 percent of the population within its Grade B analog contour will continue to receive full [58] analog service through June 12, 2009, from a major network affiliate. We note that this need not be a single other major network affiliate,[59] so long as 90 percent of the population is receiving full analog service from some major network affiliate.[60] Although such a station incurs no additional obligations, it must comply fully with the requirements imposed on all stations that terminate early: To file and update the Analog Service Termination Notification form, as discussed in Section III.A.2, and to air 30 days of viewer notifications, as described in Section III.A.3. Although the filing station must list, in the March 17 filing, the stations it will rely upon to provide the requisite level of service, each station is individually responsible for ensuring that the required percentage of its own analog viewers actually receive the required level of service.[61]

b. Early Terminations By Major Network Affiliates That Certify Compliance With the Public Interest Related Conditions

26. If a major network affiliate cannot certify that full analog service will be provided by some major network affiliate to at least 90 percent of the population in its Grade B contour through June 12, 2009, then it must certify that there will be some analog service to 90 percent of the population in its Grade B contour through June 12, 2009, and that it will comply with the additional conditions below. Analog service, for this purpose, may be ''enhanced nightlight'' service, as defined below, or some combination of enhanced nightlight and full service analog programming from a major network affiliate (when the full service analog programming is not available to at least 90 percent of population in the station's Grade B analog contour). Either of these will ensure continuing access to local news, public affairs and emergency information, as well as DTV educational information, for any viewer who has not yet transitioned. Any major network affiliate that is certifying in order to terminate analog service early must include with its filing a list of the stations that will, individually or collectively, continue to provide such analog service to at least 90 percent of its analog viewers through June 12, 2009.[62] Stations may cooperate to share responsibility for providing the required level of analog service, but each station is individually responsible for ensuring that its own analog viewers receive the required level of service.

27. Major network affiliates must certify in the March 17 filing that they will comply with these other public interest conditions if more than 10 percent of the population in their Grade B service contour will lose full analog service from all major network affiliates before June 12. These obligations must be undertaken so that they are in place and operating no later than the day on which more than 10 percent of the population in their Grade B service contour actually do lose full analog service from all major network affiliates—usually when the last major network affiliate in the market terminates full service analog programming. The requirements for ''Walk-In Help Centers'' and ''Consumer Referral Telephone Numbers'' contemplate collective effort, in a market where more than one broadcaster has certified compliance with the conditions, but we remind major network affiliates who certify compliance that they are each individually responsible for ensuring that collective efforts are compliant, and individually liable if they are not. We expect that major network affiliates and other stations serving the same viewing area will closely coordinate if they intend to terminate analog service before June 12, 2009. While we applaud and encourage coordination among broadcasters serving the same area within a market, we emphasize that broadcasters that continue providing full analog service to at least 90 percent of the population in their analog service area through June 12, 2009, are not responsible for compliance with any of the requirements associated with early termination, or for any shared efforts or expenses incurred by early termination stations as a result of these requirements.

28. A major network affiliate must certify to all of the public interest related conditions in the next paragraph if it intends to terminate analog service before June 12, 2009, unless some other major network affiliate will provide full analog service to at least 90 percent of the population within the terminating station's Grade B contour through June 12, 2009. We find that these conditions are directly related to, and necessary for, the early transition of a major network affiliate if its viewers will not have access to any other major network affiliate programming. Our experience on and after February 17th demonstrates that the continuing presence of at least one major network affiliate station broadcasting in analog provides vital information to viewers concerning the transition, as well as keeping them informed of local news. Broadcasters have the primary responsibility for their viewers and have the greatest interest in assuring that their signals continue to be available to their viewers. We impose these conditions with the awareness that many broadcasters have taken and will take these actions, and more, on their own. But we are mindful of our responsibility to ensure that all broadcasters fulfill their public interest obligations as licensees and to establish a baseline of the necessary information and service for viewers in every community, particularly during this potentially disruptive transition. These conditions are based on those proposed in the NPRM, which were in turn based on those imposed on many major network affiliates that transitioned on February 17. Although the Commission will take all steps within our capacity to provide outreach and support to markets in which there will be an early transition, realistically we cannot be everywhere. And, while we intend to work with contractors and volunteer

[58] See note 36.

[59] Note that if the station is relying on (an)other major network affiliate(s), the station must confirm that the affiliate(s) relied on remain(s) able to cover at least 90 percent of the population in the station's Grade B coverage area even if the affiliate(s) is (are) operating at reduced power.

[60] Indeed, if the major network affiliate in question is reducing rather than terminating, it may count the percentage of its full Grade B contour still served toward the 90 percent. So, if the station will continue to serve 80 percent of the population in its service area through June 12, there need only be an additional, non-overlapping, 10 percent served by another major network affiliate through June 12 in order for the station to comply.

[61] Stations filing for early termination must determine and certify that the requisite analog coverage will be provided. We intend to rely on the stations' filings to determine whether the termination is in the public interest.

[62] In this situation, just as for other major network affiliates, the stations filing for early termination must determine and certify that the requisite analog coverage will be provided, and we will rely on their filings to determine whether the termination is in the public interest. Here too, if a major network affiliate is substantially reducing coverage but not terminating analog service altogether, it may count the percentage of its Grade B contour still served toward the 90 percent. For example, if the station will continue to serve 70 percent of the population in its service area through June 12, there need only be an additional, non-overlapping, 20 percent served by another major network affiliate's ''enhanced nightlight'' through June 12 in order for the station to be in compliance.

organizations across the country, we cannot necessarily have all of these services in place for every early transition. Therefore, we find it reasonable and appropriate that the major network affiliates that choose to transition early, leaving their viewers with no access to major network affiliate programming, take on some of the on-the-ground responsibility to support and assist their viewers through the walk-in help centers, consumer referral telephone numbers, and other public interest conditions described here.

29. Based on our experience and informal questions from stations affected by these requirements during the February 17 transition, we have reorganized the requirements and provided additional detail, as follows:

Certification Regarding Continuing Analog Service

- At least 90 percent of the population in the station's Grade B analog contour will continue to receive some analog service, until June 12, 2009, in the form of ''enhanced nightlight'' service (described below), or some combination of enhanced nightlight and ''full'' analog service from a major network affiliate.[63] Note that if the certifying station is relying on one or more other major network affiliates, the station must confirm that the affiliates relied on remain able to cover at least 90 percent of the population in the station's Grade B coverage area even if the affiliates are operating at reduced power.
- ''Enhanced nightlight'' service constitutes the broadcast, by a major network affiliate, of an analog signal providing, at a minimum, DTV transition and emergency information, as well as local news and public affairs programming. Both DTV transition and emergency information must be accessible to the disability community (*e.g.*, broadcast notices must have an audio component, as well as being closed or open captioned). The local news, public affairs, and other non-emergency programming are not subject to the programming restrictions of the Analog Nightlight Act, and as such may include commercial advertising.[64]
- The DTV transition information must be provided in Spanish and English, and must include demonstrations of converter box installations and antenna setups; the location and operating hours of all walk-in DTV help centers in the market (including centers not affiliated with the station); [65] the FCC Call Center telephone and TTY numbers; the telephone number for the local or toll-free consumer referral telephone number provided by the station; and other helpful information about the DTV transition.

Certification Regarding Other Public Interest Conditions

Walk-In Help Centers

- The station, alone or together with other stations or local businesses and organizations in the market, will provide at least one location and sufficient staff for a consumer ''walk-in'' help center. The walk-in help center(s) must be able to: assist consumers with applying for coupons and obtaining converter boxes; demonstrate how to install and operate converter boxes; assist consumers with antenna, reception, and coverage questions; provide maps and lists of communities that may be affected by coverage issues; and serve as a redistribution point for consumers who are willing to donate coupons, converter boxes, and televisions for those in need of these items. The certification must specify whether the station will operate the walk-in help center(s) itself or rely on other organizations in the market.
- Each walk-in help center must contain (for hands-on demonstration purposes) at least one analog-only television, one coupon-eligible digital-to-analog converter box, one VCR, DVD player, or game console (to demonstrate how to hook-up such devices in conjunction with a digital-to-analog converter box), and one antenna able to receive the digital signals of the local broadcast station(s). A display area for printed literature regarding the digital-to-analog converter box coupon program, connection guides for digital-to-analog converter boxes, and guides for antenna and reception issues is also required. There must also be at least one computer with an Internet connection so that consumers can, among other things, apply online for converter box coupons and view coverage maps for broadcast stations in their area. The walk-in help center must also have a DVD player attached to a TV that is not being used for setup demonstrations, so that consumers can view educational videos regarding installing a converter box and videos regarding antennas, reception, and coverage issues.
- The staff at the walk-in help center must be prepared to demonstrate the use of the equipment on site; to provide information about any service losses for viewers of local stations; to assist viewers with accessing DTV transition information online; and to assist them with their personal equipment if they bring it to the center.
- At least one walk-in help center must be open every day from at least 12 p.m. (noon) to 8 p.m. for the first 21 days this requirement is in effect, and between the hours of 4 and 8 p.m. on Fridays, and 10 a.m. to 4 p.m. on Saturdays and Sundays, thereafter. This requirement terminates on June 12, 2009. There must be at least one broadcast station employee, from any participating station, on-site at all times during the operating hours of the center.

Consumer Referral Telephone Numbers

- The station must provide a local or toll-free consumer referral telephone number to the Commission, and must staff this number with personnel that can answer complex viewer questions, particularly about reception. This will serve to supplement the Commission's national call center. The certification must specify whether the station's referral number will be staffed by the station itself or if the station is relying on another entity or entities to respond to consumer calls and referrals.

DTV Education and Outreach

- No later than 30 days prior to its analog termination, the station will provide the Commission with the following information: the address and operating hours of the Walk-In Help Center, and the phone number and operating hours applicable to the consumer referral telephone number, that the station will be relying on to meet these obligations, as well as the name and phone number of the station's point of contact for these issues. This information will be submitted by way of an update to the Analog Service Termination Notification.
- Each station is encouraged to coordinate with and use community resources to provide off-air consumer outreach and support, including in-home assistance and other helpful information about the DTV transition.

[63] For example, combined coverage can be provided by a major network affiliate that is not transitioning early, but that does not provide full analog service to at least 90 percent of the population in the certifying station's Grade B analog contour. We note that if some combination of major network affiliates provide full analog service to at least 90 percent of the population in the certifying station's Grade B coverage area through June 12, 2009, the station is exempt from these requirements.

[64] *Implementation of Short-Term Analog Flash and Emergency Readiness Act; Establishment of DTV Transition ''Analog Nightlight'' Program*, MB Docket No. 08–255, Report and Order, FCC 09–2 (rel. Jan 15, 2009) (''*Analog Nightlight Order*'').

[65] The Commission will publicize the location and hours of local walk-in centers via our Web site at *https://dtvsupport.fcc.gov/dtvtools*, using the detailed data provided by stations.

30. We recognize that there may be extreme technical or financial circumstances that prevent some major network affiliates subject to the certification requirements from certifying that they and/or the other stations in their market will provide continuing analog service.[66] In such cases, these licensees may make an alternative showing to the Commission that extraordinary, exigent circumstances, such as the unavoidable loss of their analog site or extreme economic hardship, require that they terminate their analog service on their proposed date but prevent them from providing enhanced nightlight service for their analog viewers.[67] This showing must also include information regarding analog service that will be available for the station's viewers after the station terminates its analog service.[68] The showing should not exceed five (5) pages, not including attachments. Stations attempting to make this showing bear a heavy burden of proof. Absent technical impossibility, any station electing to make this showing must await a determination by the Commission that its showing is sufficient before terminating analog service. The Commission will endeavor to resolve all of these cases as soon as possible prior to the stations' proposed termination dates.

31. We also retain the right to prevent any station from going forward with their proposed early termination if we find it in the public interest to do so. For example, we may need to adjust the timing of some stations' or some markets' transition plans if multiple markets intend to transition simultaneously, because this could severely strain the resources of the Commission and others working to ensure full consumer preparedness. As the Commission did in the case of stations seeking to terminate on February 17, we will expeditiously provide public notice if any station will not be permitted to transition on its elected early transition date.

B. Time of Day for Analog Service Termination

32. We find that it is appropriate to permit all stations the flexibility to terminate analog service at any time of day on the date they terminate analog broadcasting. As noted in the *First DTV Delay Act Order*, full-power stations' analog licenses expire at 11:59:59 p.m. local time on June 12, 2009.[69] Stations may continue analog broadcasting after 11:59:59 p.m. local time only to the extent that they are participating in the Analog Nightlight program.[70] However, the DTV Delay Act and the other relevant statutory provisions are silent as to the time of day on June 12, 2009, at which analog termination must occur. We do not believe it is necessary to treat analog termination on June 12 but prior to 11:59:59 p.m. local time as an ''early'' termination and leave it to stations to determine what time of day is most appropriate for their viewers.[71] While stations have the flexibility to transition at any time, we understand that some stations that have already transitioned experienced difficulties (*e.g.*, coordination with local cable operators) that were more easily addressed during daytime hours. Stations must inform the Commission of the approximate time of day they plan to terminate when they file their analog service termination notification,[72] and must notify viewers through their required PSAs, crawls and other on-air consumer education if they are planning to end analog service before 11:59:59 p.m. local time on their final day of service. We also extend flexibility to stations that are transitioning early to do so at the time of day most appropriate for their viewers.

C. DTV Consumer Education Initiative

33. As proposed in the NPRM, we amend the *DTV Consumer Education Initiative* requirements to ensure that consumers will receive the information they need to make proper preparations for the digital transition of the stations on which they rely for television service. We also eliminate post-transition obligations on broadcasters to continue broadcasting DTV transition educational information via their digital signals because such viewers no longer need this information.[73] These adjustments to the *DTV Consumer Education Initiative* requirements are necessary to accomplish the purposes of the DTV Delay Act and are based on our experience and lessons learned in the early transitions thus far. We conclude that these amended rules strike the correct balance by requiring disclosure of both potential signal loss, where warranted, and information about antennas and rescanning, which together will enable viewers to retain access to the broadcast signals. At the same time, we eliminate unnecessary repetition of information after a station has completed its transition. This balanced adjustment to the rules is supported by our experience and the record in this proceeding.

34. Broadcasters are required to regularly provide on-air consumer education about the DTV transition.[74] The *DTV Consumer Education Initiative* offered broadcasters a choice of approaches to fulfilling this requirement: Options One or Two, available to any broadcaster, or Option Three, available only to non-commercial stations.[75] Among and within these Options, broadcasters have a range of techniques to choose from, resulting in a mix of public service announcements (PSAs), graphics and text superimposed over programming, and longer-form informational programming. In the *Omnibus Order*, we revised the rules of the *DTV Consumer Education Initiative* to conform to the delay of the DTV transition. In the companion NPRM we proposed additional revisions, which we adopt in this Report and Order. We remind broadcasters that whatever option they elected, these on-air education requirements are separate from and in addition to any viewer notification requirements associated with early analog termination notifications discussed in this Report and Order, the *Third DTV Periodic Report and Order,*[76] or any other rule or regulation.

35. Each of the revised *DTV Consumer Education Initiative* rules requires stations to be in full

[66] We anticipate that no station will have difficulty complying with the Walk-In Help Center, Consumer Referral Telephone Number, and DTV Education and Outreach obligations, but that continuing analog service may pose a significant challenge for stations facing extraordinary exigent circumstances.

[67] Pappas Broadcasting has asked that all flash cut stations be exempt from the early transition requirements due to the technical limitations they face. We invite such stations to make the alternative showing, if they believe these limitations constitute extraordinary exigent circumstances. Pappas Comments at 3.

[68] For example, a network affiliate might partner with another station serving the same area to ensure that its viewers may view local news, public affairs and emergency information. Some network affiliates transitioning on February 17 partnered with local NCEs to provide local news programs, which the NCEs aired without commercials.

[69] *First DTV Delay Order*, FCC 09–9, § II.A. para 3.

[70] *See Analog Nightlight Order.*

[71] We remind stations that they must obtain Commission approval for operation of a post-transition digital facility at any time prior to June 12 at 11:59:59 pm. *See Third DTV Periodic Report and Order,* 23 FCC Rcd at 3041–58, paras 98–134 (Section V.C.); *see also February 5th Public Notice* at 2.

[72] *i.e.*, Early Morning (12 a.m.–6 a.m.), Morning (6:01 a.m.–12 p.m.), Afternoon (12:01 p.m.–6 p.m.), or Evening (6:01 p.m.–11:59 p.m.).

[73] In most cases, a viewer who can see the educational message on the station's digital channel has, by definition, succeeded in making his or her own transition. Thus, only those who cannot see it would benefit from it.

[74] 47 CFR 73.674.

[75] *DTV Consumer Education Initiative,* 23 FCC Rcd at 4139.

[76] *See, e.g., Third DTV Periodic Report and Order,* 23 FCC Rcd 2994 at 3033, 3044, 3050 and 3057.

compliance no later than April 1, 2009. This is the same date that manufacturers, eligible telecommunications carriers, and multichannel video programming distributors must be in full compliance with the revisions to their respective sections, adopted in the *Omnibus Order*.[77] We note that stations will not be expected to address any of the revised requirements of this Order in their first quarter DTV Quarterly Activity Station Report (Form 388), and therefore the revised Form 388 will not be available for filing until the second quarter of the year.

1. Elimination of Post-Termination Consumer Education Obligations

36. In the NPRM, we asked whether stations that participate in the post-transition statutory nightlight program should be exempt from post-transition consumer education obligations. We received a large number of comments in favor of this proposal. Responding to our request for ''comment on any actions 'necessary or appropriate to implement the provisions, and carry out the purposes' of the DTV Delay Act'' that were not resolved in the *Omnibus Order*, the majority of these comments go farther and suggest that no station should have any obligations under the *DTV Consumer Education Initiative* after it terminates analog broadcasting, or at least after every station in its market does so.[78] Most commenters on this question agree that any additional obligations for stations already transitioned to digital would cause viewer confusion.[79] Many comments argue that confusion might result, as viewers may think they need to take additional action to prepare,[80] or may question whether they will continue to be able to view the station that has already transitioned.[81] Indeed, commenters argue that on-air consumer education for digital-only stations would serve only to reach those already prepared, and that such information has ''no relevance or impact'' for those watching a digital broadcast.[82] Griffin acknowledges that consumer education on digital channels may have ''ancillary'' benefits, but argues that they are far outweighed by the drawbacks, including cost and confusion to viewers.[83] Berl Brechner, President of WMDT, Salisbury, Maryland, opposes continuing DTV education requirements as an excessive burden on broadcasters who transitioned early.[84] United and NAB proposed at least limiting post-transition consumer education requirements.[85]

37. After review of the comments, and consideration of our experiences working with consumers after the February 17, 2009, early transitions, we conclude that the on-air obligations for digital-only stations should be eliminated. We find that, for digital-only stations, providing on-air consumer education via digital broadcasting does not produce sufficient benefit compared to its cost, and therefore we revise our rules to permit most stations to end their participation in the Initiative after they terminate analog programming. We will continue to require stations that have not completed construction of their full authorized post-transition digital facility to continue complying with the Consumer Education requirements after they terminate their analog service until they complete construction and commence operation of their full authorized post-transition digital facility.[86] These stations must revise the content of their educational messages to provide information about the limits on station's digital service area and the anticipated date for it to complete construction and commence operation of its full, authorized post-transition digital facility.

2. Service Loss Notices

38. As proposed in the NPRM, we amend the *DTV Consumer Education Initiative* rules to require broadcasters to inform their viewers if 2 percent or more of the population served in their analog service contour will not be served by their digital signal.[87] Stations may also broadcast information about areas predicted to gain service, but they are required to air information about loss regardless of how many people are gaining service. As we discussed in the NPRM, our experience with stations that have already terminated analog service, particularly in those areas where an entire market has transitioned, is that loss of a station due to a change in the digital coverage area creates great consumer confusion and distress.[88] The problem is no less acute, however, for analog viewers who received analog service and are within the digital service area but who nonetheless do not receive digital service, due to changes in signal propagation associated with a change from VHF to UHF channel assignments (or vice versa) or for other technical reasons related to the use of digital transmission. Problems associated with signal loss may arise for the viewers of stations that transition at any time, up to and including June 12. Indeed, such problems may arise even before stations terminate their analog service as more and more viewers obtain digital equipment and come to rely on digital service.[89] Therefore, we will require every station that has not already terminated analog broadcasting to provide specific notice to analog viewers if 2 percent or more of the population in its Grade B analog service area is likely to lose over-the-air service from the station when it terminates analog service. We also remind stations that terminated analog service on February 17, 2009 that they are required to provide information about service losses via the enhanced analog nightlight serving their area.[90]

39. Broadcasters that elected the Option One educational requirements are already required to provide information to their viewers about any ''[c]hanges in the geographic area or population served by the station during or after the transition.'' [91] They must do so via their regularly-aired PSAs.[92] We asked in the NPRM whether a similar requirement, but limited to population losses, should be extended to broadcasters who elected Options Two

[77] Omnibus Order, FCC 09–11 para 15.

[78] Griffin Comments at 5; NAB Comments at 10–13; Centex Comments at 3. We have already granted a waiver to all stations in the Wilmington market area, after that market completed its transition early. *See DTV Delay Act Omnibus Order*, FCC 09–11, para 67 (discussing the waiver). We note that we have received consumer education waiver requests from the stations in the Hawaii market, which has also fully completed its transition, but that these requests are mooted by our action in this Order.

[79] NAB Comments at 13–15; Centex Comments at 3; Griffin Comments at 2.

[80] Mt. Mansfield Comments at 3.

[81] Griffin Comments at 2.

[82] Centex Comments at 3; Mt. Mansfield at 4.

[83] Griffin Comments at 5.

[84] Berl Brechner Comments at 3.

[85] United Comments at 3, NAB Comments at 13–15.

[86] This requirement for continued consumer education applies, for example, to stations that have received an extension of their construction permit beyond June 12, 2009, or are operating pursuant to a ''phased transition'' STA which allows continued operation on a pre-transition digital channel or reduced operation on the post-transition channel. It does not apply to stations that have completed construction of their authorized post-transition facility but have not completed construction of a maximized facility. *See* 47 CFR 73.674(b)(3), amended as 73.674(b)(4).

[87] *NPRM* at para 64.

[88] *Id.* at para 63.

[89] This difficulty is exacerbated for consumers relying on converter boxes that do not have analog pass-through.

[90] *February 11th PN.*

[91] *Consumer Education Order,* 23 FCC Rcd at 4190.

[92] An example of such a ''change to service area'' notice was aired by WUTB–DT, a Baltimore, MD station, which states, in part: ''Due to a slight change in the station's transmission radius, viewers in the following areas, Southwest Talbot County, MD, Central Calvert County, MD, Southern Prince George's County, MD, and East-Central Fairfax County, VA, may not be able to receive WUTB–DT over the air on digital channel 24.1.''

or Three. NAB does not dispute the need for service loss notices, but expressed concern about ''providing too much or unnecessary information to too many viewers,'' leading to a ''flood'' of consumer calls.[93] We conclude that, on balance, it is better to give viewers too much DTV information rather than too little. Although there is some information available to consumers about potential signal loss now on the internet,[94] we conclude that broadcasters are best positioned to know and communicate information about signal loss and its effects on their own viewers through the most direct and appropriate means. Without broadcaster disclosure, consumers are likely to be unaware of the potential impact of signal change or loss and the need to consult our Web site for specific information.

40. When the Commission issued its signal loss report in December 2008, we explained our findings with respect to 319 stations predicted to lose 2 percent or more of their analog viewer population after they transition to digital service. We noted that we ''expect broadcasters to make this information publicly available and a part of their local DTV education efforts.'' [95] It appears that few stations have heeded our expectation and disclosed losses to their viewers. Viewers in such areas will need to take action to retain access to their local stations, either by purchasing more sophisticated reception equipment or by subscribing to a pay television service. Without information from the stations whose service area is changing, consumers have no easy way to discover the potential for loss or change in service. Consumers without such information may experience not only frustration, but also unnecessary expense. For example, they may heed more general consumer education messages advising over-the-air viewers to obtain digital converter boxes, only to discover belatedly that they are unable to receive the digital signal from one or more stations in their area. Even worse, they may invest money and time in the purchase and installation of a new outdoor antenna only to learn that the digital signal will not reach their home with sufficient strength to be received and viewed. We conclude that the limited information available to consumers about service loss constitutes a substantial problem that we must redress. Without this information, consumers will be unable to make informed decisions about how to address the service loss, such as through technical improvements to their reception system or through subscription to a paid television service.

41. We amend our rules to require all broadcasters to provide service loss information to their viewers via their existing on-air education efforts (PSAs, crawls, etc), if 2 percent or more of their analog viewers are predicted to lose service (even if the station gains viewers elsewhere).[96] We note that the Commission identified 319 stations that are predicted to have a signal loss of 2 percent or greater.[97] To date, 106 of these stations have terminated their analog service.[98] The remaining 213 must comply with the new consumer education requirement.

42. Stations subject to this requirement must provide geographically specific information describing areas of population that are covered by the Grade B analog contour but are not predicted to receive digital service. NAB argues that if a station tries to convey geographic information about areas within the digital service area but predicted to lose service, it would be ''extremely confusing and inaccurate.'' [99] They suggest a service loss notice should be sufficient if it contains text such as ''a small percentage of current viewers using an antenna to view this analog station may have problems receiving this station's digital signal,'' and directs viewers to a commercial antenna prediction site, *antennaweb.org.*[100] We disagree. If broadcasters provide only the general information suggested in NAB's comments, it would effectively undermine the goal of providing signal loss information. Moreover, the *antennaweb.org* Web site is not ideal for all consumers. It is not intended to be used to predict signal coverage, and provides little or no guidance regarding the usefulness of indoor antennas, which can work in many locations and are often the only practical option. In some cases, viewers will need to obtain new or better equipment to receive a station's digital signal because the analog signal was weak or poor but viewable, while the digital signal is unwatchable due to the cliff effect which results in tiling or a black screen. Viewers need the information and advice that stations are best positioned to provide so that they can make choices about how to receive the station's signal, whether over-the-air or through a subscription service. We find that it is important that consumers be given a reasonable amount of geographically specific information through on-air spots, even if complete information cannot be contained within a consumer notice. It is also critical that consumers be given guidance on how to find more complete information, by reference to the Commission's Web site, as well as other sources of information.

43. Of the 319 stations predicted to experience population coverage losses of 2 percent or more, 196 are a result of changes the station has made in its service area through, for example, relocating the transmitter, reducing power, or changing antenna direction. We do not mandate specific language that must be used by such stations, but stations that have shifted or reduced their coverage area must disclose the geographic areas where there is likely to be a service loss. We note, for example, that WUTB, an affiliate of MyNetwork serving the Baltimore, Maryland area, developed a signal loss PSA which provides the type of information that would be clear and helpful for viewers. It briefly and clearly discloses the parts of counties affected and advises viewers to turn to another affiliate of that network to obtain digital service over-the-air. Stations may also point out to their viewers any areas in which their over-the-air service will improve or expand.[101] All service loss notices must direct viewers to the FCC toll-free telephone and TTY numbers and Web site for more information.[102]

44. NAB supports limiting the signal loss disclosure requirement to stations with losses due to changes in service area, but Mt. Mansfield notes that many stations are predicted to lose viewers due to multiple reasons.[103] We agree. Consumers who may lose over-the-air service as a result of the change in

[93] NAB Comments at 31.

[94] *See, e.g., http://www.fcc.gov/dtv/markets/report2.html* on the FCC's DTV.gov Web site.

[95] *See* Executive Summary at 1, *http://www.fcc.gov/dtv/markets/DTV_Report_2.pdf.*

[96] The Commission has created a list of stations anticipated to lose 2 percent or more of their analog viewers, which can be found on the FCC Web site at *http://www.fcc.gov/dtv/markets/report2.html.*

[97] *See http://www.fcc.gov/dtv/markets/DTV_Report_2.pdf.*

[98] As noted here, any of these stations that are airing or participating in airing analog nightlight service must disclose and explain their signal loss as part of the DTV information component of their nightlight programming.

[99] NAB Comments at 31, note 72.

[100] NAB Comments at 32–33.

[101] There may well be viewers who currently rely on subscription service who may be able to rely, instead, on free over-the-air broadcasting and thus realize one of the benefits of the DTV transition, particularly where the station offers multicast channels. *See http://www.FCC.gov/DTV/markets* (Gains significantly outweigh losses nationwide).

[102] The FCC telephone number is 1–888–CALLFCC, the TTY number is 1–888–TELLFCC, and the Web site link for our address tool is *http://www.DTV.gov/maps.*

[103] NAB Comments at 31, Mt. Mansfield Comments at 2.

frequency from VHF to UHF are entitled to be informed in advance so that they can make appropriate preparations. We recognize, however, that it may be more difficult to articulate particular areas of loss due to a frequency change, as opposed to the coverage shifts, and that more general language may therefore be appropriate. For example, a PSA could state that engineering predictions indicate that some current viewers of the station's analog signal who are located in areas obstructed by hills or buildings may not receive the station's digital signal, and direct the viewer to the FCC's telephone number and Web site for more information. The FCC can provide information about predicted signal coverage for a particular address. We also note that in some cases signal loss may be attributable to both change of coverage and change of frequency. In these cases, stations must disclose all geographically discrete locations predicted to lose service for any reason, and also include more general language about predicted losses due to obstructions.

45. The NPRM also sought comment on other means that stations could use to communicate signal loss information to their viewers.[104] We suggested permitting or requiring direct mail to addresses in the affected area, or through radio broadcasts and local newspapers targeting viewers who are likely to experience loss. NAB opposed requiring these other measures, noting, for example, that stations would find it difficult to develop zip codes or mailing lists, and that postage is costly.[105] We conclude that televised broadcasting of information is the best way for stations to be sure of reaching the affected population. Stations are permitted and encouraged to use other means, particularly radio broadcasts, if they wish, but these other measures are not required.[106]

46. NAB argues that, while the FCC's coverage maps can be relied upon to make ''an initial threshold determination of whether there would be a loss of viewership of two percent or more,'' stations should be given the opportunity to demonstrate through ''specific engineering showings that the anticipated loss will be less than that shown on the FCC's coverage maps,'' and presumably as a result be exempt from the service loss notice requirement.[107] We conclude that the FCC maps and coverage predictions are the basis for identifying stations that must comply with these signal loss disclosure requirements.[108] If our report predicts a loss of 2 percent or more, the station is required to provide signal loss information to its viewers. Stations may use their own specific engineering analysis to provide more particularized information to their viewers.

47. NAB also disputes the value to individual viewers of the general coverage maps, arguing that a consumer-focused Web site like *http://antennaweb.org* is more valuable because it provides information about a specific address and does not assume total loss of digital coverage exactly at the edge of the predicted service area.[109] We agree that an address-specific mapping tool is the most helpful for consumers, and have developed an online digital reception mapping tool specifically for that reason.[110] As discussed above, we do not agree that *http://antennaweb.org* is the most useful tool for all consumers.

48. These required service loss notices may be no fewer than 30 seconds long, and must be aired at least once per day, between 8 a.m. and 11:35 p.m., by all broadcasters with a 2 percent or greater predicted service loss. At least three times per week, they must air in primetime.[111] This requirement is in addition to and not in lieu of the other on-air informational requirements for broadcasters, but like other consumer education requirements it will expire when a station terminates analog broadcasting. This information must also appear on a station's internet home page, including a link to the online digital reception mapping tool hosted by the Commission.[112] This information must remain available on a station's internet home page for at least 30 days after the station terminates its analog service, notwithstanding the termination of other consumer education requirements. Because we are applying this service loss notice requirement to all analog broadcasters with a 2 percent or greater predicted service loss, regardless of the consumer education option the broadcaster chose, we will eliminate the existing service loss notice requirement currently applicable to broadcasters that elected to comply with the Option One consumer education requirements.[113]

3. Antenna Information

49. We also proposed that consumer education should include information about antennas. We find that antenna information is valuable for all viewers, not only those where there is a predicted signal loss.[114] Many viewers would benefit from a refined and enhanced understanding of the role their antenna setup plays in reception of local stations, and any actions they could take to improve reception, particularly actions short of purchasing new equipment.[115] In addition to the general information that must be provided by all stations, if a station is changing its broadcast frequency from VHF to UHF (or vice versa), it must include information about the need for additional or different equipment to avoid loss of service.[116] We will not require specific language, but we do not find NAB's proposed language, ''using a VHF/UHF antenna will help ensure reception of all stations in your local area,'' sufficiently relevant for every situation. Instead, we require that each station that is transitioning between the VHF and UHF bands, in either direction, must inform its viewers of the change in frequency and remind viewers that they must have a UHF or VHF antenna, as appropriate, to receive the signal after the transition.[117] We also proposed in the NPRM to require notices describing ''areas where analog signal strength is generally sufficient for viewers to rely on an indoor antenna but where it is likely that they will need an outdoor antenna to receive the digital signal.'' [118] NAB argues that there is insufficient industry consensus on how to model this situation, and that it

[104] NPRM at para 65.

[105] NAB Comments at 34.

[106] NAB notes that some stations have engaged these other measures, which should be permitted but not required, so as to reduce the burden on small stations in particular. *See id.*

[107] NAB Comments at 32, note 73.

[108] *See http://www.fcc.gov/dtv/markets/report2.html* and *http://www.fcc.gov/dtv/markets/DTV_Report_2.pdf.*

[109] *Id.*

[110] Found at *http://www.DTV.gov/maps.*

[111] *See* Rules Appendix.

[112] Found at *http://www.DTV.gov/maps.* Consumers can also find coverage change maps relevant to their market at *http://www.fcc.gov/dtv/markets/report2.html.*

[113] Signal loss information must also be included in the viewer notifications required of stations that are terminating before June 12, for stations covered by this section.

[114] NAB's comments support including information about antennas in the DTV Consumer Education requirements. NAB Comments at 33.

[115] For instance, stations that are predicted to potentially lose some analog viewers should provide guidance to viewers who could improve their ability to receive the station's signal by obtaining a different or better antenna. See *http://www.fcc.gov/dtv/markets/.*

[116] The implementation of Major Channel Numbers as part of the Program System Information Protocol (PSIP) makes it more difficult for consumers to determine this information on their own, because a station's ''channel'' no longer necessarily reflects its over the air frequency. *See Third DTV Periodic Report and Order,* 23 FCC Rcd at 3079–3082, paras 185–189.

[117] We encourage stations to be mindful, in preparing their notices, that from the perspective of the viewer there is no change of channel number even when there is a change of frequency.

[118] *NPRM* at para 64.

therefore cannot be conveyed.[119] We agree that specific advice as to the use of indoor or outdoor antennas can vary house by house within the same neighborhood, and, therefore, we will not require stations to include this information. We will require, however, that a station whose signal strength will be reduced in a discrete geographic area as a result of a shift by the station in its coverage area must address this reduction in their antenna information notices.

50. Antenna information could be included as part of a station's existing *DTV Consumer Education Initiative* efforts,[120] discussed during news programs, or otherwise conveyed in the manner the station determines will be most helpful to consumers. The information must be provided at least once per day, in a message lasting at least 15 seconds, with at least three of those messages per week airing during primetime.

4. Rescanning

51. As proposed in the NPRM, we will require all stations to provide information to consumers about the need to periodically rescan for channels. A digital receiver, whether it is in a digital-to-analog converter box, a digital television, or any other device, must ''scan'' for available broadcast frequencies before it can be used to tune and view digital television.[121] Most such receivers do not automatically ''rescan'' for additional channels or changes in existing channels. During the time surrounding the conclusion of the transition, many stations will be changing the service areas and the broadcast channels of their digital transmissions. As a result, viewers will need to periodically rescan during this period in order to ensure that they are correctly receiving all the digital broadcast services available to them. Our experience assisting with outreach and education across the nation, however, has made it clear that this concept can be difficult to convey to viewers, particularly because digital receivers, including different converter boxes, have a variety of different rescanning procedures. This makes widespread consumer awareness of the issue crucial, so that viewers can take the steps they need to take to educate themselves or seek help from others. NAB agrees with the Commission about the importance of educating viewers about rescanning, and is in fact preparing a public service announcement about rescanning that it will make available to all broadcasters.[122] It suggests that stations be given flexibility in providing this information, and we agree that this is appropriate. Therefore, we will require all stations to broadcast information to consumers about the need to periodically rescan, but this information may be provided in the manner of a station's choosing. The message could be included as part of a station's existing *DTV Consumer Education Initiative* efforts,[123] discussed during news programs, or broadcast at another time if the station determines that will be most helpful to consumers. They must be aired at least once per day, in a message lasting at least 15 seconds, with at least three of those messages per week airing during primetime.[124]

5. Consumer Referral Telephone Numbers and Publicizing Consumer Help Centers

52. We will require all stations, when filing the analog service termination notification form, to provide us with a telephone number that will serve to receive local consumer calls and consumer referrals from our national Call Center.[125] We anticipate that the FCC Call Center will be able to help most callers, for instance with converter box set-ups, the NTIA coupon program, scanning issues, access to the Commission's online mapping tool, and basic antenna guidance. Nonetheless, local stations typically are the best source of information and assistance for viewers having difficulty receiving a particular signal. In particular, where a reception issue may arise due to very localized terrain issues, a local station is in a much better position to address related concerns than the staff at the FCC's national Call Center.

53. We expect that the telephone number provided will be one that is staffed during business hours with personnel who are prepared to answer complex questions from viewers, particularly regarding necessary actions to take to get reception in specific locations, and other engineering issues. We note that stations should be prepared for an increased volume of calls, both referred and locally originating, around important dates such as the date the station terminates analog, the date many other stations in the market terminate analog, and June 12. This telephone number may be operated and staffed by the station itself, by a group of stations in a market, or by a third party entity such as a state broadcasters' association.

54. We will also require that these telephone numbers, and any walk-in centers in the market, be publicized by each station as part of their consumer education obligations. In many markets, there may be a number of local help centers. These will include volunteer efforts, centers run by major network affiliates that are transitioning early, and potentially FCC contractors. These locally-focused efforts are among the best ways to help consumers who remain unprepared, but they are only valuable to the extent that they are made known to viewers. Therefore, we will require every station to include at least the following elements in its on-air education efforts: the location and operating hours of walk-in DTV help centers in the market; the FCC Call Center telephone number and TTY number; and the telephone number for the station's telephone number for consumer referrals and calls from local viewers.[126] Similar to the rescanning notices, this information could be included as part of a station's existing *DTV Consumer Education Initiative* efforts,[127] discussed during news programs, or broadcast at another time if the station determines that will be most helpful to consumers. The information must be aired at least once per day, in a message lasting at least 15 seconds, with at least three of those messages per week airing during primetime.[128]

6. 100 Day Countdown

55. We amend Option Two of the *DTV Consumer Education Initiative* to require each station to air a 60-day countdown to its termination of analog service. As discussed above, the *Omnibus Order* required stations to begin a new 100-Day Countdown to June 12, 2009, but we temporarily waived that requirement in order to

[119] NAB Comments at 33.

[120] Option One broadcasters may replace up to 25 percent of their daily PSAs and crawls with antenna information notices, notwithstanding the other content requirements for Option One notices. 47 CFR 73.674(c)(3)(vi) and 4.

[121] *NPRM* at para 66.

[122] NAB Comments at 30.

[123] Option One broadcasters may replace up to 25 percent of their daily PSAs and crawls with notices focused on rescanning, notwithstanding the other content requirements for Option One notices. 47 CFR 73.674(c)(3)(vi) and 4.

[124] *See* Rules Appendix.

[125] This telephone number for consumer referrals must be provided by March 17, 2009 on the Analog Service Termination Notification form, but may be updated as necessary.

[126] This information will be available from the Commission at our Web site, *https://dtvsupport.fcc.gov/dtvtools,* compiled using the detailed data provided by stations and third party entities.

[127] Option One broadcasters may replace up to 25 percent of their daily PSAs and crawls with this ''local assistance'' contact information, notwithstanding the other content requirements for Option One notices. 47 CFR 73.674(c)(3)(vi) and 4.

[128] *See* Rules Appendix.

consider possible revisions to ensure that the Countdown was as effective as possible in educating consumers. We asked in the NPRM how we should revise this requirement, and received a number of comments, all advocating limitations. There was complete agreement among commenters who addressed this proposal that there should be no countdown for stations that have already transitioned. In general, commenters emphasized that imposition of a 100-day countdown clock for stations that have transitioned would cause viewer confusion and would not reach those analog viewers most in need of such information.[129] NAB and Mt. Mansfield both argue that the countdown might lead digital viewers to believe they need to take further steps to prepare. United commented that the ''fundamental differences'' between analog and digital broadcasts warrant different consumer education tactics.[130] As discussed above, we agree with these commenters that a station need not continue DTV transition education once it has terminated analog service. NAB, however, also proposed a more nuanced and limited approach to the countdown before a station terminates analog service. They would limit all countdowns to 60 days, arguing that this will create more urgency once the countdowns begin again.[131] They would permit stations that transition early to air a countdown to their own transition, and they would require stations that transition on June 12 to air a countdown to the national transition deadline.[132] We largely agree with these proposals.

56. As discussed in the NPRM, a simple nationwide countdown was appropriate when the vast majority of stations were planning to continue analog programming until the conclusion of the transition.[133] Now that the transition has been delayed, however, we anticipate that an appreciable number of the roughly 64 percent of stations that did not transition on or before February 17 may transition prior to June 12. Under the circumstances, we agree with the commenters that requiring an identical and simultaneous countdown to June 12 by all Option Two stations could create confusion, and would not necessarily reach those viewers most in need of the information.[134] Nonetheless, the countdown clock serves an important educational purpose, and stations transitioning early, in particular, need to convey the appropriate level of urgency to their viewers. This makes NAB's proposal, which would appear to permit stations that terminate early to do so without a countdown at all, not entirely sufficient to meet the needs of consumer education. Therefore, we will require each Option Two station to run a countdown to its own termination of analog service, beginning no later than March 17, 2009 or 60 days prior to its analog termination, whichever date occurs later.[135] As a result, stations that are terminating analog on the transition deadline of June 12, 2009, will begin their countdown on April 13, 2009 (such that April 13 is day 60, and June 12 is Day Zero). Stations that transition earlier will begin counting down earlier, but will not be required to begin their countdown earlier than April 1, 2009.

7. 30 Minute Informational Videos

57. We amend the *DTV Consumer Education Initiative* rules to require Option Two and Three broadcasters that are still broadcasting in analog to air a new, up-to-date 30 minute informational video before they transition. United Communications Corporation agreed with our tentative decision not to require stations that have already transitioned to air an additional 30-minute informational video, a proposal we adopt.[136] Under the rules as revised in the *Omnibus Order,* Option Two and Three broadcasters must, on at least one day prior to June 12, 2009, air ''an informational program on the digital television transition.'' [137] Many, if not most, of the affected broadcasters complied with this requirement when the transition was to take place on February 17, and their informational programs necessarily reflected that date. For stations that have already transitioned, we find that such a program met the needs of their viewers. For stations that have not yet transitioned, however, we find that a program aired before the adoption of the DTV Delay Act cannot be considered sufficiently accurate and helpful to viewers. Therefore, we will require such Option Two and Three stations to air an up-to-date 30 minute informational program before they cease analog programming.

58. NAB supports this proposal, but argues that we should not require the video to contain locally-specific information. However, we find that locally-specific information is the most important, particularly for viewers who may not have transitioned because of uncertainty regarding continuing service. Therefore, in order to serve the consumer educational purposes of the DTV Delay Act, this up-to-date 30-minute informational video must explain: (1) The change in the transition date; (2) when that particular station is transitioning; (3) when other stations in the market are transitioning; and (4) service loss issues, if any (providing the same information required by the rules adopted in section III.C.2, above).

8. Form 388

59. Finally, we revise Form 388, the DTV Quarterly Activity Station Report, to reflect the changes we have made to the *DTV Consumer Education Initiative* broadcaster rules in this Report and Order.[138] The Commission has received approval from OMB for these minor changes to the forms.[139]

D. DTS Signal Loss ''Waiver Policy'' Extended

60. We extend until December 14, 2009 the deadline for accepting DTV distributed transmission system technologies (''DTS'') ''waiver policy'' proposals to permit a station to use DTS if doing so will enable it to continue to serve its existing analog viewers who would otherwise lose service as a result of its transition to digital service. In the *DTS Order,* the Commission adopted a waiver policy to enable stations to address the type of loss experienced by WECT, Wilmington, NC (channel 6), where many analog viewers of that station lost service when the station transitioned to digital-only operations. The Commission permitted a station to use DTS if doing so will enable it to continue to serve its existing analog viewers within its analog Grade B contour who would otherwise lose service as a result of its transition.[140]

[129] NAB Comments at 28, Berl Brechner Comments at 1, Mt. Mansfield Comments at 3–4, Griffin Comments at 3.

[130] United Comments at 2.

[131] NAB Comments at Attachment A.

[132] NAB Comments at 24.

[133] *DTV Delay Act Omnibus Order,* FCC 09–11, para 59.

[134] NAB Comments at 28, United Comments at 2, Griffin Comments at 3, Berl Brechner Comments at 1, Mt. Mansfield Comments at 3–4

[135] Stations may explain the difference between the national and station-specific transition to viewers, even simultaneously with their countdown clock. For instance, a station could run a graphic that shows both the national countdown and the station's countdown simultaneously, if they are different. In order to give stations more flexibility in the format of these countdown reminders, we will remove the maximum duration limits provided for in our rules.

[136] United Comments at 5.

[137] 47 CFR 73.674(d)(5).

[138] All rule changes are reflected in the Appendix to this document.

[139] *See* OMB Control No. 3060–1115 (Form 388).

[140] *Digital Television Distributed Transmission System Technologies,* MB Docket No. 05–312,

Continued

The Commission set a deadline of August 18, 2009 for accepting such waiver requests, saying that ''providing the flexibility to apply within six months after the transition date will allow stations to deal with unforeseen circumstances that come to light when they make their transition.'' [141] In comments in response to the *NPRM,* the Merrill Weiss Group LLC (''MWG'') asks that the August deadline be extended until December 14, 2009—six months after the June 12 transition date.[142] We agree with MWG and extend until December 14, 2009 the deadline for accepting DTS proposals under this waiver policy. We expect that DTS can be a useful tool for stations to prevent such loss of service to existing analog viewers resulting from changes to the station's service area in the transition to digital service and find that stations should have access to this tool for up to six months after the new June 12 deadline.

E. Phased Transition STAs Extended From August 18 to October 18

61. We reconsider *sua sponte* our decision in the *Omnibus Order* and give stations with phased transition special temporary authorizations (STAs) an additional two months—until October 18, 2009—to complete their transition and operate at their full, authorized post-transition (DTV) facilities. In addition, we will consider on a case-by-case basis extending these phased transition STAs for an additional, but limited, period of time upon an appropriate and detailed public interest justification explaining why additional time is warranted given the station's particular circumstances. Finally, we delegate authority to the Media Bureau to consider and act on these phased transition STAs, consistent with this Order.

62. In the *Third DTV Periodic Report and Order,* the Commission adopted two provisions for a ''phased transition'' in an effort to offer broadcasters regulatory flexibility in meeting their post-transition construction deadlines without disappointing viewer expectations after the transition deadline.[143] First, the Commission granted a six month STA to stations to temporarily remain on their pre-transition DTV channel with an option to seek another six months, provided the station continues to satisfy the conditions for this STA. These stations were required to commence operations on their final, post-transition (digital) channel no later than February 18, 2010. Second, the Commission granted a one-time six-month STA to stations to build less than their full, authorized facility by their construction deadline. These flexible options were particularly needed by stations planning to use their own or another stations analog equipment for post-transition digital operation, which made it impossible for them to finalize construction of their digital facilities before February 17th without terminating their analog service early. These stations were required to commence operations at full, authorized digital facilities no later than August 18, 2009.[144] To qualify for either of these phased transition provisions, stations were required to meet a service requirement to minimize the loss of service after the transition deadline, were prohibited from causing impermissible interference to other stations or preventing other stations from making their transition, and were required to comply with a viewer notification requirement.[145] We note that stations that started these viewer notifications in advance of a previously planned termination that did not occur must restart airing these notifications 30 days in advance of their phased transition.

63. In the *First DTV Delay Order,* we extended until June 12, 2009 (the new transition deadline) the construction deadline for stations with a deadline of February 17, 2009 (the previous transition deadline).[146] In the *Omnibus Order,* however, we found it unnecessary to automatically extend the deadlines established for stations that obtained STAs through the phased transition provisions of the *Third DTV Periodic Report and Order* because, in many cases, we found these STAs were granted to address construction impediments due to weather-related concerns.[147] Finally, we noted in the *Omnibus Order* that, to the extent additional time is needed by phased transition stations, they must comply with Section 73.3598(b) tolling standard established in the *Third DTV Periodic Report and Order.*[148] We note that stations with the first type of a phased transition STA (*i.e.*, to temporarily remain on their pre-transition DTV channel) are already permitted to seek Commission approval for extensions up until February 17, 2010, provided the station continues to satisfy the conditions for this STA. We will scrutinize such requests to be sure that the circumstances justify the extension. We will grant such extensions only for as long as is absolutely necessary, based on the justifications submitted, and in no event beyond February 17, 2010.

64. Some parties object to the decision to limit the length of time stations with unique technical challenges could remain at reduced power on their post-transition facilities. They seek additional time for such stations that

Report and Order, 23 FCC Rcd 16731, para 28 (2008) (''*DTS Order*'').

[141] *Id.* The Commission limited the use of DTS under this waiver policy to stations that apply on or before August 18, 2009 ''[b]ecause the purpose of this waiver policy is to maintain service to existing viewers after the digital transition.'' The Commission urged stations to determine right away ''if they anticipate such a loss of service to current analog viewers and to apply as soon as possible to obtain an STA for DTS operation under the interim policy so that they can continue to provide uninterrupted service to the current analog viewers within their analog Grade B contour after they terminate their analog service.''

[142] Merrill Weiss Group LLC (''MWG'') Comments.

[143] *Third DTV Periodic Report and Order,* 23 FCC Rcd at 3041.

[144] *Id.*

[145] Pursuant to the first phased transition provision, the Commission allowed stations that are moving to a different DTV channel for post-transition operations to temporarily remain on their pre-transition DTV channel while they complete construction of their final digital facilities, provided: (1) They build facilities that serve at least the same population that receives their current analog TV and DTV service so that over-the-air viewers will not lose TV service; and (2) They do not cause impermissible interference to other stations or prevent other stations from making their transition. Pursuant to the second phased transition provision, the Commission allowed stations to operate their post-transition facilities at less than their full, authorized facilities, provided they demonstrated either: (1) A ''unique technical challenge'' (as defined in the *Third DTV Periodic Report and Order*) and could serve at least 85 percent of the same population that receives their current analog TV and DTV service; or (2) A significant technical impediment to the construction of their full, authorized facilities that would not otherwise qualify for an extension of time to construct facilities under the new, stricter standard adopted in the *Third DTV Periodic Report and Order* and could serve at least 100 percent of the same population that receives their current analog TV and DTV service so that over-the-air viewers will not lose TV service. Both phased transition provisions also require the station to notify viewers on its analog channel about the station's planned delay in construction and operation of post-transition (DTV) service. The viewer notifications must occur every day on-air at least four times a day including at least once in primetime for the 30 days prior to the station's termination of full, authorized analog service. *Third DTV Periodic Report and Order,* 23 FCC Rcd at 3039, para 91.

[146] *First DTV Delay Order,* FCC 09–9 at para 3.

[147] *See Omnibus Order,* FCC 09–11 para 37. *See also Third DTV Periodic Report and Order,* 23 FCC Rcd at 3036–3042, paras 88–97.

[148] Specifically, as noted in paragraph 36 of the *DTV Delay Act Omnibus Order,* at para 36, we will apply the extension request standard contained in Section 73.624(d)(3) to stations with construction deadlines on or before June 12, 2009 and the tolling standard set forth in Section 73.3598(b) to all construction deadlines occurring June 13, 2009 or later. *See* 47 CFR 73.624(d)(3) (extension standard); and 47 CFR 73.3598(b) (tolling standard). We note that the Section 73.3598(b) tolling standard does not provide relief for financial hardship, except that paragraph (b)(2) would toll the construction deadline for a station that could not build because of a pending bankruptcy court action.

could demonstrate a need for more time.[149] For example, Tribune/Allbritton and UNC–TV explain in their *ex partes* that their particular situations require extensive tower work and coordination that can only take place after the stations terminate their analog service.[150] They point out that work can only commence after they terminate analog service and that they had planned on a four month process, beginning in the spring following the original February 17th transition deadline. The delay to June means that they cannot begin work on their post-transition facilities until mid-June because they will continue to use their analog transmission equipment until then.

65. We believe many other phased transition stations may be in this same situation and are, therefore, persuaded to provide two additional months to all phased transition stations, thus extending their STAs from August 18 to October 18, 2009. Given the limited amount of time afforded, and that the service requirement will minimize the loss of service after the transition date, we find it appropriate to give this two-month blanket extension to all phased transition stations. We find that providing this extra time will permit phased transition stations to continue providing analog service until the end of the transition and that the benefit of full analog service through the transition deadline weighs in favor of somewhat reduced post-transition digital service for a limited period of time.[151] Accordingly, we extend until October 18, 2009 the construction deadline for stations with a phased transition STA deadline of August 18, 2009.

66. In addition to the blanket two-month extension granted above, we will consider on a case-by-case basis extending phased transition STAs for stations with unique technical challenges. However, absent a tolling justification, no phased transition extensions will be granted beyond February 17, 2010. To obtain an additional extension beyond October 18, the station must continue to satisfy the conditions for a phased transition STA (noted above), which, we clarify, includes a requirement that the station provide an appropriate justification explaining why additional time is warranted given the station's particular circumstances. Such a justification is always required as part of the STA approval process, but we note that we will give renewed consideration as to whether a particular length of extension is warranted in the particular circumstances at issue.

IV. Procedural Matters

A. Statutory Authority

67. As addressed in detail in the *Omnibus Order,* we have concluded that the rule changes and other actions taken in order to implement the DTV Delay Act are not subject to the rulemaking requirements of the Administrative Procedure Act,[152] Congressional Review Act,[153] Regulatory Flexibility Act,[154] or any other provision of law that otherwise would apply and would impede implementation of the statutory directives.[155] No commenter disagreed with our conclusion. We find that the rule changes and other actions taken in this Order are, therefore, not subject to the above-referenced requirements and, in any event, conclude that there is good cause for departure from such requirements here for the reasons set forth in the *Omnibus Order.*

B. Additional Information

68. For more information, please contact Evan Baranoff, *Evan.Baranoff@fcc.gov,* at 202–418–7142 or Lyle Elder, *Lyle.Elder@fcc.gov,* at 202–418–2120, of the Media Bureau, Policy Division, or Eloise Gore, *Eloise.Gore@fcc.gov,* at 202–418–7200, of the Media Bureau.

C. Final Paperwork Reduction Act of 1995 Analysis

69. This Report and Order was analyzed with respect to the Paperwork Reduction Act of 1995 (''PRA'')[156] and contains modified information collection requirements. Specifically, this Report and Order modifies several existing DTV transition-related information collection requirements.[157] The Commission has received OMB approval under OMB's emergency processing rules for these modified information collection requirements.[158] For additional information concerning the information collection requirement contained in this Report and Order, contact the Office of Managing Director (OMD), Performance Evaluation & Records Management (PERM): Cathy Williams, *Cathy.Williams@fcc.gov,* at 202–418–2918.

V. Ordering Clauses

70. *It is ordered* that, pursuant to the authority contained in Sections 1, 2, 4, 7, 303, 309, and 337 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 157, 303, 309, and 337, and Sections 2 and 4 of the DTV Delay Act, Public Law 111–4, 123 Stat. 112, *to be codified at* 47 U.S.C. 309(j)(14) and 337(e), this Report and Order IS ADOPTED and the Commission's Rules *are hereby amended* as set forth in the Rules Appendix.

71. *It is also ordered* that, pursuant to the authority contained in Section 4(c) of the DTV Delay Act, DTV Delay Act sec 4(c), the rules, requirements, forms and procedures adopted in this Report and Order will be effective on March 13, 2009.

List of Subjects in 47 CFR Part 73

Digital television, Reporting and recordkeeping requirements, and Television.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

■ 2. Revise § 73.674 to read as follows:

§ 73.674 Digital Television Transition Notices by Broadcasters.

(a) Each full-power commercial and noncommercial educational television broadcast station licensee or permittee must air an educational campaign about the transition from analog broadcasting

[149] *See, e.g.,* Tribune Broadcasting and Allbritton Communications (''Tribune and Allbritton'') Ex Parte in MB Docket 09–17 (dated March 3, 2009); University of North Carolina (''UNC–TV'') Ex Parte in MB Docket 09–17 (dated March 4, 2009); KTVU Partnership (''Cox'') Comments regarding stations KTVU and KICU (each dated March 4, 2009); LeSEA Broadcasting Corporation Comments (dated March 4, 2009);

[150] *Ex Parte* Comments of Tribune Broadcasting and Allbritton Communications (dated March 3, 2009) at 1; *Ex Parte* Comments of the University of North Carolina (filed March 4, 2009) at 3.

[151] We note, however, that phased transition stations must continue to comply with the Consumer Education requirements until they complete construction and commence operation of their full, authorized post-transition digital facility.

[152] 5 U.S.C. 551, *et seq.* (APA).

[153] 5 U.S.C. 801, *et seq.* (CRA).

[154] 5 U.S.C. 601, *et seq.* (RFA).

[155] *DTV Delay Act Omnibus Order,* FCC 09–11 at para 70.

[156] The Paperwork Reduction Act of 1995 (''PRA''), Public Law 104–13, 109 Stat 163 (1995) (*codified in* Chapter 35 of Title 44 U.S.C.).

[157] *See* OMB Control Nos. 3060–0386 (CDBS Informal Filing Forms), 3060–1115 (Form 388 and consumer education requirements), and 3060–1117 (viewer notifications for analog service termination).

[158] 5 CFR 1320.13.

to digital television (DTV). For each such commercial station, a licensee or permittee must elect by March 27, 2008, to comply with either paragraph (c) or (d) of this section. For each such noncommercial station, a licensee or permittee must elect, by March 27, 2008, to comply with paragraph (c), (d), or (e) of this section. A licensee or permittee must note their election via the filing of Form 388 as required by §§ 73.3526 and 73.3527.

(b) The following requirements apply to paragraphs (c), (d), and (e) of this section:

(1) The station must comply with the requirements of the paragraph it elects with respect to its analog channel and its primary digital stream.

(2) Any Public Service Announcement aired to comply with these requirements must be closed-captioned, notwithstanding § 79.1(d)(6) of this chapter.

(3) The campaign must begin no later than March 27, 2008, and continue at least through the station's termination of analog service, not later than June 12, 2009, except for stations subject to the provisions of paragraph (b)(4) of this section.

(4) Any station that has filed a request for an extension of the deadline for construction of its full, authorized post-transition digital facility, including a request for phased transition pursuant to the Third DTV Periodic Report and Order in MB Docket 07–91, or is operating under such an extension, must continue its DTV consumer education campaign until the station completes construction of its full, authorized post-transition digital facility. After the station terminates analog service, it must continue to comply with the requirements of the Consumer Education Campaign Option that it has elected, except that the content of all on-air education must be revised to provide information about the station's limited digital service area and the anticipated date for it to complete construction and commence operation of its full, authorized post-transition digital facility.

(5) *Service Loss Notices*—Beginning April 1, 2009, if the FCC's Signal Loss Report, available on *http://www.dtv.gov,* predicts that 2 percent or more of the population in a station's Grade B analog service contour will not receive the station's digital signal, the station must air service loss notices, as provided in this paragraph.

(i) Service loss notices may be no fewer than 30 seconds long, and must be aired at least once per day, between 8 a.m. and 11:35 p.m. At least three service loss notices per week must air between 8 p.m. and 11 p.m. in the Atlantic, Eastern and Pacific time zones, and between 7 p.m. and 10 p.m. in the Mountain, Central, and Alaskan time zones.

(ii) Service loss notices are in addition to the other obligations imposed by this section.

(iii) The service loss notices must include the FCC's Call Center number, 1–888–CALL–FCC, the FCC's TTY number, 1–888–TELL–FCC, and the Web site address for the FCC's online digital reception mapping tool, *http://www.DTV.gov/maps.*

(iv) The station must post service loss information on its Web site home page, including a link to the relevant coverage change maps on *http://www.DTV.gov* and the FCC's online digital reception mapping tool, *http://www.DTV.gov/maps.* This information must remain available on the station's Web site home page for at least 30 days after the station terminates its analog service, notwithstanding the termination of other consumer education requirements.

(v) The loss areas disclosed in the service loss notices must be based on the FCC's Signal Loss Report.

(vi) Service loss notices must disclose that some current viewers of the station's analog signal are predicted to experience a loss of service and describe the discrete geographic areas where there is likely to be a service loss.

(vii) If any predicted service loss is attributable to a change in the station's frequency from VHF to UHF, and the predicted losses cannot entirely be described with respect to discrete geographic areas, the station must, at a minimum, disclose that some analog viewers located in areas obstructed by hills or buildings are predicted to be unable to receive the station's digital signal. This is in addition to, and not in lieu of, descriptions of any discrete geographic areas where there is likely to be a service loss.

(6) *Antenna Information Notices*—Beginning April 1, 2009, all stations must include information about the use of antennas as part of their consumer education campaign, as provided in this paragraph.

(i) The antenna information notices should provide information about the types of antennas that their viewers may need, and how to install them.

(ii) Stations that have changed or are changing the frequency band in which they broadcast must inform their viewers of the change in frequencies and explain how the change affects the antenna they need to receive their signal.

(iii) Stations that are predicted by the FCC's Signal Loss Report to have any loss of viewers should consider whether their viewers can improve their ability to receive their signal by obtaining a different or better antenna, and if so, provide information concerning such antennas.

(iv) Antenna information notices must be no fewer than 15 seconds long, and must be aired at least once per day, between 8 a.m. and 11:35 p.m. At least three antenna information notices per week must air between 8 p.m. and 11 p.m. in the Atlantic, Eastern and Pacific time zones, and between 7 p.m. and 10 p.m. in the Mountain, Central, and Alaskan time zones.

(v) Antenna information notices may be included as part of a station's DTV Consumer Education Initiative efforts, or may be discussed for at least 15 seconds during news programs, or broadcast in other ways that the station determines will be most helpful to consumers.

(vi) Notwithstanding the content requirements of paragraph (c) of this section, a licensee or permittee electing compliance with paragraph (c) of this section may replace up to 25 percent of their daily PSAs and crawls with antenna notices.

(7) *Rescanning Notices*—Beginning April 1, 2009, all stations must include information in their consumer education campaigns to inform and remind viewers about the importance of periodically using the rescan function of their digital televisions and digital converter boxes, as provided in this paragraph.

(i) Rescanning notices should explain why rescanning is important in general and, in particular, if the station is changing channels or signal direction.

(ii) Rescanning notices must be no fewer than 15 seconds long, and must be aired at least once per day, between 8 a.m. and 11:35 p.m. At least three rescanning notices per week must air between 8 p.m. and 11 p.m. in the Atlantic, Eastern and Pacific time zones, and between 7 p.m. and 10 p.m. in the Mountain, Central, and Alaskan time zones.

(iii) Rescanning notices may be included as part of a station's DTV Consumer Education Initiative efforts, or may be discussed for at least 15 seconds during news programs, or broadcast in other ways that the station determines will be most helpful to consumers.

(iv) Notwithstanding the content requirements of paragraph (c) of this section, a licensee or permittee electing compliance with paragraph (c) of this section may replace up to 25 percent of their daily PSAs and crawls with rescanning notices.

(8) *Help Center Notices*—Beginning April 1, 2009, as part of its DTV consumer education campaign, every station must air notices providing the location and operating hours of walk-in DTV help centers in the station's market area; the FCC Call Center telephone number and TTY number; and the station's telephone number for receiving consumer referrals and calls from local viewers, as provided in this paragraph.

(i) Help center notices must be no fewer than 15 seconds long, and must be aired at least once per day, between 8 a.m. and 11:35 p.m. At least three help center notices per week must air between 8 p.m. and 11 p.m. in the Atlantic, Eastern and Pacific time zones, and between 7 p.m. and 10 p.m. in the Mountain, Central, and Alaskan time zones.

(ii) Help center notices may be included as part of a station's DTV Consumer Education Initiative efforts, or may be discussed for at least 15 seconds during news programs, or broadcast in other ways that the station determines will be most helpful to consumers.

(iii) Notwithstanding the content requirements of paragraph (c) of this section, a licensee or permittee electing compliance with paragraph (c) of this section may replace up to 25 percent of its daily PSAs and crawls with help center notices.

(c) *Consumer Education Campaign Option One:*

(1) From March 27, 2008 through the station's termination of analog service or, for stations subject to the provisions of paragraph (b)(4) of this section, until the station completes construction of its full, authorized post-transition digital facility, a licensee or permittee must, at a minimum, air one transition-related public service announcement (PSA), and one transition-related informative text crawl, in every quarter of every broadcast day. This minimum will increase to two of each, per quarter, from April 1, 2008 through September 30, 2008, and to three of each, per quarter, from October 1, 2008 through the conclusion of the campaign. At least one PSA and one informative text crawl per day must be aired between 8 p.m. and 11 p.m. in the Atlantic, Eastern and Pacific time zones, and between 7 p.m. and 10 p.m. in the Mountain, Central, and Alaskan time zones.

(2) For the purposes of this section, each broadcast day consists of four quarters; 6:01 a.m. to 12 p.m., 12:01 p.m. to 6 p.m., 6:01 p.m. to 12 a.m., and 12:01 a.m. to 6 a.m.

(3) Informative text crawls must:

(i) Air during programming;

(ii) Air for no fewer than 60 consecutive seconds;

(iii) Be displayed so that the text travels across the bottom or top of the viewing area at the same speed used for other informative text crawls concerning news, sports, and entertainment information;

(iv) Be presented in the same language as a majority of the programming carried by the station;

(v) Be displayed so that they do not block and are not blocked by closed-captioning or emergency information; and

(vi) Contain at least the following information, but may contain more, provided they contain no misleading or inaccurate statements:

(A) The nationwide switch to digital television broadcasting will be complete on June 12, 2009, but your local television stations may switch sooner. After the switch, analog-only television sets that receive TV programming through an antenna will need a converter box to continue to receive over-the-air TV. Watch your local stations to find out when they will turn off their analog signal and switch to digital-only broadcasting. Analog-only TVs should continue to work as before to receive low power, Class A or translator television stations and with cable and satellite TV services, gaming consoles, VCRs, DVD players, and similar products.

(B) More information is available by phone and online, and provide appropriate contact information, including means of contacting the station or the network.

(4) Public service announcements must have a duration of no fewer than 15 consecutive seconds, and contain, at a minimum, the information described in paragraph (c)(3)(vi) of this section. They must also address the following topics at least once each during every calendar week:

(i) The steps necessary for an over-the-air viewer or a subscriber to a multichannel video programming distributor to continue viewing the station after the transition;

(ii) The channel on which the station can be viewed after the transition;

(iii) Whether the station will be providing multiple streams of free video programming during or after the transition;

(iv) Whether the station will be providing a High Definition signal during or after the transition;

(v) The exact date and time that the station will cease analog broadcasting; and

(vi) The exact date and time that the station will begin digital broadcasting on its post-transition channel, if it has not already done so.

(d) *Consumer Education Campaign Option Two:*

(1) A licensee or permittee must, at a minimum, air an average of sixteen (16) transition-related PSAs per week, and an average of sixteen (16) transition-related crawls, snipes, and/or tickers per week, over a calendar quarter.

(2) For the purposes of calculating the average number of PSAs aired, a 30-second PSA qualifies as a single PSA, and two 15-second PSAs count as a single PSA.

(3) PSAs, crawls, snipes, and/or tickers aired between the hours of 1 a.m. and 5 a.m. do not conform to the requirements of this section and will not count toward calculating the average number of transition-related education pieces aired.

(4) Over the course of each calendar quarter, 25 percent of all PSAs, and 25 percent of all crawls, snipes, and/or tickers, must air between 6 p.m. and 11:35 p.m. (Atlantic, Eastern and Pacific time zones) or between 5 p.m. and 10:35 p.m. (Mountain, Central, and Alaskan time zones).

(5) Stations must air a 30-minute informational program on the digital television (DTV) transition between 8 a.m.–11:35 p.m. on at least one day after April 1, 2009, and prior to the station's termination of analog service. The program must contain at least the following information:

(i) The fact that Congress has changed the deadline for the national DTV transition to June 12, 2009;

(ii) The date and approximate time of day when the station airing the informational video is terminating analog service;

(iii) The date and approximate time of day when all other full-power stations in the same market are terminating analog service;

(iv) For stations covered by paragraph (b)(5) of this section, the same service loss information required by paragraph (b)(5) of this section.

(6) Beginning on April 1, 2009, or sixty (60) days prior to the station's termination of analog service, whichever is later, the station must begin a 60-Day Countdown to its transition to digital-only service. During this period, the station must air at least one of the following per day:

(i) *Graphic Display.* A graphic super-imposed during programming content that reminds viewers graphically there are ''x number of days'' until the transition. They will be visually instructed to call a toll-free number and/or visit a Web site for details. The

duration must be at least five (5) seconds.

(ii) *Animated Graphic.* A moving or animated graphic that ends up as a countdown reminder. It would remind viewers that there are ''x number of days'' until the transition. They will be visually instructed to call a toll-free number and/or visit a Web site for details. The duration must be at least five (5) seconds.

(iii) *Graphic and Audio Display.* Option #1 or option #2 with an added audio component. The duration must be at least five (5) seconds.

(iv) *Longer Form Reminders.* Stations can choose from a variety of longer form options to communicate the countdown message. Examples might include an ''Ask the Expert'' segment where viewers can call in to a phone bank and ask knowledgeable people their questions about the transition. The duration must be at least two (2) minutes. (Some stations may also choose to include during newscasts DTV ''experts'' who may be asked questions by the anchor or reporter about the impending transition deadline.)

(e) *Consumer Education Campaign Option Three:*

(1) Only a licensee or permittee of a noncommercial television station may elect this option. Under this option, from March 27, 2008, through April 30, 2008, a noncommercial broadcaster must, at a minimum, air 60 seconds per day of transition-related education (PSAs), in variable timeslots, including at least 7.5 minutes per month between 6 p.m. and 12 a.m. From May 1, 2008, through October 31, 2008, a broadcaster must, at a minimum, air 120 seconds per day of transition-related education (PSAs), in variable timeslots, including at least 15 minutes per month between 6 p.m. and 12 a.m. From November 1, 2008, through the station's termination of analog service, or, for stations subject to the provisions of paragraph (b)(4) of this section, until the station completes construction of its full, authorized post-transition digital facility, a broadcaster must, at a minimum, air 180 seconds per day of transition-related education (PSAs), in variable timeslots, including at least 22.5 minutes per month between 6 p.m. and 12 a.m.

(2) Noncommercial stations must air a 30-minute informational program on the digital television (DTV) transition between 8 a.m.–11:35 p.m. on at least one day after April 1, 2009, and prior to the station's termination of analog service. The program must contain at least the following information:

(i) The fact that Congress has changed the deadline for the national DTV transition to June 12, 2009;

(ii) The date and approximate time of day when the station airing the informational video is terminating analog service;

(iii) The date and approximate time of day when all other full-power stations in the same market are terminating analog service;

(iv) For stations covered by paragraph (b)(5) of this section, the same service loss information required by paragraph (b)(5) of this section.

[FR Doc. E9–5820 Filed 3–13–09; 4:15 pm]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 356, 365, and 374

[Docket No. FMCSA–2008–0235]

RIN 2126–AB16

Elimination of Route Designation Requirement for Motor Carriers Transporting Passengers Over Regular Routes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule; delay of effective date and request for comments.

SUMMARY: On March 3, 2009, FMCSA published a document in the **Federal Register** (74 FR 9172) requesting comments on its proposal to delay the effective date of its January 16, 2009, final rule entitled ''Elimination of Route Designation Requirement for Motor Carriers Transporting Passengers over Regular Routes.'' Based on the five comments received, all supporting the proposal to delay the effective date of the final rule, FMCSA is extending the effective date by 90 days, and seeks additional public comment on the rulemaking. The final rule announced the discontinuation of the administrative requirement that applicants seeking for-hire authority to transport passengers over regular routes submit a detailed description and a map of the route(s) over which they propose to operate. In response to the Assistant to the President and Chief of Staff's memorandum of January 20, 2009, FMCSA extends the effective date to allow the Agency the opportunity for further review and consideration of the January 16, 2009, final rule and solicits public comments on the final rule. In order to afford sufficient time to consider and respond to comments, the effective date is extended for 90 days.

DATES: Comments must be received on or before April 16, 2009. The effective date of the rule amending 49 CFR Parts 356, 365, and 374, published at 74 FR 2895, January 16, 2009, is delayed until June 15, 2009. The compliance date for this rule continues to be July 15, 2009.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Number in the heading of this document by any of the following methods. Do not submit the same comments by more than one method. The Federal eRulemaking portal is the preferred method for submitting comments, and we urge you to use it.

Federal eRulemaking Portal: Go to http://www.regulations.gov. Follow the online instructions for submitting comments. In the *Comment or Submission* section, type Docket ID Number ''FMCSA–2008–0235'', select ''Go'', and then click on ''Send a Comment or Submission.'' You will receive a tracking number when you submit a comment.

Telefax: 1–202–493–2251.

Mail, Courier, or Hand-Deliver: Docket Management Facility; U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Privacy Act: Regardless of the method used for submitting comments, all comments will be posted without change to the Federal Docket Management System (FDMS) at *http://www.regulations.gov*. Anyone can search the electronic form of all our dockets in FDMS, by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). DOT's complete Privacy Act Statement was published in the **Federal Register** on April 11, 2000 (65 FR 19476) or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf*.

FOR FURTHER INFORMATION CONTACT: Mr. David Miller, Regulatory Development Division, (202) 366–5370 or by e-mail at: *FMCSAregs@dot.gov*.

SUPPLEMENTARY INFORMATION: On January 16, 2009, FMCSA published a final rule announcing the discontinuation of the administrative requirement that applicants seeking for-hire authority to transport passengers over regular routes submit a detailed description and a map of the route(s) over which they propose to operate (74

FR 2895). The effective date of the rule was originally March 17, 2009, with a compliance date of July 15, 2009.

In accordance with the January 20, 2009 memorandum, 74 FR 4435, January 26, 2009, from the Assistant to the President and Chief of Staff, on March 2, 2009 (74 FR 9172), FMCSA sought comment on a proposal to extend the effective date of the final rule for 90 days. FMCSA received five comments to the March 2 notice. All of the commenters supported extending the effective date of the final rule for 90 days, providing for a new comment period, and, if appropriate, reconsidering the final rule based on any new information provided by the comments. Therefore, FMCSA extends the effective date of its January 16, 2009, final rule from March 17, 2009, to June 15, 2009. This will provide us sufficient time to address issues that have been raised about whether the new rule will make it more difficult for us to enforce our requirements concerning safety and access for individuals with disabilities. Although we believe the final rule fully addressed these issues, in light of the Assistant to the President and Chief of Staff's memorandum, we are delaying the effective date of the final rule to allow the Agency the opportunity for further review and consideration of these issues.

List of Subjects

49 CFR Part 356

Administrative practice and procedure, Routing, Motor carriers.

49 CFR Part 365

Administrative practice and procedure, Brokers, Buses, Freight forwarders, Motor carriers, Moving of household goods, Reporting and recordkeeping requirements.

49 CFR Part 374

Aged, Blind, Buses, Civil rights, Freight, Individuals with disabilities, Motor carriers, Smoking.

Issued on: March 12, 2009.

Rose A. McMurray,

Acting Deputy Administrator.

[FR Doc. E9–5778 Filed 3–16–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R1-ES-2008-0016; MO 9221050083-B2]

RIN 1018-AV00

Endangered and Threatened Wildlife and Plants; Listing *Phyllostegia hispida* (No Common Name) as Endangered Throughout Its Range

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered status under the Endangered Species Act of 1973, as amended (Act), for *Phyllostegia hispida* (no common name), a plant species from the island of Molokai in the Hawaiian Islands. This final rule implements the Federal protections provided by the Act for this species. We have also determined that critical habitat for *P. hispida* is prudent but not determinable at this time.

DATES: This rule becomes effective April 16, 2009.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov* and *http://www.fws.gov/pacificislands*. Comments and materials received, as well as supporting documentation used in the preparation of this rule, will be available for public inspection, by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3-122, Box 50088, Honolulu, HI 96850; telephone, 808-792-9400; facsimile, 808-792-9581.

FOR FURTHER INFORMATION CONTACT: Patrick Leonard, Field Supervisor, Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

Phyllostegia hispida is known only from the island of Molokai, Hawaii, where 24 wild and 214 outplanted individuals currently exist. Molokai is approximately 38 miles (mi) (61 kilometers (km)) long and up to 10 mi (16 km) wide, and encompasses an area of about 260 square (sq) mi (674 sq km) (Foote *et al.* 1972, p. 11; Department of Geography 1998, p. 13). Three shield volcanoes make up most of the land mass, dividing the island into roughly three geographic segments: West Molokai Mountain, East Molokai Mountain, and a volcano that formed Kalaupapa Peninsula (Department of Geography 1998, pp. 11, 13).

The taller and larger East Molokai Mountain, which makes up eastern Molokai, rises 4,970 feet (ft) (1,514 meters (m)) above sea level on the island's summit at Kamakou and comprises roughly 50 percent of the island's land area (Department of Geography 1998, p. 11; Foote *et al.* 1972, p. 11). *Phyllostegia hispida* is known only from the wet forests of eastern Molokai, at elevations from 2,300 to 4,200 ft (700 to 1,280 m) (Wagner *et al.* 1999, p. 819). The wet forests where *P. hispida* has been recorded are found only on the windward side of East Molokai, which differs topographically from the leeward side. Precipitous cliffs line the northern windward coast, with deep inaccessible valleys dissecting the coastline. The annual rainfall on the windward side ranges from 75 to over 150 inches (in) (200 to over 375 centimeters (cm)), distributed throughout the year. The soils are poorly drained and high in organic matter. The gulches and valleys are usually very steep, but sometimes gently sloping (Foote *et al.* 1972, p. 14).

The native habitats and vegetation of the Hawaiian Islands have undergone extreme alterations because of past and present land use, as well as the intentional or inadvertent introduction of nonnative animal and plant species. Introduced mammals, particularly feral pigs (*Sus scrofa*), have greatly affected native Hawaiian plant communities. Feral pigs have been described as the most pervasive and disruptive nonnative influence on the unique native forests of the Hawaiian Islands, and are widely recognized as one of the greatest threats to forest ecosystems in Hawaii today (Aplet *et al.* 1991, p. 56; Anderson and Stone 1993, p. 195; Loope 1998, p. 752). Introduced (nonnative) plant species, which now comprise approximately half of the plant taxa in the islands, have come to dominate many Hawaiian ecosystems, and frequently outcompete native plants for space, light, water, and nutrients, as well as alter ecosystem function, rendering habitats unsuitable for native species (Cuddihy and Stone 1990, pp. 73-91; Vitousek *et al.* 1997, p. 6).

The plant *Phyllostegia hispida* has only a few recorded occurrences and until recently was thought to be extinct in the wild. Alterations of the plant's native habitat by feral pigs and nonnative plants have been the primary threats to *P. hispida*, in conjunction

with the threat of predation by feral pigs, competition with nonnative plants, and more recently the negative demographic and genetic consequences of extremely small population size, as well as the consequent vulnerability to extinction through deterministic or stochastic (chance) events.

Previous Federal Actions

We first identified *Phyllostegia hispida* as a candidate for listing in the September 19, 1997, Notice of Review of Plant and Animal Taxa that are Candidates or Proposed for Listing as Endangered or Threatened Species (Notice of Review) (62 FR 49397). Candidates are those taxa for which we have on file sufficient information on biological vulnerability and threats to support preparation of a listing proposal, but for which development of a listing regulation is precluded by other higher priority listing activities.

On May 4, 2004, the Center for Biological Diversity petitioned the Service to list 225 species of plants and animals as endangered under the provisions of the Act (16 U.S.C. 1531 *et seq.*), including *Phyllostegia hispida*. In our Notice of Review, dated September 12, 2006 (71 FR 53756), we retained a listing priority number of 2 for this species, in accordance with our priority guidance published on September 21, 1983 (48 FR 43098). A listing priority of 2 reflects threats that are both imminent and high in magnitude, as well as the taxonomic classification of *P. hispida* as a full species. We determined that publication of a proposed rule to list the species was precluded by our work on higher priority listing actions during the period from May 2, 2005, through August 23, 2006 (71 FR 53756). However, we have since completed those actions. As such, we had available resources to propose to list this species.

On February 19, 2008, we published a proposed rule to list *Phyllostegia hispida* as endangered throughout its range (73 FR 9078). We solicited data and comments from the public on the proposed rule. The comment period opened on February 19, 2008, and closed on April 21, 2008.

Species Information

Phyllostegia hispida was first described by William Hillebrand in 1870 from a specimen collected from an area that he described as the ''heights of Mopulehu'' on the island of Molokai (see ''Type Description,'' Smithsonian Institution and National Tropical Botanical Garden 2008), and is recognized as a distinct taxon in Wagner *et al.* (1999, pp. 817-819). A non-aromatic member of the mint family (Lamiaceae), *P. hispida* is a loosely spreading, many-branched vine that often forms large, tangled masses. Leaves are thin and flaccid with hispid hairs (rough with firm, stiff hairs) and glands. The leaf margins are irregularly and shallowly lobed. Six to eight white flowers make up each verticillaster (a false whorl, composed of a pair of nearly sessile cymes (a flat-topped or round-topped flower cluster) in the axils of opposite leaves or bracts), and nutlets are approximately 0.1 inches (in) (2.5 millimeters (mm)) long (Wagner *et al.* 1999, pp. 817-819). No life history information is currently available on this species.

The few documented specimens of *Phyllostegia hispida* have typically been found in wet *Metrosideros polymorpha* (ohia)–dominated forest, with most at an elevation between 3,650 and 4,200 ft (1,112 and 1,280 m). Associated native species include *Cheirodendron trigynum* (olapa), *Ilex anomala* (aiae), *Cibotium glaucum* (hapuu), *Broussaisia argutus* (kanawao), *Rubus hawaiensis* (akala), *Sadleria cyatheoides* (amau), *Pipturus albidus* (mamaki), *Nertera granadensis* (makole), *Athyrium microphyllum* (no common name), *Elaphoglossum fauriei* (no common name), and bryophytes (Hawaii Biodiversity and Mapping Program (HBMP) 2007).

From 1910 through 1979, a total of 8 occurrences of *Phyllostegia hispida* were recorded from the wet forests of eastern Molokai (HBMP 2007). None of these historical occurrences have been relocated during surveys conducted in the wet forests of east Molokai over the past several years (The Nature Conservancy of Hawaii (TNCH) 1997b, pp. 1-19; Perlman 2006a). In 1996, two adult plants were found in eastern Molokai within TNCH's Kamakou Preserve, one next to the Pepeopae Boardwalk and the other east of Hanalilolilo growing along the fence within the State of Hawaii's Puu Alii Natural Area Reserve (NAR). In 1997, a single *Phyllostegia* individual was discovered on the rim of Pelekunu Valley in the Puu Alii NAR (HBMP 2005; TNCH 1997b, p. 6). There is some uncertainty, however, as to whether this individual was *P. hispida*, as it was identified as *P. manni* by Hawaii Division of Forestry and Wildlife (DOFAW) staff, based upon the size and lobing of its leaves (Hobdy 2006; Lau 2006; Nohara 2006). This individual plant was protected from feral ungulates inside a fenced exclosure. Seeds were collected, and seedlings were produced by DOFAW and outplanted into the exclosure with the wild plant (Nohara 2006).

In November 1996, TNCH erected an exclosure around the Pepeopae Boardwalk individual and began frequent, recurrent weeding and monitoring within the fenced area (TNCH 1997a, p. 2). They also built an exclosure approximately 656 ft (200 m) away for future outplantings of propagated individuals. Plants grown from leaf buds collected from the Pepeopae Boardwalk plant were outplanted into the exclosure in December 1997 (TNCH 1998a, p. 7). They survived through 1998 (TNCH 1998b, Appendix 1, dot 28), but have since been confirmed dead (Aruch 2006; Misaki 2006).

The Pepeopae Boardwalk individual died in 1998 or 1999 (HBMP 2005), and the wild plant and outplantings in Puu Alii NAR, which may possibly have been *Phyllostegia manni* and not *P. hispida* (see above; the question of taxonomic identity was never resolved), died several years ago (Perlman 2005; Wood 2005; Hughes 2006b). The University of Hawaii's Lyon Arboretum has material from the individual that was growing along the Puu Alii fence and from the Pepeopae Boardwalk individual in micropropagation (U.S. Fish and Wildlife Service 2005).

Surveys have been conducted in the wet forests of east Molokai, but no additional *Phyllostegia hispida* plants were found. The species was thought to have been extirpated from the wild until 2005, when two seedlings were found in a Hanalilolilo stream bank in Kamakou Preserve, indicating the possible presence of a mature plant, or plants, somewhere in the vicinity (TNCH 1997b, pp. 1-19; Perlman 2005; Perlman 2006a; Wood 2006). One of the seedlings was collected by a botanist with HBMP and provided to Lyon Arboretum in Honolulu, which in turn provided it to Kalaupapa National Historic Park (KNHP) on Molokai for attempted propagation. That plant has since died (Hughes 2006a; Garnett 2006). The other seedling was collected by a botanist with the National tropical Botanic Gardens. Cuttings were propagated from this seedling and providedto KNHP (Perlman 2006b). Plants grown from these cuttings have since been outplanted into TNCH's Kamakou Preserve (see below).

Phyllostegia hispida was again thought to be extirpated from the wild until a single juvenile plant was discovered in May 2006 within the Puu Alii NAR along the Puu Alii fenceline at 4,100 ft (1,250 m) elevation (Perlman 2006b). Although protected within a 10-ft (3-m) diameter fenced exclosure (Stevens 2006), that individual has died for unknown reasons (Oppenheimer

2007). However, 10 new wild plants were discovered in April 2007: 9 within Kamakou Preserve and 1 within Puu Alii NAR. Four of the individuals found within Kamakou Preserve were seedlings that were closely clustered next to a fenceline. These were protected with temporary fencing; however, two of these individuals are now dead. Two of the remaining eight wild individuals discovered in April 2007 are mature and have fruited and produced seeds. Seeds and cuttings have been removed from these individuals for attempted cultivation (Oppenheimer 2008b). Other than the two remaining seedlings that were protected with temporary fencing, the remainder of the wild individuals are not currently protected within exclosures.

Since April 2007, 15 additional *Phyllostegia hispida* individuals have been found within Kamakou Preserve while conducting *Rubus argutus* (Florida prickly blackberry) control trips (Oppenheimer 2008a,b; Oppenheimer 2008d). Most of the remaining wild individuals, which now number 24, are located on landslides or in windthrow areas (areas in which trees have been uprooted or overthrown by wind) (Oppenheimer 2008b,c).

In addition, several outplantings of cultivated individuals have been completed within TNCH's Kamakou Preserve as of April 2007. Twelve individuals were outplanted into exclosures in April 2007, and 11 of these were still doing well as of April 2008. Another 12 were outplanted in June 2007, all of which remained as of April 2008 (Oppenheimer 2008b). A third outplanting of 6 plants was done in August 2007 (Oppenheimer 2008b), another 124 individuals were outplanted in August 2008 (Oppenheimer 2008d), and 61 more were outplanted in September 2008 (Oppenheimer 2008c), bringing the total number of *Phyllostegia hispida* plants in the wild to 24 naturally occurring and 214 outplanted individuals. One of the wild individuals is located within Puu Alii NAR; all of the remaining individuals are located within Kamakou Preserve.

Summary of Comments and Recommendations

In the proposed rule published on February 19, 2008 (73 FR 9078), we requested that all interested parties submit written comments on the proposal by April 21, 2008. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. Newspaper notices inviting general public comment were published in the Honolulu Advertiser and Molokai Advertiser News. We did not receive any requests for a public hearing.

During the comment period for the proposed rule, we received one written public comment in support of listing *Phyllostegia hispida* with endangered status. In addition, the commenter concurred with our assessment that feral pigs and invasive, nonnative plants are both important and immediate threats to Hawaii's native plants and to *P. hispida* in particular. No further additional information was offered beyond these statements of support; therefore we will not address this comment further here.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from seven individuals with scientific expertise that included familiarity with *Phyllostegia hispida* and its habitat, biological needs, and threats. We received written comments from two experts, both of whom agreed with the assessment that *P. hispida* meets the definition of an endangered species. In addition, both experts pointed out that while the continuing invasion of alien plants and feral ungulates undoubtedly poses threats to the species and its habitat, the limited area currently occupied by *P. hispida* has not yet become highly modified by nonnative plants and feral pigs, due to ongoing management by TNCH. The remaining plants are found in a native-dominated plant community within TNCH's Kamakou Preserve where control efforts for both alien plants and feral ungulates are ongoing. Both experts also point out that they believe *P. hispida* may be dependent upon tree-fall openings in the canopy or similar disturbances that provide increased sunlight for germination. Information provided by the peer reviewers has been incorporated into this final rule.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

As with virtually every other native plant community in the islands, the wet forests of Molokai where *Phyllostegia hispida* occurs have been affected by introduced (nonnative) feral pigs and introduced (nonnative) plants (DOFAW 1991, pp. 3, 14-23; TNCH 1994, pp. 6, 9-12; HBMP 2007). The poor reproduction and survivorship of *P. hispida* clearly indicate that the current conditions are less than optimal for this species, although we do not yet fully understand the specific mechanisms that are undermining its viability.

Feral Pigs

European pigs, introduced to Hawaii by Captain James Cook in 1778, hybridized with domesticated Polynesian pigs, became feral, and invaded forested areas, especially wet and mesic forests and dry areas at high elevations. They are currently present on Kauai, Niihau, Oahu, Molokai, Maui, and Hawaii. These introduced feral pigs are extremely destructive and have both direct and indirect impacts on native plant communities. While rooting in the earth in search of invertebrates and plant material, feral pigs directly affect native plants by disturbing and destroying vegetative cover, trampling plants and seedlings, and possibly reducing or eliminating plant regeneration by damaging or eating seeds and seedlings (further discussion of predation is under Factor C, below). Feral pigs are a major vector for the establishment and spread of competing invasive, nonnative plant species, by dispersing these plant seeds on their hooves and coats as well as through their digestive tracts, and by fertilizing the disturbed soil through their feces. Feral pigs feed preferentially on the fruits of many nonnative plants, such as *Passiflora tarminiana* (banana poka) and *Psidium cattleianum* (strawberry guava), thereby facilitating the spread of these invasive species, and also contribute to erosion by clearing vegetation and creating large areas of disturbed soil, especially on slopes (Aplet *et al.* 1991, p. 56; Smith 1985, pp. 190, 192, 196, 200, 204, 230-231; Stone 1985, pp. 254-255, 262-264; Medeiros *et al.* 1986, pp.

27-28; Scott *et al.* 1986, pp. 360-361; Tomich 1986, pp. 120-126; Cuddihy and Stone 1990, pp. 64-65; Loope *et al.* 1991, pp. 1-21; Wagner *et al.* 1999, p. 52).

Feral pigs are present in the wet forest habitat formerly and currently inhabited by *Phyllostegia hispida* within Puu Alii NAR and Kamakou Preserve, and although control efforts are underway, they continue to degrade the condition of the forest there (DOFAW 1991, pp. 3, 14-23; TNCH 1994, pp. 6, 9-12; HBMP 2007). They are considered a major threat to native species and to the overall health of the watershed in which *P. hispida* occurs (DOFAW 1991, pp. 3, 14-23; TNCH 1994, pp. 6, 9-12). Significant management actions are directed at feral ungulate control in the area where *P. hispida* has been found within Puu Alii NAR and Kamakou Preserve on Molokai, such as large-scale watershed fencing, construction of ungulate exclosures around rare plants, and hunting of feral pigs by both staff and the public (TNCH 1997a, pp. 2-3; TNCH 1998a, pp. 1-2, 7; DOFAW 2000, pp. 3, 12; HBMP 2007). When the individual *P. hispida* was discovered in 1996 next to the boardwalk at Pepeopae, TNCH noted signs of feral pig presence (e.g., droppings, evidence of rooting, wallows) in the vicinity (HPMP 2007) and immediately erected a fenced exclosure around the plant to protect it (TNCH 1997a, pp. 2-3). Similarly, a fenced exclosure was erected around the individual that was discovered within the Puu Alii NAR in 1997 to protect it from feral pigs (Nohara 2006). The juvenile plant discovered within the Puu Alii NAR in 2005 was immediately fenced to protect it from feral pigs (Stevens 2006), as were four of the most recently discovered plants along the fenceline within Kamakou Preserve (Oppenheimer 2007). Most of the wild individuals, however, are not currently protected within exclosures, and despite ongoing control efforts, feral pigs persist in the range of *P. hispida*.

Feral pigs have been described as the most pervasive and disruptive nonnative influence on the unique native forests of the Hawaiian Islands, and are widely recognized as one of the greatest current threats to forest ecosystems in Hawaii (Aplet *et al.* 1991, p. 56; Anderson and Stone 1993, p. 195; Loope 1998, pp. 752, 769-770). Feral pigs continue to persist despite control efforts, and fencing protects individual plants only temporarily. Furthermore, the remote and rugged terrain of the islands makes the long-term maintenance of fencing difficult. Because of their high rate of reproduction, more than 40 percent of the feral pig population must be removed annually before any decline in numbers is observed (Hess *et al.* 2006, p. 39). The most intensive feral pig eradication programs in the Hawaiian Islands have taken years of continuous effort to achieve effective control, even within fenced areas (Hess *et al.* 2006). Even though two peer reviewers have suggested that the habitat currently occupied by *Phyllostegia hispida* on TNCH land has not yet been highly modified by feral pigs, due to the well-documented negative impacts of feral pigs on native Hawaiian plant communities, the known habitat degradation caused by feral pigs in the habitat occupied by *P. hispida*, and the continuing presence of feral pigs in the limited area where *P. hispida* is found, we consider habitat modification and degradation by feral pigs to be an immediate and ongoing threat to this species throughout its range, and we have no indication that this threat is likely to be significantly ameliorated in the near future.

Nonnative Plants

Introduced, nonnative plant species are a pervasive threat to the native flora throughout the Hawaiian Islands. Of the current total of nearly 2,000 native and naturalized plant taxa, approximately half are introduced, nonnative species from other parts of the world, and nearly 100 of these are considered invasive pest species (Smith 1985, p. 180). On the Hawaiian Islands and other tropical islands, studies have shown that many of these introduced plant taxa outcompete and displace native plants, and often alter the habitat to the point that it is no longer suitable for the native plant species; these studies include nonnative pest plants found in habitat similar to that of *Phyllostegia hispida* (Smathers and Gardner 1978, pp. 274-275; Smith 1985, pp. 196, 206, 230; Loope and Medeiros 1992, pp. 7-8; Medeiros *et al.* 1992, pp. 30-32; Ellshoff *et al.* 1995, pp. 1-5; Meyer and Florence 1996, pp. 777-780; Medeiros *et al.* 1997, pp. 30-32; Loope *et al.* 2004, pp. 1472-1473). In particular, nonnative pest plants may make habitat less suitable for native plants by modifying availability of light, altering soil-water regimes, modifying nutrient cycling, or altering fire characteristics of native plant communities (Smith 1985, pp. 206, 217, 225, 227-233; Cuddihy and Stone 1990, p. 74).

Although there is no empirical evidence specific to *Phyllostegia hispida* due to the lack of research on the species, scientists familiar with *P. hispida* believe it does not handle either shade or competition well (Oppenheimer 2007), and nonnative plants are likely to contribute to both of these conditions. Examples of some of the nonnative plants documented in the areas formerly occupied by *P. hispida* include *Axonopus fissifolius* (narrow-leaved carpetgrass), *Clidemia hirta* (Koster's curse), *Erechtites valerianifolia* (fireweed), *Juncus effuses* (Japanese mat rush), *Rubus rosifolius* (thimbleberry), and *Sacciolepis indica* (Glenwood grass). *Rubus rosifolius* and *R. argutus* are scattered throughout the area in which *P. hispida* currently exists, and are targets of control by TNCH staff in the area (Oppenheimer 2008a). Because of demonstrated habitat modification and resource competition by nonnative plant species in habitat similar to the wet forest habitat of *P. hispida*, and the ongoing need for control of invasive nonnative plant species in the area currently occupied by *P. hispida*, we consider habitat modification and degradation by nonnative plants to be an immediate and ongoing threat to this species throughout its range.

To date, successful eradication or control of invasive alien plants has only been achieved on a very small scale, and then usually when control efforts have been initiated in the early stages of establishment (Mack and Lonsdale 2002, p. 166). Many of the invasive, nonnative plants in Hawaii are so widespread and easily dispersed that some researchers question whether eradication is a realistic goal (e.g., Mack and Lonsdale 2002, p. 165). On average, 40 new plant species have been introduced to the Hawaiian Islands every year over the past two centuries (Loope 1998, p. 752). Although managers are attempting to control nonnative plants, resources to support such efforts are often limited (e.g., Holt 1992, p. 527), and invasive nonnative plants persist in most areas in spite of such efforts. In addition, the control of introduced ungulates such as feral pigs, which contribute to the spread of alien plant species, is viewed as a prerequisite to the effective control of nonnative plants (e.g., Holt 1992, p. 527). Therefore, due to the ubiquitous nature of the invasive plant problem in the Hawaiian Islands, the extreme difficulty of eradicating invasive, nonnative plant species that have become widespread and well-established, and the continuing presence of introduced ungulates that contribute to the spread and establishment of nonnative plants, we have no indication that this threat to *Phyllostegia hispida* is likely to be significantly reduced any time in the near future.

In summary, feral pigs contribute to the modification and degradation of *Phyllostegia hispida's* habitat by disturbing and destroying vegetative cover, trampling plants and seedlings, reducing or eliminating plant regeneration by damaging or eating seeds and seedlings, and increasing erosion by creating large areas of bare soil. Feral pigs are also a major vector for the dispersal of invasive, nonnative plant species that pose a threat to *P.hispida*. The presence of nonnative plant species contributes to the modification and degradation of *P. hispida's* habitat by modifying availability of light, altering soil-water regimes, modifying nutrient cycling, and changing the fire characteristics of the native plant community. Evidence suggests that *P. hispida* is negatively affected by shade and competition, both conditions exacerbated by invasive nonnative plants. We therefore find that habitat modification and degradation by feral pigs and nonnative plants poses an immediate and ongoing threat to *Phyllostegia hispida,* despite the occurrence of the species on protected lands, and we have no indication that this threat is likely to be significantly ameliorated in the near future.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization for commercial, recreational, scientific, or educational purposes is not known to be a threat to *Phyllostegia hispida* in any portion of its range, and as such is not addressed in this rule.

C. Disease or Predation

Because the native vegetation of Hawaii evolved without any browsing or grazing mammals present, many plant species do not have natural defenses against such impacts (Carlquist 1980, pp. 173-175; Lamoureux 1994, pp. 54-55). Native plants such as *Phyllostegia hispida* do not have physical or chemical adaptations, such as thorns or noxious compounds, to protect them, thereby rendering them particularly vulnerable to predation by feral pigs or other ungulates (Department of Geography 1998, pp. 137-138; Carlquist 1980, p. 175). Browsing by ungulates has been observed on many other native plants, including common and rare or endangered species (Cuddihy and Stone 1990, pp. 64-65). In a study of feral pig populations in the Kipahulu Valley on the island of Maui, feral pigs were observed feeding on at least 40 plant species in the rainforest ecosystem, 75 percent of which were native plants occurring in the herbaceous understory and subcanopy layer (Diong 1982, p. 160). Therefore, even though we have no evidence of direct browsing for *P. hispida*, given the presence of feral pigs in the area where *P. hispida* occurs, we consider it likely that feral pigs may affect the species directly through predation. As described above under Factor A, due to the persistence of feral pigs in the limited range of *P. hispida* in spite of control efforts, and the likelihood that their presence will continue, we believe feral pigs pose an immediate and ongoing threat to the species throughout its range, and that this threat is unlikely to be significantly reduced in the near future.

D. The Inadequacy of Existing Regulatory Mechanisms

Of the 238 known individuals of *Phyllostegia hispida*, 24 wild and 214 recently outplanted, 237 occur on TNCH's Kamakou Preserve. TNCH manages this private land for the benefit of threatened and endangered species and ecosystems. The management efforts at TNCH's Kamakou Preserve include control of nonnative plants and feral pigs, as well as fencing, all of which benefit *P. hispida*. However, as noted in the discussion of Factor A above, the eradication of nonnative plants and feral pigs, even within fenced areas under active management, is a difficult and extremely lengthy task. The continuing presence of nonnative plants and feral pigs within the fenced area of the preserve, in concert with the threat of very small population size and limited number of reproductive individuals, which will be discussed in Factor E, renders *P. hispida* vulnerable to extinction due to these threats despite beneficial management on the Kamakou Preserve. The threat of extinction is not posed, however, by an inadequacy of regulatory mechanisms on TNCH lands.

Only one known individual of *Phyllostegia hispida* is found on State lands, in the Puu Alii NAR. Hawaii Administrative Rules 13-209 provide protections for this single individual, including a prohibition against removal, injury, or killing, and a prohibition against the introduction of plants or animals. The State has been working to fence greater areas of the NAR and to eradicate feral pigs and nonnative plants within the fenced areas, but this work is not yet complete. As noted in the discussion of Factor A above, the eradication of nonnative plants and feral pigs, even within fenced areas under active management, is a difficult and extremely lengthy task. Although some regulatory protections are in place on the NAR that benefit *P. hispida*, only one single plant occurs under these protections. This fact, in conjunction with the persistence of nonnative plants and feral pigs, small population size, and limited number of reproductive individuals of the species remaining, renders *P. hispida* vulnerable to extinction due to these threats despite the protections on the Puu Alii NAR. The threat of extinction is not posed, however, by an inadequacy of regulatory mechanisms on the NAR. The regulatory mechanisms that provide for the control of threats to *P. hispida* on the Puu Alii NAR appear to be adequate, but as the success of these control efforts has yet to be realized, the threats continue at present.

We find that where individuals of *Phyllostegia hispida* are currently found, the inadequacy of regulatory mechanisms does not pose a threat to the species. However, should the recovery of the species eventually require reintroductions in other areas, this factor may pose a potential impediment to recovery.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

One of the most significant threats to *Phyllostegia hispida* is its extremely low numbers and highly restricted distribution. A total of 238 plants are currently known to exist, 24 naturally occurring and 214 outplanted. Only two wild individuals are mature and have fruited and produced seeds. All of the remaining individuals are young or only recently established. Survivorship of known wild individuals has been poor, and although outplantings have been attempted, none of these outplantings has yet proven successful for more than the short term. Although propagules of *P. hispida* have been collected on an opportunistic basis and some controlled propagation of the species has taken place, there is no dedicated funding for propagation of the species and no formal plan exists for outplanting and reintroduction.

Deterministic factors, such as habitat alteration or loss of a key pollinator, may have reduced this population to such a small size that it is now susceptible to a stochastic extinction event (Gilpin and Soulé 1986, pp. 24-25). Species that are known from few wild individuals and are endemic to a single, small island are inherently more vulnerable to extinction than widespread species because of the higher risks posed to a few populations and individuals by genetic bottlenecks, random demographic fluctuations, and localized catastrophes, such as hurricanes and disease outbreaks (Mangel and Tier 1994, pp. 607-614;

Pimm *et al*. 1988, pp. 757-785). In the case of *Phyllostegia hispida*, the entire population of the species is small and restricted to a highly localized geographic area, rendering it highly vulnerable to the risk of extinction in the wild due to the lack of redundancy in populations. In addition, the lack of reproductive individuals and skewing of the population toward young plants poses a significant threat to the species, as recruitment may not be sufficient to offset mortality in the population. These consequences of small population size (e.g., insufficient natural reproduction, loss of genetic diversity), in conjunction with the risk of losing the entire population in the wild due to factors such as localized events (e.g., hurricanes) and threats posed by ungulates, render the species highly vulnerable to extinction at any time. Although some species are naturally rare, the poor survivorship of *P. hispida* suggests that the requisite biological or ecological needs of the species are not being met under current conditions. The reasons for the poor survivorship and lack of reproduction observed in this species are not known.

All of these negative demographic factors, as well as the vulnerability of extinction of the population from a catastrophic natural event, pose immediate and significant threats to the species despite the fact that it currently occurs on protected lands, including State and TNCH reserves. Small population size has therefore become a primary and immediate threat to this species, and given the current size and composition of the population, we do not foresee the likelihood of this threat lessening to any significant degree any time in the near future.

Conclusion and Determination

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to *Phyllostegia hispida*. The species' extremely low numbers and highly restricted geographic range make it particularly susceptible to extinction at any time from random events such as hurricanes (Factor E). In addition, the lack of mature reproductive individuals poses an immediate threat to the species (Factor E). Although the species is found on protected lands with ongoing management efforts, as described above, we find that it nonetheless faces continuing threats from habitat destruction and degradation due to feral pig activity and invasive nonnative plants (Factor A), competition with nonnative plant species (Factor A), and predation by nonnative mammals (Factor C). The pervasive nature of feral pigs and invasive plants on the island of Molokai makes it unlikely that control efforts will significantly reduce the degree of threat to the species anytime in the near future; therefore we find that these factors, in combination with the extremely low number of reproductive individuals and limited distribution of the population, pose a significant and immediate threat to *P. hispida* and place the species at current risk of extinction throughout its range.

The Act defines an endangered species as ''any species which is in danger of extinction throughout all or a significant portion of its range.'' *Phyllostegia hispida* is highly restricted in its range, currently occurring only within Puu Alii NAR and the immediately adjacent Kamakou Preserve on the island of Molokai. Based on the immediate and ongoing significant threats to *P. hispida* throughout its entire limited range, as described above, we consider the species *P. hispida* to be in danger of extinction throughout all of its range. Therefore, we are listing *P. hispida* as an endangered species under the Act. Because we determine that *P. hispida* is endangered throughout all of its range, there is no reason to consider its status in any significant portion of its range.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection measures required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

For *Phyllostegia hispida*, Federal agency actions that may require consultation as described in the preceding paragraph include feral ungulate removal or other management actions undertaken by the National Park Service within Puu Alii NAR; the provision of Federal funds to State and private entities through Federal programs, such as the Service's Partners for Fish and Wildlife Program, State Wildlife Grant Program, and Federal Aid in Wildlife Restoration Program; and the various grants administered by the U.S. Department of Agriculture, Natural Resources Conservation Service. Other types of actions that may require consultation include U.S. Army Corps of Engineers activities, such as the construction or maintenance of boardwalks and bridges subject to section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq*.).

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies. Although Hawaii has a strong Endangered Species law (HRS, Sect. 195-D), *Phyllostegia hispida* is not currently protected under that law. Federal listing of *P. hispida* will automatically invoke State listing under Hawaii's Endangered Species law and

supplement the protection available under other State laws. The Federal Endangered Species Act will, therefore, offer additional protection to this species.

The Act and 50 CFR 17.62 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. We anticipate that the only permits that would be sought or issued for *Phyllostegia hispida* would be in association with recovery efforts, as this species is not common in cultivation or the wild. Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to U.S. Fish and Wildlife Service, Ecological Services, Eastside Federal Complex, 911 N.E. 11th Avenue, Portland, OR 97232-4181 (telephone 503-231-6158; facsimile 503-231-6243).

Critical Habitat

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species and

(b) Which may require special management considerations or protections; and

(2) Specific areas outside the geographical area occupied by a species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary of the Interior that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures which are necessary to bring any endangered or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by private landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the landowner's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, the habitat within the geographical area occupied by the species at the time of listing must contain the physical and biological features essential to the conservation of the species, and be included only if those features may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements (PCEs) laid out in the appropriate quantity and spatial arrangement for the conservation of the species). Under the Act, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed only when we determine that those areas are essential for the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658)), and our associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

There is no documentation that *Phyllostegia hispida* is threatened by taking or other human activity. In the absence of finding that the designation of critical habitat would increase threats to a species, if there are any benefits to a critical habitat designation, then a prudent finding is warranted. The potential benefits include: (1) Triggering consultation under section 7 of the Act, for actions in which there may be a Federal nexus where it would not otherwise occur because, for example, the area is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species.

The primary regulatory effect of a critical habitat designation is the section 7(a)(2) requirement that Federal agencies refrain from taking any action that destroys or adversely affects critical habitat. At present, the only known

extant individuals of *Phyllostegia hispida* occur on State and private land, and all previously known occurrences have been on State and private lands. However, the State-owned Puu Alii NAR falls within the boundaries of the Kalaupapa National Historic Park, and the National Park Service may need to consult with the Service in the future should they determine that actions they intend to fund, carry out, or authorize within the NAR may affect *P. hispida* or destroy or adversely affect critical habitat. In addition, lands that may be designated as critical habitat in the future for this species may be subject to Federal actions that trigger the section 7 consultation requirement, such as the granting of Federal monies for conservation projects or the need for Federal permits for projects, such as the construction and maintenance of boardwalks and bridges subject to section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq*.). There may also be some educational or informational benefits to the designation of critical habitat. Educational benefits include the notification of land owners, land managers, and the general public of the importance of protecting the habitat of this species. In the case of *P. hispida*, these aspects of critical habitat designation would potentially benefit the conservation of the species. Therefore, since we have determined that the designation of critical habitat will not likely increase the degree of threat to the species and may provide some measure of benefit, we find that designation of critical habitat is prudent for *P. hispida*.

Critical Habitat Determinability

As stated above, section 4(a)(3) of the Act requires the designation of critical habitat concurrently with the species' listing ''to the maximum extent prudent and determinable.'' Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Information sufficient to perform required analyses of the impacts of the designation is lacking, or

(ii) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

When critical habitat is not determinable, the Act provides for an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas occupied by the species at the time of listing to designate as critical habitat, we consider those physical and biological features essential to the conservation of the species that may require special management considerations or protection. We consider the physical or biological features to be the PCEs laid out in the appropriate quantity and spatial arrangement for the conservation of the species. The PCEs include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, and rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical geographical and ecological distributions of a species.

We are currently unable to identify the primary constituent elements for *Phyllostegia hispida*, because those physical and biological features that are essential to the conservation of this species are not known at this time. As discussed in the ''Species Information'' section of this rule, between the years 1910 and 1996 only 10 occurrences of *P. hispida* were documented, and the location information for these occurrences was recorded at a relatively coarse scale. Elevations are known only for the few individuals discovered within the last 10 years. From 1996 through 2005, a total of only 6 plants (3 adults, 2 seedlings, and 1 juvenile) were located, all existing only as single individuals in disparate locations. All of the previously known adults died without reproducing naturally in the wild. Currently, there are 24 individuals known to naturally exist in the wild, only 2 of which are mature. Seeds and cuttings have been removed from these two individuals for attempted cultivation (Oppenheimer 2008b). As of April 2008, an additional 214 individuals produced from cuttings and outplanted into exclosures in Kamakou Preserve are also extant.

The reasons for the deaths of the *Phyllostegia hispida* individuals summarized in the ''Species Information'' section of this rule are unknown, as are the reasons for poor natural reproduction in the wild. Key features of the plant's life history, such as longevity, dispersal mechanisms, or vectors for pollination, are unknown.

With so few recorded occurrences of the species, little is known of *Phyllostegia hispida* in terms of what this plant needs to survive and reproduce successfully in the wild. The poor viability of the *P. hispida* occurrences observed in recent years indicates that current conditions are not sufficient to meet the basic biological requirements of this species. Although two mature plants that are producing fruits were recently discovered, there has yet to be an observation of an individual or population of *P. hispida* that has successfully produced surviving young in the wild. As the successful survival and reproduction of the species in the wild has not yet been documented, the optimal conditions that would provide the biological or ecological requisites of the species are not known. Although, as described above, we can surmise that habitat degradation from a variety of factors has contributed to the decline of the species, we do not know specifically what essential physical or biological features of that habitat are currently lacking for *P. hispida*. As we are unable to identify the physical and biological features essential to the conservation of *P. hispida*, we are unable to identify areas that contain these features and that might qualify for designation as critical habitat.

Although we have determined that the designation of critical habitat is prudent for *Phyllostegia hispida*, the biological needs of the species are not sufficiently well known to permit identification of the physical and biological features that may be essential for the conservation of the species, or those areas essential to the conservation of the species. Therefore, we find that critical habitat for *P. hispida* is not determinable at this time. The recent outplanting of more than 200 new seedlings into the Kamakou Preserve presents us with an opportunity to study the growth of these plants and better determine the physical and biological features that may be essential for the conservation of the species. We intend to use the iterative information gained from this continuing research into the essential life history requirements of *P. hispida* to facilitate identification of essential features and areas. In addition, we will evaluate the needs of *P. hispida* within the ecological context of the broader ecosystem in which it occurs, similar to the approach that was recently proposed for 47 species endemic to the island of Kauai (October 21, 2008; 73 FR 62592), and will consider the utility of using this approach for this species as well.

Required Determinations

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

This rule does not contain any new collections of information that require approval by Office of Management and Budget (OMB) under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations adopted under section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited in this rule is available on the Internet at *http://www.regulations.gov* or upon request from the Field Supervisor, Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Author(s)

The primary authors of this document are the staff members of the Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service (see **ADDRESSES**).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

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

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

■ 2. Amend §17.12(h) by adding the following entry to the List of Endangered and Threatened Plants in alphabetical order under ''Flowering Plants'':

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
* * * * * * *							
Phyllostegia hispida	None	U.S.A. (HI)	Lamiaceae	E	762	NA	NA

* * * * * * *

Dated: March 4, 2009.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. E9–5348 Filed 3–16–09; 8:45 am]

BILLING CODE 4310-55-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0809251266–81485–02]

RIN 0648–XN60

Fisheries of the Northeastern United States; Scup Fishery; Reduction of Winter I Commercial Possession Limit

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

ACTION: Temporary rule; inseason adjustment.

SUMMARY: NMFS announces the reduction of the scup coastwide commercial possession limit from Maine through North Carolina for the Winter I period. Regulations governing the scup fishery require publication of this notification to advise the coastal states from Maine through North Carolina that 80 percent of the commercial quota allocated to the Winter I period is projected to be harvested and to announce that the possession limit for a Federal vessel permit holder is reduced.

DATES: Effective 0001 hours, March 19, 2009, through April 30, 2009.

FOR FURTHER INFORMATION CONTACT: Emily Bryant, Fishery Management Specialist, (978) 281–9244.

SUPPLEMENTARY INFORMATION: Regulations governing the scup fishery are found at 50 CFR part 648. The regulations at § 648.120(c) require the Northeast Regional Administrator to publish annual scup quota allocations and the percentage of landings attained during the Winter I period at which the possession limits would be reduced. On January 2, 2009, NMFS published the final rule for the summer flounder, scup, and black sea bass specifications in the **Federal Register** (74 FR 29). This final rule requires NMFS to publish a notification in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that the commercial scup possession limit will be reduced once 80 percent of the Winter I Period quota is projected to be harvested. Based upon recent projections, the Regional Administrator anticipates that 80 percent of the Federal commercial quota of 3,777,443 lb (1,713 mt) for the 2009 Winter I period will be harvested by March 19, 2009. Therefore, to maintain the integrity of the 2010 Winter I period quota by avoiding quota overages, the commercial scup possession limit will be reduced from 30,000 lb (13,608 kg) to 1,000 lb (454 kg) of scup per trip. This possession limit will remain in effect until the end of the Winter I period (through April 30, 2009) or until the Winter I quota allocation has been fully harvested, which ever occurs first.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: March 12, 2009.

Emily H. Menashes,

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

[FR Doc. E9–5749 Filed 3–16–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 09100091344–9056–02]

RIN 0648–XO07

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 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 pollock in Statistical Area 610 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the B season allowance of the 2009 total allowable catch (TAC) of pollock for Statistical Area 610 in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 12, 2009, through 1200 hrs, A.l.t., August 25, 2009.

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 B season allowance of the 2009 TAC of pollock in Statistical Area 610 of the GOA is 3,233 metric tons (mt) as established by the final 2009 and 2010 harvest specifications for groundfish of the GOA (74 FR 7333, February 17, 2009).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the B season allowance of the 2009 TAC of pollock in Statistical Area 610 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,000 mt, and is setting aside the remaining 233 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

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 pollock in Statistical Area 610 of 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 March 11, 2009.

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

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

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

Dated: March 11, 2009.

Emily H. Menashes,

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

[FR Doc. E9–5713 Filed 3–12–09; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 50
Tuesday, March 17, 2009

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

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. OSHA–2008–0046]

RIN 1218–AC33

Occupational Exposure to Diacetyl and Food Flavorings Containing Diacetyl

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Advance Notice of Proposed Rulemaking; withdrawal.

SUMMARY: OSHA is withdrawing its Advance Notice of Proposed Rulemaking (ANPRM) on Occupational Exposure to Diacetyl and Food Flavorings Containing Diacetyl in order to facilitate convening a Small Business Advocacy Review Panel, pursuant to the Small Business Regulatory Enforcement Fairness Act (SBREFA). Materials submitted prior to this withdrawal as well as any other information submitted directly to OSHA after the withdrawal will be put in the public rulemaking docket and receive equal consideration as a part of the rulemaking record. In addition, there will be several other opportunities for stakeholders to provide information and comment during the rulemaking process.

DATES: The ANPRM on Occupational Exposure to Diacetyl and Food Flavorings Containing Diacetyl, published January 21, 2009 (74 FR 3938), is withdrawn, effective March 17, 2009.

SUPPLEMENTARY INFORMATION: On September 25, 2007, OSHA announced its intent to initiate rulemaking to address concerns regarding diacetyl exposure in the workplace pursuant to Section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651, 655). The Agency hosted a stakeholder meeting on October 17, 2007, as part of its process to gather information for the rulemaking. The meeting addressed not only specific OSHA information requests, but also identified stakeholder concerns associated with developing a standard addressing occupational exposure to diacetyl and food flavorings containing diacetyl. OSHA also announced its intent to convene a Small Business Advocacy Review (SBAR) Panel, pursuant to the SBREFA, in the Department of Labor's Semiannual Regulatory Agenda (73 FR 71396, 71399, 11/24/2008). The SBREFA requires that, prior to publication of any proposed rule that has a significant economic impact on a substantial number of small entities, OSHA convene a SBAR Panel to determine the impacts of such a rule on small businesses and the ways those impacts can be reduced, consistent with the Agency's statutory requirements.

On January 21, 2009, OSHA published an ANPRM (74 FR 3938). The ANPRM sought information and comment on issues related to occupational exposure to diacetyl and food flavorings containing diacetyl, including current employee exposures; the relationship between exposure and the development of adverse health effects; methods to evaluate, monitor, and control exposure; and related topics.

OSHA is withdrawing the ANPRM in order to promptly convene a SBAR panel. Responses to the questions raised in the ANPRM, however, are still of interest to OSHA. Thus, such responses submitted prior to this withdrawal as well as any other information submitted directly to OSHA after this withdrawal will be included in the public rulemaking docket and receive equal consideration as a part of the overall rulemaking record. In addition, relevant materials received before the SBAR panel is formally convened will be considered as part of the SBREFA review process. For consideration in the SBREFA review, OSHA requests that such information be submitted within 10 business days of this notice. Commenters should be aware that upon withdrawal of this ANPRM they will no longer be able to use the *http://www.regulations.gov* portal for submitting comments. Information submitted informally to the Agency after withdrawal of this ANPRM should be sent to OSHA's Docket Office at the address/fax number indicated below. OSHA believes that withdrawing the ANPRM will not hinder the ability of the Agency to obtain information or limit stakeholders from providing information and comment during this rulemaking. OSHA recognizes the importance of gathering information and comment during the development of rules and stakeholders still have several avenues to provide input during the rulemaking process even though the ANPRM is being withdrawn.

For example, during the SBREFA process, small entity representatives (SERs) will review and comment on a draft proposed standard, alternatives to the draft proposal, and preliminary analyses of costs, benefits, and impacts of the draft proposal. At the same time OSHA provides these documents to the SERs, the Agency will include the documents in the public docket of this rulemaking (Docket No. OSHA–2008–0046), which is available for stakeholders to view and download. OSHA will hold meetings (open to the public) with the SERs to gather their input and will put their written comments in the public docket. Finally, OSHA will put the final SBAR Panel report in the public docket at the conclusion of the process. Throughout this process, interested parties who are not directly participating in the SBREFA process may nevertheless enter comments into the public docket for this rulemaking. Such comments will be considered by OSHA as part of the rulemaking. In addition, OSHA will formally request public comment when the Agency publishes a proposed rule in the **Federal Register**, and will hold public hearings at which stakeholders will be provided a further opportunity to provide additional information, make suggestions, and raise issues.

OSHA also intends to conduct expert peer reviews of the preliminary risk and feasibility assessments and will put the relevant documents in the public docket when a rule is proposed and open for public comment. In addition, OSHA has conducted and is continuing to conduct site visits at workplaces where exposures to diacetyl and food flavorings containing diacetyl may occur to collect information on processes utilizing diacetyl and the controls used to prevent or minimize employee exposures.

FOR FURTHER INFORMATION CONTACT:

Press Inquiries: Jennifer Ashley, OSHA, Office of Communications, Room N–3647, U.S. Department of

Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: 202–693–1999.

General and Technical Information: David O'Connor, OSHA, Directorate of Standards and Guidance, Office of Chemical Hazards—Non-Metals, Room N–3718, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone 202–693–2090.

Submission of Information and Comment: OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 (reference Docket No. OSHA–2008–0046); telephone 202–693–2350 or David O'Connor, OSHA, Directorate of Standards and Guidance, Office of Chemical Hazards—Non-Metals, Room N–3718, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone 202–693–2090. If your comments, including attachments do not exceed 10 pages, you may fax them to the OSHA Docket Office at 202–693–1648.

Authority and Signature

This document was prepared under the direction of Donald G. Shalhoub, Deputy Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor. It is issued pursuant to section 4, 6, and 8 of the Occupational Safety and Health Act of 1970 and Secretary of Labor's Order No. 5–2007 (72 FR 31160).

Signed at Washington, DC, this 11th day of March 2009.

Donald G. Shalhoub,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E9–5689 Filed 3–16–09; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[OAR–2004–0091; FRL–8768–8]

Outer Continental Shelf Air Regulations; Consistency Update for California

AGENCY: Environmental Protection Agency (''EPA'').

ACTION: Proposed rule—Consistency Update.

SUMMARY: EPA is proposing to update a portion of the Outer Continental Shelf (''OCS'') Air Regulations. Requirements applying to OCS sources located within 25 miles of States' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (''COA''), as mandated by section 328(a)(1) of the Clean Air Act, as amended in 1990 (''the Act''). The portions of the OCS air regulations that are being updated pertain to the requirements for OCS sources by the Ventura County Air Pollution Control District (Ventura County APCD). The intended effect of approving the OCS requirements for the Ventura County APCD is to regulate emissions from OCS sources in accordance with the requirements onshore. The change to the existing requirements discussed below is proposed to be incorporated by reference into the Code of Federal Regulations and is listed in the appendix to the OCS air regulations.

DATES: Any comments must arrive by April 16, 2009.

ADDRESSES: Submit comments, identified by docket number OAR–2004–0091, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions.

2. *E-mail: steckel.andrew@epa.gov*.

3. *Mail or deliver:* Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Cynthia Allen, Air Division (Air–4), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947–4120, *allen.cynthia@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background Information

Why is EPA taking this action?

On September 4, 1992, EPA promulgated 40 CFR part 55,[1] which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a State's seaward boundary, the requirements shall be the same as would be applicable if the sources were located

[1] The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to § 55.12 of the OCS rule, consistency reviews will occur (1) At least annually; (2) upon receipt of a Notice of Intent under § 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This proposed action is being taken in response to requirements submitted by the Ventura County APCD. Public comments received in writing within 30 days of publication of this document will be considered by EPA before publishing a final rule. Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

II. EPA's Evaluation

A. What criteria were used to evaluate rules submitted to update 40 CFR part 55?

In updating 40 CFR part 55, EPA reviewed the rules submitted for inclusion in part 55 to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules,[2] and requirements that regulate toxics which are not related to the attainment and maintenance of federal and state ambient air quality standards.

B. What requirements were submitted to update 40 CFR part 55?

1. After review of the requirements submitted by the Ventura County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following District requirements applicable to OCS sources:

Rule No.	Name	Adoption or amended date
72	New Source Performance Standards (NSPS)	9/9/08
73	National Emissions Standards for Hazardous Air Pollutants (NESHAPS)	9/9/08
230	Notice to Comply	9/9/08

III. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (''OMB'') review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB Review. These rules implement requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. These OCS rules already apply in the COA, and EPA has no evidence to suggest that these OCS rules have created an adverse material effect. As required by section 328 of the Clean Air Act, this action simply updates the existing OCS requirements to make them consistent with rules in the COA.

B. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in 40 CFR part 55, and by extension this update to the rules, under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0249. Notice of OMB's approval of EPA Information Collection Request (''ICR'') No. 1601.06 was published in the **Federal Register** on March 1, 2006 (71 FR 10499–10500). The approval expires January 31, 2009. As EPA previously indicated (70 FR 65897–65898 (November 1, 2005)), the annual public reporting and recordkeeping burden for collection of information under 40 CFR part 55 is estimated to average 549 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of

[2] Each COA which has been delegated the authority to implement and enforce part 55, will use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. 40 CFR 55.14(c)(4).

information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable. In addition, EPA is amending the table in 40 CFR part 9 of currently approved OMB control numbers for various regulations to list the regulatory citations for the information requirements contained in this final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

These rules will not have a significant economic impact on a substantial number of small entities. These rules implement requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. These OCS rules already apply in the COA, and EPA has no evidence to suggest that these OCS rules have had a significant economic impact on a substantial number of small entities. As required by section 328 of the Clean Air Act, this action simply updates the existing OCS requirements to make them consistent with rules in the COA. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

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

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Today's proposed rules contain no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or to the private sector in any one year. These rules implement requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act without the exercise of any policy discretion by EPA. These OCS rules already apply in the COA, and EPA has no evidence to suggest that these OCS rules have created an adverse material effect. As required by section 328 of the Clean Air Act, this action simply updates the existing OCS requirements to make them consistent with rules in the COA.

E. Executive Order 13132: Federalism

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

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. These rules implement requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. As required by section 328 of the Clean Air Act, this rule simply updates the existing OCS rules to make them consistent with current COA requirements. These rules do not amend the existing provisions within 40 CFR part 55 enabling delegation of OCS regulations to a COA, and this rule does not require the COA to implement the OCS rules. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicits comments on this proposed rule from State and local officials.

F. Executive Order 13175: Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This rule does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal government and Indian tribes and thus does not have ''tribal implications,'' within the meaning of Executive Order 13175. This rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. As required by section 328 of the Clean Air Act, this rule simply updates the existing OCS rules to make them consistent with current COA requirements. In addition, this rule does not impose substantial direct compliance costs tribal governments, nor preempt tribal law. Consultation with Indian tribes is therefore not required under Executive

Order 13175. Nonetheless, in the spirit of Executive Order 13175 and consistent with EPA policy to promote communications between EPA and tribes, EPA specifically solicits comments on this proposed rule from tribal officials.

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

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

This proposed rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866. In addition, the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportional risk to children.

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

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

I. National Technology Transfer and Advancement Act

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

As discussed above, these rules implement requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. As required by section 328 of the Clean Air Act, this rule simply updates the existing OCS rules to make them consistent with current COA requirements. In the absence of a prior existing requirement for the state to use voluntary consensus standards and in light of the fact that EPA is required to make the OCS rules consistent with current COA requirements, it would be inconsistent with applicable law for EPA to use voluntary consensus standards in this action. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA lacks the discretionary authority to address environmental justice in this proposed action. This rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. As required by section 328 of the Clean Air Act, this rule simply updates the existing OCS rules to make them consistent with current COA requirements.

Although EPA lacks authority to modify today's regulatory decision on the basis of environmental justice considerations, EPA nevertheless explored this issue and found the following. This action, namely, updating the OCS rules to make them consistent with current COA requirements, will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. Environmental justice considerations may be appropriate to consider in the context of a specific OCS permit application.

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: January 5, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

Title 40 of the Code of Federal Regulations, Part 55, is proposed to be amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101–549.

2. Section 55.14 is amended by revising paragraph (e)(3)(ii)(H) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of States' seaward boundaries, by State.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources.*

* * * * *

3. Appendix A to CFR Part 55 is amended by revising paragraph (b)(8) under the heading ''California'' to read as follows:

Appendix A to Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

California

(b) * * *

(8) The following requirements are contained in *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources:*

Rule 2 Definitions (Adopted 04/13/04)
Rule 5 Effective Date (Adopted 04/13/04)
Rule 6 Severability (Adopted 11/21/78)
Rule 7 Zone Boundaries (Adopted 06/14/77)
Rule 10 Permits Required (Adopted 04/13/04)
Rule 11 Definition for Regulation II (Adopted 03/14/06)
Rule 12 Applications for Permits (Adopted 06/13/95)
Rule 13 Action on Applications for an Authority to Construct (Adopted 06/13/95)
Rule 14 Action on Applications for a Permit to Operate (Adopted 06/13/95)
Rule 15.1 Sampling and Testing Facilities (Adopted 10/12/93)
Rule 16 BACT Certification (Adopted 06/13/95)
Rule 19 Posting of Permits (Adopted 05/23/72)
Rule 20 Transfer of Permit (Adopted 05/23/72)
Rule 23 Exemptions from Permits (Adopted 04/08/08)
Rule 24 Source Recordkeeping, Reporting, and Emission Statements (Adopted 09/15/92)
Rule 26 New Source Review—General (Adopted 03/14/06)
Rule 26.1 New Source Review—Definitions (Adopted 11/14/06)
Rule 26.2 New Source Review—Requirements (Adopted 05/14/02)
Rule 26.3 New Source Review—Exemptions (Adopted 03/14/06)
Rule 26.6 New Source Review—Calculations (Adopted 03/14/06)
Rule 26.8 New Source Review—Permit To Operate (Adopted 10/22/91)
Rule 26.10 New Source Review—PSD (Adopted 01/13/98)
Rule 26.11 New Source Review—ERC Evaluation At Time of Use (Adopted 05/14/02)
Rule 26.12 Federal Major Modifications (Adopted 06/27/06)
Rule 28 Revocation of Permits (Adopted 07/18/72)
Rule 29 Conditions on Permits (Adopted 03/14/06)
Rule 30 Permit Renewal (Adopted 04/13/04)
Rule 32 Breakdown Conditions: Emergency Variances, A., B.1., and D. only (Adopted 02/20/79)
Rule 33 Part 70 Permits—General (Adopted 09/12/06)
Rule 33.1 Part 70 Permits—Definitions (Adopted 09/12/06)
Rule 33.2 Part 70 Permits—Application Contents (Adopted 04/10/01)
Rule 33.3 Part 70 Permits—Permit Content (Adopted 09/12/06)
Rule 33.4 Part 70 Permits—Operational Flexibility (Adopted 04/10/01)
Rule 33.5 Part 70 Permits—Time frames for Applications, Review and Issuance (Adopted 10/12/93)
Rule 33.6 Part 70 Permits—Permit Term and Permit Reissuance (Adopted 10/12/93)
Rule 33.7 Part 70 Permits—Notification (Adopted 04/10/01)
Rule 33.8 Part 70 Permits—Reopening of Permits (Adopted 10/12/93)
Rule 33.9 Part 70 Permits—Compliance Provisions (Adopted 04/10/01)
Rule 33.10 Part 70 Permits—General Part 70 Permits (Adopted 10/12/93)
Rule 34 Acid Deposition Control (Adopted 03/14/95)
Rule 35 Elective Emission Limits (Adopted 11/12/96)
Rule 36 New Source Review—Hazardous Air Pollutants (Adopted 10/06/98)
Rule 42 Permit Fees (Adopted 04/08/08)
Rule 44 Exemption Evaluation Fee (Adopted 04/08/08)
Rule 45 Plan Fees (Adopted 06/19/90)
Rule 45.2 Asbestos Removal Fees (Adopted 08/04/92)
Rule 47 Source Test, Emission Monitor, and Call-Back Fees (Adopted 06/22/99)
Rule 50 Opacity (Adopted 04/13/04)
Rule 52 Particulate Matter-Concentration (Grain Loading) (Adopted 04/13/04)
Rule 53 Particulate Matter-Process Weight (Adopted 04/13/04)
Rule 54 Sulfur Compounds (Adopted 06/14/94)
Rule 56 Open Burning (Adopted 11/11/03)
Rule 57 Incinerators (Adopted 01/11/05)
Rule 57.1 Particulate Matter Emissions from Fuel Burning Equipment (Adopted 01/11/05)
Rule 62.7 Asbestos—Demolition and Renovation (Adopted 09/01/92)
Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64 Sulfur Content of Fuels (Adopted 04/13/99)
Rule 67 Vacuum Producing Devices (Adopted 07/05/83)
Rule 68 Carbon Monoxide (Adopted 04/13/04)
Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 12/13/94)
Rule 71.1 Crude Oil Production and Separation (Adopted 06/16/92)
Rule 71.2 Storage of Reactive Organic Compound Liquids (Adopted 09/26/89)
Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 06/16/92)
Rule 71.4 Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 06/08/93)
Rule 71.5 Glycol Dehydrators (Adopted 12/13/94)
Rule 72 New Source Performance Standards (NSPS) (Adopted 09/09/08)
Rule 73 National Emission Standards for Hazardous Air Pollutants (NESHAPS) (Adopted 09/9/08)
Rule 74 Specific Source Standards (Adopted 07/06/76)
Rule 74.1 Abrasive Blasting (Adopted 11/12/91)
Rule 74.2 Architectural Coatings (Adopted 11/13/01)
Rule 74.6 Surface Cleaning and Degreasing (Adopted 11/11/03—effective 07/01/04)
Rule 74.6.1 Batch Loaded Vapor Degreasers (Adopted 11/11/03—effective 07/01/04)
Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 10/10/95)
Rule 74.8 Refinery Vacuum Producing Systems, Waste-Water Separators and Process Turnarounds (Adopted 07/05/83)
Rule 74.9 Stationary Internal Combustion Engines (Adopted 11/08/05)
Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 03/10/98)
Rule 74.11 Natural Gas-Fired Residential Water Heaters-Control of NO_X (Adopted 04/09/85)
Rule 74.11.1 Large Water Heaters and Small Boilers (Adopted 09/14/99)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 04/08/08)
Rule 74.15 Boilers, Steam Generators and Process Heaters (Adopted 11/08/94)
Rule 74.15.1 Boilers, Steam Generators and Process Heaters (Adopted 06/13/00)
Rule 74.16 Oil Field Drilling Operations (Adopted 01/08/91)
Rule 74.20 Adhesives and Sealants (Adopted 01/11/05)
Rule 74.23 Stationary Gas Turbines (Adopted 1/08/02)
Rule 74.24 Marine Coating Operations (Adopted 11/11/03)
Rule 74.24.1 Pleasure Craft Coating and Commercial Boatyard Operations (Adopted 01/08/02)
Rule 74.26 Crude Oil Storage Tank Degassing Operations (Adopted 11/08/94)
Rule 74.27 Gasoline and ROC Liquid Storage Tank Degassing Operations (Adopted 11/08/94)
Rule 74.28 Asphalt Roofing Operations (Adopted 05/10/94)
Rule 74.30 Wood Products Coatings (Adopted 06/27/06)
Rule 75 Circumvention (Adopted 11/27/78)
Rule 101 Sampling and Testing Facilities (Adopted 05/23/72)
Rule 102 Source Tests (Adopted 04/13/04)
Rule 103 Continuous Monitoring Systems (Adopted 02/09/99)
Rule 154 Stage 1 Episode Actions (Adopted 09/17/91)
Rule 155 Stage 2 Episode Actions (Adopted 09/17/91)
Rule 156 Stage 3 Episode Actions (Adopted 09/17/91)
Rule 158 Source Abatement Plans (Adopted 09/17/91)
Rule 159 Traffic Abatement Procedures (Adopted 09/17/91)
Rule 220 General Conformity (Adopted 05/09/95)
Rule 230 Notice to Comply (Adopted 9/9/08)

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[FR Doc. E9–5728 Filed 3–16–09; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 09–26; FCC 09–14]

Implementation of the Child Safe Viewing Act; Examination of Parental Control Technologies for Video or Audio Programming

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document implements the Child Safe Viewing Act of 2007, S. 602, 110th Cong., adopted December 2, 2008, which directs the Commission to initiate a proceeding to examine ''the existence and availability of advanced blocking technologies that are compatible with various communications devices or platforms'' and can be used by parents to shield their children from objectionable video or audio programming. Although the development of new media technologies and platforms offers learning opportunities for children, it also poses new dangers. This Notice of Inquiry will examine tools currently available to parents and under development to help them supervise how their children use the media and, as directed by the Child Safe Viewing Act, the Commission will submit a report to Congress detailing its findings.

DATES: Comments are due on or before April 16, 2009; reply comments are due on or before May 18, 2009.

ADDRESSES: You may submit comments, identified by MB Docket No. 09–26, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs/.* Filers should follow the instructions provided on the Web site for submitting comments. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number.
- *E-mail: ecfs@fcc.gov.* To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.
- *Mail:* Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail.
- For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

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FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Kim Matthews of the Media Bureau, Policy Division at (202) 418–2154 or at *Kim.Matthews@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Inquiry* (NOI), FCC 09–14, adopted on March 2, 2009, and released on March 2, 2009. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Summary of the Notice of Inquiry

Introduction

1. This Notice of Inquiry (NOI) implements the Child Safe Viewing Act of 2007, adopted December 2, 2008, which directs the Commission to initiate a proceeding within 90 days after the date of enactment to examine ''the existence and availability of advanced blocking technologies that are compatible with various communications devices or platforms.'' Congress defined ''advanced blocking technologies'' as ''technologies that can improve or enhance the ability of a parent to protect his or her child from any indecent or objectionable video or audio programming, as determined by such parent, that is transmitted through the use of wire, wireless, or radio communications.'' Congress's intent in adopting the Act was to spur the development of the ''next generation of parental control technology.'' In conducting this proceeding, we will examine blocking technologies that may be appropriate across a wide variety of distribution platforms and devices, can filter language based upon information in closed captioning, can operate independently of pre-assigned ratings, and may be effective in enhancing a parent's ability to protect his or her child from indecent or objectionable programming, as determined by the parent. The Act directs the Commission to issue a report to Congress no later than August 29, 2009 detailing our findings in this proceeding.

Background and Scope of Inquiry

2. The media environment that children encounter is becoming increasingly complex. In the majority of homes with children, there are at least three television sets, some of which receive signals over the air and others that are linked to cable or satellite services. The average TV household in the United States receives 17 broadcast TV stations and more than 118 television channels. In addition, many homes have DVD players, computers with Internet access, and a variety of mobile devices, such as iPods or other MP3 devices and wireless devices such as cell phones and smart phones, that are capable of playing both audio and video. Each of these media outlets has its own type of password and/or program blocking system, which poses a significant challenge for parents trying to direct or supervise their children's exposure to video and audio programming.

3. Together with the growth in the kinds of media devices available to children there has been an increase in the amount of time children are exposed to media content. Children six years and younger average almost 2½ hours of daily exposure to media content, while children 8 to 18 use media—including television, video players, audio media, video games, and computers—close to five hours each day and often use two or more media simultaneously. As a result of the transition to digital technology and the continuing technological convergence of media, children today can access the same source of content from a variety of media platforms, some of which are portable. Teens can watch on a computer a program that aired on television days earlier and can use a cell phone or other wireless device as a multimedia platform, to surf the Internet and download video and audio programming. The ubiquity of media in the lives of children and the portability of many media devices makes direct adult supervision of the content of the media to which children are exposed increasingly difficult. The goal of this proceeding is to examine current and new technologies that can assist parents, as well as other caregivers, to shield children from inappropriate content in this rapidly changing media environment.

4. Section 2(a) of the Child Safe Viewing Act directs the Commission to initiate a notice of inquiry to examine:

(1) The existence and availability of advanced blocking technologies that are

compatible with various communications devices or platforms;

(2) Methods of encouraging the development, deployment, and use of such technology by parents that do not affect the packaging or pricing of a content provider's offering; and

(3) The existence, availability, and use of parental empowerment tools and initiatives already in the market.

5. Thus, the Act requires that we examine ''advanced blocking technologies'' currently available across a wide range of media platforms. Section 2(d) of the Act defines the term ''advanced blocking technologies'' as ''technologies that can improve or enhance the ability of a parent to protect his or her child from any indecent or objectionable video or audio programming, as determined by such parent, that is transmitted through the use of wire, wireless, or radio communication.'' We invite comment on advanced blocking technologies that may be appropriate across various distribution platforms, including wired, wireless, and Internet platforms. We also invite comment on the statutory definition of ''advanced blocking technologies.'' Whereas the Commission has defined the term ''indecent'' in other contexts, the Act appears to leave determination of what is ''indecent'' or ''objectionable'' entirely to the individual discretion of parents. We invite comment on this interpretation and on any other issues regarding the statutory definition of advanced blocking technologies.

6. Section 2(b) of the Act states that the Commission shall consider advanced blocking technologies that:

(1) May be appropriate across a wide variety of distribution platforms, including wired, wireless, and Internet platforms;

(2) May be appropriate across a wide variety of devices capable of transmitting or receiving video or audio programming, including television sets, DVD players, VCRs, cable set top boxes, satellite receivers, and wireless devices;

(3) Can filter language based upon information in closed captioning;

(4) Operate independently of ratings pre-assigned by the creator of such video or audio programming; and

(5) May be effective in enhancing the ability of a parent to protect his or her child from indecent or objectionable programming, as determined by such parent.

7. This language makes it clear that we are to consider blocking technologies appropriate for use on a variety of devices that transmit audio and video programming. The devices specifically identified in section 2(b)(2), such as television sets, DVD players, VCRs, and wireless devices, are capable of transmitting both audio and video programming. We seek comment on whether Congress intended that we examine blocking technologies for content that is audio only (*e.g.*, music), or technologies appropriate for content that combines audio and video (*e.g.*, television programs), or both. The Act does not define the terms ''audio'' or ''video.'' The legislative history indicates that Congress was focused primarily on television content. The Senate Report indicates that the Act stems from Congress's concern with the efficacy of the V-chip, given its limited use by parents, as well as a desire to ensure that blocking capability continues to be available to consumers as technology advances. The Senate Report cites section 551(e) of the Telecommunications Act of 1996 and notes that that provision requires the Commission to '' 'take such action as the Commission determines appropriate' to assess alternative program blocking technologies and to expand the V-chip requirement, if necessary, to facilitate the use of alternative technologies that may not rely on common ratings.'' The Senate Report also explains that the Act requires the Commission to consider technologies that may be appropriate across a variety of content distribution platforms ''[i]n recognition of the fact that *television content* is currently being made available over the Internet and over mobile devices.''(emphasis added) This language suggests that Congress intended that we focus on television content and the variety of platforms over which such content can be displayed and consider technologies capable of blocking inappropriate audio or video content transmitted as part of such programming. We invite comment on this view. We also note that, although section 2(b)(2) refers to ''devices capable of transmitting or receiving video *or* audio programming,'' it does not list radios as one of the specific devices for which blocking technology should be considered. Although the list is illustrative and not exhaustive, it appears significant that no audio-only devices are listed. Moreover, the Senate Report discusses television primarily and does not refer to radios, and radios were not discussed during the Senate hearing on the Act. In light of the language of the Act and the legislative history, we invite comment on whether we should examine blocking technology designed for audio content alone in this proceeding, or focus on technology capable of blocking objectionable audio conveyed together with video programming.

8. We also invite comment on how we should interpret the term ''video programming'' for purposes of this proceeding. Section 602(20) of the Communications Act states that: ''the term 'video programming' means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.'' Is this the appropriate definition to use for purposes of the Child Safe Viewing Act? It seems clear that ''video programming'' as that term is used in the Child Safe Viewing Act includes, for example, an episode of a television program, whether that program is provided on a television set over the air or via cable or satellite, or provided over the Internet on a computer or wireless device, or provided directly by a wireless carrier. We invite comment, however, on whether the term ''video programming'' includes such content as videos provided on Internet video hosting sites, such as YouTube, and vodcasts of nontraditional video content. In addition, we seek comment on how the use of the term ''video programming'' in the Act limits the scope of this proceeding.

9. As directed by section 2(a)(2) of the Act, we invite comment on ''methods of encouraging the development, deployment, and use'' of advanced blocking technologies. What strategies should be used in this regard and what role should industry, trade organizations, consumer groups, Government and others play in this effort? Section 2(a)(2) also states that the Commission should examine methods of encouraging the development, deployment, and use of advanced blocking technologies ''that do not affect the packaging or pricing of a content provider's offering.'' We invite comment on how we should interpret this language. How does the language in section 2(a)(2) regarding packaging and pricing of a content provider's offering relate to our mandate under the Act?

10. In addition, section 2(a)(3) of the Act directs us to examine ''the existence, availability, and use of parental empowerment tools and initiatives already in the market.'' Although the Act's focus is advanced blocking technologies and facilitating the next generation of parental control technology, the Senate Report makes clear that Congress was concerned about the V-chip, which is a parental empowerment tool already in the market, and about the low-level of V-chip use. Accordingly, we invite comment specifically on efforts to

improve or expand V-chip technology and to encourage increased use of the V-chip by parents. We also seek comment on any other parental empowerment tools that are currently available to consumers, as well as any initiatives to encourage their availability and/or use.

11. Finally, we invite comment on whether we should examine blocking technology for video game players and/or video games. Video game players are not included among the devices specifically identified in section 2(b)(2), and video games are not mentioned in the Senate Report and were not discussed in the Senate hearing on the Act. However, in light of the popularity of video games among children and concerns expressed regarding their content, we seek comment on whether we should examine methods of controlling access to video games in this proceeding.

Discussion and Request for Comment

A. Television

12. The Commission has long recognized that television plays a significant role in the lives of American children. Children ages 8 to 18 watch on average more than three hours of television each day, and more than two thirds of children in this age range have a television in their bedroom. Children younger than 8 watch on average 2 hours of television daily and more than one third have a television in their bedroom. Because many children watch television while they engage in other activities, the total amount of time that children are exposed to television content is even greater than statistics regarding their daily television use suggest. Moreover, in spite of the increase in the number of other types of media to which children are exposed, television remains the media of choice among children. Children ages 8 to 18 devote about 50 percent of their total media time to television, while younger children devote about two-thirds of their media time to television viewing. Thus, television remains a primary medium of concern in terms of children's exposure to potentially objectionable content.

13. In 1996, Congress amended Title III of the Communications Act, 47 U.S.C. section 303(x), to require the incorporation of blocking technology into television sets. Section 551 of the Telecommunications Act of 1996, also known as the Parental Choice in Television Programming Act, directed the Commission to adopt rules that require certain televisions or devices capable of receiving television signals to ''be equipped with a feature designed to enable viewers to block display of all programs with a common rating.'' *Id.* (added by section 551 of the 1996 Act). In 1998, the Commission adopted rules requiring that, starting in 2000, television sets with screens 13 inches or larger must be equipped with a V-chip. Section 551 of the 1996 Act also directed that, if the industry did not adopt voluntary rules for rating video programming within a year, the Commission should prescribe guidelines and recommended procedures for program ratings. 47 U.S.C. section 303(w). Following the adoption of this provision, the broadcast, cable, and movie industries jointly created a voluntary system for rating television content, known as the TV Parental Guidelines, which the Commission subsequently recognized as meeting the requirements of the 1996 Act.

14. The Parental Guidelines contain both age- and content-based ratings. The age-based ratings are: TV–Y (All Children); TV–Y7 (Directed to Older Children—age 7 or older); TV–G (General Audience); TV–PG (Parental Guidance Suggested); TV–14 (Parents Strongly Cautioned—may be unsuitable for children under 14); and TV–MA (Mature Audience Only—may be unsuitable for children under 17). The content-based descriptors are: V (violence); FV (fantasy violence in older children's programming); S (sexual content); D (suggestive dialogue); and L (strong language in programming). The guidelines apply to most television programming, except for news and sports programming and advertisements.

15. As Congress noted in adopting the Child Safe Viewing Act, studies conducted since the V-chip requirements and TV Parental Guidelines were adopted show that the V-chip is not widely used and many parents remain unaware of it. A study conducted from 1999–2001 by the Annenberg Public Policy Center found that only 8 percent of the families studied had the V-chip programmed and were using it. The study showed that many parents are not aware that they have a V-chip and others find that ''programming the V-chip is a multi-step and often confusing process.'' In two more-recent studies conducted by the Kaiser Family Foundation in 2004 and 2007, the first showed that only 15 percent of parents have used the V-chip, and the second showed that 16 percent of parents used the V-chip. The 2007 Kaiser Family Foundation study showed that more than half of parents who had purchased a television set since 2000, when the requirement that sets over 13 inches be equipped with a V-chip went into effect, were not even aware that they have a V-chip.

16. We invite comment on these studies and any improvements that could be made to the V-chip and the existing TV ratings system to increase their use and effectiveness. Are there ways in which the V-chip could be made easier to use and program? What steps could be taken to increase parental awareness of the V-chip? The V-chip has been referred to as an ''orphaned technology,'' meaning that no entity has a financial incentive to promote its use. What role should industry or the government play in promoting the V-chip? What kinds of promotions would be most effective and who should bear the cost? We note that the broadcast networks have previously joined with the Advertising Council to air some public service campaigns promoting the V-chip. Was this campaign successful?

17. We also invite comment on the current ratings system. The 2007 Kaiser Family Foundation study also showed that, although more than 80 percent of parents have heard of the TV ratings, most do not understand what they mean. Only 30 percent of parents with children between 2 and 6 could name any of the ratings used for children's programs (TV–Y, TV–7, or TV–G). Only 11 percent of parents with children in this age range knew that the content rating FV had anything to do with violence, and 9 percent thought it meant ''family viewing.'' More than half of parents of older children that had heard of the TV ratings understood the meaning of the TV–14 and TV–MA age-based ratings and the ''V'' content descriptor, but only 36 percent of these parents understood that ''S'' designates a show with sexual content and only 2 percent knew that ''D'' indicates suggestive dialogue. We invite comment on these studies and on ways in which awareness of the current ratings system could be improved.

18. We also seek comment on the extent to which programming is rated, using both the age-based ratings as well as the content descriptors, and on whether the ratings are applied accurately. Some have criticized the application of the TV Parental Guidelines. In a 2007 report, the Parents Television Council (PTC) examined all prime time entertainment programming on the six broadcast networks during the November 2006 and February 2007 sweeps period. In its report, PTC states that 99 percent of the programs they examined were rated either TV–PG or TV–14, meaning they were deemed suitable for children as young as 14, despite the fact that some programs

contained mature subject matter. According to PTC, none of the programs examined received the TV–MA rating for mature audiences, and forty percent or more of the programs lacked one or more of the appropriate content descriptors for suggestive dialogue (''D''), sexual (''S'') or violent content (''V''), or strong language (''L''). PTC argues that the problems in applying the TV Parental Guidelines stem from the fact that there are no guidelines dictating how the ratings should be applied and that each network rates its own programs. Other studies have also indicated that the ratings may not be correctly applied and that parents do not believe that programs are rated accurately. We seek comment on these views. Are broadcasters and other programming distributors transmitting the ratings information, as they agreed to do in 1997?

19. As noted above, commercials are currently not rated using the TV Parental Guidelines. The Commission and others have raised concerns about the airing of inappropriate or adult-oriented commercials during programming directed to or widely viewed by children. We invite comment on the extent to which inappropriate commercials are aired in programming viewed by children and on possible solutions to this problem. Could commercials be rated so that the V-chip or other technology could be used to filter out commercials with inappropriate content? What role should the Government, industry, or third-parties play in this effort?

20. We invite comment on blocking technology that operates based on ratings established by an entity other than the creator of the programming. Section 2(b) of the Act directs us to examine advanced blocking technologies that ''operate independently of ratings pre-assigned by the creator of such video or audio programming'' and that enhance the ability of a parent to protect his or her child from indecent or objectionable programming ''as determined by such parent.'' Are there technologies currently available or in development that give parents a greater role in determining how programs should be rated? How could the Commission encourage the development, deployment, and use of such technology?

21. Other parties have also called for improvements in the V-chip and the TV ratings. In a November 2008 letter, the Benton Foundation, Common Sense Media, and the Coalition for Independent Ratings (CFIRS, *et al.*) urged the Commission to take steps to ensure that digital televisions can respond to ''improved content ratings that could help parents better select what content enters their homes.'' CFIRS, *et al.* noted that the current ratings system does not allow parents to block programs that ''glamorize smoking, alcohol abuse or illegal drug use'' and does not allow ratings in languages other than English. CFIRS, *et al.* also noted that several new TV ratings systems have been developed since the present guidelines that would give viewers a choice of which guidelines to use. CFIRS, *et al.* argued that V-chip requirements should ensure that there is ample space for future generations to extend the current ratings and develop new ones. The concept of a V-chip that can accommodate ratings other than the existing TV Parental Guidelines is generally referred to as the ''open V-chip.'' The Commission has generally endorsed this concept by recognizing that the ability to modify the current rating system is beneficial and by requiring that television sets have the capacity to respond to changes in the TV ratings. In their November 2008 letter, CFIRS, *et al.* urged the Commission to take action on an issue pending in the Commission's Second DTV Periodic Review proceeding. Ratings systems are carried in Rating Region Tables (RRTs). The Advanced Television Systems Committee (ATSC), which maintains the list of rating region assignments, originally assigned 0x01 (RRT 1) to the United States. RRT 1 carries the current U.S. rating system (the TV Parental Guidelines and MPAA ratings). Prior to the *Second DTV Periodic Report and Order,* 69 FR 59500, October 4, 2004, television sets were designed to convey only the ratings information contained in RRT 1. In the Second *DTV Periodic Report and Order,* the Commission stated that ''[w]e generally believe that the ability to modify the current content advisory system is beneficial'' and that ''to ensure the ability to modify the content advisory system, receivers must be able to process newer RRT version numbers or use new rating region codes as suggested by ATSC.'' The Commission also revised 47 CFR 15.120(d)(2) to, among other things, state that ''[d]igital television receivers shall be able to respond to changes in the content advisory system.'' 47 CFR 15.120(d)(2). Subsequent to the adoption of the *Second DTV Periodic Report and Order,* the ATSC reserved rating region code 0x05 (RRT 5) for an unspecified alternative U.S. rating system or systems. The Consumer Electronics Association (CEA) filed a petition for reconsideration of the *Second DTV Periodic Report and Order* arguing that receivers should be required to respond to only one additional RRT—RRT 5—in addition to RRT 1. *See* Petition for Reconsideration and/or Clarification of CEA, filed Nov. 3, 2004, in MB Docket No. 03–15. CFIRS and other parties have filed oppositions to the CEA Petition, arguing that television sets should not be limited to only one additional RRT and that more capacity is needed to accommodate additional and improved ratings systems. The CEA Petition remains pending. The specific issue raised in the CEA Petition regarding RRTs will be resolved in the Second DTV Periodic Review proceeding. If the V-chip could accommodate multiple program ratings created, for example, by different ratings services, how would this system be implemented? How would multiple ratings be incorporated into programming? How would parents select a rating system for use on their television set and how could a V-chip offering this degree of choice be made easy for parents to use? Could parents decide to use more than one rating system on the same television set and, if so, how would parents move from one system to another?

22. We invite comment on whether there are intellectual property concerns that could affect efforts to improve the V-chip and the current ratings system, as well as efforts to develop an ''open V-chip'' and other next-generation parental control technologies. There is a patent on the technology that may be necessary to enable television manufacturers to implement an open V-chip regime whereby television receivers must respond to multiple Ratings Region Tables (RRTs) capable of containing expanded ratings systems and/or multiple ratings systems. Licenses for this technology are being offered through Tri-Vision International Limited (''Tri-Vision''), a Canadian company. Would the Tri-Vision patent apply in a situation in which a television set could respond to multiple RRTs, therefore providing capacity for the set's V-chip to process additional and/or more-detailed ratings systems? Are the licensing terms that Tri-Vision offers reasonable? What steps should be taken to ensure that patent issues do not discourage manufacturers from including blocking technology in consumer equipment? We also invite comment on what, if any, alternative ratings systems for use in conjunction with the V-chip are available or are in the process of being developed.

23. Apart from the V-chip, we invite comment on any other advanced blocking technologies for television

either currently in existence or under development. We note that TiVo's KidZone permits parents to both block and select and/or record programming for their children based on a list of recommended programs developed by a number of independent organizations, including Common Sense Media, Discovery Kids, and the Parents Television Council. How does TiVo compare to the V-chip in terms of ease of use and effectiveness? Are there any data regarding actual use of KidZone by parents? Are other entities offering similar devices? TiVo technology permits parents not only to screen-out content parents find inappropriate, but also to select specific content based on recommendations from a number of different entities. Does any other technology offer the ability to select desired programming as well as screen-out objectionable programming?

24. Pursuant to section 2(b)(3) of the Act, we also seek comment on advanced blocking technologies that ''can filter language based upon information in closed captioning.'' This language seems to focus on technology that uses closed captions to identify inappropriate content in television programs. One technology being offered now is TVGuardian, which operates by scanning closed captioning, muting the audio part of the program when offensive phrases appear, and displaying a profanity-free version of the phrase at the bottom of the TV screen. We invite comment on this technology and any others that use closed captioning as the basis for screening programming. We note that closed captions are not always synchronized perfectly with the audio, and thus the captions may appear slightly before or after the time words are spoken as part of the on-screen program. We invite comment on whether and how this lack of synchronization affects the use of captions to block inappropriate content.

25. Finally, what methods would be most effective in encouraging the development and use of advanced blocking technology for television? What role should the industry, trade associations, consumer organizations, and Government play in this regard? Do private entities have sufficient incentive to develop advanced blocking technologies for commercial use? What other parental empowerment tools and initiatives are available to help parents protect their children from programming that they consider objectionable or indecent?

B. Cable and Satellite

26. We invite comment on the additional parental control options available to cable and satellite subscribers. What tools are available to parents, how easy are these tools to use, and how widely are they employed by parents to control what their children watch? Like the V-chip, cable set top boxes and satellite receivers permit parents to block programs that contain certain ratings under the TV Parental Guidelines. Are these boxes easier to use than the V-chip? In addition, digital cable set-top boxes and satellite receivers offer the option of blocking entire channels or blocking individual programs. We are interested in any research that compares cable and satellite blocking devices to the V-chip, particularly in terms of ease of use and popularity with parents. We also invite comment on blocking technology for digital video recorders (DVRs). Although these devices are not specifically mentioned in section 2(b)(2) of the Act, DVRs are generally incorporated into or connected to a cable or satellite set top box and are an increasingly popular alternative to VCRs, which are specifically mentioned in section 2(b)(2). We note that TiVo, which is one brand of DVR, provides equipment that can be used in conjunction with cable and satellite service, thereby providing parents with access to the KidZone product described above. How do the options provided by TiVo and any other third-party DVR compare to the parental controls available in cable set top boxes and satellite receivers? In addition to technology currently available, are there any new technologies under development or on the horizon for satellite or cable? We also invite comment on how we could encourage the development of new technologies for these services, as well as their use by parents.

C. Wireless Devices

27. Providing parents and caregivers with tools to protect children from content they deem inappropriate may present additional challenges on wireless devices, which are typically operated by children away from the purview of their parents. Further, the devices themselves may be limited in the type of software or applications that can be added directly by the consumer. We note that the type of content available over wireless devices differs from that available over broadcast television, cable, or satellite in that consumers can view both carrier-provided content through packaged offerings (similar to broadcast, cable, and satellite TV) and outside, third-party content (similar to wireline broadband Internet service). Therefore, parents may need to have access to multiple types of advanced blocking technologies or ensure that the advanced blocking technologies can filter out objectionable content from multiple sources.

28. Video programming and other content available on wireless devices includes both content offered by the wireless provider itself, such as streamed versions of certain cable TV channels, music videos, sports, news clips, TV programs, and short TV episodes made exclusively for mobile phones (mobisodes), as well as third-party content obtained via the Internet. We seek comment on any blocking technology currently available for content, particularly video programming, on wireless devices, as well as ways of encouraging the development, deployment, and use of such technology. We also invite comment on the availability of any other parental empowerment tools related to wireless devices.

29. The wireless industry has developed child protection measures both for content offered by wireless providers as well as content available over the Internet on wireless devices. CTIA and participating wireless carriers have voluntarily adopted Carrier Content Classification and Internet Access Control Guidelines, which provide for voluntary classification standards for ''Carrier Content'' (those materials that reside with a carrier's managed content portal or third party content whose charges are included on a carrier's bill). Under the Guidelines, Accessible Carrier Content is available to consumers of all ages while Restricted Carrier Content is available to those 18 or older or to younger consumers with specific parental authorization. Each carrier is responsible for its implementation of access controls, including age-verification mechanisms, and those carriers agreeing to these voluntary guidelines have pledged not to offer any Restricted Carrier Content until they have provided controls to allow parents to restrict access to this type of content. Restricted Carrier Content includes intense profanity, intense violence, graphic depiction of sexual activity or sexual behaviors, nudity, hate speech, graphic depiction of illegal drug use, and any activities that are restricted by law to those 18 years of age and older, such as gambling and lotteries. Several larger carriers have already announced the institution of guidelines to block

inappropriate content through parental control services. For example, Verizon Wireless allows parents to filter content by certain age categories (7+ years old, 13+ years old, 17+ years old), which includes content on its Mobile Web service.

30. The wireless industry is also developing ''Internet Content Access Control'' technologies to enable account holders to filter and block access to specific Web sites. According to CTIA, all major carriers currently provide consumers with the ability to block all Internet access on their devices. In addition, wireless companies are researching solutions to provide controls with the ability to limit specific Internet content or sites on consumers' devices, which would be implemented on a carrier-by-carrier basis.

31. We invite comment on these methods for controlling access to content available over wireless devices. Are these controls effective and easy to understand and activate by parents? To what extent are these parental control technologies used? Both the Carrier Content guidelines and the Internet Content Access Control guidelines filter content using age-based categories as defined by the industry rather than by consumers. How effective or accurate are these content ratings? How do these guidelines utilize existing standards, such as the TV Parental Guidelines or the MPAA rating system? Are there any technologies for wireless devices either currently in existence or in development that operate with a ratings system developed by an entity not associated with the content creator or the industry?

32. In addition to the blocking technologies discussed above, we also seek information on any other types of blocking or filtering technologies currently available to consumers or other technologies currently in development for use on wireless devices. We note that technology is available on some wireless devices that permits parents to view the information children receive over these devices. How useful and widely used is this technology? We also invite comment on any other parental empowerment tools currently available for wireless technology. How do the features that make mobile, wireless devices unique (*e.g.*, the size of the device/screen, the speed of broadband service on a mobile device, system requirements) affect how advanced blocking technologies operate for these devices? What are the pros and cons of using blocking technologies through the network versus via the handset? How does the type of filter (network-or handset-based) affect the user experience (*e.g.*, ease of use, ability to personalize or change the settings on the filter, etc.)? Further, as wireless carriers move toward open platforms, how will blocking and filtering be affected? For instance, do parties expect there to be additional blocking applications available that are being created and marketed by third parties? Do third-party application providers need open platforms in place in order to provide these advanced blocking technologies to consumers, or do application providers generally provide their products to the carriers themselves rather than directly to end users? Do consumers using licensed wireless service have to purchasing or request free blocking or filtering from their wireless providers, or can they purchase or otherwise obtain freely these technologies themselves and load applications onto their wireless devices?

33. We also seek comment on how to encourage the development, deployment, and use of blocking and filtering technologies on wireless devices by parents. To the extent wireless providers already have tools available to help parents protect children from inappropriate content, how are these providers educating consumers and publicizing the availability and convenience of such tools? How could trade organizations or consumer organizations publicize the development, deployment, and use of filtering technologies? In addition, what role should the Government play in ensuring that blocking and filtering tools are made available to parents so that children can be shielded from inappropriate content?

D. Non-Networked Devices

34. Section 2(b)(2) of the Act directs the Commission to examine advanced blocking technologies that ''may be appropriate across a wide variety of devices capable of transmitting or receiving video or audio programming, including * * * DVD players [and] VCRs.'' As directed by this section of the Act, we inquire as to the existence and availability of blocking technologies for non-networked devices capable of receiving video or audio programming, particularly DVD players and VCRs. We note that most DVD players do not contain a tuner and therefore are not themselves capable of transmitting or receiving video or audio programming. Nonetheless, as these devices are specifically identified in the Act, we seek comment on blocking technologies for these devices.

35. DVD players and VCRs play a major role in the lives of many American families—DVD players are now owned by about 84% of American households and VCRs, while in decline, are still owned by the great majority of American households. However, unlike wired, wireless, or Internet platforms, which directly distribute video or audio content to consumers, DVD players and VCRs are dependent on video discs or videotapes to distribute content. This situation gives parents greater control over DVD players and VCRs than they have over other distribution platforms. Specifically, parents have the ability to purchase or rent for their children age-appropriate content for DVD players and VCRs and accumulate libraries of such content to be used at either their, or their children's, discretion. Nonetheless, there may remain a legitimate concern—particularly for older children—to the extent that children make their own content purchases for DVD players and VCRs or are given inappropriate videotapes or video discs by other children or adults. Thus, there may be a role for blocking technologies for these devices. We invite comment on whether blocking technologies exist or are under development for DVD players and VCRs and, if so, how these technologies compare to blocking technologies available for other distribution platforms and networked devices. We also seek comment on whether blocking technologies exist for similar non-networked devices, such as digital audio players (MP3 players) and portable media players. If blocking technologies exist for non-networked devices, to what extent are they used by parents? What methods would be effective in encouraging the development and use of such technology? Movies on DVDs and video tapes are generally rated using the MPAA rating system. Is this rating system effective?

E. Content Available Over the Internet

36. Section 2(b)(1) of the Act directs us to consider advanced blocking technologies that ''may be appropriate across a wide variety of distribution platforms, including * * * Internet platforms.'' Video and audio programming is increasingly available on the Internet. Many sources of video and audio programs traditionally seen on television are making their content available over the Internet, and third party online services such as Hulu permit individuals to watch television programs and movies that are streamed to computer screens. Other sites such as iTunes provide a download-on-demand service, permitting individuals to download TV shows and movies to their computers or from a computer to devices such as an iPod or iPhone. Some programs are also available as

podcasts and vodcasts which can be subscribed to, downloaded on demand, and played on computers, wireless devices, and MP3 (audio) or MP4 (video) players. Some video hosting services, such as YouTube, permit anyone to upload videos that can be streamed to viewers, thereby permitting Internet content to be created by individuals not associated with traditional television content. In addition, peer-to-peer applications have likewise facilitated the distribution of content over the Internet. As discussed in paragraph 8, *supra*, we invite comment on what video found on the Internet should properly be considered ''video programming'' for purposes of this proceeding.

37. The safety of children online has been a primary concern of families and Congress since the Internet was first opened to public use. Congress has passed several laws seeking to protect children from Internet content, and has requested several reports on child online safety. There have also been a number of non-U.S. Government studies that have examined child online safety. Most recently, in addition to this inquiry mandated by the Child Safe Viewing Act, Congress directed the NTIA to establish the Online Safety and Technology Working Group (''OSTWG'') ''to review and evaluate the status of industry efforts to promote online safety through educational efforts, parental control technology, blocking and filtering software, age-appropriate labels for content or other technologies or initiatives designed to promote a safe online environment for children.'' The OSTWG has one year from the date it is first convened to submit a report to Congress. We invite comment on how our inquiry in this proceeding should differ from the effort of the OSTWG. We also invite comment on what information learned in previous studies of the Internet, online safety, and parental control technologies could be applied to our mandate under the Child Safe Viewing Act to examine advanced blocking technologies for Internet video and audio programming? What have we learned since previous reports and how has the Internet evolved, including in ways perhaps not anticipated by those studies?

38. We invite comment generally on advanced blocking technologies and parental empowerment tools that assist parents in controlling their children's access to audio and video programming on the Internet. Blocking technology allows an individual to receive all content except content that is blocked because it is on a blacklist. The list of what is blocked may be generated through an automated analysis, human review, or by user options. Individuals can select different blocking services which may block based on different criteria, permitting parents to select a service that more closely matches their concerns. The list of blocked content may be updated regularly from the filtering service or from a third party service that reviews Internet content. Generally blocking technology gives the owner the ability to use a password to turn off the filters when desired.

39. In addition to blocking, there are a number of other kinds of parental empowerment tools currently available for the Internet. For example, many services give content creators, viewers, and third-parties the ability to label or tag content. Creators can label their own content and individuals watching a video, viewing a photo, or reading a blog can tag that content as worthy of reading, offensive, or perhaps a violation of community standards. Reviews and ratings of content can also be provided by third-party Web sites. We invite comment on whether tagging or labeling content is an effective solution to protect children from inappropriate content. Is offensive content appropriately flagged, and has the industry been responsive in acting on flagged content? Is tagging, labeling, or flagging content by the Internet community itself more effective than filtering by the industry or a third-party based on ratings developed by the industry or a third-party?

40. Another strategy currently used on the Internet to block indecent or offensive content is the creation of child safe zones that ''white list'' safe content and block out unwanted content. Examples of child safe zones include .Kids.US and Teen Second Life. Has the child safe zone strategy been effective, and do parents know about this option? Do children, particularly teenagers, simply bypass the restrictions of these safe zones, for example by going straight to the adult space instead of staying in the designated child safe space? Other parental control solutions currently available on the Internet include monitoring and recording devices that provide parents with information about their children's Internet use, takedown and acceptable use policies adopted by certain Web sites that identify and remove objectionable content, services offered by some Web sites that restrict access by children to parts of the site, and age verification. We invite comment on these and any other technologies available or under development to control children's access to Internet content, as well as any other parental empowerment tools currently available. Is there technology that would permit parents to select programming for their children similar to TiVo KidZone?

41. We also invite comment on how we can encourage the development and use of advanced blocking technologies and other parental control solutions for video and audio programming available over the Internet. We note that parental control solutions can be implemented in a variety of ways in a variety of locations in the network, which offers the opportunity for multiple approaches to providing parental control. For example, blocking technology can reside in a specific application that an individual is using (a Web browser that blocks pop-up ads or an e-mail application that blocks spam); in an individual's computer (a firewall that blocks malicious traffic); in an individual's local network (a network gateway that restricts access to the network); in an individual's Internet access service (ISP blocking ports that are used in worm and virus attacks); within Internet networks (networks blocking malicious man-in-the-middle phishing attacks); at the hosting site of the content or applications (hosting site takes down content which does not comply with the host's acceptable use policy); or at a third party site which is monitoring for unwanted content (an organization that reviews Web sites and publishes a list of Web sites that do not meet that organization's criteria). Which of these approaches shows promise for providing parents with ability to control children's access to objectionable content? Are end-user device based mechanisms preferable in terms of providing for parental control? What types of advanced blocking mechanisms could be built into consumer-level routers? Are any blocking technologies currently in use effective in giving parents the ability to restrict their children's access to objectionable content from sources other than Web sites?

42. Finally, to what extent are children able to circumvent the blocking technologies adopted by parents? We note that encryption of content may circumvent advanced blocking mechanisms. We also note that children may obtain access to content deemed objectionable via Internet access not controlled by a child's parents, such as Wi-Fi hot spots, a neighbor's wireless LAN, or Internet access that is publicly available, such as in schools and libraries and Internet cafes. Children may also circumvent parental controls in the home through the use of portable storage devices, such as a flash drive or an iPod or recordable DVDs. Is there technology available to parents that

would prevent a child from obtaining objectionable content from outside the home and later viewing or listening to it on equipment in the home? In light of the ways in which blocking technology might be circumvented, what role should education play in protecting children from objectionable content? How can the value of the Internet as an educational and informational tool for children be balanced against efforts to ensure children's online safety?

F. Blocking Technologies Compatible With Multiple Platforms

43. Finally, we seek general comment on whether there are blocking technologies currently available or in development that are capable of operating across multiple platforms. Because children today have access to multiple media platforms, content that parents may have blocked on one medium could potentially be accessed by children on another medium. For example, while parents may have activated the V-chip to block TV–14 content on the family television set, a child may be able to access the same content over the Internet on the family computer or on the child's own laptop or wireless device. To what extent could blocking technologies compatible with multiple platforms provide a solution to parents in this situation? For example, are there technologies that could operate on a wireless network or wireless device as well as another platform (such as cable or wireline service)? Are Internet filters able to filter Internet content to all devices, including wireless devices, or are they limited to computers (which would include wireless modem cards used on laptops or other portable devices, but not wireless smartphones)? To the extent that blocking technologies are able to filter Internet content to both wireline and wireless devices, are there any technical limitations for filters operating on laptops using wireless laptop cards, due to the potentially slower speed of a wireless broadband service? Are there other issues that need to be resolved in order to ensure that blocking technologies can operate seamlessly across platforms?

Administrative Matters

44. *Ex Parte Rules.* Pursuant to § 1.1204(b)(1) of the Commission's rules, 47 CFR 1.1204(b)(1), this is an exempt proceeding. *Ex parte* presentations are permitted, and need not be disclosed.

45. *Comments and Reply Comments.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on the Notice of Inquiry, MB Docket No. 09–26, on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998.

46. *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.Commission.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov*. Filers should follow the instructions provided on the Web site for submitting comments.

For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.

47. *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

48. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.
- In addition, parties must serve the following with either an electronic copy via e-mail or a paper copy of each pleading: (1) the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160, or via e-mail at *http://www.bcpiweb.com*; and (2) Kim Matthews, Media Bureau, 445 12th Street, SW., Room 4–A813, *Kim.Matthews@fcc.gov*.

49. *People with Disabilities:* Contact the Commission to request materials in accessible formats (Braille, large print, electronic files, audio format, etc.) by e-mail at *Commission504@Commission.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

50. *Additional Information.* For additional information on this proceeding, contact Kim Matthews, Media Bureau, at (202) 418–2154, or at *kim.matthews@fcc.gov*.

Ordering Clause

51. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 4(i), 303(g), and 403 of the Communications Act, 47 U.S.C. 154(i), 303(g), and 403, and pursuant to the Child Safe Viewing Act of 2007, this Notice of Inquiry *is adopted.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–5635 Filed 3–16–09; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R1–ES–2008–0096; MO 922105083–B2]

RIN 1018–AW34

Endangered and Threatened Wildlife and Plants; Listing the Plant Lepidium papilliferum (Slickspot Peppergrass) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of new information relevant to our consideration of the status of

Lepidium papilliferum (slickspot peppergrass), proposed for listing as endangered, under the Endangered Species Act of 1973, as amended (Act). We, therefore, announce the reopening of the comment period on the proposed listing and invite interested members of the public to submit comments on this new information as it applies to the status and proposed listing of *L. papilliferum*. Information previously submitted for this proposed listing need not be resubmitted, as all information already received regarding this proposed listing will be incorporated into the public record and fully considered in our evaluation.

DATES: To allow adequate time for consideration of your comments, all information should be submitted to us by April 16, 2009.

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

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket FWS–R1–ES–2008–0096; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

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

FOR FURTHER INFORMATION CONTACT: Jeffery L. Foss, State Supervisor, U.S. Fish and Wildlife Service, Idaho Fish and Wildlife Office, by mail at 1387 S. Vinnell Way, Room 368, Boise, ID 83709; by telephone at 208–378–5243; by facsimile at 208/378–5262; or by electronic mail at: *fw1srbocomment@fws.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

For a detailed description of Federal actions concerning *Lepidium papilliferum*, please refer to the September 19, 2008, Notice Reopening the Comment Period on the Proposed Rule to List *Lepidium papilliferum* as Endangered (73 FR 54345) and the January 12, 2007, Withdrawal Notice published in the **Federal Register** (72 FR 1621). A summary of the most recent Federal actions concerning the species is provided here.

The notice that published on January 12, 2007 (72 FR 1621), served to withdraw our July 15, 2002, proposed rule (67 FR 46441) to list *Lepidium papilliferum* as endangered under the Act. The withdrawal of the proposed rule was based on our conclusion that, while the best available information indicated that certain threat factors were degrading the species' sagebrush-steppe matrix habitat, there was little evidence that these threats were negatively affecting the abundance of *L. papilliferum*, which inhabits slickspot microsites within the sagebrush-steppe ecosystem. In addition, we concluded that annual abundance of the plant was strongly correlated with spring precipitation, and therefore the high degree of variability observed in plant abundance over time was to be expected. Information on the plant's overall population trend was inconsistent, as it appeared to be decreasing in recent years in a subset of the species' range, but appeared to be increasing over those same years on a rangewide scale as expected in response to increased rainfall. Finding no consistent evidence of a rangewide negative population trend for the species, we concluded that *L. papilliferum* did not meet the definition of a threatened or endangered species under the Act.

On June 4, 2008, the U.S. District Court for the District of Idaho vacated the Service's January 2007 withdrawal notice and remanded the decision to the Service for further consideration consistent with the Court's opinion (*Western Watersheds Project* v. *Jeffery Foss et al.*, Case No. 07–161–E–MHW). In response to the Court's decision, the Service notified the public on September 19, 2008, of the reinstatement of the July 15, 2002, proposed rule to list *Lepidium papilliferum* as endangered and opened a public comment period for 30 days through October 20, 2008. We received a total of seven comments during that comment period.

Since the closure of the last comment period, new information has become available that is relevant to our evaluation of the proposed listing of *Lepidium papilliferum*. To ensure that our review of the species' status is complete and based on the best available scientific and commercial information, we are soliciting comments on this new information as it relates to the status and proposed listing of *L. papilliferum*. We have also specifically requested peer review of this new information and its relevance to the status of *L. papilliferum* from experts familiar with the species or its habitat; these reviews will also be accepted during this comment period.

New Information Available for Review

Information received, developed, or analyzed since the last comment period ended on October 20, 2008, is available for review by accessing the Web site *http://www.regulations.gov* (Docket ID FWS–R1–ES–2008–0096) or by contacting the State Supervisor (see **FOR FURTHER INFORMATION CONTACT** above). This information includes, but is not limited to, the following documents:

(1) Analysis of Slickspot Peppergrass (*Lepidium papilliferum*) Population Trends on Orchard Training Area and Rangewide Implications (Sullivan and Nations 2009);

(2) *Lepidium papilliferum* (Slickspot peppergrass) Evaluation of Trends 2004–2007 (Unnasch 2008);

(3) Analysis of *Lepidium papilliferum* monitoring data collected on the Inside Desert (Owyhee Plateau) (2000–2002) (Wells and Popovich 2009);

(4) GIS Analysis for the 2009 Status Review of Slickspot Peppergrass (*Lepidium papilliferum*) (Stoner 2009).

The public comments received during the most recent public comment period, which closed on October 20, 2008, are also accessible for viewing at *http://www.regulations.gov* (Docket ID FWS–R1–ES–2008–0096), or by contacting the State Supervisor (see **FOR FURTHER INFORMATION CONTACT** above).

Public Comments

We will base any final action resulting from the proposed rule on the best scientific and commercial data available and intend to be as accurate and as effective as possible. Therefore, we request comments or suggestions on the proposed rule from the public, other concerned governmental agencies, the scientific community, industry, and any other interested parties.

We ask for comments concerning the new information contained in the analyses of *Lepidium papilliferum* population trends on the Orchard Training Area in southwest Idaho (Sullivan and Nations 2009), on the rangewide Habitat Integrity and Population (HIP) monitoring (Unnasch 2008), a recent analysis of *L. papilliferum* data collected on the Inside Desert (Owyhee Plateau) from 2000 to 2002 (Wells and Popovich 2009), and GIS analysis of *Lepidium papilliferum* (Stoner 2009). In particular, comments are sought regarding the relevance of the new information to the proposed listing status of *L. papilliferum,* as it pertains to the following:

(1) Biological, commercial trade, or other relevant data concerning threats (or lack thereof) to *Lepidium papilliferum;*

(2) Additional information concerning the range, distribution, and population size of *Lepidium papilliferum,* including the locations of any additional populations of the species;

(3) Any information on the biological or ecological requirements of *Lepidium papilliferum;*

(4) Current or planned activities in the areas occupied by *Lepidium papilliferum* and their possible impacts on the species.

If you wish to comment, you may submit your comments and materials concerning this new information by one of the methods listed in the **ADDRESSES** section.

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

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

At this time, we are soliciting new information on the status of *Lepidium papilliferum.* We will base our determination as to whether listing is warranted on a review of the best scientific and commercial information available, including all such information received as a result of this notice.

Authors

The primary authors of this notice are staff of the Idaho Fish and Wildlife Office, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 4, 2009.

Elizabeth H. Stevens,

Acting Deputy Director, Fish and Wildlife Service.

[FR Doc. E9–5697 Filed 3–16–09; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 74, No. 50
Tuesday, March 17, 2009

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

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—National Hunger Clearinghouse Database Form

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice invites the general public and other public agencies to comment on this information collection, concerning the National Hunger Clearinghouse.

DATES: Comments on this notice must be received by May 18, 2009.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Rachel Johnson, Program Analyst, Office of Strategic Initiatives, Partnerships, and Outreach, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 912, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Rachel Johnson, Program Analyst, at 703–305–2908 or via e-mail to *Rachel.Johnson@fns.usda.gov*. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov*, and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m. Monday through Friday) at 3101 Park Center Drive, Room 912, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Rachel Johnson, Program Analyst, at 703–305–2297. Copies of this information collection may be obtained from Ms. Johnson at the address listed above.

SUPPLEMENTARY INFORMATION:

Title: National Hunger Clearinghouse Database Form.

OMB Number: 0584–0474.

Expiration Date: 7/31/2009.

Type of Request: Revision of a currently approved collection.

Abstract: Section 26(d) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769g(d)) (the Act), which was added to the Act by section 123 of Public Law 103–448 on November 2, 1994, mandated that FNS enter into a contract with a non-governmental organization to establish and maintain an information clearinghouse (named ''USDA National Hunger Clearinghouse'' or ''Clearinghouse'') for groups that assist low-income individuals or communities regarding nutrition assistance programs or other assistance. FNS awarded this contract to the national hunger advocacy organization World Hunger Year (WHY) of New York, NY. Section 26(d) was amended by section 112 of Public Law 105–336 on October 31, 1998 to extend funding for the Clearinghouse (now called ''National Hunger Clearinghouse'' or ''Clearinghouse'') through fiscal year 2003. This Act was amended by Public Law 108–265 on June 30, 2004, and provided increased funding for the Clearinghouse.

The Clearinghouse includes a database of non-governmental, grassroots programs that work in the areas of hunger and nutrition, as well as a mailing list of relevant local governmental agencies. Under the original contract, Clearinghouse staff established the database by reviewing relevant programs of organizations contained in several existing mailing lists. Program and mailing information about organizations pulled from these lists were collected and entered into the database once each contract year via a mail survey with follow up to ensure high response rates. Surveys are also completed online at *http://www.worldhungeryear.org/forms/nhc_form.asp*. Survey questionnaires will continue to be sent out under the current contract. From this information collection, the following information was determined:

Estimate of the Burden: Public reporting burden for this collection of information is estimated to average five (5) minutes to complete the survey (the survey includes one two-page instrument).

Affected Public: Business or other for-profit, non-profit organizations providing nutrition assistance services to the public.

Estimated Number of Respondents: 1,750.

Estimated Number of Responses per Respondent: One response per respondent.

Estimated Total Annual Burden: 146 hours.

Dated: March 10, 2009.

E. Enrique Gomez,

Acting Administrator, Food and Nutrition Service.

[FR Doc. E9–5753 Filed 3–16–09; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection: Ride-Along Program

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on a new information collection associated with the Ride-Along Program application, a program which allows any private citizen to

apply to ride along with Forest Service law enforcement officers.

DATES: Comments must be received in writing on or before May 18, 2009 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to the Director of Law Enforcement and Investigations, USDA Forest Service, Mail Stop 1140, 1400 Independence Ave., SW., Washington, DC 20250–1140.

Comments also may be submitted via facsimile to 703–605–5112, or by e-mail to Gene Smithson at *gsmithson@fs.fed.us*.

The public may inspect comments received at 1621 N. Kent Street, Room 1015, Rosslyn Plaza East, Arlington, VA, during normal business hours. Visitors are encouraged to call ahead to 703–605–4690 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Gene Smithson, Acting Assistant Director for Enforcement and Liaison, LE&I, 703–605–4530. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Forest Service Law Enforcement Ride-Along Program.

OMB Number: 0596–0170.

Type of Request: Renewal.

Abstract: This information collection is necessary for Forest Service Law Enforcement and Investigations (LE&I) personnel to authorize a rider who applies to participate in the Ride-Along program. The information collection also provides additional protection for LE&I personnel who allow authorized riders to accompany them in boats, cars, trucks, or other vehicles. The purpose of this program is for citizens to learn about and observe Forest Service LE&I tasks and activities. The program is intended to enhance Forest Service law enforcement community relationships, improve the quality of Forest Service customer service, and provide LE&I personnel a recruitment tool. A rider shall complete two forms in order to participate. Form FS–5300–33 asks for the participant's name, address, social security number, driver's license number, work address, location of the Ride-Along, and the reason for the Ride-Along. Law enforcement officers use form FS–5300–33 to conduct a minimum background check before authorizing a person to ride along. Form FS–5300–34 is signed by riders to exempt law enforcement officers and the Forest Service from damage, loss, or injury liability incurred during the rider's participation in the program. If the information is not collected, riders will be denied permission to ride along with Forest Service law enforcement personnel.

Estimate of Annual Burden:

FS–5300–33: 5 minutes.

FS–5300–34: 5 minutes.

Total: 10 minutes.

Type of Respondents: Citizens who want to learn about and observe Forest Service Law Enforcement and Investigation (LE&I) tasks and activities.

Estimated Annual Number of Respondents: 500.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 84 hours per year.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the information collection submission for Office of Management and Budget approval.

Dated: March 3, 2009.

Abigail R. Kimball,

Chief, Forest Service.

[FR Doc. E9–5761 Filed 3–16–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

South Gifford Pinchot National Forest Resource Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The South Gifford Pinchot National Forest Resource Advisory Committee will meet on Monday, April 20, 2009, at the Columbia Gorge Riverside Lodge 200 SW Cascade Avenue, Stevenson, Washington. The meeting will begin at 9 a.m. and continue until 4 p.m. The purpose of the meeting is to: Elect a chairperson and vice-chair, propose an indirect project percentage, receive an overview of Title II accomplishments, and make recommendations on approximately 60 proposals for Title II funding of projects under the Secure Rural Schools and County Self-Determination Act of 2000.

All South Gifford Pinchot National Forest Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The ''open forum'' provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The ''open forum'' is scheduled to occur at 9:10 a.m. on April 20. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Roger Peterson, Public Affairs Specialist, at (360) 891–5007, or write Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE. 51st Circle, Vancouver, WA 98682.

Dated: March 6, 2009.

Janine Clayton,

Forest Supervisor.

[FR Doc. E9–5587 Filed 3–16–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

North Gifford Pinchot National Forest Resource Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The North Gifford Pinchot National Forest Resource Advisory Committee will meet on Tuesday, April 14, 2009, at the Salkum Timberland Library, 2480 U.S. Highway 12, Salkum, Washington. The meeting will begin at 9 a.m. and continue until 4 p.m. The purpose of the meeting is to: Elect a chairperson and vice-chair, propose an indirect project percentage, receive an overview of Title II accomplishments, and make recommendations on approximately 15 proposals for Title II funding of projects under the Secure

Rural Schools and County Self-Determination Act of 2000.

All North Gifford Pinchot National Forest Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The ''open forum'' provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The ''open forum'' is scheduled to occur at 9:10 a.m. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Roger Peterson, Public Affairs Specialist, at (360) 891–5007, or write Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE. 51st Circle, Vancouver, WA 98682.

Dated: March 6, 2009.

Janine Clayton,

Forest Supervisor.

[FR Doc. E9–5588 Filed 3–16–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: National Immunization Survey Evaluation Study.

Form Number(s): Numerous.

OMB Control Number: None.

Type of Request: New collection.

Burden Hours: 1,445.

Number of Respondents: 2,695.

Average Hours Per Response: 32 minutes.

Needs and Uses: On behalf of the Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services, the U.S. Census Bureau requests authorization of the Office of Management and Budget (OMB) to conduct an evaluation study of an alternative sampling methodology for the National Immunization Survey (NIS). The purpose of this study is to explore how collaborating with the CDC and using the American Community Survey (ACS) as the sampling frame for selecting eligible households could result in improvements to the NIS. Use of the ACS as a sampling frame, which includes non-landline households and also identifies households with age-eligible children, would provide a more complete sampling frame for the NIS and could substantially reduce data collection costs.

The NIS is currently a continuing, nationwide random-digit-dialing (RDD) landline telephone survey of families with children aged 19 to 35 months, and teens aged 13–17 years, followed by a mailed survey to children's immunization providers. Since the survey's inception to the present, private contractors have conducted the NIS for the CDC. National, state, and local level estimates of vaccine-specific coverage, including newly licensed vaccines, are produced annually.

The NIS was established to provide an on going, consistent data set for analyzing vaccination coverage among young children in the United States and disseminating this information to state and local health departments and other interested public health partners. One of the goals of the 1993 Childhood Immunization Initiative was to achieve target vaccination coverage levels for 2-year-old children. One of the activities for meeting these goals was to improve surveillance for vaccine coverage. As a result, funding for the NIS was provided and data collection began in April 1994. Subsequently, national Healthy People 2000 and 2010 objectives included targets for childhood and adolescent vaccination rates. Currently, the NIS provides vaccination coverage estimates annually for children aged 19–35 months and teens aged 13–17 years, by state and at least six city/county areas. The information collected is used to evaluate state and local immunization programs, to develop health care policies, and to assist in the determination of funding allocations for the Vaccines for Children (VFC) program. Since 1994, the VFC program has helped families of children who may not otherwise have access to vaccines by providing free vaccines to doctors who serve them.

In recent years, the NIS has covered a decreasing portion of the target population as more households rely solely on cell phone telephone service. Based on data from January–June 2008 from the National Health Interview Survey (NHIS), 29 percent of children under three years of age lived in households without landline services. Among households with both landline and cell phone service, some may primarily use their cell phones and be less likely to respond to calls to their landlines. As part of the CDC's continuing effort to evaluate and refine the NIS, this study is intended to explore how sampling from the ACS for households with age-eligible children having landline, cell phone only, and no telephone service could result in improvements to the survey, particularly in terms of coverage, response, and cost, and whether the ACS and supplemental administrative files can be used to identify a sufficient sample of children for national, state and local level assessment.

The NIS is the largest survey ever conducted to assess vaccination coverage of young children and adolescents in the U.S. and is used to measure and assess changes in vaccination coverage levels over time. Also, the NIS helps track progress towards public health immunization goals. The purpose of this evaluation study is to determine if using the ACS as the frame from which to select the NIS sample will result in improvements to the survey, in terms of providing a more complete sampling frame, increasing response rates, and decreasing data collection costs. The evaluation study will be kept as closely as possible to the current NIS to allow comparisons, but plans are to incorporate innovations that could be implemented eventually as part of a full production survey. With the overall goal of improving response rates and coverage, possible experiments could include offering incentives to all sampled households or using different versions of the advance letter or screener to encourage participation.

The NIS is an important tool for measuring vaccination coverage levels for the nation; however, there are limitations and challenges that the current NIS faces. The NIS evaluation study provides the CDC with the opportunity to explore some possible changes to the survey methodology in an attempt to assess new options and refine current methods. One major design change is in the sample selection. The current NIS sample is selected by landline RDD, whereas the sample for the NIS Evaluation Study is a targeted sample of age-eligible respondents drawn from the ACS sample. Using the ACS as the NIS sampling frame provides a rich source of data for non-respondents and allows for more powerful weighting adjustments. Furthermore, the NIS RDD sample is limited to households with landline telephone service. However, the Evaluation Study sample will not only include households with landline service but also non-landline households (wireless service only) and households with no phone service. The information collected from the latter two groups will assist the CDC in

assessing the potential bias in the current NIS estimates from the exclusion of these households. However, the success of the evaluation is contingent on the Census Bureau's ability to draw sufficient sample from the ACS for state and local area estimates.

Affected Public: Individuals or households; businesses or other for-profit.

Frequency: One time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 8 and the Public Health Service Act, Title 42, United States Code, Sections 306 & 2102(a)(7).

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or email (*bharrisk@omb.eop.gov*).

Dated: March 11, 2009.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–5657 Filed 3–16–09; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committees

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of the Census (Census Bureau) is giving notice of a joint meeting of the Census Advisory Committees (CACs) on the African American Population, the American Indian and Alaska Native Populations, the Asian Population, the Hispanic Population, and the Native Hawaiian and Other Pacific Islander Populations. The Committees will address issues related to the 2010 Decennial Census, including the Integrated Communications Campaign, 2010 Partnerships, and other decennial activities. The five Census Advisory Committees on Race and Ethnicity will meet in plenary and concurrent sessions on April 22–24, 2009. Last minute changes to the schedule are possible, which could prevent advance notification.

DATES: April 22–24, 2009. On April 22, the meeting will begin at approximately 1 p.m. and end at approximately 5 p.m. On April 23, the meeting will begin at approximately 8:30 a.m. and end at approximately 4:30 p.m. On April 24, the meeting will begin at approximately 8:30 a.m. and end at approximately 3:45 p.m.

ADDRESSES: The meeting will be held at the U.S. Census Bureau, 4600 Silver Hill Road, Suitland, Maryland 20746.

FOR FURTHER INFORMATION CONTACT: Jeri Green, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 8H182, 4600 Silver Hill Road, Suitland, Maryland 20746, telephone 301–763–6590. For TTY callers, please use the Federal Relay Service 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The CACs on the African American Population, the American Indian and Alaska Native Populations, the Asian Population, the Hispanic Population, and the Native Hawaiian and Other Pacific Islander Populations are comprised of nine members each. The Committees provide an organized and continuing channel of communication between the representative race and ethnic populations and the Census Bureau. The Committees provide an outside-user perspective and advice on research and design plans for the 2010 Decennial Census, the American Community Survey, and other related programs particularly as they pertain to an accurate count of these communities. The Committees also assist the Census Bureau on ways that census data can best be disseminated to diverse race and ethnic populations and other users. The Committees are established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, Section 10(a)(b)).

All meetings are open to the public. A brief period will be set aside at the meeting for public comment. However, individuals with extensive questions or statements must submit them in writing to Ms. Jeri Green at least three days before the meeting. Seating is available to the public on a first-come, first-served basis.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Committee Liaison Officer as soon as possible, preferably two weeks prior to the meeting.

Due to increased security and for access to the meeting, please call 301–763–3231 upon arrival at the Census Bureau on the day of the meeting. A photo ID must be presented in order to receive your visitor's badge. Visitors are not allowed beyond the first floor.

Dated: March 10, 2009.

Thomas L. Mesenbourg,

Acting Director, Bureau of the Census.

[FR Doc. E9–5677 Filed 3–16–09; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–880

Barium Carbonate from the People's Republic of China: Continuation of Antidumping Duty Order

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

SUMMARY: As a result of the determinations by the Department of Commerce (''Department'') and the International Trade Commission (''ITC'') that revocation of the existing antidumping duty (''AD'') order on barium carbonate from the People's Republic of China (''PRC'') would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States within a reasonably foreseeable time, the Department is publishing this notice of continuation of the AD order.

EFFECTIVE DATE: March 17, 2009.

FOR INFORMATION CONTACT: Hallie Noel Zink at 202–482–6907; AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 2, 2008, the Department initiated a sunset review of the antidumping duty order on barium carbonate from the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended (''Act''). *See Initiation of Five-year (''Sunset'') Review, 73 FR 51275 (September 2, 2008); see also Antidumping Duty Order: Barium Carbonate from the People's Republic of China*, 68 FR 56619 (October 1, 2003). As a result of its review, the Department found that revocation of this AD order would likely lead to continuation or recurrence of dumping and notified the

ITC of the margins likely to prevail were the order revoked. *See Barium Carbonate from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 74 FR 882 (January 9, 2009). On January 21, 2009, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the AD order on barium carbonate from the PRC would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Barium Carbonate From China*, 74 FR 10278 (March 10, 2000); and B*arium Carbonate from China: Investigation No. 731–TA–1020 (Review)*, ITC Publication 4060 (January 2009).

Scope of the Order

The merchandise covered by this order is barium carbonate, regardless of form or grade. The product is currently classifiable under subheading 2836.60.0000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Continuation of Order

As a result of the determinations by the Department and the ITC that revocation of the AD order on barium carbonate from the PRC would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the AD order on barium carbonate from the PRC. U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. This review covers imports from all manufacturers and exporters of barium carbonate from the PRC.

The effective date of continuation of this AD order will be the date of publication in the **Federal Register** of this notice. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of these orders not later than February 2013. See also 19 CFR 351.218(c)(2).

This five-year (''sunset'') review and notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: March 10, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–5743 Filed 3–16–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews

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

SUMMARY: The Department of Commerce (''Department'') is conducting an administrative review and two new shipper reviews of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam (''Vietnam''). *See Notice of Antidumping Duty Order: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 47909 (August 12, 2003) (''*Order*''). The administrative review and new shipper reviews includes three companies, including QVD Food Company Ltd. (''QVD''), the mandatory respondent, and the two new shipper review companies are Binh An Seafood Joint Stock Co. (''Binh An'') and Southern Fishery Industries Company, Ltd. (''South Vina''). We preliminarily found that Binh An and QVD did not sell subject merchandise at less than normal value (''NV'') and thus received zero margins during the period of review (''POR''), August 1, 2006, through July 31, 2007. We also preliminarily rescinded South Vina. *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Preliminary Results of the New Shipper Review and Fourth Antidumping Duty Administrative Review and Partial Rescission of the Fourth Administrative Review*, 73 FR 52015 (September 8, 2008) (''*Preliminary Results*''). We conducted verifications of Binh An and South Vina and subsequently issued a post-preliminary calculation for South Vina. *See* New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Post-Preliminary Results Analysis for Southern Fishery Industries Co., Ltd. dated January 13, 2009. We gave interested parties an opportunity to comment on the *Preliminary Results* and the Post-preliminary results for South Vina. Based upon our analysis of the comments and information received, we made changes to the dumping margin calculations for the final results. *See* Memorandum to the File from Alan Ray, Case Analyst, through Alex Villanueva, Program Manager, Final Results Analysis for QVD and its Affiliates (March 9, 2009); Memorandum to the File from Matthew Renkey, Senior Case Analyst, through Alex Villanueva, Program Manager, Final Results Analysis for Binh An Seafood Joint Stock Company (''Binh An'') (March 9, 2009); and Memorandum to the File from Javier Barrientos, Senior Case Analyst, through Alex Villanueva, Program Manager, Final Results Analysis for Southern Fishery Industries Co., Ltd. (''South Vina'') (March 9, 2009). The final dumping margins are listed below in the section entitled ''Final Results of the Reviews.''

DATES: *Effective Date:* March 17, 2009.

FOR FURTHER INFORMATION CONTACT: Alan Ray or Javier Barrientos, 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 and (202) 482–2243, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On September 8, 2008, the Department published in the **Federal Register** the preliminary results of this new shipper and administrative review of the antidumping duty order on certain frozen fish fillets from Vietnam. Since the *Preliminary Results*, the following events have occurred.

From September 17–19, 2008, the Department conducted the verification of Binh An Binh An in Can Tho City, Vietnam. From September 22–24, 2008, the Department verified South Vina in Can Tho City, Vietnam.

South Vina and An Xuyen Company Ltd. (''An Xuyen'') submitted case briefs on January 5 and 23, 2009, respectively. On February 3, 2009, Petitioners, Catfish Farmers of America and individual U.S. catfish processors, and QVD Food Company (''QVD'') submitted case briefs. On February 10, 2009, Petitioners, South Vina, Binh An, and QVD submitted rebuttal briefs.

On October 20, 2008, the Department extended the time limit for completion of the final results of this administrative review by 60 days. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Time Limit for*

Final Results of the New Shipper and Fourth Antidumping Duty Administrative Review, 73 FR 63435 (October 24, 2008).

On February 25, 2009, the Department conducted a public and a closed hearing. On March 3, 2009, the Department placed additional information on the record. Petitioners and QVD submitted comments regarding this additional information on March 5, 2009.

Scope of the Order

The product covered by the order is frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species *Pangasius Bocourti, Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*), and *Pangasius Micronemus*. Frozen fish fillets are lengthwise cuts of whole fish. The fillet products covered by the scope include boneless fillets with the belly flap intact (''regular'' fillets), boneless fillets with the belly flap removed (''shank'' fillets), boneless shank fillets cut into strips (''fillet strips/finger''), which include fillets cut into strips, chunks, blocks, skewers, or any other shape. Specifically excluded from the scope are frozen whole fish (whether or not dressed), frozen steaks, and frozen belly-flap nuggets. Frozen whole dressed fish are deheaded, skinned, and eviscerated. Steaks are bone-in, cross-section cuts of dressed fish. Nuggets are the belly-flaps. The subject merchandise will be hereinafter referred to as frozen ''basa'' and ''tra'' fillets, which are the Vietnamese common names for these species of fish. These products are classifiable under tariff article codes 1604.19.4000, 1604.19.5000, 0305.59.4000, 0304.29.6033 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the Harmonized Tariff Schedule of the United States (''HTSUS'').[1] The order covers all frozen fish fillets meeting the above specification, regardless of tariff classification. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this proceeding and to which we have responded are listed in the Appendix to this notice and addressed in the Issues and Decision Memorandum (''Final Decision Memo''), which is hereby adopted by this notice. Parties can find a complete discussion of the issues raised in this administrative review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit (''CRU''), room 1117 of the main Department building. In addition, a copy of the Final Decision Memo can be accessed directly on our Web site at *http://ia.ita.doc.gov/*. The paper copy and electronic version of the Final Decision Memo are identical in content.

Verification

As provided in section 782(i) of the Tariff Act, as amended (''Act''), we conducted verification of the information submitted by Binh An and South Vina for use in our final results. *See* Memorandum to the File, through Alex Villanueva, Program Manager, AD/CVD Operations, Office 9, from Matthew Renkey, Senior Case Analyst, AD/CVD Operations, Office 9, Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Verification of Binh An Seafood Joint Stock Company, dated December 9, 2008 and Memorandum to the File, through Alex Villanueva, Program Manager, AD/CVD Operations, Office 9, from Javier Barrientos, Senior Case Analyst, AD/CVD Operations, Office 9, Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Verification of Southern Fishery Industries Co., Ltd., dated December 10, 2008. For all companies, we used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by the respondents.

Changes Since the Preliminary Results

Based on a review of the record as well as comments received from parties regarding our *Preliminary Results*, we have made revisions to the margin calculation for QVD, South Vina, and Binh An for the final results. For all changes to the calculations of QVD, Binh An and South Vina, *see* the Final Decision Memo and company specific analysis memoranda. For changes to the surrogate values *see* Memorandum to the File, through Alex Villanueva, Program Manager, AC/CVD Operations, Office 9, from Alan Ray, case analyst, AD/CVD Operations, Office 9, New Shipper Review and Fourth Antidumping Duty Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Values for the Final Results.

Final Results of the Reviews

The weighted-average dumping margins for the POR are as follows:

CERTAIN FROZEN FISH FILLETS FROM VIETNAM

Manufacturer/exporter	Weighted-average margin
QVD[2]	0.52
South Vina	0.00
Binh An	0.00
Agifish[3]	0.52
Anvifish[3]	0.52
Vietnam-Wide Entity[4]	63.88

Assessment

The Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries, pursuant to 19 CFR 351.212(b). We have calculated importer-specific duty assessment rates on a per-unit basis. Specifically, we divided the total dumping margins (calculated as the difference between normal value and export price or constructed export price) for each importer by the total quantity of subject merchandise sold to that importer during the POR to calculate a per-unit assessment amount. In this and future reviews, we will direct CBP to assess importer-specific assessment rates based on the resulting per-unit (*i.e.*, per-kilogram) rates by the weight in kilograms of each entry of the subject merchandise during the POR. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of these administrative and new shipper reviews.

Cash Deposit Requirements

The following cash-deposit requirements will be effective upon publication of the final results of these administrative and new shipper reviews for all shipments of the subject merchandise entered, or withdrawn

[1] Until July, 2004, these products were classifiable under tariff article codes 0304.20.60.30 (Frozen Catfish Fillets), 0304.20.60.96 (Frozen Fish Fillets, NESOI), 0304.20.60.43 (Frozen Freshwater Fish Fillets) and 0304.20.60.57 (Frozen Sole Fillets) of the HTSUS. Until February 1, 2007, these products were classifiable under tariff article code 0304.20.60.33 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the HTSUS.

[2] This rate is applicable to the QVD Single Entity which includes QVD, QVD Dong Thap, and Thuan Hung Co. Ltd.

[3] For the exporters subject to review that are determined to be eligible for separate-rate status, but were not selected as mandatory respondents, the Department normally establishes a weighted-average margin based on an average of the rates it calculated for the mandatory respondents, excluding any rates that are zero, *de minimis*, or based entirely on facts available. In this proceeding, there is only one such mandatory respondent, QVD. Accordingly, the rate calculated for QVD is applied as the rate for Agifish and Anvifish.

[4] This includes An Xuyen.

from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each of the reviewed companies that received a separate rate in this review will be the rate listed in the final results of review (except that if the rate for a particular company is *de minimis*, *i.e.*, less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period of review; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the Vietnam-wide rate of 63.88 percent. These deposit requirements, when imposed, shall remain in effect until further notice.

Reimbursement of Duties

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

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the final results of these administrative and new shipper reviews and notice in accordance with sections 751(a)(1) and (2) and 777(i) of the Act.

Dated: March 9, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix I—Decision Memorandum

[FR Doc. E9–5744 Filed 3–16–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–930

Antidumping Duty Order: Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China

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

EFFECTIVE DATE: March 17, 2009.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the ''Department'') and the International Trade Commission (''ITC''), the Department is issuing an antidumping duty order on circular welded austenitic stainless pressure pipe from the People's Republic of China (''PRC'').

FOR FURTHER INFORMATION CONTACT: Melissa Blackledge or Howard Smith, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482–3518 and 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended (the ''Act''), on January 28, 2009, the Department published its final determination in the antidumping duty investigation of circular welded austenitic stainless pressure pipe from the PRC. *See Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 4913 (January 28, 2009). On March 12, 2009, the ITC notified the Department of its affirmative final determination of material injury to a U.S. industry. *See Welded Stainless Steel Pressure Pipe from China*, Investigation Nos. 701–TA–454 and 731–TA–1144 (Final), USITC Publication, 4064 (March 2009).

Scope of the Order

The merchandise covered by this order is circular welded austenitic stainless pressure pipe not greater than 14 inches in outside diameter. This merchandise includes, but is not limited to, the American Society for Testing and Materials (''ASTM'') A–312 or ASTM A–778 specifications, or comparable domestic or foreign specifications. ASTM A–358 products are only included when they are produced to meet ASTM A–312 or ASTM A–778 specifications, or comparable domestic or foreign specifications. Excluded from the scope are: (1) welded stainless mechanical tubing, meeting ASTM A–554 or comparable domestic or foreign specifications; (2) boiler, heat exchanger, superheater, refining furnace, feedwater heater, and condenser tubing, meeting ASTM A–249, ASTM A–688 or comparable domestic or foreign specifications; and (3) specialized tubing, meeting ASTM A–269, ASTM A–270 or comparable domestic or foreign specifications.

The subject imports are normally classified in subheadings 7306.40.5005; 7306.40.5040, 7306.40.5062, 7306.40.5064, and 7306.40.5085 of the Harmonized Tariff Schedule of the United States (''HTSUS''). They may also enter under HTSUS subheadings 7306.40.1010; 7306.40.1015; 7306.40.5042, 7306.40.5044, 7306.40.5080, and 7306.40.5090. The HTSUS subheadings are provided for convenience and customs purposes

[5] Bionic Sea Food (''Bionic'').

[6] Gemini Sea Food Ltd. (''Gemini'').

only, the written description of the scope of this order is dispositive.

Provisional Measures

Section 733(d) of the Act states that suspension of liquidation instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months except where exporters representing a significant proportion of exports of the subject merchandise request the Department to extend that four–month period to no more than six months. At the request of an exporter that accounted for a significant proportion of exports of circular welded austenitic stainless pressure pipe, we extended the four–month period to no more than six months. *See Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 51788 (September 5, 2008) (''*Preliminary Determination*'').

In this investigation, the six–month period beginning on the date of the publication of the *Preliminary Determination* (*i.e.*, September 5, 2008) ended on March 3, 2009. Furthermore, section 737 of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination. Therefore, in accordance with section 733(d) of the Act, we have instructed U.S. Customs and Border Protection (''CBP'') to terminate suspension of liquidation and to liquidate without regard to antidumping duties (*i.e.*, release all bonds and refund all cash deposits), unliquidated entries of circular welded austenitic stainless pressure pipe from the PRC entered, or withdrawn from warehouse, for consumption after March 3, 2009, and before the date of publication of the ITC's final injury determination in the **Federal Register**. Suspension of liquidation will continue on or after the date of publication of the ITC's final injury determination in the **Federal Register**.

Antidumping Duty Order

On March 12, 2009, in accordance with section 735(d) of the Act , the ITC notified the Department of its final determination, pursuant to section 735(b)(1)(A)(i) of the Act, that an industry in the United States is materially injured by reason of less–than-fair–value imports of subject merchandise from the PRC. Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct CBP to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price of the merchandise for all relevant entries of circular welded austenitic stainless pressure pipe from the PRC. Except for the entries noted above,[1] these antidumping duties will be assessed on all unliquidated entries of circular welded austenitic stainless pressure pipe from the PRC entered, or withdrawn from the warehouse, for consumption on or after September 5, 2008, the date on which the Department published its preliminary determination. *See Preliminary Determination*.

Effective on the date of publication of the ITC's final affirmative injury determination, CBP will require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted–average antidumping duty margins listed below. See section 735(c)(1) of the Act. The ''PRC–wide'' rate applies to all exporters of subject merchandise not specifically listed. The weighted–average dumping margins are as follows:

Exporter & Producer	Weighted–Average Margin
Zhejiang Jiuli Hi–Tech Metals Co., Ltd. Produced by: Zhejiang Jiuli Hi–Tech Metals Co., Ltd.	10.53%
PRC–Wide Entity	55.21%

This notice constitutes the antidumping duty order with respect to circular welded austenitic stainless pressure pipe from the PRC pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room 1117 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: March 12, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–5730 Filed 3–16–09; 8:45 am]

BILLING CODE 3510–DS–S

[1] Namely, entries of circular welded austenitic stainless pressure pipe from the PRC entered, or withdrawn from warehouse, for consumption after March 3, 2009, and before the date of publication of the ITC's final injury determination in the **Federal Register**.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Meeting of the Information Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Meeting notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Information Security and Privacy Advisory Board (ISPAB) will meet Wednesday, April 1, 2009 from 8:30 a.m. until 5 p.m., Thursday, April 2, 2009, from 8:30 a.m. until 5 p.m., and Friday, April 3, 2009 from 8 a.m. until 12:15 p.m. All sessions will be open to the public. The ISPAB was established by the Computer Security Act of 1987 (Pub. L. 100–235) and amended by the Federal Information Security Management Act of 2002 (Pub. L. 107–347) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to federal computer systems. Details regarding the ISPAB's activities are available at *http://csrc.nist.gov/groups/SMA/ispab/index.html/*.

DATES: The meeting will be held on April 1, 2009, from 8:30 a.m. until 5 p.m., April 2, 2009, from 8:30 a.m. until 5 p.m. and April 3, 2009, from 8 a.m. until 12:15 p.m.

ADDRESSES: The meeting will take place at West Parlor Dining Room, George Washington University, 1918 F Street, NW., Dining Room Conference, Washington, DC on April 1, 2009, and the George Washington University Cafritz Conference Center, 800 21st Street, NW., Room 307, Washington, DC on April 2 & 3, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Pauline Bowen, ISPAB Secretariat, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, telephone: (301) 975–2938.

SUPPLEMENTARY INFORMATION:

Agenda

—DNS Sec Report.
—Standard OMB Update.
—FNS and Tools of CERT.
—Open Government & Security.
—ID Management Framework.
—Supply Chain Risk Management.
—Privacy Report.
—NIST Update.
—Follow-up Discussion On Cloud Computing.

—Board Discussion on NIST Standards and Guidelines.
—Stimulus and Cyber Security—CIO Panel.
—FISMA—What's happening on the Hill?
—Discussion of White House 60-day Review.
—Consensus Audit Guidelines.

Note that agenda items may change without notice because of possible unexpected schedule conflicts of presenters. The final agenda will be posted on the Web site indicated above.

Public Participation: The ISPAB agenda will include a period of time, not to exceed thirty minutes, for oral comments from the public (Thursday, April 2, 2009, at 3:15–3:45 p.m.). Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the ISPAB Secretariat at the telephone number indicated above. In addition, written statements are invited and may be submitted to the ISPAB at any time. Written statements should be directed to the ISPAB Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930. Approximately 15 seats will be available for the public and media on April 1–3, 2009.

Dated: March 10, 2009.

Patrick Gallagher,

Deputy Director.

[FR Doc. E9–5745 Filed 3–16–09; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Delegation of Settlement Authority Under the Federal Tort Claims Act

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Department of Justice Civil Division Directive (28 CFR part 14) and 10 U.S.C. 113(d), the Secretary of Defense has delegated to the Secretaries of the Army, Navy, and Air Force the authority to adjust, determine, compromise, and settle administrative claims involving their respective Military Departments under 28 U.S.C. 2672 (relating to the administrative settlement of Federal tort claims), if the amount of the proposed settlement, compromise, or award does not exceed $300,000.

The Delegation to the Secretary of the Army includes the authority to adjust, determine, compromise, and settle administrative claims arising out of the acts or omissions of civilian personnel of DoD Components other than the Military Departments in accordance with DoD Directive 5515.9, ''Settlement of Tort Claims,'' April 19, 2004.

The authority delegated above may be re-delegated in writing.

FOR FURTHER INFORMATION CONTACT: Ms Patricia Toppings, WHS/ESD Information Management Division, 1777 North Kent Street, Rosslyn Plaza North, Suite 11000, Arlington, VA 22209–2133.

Dated: March 12, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–5709 Filed 3–16–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

DoD Board of Actuaries Open Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: Under the provision of the Federal Advisory Committee Act of 1972 (5 U.S.C., appendix as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following Federal Advisory committee meeting of the DoD Board of Actuaries will take place:

DATES: August 27, 2009 (1 p.m.–5 p.m.) and August 28, 2009 (10 a.m.–1 p.m.)

ADDRESSES: 4040 N. Fairfax Drive, Suite 270, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Inger Pettygrove at the DoD Office of the Actuary, 4040 N. Fairfax Drive, Suite 308, Arlington, VA 22203; telephone 703–696–7413.

SUPPLEMENTARY INFORMATION:

Purpose of the meeting: The purpose of the meeting is for the Board to review DoD actuarial methods and assumptions to be used in the valuations of the Education Benefits Fund, the Military Retirement Fund, and the Voluntary Separation Incentive Fund, in accordance with the provisions of Section 183, Section 2006, Chapter 74 (10 U.S.C. 1464 et seq.), and Section 1175 of Title 10, United States Code.

Agenda:

Education Benefits Fund (August 27, 1 p.m.–5 p.m.).

Briefing on investment experience.

Developments in education benefits.

Economic assumptions.*

September 30, 2008, valuation and proposed per capita and amortization cost reserve programs.*

September 30, 2008, valuation and proposed per capita and amortization cost active duty programs.*

Military Retirement Fund (August 28, 10 a.m.–1 p.m.).

Briefing on retirement fund investment experience.

September 30, 2008, valuation of the military retirement system.*

Methods and assumptions for September 30, 2009, valuation.*

Voluntary Separation Incentive (VSI) Fund.*

Recent and proposed legislation.

* Board approval required.

Public's accessibility to the meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first come basis.

Committee's Designated Federal Officer or Point of Contact: Persons desiring to attend the DoD Board of Actuaries meeting or make an oral presentation or submit a written statement for consideration at the meeting must notify Inger Pettygrove at 703–696–7413 by August 3, 2009.

Dated: March 12, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–5706 Filed 3–16–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2009–OS–0045]

Privacy Act of 1974; Notice of a Computer Matching Program

AGENCY: Defense Manpower Data Center, DoD.

ACTION: Notice of a Computer Matching Program.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment. The DoD, as the matching agency under the Privacy Act is hereby giving notice to the record subjects of a computer matching program between the Social Security Administration (SSA) and DoD that their records are being matched by computer. The purpose of this agreement is to verify applicants for, and recipients of

Supplement Security Income (SSI) payments and Special Veterans Benefits (SVB) with respect of determination of eligibility and calculating payment amounts.

DATES: This proposed action will become effective April 16, 2009 and matching may commence unless changes to the matching program are required due to public comments or by Congressional or by Office of Management and Budget objections. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 1901 South Bell Street, Suite 920, Arlington, VA 22202–4512.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel P. Jenkins at telephone (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DMDC and SSA have concluded an agreement to conduct a computer matching program between the agencies. The purpose of this agreement is to verify eligibility of individual's of Supplemental Security Income (SSI) payments and the entitlement of individuals to Special Veterans Benefits (SVB).

The parties to this agreement have determined that a computer matching program is the most efficient, expeditious, and effective means of obtaining the information needed by the SSA under the Social Security Act to verify the eligibility/entitlement of and to verify payment/benefit amounts for certain SSI and SVB recipients/beneficiaries. Conducting such a manual match would impose a considerable administrative burden, constitute a greater intrusion of the individual's privacy and would result in additional delay in the eventual SSI payment and SVB benefit recovery of unauthorized or erroneous payment.

A copy of the computer matching agreement between SSA and DMDC is available upon request to the public. Requests should be submitted to the address caption above or to the Office of Payment Policy, Office of Income Security Programs, Office of Disability and Income Security Programs, Social Security Administration, 0106 RRCC, 6401 Security Boulevard, Baltimore, MD 21235.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published in the **Federal Register** at 54 FR 25818 on June 19, 1989.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on March 5, 2009, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: March 11, 2009.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Computer Matching Program Between the Social Security Administration and the Department of Defense for Verification of Social Security Supplemental Security Income Payments and Special Veterans Benefits

A. *Participating Agencies:* Participants in this computer matching program are the Social Security Administration (SSA) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The SSA is the source agency, *i.e.*, the activity disclosing the records for the purpose of the match. The DMDC is the specific recipient activity or matching agency, *i.e.*, the agency that actually performs the computer matching.

B. *Purpose of the Match:* The Social Security Act requires SSA to verify, with independent or collateral sources, information provided to SSA by recipients of SSI payments and beneficiaries of SVB benefits. The SSI and SVB recipient/beneficiaries provides information about eligibility/entitlement factors and other relevant information. SSA obtains additional information as necessary before making any determinations of eligibility/payment or entitlement/benefit amounts or adjustments thereto. With respect to military retirement payments to SSI recipients and SVB beneficiaries who are retired members of the Uniformed Services or their survivors, SSA proposes to accomplish this task by computer matching with the DOD.

C. *Authority for Conducting the Match:* The legal authority for the matching program is contained in sections 1631(e)(1)(B), (f), and 806(b) of the Social Security Act (42 U.S.C. 1383(e)(1)(B), (f) and 1006(b)).

D. *Records to be Matched:* The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

SSA will use records from a system of records identified as 60–0103, entitled ''Supplemental Security Income Record and Special Veterans Benefits, SSA / ODSSIS'', last published in the **Federal Register** at 71 FR 1830, January 11, 2006.

DoD will use the system of records identified as DMDC 01, entitled, ''Defense Manpower Data Center Data Base'', published 73 FR 5820, January 31, 2008. Attachment 5 is a copy of the system notice with the appropriate routine use, *i.e.*, RU l (e) (l) annotated.

E. *Description of Computer Matching Program:* SSA, as the source agency, will provide DMDC with an electronic file which contains the data elements. Upon receipt of the electronic file, DMDC, as the recipient agency, will perform a computer match using all nine digits of the SSN of the SSI/SVB file against a DMDC database which contains the data elements. The DMDC database consists of extracts of personnel and pay records of retired members of the uniformed services or their survivors. The ''hits'' or matches will be furnished to SSA. SSA is responsible for verifying and determining that the data on the DMDC electronic reply file are consistent with the SSA source file and resolving any discrepancies or inconsistencies on an individual basis. SSA will also be responsible for making final determinations as to eligibility for/entitlement to, or amount of payments/benefits, their continuation or needed adjustments, or any recovery of overpayments as a result of the match.

1. The electronic file provided by SSA will contain approximately 8.6 million records extracted from the SSR/SVB.

2. The electronic DMDC database contains records on approximately 2.3 million retired uniformed service members or their survivors.

F. *Inclusive Dates of the Matching Program:* This computer matching program is subject to public comment and review by Congress and the Office of Management and Budget. If the mandatory 30 day period for comment has expired and no comments are received and if no objections are raised by either Congress or the Office of Management and Budget within 40 days of being notified of the proposed match, the computer matching program becomes effective and the respective agencies may begin the exchange at a mutually agreeable time and thereafter on a quarterly basis. By agreement

between SSA and DMDC, the matching program will be in effect for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. *Address for Receipt of Public Comments or Inquiries:* Director, Defense Privacy Office, 1901 South Bell Street, Suite 920, Arlington, VA 22202–4512. Telephone (703) 607–2943.

[FR Doc. E9–5708 Filed 3–16–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2009–OS–0044]

Privacy Act of 1974; System of Records

AGENCY: Defense Threat Reduction Agency, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: Defense Threat Reduction Agency is amending a system of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on April 16, 2009 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Freedom of Information and Privacy Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Carter at (703) 767–1771.

SUPPLEMENTARY INFORMATION: The Defense Threat Reduction Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record systems being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 11, 2009.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

HDTRA 019

SYSTEM NAME:

Arms Control Treaty Inspections Management System (April 18, 2007, 72FR 19471).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with ''Arms Control Inspection Planning System Records''.

SYSTEM LOCATION:

Delete entry and replace with ''Defense Threat Reduction Agency, Room 4533, HQ Complex, 8725 John J. Kingman Road, VA 22060–6201.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Arms Control Inspection Planning System, Program Lead, Operations Enterprise, Operations Branch, Defense Threat Reduction Agency, Room 4533, HQ Complex, 8725 John J. Kingman Rd., VA 22060–6201.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to Arms Control Inspection Planning System, Program Lead, Operations Enterprise, Operations Branch, Defense Threat Reduction Agency, Room 4533, HQ Complex, 8725 John J. Kingman Road, Ft Belvoir, VA 22060–6201.

Requests should contain individual's full name and Social Security Number (SSN).''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to Arms Control Inspection Planning System, Program Lead, Operations Enterprise, Operations Branch, Defense Threat Reduction Agency, Room 4533, HQ Complex, 8725 John J. Kingman Road, Ft Belvoir, VA 22060–6201.

Requests should contain individual's full name and Social Security Number (SSN).''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The DTRA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DTRA Instruction 5400.11; 32 CFR part 318; or may be obtained from the Arms Control Inspection Planning System, Program Lead, Operations Enterprise, Operations Branch, Defense Threat Reduction Agency, Room 4533, HQ Complex, 8725 John J. Kingman Road, Ft. Belvoir VA 22060–6201.''

* * * * *

HDTRA 019

SYSTEM NAME:

Arms Control Inspection Planning System Records.

SYSTEM LOCATION:

Defense Threat Reduction Agency, Room 4533, HQ Complex, 8725 John J. Kingman Road, VA 22060–6201.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals affiliated with the Defense Threat Reduction Agency, either by military assignment, civilian employment, or contractual support agreement. Individuals that are weapons inspectors, linguists, mission schedulers/planners, personnel assistants/specialists, portal rotation specialists, operation technicians, passport managers, clerical staff, and database management specialists.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number (SSN), date of birth, city/state/country of birth, education, gender, race, civilian or military member, military rank, security clearance, occupational category, job organization and location, emergency locator information, and passport numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 302, Delegation of Authority; National Security Directive 41, Organizing to Manage On-site Inspection for Arms Control; and E.O. 9397 (SSN).

PURPOSE(S):

To manage the Arms Control activities, including personnel resources, manpower/billet management, passport status, mission scheduling and planning, inspection team composition, inspector and transport list management, inspector training, and inspection notification generation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of DTRA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES OF STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Records may be retrieved by name and/or Social Security Number (SSN), title, personnel type, and passport numbers.

SAFEGUARDS:

Records are maintained in areas accessible only to Defense Threat Reduction Agency personnel who must use the records to perform their duties. The computer files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during non-duty hours. Records are stored in a computer system with extensive intrusion safeguards.

RETENTION AND DISPOSAL:

Records are maintained for as long as the individual is assigned to Defense Threat Reduction Agency (DTRA). Upon departure from DTRA, records concerning that individual are removed from the active file and retained in an inactive file for two years and then deleted.

SYSTEM MANAGER(S) AND ADDRESS:

Arms Control Inspection Planning System, Program Lead, Operations Enterprise, Operations Branch, Defense Threat Reduction Agency, Room 4533, HQ Complex, 8725 John J. Kingman Rd., VA 22060–6201.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to Arms Control Inspection Planning System System, Program Lead, Operations Enterprise, Operations Branch, Defense Threat Reduction Agency, Room 4533, HQ Complex, 8725 John J. Kingman Road, Ft Belvoir, VA 22060–6201.

Requests should contain individual's full name and Social Security Number (SSN).

RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to Arms Control Inspection Planning System System, Program Lead, Operations Enterprise, Operations Branch, Defense Threat Reduction Agency, Room 4533, HQ Complex, 8725 John J. Kingman Road, Ft Belvoir, VA 22060–6201.

Requests should contain individual's full name and Social Security Number (SSN).

CONTESTING RECORD PROCEDURES:

The DTRA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DTRA Instruction 5400.11; 32 CFR part 318; or may be obtained from the Arms Control Inspection Planning System, Program Lead, Operations Enterprise, Operations Branch, Defense Threat Reduction Agency, Room 4533, HQ Complex, 8725 John J. Kingman Road, Ft. Belvoir VA 22060–6201.

RECORD SOURCE CATEGORIES:

Individual, DTR Officials, and assignment personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–5699 Filed 3–16–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2009–0017]

Privacy Act of 1974; System of Records

AGENCY: Department of Air Force, DoD.

ACTION: Notice to delete a system of records.

SUMMARY: The Department of Air Force proposes to delete a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective on April 16, 2009 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Officer, Office of Warfighting Integration and Chief Information Officer, SAF/XCISI, 1800 Air Force Pentagon, Suite 220, Washington, DC 20330–1800.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Brodie at (703) 696–7557.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Air Force proposes to delete a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 11, 2009.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 AETC E

SYSTEM NAME:

Recruiting Activities Management Support System (RAMSS) (June 11, 1997, 62 FR 31793).

REASON:

The records collected for this system are now covered by F036 AETC X, College Scholarship Program (CSP) (August 22, 2008, 73 FR 49659).

Accordingly, this Privacy Act System of Records Notice should be deleted.

[FR Doc. E9–5700 Filed 3–16–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2009–0020]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Department of the Air Force proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on April 16, 2009 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Officer, Office of Warfighting Integration and Chief Information Officer, SAF/XCPPI, 1800 Air Force Pentagon, Washington, DC 20330–1800.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Swilley at (703) 696–6648.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, were submitted on March 9, 2009, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996, (February 20, 1996, 61 FR 6427).

Dated: March 11, 2009.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F032 AFCESA C

SYSTEM NAME:

Civil Engineer System—Explosive Ordnance Records.

SYSTEM LOCATION:

Department of the Air Force, 643 ELSS/EIRC, 201 East Moore Drive, Bldg 856, Gunter AFB, AL 36114–3001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty military, civilians, and Air Force contractor personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Full name, rank, Social Security Number (SSN), gender, place of birth, date of birth; email address; clearance and clearance investigation status; passport number, type, date and location of issue; training information to include dates of training, certifications; unit and assignment information; temporary duty information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; 10 U.S.C. 9832, Property Accountability: Regulations; Department of Defense Directive 5210.55, Selection of DoD Military and Civilian Personnel and Contractor Employees for Assignment duties; Department of Defense Regulation 5200–2R, DoD Personnel Security Program; Air Force Instruction 33–213, Identity Management; and E.O. 9397 (SSN).

PURPOSE(S):

Provide accurate documentation of Explosive Ordnance Device (EOD) incident reporting to cover emergency response to improvised explosive devices, conventional munitions, airfield emergencies, support to civil authorities, and weapons of mass destruction incidents. Record individual's home-station and contingency and ancillary training requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Last name, first name, and rank.

SAFEGUARDS:

Steps have been taken to limit the access to the Privacy data to only those users with the appropriate roles. Access to records is limited to persons responsible for servicing the record in performance of their official duties and who are properly screened and cleared for need-to-know. Access to the application is restricted by passwords which are changed periodically.

RETENTION AND DISPOSAL:

Records are retained for 30 years or until no longer needed and then deleted from the database by erasing or degaussing.

SYSTEM MANAGER(S) AND ADDRESS:

Information Technology Program Manager, HQ AFCESA/CEOI, 139 Barnes Drive, Suite 1, Tyndall AFB, FL 32403–5319.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to ACES/IWIMS Program Manager, HQ AFCESA/CEOI, 139 Barnes Drive, Suite 1, Tyndall AFB, FL 32403–5319.

Individual should provide their full name, aliases, date and place of birth, Social Security Number, service number(s), or other information verifiable from the records in written request.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to ACES/IWIMS Program Manager, HQ AFCESA/CEOI, 139 Barnes Drive, Suite 1, Tyndall AFB, FL 32403–5319.

Individual should provide their full name, aliases, date and place of birth, Social Security Number, service number(s), or other information verifiable from the records in written request.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3056, may be exempt pursuant to 5 U.S.C. 552a(k)(3).

An exemption rule for this record system has been promulgated in accqordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 806b.

[FR Doc. E9–5707 Filed 3–16–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Partially Closed Meeting of the Secretary of the Navy Advisory Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Secretary of the Navy Advisory Panel will meet to receive ethics training and discuss top areas of concern that the Secretary of the Navy should address. The discussion of such information would be exempt from public disclosure as set forth in section 552b(c)(5), (6), and (7) of title 5, United States Code. For this reason the executive session of this meeting will be closed to the public.

DATES: The open session of the meeting will be held on Thursday, April 2, 2009, from 8:15 a.m. to 10:15 a.m. The closed executive session will also be held on Thursday, April 2, 2009, from 10:30 a.m. to 2 p.m.

ADDRESSES: The meeting will be held in Room 5E456, in the Pentagon,

Washington, DC. The meeting will be handicap accessible.

For Access: Public access is limited due to the Pentagon Security requirements. Any individual wishing to attend will need to contact CDR Marc Gage at 703–695–3042 or LCDR Victor Spears at 703–695–3573 no later than March 26, 2009. Members of the public who do not have Pentagon access will be required to also provide name, date of birth and Social Security number by March 26, 2009, in order to obtain a visitor badge. Public transportation is recommended as public parking is not available.

Members of the public wishing to attend this event must enter through the Pentagon's Metro Entrance between 8:15 a.m. and 8:35 a.m. At this entrance, they will be required to present two forms of identification in order to receive a visitors badge and meet their escort. Members of the public will then be escorted to Room 5E456 to attend the open sessions of the Advisory Panel. Members of the public shall remain with designated escorts at all times while on the Pentagon Reservation. Members of the public will be escorted back to the Pentagon Metro Entrance at 10:15 a.m.

FOR FURTHER INFORMATION CONTACT: Colonel Caroline Simkins-Mullins, SECNAV Advisory Panel, Office of Program and Process Assessment 1000 Navy Pentagon, Washington, DC 20350, telephone: 703–697–9154.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act, as amended (5 U.S.C. App.). The executive session of this meeting will consist of discussions of ethics training for the Secretary of the Navy Advisory Panel. The proposed closed session from 10:30 a.m. to 2 p.m. will include a discussion of top areas of concern that the Secretary of the Navy should address. Discussion of such information cannot be adequately segregated from other topic, which precludes opening the executive session of this meeting to the public.

Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of this meeting be closed to the public because it will be concerned with matters listed in sections 552b(c)(5), and (7) of the title 5, United States Code.

Dated: March 10, 2009.

A.M. Vallandingham,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E9–5696 Filed 3–16–09; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education: Overview Information; Technological Innovation and Cooperation for Foreign Information Access Program Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

Catalog of Federal Domestic Assistance (CFDA) Number: 84.337A.

Dates: Applications Available: March 17, 2009.

Deadline for Transmittal of Applications: April 16, 2009.

Deadline for Intergovernmental Review: June 15, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Technological Innovation and Cooperation for Foreign Information Access (TICFIA) Program provides grants to support projects that will develop innovative techniques or programs using electronic technologies to collect information from foreign sources. The projects access, collect, organize, preserve, and widely disseminate information on world regions and countries other than the United States that address our Nation's teaching and research needs in international education and foreign languages.

Priority: This notice contains one invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

Invitational Priority:

This priority is:

Projects that focus on any of the seventy-eight (78) languages on the U.S. Department of Education's list of Less Commonly Taught Languages (LCTLs), which follows:

Akan (Twi-Fante), Albanian, Amharic, Arabic (all dialects), Armenian, Azeri (Azerbaijani), Balochi, Bamanakan (Bamana, Bambara, Mandikan, Mandingo, Maninka, Dyula), Belarusian, Bengali (Bangla), Berber (all languages), Bosnian, Bulgarian, Burmese, Cebuano (Visayan), Chechen, Chinese (Cantonese), Chinese (Gan), Chinese (Mandarin), Chinese (Min), Chinese (Wu), Croatian, Dari, Dinka, Georgian, Gujarati, Hausa, Hebrew (Modern), Hindi, Igbo, Indonesian, Japanese, Javanese, Kannada, Kashmiri, Kazakh, Khmer (Cambodian), Kirghiz, Korean, Kurdish (Kurmanji), Kurdish (Sorani), Lao, Malay (Bahasa Melayu or Malaysian), Malayalam, Marathi, Mongolian, Nepali, Oromo, Panjabi, Pashto, Persian (Farsi), Polish, Portuguese (all varieties), Quechua, Romanian, Russian, Serbian, Sinhala (Sinhalese), Somali, Swahili, Tagalog, Tajik, Tamil, Telugu, Thai, Tibetan, Tigrigna, Turkish, Turkmen, Ukrainian, Urdu, Uyghur/Uigur, Uzbek, Vietnamese, Wolof, Xhosa, Yoruba, and Zulu.

Program Authority: 20 U.S.C. 1126.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 84, 85, 86, 97, 98 and 99. As there are no program-specific regulations, each applicant is encouraged to read the authorizing statute for the TICFIA Program in section 606 of Title VI, part A of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1126.

Note: The regulations in 34 CFR part 79 apply to all applicants except Federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Areas of National Need:

In accordance with section 601(c) of the HEA, (20 U.S.C. 1121(c)), the Secretary has consulted with and received recommendations regarding national need for expertise in foreign languages and world regions from the head officials of a wide range of Federal agencies. The Secretary has taken these recommendations into account, and a list of foreign languages and world regions identified by the Secretary as areas of national need may be found on the following Web sites: *http://www.ed.gov/about/offices/list/ope/policy.html. http://www.ed.gov/programs/iegpsticfia/legislation.html.*

Also included on these Web sites are the specific recommendations the Secretary received from Federal agencies.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: We propose to allocate $1,700,000 for new awards for this program for FY 2009. The actual level of funding, if any, depends on final Congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $150,000–$190,000.

Estimated Average Size of Awards: $170,000.

Maximum Award: We will reject any application that proposes a budget exceeding $190,000 for a single budget period of 12 months. The Assistant Secretary for Postsecondary Education

may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* (1) Institutions of higher education (IHEs); (2) public or nonprofit private libraries; (3) a partnership of an IHE and one or more of the following: (A) another IHE; (B) a library; or (C) a nonprofit educational organization.

2. *Cost Sharing or Matching:* This program has a matching requirement under section 606(d) of the HEA, 20 U.S.C. 1126(d). The Federal share of the total cost of carrying out a program under this section shall not be more than 66⅔ percent. The non-Federal share of such costs may be provided either in-kind or in cash, and may include contributions from private sector corporations or foundations.

IV. Application and Submission Information

1. *Address to Request Application Package:* Susanna Easton, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., room 6093, Washington, DC 20006–8521. Telephone: (202) 502–7628; or, by e-mail: *Susanna.Easton@ed.gov*.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program competition. Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative [Part III] that addresses the selection criteria to no more than 40 pages, using the following standards:

• A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides. Page numbers and an identifier may be outside of the 1″ margin.

• Double space (no more than three lines per vertical inch) all text in the application narrative, *except* titles, headings, footnotes, quotations, references, captions, and all text in charts, tables, and graphs. These items may be single-spaced. Charts, tables, figures, and graphs in the application narrative count toward the page limit.

• Use a font that is either 12 point or larger, or no smaller than 10 pitch (characters per inch). However, you may use a 10 point font in charts, tables, figures, and graphs.

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the Application for Federal Assistance face sheet (SF 424); the supplemental information form required by the Department of Education; Part II, the budget information summary form (ED Form 524); or Part IV, the assurances and certifications. The page limit also does not apply to a table of contents. If you include any attachments or appendices not specifically requested, these items will be counted as part of your program narrative [Part III] for purposes of the page limit requirement. You must include your complete response to the selection criteria in the program narrative.

We will reject your application if you apply these standards and exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: March 17, 2009.

Deadline for Transmittal of Applications: April 16, 2009.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to Section IV. 6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in Section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: June 15, 2009.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Technological Innovation and Cooperation for Foreign Information Access (TICFIA) Program, CFDA number 84.337A, must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the TICFIA Program at *http://www.Grants.gov*. You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.*, search for 84.337, not 84.337A).

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically

through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted, and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf*.

• To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition, you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award Number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues With the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in Section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time; or, if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Susanna Easton, International Education Programs Service, U.S. Department of Education,

1990 K Street, NW., room 6093, Washington, DC 20006–8521. FAX: (202) 502–7860.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.337A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.337A) 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *General:* For FY 2009, applications will be randomly divided and reviewed by separate panels of foreign language and area studies and international studies experts. A rank order from highest to lowest score will be developed and used for funding purposes.

2. *Selection Criteria:* The selection criteria for this program are from EDGAR (34 CFR 75.209 and 75.210) and are as follows: (a) Meeting the purpose of the authorizing statute (15 points), (b) Need for project (10 points), (c) Significance (14 points), (d) Quality of the project design (12 points), (e) Quality of key personnel (8 points), (f) Quality of project services (4 points), (g) Adequacy of resources (12 points), (h) Quality of the management plan (10 points), and (i) Quality of the project evaluation (15 points).

Note: Applicants should address these selection criteria only in the context of the program requirements in section 606 of the HEA.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award of the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. Grantees are required to use the electronic data instrument International Resource Information System (IRIS) to complete the final report. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to: *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measure:* Under the Government Performance and Results Act of 1993 (GPRA), the Department will use the following measure to evaluate the success of this program: Percentage of projects judged to be successful by the program officer, based on a review of information provided in annual performance reports.

The information provided by grantees in their performance reports submitted via IRIS will be the source of data for this measure. Reporting screens for institutions can be viewed at: *http://www.ieps-iris.org/iris/pdfs/TICFIA.pdf.*

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Susanna Easton, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., room 6069, Washington, DC 20006–8521. Telephone: (202) 502–7628 or by e-mail: *susanna.easton@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in Section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF), on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Delegation of Authority: The Secretary of Education has delegated authority to Daniel T. Madzelan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education to perform the functions of the Assistant Secretary for Postsecondary Education.

Dated: March 12, 2009.

Daniel T. Madzelan,

Director, Forecasting and Policy Analysis.

[FR Doc. E9–5760 Filed 3–16–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.038, 84.033, and 84.007]

Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs

ACTION: Notice of the 2009–2010 award year deadline dates for the campus-based programs.

SUMMARY: The Secretary announces the 2009–2010 award year deadline dates for the submission of requests and documents from postsecondary institutions for the campus-based programs.

SUPPLEMENTARY INFORMATION: The Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs are collectively known as the campus-based programs.

The Federal Perkins Loan Program encourages institutions to make low-interest, long-term loans to needy undergraduate and graduate students to help pay for their education.

The FWS Program encourages the part-time employment of needy undergraduate and graduate students to help pay for their education and to involve the students in community service activities.

The FSEOG Program encourages institutions to provide grants to exceptionally needy undergraduate students to help pay for their cost of education.

The Federal Perkins Loan, FWS, and FSEOG programs are authorized by parts E and C, and part A, subpart 3, respectively, of title IV of the Higher Education Act of 1965, as amended.

Throughout the year, in its ''Electronic Announcements,'' the Department will continue to provide additional information for the individual deadline dates listed, via the Information for Financial Aid Professionals (IFAP) Web site at *http://www.ifap.ed.gov.*

Deadline Dates: The following table provides the 2009–2010 award year deadline dates for the submission of applications, reports, and waiver requests for the campus-based programs. Institutions must meet the established deadline dates to ensure consideration for funding or a waiver, as appropriate.

2009–2010 AWARD YEAR DEADLINE DATES

What does an institution submit?	How is it submitted?	What is the deadline for submission?
1. The Campus-Based Reallocation Form designated for the return of 2008–2009 funds and the request of supplemental FWS funds for the 2009–2010 award year.	The Reallocation Form must be submitted electronically via the Internet and is located in the ''Setup'' section of the FISAP on the Web at: *http://www.cbfisap.ed.gov*.	August 21, 2009.
2. The 2008–2009 Fiscal Operations Report and 2010–2011 Application to Participate (FISAP).	The FISAP is located on the Internet at the following Web site: *http://www.cbfisap.ed.gov*. The FISAP must be submitted electronically via the Internet, and the FISAP's signature page must be mailed to: FISAP Administrator, 2020 Company, LLC, 3110 Fairview Park Drive, Suite 950, Falls Church, VA 22042.	October 1, 2009.
3. The Work Colleges Program Report of 2008–2009 award year expenditures.	The Work Colleges Program Report can be found in the ''Setup'' section of the FISAP on the Web at: *http://www.cbfisap.ed.gov*. The report must be submitted electronically via the Internet, and a printed copy with an original signature must be submitted by one of the following methods: Hand deliver to: United States Department of Education, Federal Student Aid Grants & Campus-Based Division, 830 First Street, NE., Room 62E3, ATTN: Work Colleges Coordinator, Washington, DC 20002, or Mail to: The address listed above for hand delivery. However, please use ZIP Code 20202–5453.	October 1, 2009.
4. The 2008–2009 FISAP Edit Corrections and Perkins Cash on Hand Update.	The FISAP is located on the Internet at the following Web site: *http://www.cbfisap.ed.gov*. The FISAP Edit Corrections and Perkins Cash on Hand Update must be submitted electronically via the Internet.	December 15, 2009.
5. A request for a waiver of the 2010–2011 award year penalty for the underuse of 2008–2009 award year funds.	The request for a waiver can be found in Part II, Section C of the FISAP on the Web at: *http://www.cbfisap.ed.gov*. The request and justification must be submitted electronically via the Internet.	February 12, 2010.

2009–2010 AWARD YEAR DEADLINE DATES—Continued

What does an institution submit?	How is it submitted?	What is the deadline for submission?
6. The Institutional Application and Agreement for Participation in the Work Colleges Program for the 2010–2011 award year.	The Institutional Application and Agreement for Participation in the Work Colleges Program can be found in the ''Setup'' section of the FISAP on the Web at: *http://www.cbfisap.ed.gov*. The application and agreement must be submitted electronically via the Internet, and a printed copy with original signature must be submitted by one of the following methods: Hand deliver to: United States Department of Education, Federal Student Aid Grants & Campus-Based Division, 830 First Street, NE., Room 62E3, ATTN: Work Colleges Coordinator, Washington, DC 20002, or Mail to: The address listed above for hand delivery. However, please use ZIP Code 20202–5453.	March 12, 2010.
7. A request for a waiver of the FWS Community Service Expenditure Requirement for the 2010–2011 award year.	The FWS Community Service waiver request can be found in the ''Setup'' section of the FISAP on the Web at: *http://www.cbfisap.ed.gov.*. The request and justification must be submitted electronically via the Internet.	April 23, 2010.

Note:
• The deadline for electronic submissions is 11:59 p.m. (Eastern time) on the applicable deadline date. Transmissions must be completed and accepted by 12:00 midnight to meet the deadline.
• Paper documents that are sent through the U.S. Postal Service must be postmarked by the applicable deadline date.
• Paper documents that are hand delivered by a commercial courier must be received no later than 4:30 p.m. (Eastern time) on the applicable deadline date.
• The Secretary may consider on a case-by-case basis the effect that a major disaster, as defined in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)) or another unusual circumstance has on an institution in meeting the deadlines.

Proof of Mailing or Hand Delivery of Paper Documents

If you submit paper documents when permitted by mail or by hand delivery from a commercial courier, we accept as proof one of the following:

(1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(2) A legibly dated U.S. Postal Service postmark.

(3) A legibly dated shipping label, invoice, or receipt from a commercial courier.

(4) Other proof of mailing or delivery acceptable to the Secretary.

If the paper documents are sent through the U.S. Postal Service, we do not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office. All institutions are encouraged to use certified or at least first-class mail.

The Department accepts hand deliveries from commercial couriers between 8:00 a.m. and 4:30 p.m., Eastern time, Monday through Friday except Federal holidays.

Sources for Detailed Information on These Requests

A more detailed discussion of each request for funds or waiver is provided in specific ''Electronic Announcements,'' which are posted on the Department's IFAP Web site (*http://www.ifap.ed.gov*) at least 30 days before the established deadline date for the specific request. Information on these items is also found in the Federal Student Aid Handbook.

Applicable Regulations: The following regulations apply to these programs:

(1) Student Assistance General Provisions, 34 CFR part 668.

(2) General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 673.

(3) Federal Perkins Loan Program, 34 CFR part 674.

(4) Federal Work-Study Programs, 34 CFR part 675.

(5) Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 676.

(6) Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600.

(7) New Restrictions on Lobbying, 34 CFR part 82.

(8) Governmentwide Requirements for Drug-Free Workplace (Financial Assistance), 34 CFR part 84.

(9) Governmentwide Debarment and Suspension (Nonprocurement), 34 CFR part 85.

(10) Drug and Alcohol Abuse Prevention, 34 CFR part 86.

FOR FURTHER INFORMATION CONTACT: Kathleen Wicks, Director of Grants & Campus-Based Division, U.S. Department of Education, Federal Student Aid, 830 First Street, NE., Union Center Plaza, room 62E3, Washington, DC 20202–5453. Telephone: (202) 377–3110 or via the Internet: *kathleen.wicks@ed.gov.*

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 can obtain this document in an accessible format (*e.g.* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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Program Authority: 20 U.S.C. 1087aa *et seq.*; 42 U.S.C. 2751 *et seq.*; and 20 U.S.C. 1070b *et seq.*

Dated: March 12, 2009.

James F. Manning,

Acting Chief Operating Officer, Federal Student Aid.

[FR Doc. E9–5759 Filed 3–16–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, April 2, 2009, 9 a.m.–5 p.m., Friday, April 3, 2009, 8:30 a.m.–4 p.m.

ADDRESSES: Red Lion Hotel on the River, Jantzen Beach, 909 N. Hayden Island Drive, Portland, Oregon 97217, Phone: (503) 978–4586, Fax: (503) 735–4847.

FOR FURTHER INFORMATION CONTACT: Paula Call, Federal Coordinator, Department of Energy Richland Operations Office, 825 Jadwin Avenue, P.O. Box 550, A7–75, Richland, WA 99352; Phone: (509) 376–2048; or e-mail: *Paula_K_Call@rl.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- Agency Updates (Department of Energy Office of River Protection and Richland Operations Office (RL); Washington State Department of Ecology; and the U.S. Environmental Protection Agency).
- Committee Updates, including: Tank Waste Committee; River and Plateau Committee; Health, Safety and Environmental Protection Committee; Public Involvement Committee; and Budgets and Contracts Committee.
- Draft Advice: Tri-Party Agreement Change Package, Beryllium Exposure, RL System Criteria to Guide Selection of Optimum Paths for Remediation on Hanford Waste, Draft Advice on Environmental Restoration Disposal Facility Record of Decision Amendment.
- Plutonium Toxicity Tutorial.
- Landscape View of Public Involvement.
- Spring Budget Meetings.
- Tank Closure Tutorial.
- Issue Manager Training.
- Board Self-Evaluation Report.
- Updates to Hanford Advisory Board Process Manual.
- Vice Chair Nominations.

Public Participation: The meeting is open to the public. The EM SSAB, Hanford, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Paula Call at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Paula Call at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Paula Call's office at the address or phone number listed above. Minutes will also be available at the following Web site: *http://www.hanford.gov/?page=413&parent=397.*

Issued at Washington, DC, on March 12, 2009.

LaTanya Butler,

Acting Deputy Committee Management Officer.

[FR Doc. E9–5705 Filed 3–16–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Changes to Public Hearings for the Revised Draft Environmental Impact Statement for Decommissioning and/or Long-Term Stewardship at the West Valley Demonstration Project and Western New York Nuclear Service Center, DOE/EIS–0226D (Revised)

AGENCY: Department of Energy.

ACTION: Notice of changes to public hearings.

SUMMARY: This notice announces changes to the public hearings initially published in the December 5, 2008 Notice of Availability (73 FR 74160) for the *Revised Draft Environmental Impact Statement for Decommissioning and/or Long-Term Stewardship at the West Valley Demonstration Project and Western New York Nuclear Service Center [DOE/EIS–0226–D (Revised)]* (referred to as the ''Draft Decommissioning and/or Long-Term Stewardship EIS'' or ''Draft EIS.''). An additional public hearing will be held in Albany, NY and the location for the Blasdell, NY hearing has been changed to Buffalo, NY.

DATES: Public hearings on the Draft EIS will be held on March 30, 2009; March 31, 2009; April 1, 2009; and April 2, 2009.

ADDRESSES: Public hearings will be held at the following locations: Monday, March 30, 2009, from 6:30 p.m. to 9:30 p.m. at the Crowne Plaza Albany Hotel, State and Lodge Street, Albany, NY 12207; Tuesday, March 31, 2009, from 6 p.m. to 9 p.m. at the Seneca Nation of Indians, William Seneca Building, 12837 Route 438, Irving, NY 14081; Wednesday, April 1, 2009, from 6:30 p.m. to 9:30 p.m. at the Ashford Office Complex, 9030 Route 219, West Valley, NY 14177; and Thursday, April 2, 2009, from 6:30 p.m. to 9:30 p.m. at the Erie Community College/City Campus Auditorium, 121 Ellicott Street, Buffalo, NY 14203.

FOR FURTHER INFORMATION CONTACT: Oral and written comments on the Draft EIS will be accepted at the public hearings, or written comments may be mailed to Catherine Bohan, EIS Document Manager, West Valley Demonstration Project, U.S. Department of Energy, P.O. Box 2368, Germantown, MD 20874. Comments must be received by June 8, 2009 to be considered in the Final EIS. Comments may also be submitted via e-mail at *http://www.westvalleyeis.com* or by faxing toll-free to 866–306–9094. Please mark all envelopes, faxes, and e-mail: ''Draft Decommissioning and/or

Long-Term Stewardship EIS Comments.''

Issued in Washington, DC on March 11, 2009.

Michael C. Moore,

Acting Director, Office of Small Sites Projects.

[FR Doc. E9–5701 Filed 3–16–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–48–002]

Chandeleur Pipe Line Company; Notice of Application for Amendment

March 10, 2009.

Take notice that on March 3, 2009, Chandeleur Pipe Line Company (Chandeleur) filed with the Commission an application pursuant to section 7(c) of the Natural Gas Act (NGA), as amended, and part 157 of the Commission's regulations seeking an amendment of the existing authorization issued to Chandeleur on May 11, 2004 [1] in Docket No CP04–48–000 (May 11 Order) for the acquisition from Chevron Natural Gas Pipe Line LLC (Chevron) of Chevron's interest in the Mobile Area Gathering System (MAGS), an offshore gathering pipeline.

Specifically, by the application, Chandeleur requests that the Commission amend the Certificate of Public Convenience and Necessity issued in the May 11 Order to authorize Chandeleur to acquire the interest of Murphy Exploration & Production Company (Murphy) in the MO 908 Segment of the MAGS System. The acquisition by Chandeleur of this remaining interest will complete Chandeleur's ownership of the MAGS System.

Copies of this filing are available for review at the Commission's Washington, DC offices, or may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (801) 584–6851.

Any questions regarding this application should be directed to Jeffrey L. Kirk, at 4800 Fournace Place, Bellaire, Texas 77401, or by telephone at (713) 432–6753, or via e-mail at *jkgv@chevron.com*.

There are two ways to become involved in the Commission's review of this application. First, any person wishing to obtain legal status by becoming a party to this proceeding should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to the project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link. 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.

Comment Date: March 31, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–5684 Filed 3–16–09; 8:45 am]

BILLING CODE 6717–01–P

[1] 107 FERC ¶ 61,162 (2004).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2175–000,120–000, 67–000]

Southern California Edison Company; Notice of Authorization for Continued Project Operation

March 10, 2009.

On February 23, 2007, the Southern California Edison Company, licensee for the Big Creek Nos.1, 2, (FERC No. 2175), 3 (FERC No.120), and 2A, 8, and Eastwood Project (FERC No. 67), filed Applications for New license(s) pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Big Creek Nos. 1 and 2 are situated along Big Creek, No. 3 is situated on the San Joaquin River, and the Nos. 2A, 8, and Eastwood Project is situated on the South Fork San Joaquin River. The nearest communities are Big Creek, Shaver Lake, North Fork, City of Fresno, and Auberry.

The licenses for Project Nos. 2175, 120, and 67 were issued for a period ending February, 28, 2009. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its

application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project Nos. 2175, 120, and 67 is issued to the Southern California Edison Company for a period effective March 1, 2009 through February 28, 2010, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before February 28, 2010, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise. If the project is not subject to section 15 of the FPA, notice is hereby given that the Southern California Edison Company is authorized to continue operation of the Big Creek Nos. 1 and 2, 3, and 2A, 8, and Eastwood Projects, until such time as the Commission acts on its application for a subsequent license.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–5681 Filed 3–16–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

March 10, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP96–312–188.

Applicants: Tennessee Gas Pipeline Company.

Description: Tennessee Gas Pipeline Company submits notice of the termination of a Negotiated Rate Arrangement.

Filed Date: 03/02/2009.

Accession Number: 20090309–0168.

Comment Date: 5 p.m. Eastern Time on Monday, March 16, 2009.

Docket Numbers: RP99–176–185.

Applicants: Natural Gas Pipeline Company of America.

Description: Natural Gas Pipeline Company of America, LLC submits an amendment with a negotiated rate exhibit to an existing recourse rate Storage Rate Schedule NSS Agreement with JP Morgan Ventures Energy Corp etc.

Filed Date: 03/05/2009.

Accession Number: 20090306–0038.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 17, 2009.

Docket Numbers: RP99–176–186.

Applicants: Natural Gas Pipeline Company of America.

Description: Natural Gas Pipeline Company of America, LLC submits an amendment with negotiated rate exhibit to an existing negotiated Storage Rate Schedule NSS Agreement etc with Oneok Energy Services Company, LP.

Filed Date: 03/05/2009.

Accession Number: 20090306–0039.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 17, 2009.

Docket Numbers: RP99–176–187

Applicants: Natural Gas Pipeline Company of America.

Description: Natural Gas Pipeline Company of America, LLC submits an amendment with negotiated rate exhibit to an existing discount Transportation Rate Schedule FTS Agreement.

Filed Date: 03/05/2009.

Accession Number: 20090306–0040.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 17, 2009.

Docket Numbers: RP99–176–188.

Applicants: Natural Gas Pipeline Company of America.

Description: Natural Gas Pipeline Company of America, LLC submits an amendment with negotiated rate exhibit to an existing discounted Storage Rate Schedule NSS Agreement.

Filed Date: 03/05/2009.

Accession Number: 20090306–0041.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 17, 2009.

Docket Numbers: RP99–176–189.

Applicants: Natural Gas Pipeline Company of America.

Description: Natural Gas Pipeline Company of America, LLC submits a new Transportation Rate Schedule FTS Agreement *et al.* Filed Date: 03/05/2009.

Accession Number: 20090306–0042.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 17, 2009.

Docket Numbers: RP99–176–190.

Applicants: Natural Gas Pipeline Company of America.

Description: Natural Gas Pipeline Company of America, LLC submits an amendment with negotiated rate exhibit to an existing recourse rate Storage Rate Schedule NSS Agreement.

Filed Date: 03/05/2009.

Accession Number: 20090306–0043.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 17, 2009.

Docket Numbers: RP99–176–191.

Applicants: Natural Gas Pipeline Company of America.

Description: Natural Gas Pipeline Company of America, LLC submits an amendment with a negotiated rate exhibit to an existing recourse rate Transportation Rate Schedule FTS Agreement with Black Hills Utility Holdings, Inc etc.

Filed Date: 03/05/2009.

Accession Number: 20090306–0036.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 17, 2009.

Docket Numbers: RP04–274–017.

Applicants: Kern River Gas Transmission Company.

Description: Kern River Gas Transmission Company submits its FERC Gas Tariff, Second Revised Volume 1 the tariff sheets, the tariff sheets listed on Appendix A effective dates indicated.

Filed Date: 03/02/2009.

Accession Number: 20090306–0107.

Comment Date: 5 p.m. Eastern Time on Monday, March 16, 2009.

Docket Numbers: RP08–257–004.

Applicants: Saltville Gas Storage Company L.L.C.

Description: Saltville Gas Storage Company LLC submits their refund report pursuant to Sections 154.501 and 154.502 of the Commission's regulations.

Filed Date: 03/06/2009.

Accession Number: 20090309–0140.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 18, 2009.

Docket Numbers: RP08–484–002.

Applicants: Colorado Interstate Gas Company.

Description: Colorado Interstate Gas Co submits Sixth Revised Sheet 318 *et al* to FERC Gas Tariff, First Revised Volume 1, to be effective 2/1/09.

Filed Date: 02/27/2009.

Accession Number: 20090304–0153.

Comment Date: 5 p.m. Eastern Time on Friday, March 13, 2009.

Docket Numbers: RP06–540–007.

Applicants: High Island Offshore System, L.L.C.

Description: Second annual report of non-routine expenditures pursuant to its O&M Agreement for calendar year 2008 of High Island Offshore System, L.L.C..

Filed Date: 03/02/2009.

Accession Number: 20090302–5186.

Comment Date: 5 p.m. Eastern Time on Monday, March 16, 2009.

Docket Numbers: RP09–435–000.

Applicants: Chandeleur Pipe Line Company.

Description: Chandeleur Pipe Line Company submits Petition For Approval of Settlement requesting Commission approval of an Offer of Settlement and Stipulation and Agreement etc.

Filed Date: 03/04/2009.
Accession Number: 20090305–0081.
Comment Date: 5 p.m. Eastern Time on Monday, March 16, 2009.

Docket Numbers: RP09–437–000.
Applicants: Young Gas Storage Company, Ltd.
Description: Young Gas Storage Company, LTD submits Eighth Revised Sheet No 96 *et al* to FERC Gas Tariff, Original Volume No 1.
Filed Date: 03/06/2009.
Accession Number: 20090309–0163.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 18, 2009.

Docket Numbers: RP09–438–000.
Applicants: Wyoming Interstate Company, Ltd.
Description: Wyoming Interstate Company, Ltd submits Eighth Revised Sheet No 72 *et al* to FERC Gas Tariff, Second Revised Volume No 2.
Filed Date: 03/06/2009.
Accession Number: 20090309–0164.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 18, 2009.

Docket Numbers: RP09–439–000.
Applicants: Cheyenne Plains Gas Pipeline Company LLC.
Description: Cheyenne Plains Gas Company, LLC submits First Revised Sheet No 244 *et al* to FERC Gas Tariff, Original Volume No 1.
Filed Date: 03/06/2009.
Accession Number: 20090309–0165.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 18, 2009.

Docket Numbers: RP09–440–000.
Applicants: Colorado Interstate Gas Company.
Description: Colorado Interstate Gas Co submits Fifth Revised Sheet No. 330B *et al* to FERC Gas Tariff, First Revised Volume No. 1, to be effective 5/1/09.
Filed Date: 03/06/2009.
Accession Number: 20090309–0166.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 18, 2009.

Docket Numbers: RP09–441–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: Fee Collection Report by Transcontinental Gas Pipeline: Petitions for issuance of declaratory order.
Filed Date: 03/06/2009.
Accession Number: 20090309–0142.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 18, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–5685 Filed 3–16–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

March 5, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP96–312–189.
Applicants: Tennessee Gas Pipeline Company.
Description: Tennessee Gas Pipeline Co submits an amended gas transportation agreement.
Filed Date: 03/02/2009.
Accession Number: 20090304–0081.
Comment Date: 5 p.m. Eastern Time on Monday, March 16, 2009.

Docket Numbers: RP96–320–101.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Co, LP submits the capacity release agreement.
Filed Date: 02/27/2009.
Accession Number: 20090304–0150.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 11, 2009.

Docket Numbers: RP96–272–088.
Applicants: Northern Natural Gas Company.
Description: Northern Natural Gas Co submits 50 Revised Sheet 66 *et al* to FERC Gas Tariff, Fifth Revised Volume 1, to be effective 3/1/09.
Filed Date: 02/27/2009.
Accession Number: 20090304–0155.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 11, 2009.

Docket Numbers: RP96–383–092.
Applicants: Dominion Transmission, Inc.
Description: Dominion Transmission, Inc submits Sixteenth Revised Sheet 1405 to FERC Gas Tariff, Third Revised Volume 1, to be effective 3/1/09.
Filed Date: 02/27/2009.
Accession Number: 20090304–0154.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 11, 2009.

Docket Numbers: RP99–176–183.
Applicants: Natural Gas Pipeline Co of America LLC.
Description: Natural Gas Pipeline Company of America, LLC submits the Firm Transportation and Storage Negotiated Rate Agreement with Northern Illinois Gas Co.
Filed Date: 02/27/2009.
Accession Number: 20090304–0152.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 11, 2009.

Docket Numbers: RP99–176–184.
Applicants: Natural Gas Pipeline Co of America LLC.
Description: Natural Gas Pipeline Co of America, LLC submits two amendments to the Transportation Rate Schedule FTS Agreement.
Filed Date: 02/27/2009.
Accession Number: 20090304–0151.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 11, 2009.

Docket Numbers: RP06–540–007.
Applicants: High Island Offshore System, L.L.C.

Description: Second annual report of non-routine expenditures pursuant to its O&M Agreement for calendar year 2008 of High Island Offshore System, L.L.C..

Filed Date: 03/02/2009.

Accession Number: 20090302–5186.

Comment Date: 5 p.m. Eastern Time on Monday, March 16, 2009.

Docket Numbers: RP09–285–001.

Applicants: Central Kentucky Transmission Company.

Description: Central Kentucky Transmission Co submits Second Revised Sheet No. 134 *et al* to FERC Gas Tariff, Second Revised Volume No. 1, to be effective 2/26/09.

Filed Date: 03/03/2009.

Accession Number: 20090304–0129.

Comment Date: 5 p.m. Eastern Time on Monday, March 16, 2009.

Docket Numbers: RP09–427–000.

Applicants: Southern Natural Gas Company.

Description: Southern Natural Gas submits Third Revised Sheet 1 *et al* to FERC Gas Tariff, Seventh Revised Volume 1.

Filed Date: 03/02/2009.

Accession Number: 20090304–0082.

Comment Date: 5 p.m. Eastern Time on Monday, March 16, 2009.

Docket Numbers: RP09–429–000.

Applicants: Florida Gas Transmission Company, LLC.

Description: Florida Gas Transmission Company LLC submits their Capital Surcharge Filing.

Filed Date: 02/27/2009.

Accession Number: 20090304–0073.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 11, 2009.

Docket Numbers: RP09–431–000.

Applicants: Vector Pipeline, L.P.

Description: Vector Pipeline, LP submits proposed tariff sheets for the purpose of effecting a general system-wide rate decrease.

Filed Date: 02/27/2009.

Accession Number: 20090304–0074.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 11, 2009.

Docket Numbers: RP09–432–000.

Applicants: El Paso Natural Gas Company.

Description: El Paso Natural Gas Co submits a transportation service agreement and Twentieth Revised Sheet 2 to FERC Gas Tariff, Second Revised Volume 1A under RP09–432.

Filed Date: 03/02/2009.

Accession Number: 20090304–0077.

Comment Date: 5 p.m. Eastern Time on Monday, March 16, 2009.

Docket Numbers: RP09–433–000.

Applicants: Dominion Cove Point LNG, LP.

Description: Dominion Cove Point LNG, LP submits Eleventh Revised Sheet 8 *et al* to FERC Gas Tariff, Original Volume 1.

Filed Date: 02/27/2009.

Accession Number: 20090304–0079.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 11, 2009.

Docket Numbers: RP09–434–000.

Applicants: Sabine Pipe Line, LLC.

Description: Sabine Pipe Line, LLC submits Twelfth Revised Sheet 20 to FERC Gas Tariff, Original Volume 1 under RP09–434.

Filed Date: 03/03/2009.

Accession Number: 20090304–0078.

Comment Date: 5 p.m. Eastern Time on Monday, March 16, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–5686 Filed 3–16–09; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR09–3–000]

Western Refining Southwest, Inc. and Western Refining Pipeline Company v. TEPPCO Crude Pipeline, LLC; Notice of Complaint Amendmemt

March 10, 2009.

Take notice that on March 4, 2009, Western Refining Southwest, Inc. (Western) and Western Refining Pipeline Company (Western Pipeline) amended their complaint dated February 9, 2009 against TEPPCO Crude Pipeline, LLC (TEPPCO). Western and Western Pipeline have amended their Complaint in order to address their allegations regarding TEPPCO's continued violation of the Interstate Commerce Act and the Commission's Rules and Regulations by refusing to honor nominations made by Western subsequent to filing of the Complaint.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the

Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email 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 Tuesday, March 24, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–5680 Filed 3–16–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–58–000]

Rockies Express Pipeline LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Meeker to Cheyenne Expansion Project and Request for Comments on Environmental Issues

March 10, 2009.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Meeker to Cheyenne Expansion Project involving construction and operation of facilities by Rockies Express Pipeline LLC (REX) in Moffat County, Colorado, and Carbon County, Wyoming. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This Notice of Intent (NOI) announces the opening of the scoping process we will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine which issues need to be evaluated in the EA. Please note that the scoping period will close on April 9, 2009.

This notice is being sent to landowners of property within 2.5 mile of the Big Hole and Arlington Compressor Stations; Federal, State, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Summary of the Proposed Project

REX proposes to design, construct, and maintain (a) a new 17,500-horsepower (hp) electric-driven compressor unit at the existing Arlington Compressor Station in Carbon County, Wyoming; and (b) a new 20,500-hp gas-fired compressor unit at the existing Big Hole Compressor Station in Moffat County, Colorado.

Carbon Power and Light, Inc. (CP&L) would construct a 230-kilovolt electric transmission line about three (3) miles long to serve the electric compressor units at the Arlington Compressor Station. The proposed transmission line would begin at the Foot Creek Substation and follow a route to the southwest along Wyoming State Highway 13 to CP&L's planned Arlington substation site adjacent to the Arlington Compressor Station.[1]

The additional compression expansion would provide an additional 200,000 dekatherms per day (Dth/day) of natural gas from the Meeker Hub northward to the Wamsutter Hub and continuing eastward to the Cheyenne Hub as a result of a ''ramp-up'' contractual agreement with EnCana Marketing USA. If approved, REX proposes to commence construction of the proposed facilities in July 2010.

The general location map of REX's Meeker to Cheyenne Expansion Project and CP&L's facilities are shown in Appendix 1.[2]

Land Requirements for Construction

Construction of the compressor station expansions would occur completely within the fenced property boundaries of the existing 19.4-acre Big Hole and 10.8-acre Arlington Compressor Stations. Land required for operation of the new compressor units would be 0.7 acre within the existing compressor station sites. Existing public roads would be used to access the facilities.

CP&L's planned transmission line would be about 4.2 miles long with a 150-foot wide right of way (ROW). Support structures would be ''H–Frame'' wooden poles which would be placed every 650 feet apart for a total of about 34 structures. Land disturbance during construction would be approximately 2800 square feet per structure. At each structure there would be a 100-foot by 100-foot area that would be permanently cleared of trees or shrubbery.

The EA Process

The National Environmental Policy Act (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. 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 NOI, 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. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we[3] will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Land use.
- Water resources, fisheries, and wetlands.
- Cultural resources.
- Vegetation and wildlife.
- Air quality and noise.
- Endangered and threatened species.
- Public safety.

We will also evaluate possible alternatives to the proposed project or

[1] This NOI is also being sent to affected landowners along the planned CP&L non-jurisdictional transmission line.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than appendix 1 (maps) are available on the Commissions Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instruction on connecting to eLibrary, refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

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 in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies; public interest groups; interested individuals; affected landowners; newspapers; libraries; and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the Meeker to Cheyenne Expansion Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before April 9, 2009.

For your convenience, there are three methods in which you can use to submit your comments to the Commission. In all instances please reference the project docket number CP09–58–000 with your submission. The docket number can be found on the front of this notice. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at 202–502–8258 or *efiling@ferc.gov*.

(1) You may file your comments electronically by using the *Quick Comment* feature, which is located on the Commission's Internet Web site at *http://www.ferc.gov* under the link to *Documents and Filings*. A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's Internet website at *http://www.ferc.gov* under the link to *Documents and Filings*. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on ''*Sign up*'' or ''*eRegister*.'' You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing;'' or

(3) You may file your comments via mail to the Commission by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Label one copy of the comments for the attention of Gas Branch 1, PJ11.1.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities.

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (Appendix 2). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor,'' which is an official party to the proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's Internet Web site.

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 (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202)502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

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 *http://www.ferc.gov/esubscribenow.htm*.

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–5679 Filed 3–16–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

March 10, 2009.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that

the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may 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, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	File date	Presenter or requester
Prohibited:		
1. CP09–54–000	3–4–09	Commission Staff.[1]
Exempt:		
1. CP04–36–000	3–4–09	Hon. Walter S. Felag, Jr.
2. CP08–458–000	3–4–09	Kenneth Warn.
3. CP07–444–000	3–9–09	Kenneth Warn.
4. CP09–54–000	2–12–09	Hon. Dave Freudenthal.
5. CP09–54–000	3–10–09	David Swearington.
6. EL09–29–000, EL09–30–000	2–27–09	Hon. Brad Molnar.
7. P–2210–169	2–23–09	T. P. Rogers.[2]
8. P–12429–000	3–9–09	Dan Jewell.

[1] Memorandum to the File, Summary of Meeting.
[2] E-mail attaching informational filing.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–5678 Filed 3–16–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2244–022]

Energy Northwest; Notice of Staff Participation in Meeting

March 10, 2009.

On April 27, 2009, Office of Energy Projects staff (staff) will host a meeting in Olympia, Washington to: (1) Discuss the Packwood Lake Hydroelectric Project (project) draft environmental assessment (EA) (issued on February 5, 2009), and comments filed therein; (2) to discuss and attempt to resolve differences between the staff's recommended alternative in the draft EA with the 10(j) recommendation filed by the Washington Department of Fish and Wildlife; and (3) facilitate the processing of the National Marine Fisheries Service's biological opinion, the Washington State Department of Ecology's water quality certification, and the Forest Service's modified 4(e) conditions for the project.

The meeting will start at 9 a.m. at the Washington Public Utility District Association building, located at 212 Union Avenue SE., Olympia, WA 98501. For directions please contact Audrey Desserault of Energy Northwest at (509) 377–8468, or via e-mail at: *AJDESSERAULT@energy-northwest.com*. For further information about the meeting please contact Carolyn Templeton of the Commission's staff at (202) 502–8785, or via e-mail at: *Carolyn.Templeton@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–5682 Filed 3–16–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01–5–000]

Electronic Tariff Filings; Notice of Technical Conference Regarding Electronic Tariff Filing

March 10, 2009.

Take notice that on April 28, 2009, from 9 a.m. to 12 noon, a technical conference will be held to discuss the implementation of electronic tariff filing. In Order No. 714,[1] the Commission adopted regulations requiring that, as of April 1, 2010, tariff and tariff related filings must be made electronically. The first technical conference was held on December 3, 2008.

This conference will cover: the data fields and formatting to be included in the Table of Contents on the Commission's public viewer; issues that have arisen with respect to the testing site, including the need for dates or versioning in the comma separated value files and the error codes and descriptions; and a discussion of the means by which companies may, if they choose, include pending compliance tariff provisions in their baseline filings. Time permitting, participants also will be free to ask questions about other issues related to electronic tariff filing.

Background material on the standards and requirements can be found on the Commission's Web site (*http://www.ferc.gov*; click on eTariff under the Documents and Filings Heading).

The technical conference is open to the public. The conference will be held at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. In addition, the conference will be accessible via telephone. Staff anticipates posting any documents that may be referenced during the conference on the eTariff Web site so that they will be accessible to those using the telephone.

The telephone number for the conference will be posted on *http://www.ferc.gov/docs-filing/etariff.asp* and an RSS alert of the posting will be

[1] *Electronic Tariff Filings*, Order No. 714, 73 FR 57,515 (Oct. 3, 2008), 124 FERC ¶ 61,270, FERC Stats. & Regs [Regulations Preambles] ¶ 31,276 (2008) (Sept. 19, 2008).

issued. No preregistration is needed to access the conference by telephone.

For more information, contact Keith Pierce, Office of Energy Market Regulation at (202) 502–8525 or send an e-mail to *ETariff@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–5683 Filed 3–16–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OA–2006–0074; FRL–8782–4]

Agency Information Collection Activities; Proposed Collection; Comment Request; Volunteer Customer Satisfaction Surveys; ICR Number 1711.06, OMB Control No. 2090–0019

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on August 30, 2009. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before May 18, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OA–2006–0074 by one of the following methods:

- *www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: docket.oei@epa.gov.*
- *Fax:* 202–566–1753.
- *Mail:* OEI Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* OEI Docket in the EPA Docket Center [EPA/DC], EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OA–2006–0074. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Patricia Bonner, National Center for Environmental Innovation [Mail Code 1807T], Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–566–2204; fax number: 202–566–2200; e-mail address: *bonner.patricia@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OA–2006–0074 is available for online viewing at *www.regulations.gov,* or in person viewing at the OEI Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the OEI Docket is 202–566–1752.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Voluntary Customer Satisfaction Surveys

Docket ID No.: EPA–HQ–OA–2006–0074.

Affected entities: Entities potentially affected by this action are primarily individuals and households.

Title: Voluntary Customer Satisfaction Surveys.

ICR numbers: EPA ICR No. 1711.06. OMB Control No. 2090–0019.

ICR status: This ICR is currently scheduled to expire on August 30, 2009. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: EPA uses voluntary surveys to learn how satisfied EPA customers are with our services, and how we can improve services, products and processes. EPA surveys individuals who use services or could have. During the next three years, EPA plans up to 56 surveys, and will use results to target/measure service delivery improvements. By seeking renewal of the generic clearance for customer surveys, EPA will have the flexibility to gather the views of our customers to better determine the extent to which our services, products and processes satisfy their needs or need to be improved. The generic clearance will speed the review and approval of customer surveys that solicit opinions from EPA customers on a voluntary basis, and do not involve ''fact-finding'' for the purposes of regulatory development or enforcement.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it has a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average not more than eight minutes. Response development time will range from several minutes to two hours per response, depending whether the instrument is a short series of feedback questions or a more complex discussion session for a focus group. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR now available uses estimates that may change as the Agency updates information about survey planning for the next three years. Further information will be provided when the Second **Federal Register** Notice is published. The Agency's estimates are summarized briefly here:

Estimated total number of potential respondents: 15,000–16,000.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: One.

Estimated total annual burden hours: 1,500–1,700.

Estimated total annual costs: $8,000. This includes an estimated burden cost of $8,000 and an estimated cost of $0 for capital investment or maintenance and operational costs.

Are There Changes in the Estimates From the Last Approval?

EPA expects that the number of respondent burden hours will decrease by 10–15%, from 2,000 hours in the current ICR to 1,700 hours or less over the next three years. This decrease is because the Agency continues its move from all other types of surveys to online surveys and the total number of surveys submitted for processing continues to decrease.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: March 11, 2009.

David Widawsky,

Acting Director, National Center for Environmental Innovation, Office of Policy, Economics and Innovation, Office of the Administrator.

[FR Doc. E9–5729 Filed 3–16–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 31, 2009.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Louis A. Welle, Naples, Florida, and Kenneth M. Welle and Lori M. Welle, both of Dayton, Minnesota, as a group acting in concert, to acquire voting shares of Community Pride Bank Corporation, Ham Lake, Minnesota, and thereby indirectly acquire voting shares of Community Pride Bank, Isanti, Minnesota.

Board of Governors of the Federal Reserve System, March 11, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–5651 Filed 3–16–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 10, 2009.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Bank Applications Officer) 33 Liberty Street, New York, New York 10045–0001:

1. Chemung Financial Corporation, Elmira, New York, to acquire, by merger, Canton Bancorp, Inc., and thereby indirectly acquire The Bank of Canton, both of Canton, Pennsylvania.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. OSB Financial Corporation, Brooklyn, Michigan, to become a bank holding company by acquiring 100 percent of the voting shares of OSB Community Bank, Brooklyn, Michigan.

C. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Beartooth Financial Corporation, Billings, Montana, to become a bank holding company by acquiring 100 percent of the voting shares of Beartooth Bank, Billings, Montana.

Board of Governors of the Federal Reserve System, March 12, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–5693 Filed 3–16–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. E9-4588) published on page 9403 of the issue for Wednesday, March 4, 2009.

Under the Federal Reserve Bank of Atlanta heading, the entry for RMB Holdings, LLC, and ATB Management, LLC, both of Birmingham, Alabama, is revised to read as follows:

A. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. RMB Holdings, LLC, and ATB Management, LLC, both of Birmingham, Alabama, to acquire up to 30 percent of the voting shares of Americus Financial Services, Inc., and thereby indirectly acquire voting shares of Red Mountain Bank, N.A., both of Birmingham, Alabama.

Comments on this application must be received by March 30, 2009.

Board of Governors of the Federal Reserve System, March 11, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–5652 Filed 3–16–09 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 website at *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 April 1, 2009.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. Manhattan Bancorp, El Segundo, California; and Carpenter Fund Manager GP, LLC; Carpenter Fund Management, LLC; Carpenter Community Bancfund, L.P.; Carpenter Community Bancfund–A, L.P.; Carpenter Community Bancfund–CA, L.P.; CCFW, Inc.; and SCJ, Inc., all of Irvine, California, to form a new wholly owned subsidiary, MB Financial Services, Inc., El Segundo, California, which will enter into a *de novo* joint venture with Bodi Advisors, Inc., El Segundo, California, by acquiring approximately 70 percent of the voting shares of Bodi Capital LLC, and thereby engage in riskless principal transactions, pursuant to section 225.28(b)(7), and mortgage brokerage and loan origination activities, pursuant to section 225.28(b)(1), both of Regulation Y.

Board of Governors of the Federal Reserve System, March 12, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–5692 Filed 3–16–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 082 3114]

American Telecom Services, Inc.; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of

federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before April 9, 2009.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to''American Telecom Services, File No. 082 3114'' to facilitate the organization of comments. Please note that your comment—including your name and your state—will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . .,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://secure.commentworks.com/ftc-AmericanTelecom*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink: (*https://secure.commentworks.com/ftc-AmericanTelecom*). If this Notice appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at *http://www.ftc.gov* to read the Notice and the news release describing it.

A comment filed in paper form should include the ''American Telecom Services, Inc., File No. 082 3114'' reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135, 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The Federal Trade Commission Act (''FTC Act'') and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

FOR FURTHER INFORMATION CONTACT: Linda K. Badger, FTC Western Region, San Francisco, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, (415) 848-5151.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 11, 2009), on the World Wide Web, at (*http://www.ftc.gov/os/2009/03/index.htm*). A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from American Telecom Services, Inc. (''ATS''). ATS, with headquarters in Atlanta, Georgia, is a distributor of telephones and phone services.

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns ATS's cash rebate promotions. To make its products more attractive to retailers and their customers, ATS has offered numerous mail-in rebates ranging from $5 to $50 in value. In implementing these promotions, ATS used third party fulfillment houses to process and pay rebate requests received from its customers. The complaint alleges that ATS engaged in deceptive practices relating to these rebate offers. Specifically, the complaint alleges that ATS falsely represented that purchasers of eligible ATS products will receive rebate checks within eight weeks after receipt of their properly completed requests. The proposed complaint further alleges that tens of thousands of consumers who submitted properly completed requests for rebates since 2006 have experienced substantial delays, including delays of one year or longer. According to the complaint,

[1] FTC Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

these delays have been due, in part, to ATS's inability to pay its third party fulfillment houses, as well as its refusal to timely pay third party fulfillment houses with which it had disagreements.

The proposed order contains provisions designed to prevent ATS from engaging in similar acts and practices in the future. Part I of the proposed order prohibits ATS from misrepresenting the time in which any rebate will be mailed and from failing to provide any rebate within the time specified, or if no time is specified, within thirty days. This provision also prohibits the company from misrepresenting any material terms of any rebate program, including the status of or reasons for any delay in providing any rebate.

Parts II through V of the proposed order are standard reporting and compliance provisions. Part VI provides that the order will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark

Secretary

[FR Doc. E9–5733 Filed 3–16–09: 8:45 am]

[BILLING CODE 6750–01–S]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: TANF Quarterly Financial Report, ACF–196.

OMB No.: 0970–0247.

Description: This information collection is authorized under Section 411(a)(3) of the Social Security Act. This request is for renewal of approval to use the Administration for Children and Families' (ACF) 196 form for periodic financial reporting under the Temporary Assistance for Needy Families (TANF) program. Approval of this information collection expires on March 31, 2009. States participating in the TANF program are required by statute to report financial data on a quarterly basis. This form meets the legal standard and provides essential data on the use of Federal funds. Failure to collect the data would seriously compromise ACF's ability to monitor program expenditures, estimate funding needs, and to prepare budget submissions required by Congress. Financial reporting under the TANF program is governed by 45 CFR part 265.

Respondents: TANF Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–196TT	20	4	2	160
ACF–196	51	4	8	1,632
Estimated Total Annual Burden Hours:				1,792

Additional Information:

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment:

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project. *Fax:* 202–395–6974. *Attn:* Desk Officer for the Administration for Children and Families.

Dated: March 11, 2009.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. E9–5641 Filed 3–16–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Blood Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Blood Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 1, 2009, from 8 a.m. to 6 p.m. and on April 2, 2009, from 8 a.m. to 4:45 p.m.

Location: Hilton Washington DC North/Gaithersburg, Grand Ballroom, 620 Perry Pkwy., Gaithersburg, MD 20877, 301–977–8900.

Contact Person: William Freas or Pearline K. Muckelvene, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike (HFM–71), Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014519516. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On April 1, 2009, the committee will hear updates on the following topics: National Biovigilance Data Collection and Analysis Program; a summary of the December 16 and 17, 2008, meeting of the Department of Health and Human Services Advisory Committee on Blood Safety and Availability; and a summary of the September 12, 2008, FDA Workshop on Approaches to Minimize the Risk of Transfusion-Transmitted Babesiosis in the United States. The committee will then discuss blood donor screening and testing donors of human cells, tissues and cellular and tissue-based products (HCT/Ps) for hepatitis B virus infection by nucleic acid testing. In the afternoon, the committee will discuss potential testing strategies for *Trypanosoma cruzi* infection in blood donors. On April 2, 2009, the committee will discuss FDA's current considerations on plasma obtained from a Whole Blood donor for further manufacturing use and in the afternoon will review the research programs in the Laboratory of Molecular Virology, Division of Emerging and Transfusion Transmitted Diseases, CBER Site Visit held on October 22, 2008.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2009 and scroll down to the appropriate advisory committee link.

Procedure: On April 1, 2009, from 8 a.m. to 6 p.m. and on April 2, 2009, from 8 a.m. to 3:45 p.m, the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before March 25, 2009. Oral presentations from the public will be scheduled between approximately 11:30 a.m. and 12 noon and between approximately 4:15 p.m. and 4:45 p.m. on April 1, 2009, and between approximately 10:45 a.m. and 11:45 a.m. and between approximately 3:15 p.m. and 3:45 p.m. on April 2, 2009. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before March 23, 2009. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by March 24, 2009.

Closed Committee Deliberations: On April 2, 2009, between 4 p.m. and 4:45 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss reports of intramural research programs and make recommendations regarding personnel staffing decisions.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact William Freas or Pearline K. Muckelvene at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 10, 2009.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E9–5734 Filed 3–16–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF STATE

[Public Notice 6545]

DEPARTMENT OF HOMELAND SECURITY

Certification Related to Implementation of The Western Hemisphere Travel Initiative

Pursuant to the authorities vested in the Secretary of State and the Secretary of Homeland Security, including under section 7209(b)(1)(B) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. 108–458), as amended by section 546 of the Department of Homeland Security Appropriations Act, 2007 (Pub. L. 109–295), section 723 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110–53), and section 545 of title V of Div. E of the Consolidated Appropriations Act of 2008 (Pub. L. 110–161), we hereby certify that

(i) The National Institute of Standards and Technology certifies that the Departments of Homeland Security and State have selected a card architecture that meets or exceeds International Organization for Standardization (ISO) security standards and meets or exceeds best available practices for protection of personal identification documents: That the National Institute of Standards and Technology has also assisted the Departments of Homeland Security and State to incorporate into the architecture of the card the best available practices to prevent the unauthorized use of information on the card: That to facilitate efficient cross-border travel, the Departments of Homeland Security and State have, to the maximum extent possible, developed an architecture that is compatible with information technology systems and infrastructure used by United States Customs and Border Protection;

(ii) The technology to be used by the United States for the passport card, and any subsequent change to that technology, has been shared with the governments of Canada and Mexico;

(iii) An agreement has been reached with the United States Postal Service on the fee to be charged individuals for the passport card, and a detailed justification has been submitted to the Committees on Appropriations of the Senate and the House of Representatives;

(iv) An alternative procedure has been developed for groups of children traveling across an international border under adult supervision with parental consent;

(v) The necessary technological infrastructure to process the passport cards has been installed, and all employees at ports of entry have been properly trained in the use of the new technology;

(vi) The passport card has been made available for the purpose of international travel by United States citizens through land and sea ports of entry between the United States and Canada, Mexico, the Caribbean and Bermuda;

(vii) A single implementation date for sea and land borders has been established; and

(viii) The signing of a memorandum of agreement to initiate a pilot program with not less than one State to determine if an enhanced driver's license, which is machine-readable and tamper proof, not valid for certification of citizenship for any purpose other than admission into the United States from Canada or Mexico, and issued by such State to an individual, may permit the individual to use the driver's license to meet the documentation requirements under subparagraph (A) of section 7209(b)(1) for entry into the United States from Canada or Mexico at land and sea ports of entry.

This certification and related Memorandum of Justification shall be provided to the Committees on Appropriations of the Senate and House of Representatives. This certification shall be published in the **Federal Register**.

Dated: February 24, 2009.

Janet Napolitano,

Secretary of Homeland Security.

Dated: February 24, 2009.

Hillary Rodham Clinton,

Secretary of State.

[FR Doc. E9–5742 Filed 3–16–09; 8:45 am]

BILLING CODE 4710–06–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–660]

In the Matter of Certain Active Comfort Footwear; Notice of Commission Determination Not To Review an Initial Determination Granting In Part Complainants' Amended Motion To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 4) of the presiding administrative law judge (''ALJ'') granting in part an amended motion to amend the complaint and notice of investigation.

FOR FURTHER INFORMATION: Mark B. Rees, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3116. Copies of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 25, 2008, based on the complaint of Masai Marketing & Trading AG of Romanshorn, Switzerland and Masai USA Corp. of Haley, Idaho (''Complainants''). 73 FR 73884 (Nov. 25, 2008). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain active comfort footwear that infringes certain claims of U.S. Patent No. 6,341,432. Complainants named as respondents RYN Korea Co., Ltd. of Seoul, Korea; Main d/b/a WalkingShoesPlus.com of Los Angeles, California; and Feet First Inc. of Boca Raton, Florida.

On January 30, 2009, Complainants filed a motion seeking leave to amend the complaint and notice of investigation to add three additional respondents to the investigation. On February 11, 2009, the ALJ issued an ID (Order No. 4) in which he determined to grant the motion in part and amend the notice of investigation to add as respondents The Tannery of Cambridge, Massachusetts and A Better Way to Health of West Melbourne, Florida. No party petitioned for review of the ID.

The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42(h) of the Commission's Rules of Practice and Procedure (19 CFR 210.42(h)).

By order of the Commission.

Issued: March 11, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–5670 Filed 3–16–09; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–454 and 731–TA–1144 (Final)]

Welded Stainless Steel Pressure Pipe From China

Determination

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China of welded stainless steel pressure pipe, provided for in subheadings 7306.40.50 and 7306.40.10 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be subsidized by the Government of China and sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective January 30, 2008, following receipt of a petition filed with the Commission and Commerce by Bristol Metals (Bristol, TN), Felker Brothers Corp. (Marshfield, WI), Marcegaglia USA, Inc. (Munhall, PA), Outokumpu Stainless Pipe, Inc. (Schaumburg, IL), and The United Steel Workers (Pittsburgh, PA).[2] The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of welded stainless steel pressure pipe from China were being subsidized by the Government of China and being sold at LTFV within the meaning of section 703(b) and 733(b) of the Act (19 U.S.C. 1671b(b) and 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 6, 2008 (73 FR 58265). The hearing was held in Washington, DC, on January 13, 2009, and all persons who requested the opportunity were

[1] The record is defined in section 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] United Steel, Paper and Forestry, Rubber, Manufacturing Energy, Allied Industrial and Service Workers International Union.

permitted to appear in person or by counsel.

The Commission transmitted its determination in these investigations to the Secretary of Commerce on March 11, 2009. The views of the Commission are contained in USITC Publication 4064 (March 2009), entitled *Welded Stainless Steel Pressure Pipe from China: Investigation Nos. 701–TA–454 and 731–TA–1144 (Final).*

Issued: March 11, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–5720 Filed 3–16–09; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of Disability Employment Policy

[OMB Number 1230–0003]

Notice of Extension of Approved Data Collection

SUMMARY: The U.S. Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation process to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This process helps ensure that requested data can be provided in the desired format, reporting burdens are minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Office of Disability Employment Policy (ODEP) is soliciting comments concerning an already approved data collection for the following Employer Assistance Referral Network (EARN) forms: EARN Provider Enrollment Form; EARN Employer Enrollment Form; EARN Employer and Provider Surveys. A copy of the approved information collection request (ICR) can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office shown in the address section below on or before May 18, 2009.

ADDRESSES: Richard Horne, U.S. Department of Labor, Office of Disability Employment Policy, 200 Constitution Avenue, NW., Suite S–1303, Washington, DC 20210. Telephone: (202) 693–7880. This is not a toll-free number.

FOR FURTHER INFORMATION CONTACT: Richard Horne, telephone: (202) 693–7880, e-mail: *horne.richard@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Employer Assistance Referral Network (EARN) is a nationwide service designed to provide employers with a technical, educational, and informational resource to simplify and encourage the hiring of qualified workers. Historically, disability programs required employers to do much of the work in the finding and hiring of people with disabilities. The Office of Disability Employment Policy (ODEP) of the Department of Labor has designed EARN to alleviate these barriers and do much of the work for the employer.

EARN is a service from the Office of Disability Employment Policy (ODEP) of the Department of Labor. This referral service links employers with providers who refer appropriate candidates with disabilities. The service is provided by means of a nationwide toll-free Call Center.

EARN is a service of the Office of Disability Employment Policy which was established pursuant to section 1(a)(1) of the Consolidated Appropriations Act, 2001 (Pub. L. 106–554) H.R. 5656, see Title I, ''Departmental Management'') 29 U.S.C. 551 *et seq.*; 5 U.S.C. 301; and Executive Order 13187, ''The President's Disability Employment Partnership Board (PDEPB)'' (January 10, 2001).

This service and the data collection component is authorized pursuant to Public Law 106–554 which direct the Office of Disability Policy to provide initiatives such as EARN to ''further the objective of eliminating employment barriers to the training and employment of people with disabilities''.

II. Desired Focus of Comments

The Department is particularly interested in comments which:

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

III. Current Action

This extended ICR covers four forms: EARN Provider Enrollment Form, EARN Employer Enrollment Form, EARN Employer Survey and EARN Provider Survey. The enrollment forms (Employer Enrollment and Provider Enrollment) will be used to enroll provider and employers who wish to participate and use this service. The surveys (Employer Survey and Provider Survey) will collect quantitative data on participants' levels of satisfaction with individual service elements and their satisfaction with the service as a whole. The surveys will also solicit free-text comments from participants regarding the service.

Agency: Office of Disability Employment Policy.

Titles: EARN Provider Enrollment Form, EARN Employer Enrollment Form, EARN Employer Survey, EARN Provider Survey.

OMB Number: 1230–0003.

Frequency: On occasion.

Affected Public: Businesses or other for-profit; not-for-profit institutions; farms; Federal Government; and State, Local, or Tribal Government.

Number of Respondents: 13,500.

Form	Estimated number of annual responses	Average response time (hours)	Estimated burden hours
EARN Provider Enrollment Form	6,000	0.33	1,980
EARN Employer Enrollment Form	7,500	0.33	2,475
EARN Employer Survey	300	0.33	99
EARN Provider Survey	300	0.33	99
Total	14,100	.....	4,653

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Description: These surveys are designed to collect data from service providers and employers. For each provider, we will collect Point of Contact (POC) information and information about the types of clients the provider serves. We also request information about the size of the provider organization, whether a fee is charged for placement services, and employer references. For each employer, we will collect information about the number of employees, geographic location, industry, specific jobs offered, and Point of Contact (POC) information. The Employer Survey and Provider Survey will collect quantitative data on participants' levels of satisfaction with individual service elements and their satisfaction with the service as a whole. The surveys will also solicit free-text comments from participants regarding the service. We will present survey data in the aggregate for all Employers and Providers. We will combine survey data with system-generated data reports containing demographic data for the sample groups as well as performance data for the Call Center.

Signed at Washington, DC, this 11th day of March 2009.

John R. Davey,

Deputy Assistant Secretary.

[FR Doc. E9–5688 Filed 3–16–09; 8:45 am]

BILLING CODE 4510–CX–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request on the ETA 5159, Claims and Payment Activities; Comment Request for Extension Without Change

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collection of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice or by accessing: *http://www.doleta.gov/OMBCN/OMBControlNumber.cfm*.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before May 18, 2009.

ADDRESSES: Send comments to Scott Gibbons, U.S. Department of Labor, Employment and Training Administration, Office of Workforce Security, 200 Constitution Avenue, NW., Frances Perkins Bldg. Room S–4531, Washington, DC 20210, telephone number (202)–693–3308 (this is not a toll-free number) or by e-mail: *gibbons.scott@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The ETA 5159 report contains information on claims activities including the number of initial claims, first payments, weeks claimed, weeks compensated, benefit payments and final payments.

These data are used in budgetary and administrative planning, program evaluation, actuarial and program research, and reports to Congress and the public.

II. Desired Focus of Comments

Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the ETA 5159, Claims and Payment Activites report. Comments are requested to:

- Evaluate whether the proposed collection of information is necessary to describe claims and payment activities, 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 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.

III. Current Actions

This is a request for OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) for continuing an existing collection of information previously approved and assigned OMB Control No. 1205–0010.

Type of Review: Extension.

Agency: Employment and Training Administration

Title: Claims and Payment Activities.

OMB Number: 1205–0010.

Agency Number: ETA 5159.

Affected Public: State Government.

Cite/Reference/Form/etc: ETA 5159.

Total Respondents: 53.

Frequency: Monthly.

Total Responses: 636.

Average Time per Response: 2 hours.

Estimated Total Burden Hours: 1272 hours per year.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 11, 2009.

Cheryl Atkinson,

Administrator, Office of Workforce Security.

[FR Doc. E9–5673 Filed 3–16–09; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

The Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO); Notice of Cancellation of Open Meeting

The quarterly the Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO) meeting scheduled for Friday, March 20, 2009 from 8:30 a.m. to 3:30 p.m., at the Omni Hotel, 401 Chestnut Street, second floor meeting room, Philadelphia, PA, has been postponed until further notice.

Signed in Washington, DC, this 11th day of March 2009.

John M. McWilliam,

Deputy Assistant Secretary, Veterans' Employment and Training Service.

[FR Doc. E9–5659 Filed 3–16–09; 8:45 am]

BILLING CODE 4510–79–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Michael P. McDonald, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* April 2, 2009.
Time: 8:30 a.m. to 5:30 p.m.
Room: 421.
Program: This meeting will review applications for America's Historical and Cultural Organizations in American Studies, submitted to the Division of Public Programs, at the January 28, 2009 deadline.

2. *Date:* April 3, 2009.
Time: 8:30 a.m. to 5:30 p.m.
Room: 421.
Program: This meeting will review applications for America's Media Makers in U.S. History II, submitted to the Division of Public Programs, at the January 28, 2009 deadline.

3. *Date:* April 6, 2009.
Time: 8:30 a.m. to 5:30 p.m.
Room: 421.
Program: This meeting will review applications for America's Historical and Cultural Organizations in U.S. History II, submitted to the Division of Public Programs, at the January 28, 2009 deadline.

4. *Date:* April 7, 2009.
Time: 8:30 a.m. to 5:30 p.m.
Room: 421.
Program: This meeting will review applications for America's Media Makers in American Studies, submitted to the Division of Public Programs, at the January 28, 2009 deadline.

5. *Date:* April 13, 2009.
Time: 8:30 a.m. to 5:30 p.m.
Room: 421.
Program: This meeting will review applications for America's Historical and Cultural Organizations in U.S. History III, submitted to the Division of Public Programs, at the January 28, 2009 deadline.

6. *Date:* April 14, 2009.
Time: 8:30 a.m. to 5:30 p.m.
Room: 421.
Program: This meeting will review applications for America's Historical and Cultural Organizations in Museums and Miscellaneous, submitted to the Division of Public Programs, at the January 28, 2009 deadline.

7. *Date:* April 14, 2009.
Time: 9 a.m. to 5 p.m.
Room: 402.
Program: This meeting will review applications for Institutes for Advanced Topics in the Digital Humanities, submitted to the Office of the Digital Humanities, at the February 18, 2009 deadline.

8. *Date:* April 21, 2009.
Time: 9 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for We the People Challenge Grants, submitted to the Office of Challenge Grants, at the February 3, 2009 deadline.

9. *Date:* April 21, 2009.
Time: 9 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review applications for Seminars and Institutes, submitted to the Division of Education Programs, at the March 3, 2009 deadline.

10. *Date:* April 22, 2009.
Time: 9 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review applications for Seminars and Institutes, submitted to the Division of Education Programs, at the March 3, 2009 deadline.

11. *Date:* April 23, 2009.
Time: 9 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review applications for Seminars and Institutes, submitted to the Division of Education Programs, at the March 3, 2009 deadline.

12. *Date:* April 24, 2009.
Time: 9 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review applications for Seminars and Institutes, submitted to the Division of Education Programs, at the March 3, 2009 deadline.

13. *Date:* April 28, 2009.
Time: 9 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review applications for Seminars and Institutes, submitted to the Division of Education Programs, at the March 3, 2009 deadline.

14. *Date:* April 29, 2009.
Time: 9 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review applications for Seminars and Institutes, submitted to the Division of Education Programs, at the March 3, 2009 deadline.

15. *Date:* April 30, 2009.
Time: 9 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review applications for Seminars and Institutes, submitted to the Division of Education Programs, at the March 3, 2009 deadline.

Michael P. McDonald,
Advisory Committee Management Officer.

[FR Doc. E9–5704 Filed 3–16–09; 8:45 am]
BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0117]

Notice of Issuance of Regulatory Guide

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Regulatory Guide 1.200, Revision 2.

FOR FURTHER INFORMATION CONTACT: Mary Drouin, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 251–7574 or e-mail to *Mary.Drouin@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision

to an existing guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency'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.

Revision 2 of Regulatory Guide 1.200, ''An Approach for Determining the Technical Adequacy of Probabilistic Risk Assessment Results for Risk-Informed Activities,'' was issued with a temporary identification as Draft Regulatory Guide, DG–1200. In 1995, the NRC issued a Policy Statement on the use of probabilistic risk analysis (PRA), encouraging its use in all regulatory matters. That Policy Statement states that '' * * * the use of PRA technology should be increased to the extent supported by the state-of-the-art in PRA methods and data and in a manner that complements the NRC's deterministic approach.'' Since that time, many uses have been implemented or undertaken, including modification of the NRC's reactor safety inspection program and initiation of work to modify reactor safety regulations. Consequently, confidence in the information derived from a PRA is an important issue, in that the accuracy of the technical content must be sufficient to justify the specific results and insights that are used to support the decision under consideration.

This regulatory guide describes one acceptable approach for determining whether the technical adequacy of the PRA, in total or the parts that are used to support an application, is sufficient to provide confidence in the results, such that the PRA can be used in regulatory decision-making for light-water reactors. This guidance is intended to be consistent with the NRC's PRA Policy Statement. It is also intended to reflect and endorse guidance provided by standards-setting and nuclear industry organizations.

II. Further Information

In June 2008, DG–1200 was published for public comment. The public comment period closed on December 31, 2008. The staff's responses to the public comments that were received are located in the NRC's Agencywide Documents Access and Management System (ADAMS) under Accession Number ML090410020. Electronic copies of Regulatory Guide 1.200, Revision 2 are available through the NRC's public Web site under ''Regulatory Guides'' at *http://www.nrc.gov/reading-rm/doc-collections/.*

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738. 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) 397–4209, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov.*

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

Dated at Rockville, Maryland, this 10th day of March 2009.

For the Nuclear Regulatory Commission.

Andrea D. Valentin,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E9–5698 Filed 3–16–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0114]

Notice of Issuance of Regulatory Guide

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance and availability of Regulatory Guide (RG) 10.4, Revision 3.

FOR FURTHER INFORMATION CONTACT: Mark Orr, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 251–7495 or e-mail to *Mark.Orr@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision to an existing guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency'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.

Revision 3 of RG 10.4, ''Guide for the Preparation of Applications for Licenses to Process Source Material,'' was issued for public comment with a temporary identification as Draft Regulatory Guide (DG)–0020. RG 10.4 directs the reader to the type of information acceptable to the NRC staff for the review of an application for new licenses, license amendments, and license renewals for the processing and use of source material in such activities as research and development; shielding; manufacturing depleted uranium and thorium-magnesium alloy products; manufacturing glass containing uranium; manufacturing and distributing other products containing source material; or shaping, grinding, and polishing lenses containing thorium. RG 10.4 does not apply to (1) activities related to the reactor fuel cycle such as uranium and thorium mill operation and uranium hexafluoride production or (2) large-scale processing of source material for extraction of metallic compounds such as zirconium or hafnium.

II. Further Information

In September 2008, DG–0020 was published with a public comment period of 60 days from the issuance of the guide. The public comment period closed on November 10, 2008. No comments were received. Electronic copies of RG 10.4, Revision 3 are available through the NRC's public Web site under ''Regulatory Guides'' at *http://www.nrc.gov/reading-rm/doc-collections/.*

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738. 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) 397–4209, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov.*

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Dated at Rockville, Maryland, this 27th day of January 2009.

For the Nuclear Regulatory Commission.

Andrea D. Valentin,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E9–5703 Filed 3–16–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Federal Register Notice of Sunshine Act Meeting

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of March 16, 23, 30, April 6, 13, 20, 2009.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of March 16, 2009

Monday, March 16, 2009

9:30 a.m. Briefing on State of Nuclear Materials and Waste Programs (Public Meeting) (Contact: Tammy Bloomer, 301–415–1725)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Tuesday, March 17, 2009

1:30 p.m. Briefing on State of Nuclear Reactor Safety Programs (Public Meeting) (Contact: Tammy Bloomer, 301–415–1725)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Friday, March 20, 2009

9:30 a.m. Briefing on the Nuclear Education Program (Public Meeting) (Contact: John Gutteridge, 301–492–2313)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of March 23, 2009—Tentative

There are no meetings scheduled for the week of March 23, 2009.

Week of March 30, 2009—Tentative

There are no meetings scheduled for the week of March 30, 2009.

Week of April 6, 2009—Tentative

There are no meetings scheduled for the week of April 6, 2009.

Week of April 13, 2009—Tentative

Wednesday, April 15, 2009

9:30 a.m. Briefing on NRC Corporate Support (Public Meeting) (Contact: Karen Olive, 301–415–2276).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Thursday, April 16, 2009

1:30 p.m. Briefing on Human Capital and EEO (Public Meeting) (Contact: Kristin Davis, 301–492–2266)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of April 20, 2009—Tentative

There are no meetings scheduled for the week of April 20, 2009.

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.*, Braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *rohn.brown@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *darlene.wright@nrc.gov.*

Dated: March 12, 2009.

Rochelle C. Bavol,

Office of the Secretary.

[FR Doc. E9–5807 Filed 3–13–09; 11:15 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Federal Regulatory Review

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Extension of request for comments.

SUMMARY: The Director of the Office of Management and Budget (OMB) extends the deadline for public comments on how to improve the process and principles governing Federal regulatory review.

DATES: Comments must be in writing and received by March 31, 2009.

ADDRESSES: Submit comments by one of the following methods:

- *E-mail: oira_submission@omb.eop.gov.*
- *Fax:* (202) 395–7245.
- *Mail:* Office of Information and Regulatory Affairs Records Management Center, Office of Management and Budget, Attn: Mabel Echols, 10th Floor NEOB, 725 17th Street, NW., Washington, DC 20503. We are still experiencing delays in the regular mail, including first class and express mail. To ensure that your comments are received on time, we recommend that comments be electronically submitted.

All comments submitted in response to this notice will be made available to the public on OMB's Web site, *http://www.reginfo.gov.* For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an e-mail comment directly to OMB, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet.

FOR FURTHER INFORMATION CONTACT: Mabel Echols, Office of Information and Regulatory Affairs, Records Management Center, Office of Management and Budget, 10th Floor NEOB, 725 17th Street, NW., Washington, DC 20503. Telephone: (202) 395–6880.

SUPPLEMENTARY INFORMATION: Consistent with the President's Memorandum for the Heads of Executive Departments and Agencies, published in the **Federal Register** [74 FR 5977], the Director of OMB is developing a set of recommendations for a new Executive Order on Federal regulatory review. Among other things, the President stated that the recommendations should offer suggestions for the following:

- The relationship between OIRA and the agencies;
- Disclosure and transparency;
- Encouraging public participation in agency regulatory processes;
- The role of cost-benefit analysis;
- The role of distributional considerations, fairness, and concern for the interests of future generations;
- Methods of ensuring that regulatory review does not produce undue delay;
- The role of the behavioral sciences in formulating regulatory policy; and
- The best tools for achieving public goals through the regulatory process.

On February 26, 2009, the Director of OMB issued a notice, published in the

Federal Register [74 FR 8819], inviting public comments on the principles and procedures governing regulatory review. He requested that comments be received by March 16, 2009. Today's action extending the comment period to March 31, 2009 was prompted by requests from a number of interested members of the public. The Director of OMB believes that, due to the unusually high level of public interest, additional time is warranted.

This public process is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Kevin F. Neyland,

Acting Administrator, Office of Information and Regulatory Affairs.

[FR Doc. E9–5763 Filed 3–16–09; 8:45 am]

BILLING CODE 3110–01–P

POSTAL SERVICE

Change in Rates of General Applicability for Competitive Products; Correction

AGENCY: Postal Service.™

ACTION: Notice; correction.

SUMMARY: The Postal Service published in the **Federal Register** of February 24, 2009 (74 FR 8434), in accordance with 39 U.S.C. 3632(b)(2), a Notice document providing the February 3, 2009 Decision of the Governors of the United States Postal Service on Changes in Rates and Classes of General Applicability for Certain Competitive Products (Governors Decision No. 09–01), and a record of the proceedings in connection with the Decision. One of the tables in the document contained seven incorrect rates. This document sets forth the table with the correct rates.

DATES: This correction is effective March 17, 2009 and is applicable on May 11, 2009.

FOR FURTHER INFORMATION CONTACT: Daniel J. Foucheaux, 202–268–2989.

SUPPLEMENTARY INFORMATION:

Background

On February 3, 2009, the Governors of the Postal Service established prices and classification changes for competitive products, pursuant to their authority under 39 U.S.C. 3632. On February 24, 2009, the Governors' Decision and the record of proceedings in connection with the Decision were published in the **Federal Register** as required by 39 U.S.C. 3632(b)(2). Following the adoption of the Governor's Decision, it was discovered that one of the rate tables, pertaining to International Surface Air Lift M-Bag ISC (ISC Drop Shipment), set out in section 2230.6 of the Mail Classification Schedule, included seven incorrect incremental rates for Rate Group 11. The Postal Service advised the Governors of the errors and provided them with a revised copy of the table incorporating the correct rates. The corrected rate table subsequently was filed by the Postal Service with the Postal Regulatory Commission on February 20, 2009.

Need for Correction

One of the rate tables contained in section 2230.6 of the Mail Classification Schedule, as adopted by Governors' Decision No. 09–01, did not incorporate the correct incremental rates for International Surface Air Lift (ISAL) M-Bag drop-shipment in Rate Group 11.

Correction

Correct table b, International Surface Air Lift M-Bag ISC (ISC Drop Shipment) that appears on page 8455 of the **Federal Register** of February 24, 2009, to read as follows:

Price group	5 lbs.	6 lbs.	7 lbs.	8 lbs.	9 lbs.	10 lbs.	11 lbs.	Each additional pound
1	15.90	16.00	16.10	16.20	16.30	16.40	16.50	1.50
2	14.30	14.85	15.40	15.95	16.50	17.05	17.60	1.60
3	11.45	12.75	14.05	15.35	16.65	17.95	19.25	1.75
4	11.45	12.75	14.05	15.35	16.65	17.95	19.25	1.75
5	11.45	12.75	14.05	15.35	16.65	17.95	19.25	1.75
6	11.45	12.75	14.05	15.35	16.65	17.95	19.25	1.75
7	11.45	12.75	14.05	15.35	16.65	17.95	19.25	1.75
8	11.45	12.75	14.05	15.35	16.65	17.95	19.25	1.75
9	18.25	20.25	22.25	24.25	26.25	28.25	30.25	2.75
10	16.25	18.40	20.55	22.70	24.85	27.00	29.15	2.65
11	11.65	12.99	14.33	15.67	17.01	18.35	19.69	1.79
12	12.90	14.60	16.30	18.00	19.70	21.40	23.10	2.10
13	14.40	15.85	17.30	18.75	20.20	21.65	23.10	2.10
14	12.05	14.35	16.65	18.95	21.25	23.55	25.85	2.35
15	16.20	19.00	21.80	24.60	27.40	30.20	33.00	3.00

Note: ISC Drop Shipment M-bags are subject to the minimum price for 5 lbs.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E9–5671 Filed 3–16–09; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59558; File No. SR–FICC–2009–04]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add Debt Securities That Are Issued Under the Debt Guarantee Program Component of the Federal Deposit Insurance Corporation's Temporary Liquidity Guarantee Program to the GCF Repo Service

March 11, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 25, 2009, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to add debt securities that are issued under the Debt Guarantee Program component of the Federal Deposit Insurance Corporation's (''FDIC's'') Temporary Liquidity Guarantee Program (''TLGP'') to FICC's GCF Repo service.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The GCF Repo service allows Government Securities Division (''GSD'') dealer members to trade general collateral repurchase agreements (''repos'') throughout the day without requiring intraday, trade-for-trade settlement on a DVP basis. The service allows the dealers to trade such general collateral repos, based on rate and term, throughout the day with interdealer broker netting members on a blind basis. Standardized, generic CUSIP numbers have been established exclusively for GCF Repo processing and are used to specify the acceptable type of underlying eligible collateral.

FICC is proposing to add an additional collateral type to the GCF Repo service. Specifically, FICC proposes to add debt securities that are issued under the Debt Guarantee Program component of FDIC's TLGP to the GCF Repo service. These securities are DTC-eligible securities.[4]

The TLGP, one of the steps taken by the U.S. Government to stabilize the credit markets and to stimulate lending, was designed to allow banks to issue FDIC-insured debt to ensure that the banks would be able to roll over any debt coming due in the coming months. The guarantee consists of timely payment of principal and interest. The expiration of the FDIC's guarantee is the earlier of either the maturity date of the issued debt or June 2012.

The Financial Industry Regulatory Authority (''FINRA'') has recently advised the Securities Industry and Financial Markets Association (''SIFMA'') on the capital charge treatment that FINRA plans to employ with respect to the guaranteed debt securities that are issued by an affiliate of a broker-dealer and that are held in inventory by the broker-dealer. Specifically, FINRA has stated that broker-dealers that may be allocated the FDIC-guaranteed debt securities issued by affiliated entities as part of the GCF Repo service will not need to take a 100 percent capital charge on the reverse repo contract because they have no control over the collateral allocated by FICC and because the allocated collateral is returned the next morning. Given this favorable treatment, members of SIFMA that are active in the GCF Repo service have requested that FICC add the FDIC-guaranteed debt securities to the service.

All current GCF Repo processing will remain unchanged. The fact that the product is a DTC-eligible security will not affect GCF Repo processing.[5] FICC has determined that with respect to its risk management processes, the FDIC-insured securities will be treated the same as all other GCF Repo-eligible collateral.

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[6] and the rules and regulations thereunder applicable to FICC because the proposed rule change enables FICC to expand an important service that provides members with a continuing ability to engage in general collateral trading activity in a safe and efficient manner. As such, the proposed rule filing facilitates the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact on or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(4)[8] thereunder because the proposed rule change effects a change in an existing service of FICC that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of FICC or for which it is responsible and (ii) does not

[1] 15 U.S.C. 78s(b)(1).

[2] This filing pertains only to the GCF Repo service and does not propose to add the FDIC-guaranteed securities to the GSD's Delivery Versus Payment (''DVP'') service.

[3] The Commission has modified the text of the summaries prepared by FICC.

[4] The present rule filing applies only to these specific FDIC-insured securities. In the future, if FICC determines to add additional DTC-eligible securities to the GCF Repo service, FICC would submit a proposed rule change filing to the Commission for this purpose.

[5] Specifically, if a GCF Repo participant engages in a trade using the new GCF Repo CUSIP, the participant will need to pledge the security free of payment to its clearing bank using the mechanism available at DTC. Once the security is pledged to the dealer's clearing bank, it is available for tri-party or GCF Repo processing. No additional processing is being introduced to the GCF Repo service by this rule filing. The present filing does not require a change to the text of the rules of GSD.

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(4).

significantly affect the respective rights of the clearing agency or persons using the service. At any time within sixty days of the filing of such 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–FICC–2009–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FICC–2009–04. 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 changes 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 Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.dtcc.com/legal/rule_filings/ficc/2009.php.* 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–FICC–2009–04 and should be submitted on or before April 7, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–5687 Filed 3–16–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59547; File No. SR–NASDAQ–2009–014]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish New Rules Applicable to the Nasdaq Market Center and Nasdaq Options Market That Explicitly Require Members To Input Accurate Information Into Nasdaq Systems

March 10, 2009.

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 February 23, 2009, The NASDAQ Stock Market LLC (''Nasdaq'') 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 Nasdaq. Nasdaq filed the proposed rule change as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders 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

Nasdaq proposes to establish new rules applicable to the Nasdaq Market Center and Nasdaq Options Market that explicitly require members to input accurate information into Nasdaq systems. The text of the proposed rule change is available from Nasdaq's Web site at *http://nasdaq.cchwallstreet.com,* at Nasdaq'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, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below, and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to adopt new rules that make clear Nasdaq members' responsibility to input accurate quotation and order information into the Nasdaq Market Center and Nasdaq Options Market (collectively the ''Nasdaq Markets''). The Nasdaq Markets require entry of certain information to post a quote or to enter an order. Such information, among other things, identifies the member, the size and price of the order or quote, and the member's capacity in placing an order. Accurate trade and quote information is fundamental to the operation of an efficient and fair market. Moreover, the information input by members when posting a quote or placing an order is used for purposes of policing the Nasdaq Markets. For example, the Financial Industry Regulatory Authority, Inc. (''FINRA'') conducts trade abuse surveillances of the Nasdaq Markets on Nasdaq's behalf. The trade abuse surveillances use capacity information input by members. A member's capacity in a trade concerns whether the member is acting as an agent, principal, or ''riskless'' principal in the transaction. Accordingly, accurate input of capacity information is of fundamental regulatory importance.

Nasdaq does not have a rule that makes an explicit statement regarding a member's obligation to input accurate information into the Nasdaq Markets. Notwithstanding, Nasdaq believes that disciplinary cases against members entering inaccurate or incomplete information may be brought appropriately under Nasdaq Rule 2110, which requires members to observe high standards of commercial honor and just and equitable principles of trade. Rule 2110 protects the investing public and the securities industry from dishonest

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

practices that are unfair to investors or hinder the functioning of a free and open market, even though those practices may not be illegal or violate a specific rule or regulation. Because of the regulatory importance of accurate information input into the Nasdaq Markets, Nasdaq believes rules that directly address members' obligation to provide accurate information are warranted. The proposed rules make clear members' obligation to input accurate information into the Nasdaq Markets, and that failure to do so would be considered a violation of Nasdaq rules.

Nasdaq notes that FINRA has rules that require the accurate entry of certain trade information into its systems. For example, FINRA Rule 7330(d) requires FINRA members to report to the OTC Reporting Facility certain specific trade-related information. A failure to provide such information represents a violation of FINRA Rules, and may result in disciplinary action. FINRA has substantially similar requirements for other trade reporting systems it operates.[5]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Section 6(b)(5) of the Act,[7] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The amendments proposed herein will serve to promote the accuracy of information input into the Nasdaq Markets. Accurate information is necessary for the efficient and fair operation of the Nasdaq Markets, and will assist Nasdaq in surveilling the markets for fraudulent activity.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

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–NASDAQ–2009–014 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR-NASDAQ–2009–014. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2009–014 and should be submitted on or before April 7, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–5714 Filed 3–16–09; 8:45 am]

BILLING CODE 8011–01–P

[5] *See* FINRA Rules 7230A and 7230B.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). The Exchange also provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change as required by Rule 19b–4(f)(6).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59549; File No. SR–NASDAQ–2009–021]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the NASDAQ Stock Market LLC Regarding a Clerical Change to Nasdaq Rules

March 10, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 4, 2009, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq proposes to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

make a clerical correction to the Nasdaq rulebook under Rule 19b–4(f)(3) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to make clerical corrections to Nasdaq Rule 7050.

Nasdaq proposes to implement the proposed rule change immediately.

The text of the proposed rule change is available on Nasdaq's Web site (*http://www.complinet.com/nasdaq*), at Nasdaq's principal office, and at the Commission's Public Reference Room.

The text of the proposed rule change is below. Proposed new language is *underlined*; proposed deletions are in [brackets].[4]

* * * * *

7050. NASDAQ Options Market

The following charges shall apply to the use of the order execution and routing services of the NASDAQ Options Market [by members] for all securities [that it trades].

(1) Fees for Execution of Contracts on the NASDAQ Options Market

Except as specified below, the charge to member entering order that executes in the NASDAQ Options Market.	$0.45 per executed contract.
For a pilot period ending July 31, 2009, charge for members or non-members entering order via the Options Intermarket Linkage that executes in the Nasdaq Options Market.	$0.45 per executed contract.
Charge to members entering orders in options on QQQQ, SPY, DIA, IWM, AAPL BAC, C, GS, JPM, RIMM, XLE, XLF, and XOM with an account type ''Customer'' that executes and remove liquidity entered by another member.	No fee.
Credit to member providing liquidity through the NASDAQ Options Market	$0.30 per executed contract.
Credit to member providing liquidity using price-improving orders through the NASDAQ Options Market.	$0.35 per executed contract.

(2)–(4) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below and is set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to make clerical corrections to Nasdaq Rule 7050. Nasdaq proposes to modify the prefatory language of Rule 7050 to eliminate the phrases ''by members'' and ''that it trades'' to reflect the fact that Rule 7050 contains fees applicable to non-members and to options that Nasdaq routes but does not trade. These changes had previously been proposed by Nasdaq, but were not reflected in subsequent Nasdaq filings.[5]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Section 6(b)(5) of the Act,[7] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change makes a minor clerical change to an existing Nasdaq rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(3) thereunder,[9] Nasdaq has designated this proposal as one that is concerned solely with the administration of the self-regulatory organization. Accordingly, Nasdaq believes that its proposal should become immediately effective.

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

[3] 17 CFR 240.19b–4(f)(3).

[4] Changes are marked to the rules of The NASDAQ Stock Market LLC as set forth in SR–NASDAQ–2009–008. The proposed changes will be reflected in the NASDAQ Online manual found at *http://nasdaq.complinet.com.*

[5] *See* Exchange Act Release No. 58298, 73 FR 46695 (Aug. 11, 2008) (SR–NASDAQ–2008–055); Exchange Act Release No. 58081, 73 FR 39755 (July 10, 2008) (SR–NASDAQ–2008–058).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(3).

Number SR–NASDAQ–2009–021 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2009–021. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2009–021 and should be submitted on or before April 7, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[3]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–5715 Filed 3–16–09; 8:45 am]

BILLING CODE 8011–01–P

[3] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59557; File No. SR–NASDAQ–2009–017]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the Processing of Orders on the NASDAQ Options Market

March 11, 2009.

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 March 6, 2009, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(5) thereunder,[4] Nasdaq has designated this proposal as one effecting a change in an existing order-entry or trading system of a self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing a proposed rule change to offer the ''WAIT'' order modifier for use with orders entered into the NASDAQ Options Market (''NOM''). This modifier is designed to enhance compliance with the Order Exposure requirement set forth at Chapter VII, Section 12 of the NOM Rules.

The text of the proposed rule change is available from Nasdaq's Web site at *http://cchwallstreet.com/nasdaqomx/* at Nasdaq's principal office, and at the Commission's Public Reference Room.

Proposed new language is italicized; proposed deletions are in brackets.[5]

* * * * *

Chapter VI, Trading Systems

Sec. 1. Definitions

The following definitions apply to Chapter VI for the trading of options listed on NOM.

(a)–(f) No Change.

(g) (1)–(4) No Change.

(5) ''WAIT'' shall mean for orders so designated, that upon entry into the System, the order is held for one second without processing for potential display and/or execution. After one second, the order is processed for potential display and/or execution in accordance with all order entry instructions as determined by the entering party.

(h) No Change.

* * * * *

Sec. 6. Acceptance of Quotes and Orders

All bids or offers made and accepted on NOM in accordance with the NOM Rules shall constitute binding contracts, subject to applicable requirements of the Rules of the Exchange and the Rules of the Clearing Corporation.

(a) General—A System order is an order that is entered into the System for display and/or execution as appropriate. Such orders are executable against marketable contra-side orders in the System.

(1) All System Orders shall indicate limit price and whether they are a call or put and buy or sell. Systems Orders can be designated as Immediate or Cancel (''IOC''), Good-till-Cancelled (''GTC''), Day (''DAY''), [or] *WAIT or* Expire Time (''EXPR'').

(2) No change.

(b) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below, and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 19, 2009, the Securities Exchange Commission approved Nasdaq's proposal to reduce the Order Exposure requirement set forth at Chapter VII, Section 12 of the NOM Rules from three seconds to one second.[6] Chapter VII, Section 12 prohibits Options Participants from executing as principal orders they

[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)(5).

[5] Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at *http://www.complinet.com/nasdaq*.

[6] *See* Exchange Act Release No. 59421 (Feb. 19, 2009) (accelerated approval of SR–Nasdaq–2009–005).

represent as agent unless (i) agency orders are first exposed on NOM for at least one (1) second or (ii) the Options Participant has been bidding or offering on NOM for at least one (1) second prior to receiving an agency order that is executable against such bid or offer. This rule ensures that Options Participant do not gain at the expense of customers by depriving them of the opportunity to interact with orders in the NOM System.

NOM Participants that enter agency orders into the NOM System have asked Nasdaq to develop an automated mechanism that permits them to enter orders into NOM as soon as the orders are received but that also prevents them from interacting with their own agency orders in violation of the order exposure requirement. Nasdaq believes this is an efficient use of resources because it will allow Nasdaq to program its NOM Systems once rather than have multiple Options Participant re-program their systems.

In order to accomplish that request, Nasdaq has developed the ''WAIT'' modifier which can be appended to an order prior to entry into NOM Systems. The WAIT modifier will instruct NOM Systems to wait precisely one second from the time of order entry before processing the order in accordance with the other instructions attached to that order. Upon expiration of the one-second WAIT period, the System will time stamp, route, display, or execute the order in accordance with the entering party's other order entry instructions. Thus, the WAIT modifier does not affect the existing display, routing, or execution priorities of the NOM Systems or any other obligations of NOM Participants as set forth in the NOM rules.

Orders designated with the WAIT modifier are independent of all other orders, including an agency order that is being exposed pursuant to Chapter VII, Section 12. WAIT orders are not associated or in any way linked to another order entered into the System, as is the case with certain facilitation orders at other options exchanges. The System will process the WAIT order even if a customer order entered into the System simultaneously with the WAIT order has been executed or cancelled during the WAIT second, unless the WAIT order itself is modified or cancelled pursuant to System rules. As a result, there is no guarantee that an order designated as WAIT will execute against another specific order. Use of the WAIT modifier is completely voluntary.

Nasdaq believes that the implementation of the aforementioned rule change modifying Nasdaq order entry options will enhance compliance with NOM rules and also preserve order execution opportunities on NOM.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and with Section 6(b)(5) of the Act,[8] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change promotes these goals by enhancing market quality and protecting investors and market participants from executions that violate Chapter VII, Section 12 of NOM Rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, Nasdaq fully expects that other options exchanges will copy this proposed rule change shortly after its implementation.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and subparagraph (f)(5) of Rule 19b–4 thereunder[10] as one that effects a change that: (A) Does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) does not have the effect of limiting the access to or availability of the system.

Specifically, the proposed rule change will benefit the protection of investors and the public interest by enhancing market quality and protecting investors and market participants from execution that violate Chapter VII, Section 12 of NOM Rules. The proposed rule change does not place a burden on competition but rather enhances competition among the markets. The proposed rule change does not limit access to or availability of the system.

Nasdaq believes that this proposal with respect to the WAIT modifier is properly designated as a change to an existing order entry system because the proposal modifies the timing of processing but not the manner in which orders are displayed, prioritized, executed, routed or otherwise processed within the System. Nasdaq has designated similar proposals in this fashion in the past, including a proposal to delay the operation of the Opening Cross on NOM.[11]

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, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2009–017 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2009–017. 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

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(5).

[11] Exchange Act Release No. 57822 (May 15, 2008) (SR–NASDAQ–2008–045); 73 FR 29800 (May 22, 2008).

Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NASDAQ–2009–017 and should be submitted on or before April 7, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–5722 Filed 3–16–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59559; File No. SR–NYSE–2009–03]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change To Adopt Listing Fees for Securities Listed Under Section 703.21 and 703.22 and Traded on NYSE Bonds

March 11, 2009.

I. Introduction

On January 9, 2009, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify the listing fees for securities that are listed under the Exchange's Listed Company Manual (''Manual'') Sections 703.21 and 703.22 and are traded on NYSE Bonds. The proposed rule change was published for comment in the **Federal Register** on February 4, 2009.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Currently, securities listed on the NYSE pursuant to Sections 703.21 (Equity-Linked Debt Securities) and 703.22 of the Manual (Equity Index-Linked Securities, Commodity-Linked Securities and Currency-Linked Securities) and traded on NYSE Bonds are subject to the fees set forth in Section 902.09 of the Manual.[4] Section 902.09 establishes various levels of fees based on the number of shares outstanding, with a minimum initial listing fee of $5,000 (for one million securities or fewer) and a maximum initial listing fee of $45,000 (for over 15 million securities). The minimum annual listing fee under Section 902.09 is $10,000 (for 6 million securities or fewer), and the maximum annual listing fee is $55,000 (for more than 50 million securities).

The Exchange proposes to establish a new section, proposed Section 902.10, in the Manual establishing fees payable in connection with the listing of securities that are listed under Section 703.21 and Section 703.22 and are traded on NYSE Bonds.[5] Under proposed Section 902.10, the initial listing fee for securities listed under Sections 703.21 and 703.22 and traded on NYSE Bonds will be a flat fee of $5,000 and the annual fee will be a flat fee of $5,000, regardless of the number of securities outstanding.

The Exchange stated that it is adopting a low level of listing fees for these securities because it believes doing so will make an exchange listing attractive in connection with offerings where listing is not crucial to a successful marketing of the securities. The Exchange notes that, in order to be listed on NYSE Bonds, a security must have a $1,000 denomination, and typically, index-linked securities and equity-linked securities with $1,000 denominations are marketed to institutional investors rather than retail investors. Because these purchasers are less concerned that securities they invest in should have an exchange listing, the Exchange notes that these securities are generally not listed on a national securities exchange. In addition, the Exchange notes that securities listed on NYSE Bonds do not have the benefit of a Designated Market Maker and, as such, the Exchange incurs lower regulatory and administrative costs in connection with such securities than would be the case with floor-traded securities. For the reasons noted above, the Exchange asserts that the proposed fees are set at a level that reflects the lower costs incurred by the Exchange in connection with the trading of securities on NYSE Bonds than on the equities trading floor, while remaining attractive to issuers for whom an exchange listing is not crucial.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act[6] and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with Sections 6(b)(4)[7] and 6(b)(5)[8] of the Act, which require that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities, and are designed, among other things, to promote just and equitable just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.[9]

The Commission believes that the new fees set forth for securities listed under Sections 703.21 and 703.22 of the Manual and traded on NYSE Bonds are consistent with the Act. The Commission notes that the adoption of new Section 902.10 will not result in any issuer paying higher initial listing fees, as the proposed flat initial listing fee of $5,000 is the same as the current minimum charged under Section 902.09. Accordingly, most issuers will

[12] 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. 59313 (January 28, 2009), 74 FR 6067.

[4] The Exchange recently added securities listed under Sections 703.21 and 703.22 and traded on NYSE Bonds to those securities subject to the fees set forth in Section 902.09. *See* Securities Exchange Act Release No. 58599 (September 19, 2008), 73 FR 55883 (September 26, 2008) (SR–NYSE–2008–56).

[5] The proposed rule change also amends Section 902.09 to remove references to the securities that will be subject to the fees under proposed Section 902.10.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78f(b)(5).

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

pay less than would currently be the case under Section 902.09. Similarly, all issuers will be subject to lower annual fees, as the proposed flat rate of $5,000 is less than the current minimum of $10,000 charged under Section 902.09. The Commission notes that the Exchange represents that, since it added securities listed under Sections 703.21 and 703.22 and traded on NYSE Bonds to Section 902.09 of the Manual,[10] the Exchange has not listed any such securities, and therefore no issuers have been charged those higher fees.[11] The Commission also notes that the Exchange has stated that it incurs lower regulatory and administrative costs in connection with such securities and that the proposed fees are set at a level that reflects these lower costs. Therefore, the Commission expects that the reduced fees should not affect the Exchange's ability to finance its regulatory activities. Based on the above, the Commission believes the proposed fee changes meet the statutory standards [12] that exchange rules provide for an equitable allocation of reasonable dues, fees and other charges among issuers, and do not unfairly discriminate between issuers.

For the reasons set forth above, the Commission finds that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–NYSE–2009–03) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–5717 Filed 3–16–09; 8:45 am]

BILLING CODE 8011–01–P

[10] *See supra* note 4.

[11] *See* e-mail from John Carey, Chief Counsel—U.S. Equities, NYSE, to Sara Hawkins, Special Counsel, Division of Trading and Markets, Commission, dated March 9, 2009.

[12] *See* Sections 6(b)(4) and 6(b)(5) of the Act, 15 U.S.C. 78f(b)(4) and 78f(b)(5).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59560; File No. SR–NYSEALTR–2009–02]

Self-Regulatory Organizations; NYSE Alternext US LLC.; Order Approving Proposed Rule Change To Revise Listing Fees

March 11, 2009.

I. Introduction

On January 8, 2009, NYSE Alternext US LLC (''NYSE Alternext'' 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 revise its listing fees. The proposed rule change was published in the **Federal Register** on February 4, 2009.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes amending its initial listing fees for common stock or common stock equivalents. The initial listing fees set forth in Section 140 of the Exchange's Company Guide for issuances of (i) less than five million shares would be increased from $40,000 to $50,000, (ii) five million to 10 million shares would be increased from $50,000 to $55,000, (iii) 10,000,001 shares to 15 million shares would be increased from $55,000 to $60,000 and (iv) in excess of 15 million shares would be increased from $65,000 to $70,000. The Exchange further proposes eliminating its $5,000 application fee in connection with a company's initial listing on the Exchange.[4]

The Exchange also proposes eliminating the $5,000 application processing fee in Section 140, payable in connection with the initial listing of a class of bonds of an issuer that does not have another class of securities listed on the Exchange. Additionally, Section 140 currently provides that, in the case of non-U.S. issuers listed on foreign stock exchanges, the fee, including the one-time, non-refundable application-processing fee of $5,000, is $40,000. The Exchange proposes to conform the initial listing fees charged to non-U.S. companies to those charged to domestic companies.

Effective January 1, 2010, the Exchange proposes to increase the annual fee for issuers that have between 50,000,001 and 75 million shares outstanding from $32,500 to $36,500 and for issuers with an excess of 75 million shares outstanding the annual fee would be raised from $34,000 to $40,000.[5] Moreover, as of the date of approval of this rule filing, issuers would be required to pay a supplemental annual fee equal to the difference between the amount they would pay in 2009 based on the current annual fee rates and the amount they would be required to pay if the 2010 annual fee rates were in place on January 1, 2009.

The Exchange further proposes eliminating Section 146 in its entirety and the provisions in Sections 140 and 142(g) that grants the Board of Directors of the Exchange the discretion to defer, waive or rebate all or any part of the initial listing fee payable in connection with any listing of securities or additional shares. The Exchange also proposes amending Section 142 of the Company Guide by (i) increasing from $60,000 to $65,000 the maximum fee per issuer for listing additional shares in a calendar year and (ii) increasing from $2,000 to $2,500 the fee charged in connection with a company changing its name or ticker symbol.

The Exchange also proposes to adopt a fee of $7,500 for technical original listings (''Technical Original Listings'') and reverse stock splits. The Exchange would apply the proposed $7,500 application fee for a Technical Original Listing if the change in the company's status is technical in nature and the shareholders of the original company receive or retain a share-for-share interest in the new company without any change in their equity position or rights.[6] The $7,500 application fee would also apply to reverse stock splits. The Technical Original Listing fee will replace the current $5,000 fee for ''substitution listings'' set forth in Section 142(d). The Technical Original Listing fee is intended to apply only to those events that would have previously

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59304 (January 27, 2009), 74 FR 6077 (February 4, 2009) (hereinafter referred to as ''Notice'').

[4] The Exchange proposes to make conforming changes to Section 144 of the Company Guide to eliminate references to the application processing fee.

[5] The Exchange proposes to retain the minimum annual fee of $27,500 for issuers with 50 million shares or less outstanding. Therefore, issuers with 50 million shares or less outstanding will not be subject to any annual fee increase for 2009.

[6] Minor technical amendments are being made to Rule 142(e) to reflect the fact that reincorporation will be explicitly included in the categories of events subject to the proposed Technical Original Listing fee.

been subject to the substitution listing fee.

Finally, the Exchange is amending the language of Section 142 to state that the fees in the section apply to non-U.S. companies. According to the Exchange, they have always applied the fees in Section 142 to non-U.S. companies, and therefore, this amendment clarifies the Exchange's policy.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,[7] which requires, among other things, that the rules of an exchange provide for equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

As discussed in the Notice, many of the Exchange's proposed fees, such as the initial listing fees for common stock or common stock equivalents, the maximum fee per issuer for listing additional shares in a calendar year, the fee charged in connection with a company changing its name or ticker symbol, and the Technical Original Listing fees are competitive with or substantially similar to the fees already in place at Nasdaq.[8] The Commission recognizes that competition for listings is becoming increasingly vigorous, and that such competition may help to ensure the reasonableness of fees among the markets vying for new listings.[9]

Moreover, as described in the Notice, the Exchange represented that it had increased services to listed companies and incurred increased costs for services and regulatory programs, which required changes to its listing fees.[10] The Exchange also cited different levels of services based on the number of outstanding shares to support the higher fees generally paid to the Exchange by larger companies and to provide justification for the proposed increases. Accordingly, the Commission believes that the Exchange's proposed fee increases are reasonable, given the current competitive landscape, the listing fees charged by Nasdaq, the services the Exchange offers issuers that choose to list with NYSE Alternext and the increased regulatory oversight costs noted by the Exchange. The Commission also believes it is reasonable for the Exchange to charge non-U.S. companies the same initial listing fees as domestic companies since, according to the Exchange, they receive the same level of service from the Exchange. For these reasons, the Commission believes the proposed fee changes meet the statutory standard of an equitable allocation of reasonable dues, fees and other charges among issuers.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act.[11]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–NYSEALTR–2009–02) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–5718 Filed 3–16–09; 8:45 am]

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[7] 15 U.S.C. 78f(b)(4).

[8] *See* Notice, *supra* note 3.

[9] *See* Securities Exchange Act Release No. 55202 (January 30, 2007), 72 FR 6017 (February 8, 2007).

[10] *See* Notice, *supra* note 3. Additionally, some costs were offset by the elimination of the $5,000 application fee.

[11] 15 U.S.C. 78f(b)(4). In approving the proposed rule change, the Commission has considered the proposed rule's impact in efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59561; File No. SR–NYSEALTR–2009–25]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Alternext US LLC Eliminating the Ability To Enter Orders on the Exchange With the Settlement Instructions of ''Cash'', ''Next Day'' and ''Seller's Option'' To Conform to Amendments Filed by the New York Stock Exchange

March 11, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 5, 2009, NYSE Alternext US LLC (the ''Exchange'' or ''NYSE Alternext'') 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to eliminate the ability to enter orders on the Exchange with the settlement instructions of ''cash'', ''next day'' and ''seller's option'' to conform to amendments filed by the New York Stock Exchange (''NYSE'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Through this filing the Exchange seeks to amend several NYSE Alternext Equities rules to conform these rules with amendments filed by the New York Stock Exchange[4] to remove references to certain settlement instructions that are no longer compatible with the Exchange's more electronic market. These include instructions to settle on ''cash'', ''next day'' or ''seller's option'' basis.

I. Background

As described more fully in a related rule filing,[5] NYSE Euronext acquired The Amex Membership Corporation (''AMC'') pursuant to an Agreement and Plan of Merger, dated January 17, 2008 (the ''Merger''). In connection with the Merger, the Exchange's predecessor, the American Stock Exchange LLC (''Amex''), a subsidiary of AMC, became a subsidiary of NYSE Euronext called

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 34–59446 (February 25, 2009), 74 FR 9323 (March 3, 2009) (SR–NYSE–2009–17).

[5] *See* Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–NYSE–2008–60 and SR–Amex–2008–62) (approving the Merger).

NYSE Alternext U.S. LLC, and continues to operate as a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended (the ''Act'') [sic].[6] The effective date of the Merger was October 1, 2008. In connection with the Merger, on December 1, 2008, the Exchange relocated all equities trading conducted on the Exchange legacy trading systems and facilities located at 86 Trinity Place, New York, New York, to trading systems and facilities located at 11 Wall Street, New York, New York (the ''Equities Relocation''). The Exchange's equity trading systems and facilities at 11 Wall Street (the ''NYSE Alternext Trading Systems'') are operated by the NYSE on behalf of the Exchange.[7]

As part of the Equities Relocation, NYSE Alternext adopted NYSE Rules 1–1004, subject to such changes as necessary to apply the Rules to the Exchange, as the NYSE Alternext Equities Rules to govern trading on the NYSE Alternext Trading Systems.[8] The NYSE Alternext Equities Rules, which became operative on December 1, 2008, are substantially identical to the current NYSE Rules 1–1004 and the Exchange continues to update the NYSE Alternext Equities Rules as necessary to conform with rule changes to corresponding NYSE Rules filed by the NYSE.

II. Proposed Amendments

Currently, in addition to regular way settlement (*i.e.,* settlement on the third business day following trade date), a customer may submit an order with settlement instructions for cash, next day or seller's option. An order with cash settlement instructions requires delivery of the securities the same day as the transaction in contrast to a regular way transaction, where the seller is required to deliver the securities on the third business day. Next day settlement instructions require delivery of the securities on the first business day following the transaction. Orders that have settlement instructions of seller's option afford the seller the right to deliver the security or bond at any time within a specified period, ranging from not less than two business days to not more than 180 days for stocks and not less than two business days and no more than sixty days for U.S. government securities.

Orders that include cash, next and seller's option settlement instructions may be submitted electronically to the Exchange; however, the orders containing any of those settlement instructions cannot be immediately and automatically executed. Rather, the orders must bypass the Exchange matching/execution engine, Display Book, and are literally printed on paper at the trading post for manual processing on the Floor.

Proposed Elimination of Cash, Next Day, Seller's Option Settlement Instructions

In the Exchange's current more electronic market, orders received by Exchange systems that are marketable upon entry are eligible to be immediately and automatically executed. Order types and settlement instructions that require manual intervention pose significant impediments to the efficient functioning of the NYSE Alternext Trading Systems operated by the NYSE on behalf of the Exchange. To this end the NYSE filed with the Commission to remove legacy orders that require manual processing. Specifically, on January 31, 2008, the NYSE filed with the Commission to amend NYSE Rule 13 to invalidate the use of the manual order types ''Alternative Order—Either/Or Order'', ''Orders Good Until a Specified Time'', ''Scale Order'' and ''Switch Order—Contingent Order'' and Rule 124's order types ''Limited Order, With or Without Sale'' and ''Basis Price Order'' as being incompatible with the more electronic NYSE market environment.[9] These changes were already reflected in NYSE Alternext's rules following the merger with the NYSE.

The Exchange's commitment to provide its market participants with the ability to have their orders executed in the most efficient manner necessitates the elimination of cash, next day and seller's option as valid settlement instructions for orders submitted to the Exchange. These instructions result in these orders printing to paper at the trading Post[10] when they are submitted electronically in Exchange systems. The DMM and the trading assistant must realize that the document printed was in fact an order thus causing delay in the execution of the order. The DMM is then responsible for the manual execution of the order. The manual intervention required of the DMM and trading assistant at the Post in the processing of these orders puts the orders at the very real risk of ''missing the market'' as a result of the current speed of order execution in the Exchange market. In addition, since orders with these settlement instructions will no longer be supported by New York Stock Exchange systems, NYSE Alternext will also no longer be able to accept them for the securities traded in the NYSE Alternext market.

The Exchange now seeks to eliminate cash, next day and seller's option as valid settlement instructions for orders submitted to the Exchange. The Exchange therefore proposes to delete the references to those settlement instructions from NYSE Alternext Rules 12 (''Business Day''), 64 (Bonds, Rights and 100-Share-Unit Stocks), 66 (U.S. Government Securities)[11], 123 (Records of Orders), 124 (Odd-Lot Orders), 130 (Overnight Comparison of Exchange Transactions), 137 (Written Contracts), 137A (Samples of Written Contracts), 189 (Unit of Delivery), 235 (Ex-Dividends, Ex-Rights), 236 (Ex-Warrants), 241 (Interest—Added to Contract Price), 257 (Deliveries After ''Ex'' Date), 282 (Buy-In Procedures) and 440G (Transactions in Stocks and Warrants for the Accounts of Members, Principal Executives and Member Organizations). In addition, the Exchange seeks to eliminate entirely NYSE Alternext Rules 73 (''Seller's Option''), 177 (Delivery Time—''Cash'' Contracts) and 179 (''Seller's Option''). In addition, the Exchange proposes to remove language in NYSE Alternext Rules 64 and 66 that provide for the possibility of using multiple settlement periods for bids and offers entered on the Exchange since, for all practical purposes, the Exchange will now only accept orders for regular way settlement.

The Exchange also proposes to amend NYSE Alternext Rule 66 to add the provision that exists in NYSE Alternext Rule 64 to allow the Exchange, in its

[6] 15 U.S.C. 78f.

[7] *See* Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex–2008–63) (approving the Equities Relocation).

[8] *See* Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex–2008–63) (approving the Equities Relocation); Securities Exchange Act Release No. 58833 (October 22, 2008), 73 FR 64642 (October 30, 2008) (SR–NYSE–2008–106) *and* Securities Exchange Act Release No. 58839 (October 23, 2008), 73 FR 64645 (October 30, 2008) (SR–NYSEALTR–2008–03) (together, approving the Bonds Relocation); Securities Exchange Act Release No. 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (SR–NYSEALTR–2008–10) (adopting amendments to NYSE Alternext Equities Rules to track changes to corresponding NYSE Rules); Securities Exchange Act Release No. 59027 (November 28, 2008), 73 FR 73681 (December 3, 2008) (SR–NYSEALTR–2008–11) (adopting amendments to Rule 62—NYSE Alternext Equities to track changes to corresponding NYSE Rule 62).

[9] *See* Securities and [sic] Exchange Act Release No. 57295 (February 8, 2008), 73 FR 8731 (February 14, 2008) (SR–NYSE–2008–11).

[10] Trading Posts are the horseshoe shaped counters manned by DMMs and trading assistants on the Trading Floor of the NYSE where individual stocks are bought and sold.

[11] The Exchange does not have the capability to accept these order types for U.S. Government securities.

discretion, to provide for additional settlement periods. The Exchange is proposing this addition to bring the provisions of the two rules into harmony as they address similar procedures with respect to different types of securities admitted to dealings on the Exchange. The Exchange, however, recognizes that any additional settlement periods it proposes to add will be subject to the rule filing process under Section 19(b) of the Securities Exchange Act of 1934 (the ''Act'') [sic].[12]

The Exchange will commence implementation of the proposed elimination of the settlement instructions discussed herein on March 13, 2009. The Exchange intends to progressively implement this elimination on a security by security basis as it gains experience with the implementation until it is operative in all securities traded on the Floor. During the implementation, the Exchange will identify on its website which securities will no longer be eligible for these settlement instructions.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Act'') [sic] for this proposed rule change is the requirement under Section 6(b)(5)[13] that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The instant filing accomplishes these goals by rescinding legacy settlement instructions that place customers at risk of missing the market and possibly receiving inferior priced executions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[12] 15 U.S.C. 78s(b).

[13] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest, (ii) impose any significant burden on competition, and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A)[14] of the Act and Rule 19b–4(f)(6) thereunder.[15]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative until 30 days after the date of filing.[16] However, Rule 19b–4(f)(6)(iii)[17] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative on March 13, 2009. Specifically, the Exchange states that the proposal will rescind legacy settlement instructions that are not compatible with the Exchange's electronic market. The Commission believes that allowing the proposed rule change to become operative on March 13, 2009 is consistent with the protection of investors and the public interest, because it will enable the Exchange to implement pending technological enhancements that require the rescission of these legacy settlement instructions. The Exchange expects these enhancements to make its order processing operations more efficient and thereby strengthen and advance the quality of the Exchange's market. Accordingly, the Commission designates the proposed rule change to be operative on March 13, 2009.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] For purposes only of waiving the 30-day operative delay of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEALTR–2009–25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEALTR–2009–25. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEALTR–2009–25 and

should be submitted on or before April 7, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–5719 Filed 3–16–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59556; File No. SR–NYSEArca–2009–17]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending Rule 6.87—Obvious Errors

March 11, 2009.

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 February 27, 2009, NYSE Arca, Inc. (''NYSE Arca'' 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 self-regulatory organization. NYSE Arca filed the proposed rule change as a ''non-controversial'' proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6.87—Obvious Errors. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Arca proposes to amend Rule 6.87 pertaining to the nullification and adjustment of options transactions. Specifically, the Exchange proposes to adopt a new provision which provides that in the interest of maintaining a fair and orderly market and for the protection of investors, the Chief Executive Officer of NYSE Arca Inc. (''CEO'') or his/her designee (collectively ''Exchange officer''),[5] may, on his or her own motion or upon request, determine to review any transaction occurring on the Exchange that is believed to be erroneous.[6] A transaction reviewed pursuant to this new provision may be nullified or adjusted only if it is determined by the Exchange officer that the transaction is erroneous as provided in Rule 6.87(a)(1)–(5) or Commentary .04 thereof. A transaction would be adjusted or nullified in accordance with the provision under which it is deemed an erroneous transaction. The Exchange officer may be assisted by a Trading Official in reviewing a transaction.

The Exchange officer shall act pursuant to this paragraph as soon as possible after receiving notification of the transaction, and ordinarily would be expected to act on the same day as the transaction occurred. However, because a transaction under review may have occurred near the close of trading or due to unusual circumstances, the rule provides that the Exchange officer shall act no later than 9:30 a.m. (ET) on the next trading day following the date of the transaction in question. An OTP Holder affected by a determination to nullify or adjust a transaction pursuant to this new provision may appeal such determination in accordance with Rule 6.87(a)(6); however, a determination by an Exchange officer not to review a transaction, or a determination not to nullify or adjust a transaction for which a review was requested or conducted, is not appealable. NYSE Arca believes it is appropriate to limit review on appeal to only those situations in which a transaction is actually nullified or adjusted.

This new provision is not intended to replace a party's obligation to request a review, within the required time periods under Rule 6.87(a)(3), of any transaction that it believes meets the criteria for an obvious error. And, if a transaction is reviewed and a determination has been rendered pursuant to Rules 6.87(a)(1)–(5) or Commentary .04 thereof, no additional relief may be granted under this new provision. Moreover, NYSE Arca does not anticipate exercising this new authority in every situation in which a party fails to make a timely request for review of a transaction pursuant to Rule 6.87(a)(3). NYSE Arca believes this provision will help to protect the integrity of its marketplace by vesting an Exchange officer with the authority to review a transaction that may be erroneous, in those situations where a party failed to make a timely request for a review.

The Exchange also proposes at this time to revise Rule 6.87(a)(3)(A) in order to clarify that the time period in which a Market Maker or other OTP Holder must notify the Exchange, when requesting relief from a possible erroneous transaction, applies to all transactions that are subject to adjustment or nullification, pursuant to Rule 6.87(a)(1)–(5).

2. Statutory Basis

This proposed rule change is designed to allow an Exchange officer to review a transaction in order to provide the opportunity for potential relief to a party affected by an obvious error. The Exchange believes that for these reasons the proposed rule change is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, because 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. NYSE Arca notes that the

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange represents that a CEO designee will be an officer of the Exchange, who has also been designated as a Trading Official, such as the Executive Vice President of Trading Operations or the Vice President of Trading Services. Exchange officers are employees of the Exchange, and are not affiliated with OTP Holders or OTP Firms.

[6] In the event a party to a transaction requests that the CEO or his/her designee review a transaction, the Exchange officer nonetheless would need to determine, on his or her own motion, whether to review the transaction.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

Exchange officer can adjust or nullify a transaction under the authority granted by this new provision only if the transaction meets the objective criteria for an obvious error under NYSE Arca rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6)(iii) thereunder.[12]

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–NYSEArca–2009–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2009–17. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2009–17 and should be submitted on or before April 7, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–5716 Filed 3–16–09; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the pre-filing requirement.

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11643 and #11644]

Kentucky Disaster Number KY–00019

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Kentucky (FEMA–1818–DR), dated 02/05/2009.

Incident: Severe winter storm and flooding.

Incident Period: 01/26/2009 through 02/13/2009.

Effective Date: 03/09/2009.

Physical Loan Application Deadline Date: 04/06/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 11/05/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, 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 private non-profit organizations in the State of Kentucky, dated 02/05/2009, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Boone, Casey, Gallatin, Hancock, Henry, Kenton, Simpson, Taylor, Wolfe, Trimble

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. E9–5736 Filed 3–16–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11690 and #11691]

Texas Disaster Number TX–00334

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Texas dated: 03/10/2009.

Incident: Bastrop County Wildland Fire.

Incident Period: 02/28/2009 and continuing.

Effective Date: 03/10/2009.

Physical Loan Application Deadline Date: 5/11/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 12/10/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, 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 Administrator's disaster declaration, 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:

Bastrop.

Contiguous Counties: Texas.

Caldwell, Fayette, Lee, Travis, Williamson.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	4.375
Homeowners Without Credit Available Elsewhere	2.187
Businesses With Credit Available Elsewhere	6.000
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere;	4.500
Businesses And Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11690 5 and for economic injury is 11691 0.

The States which received an EIDL Declaration # are Texas.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: March 10, 2009.

Darryl K. Hairston,

Acting Administrator.

[FR Doc. E9–5735 Filed 3–16–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 02/72–0627]

Accretive Investors SBIC, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Accretive Investors SBIC, L.P., 51 Madison Avenue, 31st Floor, New York, NY, 10010, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Accretive Investors SBIC, L.P. proposes to provide equity financing to Axiant, LLC, 2727 Paces Ferry Road, Atlanta, GA 30339. The financing is contemplated for working capital and debt repurchase.

The financing is brought within the purview of 107.730(a)(1) of the Regulations because Accretive II, LP; Accretive Blocker, LP; Accretive II Coinvestment Partners, LP and Accretive Coinvestment Partners, LLC, all Associates of Accretive Investors SBIC, L.P., in the aggregate own more than ten percent of Axiant, LLC.

Therefore, this transaction is considered a financing of an Associate requiring an exemption. Notice is hereby given that any interested person may submit written comments on the transaction within fifteen days of the date of this publication to the Acting Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: February 5, 2009.

Harry Haskins,

Acting Associate Administrator for Investment.

[FR Doc. E9–5738 Filed 3–16–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice to terminate the Nonmanufacturer Rule Class Waiver for Product Service Code (PSC) 3930, Warehouse Trucks and Tractors, Self-Propelled.

SUMMARY: The U.S. Small Business Administration (SBA) has terminated a waiver of the Nonmanufacturer Rule for PSC 3930, Warehouse Trucks and Tractors, Self-Propelled based on SBA's recent discovery of small business manufacturers. Terminating this waiver will require recipients of contracts set aside for small businesses, service-disabled veteran-owned small businesses, or participants in SBA's 8(a) Business Development (BD) Program to provide the products of small business manufacturers or processors on such contracts.

DATE: This waiver is effective April 1, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Edith G. Butler, by telephone at (202) 619–0422; by FAX at (202) 481–1788; or by e-mail at *edith.butler@sba.gov.*

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act (Act), 15 U.S.C. 637(a)(17), and SBA's implementing regulations require that recipients of Federal contracts set aside for small businesses, service-disabled veteran-owned small businesses, or participants in the SBA's 8(a) Business Development Program, provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. 13 CFR 121.406(b), 125.15(c). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any ''class of products'' for which there are no small business manufacturers or processors available to participate in the Federal market.

In order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. 13 CFR 121.1202(c).

The SBA defines ''class of products'' based on a six digit coding system. The coding system is the Office of Management and Budget North American Industry Classification System (NAICS). In addition, SBA uses Product Service Codes (PSC) to identify particular products within the NAICS code to which a waiver would apply.

SBA announced its decision to grant the waiver for PSC 3930 in the **Federal Register** on September 13, 1990. 55 **Federal Register** 38313 (1990). SBA received a request on December 18, 2008, to terminate the waiver to the nonmanufacturer rule for Warehouse Trucks and Tractors, Self-Propelled, under PSC 3930. In response, on

February 12, 2009, SBA issued a notice of intent to terminate the wavier of the Nonmanufacturer Rule for Warehouse Trucks and Tractors, Self-Propelled. Comments were received from this notice and SBA has determined that there are small business manufacturers, and is therefore terminating the waiver for Warehouse Trucks and Tractors, Self-Propelled, PSC 3930, under NAICS code 333319.

Dated: March 10, 2009.

Karen C. Hontz,

Director for Government Contracting.

[FR Doc. E9–5737 Filed 3–16–09; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 6543]

Advisory Committee International Postal and Delivery Services

AGENCY: Department of State.

ACTION: Notice; FACA Committee meeting announcement.

SUMMARY: As required by the Federal Advisory Committee Act, Public Law 92–463, the Department of State gives notice of the fifth meeting of the Advisory Committee on International Postal and Delivery Services. This Committee has been formed in fulfillment of the provisions of the 2006 Postal Accountability and Enhancement Act (Pub. L. 109–435) and in accordance with the Federal Advisory Committee Act.

Public Input: Any member of the public interested in providing public input to the meeting should contact Mr. Chris Wood, Office of Technical Specialized Agencies (IO/T), Bureau of International Organization Affairs, U.S. Department of State, at (202) 647–1044, *woodcs@state.gov*.

Each individual providing oral input is requested to limit his or her comments to five minutes. Requests to be added to the speaker list must be received in writing (letter, e-mail or fax) prior to the close of business on May 29, 2009; written comments from members of the public for distribution at this meeting must reach Mr. Wood by letter, e-mail or fax by this same date.

Meeting Agenda: The agenda of the meeting will include a review of the results of the March-April 2009 session of the UPU Postal Operations Council and other subjects related to international postal and delivery services of interest to Advisory Committee members and the public.

Meeting Date: June 4, 2009 from 2 p.m. to about 5 p.m. (open to the public).

Location: The American Institute of Architects (Boardroom), 1735 New York Ave., NW., Washington, DC 20006.

Dated: March 9, 2009.

Dennis M. Delehanty,

Designated Federal Officer, Advisory Committee on International Postal and Delivery Services, Foreign Affairs Officer, Department of State.

[FR Doc. E9–5747 Filed 3–16–09; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF STATE

[Public Notice 6542]

U.S. Department of State Advisory Committee on Private International Law Study Group Notice of Meeting on the United Nations Commission on International Trade Law (UNCITRAL) Draft Legislative Guide on Secured Transactions and Its Treatment of Security Rights in Intellectual Property (IP)

The Department of State Advisory Committee on Private International Law (ACPIL) will be holding a public meeting to continue to discuss the treatment of IP-secured financing practices in the UNCITRAL Draft Legislative Guide on Secured Transactions (Guide). At the 40th Session of the UNCITRAL in December 2007, the Commission adopted a legislative guide on secured transactions, including recommendations dealing with the scope of the Guide as it relates to IP law and secured financing, as well as the inclusion in the commentary to the Guide of explanatory statements on the treatment of IP as secured financing. The Commission also approved a work project on IP law matters as they relate to secured financing law. Earlier sessions for that work project were held in May and October of 2008. A third session of that work project is scheduled for April 27–May 1, 2009 in New York. The ACPIL will use this public meeting to continue to exchange thoughts on the relationship between secured finance and IP and how this matter should be addressed in the new draft IP annex to the Guide. The report of the first two sessions of the working group and the papers prepared by the Secretariat for the next session of the working group can be obtained at *http://www.uncitral.org/uncitral/en/commission/working_groups/6Security_Interests.html*.

Time: The public meeting will take place at the Department of State, Office of Private International Law, 2430 E Street, NW., Washington, DC on Tuesday, April 8, 2009, from 11 a.m. EST to 1 p.m. EST.

Public Participation: Advisory Committee Study Group meetings are open to the public, subject to the capacity of the meeting room. Access to the meeting building is controlled; persons wishing to attend should contact Tricia Smeltzer or Niesha Toms of the Department of State Legal Adviser's Office at *SmeltzerTK@state.gov* or *TomsNN@state.gov* and provide your name, e-mail address, and mailing address to get admission into the meeting or to get directions to the office. Persons who cannot attend but who wish to comment are welcome to do so by e-mail to Michael Dennis at *DennisMJ@state.gov*. If you are unable to attend the public meeting and you would like to participate by teleconferencing, please contact Tricia Smeltzer or Niesha Toms at 202–776–8420 to receive the conference call-in number and the relevant information.

Dated: March 9, 2009.

Michael J. Dennis,

Attorney-Adviser, Office of Private International Law, Department of State.

[FR Doc. E9–5751 Filed 3–16–09; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fourth Plenary Meeting, NextGen Mid-Term Implementation Task Force

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of NextGen Mid-Term Implementation Task Force meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the NextGen Mid-Term Implementation Task Force.

DATES: The meeting will be held May 12, 2009 starting at 9 a.m. to 12 p.m. Arrive in FAA Lobby at 8:30 a.m. for visitor check in.

ADDRESSES: FAA Auditorium, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

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 (P.L. 92–463, 5

U.S.C., Appendix 2), notice is hereby given for a NextGen Mid-Term Implementation Task Force meeting. The agenda will include:

- Opening Plenary (Welcome and Introductions).
- Work Group and Subgroup Status Reports and Planned Activities.
- Discussion and Next Steps.
- Closing Plenary (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 chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 10, 2009.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. E9–5666 Filed 3–16–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review; Detroit Metropolitan Wayne County Airport, Detroit, MI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Detroit Metropolitan Wayne County Airport under the provisions of 49 U.S.C. 47504 *et. seq* (the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act'') and 14 CFR part 150 by Wayne County Airport Authority. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR part 150 for Detroit Metropolitan Wayne County Airport were in compliance with applicable requirements, effective March 7, 2006 and was published in the **Federal Register** on March 21, 2006. The proposed noise compatibility program will be approved or disapproved on or before August 29, 2009.

DATES: *Effective Date:* The effective date of the start of FAA's review of the noise compatibility program is March 2, 2009. The public comment period ends May 1, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Gubry, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174, 734–229–2905. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for Detroit Metropolitan Wayne County Airport which will be approved or disapproved on or before August 29, 2009. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has formally received the noise compatibility program for Detroit Metropolitan Wayne County Airport, effective on March 2, 2009. The airport operator has requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 47504 of the Act. Preliminary review of the submitted material indicates that it conforms to FAR Part 150 requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before August 29, 2009.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety or create an undue burden on interstate or foreign commerce, and whether they are reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments relating to these factors, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174.

Wayne County Airport Authority, Michelle Plawecki, Authority Noise Manager, Noise Compatibility Office, LC Smith Terminal, Main Floor, Detroit, MI 48242. Phone: 734–942–1503. Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Dated: March 2, 2009.

Issued in Romulus, Michigan.

Matthew J. Thys,

Manager, Detroit Airports District Office, Great Lakes Region.

[FR Doc. E9–5674 Filed 3–16–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Buy America Waiver Notification

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: This notice provides information regarding the FHWA's finding that a Buy America waiver is appropriate for the span lock linear electric actuators used in rehabilitation of the Robert Moses causeway NB and SB structures in New York.

DATES: The effective date of the waiver is March 18, 2009.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Gerald Yakowenko, FHWA Office of Program Administration, (202) 366–1562, *gerald.yakowenko@dot.gov*. For legal questions, please contact Mr. Michael Harkins, FHWA Office of the Chief Counsel, (202) 366–4928, *michael.harkins@dot.gov*. Office hours for the FHWA are from 7:45 a.m. to 4:15 p.m., *e.t.*, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the Federal

Register's home page at: *http://www.archives.gov* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

Background

The FHWA's Buy America policy in 23 CFR 635.410 requires a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid construction project. The regulation also provides for a waiver of the Buy America requirements when the application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not sufficiently available. This notice provides information regarding the FHWA's findings that a Buy America waiver is appropriate for a span lock linear electric actuator in the State of New York.

In accordance with section 130 of Division K of the ''Consolidated Appropriations Act, 2008'' (Pub. L. 110–161), the FHWA published on its Web site a notice of intent to issue a Buy America waiver for the span lock linear electric actuator in New York *http://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=28* on February 4. The FHWA received one comment in response to the span lock linear electric actuator. The comment was ''Buy America needs to be maintained in every instance possible.'' During the 15-day comment period, the FHWA conducted an additional nationwide review to locate potential domestic manufacturers for the product. Based on all the information available to the agency, including the response received to the notice as well as the Agency's nationwide review, the FHWA concludes that there are no domestic manufacturers for the span lock linear electric actuator.

In accordance with the provisions of section 117 of the ''SAFETEA–LU Technical Corrections Act of 2008'' (Pub. L. 110–244, 122 Stat. 1572), the FHWA is providing this notice as its finding that a waiver of the Buy America requirements is appropriate pursuant to 23 CFR 635.410(c)(1). The FHWA invites public comment on this finding for an additional 15 days following the effective date of the finding. Comments may be submitted to the FHWA's Web site via the link provided to the New York waiver page noted above.

(Authority: 23 U.S.C. 313; Pub. L. 110–161, 23 CFR 635.410.)

Issued on: March 9, 2009.

Jeffrey F. Paniati,

Acting Deputy Administrator, Federal Highway Administration.

[FR Doc. E9–5752 Filed 3–16–09; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257; Notice No. 51]

Railroad Safety Advisory Committee; Notice of Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Announcement of Railroad Safety Advisory Committee (RSAC) Meeting.

SUMMARY: FRA announces the thirty-eighth meeting of the RSAC, a Federal Advisory Committee that develops railroad safety regulations through a consensus process. The RSAC meeting topics will include opening remarks from the FRA Acting Deputy Administrator, and status reports will be provided by the following Working Groups: Positive Train Control, Hours of Service, Passenger Safety, Locomotive Safety Standards, Railroad Bridge Safety, Medical Standards, Railroad Operating Rules, and Track Safety Standards. The Committee may be asked to approve recommendations concerning a final rule on revision of recordkeeping and reporting requirements for hours of service of safety-critical railroad employees. The Committee may be asked to approve a proposed rule on Railroad Bridge Safety and to consent to a mail ballot on recommendations for a proposed rule on Positive Train Control. The Committee may also be asked to accept a Task concerning hours of service for train, engine and yard employees of intercity and commuter passenger railroads. This agenda is subject to change, including the possible addition of further proposed tasks under the Rail Safety and Improvement Act of 2008.

DATES: The meeting of the RSAC is scheduled to commence at 9:30 a.m. and will adjourn by 4:30 p.m. on Thursday, April 2, 2009.

ADDRESSES: The RSAC meeting will be held at the Washington Marriott Hotel, located at 1221 22nd Street, NW., Washington, DC 20005. The meeting is open to the public on a first-come, first-serve basis, and is accessible to individuals with disabilities. Sign and oral interpretation can be made available if requested 10 calendar days before the meeting.

FOR FURTHER INFORMATION CONTACT: Larry Woolverton, RSAC Administrative Officer/Coordinator, FRA, 1200 New Jersey Avenue, SE., Mailstop 25, Washington, DC 20590, (202) 493–6212; or Grady Cothen, Deputy Associate Administrator for Safety, FRA, 1200 New Jersey Avenue, SE., Mailstop 25, Washington, DC 20590, (202) 493–6302.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), FRA is giving notice of a meeting of the RSAC. The RSAC was established to provide advice and recommendations to the FRA on railroad safety matters. The RSAC is composed of 54 voting representatives from 31 member organizations, representing various rail industry perspectives. In addition, there are non-voting advisory representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico, the National Transportation Safety Board, and the Federal Transit Administration. The diversity of the Committee ensures the requisite range of views and expertise necessary to discharge its responsibilities. See the RSAC Web site for details on pending tasks at: *http://rsac.fra.dot.gov/*. Please refer to the notice published in the **Federal Register** on March 11, 1996, 61 FR 9740) for additional information about the RSAC.

Issued in Washington, DC, on March 11, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–5675 Filed 3–16–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257; Notice No. 52]

Railroad Safety Advisory Committee; Working Group Activity Update

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Announcement of Railroad Safety Advisory Committee (RSAC) Working Group Activities.

SUMMARY: The FRA is updating its announcement of RSAC's Working Group activities to reflect its current status.

FOR FURTHER INFORMATION CONTACT: Larry Woolverton, RSAC Coordinator, FRA, 1200 New Jersey Avenue, SE.,

Mailstop 25, Washington, DC 20590, (202) 493–6212; or Grady Cothen, Deputy Associate Administrator for Safety, FRA, 1200 New Jersey Avenue, SE., Mailstop 25, Washington, DC 20590, (202) 493–6302.

SUPPLEMENTARY INFORMATION: This notice serves to update FRA's last announcement of working group activities and status reports of August 29, 2008 (73 FR 51041). The 37th full RSAC Committee meeting was held December 10, 2008, and the 38th meeting is scheduled for April 2, 2009, at the Washington Marriott Hotel located at 1221 22nd Street, NW., in Washington, DC.

Since its first meeting in April of 1996, the RSAC has accepted 30 tasks. The status for each of the open tasks (neither completed nor terminated) is provided below:

Open Tasks

Task 96–4—Tourist and Historic Railroads. Reviewing the appropriateness of the agency's current policy regarding the applicability of existing and proposed regulations to tourist, excursion, scenic, and historic railroads. This Task was accepted on April 2, 1996, and a Working Group was established. The Working Group monitored the steam locomotive regulation task. Planned future activities involve the review of other regulations for possible adaptation to the safety needs of tourist and historic railroads. Contact: Grady Cothen, (202) 493–6302.

Task 03–01—Passenger Safety. This task includes updating and enhancing the regulations pertaining to passenger safety, based on research and experience. This Task was accepted on May 20, 2003, and a Working Group was established. Prior to embarking on substantive discussions of a specific task, the Working Group set forth in writing a specific description of the task. The Working Group reports planned activities to the full Committee at each scheduled full RSAC meeting, including milestones for completion of projects and progress toward completion. At the first meeting, held September 9–10, 2003, a consolidated list of issues was completed. At the second meeting, held November 6–7, 2003, four task groups were established: Emergency Preparedness; Mechanical; Crashworthiness; and Track/Vehicle Interaction. The task forces met and reported on activities for Working Group consideration at the third meeting, held May 11–12, 2004, and a fourth meeting was held October 26–27, 2004. The Working Group met on March 21–22, 2006, and again on September 12–13, 2006, at which time the group agreed to establish a task force on General Passenger Safety. The full Passenger Safety Working Group met on April 17–18, 2007, December 11–12, 2007, and November 13, 2008. The next meeting is to be scheduled in June 2009. Contact: Charles Bielitz, (202) 493–6314.

(Emergency Preparedness Task Force) At the Working Group meeting of March 9–10, 2005, the Working Group received and approved the consensus report of the Emergency Preparedness Task Force related to emergency communication, emergency egress and rescue access. These recommendations were presented to and approved by the full RSAC Committee on May 18, 2005. The Working Group met on September 7–8, 2005, and additional, supplementary recommendations were presented to and accepted by the full RSAC on October 11, 2005. The Notice of Proposed Rulemaking (NPRM) was published on August 24, 2006, (71 FR 50275) and was open for comment until October 23, 2006. The Working Group agreed upon recommendations for the final rule, including resolution of final comments received, during the April 17–18, 2007, meeting. The recommendations were presented to and approved by the full RSAC on June 26, 2007. The Passenger Train Emergency Systems final rule, focusing on emergency communication, emergency egress, and rescue access, was published on February 1, 2008 (73 FR 6370). The Task Force met on October 17–18, 2007, and reached consensus on draft rule text for a followup NPRM on Passenger Train Emergency Systems, focusing on low-location emergency exit path marking, emergency lighting, and emergence signage. The Task Force presented the draft rule text to the Passenger Safety Working Group on December 11–12, 2007, and the consensus draft rule text was presented to and approved by full RSAC vote during the February 20, 2008, meeting. At its most recent meeting, held May 13–14, 2008, the Task Force recommended clarifying the applicability of backup emergency communication system requirements in the February 1, 2008, final rule, and FRA announced its intention to exercise limited enforcement discretion for a new provision amending instruction requirements for emergency window exit removal. The Working Group ratified these recommendations on June 19, 2008. No additional Task Force meetings are currently scheduled. Contact: Brenda Moscoso, (202) 493–6282.

(Mechanical Task Force) (Completed) Initial recommendations on mechanical issues (revisions to Title 49 Code of Federal Regulations (CFR) Part 238) were approved by the full Committee on January 26, 2005. At the Working Group meeting of September 7–8, 2005, the Task Force presented additional perfecting amendments and the full RSAC approved them on October 11, 2005. An NPRM was published in the **Federal Register** on December 8, 2005, (70 FR 73070). Public comments were due by February 17, 2006. The final rule was published in the **Federal Register** on October 19, 2006, (71 FR 61835) effective December 18, 2006.

(Crashworthiness Task Force) Among its efforts, the Crashworthiness Task Force provided consensus recommendations on static end strength that were adopted by the Working Group on September 7–8, 2005. The full Committee accepted the recommendations on October 11, 2005. The Front-End Strength of Cab Cars and Multiple-Unit Locomotives NPRM was published in the **Federal Register** on August 1, 2007, (72 FR 42016) with comments due by October 1, 2007. A number of comments were entered into the docket, and a Crashworthiness Task Force meeting was held September 9, 2008, to resolve comments on the NPRM. Based on the consensus language agreed to at the meeting, FRA has prepared the text of the final rule incorporating the resolutions made at the Task Force meeting and the final rule language was adopted at the Passenger Safety Working Group meeting, held on November 13, 2008. The language was presented and approved at the December 10, 2008, full RSAC meeting and the rule will go forward with a target publication date of April 2009. Contact: Gary Fairbanks, (202) 493–6322.

(Vehicle/Track Interaction Task Force) The Task Force is developing proposed revisions to 49 CFR parts 213 and 238 principally regarding high-speed passenger service. The Task Force met on October 9–11, 2007, and again on November 19–20, 2007, in Washington, DC and presented the final Task Force Report and final recommendations and proposed rule text for approval by the Passenger Safety Working Group at the December 11–12, 2007, meeting. The final report and the proposed rule text were approved by the Working Group and was presented to and approved by full RSAC vote during the February 20, 2008, meeting. The group last met on February 27–28, 2008, and FRA is currently crafting an NPRM with a target publication date of September 2009. No additional Task Force meetings are currently scheduled. Contact: John Mardente, (202) 493–1335.

(General Passenger Safety Task Force) At the Passenger Safety Working Group meeting on April 17–18, 2007, the Task Force presented a progress report to the Working Group. The Task Force met on July 18–19, 2007, and afterwards, it reported proposed reporting cause codes for injuries involving the platform gap, which were approved by the Working Group by mail ballot in September 2007. The full RSAC approved the recommendations for changes to 49 CFR part 225 accident/incident cause codes on October 25, 2007. The Task Force continues work on passenger train door securement, ''second train in station,'' trespasser incidents, and System-Safety based solutions by developing a regulatory approach to System Safety. The General Passenger Safety Task Force presented draft guidance material for management of the gap that was considered and approved by the Working Group during the December 11–12, 2007, meeting and was presented to and approved by full RSAC vote during the February 20, 2008, meeting. The group met April 23–24, 2008, and December 3–4, 2008. The next meeting is scheduled for April 21–23, 2009. Contact: Dan Knote, (631) 567–1596.

Task 05–01—Review of Roadway Worker Protection (RWP) Issues. This Task was accepted on January 26, 2005, to review 49 CFR part 214, subpart C, Roadway Worker Protection, and related sections of Subpart A; recommend consideration of specific actions to advance the on-track safety of railroad employees and contractors engaged in maintenance-of-way activities throughout the general system of railroad transportation, including clarification of existing requirements. A Working Group was established and reported to the RSAC any specific actions identified as appropriate. The first meeting of the Working Group was held on April 12–14, 2005. The group drafted and accepted regulatory language for various revisions, clarifications, and additions to 32 separate items in 19 sections of the rule. However, two parties raised technical concerns regarding the draft language concerning electronic display of track authorities. The Working Group reported recommendations to the full Committee at the June 26, 2007, meeting. The FRA, through the NPRM process, is to address this issue along with eight additional items on which the Working Group was unable to reach a consensus. Comments were received and were considered during the drafting of the NPRM. In early 2008, the external working group members were solicited to review the consensus text for errata review. In order to address the heightened concerns raised with the current regulations for adjacent-track on-track safety, an NPRM was published on July 17, 2008, that focused on this element of the RWP rule alone. As this was an NPRM, FRA sought comment on the entire proposal, including those portions that FRA sought to clarify. However, on August 13, 2008, the NPRM was withdrawn to permit further consideration of the RSAC-reported consensus language. FRA has decided to separately issue a second proposed rule on adjacent track protection, which will be handled on an accelerated basis. The second NPRM concerning adjacent controlled track safety is under final review and is expected to be published by mid-year 2009. The remaining larger NPRM for the various revisions, clarifications, and additions to 31 separate items in 19 sections of the rule and FRA's recommendations for the eight non-consensus items is planned for late 2009. Contact: Christopher Schulte, (610) 521–8201.

Task 05–02—Reduce Human Factor-Caused Train Accident/Incidents. This Task was accepted on May 18, 2005, to reduce the number of human factor-caused train accidents/incidents and related employee injuries. The Railroad Operating Rules Working Group was formed and the Group extensively reviewed the issues presented. The final Working Group meeting devoted to developing a proposed rule was held February 8–9, 2006. The Working Group was not able to deliver a consensus regulatory proposal, but did recommend that it be used to review comments on FRA's NPRM, which was published in the **Federal Register** on October 12, 2006, (FR 71 60372) with public comments due by December 11, 2006. Two reviews were held, one on February 8–9, 2007, the other on April 4–5, 2007. Consensus was reached on four items and those items were presented and accepted by the full RSAC Committee at the June 26, 2007, meeting. A final rule was published in the **Federal Register** on February 13, 2008 (73 FR 8442) with an effective date of April 14, 2008. FRA received four petitions for reconsideration of that final rule. The final rule that responded to the petitions for consideration was published in the **Federal Register** on June 16, 2008, and concluded the rulemaking. Working group meetings were held September 27–28, 2007, January 17–18, 2008, May 21–22, 2008, and September 25–26, 2008. The Working Group has considered issues related to issuance of Emergency Order No. 26 (prohibition on use of certain electronic devices while on duty) and ''after arrival mandatory directives,'' among other issues. The working group continues to work on After Arrival Orders and at the September 25, 2008, meeting voted to create a Highway-Rail Grade Crossing Task Force to review highway-rail grade crossing accident reports regarding incidents of crossing warning systems providing ''short or no warning'' resulting from or contributed to ''by train operational issues'' with the intent to recommend new accident/incident reporting codes that would better explain such events, and which may provide information for remedial action going forward. A follow-on task is to review and provide recommendations regarding supplementary reporting of train operations-related, no-warning or short-warning incidents that are not technically warning system activation failures but which result in an accident/incident or a near miss. The Task Force has been formed and is scheduled to meet in the May/June 2009 timeframe. Contact: Douglas Taylor, (202) 493–6255.

Task 06–01—Locomotive Safety Standards. This task was accepted on February 22, 2006, to review 49 CFR Part 229, Railroad Locomotive Safety Standards, and revise as appropriate. A Working Group was established with the mandate to report any planned activity to the full Committee at each scheduled full RSAC meeting, to include milestones for completion of projects and progress toward completion. The first Working Group meeting was held May 8–10, 2006. Working Group meetings were held on August 8–9, 2006, September 25–26, 2006, and October 30–31, 2006, and the Working Group presented recommendations regarding revisions to requirements for locomotive sanders to the full RSAC on September 21, 2006. The NPRM regarding sanders was published in the **Federal Register** on March 6, 2007 (72 FR 9904). Comments received were discussed by the Working Group for clarification, and FRA published a final rule on October 19, 2007 (72 FR 59216). The Working Group is continuing the review of Part 229 with work in the areas of locomotive cab temperature standards, alerters, remote control locomotives, and critical locomotive electronics with a view to proposing further revisions to update the standards. The Working Group met on January 9–10, 2007, November 27–28, 2007, February 5–6, 2008, May 20–21, 2008, August 5–6, 2008, October 22–23, 2008, and January 6–7, 2009. The next meeting is scheduled for April 15–

16, 2009. Contact: George Scerbo, (202) 493–6249.

Task 06–02—Track Safety Standards and Continuous Welded Rail (CWR). Section 9005 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109–59), the 2005 Surface Transportation Authorization Act, requires FRA to issue requirements for inspection of joint bars in CWR to detect cracks that could affect the integrity of the track structure (49 U.S.C. 20142(e)). FRA published an interim final rule (IFR) establishing new requirements for inspections on November 2, 2005 (70 FR 66288). On October 11, 2005, FRA offered the RSAC a task to review comments on this IFR, but the conditions could not be established under which the Committee could have undertaken this with a view toward consensus. Comments on the IFR were received through December 19, 2005. FRA reviewed the comments, and on February 22, 2006, the RSAC accepted this task to review and revise the CWR related to provisions of the Track Safety Standards, with particular emphasis on reduction of derailments and consequent injuries and damage caused by defective conditions, including joint failures, in track using CWR. A Working Group was established, and the first Working Group meeting was held April 3–4, 2006, at which time the Working Group reviewed comments on the IFR. The second Working Group meeting was held April 26–28, 2006. The Working Group also met May 24–25, 2006, and July 19–20, 2006. The Working Group reported consensus recommendations for the final rule that were accepted by the full RSAC Committee by mail ballot on August 11, 2006. The final rule was published in the **Federal Register** on October 11, 2006 (71 FR 59677). The Working Group continued review of Section 213.119 with a view to proposing further revisions to update the standards. The Working Group met January 30–31, 2007, April 10–11, 2007, June 27–28, 2007, August 15–16, 2007, October 23–24, 2007, and January, 8–9, 2008. The Working Group reported consensus recommendations for revisions to Section 213.119 regulations to the full RSAC Committee on February 20, 2008, and the recommendations were accepted. FRA published an NPRM on December 1, 2008, and is preparing a final rule with a target publication date of April 2009. See task 07–01 and 08–03, below. Contact: Ken Rusk, (202) 493–6236.

Task 06–03—Medical Standards for Safety-Critical Personnel. This task was accepted on September 21, 2006, to enhance the safety of persons in the railroad operating environment and the public by establishing standards and procedures for determining the medical fitness for duty of personnel engaged in safety-critical functions. A Working Group has been established and will report any planned activity to the full Committee at each scheduled full RSAC meeting, including milestones for completion of projects and progress toward completion. The first Working Group meeting was held December 12–13, 2006. The Working Group has held follow-on meetings on the following dates: February 20–21, 2007, July 24–25, 2007, August 29–30, 2007, October 31–November 1, 2007, December 4–5, 2007, February 13–14, 2008, March 26–27, 2008, and April 22–23, 2008. At the latest meeting, FRA announced that the agency would prepare an NPRM draft based on the discussions to date and schedule a further meeting for review of the document. The draft NPRM is currently in FRA coordination and the language is being revised based on comments. The draft NPRM will be presented to the RSAC Medical Standards Working Group when completed. A Doctors Task Force, established by the Working Group in May 2007, is proceeding to develop accompanying medical guidelines which will be used to provide consistent criteria for determining the medical fitness for duty of the safety-critical positions. These guidelines will be presented for Working Group consideration when complete. When accepted by the Medical Standards Working Group, the two parts of the rulemaking will be presented to the full RSAC for approval. The target date for publishing the NPRM is May, 2009. The Task Force of Physicians has had meetings or conference calls on July 24, 2007, August 20, 2007, October 15, 2007, October 31, 2007, June 23–24, 2008, September 8–10, 2008, October 8, 2008, November 12–13, 2008, December 8–10, 2008, January 27–28, 2009, and February 24–25, 2009. The next meeting of the Task Force is scheduled for March 11–12, 2009. Contact: Dr. Bernard Arseneau, (202) 493–6002.

Task 07–01—Track Safety Standards. This task was accepted on February 22, 2007, to consider specific improvements to the Track Safety Standards or other responsive actions, supplementing work already underway on continuous welded rail (CWR) specifically to: review controls applied to reuse of rail in CWR ''plug rail''; review the issue of cracks emanating from bond wire attachments; consider improvements in the Track Safety Standards related to fastening of rail to concrete ties; and ensure a common understanding within the regulated community concerning requirements for internal rail flaw inspections. The tasks were assigned to the Track Safety Standards Working Group. The Working Group will report any planned activity to the full Committee at each scheduled full RSAC meeting, including milestones for completion of projects and progress toward completion. The first Working Group meeting was held on June 27–28, 2007, and the group met again on August 15–16, 2007, and October 23–24, 2007. Two Task Forces were created under the Working Group: The Concrete Ties and Rail Integrity Task Forces. The Concrete Ties Task force met on November 26–27, 2007, February 13–14, 2008, April 16–17, 2008, July 9–10, 2008, and September 17–18, 2008. The Concrete Ties Task Force finalized consensus language regarding concrete crossties (49 CFR Part 213) and presented a recommendation to the Track Standards Working Group at the November 20, 2008, Working Group meeting. The language was approved by both the Working Group and the December 10, 2008, RSAC meeting and the Task Force was dissolved. FRA is preparing an NPRM with a target publication date of April, 2009. Contact: Ken Rusk, (202) 493–6236.

Task 08–03—Track Safety Standards Rail Integrity. This task was accepted on September 10, 2008, to consider specific improvements to the Track Safety Standards or other responsive actions designed to enhance rail integrity. The Rail Integrity Task Force was created in October 2007 under Task 07–01 and first met on November 28–29, 2007. The Task Force met on February 12–13, 2008, April 15–16, 2008, July 8–9, 2008, September 16–17, 2008, and February 3–4, 2009. Consensus has been achieved on bond wires and a common understanding on internal rail flaw inspections has been reached; however, more work remains before a recommendation for possible regulatory action is made. The next Rail Integrity Task Force meeting is scheduled for June 16–17, 2009. Contact: Ken Rusk, (202) 493–6236.

Task No. 08–04—Positive Train Control (PTC). This task was accepted on December 10, 2008, to provide advice regarding development of implementing regulations for PTC systems and their deployment under the Rail Safety Improvement Act of 2008 (RSIA, Pub. L. 110–432). The task included a requirement to convene an initial meeting not later than January 2009 and to report recommendations back to the RSAC no later than April 24, 2009. The PTC Working Group was

created in December 2008 by Working Group member nominations from Committee member organizations under Task 08–04, and the kickoff meeting was held on January 26–27, 2009. The group met again on February 11–13, 2009, and February 25–27, 2009. The next meeting is scheduled for March 17–19, 2009. Contact: Grady Cothen, (202) 493–6302.

Task No. 08–05—Railroad Bridge Safety Assurance. This task was accepted on December 10, 2008, to develop a draft rule encompassing the requirements of Section 417, of the RSIA (Division A), Railroad Bridge Safety Assurance. This Section directs the Secretary of Transportation to promulgate regulations, not later than 12 months after the October 16, 2008, date of enactment, requiring owners of track carried on one or more railroad bridges to adopt a bridge safety management program to reduce the risk of human casualties, environmental damage, and disruption to the Nation's railroad transportation system that would result from a catastrophic bridge failure. The Railroad Bridge Working Group created under Task 08–01 was directed to reconvene and the kickoff meeting was held January 28–29, 2009. The working group also met on February 23–24, 2009, where they reached agreement on consensus language covering all but two issues that remain to be resolved pending comments on the NPRM. The group will present the draft language to the full committee at the April 2, 2009, meeting. Contact: Gordon Davids, (202) 230–6320.

Task No. 08–06—Hours of Service Recordkeeping and Reporting. This task was accepted on December 10, 2008, to develop revised recordkeeping and reporting requirements for hours of service of railroad employees. The Hours of Service Working Group was formed in January 2009 by member nominations from committee member organizations and the first meeting was held on January 22–23, 2009. The working group met again on February 4–6, 2009, and February 18–20, 2009, and is scheduled to meet for the final time on March 23–25, 2009. Contact: Mark McKeon, (202) 493–6350.

Task No. 08–07—Conductor Certification. This task was accepted on December 10, 2008, to develop regulations for certification of railroad conductors, as required by the RSIA, and to consider any appropriate related amendments to existing regulations and report recommendations for the proposed or interim final rule (as determined by FRA in consultation with the Office of the Secretary of Transportation and the Office of Management and Budget) by October 16, 2009. The Conductor Certification Working Group will be officially formed at a later date by nominations from member organizations and work will begin as time and schedules will permit in 2009 after other Congressional RSAC priorities are met.

Completed Tasks

Task 96–1—(Completed) Revising the Freight Power Brake Regulations.

Task 96–2—(Completed) Reviewing and recommending revisions to the Track Safety Standards (49 CFR Part 213).

Task 96–3—(Completed) Reviewing and recommending revisions to the Radio Standards and Procedures (49 CFR Part 220).

Task 96–5—(Completed) Reviewing and recommending revisions to Steam Locomotive Inspection Standards (49 CFR Part 230).

Task 96–6—(Completed) Reviewing and recommending revisions to miscellaneous aspects of the regulations addressing Locomotive Engineer Certification (49 CFR Part 240).

Task 96–7—(Completed) Developing Roadway Maintenance Machines (On-Track Equipment) Safety Standards.

Task 96–8—(Completed) This Planning Task evaluated the need for action responsive to recommendations contained in a report to Congress entitled, Locomotive Crashworthiness & Working Conditions.

Task 97–1—(Completed) Developing crashworthiness specifications (49 CFR Part 229) to promote the integrity of the locomotive cab in accidents resulting from collisions.

Task 97–2—(Completed) Evaluating the extent to which environmental, sanitary, and other working conditions in locomotive cabs affect the crew's health and the safe operation of locomotives, proposing standards where appropriate.

Task 97–3—(Completed) Developing event recorder data survivability standards.

Task 97–4 and *Task 97–5*—(Completed) Defining Positive Train Control (PTC) functionalities, describing available technologies, evaluating costs and benefits of potential systems, and considering implementation opportunities and challenges, including demonstration and deployment.

Task 97–6—(Completed) Revising various regulations to address the safety implications of processor-based signal and train control technologies, including communications-based operating systems.

Task 97–7—(Completed) Determining damages qualifying an event as a reportable train accident.

Task 00–1—(Task withdrawn) Determining the need to amend regulations protecting persons who work on, under, or between rolling equipment and persons applying, removing or inspecting rear end marking devices (Blue Signal Protection).

Task 01–1—(Completed) Developing conformity of FRA's regulations for accident/incident reporting (49 CFR Part 225) to revised regulations of the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, and to make appropriate revisions to the FRA Guide for Preparing Accident/Incident Reports (Reporting Guide).

Task 08–01—(Completed) Report on the Nation's Railroad Bridges.

Please refer to the notice published in the **Federal Register** on March 11, 1996, (61 FR 9740) for more information about the RSAC.

Issued in Washington, DC, on March 11, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–5676 Filed 3–16–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Pricing for the United States Mint 2009 American Presidency $1 Coin Cover Series, and the United States Mint 2009 District of Columbia and U.S. Territories Quarters Official First Day Coin Cover Series

ACTION: Notification of Pricing for the United States Mint 2009 American Presidency $1 Coin Cover Series, and the United States Mint 2009 District of Columbia and U.S. Territories Quarters Official First Day Coin Cover Series.

SUMMARY: The United States Mint is announcing pricing for the 2009 American Presidency $1 Coin Cover Series and the 2009 District of Columbia and U.S. Territories Quarters Official First Day Coin Cover Series.

The 2009 American Presidency $1 Coin Cover Series will be priced at $14.95 each. Each cover includes two Presidential $1 Coins, one each from the United States Mint facilities at Denver and Philadelphia, on a display card with a stamp and a postmark marking the day the coins were first released to the public.

The 2009 District of Columbia and U.S. Territories Quarters Official First Day Coin Covers will be priced at $14.95 each. Each cover includes two quarters, one each from the United States Mint facilities at Denver and Philadelphia, on a display card with a stamp and a postmark marking the day the quarters were first released to the public.

The first 2009 American Presidency $1 Coin Cover Series, featuring the William Henry Harrison Presidential $1 Coin, and the first 2009 District of Columbia and U.S. Territories Quarters First Day Coin Cover, featuring the District of Columbia Quarter, will be offered for sale this spring.

FOR FURTHER INFORMATION CONTACT: B.B. Craig, Associate Director for Sales and Marketing; United States Mint; 801 Ninth Street, NW., Washington, DC 20220; or call 202–354–7500.

Authority: 31 U.S.C. 5111, 5112 & 9701.

Dated: March 11, 2009.

Edmund C. Moy,

Director, United States Mint.

[FR Doc. E9–5724 Filed 3–16–09; 8:45 am]

BILLING CODE 4810–37–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Pricing for United States Mint 2009 Annual Sets

ACTION: Notification of Pricing for United States Mint 2009 Annual Sets.

SUMMARY: The United States Mint is announcing pricing for the 2009 United States Mint District of Columbia and U.S. Territories Quarters Silver Proof Set™, the 2009 United States Mint Proof Set®, the 2009 United States Mint Uncirculated Coin Set®, and the 2009 United States Mint Silver Proof Set™.

The 2009 United States Mint District of Columbia and U.S. Territories Quarters Silver Proof Set will be released this spring, and will be priced at $29.95.

The 2009 United States Mint Proof Set will be released this summer, and will be priced at $29.95.

The 2009 United States Mint Uncirculated Coin Set will be released this summer, and will be priced at $27.95.

The 2009 United States Mint Silver Proof Set will be released this summer, and will be priced at $52.95.

FOR FURTHER INFORMATION CONTACT: B.B. Craig, Associate Director for Sales and Marketing; United States Mint, 801 Ninth Street, NW., Washington, DC 20220; or call 202–354–7500.

Authority: 31 U.S.C. 5111, 5112, 5132 & 9701.

Dated: March 11, 2009.

Edmund C. Moy,

Director, United States Mint.

[FR Doc. E9–5723 Filed 3–16–09; 8:45 am]

BILLING CODE 4810–37–P

Federal Register

Tuesday,
March 17, 2009

Part II

Department of Labor

Employment and Training Administration
20 CFR Part 655

Wage and Hour Division

29 CFR Parts 501, 780, and 788

Temporary Employment of H–2A Aliens in the United States; Proposed Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

Wage and Hour Division

29 CFR Parts 501, 780, and 788

RIN 1205–AB55

Temporary Employment of H–2A Aliens in the United States

AGENCY: Employment and Training Administration and Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Notice of proposed suspension of rule.

SUMMARY: The Department of Labor (DOL or the Department) proposes to suspend for 9 months the H–2A regulations published on December 18, 2008, which became effective on January 17, 2009, that amended the rules governing the certification for temporary employment of nonimmigrant workers in agricultural occupations on a temporary or seasonal basis, and the enforcement of contractual obligations applicable to employers of such nonimmigrant workers. A suspension would provide the Department with an opportunity to review and reconsider the new requirements in light of issues that have arisen since the publication of the H–2A Final Rule, while minimizing the disruption to the Department, State Workforce Agencies (SWAs), employers, and workers. To avoid the regulatory vacuum that would result from a suspension, the Department proposes to reinstate on an interim basis the rules that were in place on January 16, 2009, the day before the revised rules became effective, by reprinting those previous regulations.

DATES: Interested persons are invited to submit written comments on the proposed suspension on or before March 27, 2009. The Department will not necessarily consider any comments received after the above date in making its decisions on the final rule.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1205–AB55, by any one of the following methods:

Federal e-Rulemaking Portal: http://www.regulations.gov: Follow the Web site instructions for submitting comments.

Mail: Please submit all written comments (including disk and CD–ROM submissions) to Thomas Dowd, Administrator, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5641, Washington, DC 20210.

Hand Delivery/Courier: Please submit all comments to Thomas Dowd, Administrator, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5641, Washington, DC 20210.

Please submit your comments by only one method. The Department will post all comments received on *http://www.regulations.gov* without making any change to the comments, including any personal information provided. The *http://www.regulations.gov* Web site is the Federal e-Rulemaking portal and all comments posted there are available and accessible to the public. The Department cautions commenters not to include their personal information such as Social Security numbers, personal addresses, telephone numbers, and e-mail addresses in their comments as such submitted information will become viewable by the public via the *http://www.regulations.gov* Web site. It is the responsibility of the commenter to safeguard his or her information. Comments submitted through *http://www.regulations.gov* will not include the commenter's e-mail address unless the commenter chooses to include that information as part of his or her comment.

Please provide written comments only on whether the Department should suspend the December 18, 2008 final rule for further review and consideration of the issues that have arisen since the final rule's publication. Comments concerning the substance or merits of the December 18, 2008 final rule or the prior rule will not be considered.

Postal delivery in Washington, DC may be delayed due to security concerns. Therefore, the Department encourages the public to submit comments via the Web site indicated above.

Docket: For access to the docket to read background documents or comments received, go to the Federal eRulemaking portal at *http://www.regulations.gov*. The Department will also make all the comments it receives available for public inspection during normal business hours at the ETA Office of Policy Development and Research at the above address. If you need assistance to review the comments, the Department will provide you with appropriate aids such as readers or print magnifiers. The Department will make copies of this notice available, upon request, in large print and as an electronic file on a computer disk. The Department will consider providing this notice in other formats upon request. To schedule an appointment to review the comments and/or obtain this notice in an alternate format, contact the Office of Policy Development and Research at (202) 693–3700 (VOICE) (this is not a toll-free number) or 1–877–889–5627 (TTY/TDD).

FOR FURTHER INFORMATION CONTACT: For further information regarding 20 CFR part 655, contact William Carlson, PhD, Administrator, Office of Foreign Labor Certification, Employment and Training Administration (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210; Telephone (202) 693–3010 (this is not a toll-free number). For further information regarding 29 CFR parts 501, 780 and 788, contact James Kessler, Farm Labor Team Leader, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–3510, Washington, DC 20210; Telephone (202) 693–0070 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background and Proposed Action

On December 18, 2008, the Department published final regulations revising title 20 of the Code of Federal Regulations (20 CFR) part 655 and title 29 of the Code of Federal Regulations (29 CFR) parts 501, 780, and 788 (the ''H–2A Final Rule''). See 73 FR 77110, Dec. 18, 2008. The H–2A Final Rule replaced the previous versions of 20 CFR part 655 (2008) and 29 CFR part 501 (2008) that, for the most part, were published at 52 FR 20507, Jun. 1, 1987. With respect to the provisions under 29 CFR parts 780 and 788 that were amended by the H–2A Final Rule, the previous versions of 29 CFR 780.115, 780.201, 780.205, and 780.208 were published at 37 FR 12084, Jun. 17, 1972, and the previous version of 29 CFR 788.10 was published at 34 FR 15784, Oct. 14, 1969.

Following the issuance of the H–2A Final Rule, a lawsuit was filed in the U.S. District Court for the District of Columbia on January 12, 2009 (brought by the United Farm Workers and others) challenging the H–2A Final Rule.

United Farm Workers, et al. v. *Chao, et al.*, Civil No. 09–00062 RMU (D.D.C.). The plaintiffs asserted that in promulgating the H–2A Final Rule, the Department violated section 218 of the Immigration and Nationality Act as well as the Administrative Procedure Act. The plaintiffs requested a temporary restraining order and preliminary injunction, along with a permanent injunction that would prohibit DOL from implementing the H–2A Final Rule. On January 15, 2009, Judge Ricardo M. Urbina denied the plaintiffs' request for a temporary restraining order and preliminary injunction on the basis that the plaintiffs failed to show ''likely, imminent and irreparable harm''; the court did not address the merits of the case or whether the plaintiffs demonstrated the substantial likelihood of success on the merits. Accordingly, the H–2A Final Rule went into effect as scheduled on January 17, 2009. Although the court concluded that the plaintiffs were not entitled to a temporary restraining order and preliminary injunction, plaintiffs' challenges to the H–2A Final Rule are still pending before the district court. The Department's Answer is due in district court on March 13, 2009.

As we move forward with implementing the Final Rule, however, it is rapidly becoming evident that the Department and the SWAs may lack sufficient resources to effectively and efficiently implement the H–2A Final Rule. This has already resulted in processing delays; the delays will become even greater as applications for the upcoming growing season are now being filed with the Department. The Department has been unable to implement the sequence of operational events required to avoid confusion and application processing delays. These include developing an automated review system before the H–2A Final Rule went into effect, and training program users, State Workforce Agency staff, and Federal agency staff. Without such an automated system the Department must process each application manually, which already is causing a significant strain on the timely review and approval of H–2A applications. The Department believes that it has a responsibility to employers, workers, SWAs, and the public to ensure that a new regulatory regime has a sound basis and is capable of effective implementation. Suspending the new H–2A Final Rule and reinstating the prior rule on an interim basis will allow this examination to occur while maintaining the previous status quo.

In addition, DOL has increasing evidence that undertaking implementation of a complex new regulatory program applicable to the temporary employment of nonimmigrant workers in agricultural occupations before additional examination of the relevant legal and economic concerns is proving unnecessarily disruptive and confusing to the Department's administration of the H–2A program, SWAs, agricultural employers, and domestic and foreign workers. It is particularly important to avoid such disruption, if possible, in light of the severe economic conditions the country is now facing.

Furthermore, development of the H–2A Final Rule was based in part on policy positions of the prior Administration with which the current Administration may differ. Relatedly, the Department may wish to reconsider these policy positions in light of the rising unemployment among U.S. workers and their availability for these jobs, and continuing economic problems in this country. It would not be an efficient use of limited agency resources and it would be confusing and disruptive to program users to engage in the steps necessary to make the current rule operational if the Department were then to soon after issue a different rule. Suspending the H–2A Final Rule would prevent all parties from having to incur the costs of learning, filing, implementing, and operating under a new program that will likely be subject to further changes.

The 10 day comment period on whether to suspend the new H–2A Final Rule and reinstate on an interim basis the prior rules is necessary due to the time constraints and concerns inherent in the Department's administration of the H–2A program, and in the use of the H–2A program by the agricultural community. Growers require clear and consistent guidance on the rules governing the processing of their applications so that they can plan and staff their operations appropriately for the impending growing season. The statute requires the Department to process H–2A applications within a strict timeframe, and the Department's ability to meet the statutory mandate has been undermined by the uncertainties and technical deficiencies in the administration of the program. A longer comment period would stretch the uncertainty over the applicable rules further into the upcoming growing season. Confusion or delay in the administration of the program will result in the disruption of agricultural production, sales and market conditions in areas traditionally served by H–2A workers, which could have further deleterious effects on an already unstable economic environment. Given that the H–2A Final Rule has already been in effect for more than 6 weeks, time is of the essence, especially since H–2A applications for the upcoming growing season are now being filed with the Department under the new regulations. It is imperative that the regulations and positions taken in the preamble of the H–2A Final Rule be reviewed to ensure that they effectively carry out the statutory objectives and requirements of the program; there is a compelling need to undertake that review as soon as possible so that any changes in the H–2A Final Rule can be implemented in time to avoid jeopardizing the program's use by its stakeholders and workers. It is also imperative that during the time such a review is undertaken, the Department, SWAs, employers, and workers experience minimal disruption as to how applications are processed and the terms and conditions that apply.

To avoid confusion for the readers of the Code of Federal Regulations (CFR), if the suspension continues on April 1, 2009, the previous regulations that were in effect on April 1, 2008 would appear in the next published version of the CFR as 20 CFR 655.1 and 20 CFR part 655, subpart B. Additionally, if the suspension continues on July 1, 2009, the previous regulations that were in effect on July 8, 2008 would appear in the next published version of the CFR as 29 CFR part 501, 29 CFR 780.115, 780.201, 780.205, 780.208, and 788.10. The suspended regulations also would appear in the CFR and would be designated as 20 CFR 655.5, 20 CFR part 655, subpart C, 20 CFR part 655, subpart N, 29 CFR part 502, and 29 CFR 780.159, 780.216, 780.217, and 788.217 for clarity of citation purposes and because two distinct regulations cannot use the same regulation number.

If a final decision is reached to suspend the H–2A Final Rule, DOL would reinstate the previous rules verbatim on an interim basis to avoid a regulatory vacuum while judicial and administrative review of the H–2A Final Rule proceed. The rulemaking document would thus include provisions identifying the suspended provisions and interim regulatory text identical to the previous H–2A rule. Although the Department cannot predict the outcome of its review of the issues that have been raised or the outcome of the legal challenge to the H–2A Final Rule, either DOL will engage in further rulemaking or the suspension will be lifted after 9 months. If a final decision is reached to suspend the H–2A Final Rule, any H–2A application for which pre-filing positive recruitment was

initiated in accordance with the H–2A Final Rule prior to the date of suspension will continue to be governed by the H–2A Final Rule.

List of Subjects

20 CFR Part 655

Administrative practice and procedure, Foreign workers, Employment, Employment and training, Enforcement, Forest and forest products, Fraud, Health professions, Immigration, Labor, Passports and visas, Penalties, Reporting and recordkeeping requirements, Unemployment, Wages, Working conditions.

29 CFR Part 501

Administrative practice and procedure, Agriculture, Aliens, Employment, Housing, Housing standards, Immigration, Labor, Migrant labor, Penalties, Transportation, Wages.

29 CFR Part 780

Agricultural commodities, Agriculture, Employment, Forests and forest products, Labor, Minimum wages, Nursery stock, Overtime pay, Wages.

29 CFR Part 788

Employment, Forests and forest products, Labor, Overtime pay, Wages.

Accordingly, the Department of Labor proposes that 20 CFR part 655 and 29 CFR parts 501, 780, and 788 be amended as follows:

Title 20—Employees' Benefits

PART 655—TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES

1. The authority citation for part 655 is revised to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(H)(i) and (ii), 1182(m), (n), and (t), 1184, 1188, and 1288(c) and (d); 29 U.S.C. 49 *et seq.*; sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 323, Pub. L. 103–206, 107 Stat. 2149; Title IV, Pub. L. 105–277, 112 Stat. 2681; Pub. L. 106–95, 113 Stat. 1312 (8 U.S.C. 1182 note); and 8 CFR 213.2(h)(4)(i).

Section 655.00 issued under 8 U.S.C. 1101(a)(15)(H)(ii), 1184, and 1188; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subparts A and C issued under 8 U.S.C. 1101(a)(15)(H)(ii)(b) and 1184; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184, and 1188; and 29 U.S.C. 49 *et seq.*

Subparts D and E issued under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m), and 1184; 29 U.S.C. 49 *et seq.* ; and sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note).

Subparts F and G issued under 8 U.S.C. 1184 and 1288(c); and 29 U.S.C. 49 *et seq.*

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b1), 1182(n), 1182(t), and 1184; 29 U.S.C. 49 *et seq.*; sec 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1182 note); and Title IV, Pub. L. 105–277, 112 Stat. 2681.

Subparts J and K issued under 29 U.S.C. 49 *et seq.*; and sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note).

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c), 1182(m), and 1184; and 29 U.S.C. 49 *et seq.*

2. Revise the heading to part 655 to read as set forth above.

3. Redesignate § 655.1 as § 655.5 and suspend newly designated § 655.5.

4. Add § 655.1 to read as follows:

§ 655.1 Scope and purpose of subpart A.

This subpart sets forth the procedures governing the labor certification process for the temporary employment of nonimmigrant aliens in the United States in occupations other than agriculture, logging, or registered nursing.

5. Redesignate subpart B, consisting of §§ 655.90, 655.92, 655.93, and 655.100 through 655.119, as subpart N, consisting of §§ 655.1290, 655.1292, 655.1293, and 655.1300 through 655.1319, and suspend newly designated subpart N.

6. Add subpart B to read as follows:

Subpart B—Labor Certification Process for Temporary Agricultural Employment in the United States (H–2A Workers)

Sec.

Subpart B—Labor Certification Process for Temporary Agricultural Employment in the United States (H–2A Workers)

§ 655.90 Scope and purpose of subpart B.

(a) *General.* This subpart sets out the procedures established by the Secretary of Labor to acquire information sufficient to make factual determinations of: (1) Whether there are sufficient able, willing, and qualified U.S. workers available to perform the temporary and seasonal agricultural employment for which an employer desires to import nonimmigrant foreign workers (H–2A workers); and (2) whether the employment of H–2A workers will adversely effect the wages and working conditions of workers in the U.S. similarly employed. Under the authority of the INA, the Secretary of Labor has promulgated the regulations in this subpart. This subpart sets forth the requirements and procedures applicable to requests for certification by employers seeking the services of temporary foreign workers in agriculture. This subpart provides the Secretary's methodology for the two-fold determination of availability of domestic workers and of any adverse effect which would be occasioned by the use of foreign workers, for particular temporary and seasonal agricultural jobs in the United States.

(b) *The statutory standard.* (1) A petitioner for H–2A workers must apply to the Secretary of Labor for a certification that, as stated in the INA:

(A) There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition, and

(B) The employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

(2) Section 216(b) of the INA further requires that the Secretary may not issue a certification if the conditions regarding U.S. worker availability and adverse effect are not met, and may not issue a certification if, as stated in the INA:

(1) There is a strike or lockout in the course of a labor dispute which, under the regulations, precludes such certification.

(2)(A) The employer during the previous two-year period employed H–2A workers and the Secretary has determined, after notice and opportunity for a hearing, that the employer at any time during that period substantially violated a material term or condition of the labor certification with respect to the employment of domestic or non-immigrant workers.

(B) No employer may be denied certification under subparagraph (A) for more

than three years for any violation described in such subparagraph.

(3) The employer has not provided the Secretary with satisfactory assurances that if the employment for which the certification is sought is not covered by State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment.

(4) The Secretary determines that the employer has not made positive recruitment efforts within a multistate region of traditional or expected labor supply where the Secretary finds that there are a significant number of qualified United States workers who, if recruited, would be willing to make themselves available for work at the time and place needed. Positive recruitment under this paragraph is in addition to, and shall be conducted within the same time period as, the circulation through the interstate employment service system of the employer's job offer. The obligation to engage in positive recruitment * * * shall terminate on the date the H–2A workers depart for the employer's place of employment.

(3) Regarding the labor certification determination itself, section 216(c)(3) of the INA, as quoted in the following, specifically directs the Secretary to make the certification if:

(i) The employer has complied with the criteria for certification (including criteria for the recruitment of eligible individuals as prescribed by the Secretary), and

(ii) The employer does not actually have, or has not been provided with referrals of, qualified individuals who have indicated their availability to perform such labor or services on the terms and conditions of a job offer which meets the requirements of the Secretary.

(c) *The Secretary's determinations.* Before any factual determination can be made concerning the availability of U.S. workers to perform particular job opportunities, two steps must be taken. First, the minimum level of wages, terms, benefits, and conditions for the particular job opportunities below which similarly employed U.S. workers would be adversely affected must be established. (The regulations in this subpart establish such minimum levels for wages, terms, benefits, and conditions of employment). Second, the wages, terms, benefits, and conditions offered and afforded to the aliens must be compared to the established minimum levels. If it is concluded that adverse effect would result, the ultimate determination of availability within the meaning of the INA cannot be made since U.S. workers cannot be expected to accept employment under conditions below the established minimum levels. *Florida Sugar Cane League, Inc.* v. *Usery*, 531 F. 2d 299 (5th Cir. 1976). Once a determination of no adverse effect has been made, the availability of U.S. workers can be tested only if U.S. workers are actively recruited through the offer of wages, terms, benefits, and conditions at least at the minimum level or the level offered to the aliens, whichever is higher. The regulations in this subpart set forth requirements for recruiting U.S. workers in accordance with this principle.

(d) Construction. This subpart shall be construed to effectuate the purpose of the INA that U.S. workers rather than aliens be employed wherever possible. *Elton Orchards, Inc.* v. *Brennan*, 508 F. 2d 493, 500 (1st Cir. 1974); *Flecha* v. *Quiros*, 567 F.2d 1154, 1156 (1st Cir. 1977). Where temporary alien workers are admitted, the terms and conditions of their employment must not result in a lowering of the wages, terms, and conditions of domestic workers similarly employed. *Williams* v. *Usery*, 531 F. 2d 305, 306 (5th Cir. 1976), cert. denied, 429 U.S. 1000, and the job benefits extended to any U.S. workers shall be at least those extended to the alien workers.

§ 655.92 Authority of the Office of Foreign Labor Certification (OFLC) Administrator.

Under this subpart, the accepting for consideration and the making of temporary alien agricultural labor certification determinations are ordinarily performed by the Office of Foreign Labor Certification (OFLC) Administrator (OFLC Administrator), who, in turn, may delegate this responsibility to a designated staff member. The OFLC Administrator will informally advise the employer or agent of the name of the official who will make determinations with respect to the application.

§ 655.93 Special circumstances.

(a) *Systematic process.* The regulations under this subpart are designed to provide a systematic process for handling applications from the kinds of employers who have historically utilized nonimmigrant alien workers in agriculture, usually in relation to the production or harvesting of a particular agricultural crop for market, and which normally share such characteristics as:

(1) A fixed-site farm, ranch, or similar establishment;

(2) A need for workers to come to their establishment from other areas to perform services or labor in and around their establishment;

(3) Labor needs which will normally be controlled by environmental conditions, particularly weather and sunshine; and

(4) A reasonably regular workday or workweek.

(b) *Establishment of special procedures.* In order to provide for a limited degree of flexibility in carrying out the Secretary's responsibilities under the INA, while not deviating from the statutory requirements to determine U.S. worker availability and make a determination as to adverse effect, the OFLC Administrator has the authority to establish special procedures for processing H–2A applications when employers can demonstrate upon written application to and consultation with the OFLC Administrator that special procedures are necessary. In a like manner, for work in occupations characterized by other than a reasonably regular workday or workweek, such as the range production of sheep or other livestock, the OFLC Administrator has the authority to establish monthly, weekly, or bi-weekly adverse effect wage rates for those occupations, for a Statewide or other geographical area, other than the rates established pursuant to § 655.107 of this part, provided that the OFLC Administrator uses a methodology to establish such adverse effect wage rates which is consistent with the methodology in § 655.107(a). Prior to making determinations under this paragraph (b), the OFLC Administrator may consult with employer representatives and worker representatives.

(c) *Construction.* This subpart shall be construed to permit the OFLC Administrator to continue and, where the OFLC Administrator deems appropriate, to revise the special procedures previously in effect for the handling of applications for sheepherders in the Western States (and to adapt such procedures to occupations in the range production of other livestock) and for custom combine crews.

§ 655.100 Overview of this subpart and definition of terms.

(a) *Overview*—(1) *Filing applications.* This subpart provides guidance to an employer who desires to apply for temporary alien agricultural labor certification for the employment of H–2A workers to perform agricultural employment of a temporary or seasonal nature. The regulations in this subpart provide that such employer shall file an H–2A application, including a job offer, on forms prescribed by the Employment and Training Administration (ETA), which describes the material terms and conditions of employment to be offered and afforded to U.S. workers and H–2A

workers, with the OFLC Administrator. The entire application shall be filed with the OFLC Administrator no less than 45 calendar days before the first date of need for workers, and a copy of the job offer shall be submitted at the same time to the local office of the State employment service agency which serves the area of intended employment. Under the regulations, the OFLC Administrator will promptly review the application and notify the applicant in writing if there are deficiencies which render the application not acceptable for consideration, and afford the applicant a five-calendar-day period for resubmittal of an amended application or an appeal of the OFLC Administrator's refusal to approve the application as acceptable for consideration. Employers are encouraged to file their applications in advance of the 45-calendar-day period mentioned above in this paragraph (a)(1). Sufficient time should be allowed for delays that might arise due to the need for amendments in order to make the application acceptable for consideration.

(2) *Amendment of applications.* This subpart provides for the amendment of applications, at any time prior to the OFLC Administrator's certification determination, to increase the number of workers requested in the initial application; without requiring, under certain circumstances, an additional recruitment period for U.S. workers.

(3) *Untimely applications.* If an H–2A application does not satisfy the specified time requirements, this subpart provides for the OFLC Administrator's advice to the employer in writing that the certification cannot be granted because there is not sufficient time to test the availability of U.S. workers; and provides for the employer's right to an administrative review or a de novo hearing before an administrative law judge. Emergency situations are provided for, wherein the OFLC Administrator may waive the specified time periods.

(4) *Recruitment of U.S. workers; determinations*—(i) *Recruitment.* This subpart provides that, where the application is accepted for consideration and meets the regulatory standards, the State agency and the employer begin to recruit U.S. workers. If the employer has complied with the criteria for certification, including recruitment of U.S. workers, by 20 calendar days before the date of need specified in the application (except as provided in certain cases), the OFLC Administrator makes a determination to grant or deny, in whole or in part, the application for certification.

(ii) *Granted applications.* This subpart provides that the application for temporary alien agricultural labor certification is granted if the OFLC Administrator finds that the employer has not offered foreign workers higher wages or better working conditions (or has imposed less restrictions on foreign workers) than those offered and afforded to U.S. workers; that sufficient U.S. workers who are able, willing, and qualified will not be available at the time and place needed to perform the work for which H–2A workers are being requested; and that the employment of such aliens will not adversely affect the wages and working conditions of similarly employed U.S. workers.

(iii) *Fees*—(A) *Amount.* This subpart provides that each employer (except joint employer associations) of H–2A workers shall pay to the OFLC Administrator fees for each temporary alien agricultural labor certification received. The fee for each employer receiving a temporary alien agricultural labor certification is $100 plus $10 for each job opportunity for H–2A workers certified, provided that the fee to an employer for each temporary alien agricultural labor certification received shall be no greater than $1,000. In the case of a joint employer association receiving a temporary alien agricultural labor certification, each employer-member receiving a temporary alien agricultural labor certification shall pay a fee of $100 plus $10 for each job opportunity for H–2A workers certified, provided that the fee to an employer for each temporary alien agricultural labor certification received shall be no greater than $1,000. The joint employer association will not be charged a separate fee.

(B) *Timeliness of payment.* The fee must be received by the OFLC Administrator no later than 30 calendar days after the granting of each temporary alien agricultural labor certification. Fees received any later are untimely. Failure to pay fees in a timely manner is a substantial violation which may result in the denial of future temporary alien agricultural labor certifications.

(iv) *Denied applications.* This subpart provides that if the application for temporary alien agricultural labor certification is denied, in whole or in part, the employer may seek review of the denial, or a de novo hearing, by an administrative law judge as provided in this subpart.

(b) *Definitions of terms used in this subpart.* For the purposes of this subpart:

Except for consideration means, with respect to an application for temporary alien agricultural labor certification, the action by the OFLC Administrator to notify the employer that a filed temporary alien agricultural labor certification application meets the adverse effect criteria necessary for processing. An application accepted for consideration ultimately will be approved or denied in a temporary alien agricultural labor certification determination.

Administrative law judge means a person within the Department of Labor Office of Administrative Law Judges appointed pursuant to 5 U.S.C. 3105; or a panel of such persons designated by the Chief Administrative Law Judge from the Board of Alien Labor Certification Appeals established by part 656 of this chapter, but which shall hear and decide appeals as set forth in § 655.112 of this part. ''*Chief Administrative Law Judge*'' means the chief official of the Department of Labor Office of Administrative Law Judges or the Chief Administrative Law Judge's designee.

Administrator, Office of Foreign Labor Certification (OFLC) means the primary official of the Office of Foreign Labor Certification (OFLC Administrator), or the OFLC Administrator's designee.

Adverse effect wage rate (AEWR) means the wage rate which the OFLC Administrator has determined must be offered and paid, as a minimum, to every H–2A worker and every U.S. worker for a particular occupation and/or area in which an employer employs or seeks to employ an H–2A worker so that the wages of similarly employed U.S. workers will not be adversely affected.

Agent means a legal entity or person, such as an association of agricultural employers, or an attorney for an association, which (1) is authorized to act on behalf of the employer for temporary alien agricultural labor certification purposes, and (2) is not itself an employer, or a joint employer, as defined in this paragraph (b).

Department of Homeland Security (DHS) through the *United States Citizenship and Immigration Services (USCIS)* makes the determination under the INA on whether or not to grant visa petitions to employers seeking H–2A workers to perform temporary agricultural work in the United States.

DOL means the United States Department of Labor.

Eligible worker means a U.S. worker, as defined in this section.

Employer means a person, firm, corporation or other association or organization which suffers or permits a person to work and (1) which has a location within the United States to

which U.S. workers may be referred for employment, and which proposes to employ workers at a place within the United States and (2) which has an employer relationship with respect to employees under this subpart as indicated by the fact that it may hire, pay, fire, supervise or otherwise control the work of any such employee. An association of employers shall be considered the sole employer if it has the indicia of an employer set forth in this definition. Such an association, however, shall be considered as a joint employer with an employer member if it shares with the employer member one or more of the definitional indicia.

Employment Service (ES), in this subpart, refers to the system of federal and state entities responsible for administration of the labor certification process for temporary and seasonal agricultural employment of nonimmigrant foreign workers. This includes the State Workforce Agencies (SWAs), the National Processing Centers (NPCs) and the Office of Foreign Labor Certification (OFLC).

Employment Standards Administration means the agency within the Department of Labor (DOL), which includes the Wage and Hour Division, and which is charged with the carrying out of certain functions of the Secretary under the INA.

Employment and Training Administration (ETA) means the agency within the Department of Labor (DOL) which includes the Office of Foreign Labor (OFLC).

Federal holiday means a legal public holiday as defined at 5 U.S.C. 6103.

H–2A worker means any nonimmigrant alien admitted to the United States for agricultural labor or services of a temporary or seasonal nature under section 101(a)(15)(H)(ii)(a) of the INA (8 U.S.C. 1101(a)(15)(H)(ii)(a)).

INA means the Immigration and Nationality Act, as amended (8 U.S.C. 1101 *et seq.*).

Job offer means the offer made by an employer or potential employer of H–2A workers to both U.S. and H–2A workers describing all the material terms and conditions of employment, including those relating to wages, working conditions, and other benefits.

Job opportunity means a job opening for temporary, full-time employment at a place in the United States to which U.S. workers can be referred.

Office of Foreign Labor Certification (OFLC) means the organizational component within the ETA that provides national leadership and policy guidance and develops regulations and procedures to carry out the responsibilities of the Secretary of Labor under the INA concerning alien workers seeking admission to the United States in order to work under the Immigration and Nationality Act, as amended.

Positive recruitment means the active participation of an employer or its authorized hiring agent in locating and interviewing applicants in other potential labor supply areas and in the area where the employer's establishment is located in an effort to fill specific job openings with U.S. workers.

Prevailing means, with respect to certain benefits other than wages provided by employers and certain practices engaged in by employers, that:

(i) Fifty percent or more of employers in an area and for an occupation engage in the practice or offer the benefit; and

(ii) This 50 percent or more of employers also employs 50 percent or more of U.S. workers in the occupation and area (including H–2A and non-H–2A employers for purposes of determinations concerning the provision of family housing, frequency of wage payments, and workers supplying their own bedding, but non-H–2A employers only for determinations concerning the provision of advance transportation and the utilization of farm labor contractors).

Secretary means the Secretary of Labor or the Secretary's designee.

Solicitor of Labor means the Solicitor, United States Department of Labor, and includes employees of the Office of the Solicitor of Labor designated by the Solicitor to perform functions of the Solicitor under this subpart.

State Workforce Agency (SWA) means the State employment service agency designated under § 4 of the Wagner-Peyser Act to cooperate with OFLC in the operation of the ES System.

Temporary alien agricultural labor certification means the certification made by the Secretary of Labor with respect to an employer seeking to file with DHS a visa petition to import an alien as an H–2A worker, pursuant to sections 101(a)(15)(H)(ii)(a), 214(a) and (c), and 216 of the INA that (1) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the agricultural labor or services involved in the petition, and (2) the employment of the alien in such agricultural labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed (8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184 (a) and (c), and 1186).

Temporary alien agricultural labor certification determination means the written determination made by the OFLC Administrator to approve or deny, in whole or in part, an application for temporary alien agricultural labor certification.

United States (U.S.) worker means any worker who, whether a U.S. national, a U.S. citizen, or an alien, is legally permitted to work in the job opportunity within the United States (as defined at § 101(a)(38) of the INA (8 U.S.C. 1101(a)(38))).

Wages means all forms of cash remuneration to a worker by an employer in payment for personal services.

(c) *Definition of agricultural labor or services of a temporary or seasonal nature.* For the purposes of this subpart, ''agricultural labor or services of a temporary or seasonal nature'' means the following:

(1) ''*Agricultural labor or services*''. Pursuant to section 101(a)(15)(H)(ii)(a) of the INA (8 U.S.C. 1101(a)(15)(H)(ii)(a)), ''agricultural labor or services'' is defined for the purposes of this subpart as either ''agricultural labor'' as defined and applied in section 3121(g) of the Internal Revenue Code of 1954 (26 U.S.C. 3121(g)) or ''agriculture'' as defined and applied in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)). An occupation included in either statutory definition shall be ''agricultural labor or services'', notwithstanding the exclusion of that occupation from the other statutory definition. For informational purposes, the statutory provisions are quoted below:

(i) ''*Agricultural labor*''. Section 3121(g) of the Internal Revenue Code of 1954 (26 U.S.C. 3121(g)), quoted as follows, defines the term ''agricultural labor'' to include all service performed:

(1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife;

(2) Services performed in the employ of the owner or tenant or other operator of a farm, in connection with the operation, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(3) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the Agricultural Marketing Act, as amended (12 U.S.C. 1141j), or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for

supplying and storing water for farming purposes;

(4)(A) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed;

(B) In the employ of a group of operators of farms (other than a cooperative organization) in the performance of service described in subparagraph (A), but only if such operators produced all of the commodity with respect to which such service is performed. For purposes of this subparagraph, any unincorporated group of operators shall be deemed a cooperative organization if the number of operators comprising such group is more than 20 at any time during the calendar quarter in which such service is performed;

(C) The provisions of subparagraphs (A) and (B) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

(5) On a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

As used in this subsection, the term ''farm'' includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(ii) ''*Agriculture*'' Section 203(f) of title 29, United States Code, (section 3(f) of the Fair Labor Standards Act of 1938, as codified), quoted as follows, defines ''agriculture'' to include:

(f) * * * farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities as defined as agricultural commodities in section 1141j(g) of Title 12), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

(iii) ''*Agricultural commodity*''. Section 1141j(g) of title 12, United States Code (section 15(g) of the Agricultural Marketing Act, as amended), quoted as follows, defines ''agricultural commodity'' to include:

(g) * * * in addition to other agricultural commodities, crude gum (oleoresin) from a living tree, and the following products as processed by the original producer of the crude gum (oleoresin) from which derived: Gum spirits of turpentine, and gum rosin, as defined in section 92 of Title 7.

(iv) ''*Gum rosin*''. Section 92 of title 7, United States Code, quoted as follows, defines ''gum spirits of turpentine'' and ''gum rosin'' as—

(c) ''*Gum spirits of turpentine*'' means spirits of turpentine made from gum (oleoresin) from a living tree.

(h) ''*Gum rosin*'' means rosin remaining after the distillation of gum spirits of turpentine.

(2) ''*Of a temporary or seasonal nature*''—(i) ''*On a seasonal or other temporary basis*''. For the purposes of this subpart, ''of a temporary or seasonal nature'' means ''on a seasonal or other temporary basis'', as defined in the Employment Standards Administration's Wage and Hour Division's regulation at 29 CFR 500.20 under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA).

(ii) *MSPA definition.* For informational purposes, the definition of ''on a seasonal or other temporary basis'', as set forth at 29 CFR 500.20, is provided below:

''*On a seasonal or other temporary basis*'' means:

Labor is performed on a seasonal basis, where, ordinarily, the employment pertains to or is of the kind exclusively performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout the year. A worker who moves from one seasonal activity to another, while employed in agriculture or performing agricultural labor, is employed on a seasonal basis even though he may continue to be employed during a major portion of the year.

A worker is employed on ''other temporary basis'' where he is employed for a limited time only or his performance is contemplated for a particular piece of work, usually of short duration. Generally, employment, which is contemplated to continue indefinitely, is not temporary.

''*On a seasonal or other temporary basis*'' does not include the employment of any foreman or other supervisory employee who is employed by a specific agricultural employer or agricultural association essentially on a year round basis.

''On a seasonal or other temporary basis'' does not include the employment of any worker who is living at his permanent place of residence, when that worker is employed by a specific agricultural employer or agricultural association on essentially a year round basis to perform a variety of tasks for his employer and is not primarily employed to do field work.

(iii) ''*Temporary*''. For the purposes of this subpart, the definition of ''temporary'' in paragraph (c)(2)(ii) of this section refers to any job opportunity covered by this subpart where the employer needs a worker for a position, either temporary or permanent, for a limited period of time, which shall be for less than one year, unless the original temporary alien agricultural labor certification is extended based on unforeseen circumstances, pursuant to § 655.106(c)(3) of this part.

§ 655.101 Temporary alien agricultural labor certification applications.

(a) *General*—(1) *Filing of application.* An employer who anticipates a shortage of U.S. workers needed to perform agricultural labor or services of a temporary or seasonal nature may apply to the OFLC Administrator, for a temporary alien agricultural labor certification for temporary foreign workers (H–2A workers). A signed application for temporary alien agricultural worker certification shall be filed by the employer, or by an agent of the employer, with the OFLC Administrator. At the same time, a duplicate application shall be submitted to the SWA serving the area of intended employment.

(2) *Applications filed by agents.* If the temporary alien agricultural labor certification application is filed by an agent on behalf of an employer, the agent may sign the application if the application is accompanied by a signed statement from the employer which authorizes the agent to act on the employer's behalf. The employer may authorize the agent to accept for interview workers being referred to the job and to make hiring commitments on behalf of the employer. The statement shall specify that the employer assumes full responsibility for the accuracy of the application, for all representations made by the agent on the employer's behalf, and for compliance with all regulatory and other legal requirements.

(3) *Applications filed by associations.* If an association of agricultural producers which uses agricultural labor or services files the application, the association shall identify whether it is: (i) The sole employer; (ii) a joint employer with its employer-member employers; or (iii) the agent of its employer-members. The association shall submit documentation sufficient to enable the OFLC Administrator to verify the employer or agency status of the association; and shall identify by name and address each member which will be an employer of H–2A workers.

(b) *Application form.* Each H–2A application shall be on a form or forms prescribed by ETA. The application shall state the total number of workers the employer anticipates employing in

the agricultural labor or service activity during the covered period of employment. The application shall include:

(1) *A copy of the job offer which will be used by each employer for the recruitment of U.S. and H–2A workers.* The job offer shall state the number of workers needed by the employer, based upon the employer's anticipation of a shortage of U.S. workers needed to perform the agricultural labor or services, and the specific estimated date on which the workers are needed. The job offer shall comply with the requirements of §§ 655.102 and 653.501 of this chapter, and shall be signed by the employer or the employer's agent on behalf of the employer; and

(2) An agreement to abide by the assurances required by § 655.103 of this part.

(c) *Timeliness.* Applications for temporary alien agricultural labor certification are not required to be filed more than 45 calendar days before the first day of need. The employer shall be notified by the OFLC Administrator in writing within seven calendar days of filing the application if the application is not approved as acceptable for consideration. The OFLC Administrator's temporary alien agricultural labor certification determination on the approved application shall be made no later than 20 calendar days before the date of need if the employer has complied with the criteria for certification. To allow for the availability of U.S. workers to be tested, the following process applies:

(1) *Application filing date.* The entire H–2A application, including the job offer, shall be filed with the OFLC Administrator, in duplicate, no less than 45 calendar days before the first date on which the employer estimates that the workers are needed. Applications may be filed in person; may be mailed to the OFLC Administrator (Attention: H–2A Certifying Officer) by certified mail, return receipt requested; or delivered by guaranteed commercial delivery which will ensure delivery to the OFLC Administrator and provide the employer with a documented acknowledgment of receipt of the application by the OFLC Administrator. Any application received 45 calendar days before the date of need will have met the minimum timeliness of filing requirement as long as the application is eventually approved by the OFLC Administrator as being acceptable for processing.

(2) *Review of application; recruitment; certification determination period.* Section 655.104 of this part requires the OFLC Administrator to promptly review the application, and to notify the applicant in writing within seven calendar days of any deficiencies which render the application not acceptable for consideration and to afford an opportunity for resubmittal of an amended application. The employer shall have five calendar days in which to file an amended application. Section 655.106 of this part requires the OFLC Administrator to grant or deny the temporary alien agricultural labor certification application no later than 20 calendar days before the date on which the workers are needed, provided that the employer has complied with the criteria for certification, including recruitment of eligible individuals. Such recruitment, for the employer, the State agencies, and DOL to attempt to locate U.S. workers locally and through the circulation of intrastate and interstate agricultural clearance job orders acceptable under § 653.501 of this chapter and under this subpart, shall begin on the date that an acceptable application is filed, except that the SWA shall begin to recruit workers locally beginning on the date it first receives the application. The time needed to obtain an application acceptable for consideration (including the job offer) after the five-calendar-day period allowed for an amended application will postpone day-for-day the certification determination beyond the 20 calendar days before the date of need, provided that the OFLC Administrator notifies the applicant of any deficiencies within seven calendar days after receipt of the application. Delays in obtaining an application acceptable for consideration which are directly attributable to the OFLC Administrator will not postpone the certification determination beyond the 20 calendar days before the date of need. When an employer resubmits to the OFLC Administrator (with a copy to the SWA) an application with modifications required by the OFLC Administrator, and the OFLC Administrator approves the modified application as meeting necessary adverse effect standards, the modified application will not be rejected solely because it now does not meet the 45-calendar-day filing requirement. If an application is approved as being acceptable for processing without need for any amendment within the seven-calendar-day review period after initial filing, recruitment of U.S. workers will be considered to have begun on the date the application was received by the OFLC Administrator; and the OFLC Administrator shall make the temporary alien agricultural labor certification determination required by § 655.106 of this part no later than 20 calendar days before the date of need provided that other regulatory conditions are met.

(3) *Early filing.* Employers are encouraged, but not required, to file their applications in advance of the 45-calendar-day minimum period specified in paragraph (c)(1) of this section, to afford more time for review and discussion of the applications and to consider amendments, should they be necessary. This is particularly true for employers submitting H–2A applications for the first time who may not be familiar with the Secretary's requirements for an acceptable application or U.S. worker recruitment. Such employers particularly are encouraged to consult with DOL and SWA staff for guidance and assistance well in advance of the minimum 45-calendar-day filing period.

(4) *Local recruitment; preparation of clearance orders.* At the same time the employer files the H–2A application with the OFLC Administrator, a copy of the application shall be submitted to the SWA which will use the job offer portion-of the application to prepare a local job order and begin to recruit U.S. workers in the area of intended employment. The SWA also shall begin preparing an agricultural clearance order, but such order will not be used to recruit workers in other geographical areas until the employer's H–2A application is accepted for consideration and the clearance order is approved by the OFLC Administrator and the SWA is so notified by the OFLC Administrator.

(5) [Reserved]

(d) *Amendments to application to increase number of workers.* Applications may be amended at any time, prior to an OFLC Administrator certification determination, to increase the number of workers requested in the initial application by not more than 20 percent (50 percent for employers of less than ten workers) without requiring an additional recruitment period for U.S. workers. Requests for increases above the percent prescribed, without additional recruitment, may be approved only when the need for additional workers could not have been foreseen, and that crops or commodities will be in jeopardy prior to the expiration of an additional recruitment period.

(e) *Minor amendments to applications.* Minor technical amendments may be requested by the employer and made to the application and job offer prior to the certification determination if the OFLC Administrator determines they are justified and will have no significant

effect upon the OFLC Administrator's ability to make the labor certification determination required by § 655.106 of this part. Amendments described at paragraph (d) of this section are not ''minor technical amendments''.

(f) *Untimely applications*—(1) *Notices of denial.* If an H–2A application, or any part thereof, does not satisfy the time requirements specified in paragraph (c) of this section, and if the exception in paragraph (d) of this section does not apply, the OFLC Administrator may then advise the employer in writing that the certification cannot be granted because, pursuant to paragraph (c) of this section, there is not sufficient time to test the availability of U.S. workers. The notice of denial shall inform the employer of its right to an administrative review or de novo hearing before an administrative law judge.

(2) *Emergency situations.* Notwithstanding paragraph (f)(1) of this section, in emergency situations the OFLC Administrator may waive the time period specified in this section on behalf of employers who have not made use of temporary alien agricultural workers (H–2 or H–2A) for the prior year's agricultural season or for any employer which has other good and substantial cause (which may include unforeseen changes in market conditions), provided that the OFLC Administrator has an opportunity to obtain sufficient labor market information on an expedited basis to make the labor certification determination required by § 216 of the INA (8 U.S.C. 1186). In making this determination, the OFLC Administrator will accept information offered by and may consult with representatives of the U.S. Department of Agriculture.

(g) *Length of job opportunity.* The employer shall set forth on the application sufficient information concerning the job opportunity to demonstrate to the OFLC Administrator that the need for the worker is ''of a temporary or seasonal nature'', as defined at § 655.100(c)(2) of this part. Job opportunities of 12 months or more are presumed to be permanent in nature. Therefore, the OFLC Administrator shall not grant a temporary alien agricultural labor certification where the job opportunity has been or would be filled by an H–2A worker for a cumulative period, including temporary alien agricultural labor certifications and extensions, of 12 months or more, except in extraordinary circumstances.

§ 655.102 Contents of job offers.

(a) *Preferential treatment of aliens prohibited.* The employer's job offer to U.S. workers shall offer the U.S. workers no less than the same benefits, wages, and working conditions which the employer is offering, intends to offer, or will provide to H–2A workers. Conversely, no job offer may impose on U.S. workers any restrictions or obligations which will not be imposed on the employer's H–2A workers. This does not relieve the employer from providing to H–2A workers at least the same level of minimum benefits, wages, and working conditions which must be offered to U.S. workers consistent with this section.

(b) *Minimum benefits, wages, and working conditions.* Except when higher benefits, wages or working conditions are required by the provisions of paragraph (a) of this section, DOL has determined that in order to protect similarly employed U.S. workers from adverse effect with respect to benefits, wages, and working conditions, every job offer which must accompany an H–2A application always shall include each of the following minimum benefit, wage, and working condition provisions:

(1) *Housing.* The employer shall provide to those workers who are not reasonably able to return to their residence within the same day housing, without charge to the worker, which may be, at the employer's option, rental or public accommodation type housing.

(i) *Standards for employer-provided housing.* Housing provided by the employer shall meet the full set of DOL Occupational Safety and Health Administration standards set forth at 29 CFR 1910.142, or the full set of standards at §§ 654.404–654.417 of this chapter, whichever are applicable, except as provided for under paragraph (b)(1)(iii) of this section. Requests by employers, whose housing does not meet the applicable standards, for conditional access to the intrastate or interstate clearance system, shall be processed under the procedures set forth at § 654.403 of this chapter.

(ii) *Standards for range housing.* Housing for workers principally engaged in the range production of livestock shall meet standards of the DOL Occupational Safety and Health Administration for such housing. In the absence of such standards, range housing for sheepherders and other workers engaged in the range production of livestock shall meet guidelines issued by ETA.

(iii) *Standards for other habitation.* Rental, public accommodation, or other substantially similar class of habitation must meet local standards for such housing. In the absence of applicable local standards, State standards shall apply. In the absence of applicable local or State standards, Occupational Safety and Health Administration standards at 29 CFR 1910.142 shall apply. Any charges for rental housing shall be paid directly by the employer to the owner or operator of the housing. When such housing is to be supplied by an employer, the employer shall document to the satisfaction of the OFLC Administrator that the housing complies with the local, State, or federal housing standards applicable under this paragraph (b)(1)(iii).

(iv) *Charges for public housing.* If public housing provided for migrant agricultural workers under the auspices of a local, county, or State government is secured by an employer, and use of the public housing unit normally requires charges from migrant workers, such charges shall be paid by the employer directly to the appropriate individual or entity affiliated with the housing's management.

(v) *Deposit charges.* Charges in the form of deposits for bedding or other similar incidentals related to housing shall not be levied upon workers by employers who provide housing for their workers. However, employers may require workers to reimburse them for damage caused to housing by the individual workers found to have been responsible for damage which is not the result of normal wear and tear related to habitation.

(vi) *Family housing.* When it is the prevailing practice in the area of intended employment and the occupation to provide family housing, family housing shall be provided to workers with families who request it.

(2) *Workers' compensation.* The employer shall provide, at no cost to the worker, insurance, under a State workers' compensation law or otherwise, covering injury and disease arising out of and in the course of the worker's employment which will provide benefits at least equal to those provided under the State workers' compensation law, if any, for comparable employment. The employer shall furnish the name of the insurance carrier and the insurance policy number, or, if appropriate, proof of State law coverage, to the OFLC Administrator prior to the issuance of a labor certification.

(3) *Employer-provided items.* Except as provided below, the employer shall provide, without charge including deposit charge, to the worker all tools, supplies, and equipment required to perform the duties assigned; the employer may charge the worker for reasonable costs related to the worker's refusal or negligent failure to return any

property furnished by the employer or due to such worker's willful damage or destruction of such property. Where it is a common practice in the particular area, crop activity and occupation for workers to provide tools and equipment, with or without the employer reimbursing the workers for the cost of providing them, such an arrangement is permissible if approved in advance by the OFLC Administrator.

(4) *Meals.* Where the employer has centralized cooking and eating facilities designed to feed workers, the employer shall provide each worker with three meals a day. When such facilities are not available, the employer either shall provide each worker with three meals a day or shall furnish free and convenient cooking and kitchen facilities to the workers which will enable the workers to prepare their own meals. Where the employer provides the meals, the job offer shall state the charge, if any, to the worker for such meals. Until a new amount is set pursuant to this paragraph (b)(4), the charge shall not be more than $5.26 per day unless the OFLC Administrator has approved a higher charge pursuant to § 655.111 of this part. Each year the charge allowed by this paragraph (b)(4) will be changed by the same percentage as the 12-month percent change in the Consumer Price Index for All Urban Consumers for Food between December of the year just concluded and December of the year prior to that. The annual adjustments shall be effective on the date of their publication by the OFLC Administrator as a notice in the **Federal Register**.

(5) *Transportation; daily subsistence*—(i) *Transportation to place of employment.* The employer shall advance transportation and subsistence costs (or otherwise provide them) to workers when it is the prevailing practice of non-H–2A agricultural employers in the occupation in the area to do so, or when such benefits are extended to H–2A workers. The amount of the transportation payment shall be no less (and shall not be required to be more) than the most economical and reasonable similar common carrier transportation charges for the distances involved. If the employer has not previously advanced such transportation and subsistence costs to the worker or otherwise provided such transportation or subsistence directly to the worker by other means and if the worker completes 50 percent of the work contract period, the employer shall pay the worker for costs incurred by the worker for transportation and daily subsistence from the place from which the worker has come to work for the employer to the place of employment. The amount of the daily subsistence payment shall be at least as much as the employer will charge the worker for providing the worker with three meals a day during employment. If no charges will be made for meals and free and convenient cooking and kitchen facilities will be provided, the amount of the subsistence payment shall be no less than the amount permitted under paragraph (b)(4) of this section.

(ii) *Transportation from place of employment.* If the worker completes the work contract period, the employer shall provide or pay for the worker's transportation and daily subsistence from the place of employment to the place from which the worker, disregarding intervening employment, came to work for the employer, or, if the worker has contracted with a subsequent employer who has not agreed in that contract to provide or pay for the worker's transportation and daily subsistence expenses from the employer's worksite to such subsequent employer's worksite, the employer shall provide or pay for such expenses; except that, if the worker has contracted for employment with a subsequent employer who, in that contract, has agreed to pay for the worker's transportation and daily subsistence expenses from the employer's worksite to such subsequent employer's worksite, the employer is not required to provide or pay for such expenses.

(iii) *Transportation between living quarters and worksite.* The employer shall provide transportation between the worker's living quarters (i.e., housing provided by the employer pursuant to paragraph (b)(1) of this section) and the employer's worksite without cost to the worker, and such transportation will be in accordance with applicable laws and regulations. This paragraph (b)(5)(iii) is applicable to the transportation of workers eligible for housing, pursuant to paragraph (b)(1) of this section.

(6) *Three-fourths guarantee*—(i) *Offer to worker.* The employer shall guarantee to offer the worker employment for at least three-fourths of the workdays of the total periods during which the work contract and all extensions thereof are in effect, beginning with the first workday after the arrival of the worker at the place of employment and ending on the expiration date specified in the work contract or in its extensions, if any. If the employer affords the U.S. or H–2A worker during the total work contract period less employment than that required under this paragraph (b)(6), the employer shall pay such worker the amount which the worker would have earned had the worker, in fact, worked for the guaranteed number of days. For purposes of this paragraph (b)(6), a workday shall mean the number of hours in a workday as stated in the job order and shall exclude the worker's Sabbath and federal holidays. An employer shall not be considered to have met the work guarantee if the employer has merely offered work on three-fourths of the workdays if each workday did not consist of a full number of hours of work time specified in the job order. The work shall be offered for at least three-fourths of the workdays (that is, $\frac{3}{4} \times$ (number of days) $\times$ (specified hours)). Therefore, if, for example, the contract contains 20 eight-hour workdays, the worker shall be offered employment for 120 hours during the 20 workdays. A worker may be offered more than the specified hours of work on a single workday. For purposes of meeting the guarantee, however, the worker shall not be required to work for more than the number hours specified in the job order for a workday, or on the worker's Sabbath or Federal holidays.

(ii) *Guarantee for piece-rate-paid worker.* If the worker will be paid on a piece rate basis, the employer shall use the worker's average hourly piece rate earnings or the AEWR, whichever is higher, to calculate the amount due under the guarantee.

(iii) *Failure to work.* Any hours which the worker fails to work, up to a maximum of the number of hours specified in the job order for a workday, when the worker has been offered an opportunity to do so pursuant to paragraph (b)(6)(i) of this section and all hours of work actually performed (including voluntary work over 8 hours in a workday or on the worker's Sabbath or federal holidays) may be counted by the employer in calculating whether the period of guaranteed employment has been met.

(iv) *Displaced H–2A worker.* The employer shall not be liable for payment under this paragraph (b)(6) with respect to an H–2A worker whom the OFLC Administrator certifies is displaced because of the employer's compliance with § 655.103(e) of this part.

(7) *Records.* (i) The employer shall keep accurate and adequate records with respect to the workers' earnings including field tally records, supporting summary payroll records and records showing the nature and amount of the work performed; the number of hours of work offered each day by the employer (broken out by hours offered both in accordance with and over and above the three-fourths guarantee at paragraph (b)(6) of this section); the hours actually worked each day by the worker; the

time the worker began and ended each workday; the rate of pay (both piece rate and hourly, if applicable); the worker's earnings per pay period; the worker's home address; and the amount of and reasons for any and all deductions made from the worker's wages;

(ii) If the number of hours worked by the worker is less than the number offered in accordance with the three-fourths guarantee at paragraph (b)(6) of this section, the records shall state the reason or reasons therefore.

(iii) Upon reasonable notice, the employer shall make available the records, including field tally records and supporting summary payroll records for inspection and copying by representatives of the Secretary of Labor, and by the worker and representatives designated by the worker; and

(iv) The employer shall retain the records for not less than three years after the completion of the work contract.

(8) *Hours and earnings statements.* The employer shall furnish to the worker on or before each payday in one or more written statements the following information:

(i) The worker's total earnings for the pay period;

(ii) The worker's hourly rate and/or piece rate of pay;

(iii) The hours of employment which have been offered to the worker (broken out by offers in accordance with and over and above the guarantee);

(iv) The hours actually worked by the worker;

(v) An itemization of all deductions made from the worker's wages; and

(vi) If piece rates are used, the units produced daily.

(9) *Rates of pay.* (i) If the worker will be paid by the hour, the employer shall pay the worker at least the adverse effect wage rate in effect at the time the work is performed, the prevailing hourly wage rate, or the legal federal or State minimum wage rate, whichever is highest, for every hour or portion thereof worked during a pay period; or

(ii)(A) If the worker will be paid on a piece rate basis and the piece rate does not result at the end of the pay period in average hourly piece rate earnings during the pay period at least equal to the amount the worker would have earned had the worker been paid at the appropriate hourly rate, the worker's pay shall be supplemented at that time so that the worker's earnings are at least as much as the worker would have earned during the pay period if the worker had been paid at the appropriate hourly wage rate for each hour worked; and the piece rate shall be no less than the piece rate prevailing for the activity in the area of intended employment; and

(B) If the employer who pays by the piece rate requires one or more minimum productivity standards of workers as a condition of job retention,

(*1*) Such standards shall be specified in the job offer and be no more than those required by the employer in 1977, unless the OFLC Administrator approves a higher minimum; or

(*2*) If the employer first applied for H–2 agricultural or H–2A temporary alien agricultural labor certification after 1977, such standards shall be no more than those normally required (at the time of the first application) by other employers for the activity in the area of intended employment, unless the OFLC Administrator approves a higher minimum.

(10) *Frequency of pay.* The employer shall state the frequency with which the worker will be paid (in accordance with the prevailing practice in the area of intended employment, or at least twice monthly whichever is more frequent).

(11) *Abandonment of employment; or termination for cause.* If the worker voluntarily abandons employment before the end of the contract period, or is terminated for cause, and the employer notifies the SWA of such abandonment or termination, the employer will not be responsible for providing or paying for the subsequent transportation and subsistence expenses of any worker for whom the employer would have otherwise been required to pay such expenses under paragraph (b)(5)(ii) of this section, and that worker is not entitled to the ''three-fourths guarantee'' (see paragraph (b)(6) of this section).

(12) *Contract impossibility.* If, before the expiration date specified in the work contract, the services of the worker are no longer required for reasons beyond the control of the employer due to fire, hurricane, or other Act of God which makes the fulfillment of the contract impossible the employer may terminate the work contract. In the event of such termination of a contract, the employer shall fulfill the three-fourths guarantee at paragraph (b)(6) of this section for the time that has elapsed from the start of the work contract to its termination. In such cases the employer will make efforts to transfer the worker to other comparable employment acceptable to the worker. If such transfer is not effected, the employer shall:

(i) Offer to return the worker, at the employer's expense, to the place from which the worker disregarding intervening employment came to work for the employer,

(ii) Reimburse the worker the full amount of any deductions made from the worker's pay by the employer for transportation and subsistence expenses to the place of employment, and

(iii) Notwithstanding whether the employment has been terminated prior to completion of 50 percent of the work contract period originally offered by the employer, pay the worker for costs incurred by the worker for transportation and daily subsistence from the place from which the worker, without intervening employment, has come to work for the employer to the place of employment. Daily subsistence shall be computed as set forth in paragraph (b)(5)(i) of this section. The amount of the transportation payment shall be no less (and shall not be required to be more) than the most economical and reasonable similar common carrier transportation charges for the distances involved.

(13) *Deductions.* The employer shall make those deductions from the worker's paycheck which are required by law. The job offer shall specify all deductions not required by law which the employer will make from the worker's paycheck. All deductions shall be reasonable. The employer may deduct the cost of the worker's transportation and daily subsistence expenses to the place of employment which were borne directly by the employer. In such cases, the job offer shall state that the worker will be reimbursed the full amount of such deductions upon the worker's completion of 50 percent of the worker's contract period. However, an employer subject to the Fair Labor Standards Act (FLSA) may not make deductions which will result in payments to workers of less than the federal minimum wage permitted by the FLSA as determined by the Secretary at 29 CFR part 531.

(14) *Copy of work contract.* The employer shall provide to the worker, no later than on the day the work commences, a copy of the work contract between the employer and the worker. The work contract shall contain all of the provisions required by paragraphs (a) and (b) of this section. In the absence of a separate, written work contract entered into between the employer and the worker, the required terms of the job order and application for temporary alien agricultural labor certification shall be the work contract.

(c) *Appropriateness of required qualifications.* Bona fide occupational qualifications specified by an employer in a job offer shall be consistent with the normal and accepted qualifications required by non-H–2A employers in the same or comparable occupations and

crops, and shall be reviewed by the OFLC Administrator for their appropriateness. The OFLC Administrator may require the employer to submit documentation to substantiate the appropriateness of the qualification specified in the job offer; and shall consider information offered by and may consult with representatives of the U.S. Department of Agriculture.

(d) *Positive recruitment plan.* The employer shall submit in writing, as a part of the application, the employer's plan for conducting independent, positive recruitment of U.S. workers as required by §§ 655.103 and 655.105(a) of this part. Such a plan shall include a description of recruitment efforts (if any) made prior to the actual submittal of the application. The plan shall describe how the employer will engage in positive recruitment of U.S. workers to an extent (with respect to both effort and location(s)) no less than that of non-H–2A agricultural employers of comparable or smaller size in the area of employment. When it is the prevailing practice in the area of employment and for the occupation for non-H–2A agricultural employers to secure U.S. workers through farm labor contractors and to compensate farm labor contractors with an override for their services, the employer shall describe how it will make the same level of effort as non-H–2A agricultural employers and provide an override which is no less than that being provided by non-H–2A agricultural employers.

§ 655.103 Assurances.

As part of the temporary alien agricultural labor certification application, the employer shall include in the job offer a statement agreeing to abide by the conditions of this subpart. By so doing, the employer makes each of the following assurances:

(a) *Labor disputes.* The specific job opportunity for which the employer is requesting H–2A certification is not vacant because the former occupant is on strike or being locked out in the course of a labor dispute.

(b) *Employment-related laws.* During the period for which the temporary alien agricultural labor certification is granted, the employer shall comply with applicable federal, State, and local employment-related laws and regulations, including employment-related health and safety laws.

(c) *Rejections and terminations of U.S. workers.* No U.S. worker will be rejected for or terminated from employment for other than a lawful job-related reason, and notification of all rejections or terminations shall be made to the SWA.

(d) *Recruitment of U.S. workers.* The employer shall independently engage in positive recruitment until the foreign workers have departed for the employer's place of employment and shall cooperate with the ES System in the active recruitment of U.S. workers by:

(1) Assisting the ES System to prepare local, intrastate, and interstate job orders using the information supplied on the employer's job offer;

(2) Placing advertisements (in a language other than English, where the OFLC Administrator determines appropriate) for the job opportunities in newspapers of general circulation and/or on the radio, as required by the OFLC Administrator:

(i) Each such advertisement shall describe the nature and anticipated duration of the job opportunity; offer at least the adverse effect wage rate; give the ¾ guarantee; state that work tools, supplies and equipment will be provided by the employer; state that housing will also be provided, and that transportation and subsistence expenses to the worksite will be provided or paid by the employer upon completion of 50% of the work contract, or earlier, if appropriate; and

(ii) Each such advertisement shall direct interested workers to apply for the job opportunity at the appropriate office of the State Workforce Agency in their area;

(3) Cooperating with the ES System and independently contacting farm labor contractors, migrant workers and other potential workers in other areas of the State and/or Nation by letter and/or telephone; and

(4) Cooperating with the ES System in contacting schools, business and labor organizations, fraternal and veterans' organizations, and nonprofit organizations and public agencies such as sponsors of programs under the Job Training Partnership Act throughout the area of intended employment and in other potential labor supply areas in order to enlist them in helping to find U.S. workers.

(e) *Fifty-percent rule.* From the time the foreign workers depart for the employer's place of employment, the employer, except as provided for by § 655.106(e)(1) of this part, shall provide employment to any qualified, eligible U.S. worker who applies to the employer until 50% of the period of the work contract, under which the foreign worker who is in the job was hired, has elapsed. In addition, the employer shall offer to provide housing and the other benefits, wages, and working conditions required by § 655.102 of this part to any such U.S. worker and shall not treat less favorably than H–2A workers any U.S. worker referred or transferred pursuant to this assurance.

(f) *Other recruitment.* The employer shall perform the other specific recruitment and reporting activities specified in the notice from the OFLC Administrator required by § 655.105(a) of this part, and shall engage in positive recruitment of U.S. workers to an extent (with respect to both effort and location) no less than that of non-H–2A agricultural employers of comparable or smaller size in the area of employment. When it is the prevailing practice in the area of employment and for the occupation for non-H–2A agricultural employers to secure U.S. workers through farm labor contractors and to compensate farm labor contractors with an override for their services, the employer shall make the same level of effort as non-H–2A agricultural employers and shall provide an override which is no less than that being provided by non-H–2A agricultural employers. Where the employer has centralized cooking and eating facilities designed to feed workers, the employer shall not be required to provide meals through an override. The employer shall not be required to provide for housing through an override.

(g) *Retaliation prohibited.* The employer shall not intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against, and shall not cause any person to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against, any person who has with just cause:

(1) Filed a complaint under or related to section 216 of the INA (8 U.S.C. 1186), or this subpart or any other DOL regulation promulgated pursuant to section 216 of the INA;

(2) Instituted or caused to be instituted any proceeding under or related to section 216 of the INA, or this subpart or any other DOL regulation promulgated pursuant to section 216 of the INA (8 U.S.C. 1186);

(3) Testified or is about to testify in any proceeding under or related to section 216 of the INA (8 U.S.C. 1186), or this subpart or any other DOL regulation promulgated pursuant to section 216 of the INA;

(4) Consulted with an employee of a legal assistance program or an attorney on matters related to section 216 of the INA (8 U.S.C. 1186), or this subpart or any other DOL regulation promulgated pursuant to section 216 of the INA; or

(5) Exercised or asserted on behalf of himself/herself or others any right or

protection afforded by section 216 of the INA (8 U.S.C. 1186), or this subpart or any other DOL regulation promulgated pursuant to section 216 of the INA.

(h) *Fees.* The application shall include the assurance that fees will be paid in a timely manner, as follows:

(1) *Amount.* The fee for each employer receiving a temporary alien agricultural labor certification is $100 plus $10 for each job opportunity for H–2A workers certified, provided that the fee for an employer for each temporary alien agricultural labor certification received shall be no greater than $1,000. In the case of a joint employer association receiving a temporary alien agricultural labor certification, the fee for each employer-member receiving a temporary alien agricultural labor certification shall be $100 plus $10 for each job opportunity for H–2A workers certified, provided that the fee for an employer for each temporary alien agricultural labor certification received shall be no greater than $1,000. The joint employer association will not be charged a separate fee. Fees shall be paid by a check or money order made payable to ''Department of Labor'', and are nonrefundable. In the case of employers of H–2A workers which are members of a joint employer association applying on their behalf, the aggregate fees for all employers of H–2A workers under the application may be paid by one check or money order.

(2) *Timeliness.* Fees received by the OFLC Administrator within 30 calendar days after the date of the temporary alien agricultural labor certification determination are timely.

§ 655.104 Determinations based on acceptability of H–2A applications.

(a) *State Workforce Agency activities.* The State Workforce Agency (SWA), using the job offer portion of the H–2A application, shall promptly prepare a local job order and shall begin to recruit U.S. workers in the area of intended employment. The OFLC Administrator should notify the SWA by telephone no later than seven calendar days after the application was received by the OFLC Administrator if the application has been accepted for consideration. Upon receiving such notice or seven calendar days after the application is received by the SWA, whichever is earlier, the SWA shall promptly prepare an agricultural clearance order which will permit the recruitment of U.S. workers by the Employment Service System on an intrastate and interstate basis.

(b) *National Processing Center activities.* The OFLC Administrator, upon receipt of the H–2A application, shall promptly review the application to determine whether it is acceptable for consideration under the timeliness and adverse effect criteria of §§ 655.101–655.103 of this part. If the OFLC Administrator determines that the application does not meet the requirements of §§ 655.101–655.103, the OFLC Administrator shall not accept the application for consideration on the grounds that the availability of U.S. workers cannot be adequately tested because the benefits, wages and working conditions do not meet the adverse effect criteria; however, if the OFLC Administrator determines that the application is not timely in accordance with § 655.101 of this part and that neither the first-year employer provisions of § 655.101(c)(5) nor the emergency provisions of § 655.101(f) apply, the OFLC Administrator may determine not to accept the application for consideration because there is not sufficient time to test the availability of U.S. workers.

(c) *Rejected applications.* If the application is not accepted for consideration, the OFLC Administrator shall notify the applicant in writing (by means normally assuring next-day delivery) within seven calendar days of the date the application was received by the OFLC Administrator with a copy to the SWA. The notice shall:

(1) State all the reasons the application is not accepted for consideration, citing the relevant regulatory standards;

(2) Offer the applicant an opportunity for the resubmission within five calendar days of a modified application, stating the modifications needed in order for the OFLC Administrator to accept the application for consideration;

(3) Offer the applicant an opportunity to request an expedited administrative review of or a de novo administrative hearing before an administrative law judge of the nonacceptance; the notice shall state that in order to obtain such a review or hearing, the employer, within seven calendar days of the date of the notice, shall file by facsimile (fax), telegram, or other means normally assuring next day delivery a written request to the Chief Administrative Law Judge of the Department of Labor (giving the address) and simultaneously serve a copy on the OFLC Administrator; the notice shall also state that the employer may submit any legal arguments which the employer believes will rebut the basis of the OFLC Administrator's action; and

(4) State that if the employer does not request an expedited administrative-judicial review or a de novo hearing before an administrative law judge within the seven calendar days no further consideration of the employer's application for temporary alien agricultural labor certification will be made by any DOL official.

(d) *Appeal procedures.* If the employer timely requests an expedited administrative review or de novo hearing before an administrative law judge pursuant to paragraph (c)(3) of this section, the procedures at § 655.112 of this part shall be followed.

(e) *Required modifications.* If the application is not accepted for consideration by the OFLC Administrator, but the OFLC Administrator's written notification to the applicant is not timely as required by § 655.101 of this part, the certification determination will not be extended beyond 20 calendar days before the date of need. The notice will specify that the OFLC Administrator's temporary alien agricultural labor certification determination will be made no later than 20 calendar days before the date of need, provided that the applicant submits the modifications to the application which are required by the OFLC Administrator within five calendar days and in a manner specified by the OFLC Administrator which will enable the test of U.S. worker availability to be made as required by § 655.101 of this part within the time available for such purposes.

§ 655.105 Recruitment period.

(a) *Notice of acceptance of application for consideration; required recruitment.* If the OFLC Administrator determines that the H–2A application meets the requirements of §§ 655.101–655.103 of this part, the OFLC Administrator shall promptly notify the employer (by means normally assuring next-day delivery) in writing with copies to the State agency. The notice shall inform the employer and the State agency of the specific efforts which will be expected from them during the following weeks to carry out the assurances contained in § 655.103 with respect to the recruitment of U.S. workers. The notice shall require that the job order be laced into intrastate clearance and into interstate clearance to such States as the OFLC Administrator shall determine to be potential sources of U.S. workers. The notice may require the employer to engage in positive recruitment efforts within a multi-State region of traditional or expected labor supply where the OFLC Administrator finds, based on current information provided by a State agency and such information as may be offered and provided by other sources, that there are a significant number of able and qualified U.S. workers who, if

recruited, would likely be willing to make themselves available for work at the time and place needed. In making such a finding, the OFLC Administrator shall take into account other recent recruiting efforts in those areas and will attempt to avoid requiring employers to futilely recruit in areas where there are a significant number of local employers recruiting for U.S. workers for the same types of occupations. Positive recruitment is in addition to, and shall be conducted within the same time period as, the circulation through the interstate clearance system of an agricultural clearance order. The obligation to engage in such positive recruitment shall terminate on the date H–2A workers depart for the employer's place of work. In determining what positive recruitment shall be required, the OFLC Administrator will ascertain the normal recruitment practices of non-H–2A agricultural employers in the area and the kind and degree of recruitment efforts which the potential H–2A employer made to obtain H–2A workers. The OFLC Administrator shall ensure that the effort, including the location(s) of the positive recruitment required of the potential H–2A employer, during the period after filing the application and before the date the H–2A workers depart their prior location to come to the place of employment, shall be no less than: (1) The recruitment efforts of non-H–2A agricultural employers of comparable or smaller size in the area of employment; and (2) the kind and degree of recruitment efforts which the potential H–2A employer made to obtain H–2A workers.

(b) *Recruitment of U.S. workers.* After an application for temporary alien agricultural labor certification is accepted for processing pursuant to paragraph (a) of this section, the OFLC Administrator shall provide overall direction to the employer and the SWA with respect to the recruitment of U.S. workers.

(c) *Modifications.* At any time during the recruitment effort, the OFLC Administrator may require modifications to a job offer when the OFLC Administrator determines that the job offer does not contain all the provisions relating to minimum benefits, wages, and working conditions, required by § 655.102(b) of this part. If any such modifications are required after an application has been accepted for consideration by the OFLC Administrator, the modifications must be made; however, the certification determination shall not be delayed beyond the 20 calendar days prior to the date of need as a result of such modification.

(d) *Final determination.* By 20 calendar days before the date of need specified in the application, except as provided for under §§ 655.101(c)(2) and 655.104(e) of this part for untimely modified applications, the OFLC Administrator, when making a determination of the availability of U.S. workers, shall also make a determination as to whether the employer has satisfied the recruitment assurances in § 655.103 of this part. If the OFLC Administrator concludes that the employer has not satisfied the requirements for recruitment of U.S. workers, the OFLC Administrator shall deny the temporary alien agricultural labor certification, and shall immediately notify the employer in writing with a copy to the SWA. The notice shall contain the statements specified in § 655.104(d) of this part.

(e) *Appeal procedure.* With respect to determinations by the OFLC Administrator pursuant to this section, if the employer timely requests an expedited administrative review or a de novo hearing before an administrative law judge, the procedures in § 655.112 of this part shall be followed.

§ 655.106 Referral of U.S. workers; determinations based on U.S. worker availability and adverse effect; activities after receipt of the temporary alien agricultural labor certification.

(a) *Referral of able, willing, and qualified eligible U.S. workers.* With respect to the referral of U.S. workers to job openings listed on a job order accompanying an application for temporary alien agricultural labor certification, no U.S. worker-applicant shall be referred unless such U.S. worker has been made aware of the terms and conditions of and qualifications for the job, and has indicated, by accepting referral to the job, that she or he meets the qualifications required and is able, willing, and eligible to take such a job.

(b)(1) *Determinations.* If the OFLC Administrator, in accordance with § 655.105 of this part, has determined that the employer has complied with the recruitment assurances and the adverse effect criteria of § 655.102 of this part, by the date specified pursuant to § 655.101(c)(2) of this part for untimely modified applications or 20 calendar days before the date of need specified in the application, whichever is applicable, the OFLC Administrator shall grant the temporary alien agricultural labor certification request for enough H–2A workers to fill the employer's job opportunities for which U.S. workers are not available. In making the temporary alien agricultural labor certification determination, the OFLC Administrator shall consider as available any U.S. worker who has made a firm commitment to work for the employer, including those workers committed by other authorized persons such as farm labor contractors and family heads. Such a firm commitment shall be considered to have been made not only by workers who have signed work contracts with the employer, but also by those whom the OFLC Administrator determines are likely to sign a work contract. The OFLC Administrator shall count as available any U.S. worker who has applied to the employer (or on whose behalf an application has been made), but who was rejected by the employer for other than lawful job-related reasons or who has not been provided with a lawful job-related reason for rejection by the employer, as determined by the OFLC Administrator. The OFLC Administrator shall not grant a temporary alien agricultural labor certification request for any H–2A workers if the OFLC Administrator determines that:

(i) Enough able, willing, and qualified U.S. workers have been identified as being available to fill all the employer's job opportunities;

(ii) The employer, since the time the application was accepted for consideration under § 655.104 of this part, has adversely affected U.S. workers by offering to, or agreeing to provide to, H–2A workers better wages, working conditions or benefits (or by offering to, or agreeing to impose on alien workers less obligations and restrictions) than those offered to U.S. workers;

(iii) The employer during the previous two-year period employed H–2A workers and the OFLC Administrator has determined, after notice and opportunity for a hearing, that the employer at any time during that period substantially violated a material term or condition of a temporary alien agricultural labor certification with respect to the employment of U.S. or H–2A workers;

(iv) The employer has not complied with the workers' compensation requirements at § 655.102(b)(2) of this part; or

(v) The employer has not satisfactorily complied with the positive recruitment requirements specified by this subpart.

Further, the OFLC Administrator, in making the temporary alien agricultural labor certification determination, will subtract from any temporary alien agricultural labor certification the specific verified number of job opportunities involved which are vacant because of a strike or other labor dispute involving a work stoppage, or a lockout,

in the occupation at the place of employment (and for which H–2A workers have been requested). Upon receipt by the OFLC Administrator of such labor dispute information from any source, the OFLC Administrator shall verify the existence of the strike, labor dispute, or lockout and any resulting vacancies prior to making such a determination.

(2) *Fees.* A temporary alien agricultural labor certification determination granting an application shall include a bill for the required fees. Each employer (except joint employer associations) of H–2A workers under the application for temporary alien agricultural labor certification shall pay in a timely manner a nonrefundable fee upon issuance of the temporary alien agricultural labor certification granting the application (in whole or in part), as follows:

(i) *Amount.* The fee for each employer receiving a temporary alien agricultural labor certification is $100 plus $10 for each job opportunity for H–2A workers certified, provided that the fee to an employer for each temporary alien agricultural labor certification received shall be no greater than $1,000. In the case of a joint employer association receiving a temporary alien agricultural labor certification, each employer-member receiving a temporary alien agricultural labor certification shall pay a fee of $100 plus $10 for each job opportunity for H–2A workers certified, provided that the fee to an employer for each temporary alien agricultural labor certification received shall be no greater than $1,000. The joint employer association will not be charged a separate fee. The fees shall be paid by check or money order made payable to ''Department of Labor''. In the case of employers of H–2A workers which are members of a joint employer association applying on their behalf, the aggregate fees for all employers of H–2A workers under the application may be paid by one check or money order.

(ii) *Timeliness.* Fees received by the OFLC Administrator no more than 30 calendar days after the date of the temporary alien agricultural labor certification determination are timely.

(c) Changes to temporary alien agricultural labor certifications; temporary alien agricultural labor certifications involving employer associations—(1) Changes. Temporary alien agricultural labor certifications are subject to the conditions and assurances made during the application process. Any changes in the level of benefits, wages, and working conditions an employer may wish to make at any time during the work contract period must be approved by the OFLC Administrator after written application by the employer, even if such changes have been agreed to by an employee. Temporary alien agricultural labor certifications shall be for the specific period of time specified in the employer's job offer, which shall be less than twelve months; shall be limited to the employer's specific job opportunities; and may not be transferred from one employer to another, except as provided for by paragraph (c)(2) of this section.

(2) *Associations*—(i) *Applications.* If an association is requesting a temporary alien agricultural labor certification as a joint employer, the temporary alien agricultural labor certification granted under this section shall be made jointly to the association and to its employer members. Except as provided in paragraph (c)(2)(iii) of this section, such workers may be transferred among its producer members to perform work for which the temporary alien agricultural labor certification was granted, provided the association controls the assignment of such workers and maintains a record of such assignments. All temporary alien agricultural labor certifications to associations may be used for the certified job opportunities of any of its members. If an association is requesting a temporary alien agricultural labor certification as a sole employer, the temporary alien agricultural labor certification granted pursuant to this section shall be made to the association only.

(ii) *Referrals and transfers.* For the purposes of complying with the ''fifty-percent rule'' at § 655.103(e) of this part, any association shall be allowed to refer or transfer workers among its members (except as provided in paragraph (c)(2)(iii) of this section), and an association acting as an agent for its members shall not be considered a joint employer merely because of such referral or transfer.

(iii) *Ineligible employer-members.* Workers shall not be transferred or referred to an association's member, if that member is ineligible to obtain any or any additional workers, pursuant to § 655.110 of this part.

(3) *Extension of temporary alien agricultural labor certification*—(i) *Short-term extension.* An employer who seeks an extension of two weeks or less of the temporary alien agricultural labor certification shall apply for such extension to DHS. If DHS grants such an extension, the temporary alien agricultural labor certification shall be deemed extended for such period as is approved by DHS. No extension granted under this paragraph (c)(3)(i) shall be for a period longer than the original work contract period of the temporary alien agricultural labor certification.

(ii) *Long-term extension.* For extensions beyond the period which may be granted by DHS pursuant to paragraph (c)(3)(i) of this section, an employer, after 50 percent of the work contract period has elapsed, may apply to the OFLC Administrator for an extension of the period of the temporary alien agricultural labor certification, for reasons related to weather conditions or other external factors beyond the control of the employer (which may include unforeseen changes in market conditions), provided that the employer's need for an extension is supported in writing by the employer, with documentation showing that the extension is needed and could not have been reasonably foreseen by the employer. The OFLC Administrator shall grant or deny the request for extension of the temporary alien agricultural labor certification based on available information, and shall notify the employer of the decision on the request in writing. The OFLC Administrator shall not grant an extension where the total work contract period, including past temporary alien labor certifications for the job opportunity and extensions, would be 12 months or more, except in extraordinary circumstances. The OFLC Administrator shall not grant an extension where the temporary alien agricultural labor certification has already been extended by DHS pursuant to paragraph (c)(3)(i) of this section.

(d) *Denials of applications.* If the OFLC Administrator does not grant the temporary alien agricultural labor certification (in whole or in part) the OFLC Administrator shall notify the employer by means reasonably calculated to assure next-day delivery. The notification shall contain all the statements required in § 655.104(c) of this part. If a timely request is made for an administrative-judicial review or a de novo hearing by an administrative law judge, the procedures of § 655.112 of this part shall be followed.

(e) *Approvals of applications*—(1) *Continued recruitment of U.S. workers.* After a temporary agricultural labor certification has been granted, the employer shall continue its efforts to recruit U.S. workers until the actual date the H–2A workers depart for the employer's place of employment.

(i) Unless the SWA is informed in writing of a different date, the SWA shall deem the third day immediately preceding the employer's first date of need to be the date the H–2A workers depart for the employer's place of

employment. The employer may notify the SWA in writing if the workers depart prior to that date.

(ii)(A) If the H–2A workers do not depart for the place of employment on or before the first date of need (or by the stated date of departure, if the SWA has been advised of a different date), the employer shall notify the SWA in writing (or orally, confirmed in writing) as soon as the employer knows that the workers will not depart by the first date of need, and in no event later than such date of need. At the same time, the employer shall notify the SWA of the workers' expected departure date, if known. No further notice is necessary if the workers depart by the stated date of departure.

(B) If the employer did not notify the SWA of the expected departure date pursuant to paragraph (e)(1)(ii)(A) of this section, or if the H–2A workers do not leave for the place of employment on or before the stated date of departure, the employer shall notify the SWA in writing (or orally, confirmed in writing) as soon as the employer becomes aware of the expected departure date, or that the workers did not depart by the stated date and the new expected departure date, as appropriate.

(2) *Requirement for Active Job Order.* The employer shall keep an active job order on file until the ''50-percent rule'' assurance at § 655.103(e) of this part is met, except as provided by paragraph (f) of this section.

(3) *Referrals by ES System.* The ES system shall continue to refer to the employer U.S. workers who apply as long as there is an active job order on file.

(f) *Exceptions*—(1) *''Fifty-percent rule'' inapplicable to small employers.* The assurance requirement at § 655.103(e) of this part does not apply to any employer who:

(i) Did not, during any calendar quarter during the preceding calendar year, use more than 500 ''man-days'' of agricultural labor, as defined in section 3(u) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(u)), and so certifies to the OFLC Administrator in the H–2A application; and

(ii) Is not a member of an association which has applied for a temporary alien agricultural labor certification under this subpart for its members; and

(iii) Has not otherwise ''associated'' with other employers who are applying for H–2A workers under this subpart, and so certifies to the OFLC Administrator.

(2) *Displaced H–2A workers.* An employer shall not be liable for payment under § 655.102(b)(6) of this part with respect to an H–2A worker whom the OFLC Administrator certifies is displaced due to compliance with § 655.103(e) of this part.

(g) *Withholding of U.S. workers prohibited*—(1) *Complaints.* Any employer who has reason to believe that a person or entity has willfully and knowingly withheld U.S. workers prior to the arrival at the job site of H–2A workers in order to force the hiring of U.S. workers under § 655.103(e) of this part may submit a written complaint to the SWA. The complaint shall clearly identify the person or entity whom the employer believes has withheld the U.S. workers, and shall specify sufficient facts to support the allegation (e.g., dates, places, numbers and names of U.S. workers) which will permit an investigation to be conducted by the SWA.

(2) *Investigations.* The SWA shall inform the OFLC Administrator by telephone that a complaint under the provisions of paragraph (g) of this section has been filed and shall immediately investigate the complaint. Such investigation shall include interviews with the employer who has submitted the complaint, the person or entity named as responsible for withholding the U.S. workers, and the individual U.S. workers whose availability has purportedly been withheld. In the event the SWA fails to conduct such interviews, the OFLC Administrator shall do so.

(3) *Reports of findings.* Within five working days after receipt of the complaint, the SWA shall prepare a report of its findings, and shall submit such report (including recommendations) and the original copy of the employer's complaint to the OFLC Administrator.

(4) *Written findings.* The OFLC Administrator shall immediately review the employer's complaint and the report of findings submitted by the local office, and shall conduct any additional investigation the OFLC Administrator deems appropriate. No later than 36 working hours after receipt of the employer's complaint and the local office's report, the OFLC Administrator shall issue written findings to the local office and the employer. Where the OFLC Administrator determines that the employer's complaint is valid and justified, the OFLC Administrator shall immediately suspend the application of § 655.103(e) of this part to the employer. Such suspension of § 655.103(e) of this part under these circumstances shall not take place, however, until the interviews required by paragraph (g)(2) of this section have been conducted. The OFLC Administrator's determination under the provisions of this paragraph (g)(4) shall be the final decision of the Secretary, and no further review by any DOL official shall be given to it.

(h) *Requests for new temporary alien agricultural labor certification determinations based on nonavailability of able, willing, and qualified U.S. workers*—(1) *Standards for requests.* If a temporary alien agricultural labor certification application has been denied (in whole or in part) based on the OFLC Administrator's determination of the availability of able, willing, and qualified U.S. workers, and, on or after 20 calendar days before the date of need specified in the temporary alien agricultural labor certification determination, such U.S. workers identified as being able, willing, qualified, and available are, in fact, not able, willing, qualified, or available at the time and place needed, the employer may request a new temporary alien agricultural labor certification determination from the OFLC Administrator. The OFLC Administrator shall expeditiously, but in no case later than 72 hours after the time a request is received, make a determination on the request.

(2) *Filing requests.* The employer's request for a new determination shall be made directly to the OFLC Administrator. The request may be made to the OFLC Administrator by telephone, but shall be confirmed by the employer in writing as required by paragraphs (h)(2)(i) or (ii) of this section.

(i) *Workers not able, willing, qualified, or eligible.* If the employer asserts that any worker who has been referred by the ES System or by any other person or entity is not an eligible worker or is not able, willing, or qualified for the job opportunity for which the employer has requested H–2A workers, the burden of proof is on the employer to establish that the individual referred is not able, willing, qualified, or eligible because of lawful job-related reasons. The employer's burden of proof shall be met by the employer's submission to the OFLC Administrator, within 72 hours of the OFLC Administrator's receipt of the request for a new determination, of a signed statement of the employer's assertions, which shall identify each rejected worker by name and shall state each lawful job-related reason for rejecting that worker.

(ii) *U.S. workers not available.* If the employer telephonically requests the new determination, asserting solely that U.S. workers are not available, the employer shall submit to the OFLC Administrator a signed statement confirming such assertion. If such signed statement is not received by the

OFLC Administrator within 72 hours of the OFLC Administrator's receipt of the telephonic request for a new determination, the OFLC Administrator may make the determination based solely on the information provided telephonically and the information (if any) from the SWA.

(3) *National Processing Center review*—(i) *Expeditious review.* The OFLC Administrator expeditiously shall review the request for a new determination. The OFLC Administrator may request a signed statement from the SWA in support of the employer's assertion of U.S. worker nonavailability or referred U.S. workers not being able, willing, or qualified because of lawful job-related reasons.

(ii) *New determination.* If the OFLC Administrator determines that the employer's assertion of nonavailability is accurate and that no able, willing, or qualified U.S. worker has been refused or is being refused employment for other than lawful job-related reasons, the OFLC Administrator shall, within 72 hours after receipt of the employer's request, render a new determination. Prior to making a new determination, the OFLC Administrator promptly shall ascertain (which may be through the ES System or other sources of information on U.S. worker availability) whether able, willing, and qualified replacement U.S. workers are available or can be reasonably expected to be present at the employer's establishment within 72 hours from the date the employer's request was received.

(iii) *Notification of new determination.* If the OFLC Administrator cannot identify sufficient able, willing, and qualified U.S. workers who are or who are likely to be available, the OFLC Administrator shall grant the employer's new determination request (in whole or in part) based on available information as to replacement U.S. worker availability. The OFLC Administrator's notification to the employer on the new determination shall be in writing (by means normally assuring next-day delivery), and the OFLC Administrator's determination under the provisions of this paragraph (h)(3) shall be the final decision of the Secretary, and no further review shall be given to an employer's request for a new H–2A determination by any DOL official. However, this does not preclude an employer from submitting subsequent requests for new determinations, if warranted, based on subsequent facts concerning purported nonavailability of U.S. workers or referred workers not being eligible workers or not able, willing, or qualified because of lawful job-related reasons.

§ 655.107 Adverse effect wage rates (AEWRs).

(a) *Computation and publication of AEWRs.* Except as otherwise provided in this section, the AEWRs for all agricultural employment (except for those occupations deemed inappropriate under the special circumstances provisions of § 655.93 of this part) for which temporary alien agricultural labor certification is being sought shall be equal to the annual weighted average hourly wage rate for field and livestock workers (combined) for the region as published annually by the U.S. Department of Agriculture (USDA) based on the USDA quarterly wage survey. The OFLC Administrator shall publish, at least once in each calendar year, on a date or dates to be determined by the OFLC Administrator, AEWRs for each State (for which USDA publishes regional data), calculated pursuant to this paragraph (a) as a notice or notices in the **Federal Register**.

(b) *Higher prevailing wage rates.* If, as the result of a State agency prevailing wage survey determination, the prevailing wage rate in an area and agricultural activity (as determined by the State agency survey and verified by the OFLC Administrator) is found to be higher that the AEWR computed pursuant to paragraph (a) of this section, the higher prevailing wage rate shall be offered and paid to all workers by employers seeking temporary alien agricultural labor certification for that agricultural activity and area.

(c) Federal minimum wage rate. In no event shall an AEWR computed pursuant to this section be lower than the hourly wage rate published in 29 U.S.C. 206(a)(1) and currently in effect.

§ 655.108 H–2A applications involving fraud or willful misrepresentation.

(a) *Referral for investigation.* If possible fraud or willful misrepresentation involving a temporary alien agricultural labor certification application is discovered prior to a final temporary alien agricultural labor certification determination or if it is learned that the employer or agent (with respect to an application) is the subject of a criminal indictment or information filed in a court, the OFLC Administrator shall refer the matter to the DHS and DOL Office of the Inspector General for investigation. The OFLC Administrator shall continue to process the application and may issue a temporary alien agricultural labor certification.

(b) *Continued processing.* If a court finds an employer or agent not guilty of fraud or willful misrepresentation, or if the Department of Justice decides not to prosecute an employer or agent, the OFLC Administrator shall not deny the temporary alien agricultural labor certification application on the grounds of fraud or willful misrepresentation. The application, of course, may be denied for other reasons pursuant to this subpart.

(c) *Terminated processing.* If a court or the DHS determines that there was fraud or willful misrepresentation involving a temporary alien agricultural labor certification application, the application is thereafter invalid, consideration of the application shall be terminated and the OFLC Administrator shall return the application to the employer or agent with the reasons therefor stated in writing.

§ 655.110 Employer penalties for noncompliance with terms and conditions of temporary alien agricultural labor certifications.

(a) *Investigation of violations.* If, during the period of two years after a temporary alien agricultural labor certification has been granted (in whole or in part), the OFLC Administrator has reason to believe that an employer violated a material term or condition of the temporary alien agricultural labor certification, the OFLC Administrator shall, except as provided in paragraph (b) of this section, investigate the matter. If, after the investigation, the OFLC Administrator determines that a substantial violation has occurred, the OFLC Administrator, shall notify the employer that a temporary alien agricultural certification request will not be granted for the next period of time in a calendar year during which the employer would normally be expected to request a temporary alien agricultural labor certification, and any application subsequently submitted by the employer for that time period will not be accepted by the OFLC Administrator. If multiple or repeated substantial violations are involved, the OFLC Administrator's notice to the employer shall specify that the prospective denial of the temporary alien agricultural labor certification will apply not only to the next anticipated period for which a temporary alien agricultural labor certification would normally be requested, but also to any periods within the coming two or three years; two years for two violations, or repetitions of the same violations, and three years for three or more violations, or repetitions thereof. The OFLC Administrator's notice shall be in writing, shall state the reasons for the determinations, and shall offer the employer an opportunity to request an expedited administrative review or a de

novo hearing before an administrative law judge of the determination within seven calendar days of the date of the notice. If the employer requests an expedited administrative review or a de novo hearing before an administrative law judge, the procedures in § 655.112 of this part shall be followed.

(b) *Employment Standards Administration investigations.* The OFLC Administrator may make the determination described in paragraph (a) of this section based on information and recommendations provided by the Employment Standards Administration, after an Employment Standards Administration investigation has been conducted in accordance with the Employment Standards Administration procedures, that an employer has not complied with the terms and conditions of employment prescribed as a condition for a temporary alien agricultural labor certification. In such instances, the OFLC Administrator need not conduct any investigation of his/her own, and the subsequent notification to the employer and other procedures contained in paragraph (a) of this section will apply. Penalties invoked by the Employment Standards Administration for violations of temporary alien agricultural labor certification terms and conditions shall be treated and handled separately from sanctions available to the OFLC Administrator, and an employer's obligations for compliance with the Employment Standards Administration's enforcement penalties shall not absolve an employer from sanctions applied by ETA under this section (except as noted in paragraph (a) of this section).

(c) *Less than substantial violations*—(1) *Requirement of special procedures.* If, after investigation as provided for under paragraph (a) of this section, or an Employment Standards Administration notification as provided under paragraph (b) of this section, the OFLC Administrator determines that a less than substantial violation has occurred, but the OFLC Administrator has reason to believe that past actions on the part of the employer may have had and may continue to have a chilling or otherwise negative effect on the recruitment, employment, and retention of U.S. workers, the OFLC Administrator may require the employer to conform to special procedures before and after the temporary alien labor certification determination (including special on-site positive recruitment and streamlined interviewing and referral techniques) designed to enhance U.S. worker recruitment and retention in the next year as a condition for receiving a temporary alien agricultural labor certification. Such requirements shall be reasonable, and shall not require the employer to offer better wages, working conditions and benefits than those specified in § 655.102 of this part, and shall be no more than deemed necessary to assure employer compliance with the test of U.S. worker availability and adverse effect criteria of this subpart. The OFLC Administrator shall notify the employer in writing of the special procedures which will be required in the coming year. The notification shall state the reasons for the imposition of the requirements, state that the employer's agreement to accept the conditions will constitute inclusion of them as bona fide conditions and terms of a temporary alien agricultural labor certification, and shall offer the employer an opportunity to request an administrative review or a de novo hearing before an administrative law judge. If an administrative review or de novo hearing is requested, the procedures prescribed in § 655.112 of this part shall apply.

(2) *Failure to comply with special procedures.* If the OFLC Administrator determines that the employer has failed to comply with special procedures required pursuant to paragraph (c)(1) of this section, the OFLC Administrator shall send a written notice to the employer, stating that the employer's otherwise affirmative temporary alien agricultural labor certification determination will be reduced by twenty-five percent of the total number of H–2A aliens requested (which cannot be more than those requested in the previous year) for a period of one year. Notice of such a reduction in the number of workers requested shall be conveyed to the employer by the OFLC Administrator in the OFLC Administrator's written temporary alien agricultural labor certification determination required by § 655.101 of this part. The notice shall offer the employer an opportunity to request an administrative review or a de novo hearing before an administrative law judge. If an administrative review or de novo hearing is requested, the procedures prescribed in § 655.112 of this part shall apply, provided that if the administrative law judge affirms the OFLC Administrator's determination that the employer has failed to comply with special procedures required by paragraph (c)(1) of this section, the reduction in the number of workers requested shall be twenty-five percent of the total number of H–2A aliens requested (which cannot be more than those requested in the previous year) for a period of one year.

(d) *Penalties involving members of associations.* If, after investigation as provided for under paragraph (a) of this section, or notification from the Employment Standards Administration under paragraph (b) of this section, the OFLC Administrator determines that a substantial violation has occurred, and if an individual producer member of a joint employer association is determined to have committed the violation, the denial of temporary alien agricultural labor certification penalty prescribed in paragraph (a) shall apply only to that member of the association unless the OFLC Administrator determines that the association or other association member participated in, had knowledge of, or had reason to know of the violation, in which case the penalty shall be invoked against the association or other association member as well.

(e) *Penalties involving associations acting as joint employers.* If, after investigation as provided for under paragraph (a) of this section, or notification from the Employment Standards Administration under paragraph (b) of this section, the OFLC Administrator determines that a substantial violation has occurred, and if an association acting as a joint employer with its members is determined to have committed the violation, the denial of temporary alien agricultural labor certification penalty prescribed in paragraph (a) of this section shall apply only to the association, and shall not be applied to any individual producer member of the association unless the OFLC Administrator determines that the member participated in, had knowledge of, or reason to know of the violation, in which case the penalty shall be invoked against the association member as well.

(f) *Penalties involving associations acting as sole employers.* If, after investigation as provided for under paragraph (a) of this section, or notification from the Employment Standards Administration under paragraph (b) of this section, the OFLC Administrator determines that a substantial violation has occurred, and if an association acting as a sole employer is determined to have committed the violation, no individual producer member of the association shall be permitted to employ certified H–2A workers in the crop and occupation for which the H–2A workers had been previously certified for the sole employer association unless the producer member applies for temporary alien agricultural labor certification

under the provisions of this subpart in the capacity of an individual employer/applicant or as a member of a joint employer association, and is granted temporary alien agricultural labor certification by the OFLC Administrator.

(g) *Types of violations*—(1) *Substantial violation.* For the purposes of this subpart, a substantial violation is one or more actions of commission or omission on the part of the employer or the employer's agent, with respect to which the OFLC Administrator determines:

(i)(A) That the action(s) is/are significantly injurious to the wages, benefits, or working conditions of 10 percent or more of an employer's U.S. and/or H–2A workforce; and that:

(*1*) With respect to the action(s), the employer has failed to comply with one or more penalties imposed by the Employment Standards Administration for violation(s) of contractual obligations found by that agency (if applicable), or with one or more decisions or orders of the Secretary or a court pursuant to section 216 of the INA (8 U.S.C. 1186), this subpart, or 29 CFR part 501 (Employment Standards Administration enforcement of contractual obligations); or

(*2*) The employer has engaged in a pattern or practice of actions which are significantly injurious to the wages, benefits, or working conditions of 10 percent or more of an employer's U.S. and/or H–2A workforce;

(B) That the action(s) involve(s) impeding an investigation of an employer pursuant to section 216 of the INA (8 U.S.C. 1186), this subpart, or 29 CFR part 501 (Employment Standards Administration enforcement of contractual obligations);

(C) That the employer has not paid the necessary fee in a timely manner;

(D) That the employer is not currently eligible to apply for a temporary alien agricultural labor certification pursuant to § 655.210 of this part (failure of an employer to comply with the terms of a temporary alien agricultural labor certification in which the application was filed under subpart C of this part prior to June 1, 1987); or

(E) That there was fraud involving the application for temporary alien agricultural labor certification of that the employer made a material misrepresentation of fact during the application process; and

(ii) That there are no extenuating circumstances involved with the action(s) described in paragraph (g)(1)(i) of this section (as determined by the OFLC Administrator).

(2) Less than substantial violation. For the purposes of this subpart, a less than substantial violation is an action of commission or omission on the part of the employer or the employer's agent which violates a requirement of this subpart, but is not a substantial violation.

§ 655.111 Petition for higher meal charges.

(a) *Filing petitions.* Until a new amount is set pursuant to this paragraph (a), the OFLC Administrator may permit an employer to charge workers up to $6.58 for providing them with three meals per day, if the employer justifies the charge and submits to the OFLC Administrator the documentation required by paragraph (b) of this section. In the event the employer's petition for a higher meal charge is denied in whole or in part, the employer may appeal such denial. Such appeals shall be filed with the Chief Administrative Law Judge. Administrative law judges shall hear such appeals according to the procedures in 29 CFR part 18, except that the appeal shall not be considered as a complaint to which an answer is required. The decision of the administrative law judge shall be the final decision of the Secretary. Each year the maximum charge allowed by this paragraph (a) will be changed by the same percentage as the twelve-month percent change for the Consumer Price Index for all Urban Consumers for Food between December of the year just concluded and December of the year prior to that. The annual adjustments shall be effective on the date of their publication by the OFLC Administrator as a notice in the **Federal Register**. However, an employer may not impose such a charge on a worker prior to the effective date contained in the OFLC Administrator's written confirmation of the amount to be charged.

(b) *Required documentation.* Documentation submitted shall include the cost of goods and services directly related to the preparation and serving of meals, the number of workers fed, the number of meals served and the number of days meals were provided. The cost of the following items may be included: Food; kitchen supplies other than food, such as lunch bags and soap; labor costs which have a direct relation to food service operations, such as wages of cooks and restaurant supervisors; fuel, water, electricity, and other utilities used for the food service operation; and other costs directly related to the food service operation. Charges for transportation, depreciation, overhead and similar charges may not be included. Receipts and other cost records for a representative pay period shall be available for inspection by the OFLC Administrator for a period of one year.

§ 655.112 Administrative review and de novo hearing before an administrative law judge.

(a) *Administrative review*—(1) *Consideration.* Whenever an employer has requested an administrative review before an administrative law judge of a decision not to accept for consideration a temporary alien agricultural labor certification application, of the denial of a temporary alien agricultural labor certification, or of a penalty under § 655.110 of this part, the OFLC Administrator shall send a certified copy of the ETA case file to the Chief Administrative Law Judge by means normally assuring next-day delivery. The Chief Administrative Law Judge shall immediately assign an administrative law judge (which may be a panel of such persons designated by the Chief Administrative Law Judge from the Board of Alien Labor Certification Appeals established by part 656 of this chapter, but which shall hear and decide the appeal as set forth in this section) to review the record for legal sufficiency. The administrative law judge shall not remand the case and shall not receive additional evidence.

(2) *Decision.* Within five working days after receipt of the case file the administrative law judge shall, on the basis of the written record and after due consideration of any written submissions submitted from the parties involved or amici curiae, either affirm, reverse, or modify the OFLC Administrator's denial by written decision. The decision of the administrative law judge shall specify the reasons for the action taken and shall be immediately provided to the employer, OFLC Administrator, and DHS by means normally assuring next-day delivery. The administrative law judge's decision shall be the final decision of the Secretary and no further review shall be given to the temporary alien agricultural labor certification application or the temporary alien agricultural labor certification determination by any DOL official.

(b) *De novo hearing*—(1) *Request for hearing; conduct of hearing.* Whenever an employer has requested a de novo hearing before an administrative law judge of a decision not to accept for consideration a temporary alien agricultural labor certification application, of the denial of a temporary alien agricultural labor certification, or of a penalty under § 655.110 of this part, the OFLC Administrator shall send a certified copy of the case file to the Chief Administrative Law Judge by

means normally assuring next-day delivery. The Chief Administrative Law Judge shall immediately assign an administrative law judge (which may be a panel of such persons designated by the Chief Administrative Law Judge from the Board of Alien Labor Certification Appeals established by part 656 of this chapter, but which shall hear and decide the appeal as set forth in this section) to conduct the de novo hearing. The procedures contained in 29 CFR part 18 shall apply to such hearings, except that:

(i) The appeal shall not be considered to be a complaint to which an answer is required,

(ii) The administrative law judge shall ensure that, at the request of the employer, the hearing is scheduled to take place within five working days after the administrative law judge's receipt of the case file, and

(iii) The administrative law judge's decision shall be rendered within ten working days after the hearing.

(2) *Decision.* After a de novo hearing, the administrative law judge shall either affirm, reverse, or modify the OFLC Administrator's determination, and the administrative law judge's decision shall be provided immediately to the employer, OFLC Administrator, and DHS by means normally assuring next-day delivery. The administrative law judge's decision shall be the final decision of the Secretary, and no further review shall be given to the temporary alien agricultural labor certification application or the temporary alien agricultural labor certification determination by any DOL official.

§ 655.113 Job Service Complaint System; enforcement of work contracts.

Complaints arising under this subpart may be filed through the Job Service Complaint System, as described in 20 CFR part 658, subpart E. Complaints which involve worker contracts shall be referred by the local office to the Employment Standards Administration for appropriate handling and resolution. See 29 CFR part 501. As part of this process, the Employment Standards Administration may report the results of its investigation to ETA for consideration of employer penalties under § 655.110 of this part or such other action as may be appropriate.

7. Add subpart C to read as follows:

Subpart C—Labor Certification Process for Logging Employment and Non-H–2A Agricultural Employment

Sec.

Subpart C—Labor Certification Process for Logging Employment and Non-H–2A Agricultural Employment

§ 655.200 General description of this subpart and definition of terms.

(a) This subpart applies to applications for temporary alien agricultural labor certification filed before June 1, 1987, and to applications for temporary alien labor certification for logging employment.

(b) An employer who desires to use foreign workers for temporary employment must file a temporary labor certification application including a job offer for U.S. workers with an appropriate State Workforce Agency. The employer should file an application a minimum of 80 days before the estimated date of need for the workers. If filed 80 days before need, sufficient time is allowed for the 60-day recruitment period required by the regulations and a determination by the OFLC Administrator as to the availability of U.S. workers 20 days before the date of need. Shortly after the application has been filed, the OFLC Administrator makes a determination as to whether or not the application has been filed in enough time to recruit U.S. workers and whether or not the job offer for U.S. workers offers wages and working conditions which will not adversely affect the wages and working conditions of similarly employed U.S. workers, as prescribed in the regulations in this subpart. If the application does not meet the regulatory wage and working condition standards, the OFLC Administrator shall deny the temporary labor certification application and offer the employer an administrative-judicial review of the denial by an Administrative Law Judge. If the application is not timely, the OFLC Administrator has discretion, as set forth in these regulations, to either deny the application or permit the process to proceed reasonably with the employer recruiting U.S. workers upon such terms as will accomplish the purposes of the INA and the DHS regulations. Where the application is timely and meets the regulatory standards, the State Workforce Agency, the employer, and the Department of Labor recruit U.S. workers for 60 days. At the end of the 60 days, the OFLC Administrator grants the temporary labor certification if the OFLC Administrator finds that (1) the employer has not offered foreign workers higher wages or better working conditions (or less restrictions) than that offered to U.S. workers, and (2) U.S. workers are not available for the employer's job opportunities. If the temporary labor certification is denied, the employer may seek an administrative-judicial review of the denial by an Administrative Law Judge as provided in these regulations. The Department of Labor thereafter advises the United States Citizenship and Immigration Services of the Department of Homeland Security (DHS) of approvals and denials of temporary labor certifications. The DHS may accept or reject this advice. 8 CFR 214.2(h)(3). The DHS makes the final decision as to whether or not to grant visas to the foreign workers. 8 U.S.C. 1184(a).

(c) *Definitions for terms used in this subpart.*

Administrative Law Judge means an official who is authorized to conduct administrative hearings.

Administrator, Office of Foreign Labor Certification (OFLC Administrator) means the primary official of the Office of Foreign Labor Certification or the OFLC Administrator's designee.

Adverse effect rate means the wage rate which the OFLC Administrator has determined must be offered and paid to foreign and U.S. workers for a particular occupation and/or area so that the wages of similarly employed U.S. workers will not be adversely affected. The OFLC Administrator may determine that the prevailing wage rate in the area and/or occupation is the adverse effect rate, if the use (or non-use) of aliens has not depressed the wages of similarly employed U.S. workers. The OFLC Administrator may determine that a wage rate higher than the prevailing wage rate is the adverse effect rate if the OFLC Administrator determines that the use of aliens has depressed the wages of similarly employed U.S. workers.

Agent means a legal person, such as an association of employers, which (1) is authorized to act as an agent of the employer for temporary labor certification purposes, and (2) which is

not itself an employer, or a joint employer, as defined in this section.

Area of intended employment means the area within normal commuting distance of the place (address) of intended employment. If the place of intended employment is within a Standard Metropolitan Statistical Area (SMSA), any place within the SMSA is deemed to be within normal commuting distance of the place of intended employment.

Department of Homeland Security (DHS) through the United States Citizenship and Immigration Services (USCIS) makes the determination under the INA on whether or not to grant visa petitions to an alien seeking to perform temporary agricultural or logging work in the United States.

Employer means a person, firm, corporation or other association or organization (1) which currently has a location within the United States to which U.S. workers may be referred for employment, and which proposes to employ a worker at a place within the United States and (2) which has an employer relationship with respect to employees under this subpart as indicated by the fact that it hires, pays, fires, supervises and otherwise controls the work of such employees. An association of employers shall be considered an employer if it has all of the indicia of an employer set forth in this definition. Such an association, however, shall be considered as a joint employer with the employer member if it shares with the employer member one or more of the definitional indicia.

Employment and Training Administration (ETA) means the agency within the Department of Labor (DOL) which includes the Office of Foreign Labor (OFLC).

Job opportunity means a job opening for temporary, full-time employment at a place in the United States to which U.S. workers can be referred.

Office of Foreign Labor Certification (OFLC) means the organizational component within the ETA that provides national leadership and policy guidance and develops regulations and procedures to carry out the responsibilities of the Secretary of Labor under the INA concerning alien workers seeking admission to the United States in order to work under the Immigration and Nationality Act, as amended.

Secretary means the Secretary of Labor or the Secretary's designee.

State Workforce Agency (SWA) means the State employment service agency.

Temporary labor certification means the advice given by the Secretary of Labor to the United States Citizenship and Immigration Services (USCIS) of the Department of Homeland Security (DHS), pursuant to the regulations of that agency at 8 CFR 214.2(h)(3)(i), that (1) there are not sufficient U.S. workers who are qualified and available to perform the work and (2) the employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers.

United States workers means any worker who, whether U.S. national, citizen or alien, is legally permitted to work permanently within the United States.

§ 655.201 Temporary labor certification applications.

(a)(1) An employer who anticipates a labor shortage of workers for agricultural or logging employment may request a temporary labor certification for temporary foreign workers by filing, or by having an agent file, in duplicate, a temporary labor certification application, signed by the employer, with a SWA in the area of intended employment.

(2) If the temporary labor certification application is filed by an agent, however, the agent may sign the application if the application is accompanied by a letter from each employer the agent represents, signed by the employer, which authorizes the agent to act on the employer's behalf and which states that the employer assumes full responsibility for the accuracy of the application, for all representations made by the agent on the employer's behalf, and for the fulfillment of all legal requirements arising under this subpart.

(3) If an association of employers files the application, the association shall identify and submit documents to verify whether, in accordance with the definitions at § 655.200, it is: (i) The employer, (ii) a joint employer with its member employers, or (iii) the agent of its employer members.

(b) Every temporary labor certification application shall include:

(1) A copy of the job offer which will be used by the employer (or each employer) for the recruitment of both U.S. and foreign workers. The job offer for each employer shall state the number of workers needed by the employer, and shall be signed by the employer. The job offer shall comply with the requirements of §§ 655.202 and 653.108 of this chapter;

(2) The assurances required by § 655.203; and

(3) The specific estimated date of need of workers.

(c) The entire temporary labor certification application shall be filed with the SWA in duplicate and in sufficient time to allow the State agency to attempt to recruit U.S. workers locally and through the Employment Service intrastate and interstate clearance system for 60 calendar days prior to the estimated date of need. Section 655.206 requires the OFLC Administrator to grant or deny the temporary labor certification application by the end of the 60 calendar days, or 20 days from the estimated date of need, whichever is later. That section also requires the OFLC Administrator to offer employers an expedited administrative-judicial review in cases of denials of the temporary labor certification applications. Following an administrative-judicial review, the employer has a right to contest any denial before the DHS pursuant to 8 CFR 214.2(h)(3)(i). Finally, employers need time, after the temporary labor certification determination, to complete the process for bringing foreign workers into the United States, or to bring an appeal of a denial of an application for the labor certification. Therefore, employers should file their temporary labor certification applications at least 80 days before the estimated date of need specified in the application.

(d) Applications may be amended at any time prior to OFLC Administrator determination to increase the number of workers requested in the original application for labor certification by not more than 15 percent without requiring an additional recruitment period for U.S. workers. Requests for increases beyond 15 percent may be approved only when it is determined that, based on past experience, the need for additional workers could not be foreseen and that a critical need for the workers would exist prior to the expiration of an additional recruitment period.

(e) If a temporary labor certification application, or any part thereof, does not satisfy the time requirements specified in paragraph (c) of this section, and if the exception in paragraph (d) of this section does not apply, the SWA shall immediately send both copies directly to the appropriate OFLC Administrator. The OFLC Administrator may then advise the employer and the DHS in writing that the temporary labor certification cannot be granted because, pursuant to the regulations at paragraph (c) of this section, there is not sufficient time to test the availability of U.S. workers. The notice of denial to the employer shall inform the employer of the right to administrative-judicial review and to ultimately petition DHS for the admission of the aliens. In emergency

situations, however, the OFLC Administrator may waive the time period specified in this section on behalf of employers who have not made use of temporary alien workers for the prior year's harvest or for other good and substantial cause, provided the OFLC Administrator has sufficient labor market information to make the labor certification determinations required by 8 CFR 214.2(h)(3)(i).

(Approved by the Office of Management and Budget under control number 1205–0015)

§ 655.202 Contents of job offers.

(a) So that the employment of aliens will not adversely affect the wages and working conditions of similarly employed U.S. workers, each employer's job offer to U.S. workers must offer U.S. workers at least the same benefits which the employer is offering, intends to offer, or will afford, to temporary foreign workers. Conversely, no job offer may impose on U.S. workers any restrictions or obligations which will not be imposed on the employer's foreign workers. For example, if the employer intends to advance transportation costs to foreign workers either directly or indirectly (by having them paid by the foreign government involved), the employer must offer to advance the transportation costs of U.S. workers.

(b) Except when higher benefits, wages or working conditions are required by the provisions of paragraph (a) of this section, the OFLC Administrator has determined that, in order to protect similarly employed U.S. workers from adverse effect with respect to wages and working conditions, every job offer for U.S. workers must always include the following minimal benefit, wage, and working condition provisions:

(1) The employer will provide the worker with housing without charge to the worker. The housing will meet the full set of standards set forth at 29 CFR 1910.142 or the full set of standards set forth at part 654, subpart E of this chapter, whichever is applicable under the criteria of 20 CFR 654.401; except that, for mobile range housing for sheepherders, the housing shall meet existing Departmental guidelines. When it is the prevailing practice in the area of intended employment to provide family housing, the employer will provide such housing to such workers.

(2)(i) If the job opportunity is covered by the State workers' compensation law, the worker will be eligible for workers' compensation for injury and disease arising out of and in the course of worker's employment; or

(ii) If the job opportunity is not covered by the State workers' compensation law, the employer will provide at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment;

(3) The employer will provide without cost to the worker all tools, supplies and equipment required to perform the duties assigned and, if any of these items are provided by the worker, the employer will reimburse the worker for the cost of those so provided;

(4) The employer will provide the worker with three meals a day, except that where under prevailing practice or longstanding arrangement at the establishment workers prepare their meals, employers need furnish only free and convenient cooking and kitchen facilities. Where the employer provides the meals, the job offer shall state the cost to the worker for such meals. Until a new amount is set pursuant to this paragraph (b)(4), the cost shall not be more than $4.94 per day unless the OFLC Administrator has approved a higher cost pursuant to § 655.211 of this part. Each year the charge allowed by this paragraph (b)(4) will be changed by the 12-month percent change for the Consumer Price Index for All Urban Consumers for Food between December of the year just concluded and December of the year prior to that. The annual adjustments shall be effective on their publication by the OFLC Administrator in the **Federal Register**.

(5)(i) The employer will provide or pay for the worker's transportation and daily subsistence from the place, from which the worker, without intervening employment, will come to work for the employer, to the place of employment, subject to the deductions allowed by paragraph (b)(13) of this section. The amount of the daily subsistence payment shall be at least as much as the amount the employer will charge the worker for providing the worker with three meals a day during employment;

(ii) If the worker completes the work contract period, the employer will provide or pay for the worker's transportation and daily subsistence from the place of employment to the place, from which the worker, without intervening employment, came to work for the employer, unless the worker has contracted for employment with a subsequent employer who, in that contract, has agreed to pay for the worker's transportation and daily subsistence expenses from the employer's worksite to such subsequent employer's worksite; and

(iii) The employer will provide transportation between the worker's living quarters and the employer's worksite without cost to the worker, and such transportation will be in accordance with applicable laws and regulations;

(6)(i) The employer guarantees to offer the worker employment for at least three-fourths of the workdays of the total period during which the work contract and all extensions thereof are in effect, beginning with the first workday after the arrival of the worker at the place of employment and ending on the termination date specified in the work contract, or in its extensions if any. For purposes of this paragraph, a workday shall mean any period consisting of 8 hours of work time. An employer shall not be considered to have met the work guarantee if the employer has merely offered work on three-fourths of the workdays. The work must be offered for at least three-fourths of the 8 hour workdays. (That is, $\frac{3}{4} \times$ (number of days $\times$ 8 hours.)) Therefore, if, for example, the contract contains 20 workdays, the worker must be offered employment for 120 hours during the 20 workdays. A worker may be offered more than 8 hours of work on a single workday. For purposes of meeting the guarantee, however, the worker may not be required to work for more than 8 hours per workday, or on the worker's Sabbath or Federal holidays;

(ii) If the worker will be paid on a piece rate basis, the employer will use the worker's average hourly earnings to calculate the amount due under the guarantee; and

(iii) Any hours which the worker fails to work when the worker has been offered an opportunity to do so pursuant to paragraph (b)(6)(i) of this section, and all hours of work actually performed (including voluntary work over 8 hours in a workday, or on the worker's Sabbath or Federal holidays) may be counted by the employer in calculating whether the period of guaranteed employment has been met;

(7)(i) The employer will keep accurate and adequate records with respect to the workers' earnings, including field tally records, supporting summary payroll records, and records showing: The nature and amount of the work performed; the number of hours of work offered each day by the employer (broken out by hours offered both in accordance with, and over and above, the guarantee); the hours actually worked each day by the worker; the time the worker began and ended each workday; the rate of pay; the worker's

earnings per pay period; and the amount of and reasons for any and all deductions made from the worker's wages;

(ii) If the number of hours worked by the worker is less than the number offered in accordance with the guarantee, the records will state the reason or reasons therefor;

(iii) The records, including field tally records and supporting summary payroll records, will be made available for inspection and copying by representatives of the Secretary of Labor, and by the worker and the worker's representatives; and

(iv) The employer will retain the records for not less than three years after the completion of the contract;

(8) The employer will furnish to the worker at or before each payday, in one or more written statements:

(i) The worker's total earnings for the pay period;

(ii) The worker's hourly rate or piece rate of pay;

(iii) The hours of employment which have been offered to the worker (broken out by offers in accordance with, and over and above, the guarantee);

(iv) The hours actually worked by the worker;

(v) An itemization of all deductions made from the worker's wages; and

(vi) If piece rates are used, the units produced daily;

(9)(i) If the worker will be paid by the hour, the employer will pay the worker at least the adverse effect rate; or

(ii)(A) If the worker will be paid on a piece rate basis, and the piece rate does not result at the end of the pay period in average hourly earnings during the pay period at least equal to the amount the worker would have earned had the worker been paid at the adverse effect rate, the worker's pay will be supplemented at that time so that the worker's earnings are at least as much as the worker would have earned during the pay period if the worker had been paid at the adverse effect rate.

(B) If the employer who pays on a piece rate basis requires one or more minimum productivity standards of workers as a condition of job retention,

(1) Such standards shall be no more than those applied by the employer in 1977, unless the OFLC Administrator approves a higher minimum; or

(2) If the employer first applied for temporary labor certification after 1977, such standards shall be no more than those normally required (at the time of that first application) by other employers for the activity in the area of intended employment, unless the OFLC Administrator approves a higher minimum.

(10) The frequency with which the worker will be paid (in accordance with the prevailing practice in the area of intended employment, or at least biweekly whichever is more frequent);

(11) If the worker voluntarily abandons employment before the end of the contract period, or is terminated for cause, the employer will not be responsible for providing or paying for the subsequent transportation and subsistence expenses of any worker for whom the employer would have otherwise been required to pay such expenses under paragraph (b)(5)(ii) of this section;

(12) If, before the expiration date specified in the work contract, the services of the worker are no longer required for reasons beyond the control of the employer due to fire or other Act of God which makes the fulfillment of the contract impossible, and the OFLC Administrator so certifies, the employer may terminate the work contract. In such cases the employer will make efforts to transfer the worker to other comparable employment acceptable to the worker. If such transfer is not effected, the worker

(i) Will be returned to the place from which the worker, without intervening employment, came to work for the employer at the employer's expense; and

(ii) Will be reimbursed the full amount of any deductions made from the worker's pay by the employer for transportation and subsistence expenses to the place of employment borne directly or indirectly by the employer;

(13) The employer will make those deductions from the worker's paycheck which are required by law. The job offer shall specify all deductions, not required by law, which the employer will make from the worker's paycheck. All deductions shall be reasonable. The employer may deduct the cost of the worker's transportation and daily subsistence expenses to the place of employment which were borne directly by the employer; in such cases, however, the job offer shall state that the worker will be reimbursed the full amount of such deductions upon the worker's completion of 50 percent of the worker's contract period; and

(14) The employer will provide the worker a copy of the work contract between the employer and the worker. The work contract shall contain all of the provisions required by paragraphs (a) and (b) of this section.

§ 655.203 Assurances.

As part of the temporary labor certification application, the employer shall include assurances, signed by the employer, that:

(a) The job opportunity is not:

(1) Vacant because the former occupant is on strike or being locked out in the course of a labor dispute; or

(2) At issue in a labor dispute involving a work stoppage;

(b) During the period for which the temporary labor certification is granted, the employer will comply with applicable Federal, State and local employment-related laws, including employment related health and safety laws;

(c) The job opportunity is open to all qualified U.S. workers without regard to race, color, national origin, sex, or religion, and is open to U.S. workers with handicaps who are qualified to perform the work. No U.S. worker will be rejected for employment for other than a lawful job related reason;

(d) The employer will cooperate with the employment service system in the active recruitment of U.S. workers until the foreign workers have departed for the employer's place of employment by;

(1) Allowing the employment service system to prepare local, intrastate and interstate job orders using the information supplied on the employer's job offer;

(2) Placing at least two advertisements for the job opportunities in local newspapers of general circulation.

(i) Each such advertisement shall describe the nature and anticipated duration of the job opportunity; offer at least the adverse effect wage rate; give the ¾ guarantee; state that work tools, supplies and equipment will be provided by the employer; state that housing will also be provided, and that transportation and subsistence expenses to the worksite will be provided or paid for by the employer;

(ii) Each advertisement shall direct interested workers to apply for the job opportunity at the appropriate office of the State Workforce Agency in their area;

(3) Cooperating with the employment service system in contacting farm labor contractors, migrant workers and other potential workers in other areas of the State and/or Nation by letter and/or telephone;

(4) Cooperating with the employment service system in contacting schools, business and labor organizations, fraternal and veterans organizations, and non-profit organizations and public agencies such as sponsors of programs under the Comprehensive Employment and Training Act, throughout the area of intended employment, in order to enlist them in helping to find U.S. workers; and

(5) If the employer, or an association of employers of which the employer is a member, intends to negotiate and/or contract with the Government of a foreign nation or any foreign association, corporation or organization in order to secure foreign workers, making the same kind and degree of efforts to secure U.S. workers;

(e) From the time the foreign workers depart for the employer's place of employment, the employer will provide employment to any qualified U.S. worker who applies to the employer until fifty percent of the period of the work contract, under which the foreign worker who is in the job was hired, has elapsed. In addition, the employer will offer to provide housing, and the other benefits, wages, and working conditions required by § 655.202, to any such U.S. worker; and

(f) Performing the other specific recruitment activities specified in the notice from the OFLC Administrator required by § 655.205(a).

§ 655.204 Determinations based on temporary labor certification applications.

(a) Within two working days after the temporary labor certification application has been filed with it, the SWA shall mail the duplicate application directly to the appropriate OFLC Administrator.

(b) The SWA, using the job offer portion of its copy of the temporary labor certification application, shall promptly prepare a local job order and shall begin to recruit U.S. workers in the area of intended employment.

(c) The OFLC Administrator, upon receipt of the duplicate temporary labor certification application, shall promptly review the application to determine whether it meets the requirements of §§ 655.201–655.203 in order to determine whether the employer's application is (1) timely, and (2) contains offers of wages, benefits, and working conditions required to ensure that similarly employed U.S. workers will not be adversely affected. If the OFLC Administrator determines that the temporary labor certification application is not timely in accordance with § 655.201 of this subpart, the OFLC Administrator may promptly deny the temporary labor certification on the grounds that, in accordance with that regulation, there is not sufficient time to adequately test the availability of U.S. workers. If the OFLC Administrator determines that the application does not meet the requirements of §§ 655.202–655.203 because the wages, working conditions, benefits, assurances, job offer, etc. are not as required, the OFLC Administrator shall deny the certification on the grounds that the availability of U.S. workers cannot be adequately tested because the wages or benefits, etc. do not meet the adverse effect criteria.

(d) If the certification is denied, the OFLC Administrator shall notify the employer in writing of the determination, with a copy to the SWA. The notice shall:

(1) State the reasons for the denial, citing the relevant regulations; and

(2) Offer the employer an opportunity to request an expedited administrative-judicial review of the denial by an Administrative Law Judge. The notice shall state that in order to obtain such a review, the employer must, within five calendar days of the date of the notice, file by facsimile (fax), telegram, or other means normally assuring next day delivery a written request for such a review to the Chief Administrative Law Judge of the Department of Labor (giving the address) and simultaneously serve a copy on the OFLC Administrator. The notice shall also state that the employer's request for review should contain any legal arguments which the employer believes will rebut the basis of the OFLC Administrator's denial of certification; and

(3) State that, if the employer does not request an expedited administrative-judicial review before an Administrative Law Judge within the five days:

(i) The OFLC Administrator will advise the DHS that the certification cannot be granted, giving the reasons therefor, and that an administrative-judicial review of the denial was offered to the employer but not accepted, and enclosing, for DHS review, the entire temporary labor certification application file; and

(ii) The employer has the opportunity to submit evidence to the DHS to rebut the bases of the OFLC Administrator's determination in accordance with the DHS regulation at 8 CFR 214.2(h)(3)(i) but that no further review of the employer's application for temporary labor certification may be made by any Department of Labor official.

(e) If the employer timely requests an expedited administrative-judicial review pursuant to paragraph (d)(2) of this section, the procedures of § 655.212 shall be followed.

§ 655.205 Recruitment period.

(a) If the OFLC Administrator determines that the temporary labor certification application meets the requirements of §§ 655.201 through 655.203, the OFLC Administrator shall promptly notify the employer in writing, with copies to the SWA. The notice shall inform the employer and the SWA of the specific efforts which will be expected from them during the following weeks to carry out the assurances contained in § 655.203 with respect to the recruitment of U.S. workers. The notice shall require that the job order be placed both into intrastate clearance and into interstate clearance to such States as the OFLC Administrator shall determine to be potential sources of U.S. workers.

(b) Thereafter, OFLC Administrator, shall provide overall direction to the employer and the SWA with respect to the recruitment of U.S. workers.

(c) By the 60th day of the recruitment period, or 20 days before the date of need specified in the application, whichever is later, the OFLC Administrator, when making a determination of the availability of U.S. workers, shall also make a determination as to whether the employer has satisfied the recruitment assurances in § 655.203. If the OFLC Administrator concludes that the employer has not satisfied the requirement for recruitment of U.S. workers, the OFLC Administrator shall deny the temporary labor certification, and shall immediately notify the employer in writing with a copy to the State agency. The notice shall contain the statements specified in § 655.204(d).

(d) If the employer timely requests an expedited administrative-judicial review before an Administrative Law Judge, the procedures in § 655.212 shall be followed.

§ 655.206 Determinations of U.S. worker availability and adverse effect on U.S. workers.

(a) If the OFLC Administrator, in accordance with § 655.205 has determined that the employer has complied with the recruitment assurances, the OFLC Administrator, by 60th day of the recruitment period, or 20 days before the date of need specified in the application, whichever is later, shall grant the temporary labor certification for enough aliens to fill the employer's job opportunities for which U.S. workers are not available. In making this determination the OFLC Administrator shall consider as available for a job opportunity any U.S. worker who has made a firm commitment to work for the employer, including those workers committed by other authorized persons such as farm labor contractors and family heads; such a firm commitment shall be considered to have been made not only by workers who have signed work contracts with the employer, but also by those whom the OFLC Administrator determines are very likely to sign such a work contract. The OFLC Administrator shall also

count as available any U.S. worker who has applied to the employer (or on whose behalf an application has been made), but who was rejected by the employer for other than lawful job-related related reasons unless the OFLC Administrator determines that:

(1) Enough qualified U.S. workers have been found to fill all the employer's job opportunities; or

(2) The employer, since the time of the initial determination under § 655.204, has adversely affected U.S. workers by offering to, or agreeing to provide to, alien workers better wages, working conditions, or benefits (or by offering or agreeing to impose on alien workers less obligations and restrictions) than that offered to U.S. workers.

(b)(1) Temporary labor certifications shall be considered subject to the conditions and assurances made during the application process. Temporary labor certifications shall be for a limited duration such as for ''the 1978 apple harvest season'' or ''until November 1, 1978'', and they shall never be for more than eleven months. They shall be limited to the employer's specific job opportunities; therefore, they may not be transferred from one employer to another.

(2) If an association of employers is itself the employer, as defined in § 655.200, certifications shall be made to the association and may be used for any of the job opportunities of its employer members and workers may be transferred among employer members.

(3) If an association of employers is a joint employer with its employer members, as defined in § 655.200, the certification shall be made jointly to the association and the employer members. In such cases workers may be transferred among the employer members provided the employer members and the association agree in writing to be jointly and severally liable for compliance with the temporary labor certification obligations set forth in this subpart.

(c) If the OFLC Administrator denies the temporary labor certification in whole or part, the OFLC Administrator shall notify the employer in writing by means normally assuring next-day delivery. The notice shall contain all of the statements required in § 655.204(d). If a timely request is made for an administrative-judicial review by an Administrative Law Judge, the procedures of § 655.212 shall be followed.

(d)(1) After a temporary labor certification has been granted, the employer shall continue its efforts to actively recruit U.S. workers until the foreign workers have departed for the employer's place of employment. The employer, however, must keep an active job order on file until the assurance at § 655.203(e) is met.

(2) The State Workforce Agency (SWA) system shall continue to actively recruit and refer U.S. workers as long as there is an active job order on file.

§ 655.207 Adverse effect rates.

(a) Except as otherwise provided in this section, the adverse effect rates for all agricultural and logging employment shall be the prevailing wage rates in the area of intended employment.

(b)(1) For agricultural employment (except sheepherding) in the States listed in paragraph (b)(2) of this section, and for Florida sugarcane work, the adverse effect rate for each year shall be computed by adjusting the prior year's adverse effect rate by the percentage change (from the second year previous to the prior year) in the U.S. Department of Agriculture's (USDA's) average hourly wage rates for field and livestock workers (combined) based on the USDA Quarterly Wage Survey. The OFLC Administrator shall publish, at least once in each calendar year, on a date or dates he shall determine, adverse effect rates calculated pursuant to this paragraph (b) as a notice or notices in the **Federal Register**.

(2) *List of States.* Arizona, Colorado, Connecticut, Florida (other than sugar cane work), Maine, Maryland, Massachusetts, New Hamsphire, New York, Rhode Island, Texas, Vermont, Virginia, and West Virginia. Other States may be added as appropriate.

(3) *Transition.* Notwithstanding paragraphs (b)(1) and (2) of this section, the 1986 adverse effect rate for agricultural employment (except sheepherding) in the following States, and for Florida sugarcane work, shall be computed by adjusting the 1981 adverse effect rate (computed pursuant to 20 CFR 655.207(b)(1), 43 FR 10317; March 10, 1978) by the percentage change between 1980 and 1985 in the U.S. Department of Agriculture annual average hourly wage rates for field and livestock workers (combined) based on the USDA Quarterly survey: The States listed at 20 CFR 655.207(b)(2) (1985).

(c) In no event shall an adverse effect rate for any year be lower than the hourly wage rate published in 29 U.S.C. 206(a)(1) and currently in effect.

§ 655.208 Temporary labor certification applications involving fraud or willful misrepresentation.

(a) If possible fraud or willful misrepresentation involving a temporary labor certification application is discovered prior to a final temporary labor certification determination, or if it is learned that the employer or agent (with respect to an application) is the subject of a criminal indictment or information filed in a court, the OFLC Administrator shall refer the matter to the DHS for investigation and shall notify the employer or agent in writing of this referral. The OFLC Administrator shall continue to process the application and may issue a qualified temporary labor certification.

(b) If a court finds an employer or agent innocent of fraud or willful misrepresentation, or if the Department of Justice decides not to prosecute an employer or agent, the OFLC Administrator shall not deny the temporary labor certification application on the grounds of fraud or willful misrepresentation. The application, of course, may be denied for other reasons pursuant to this subpart.

(c) If a court or the DHS determines that there was fraud or willful misrepresentation involving a temporary labor certification application, the application shall be deemed invalidated, processing shall be terminated, and the application shall be returned to the employer or agent with the reasons therefor stated in writing.

§ 655.209 Invalidation of temporary labor certifications.

After issuance, temporary labor certifications are subject to invalidation by the DHS upon a determination, made in accordance with that agency's procedures or by a Court, of fraud or willful misrepresentation of a material fact involving the temporary labor certification application. If evidence of such fraud or willful misrepresentation becomes known to the OFLC Administrator, the OFLC Administrator shall notify the DHS in writing.

§ 655.210 Failure of employers to comply with the terms of a temporary labor certification.

(a) If, after the granting of a temporary labor certification, the OFLC Administrator has probable cause to believe that an employer has not lived up to the terms of the temporary labor certification, the OFLC Administrator shall investigate the matter. If the OFLC Administrator concludes that the employer has not complied with the terms of the labor certification, the OFLC Administrator may notify the employer that it will not be eligible to apply for a temporary labor certification in the coming year. The notice shall be in writing, shall state the reasons for the determination, and shall offer the employer an opportunity to request a

hearing within 30 days of the date of the notice. If the employer requests a hearing within the 30-day period, the OFLC Administrator shall follow the procedures set forth at § 658.421(i)(1), (2) and (3) of this chapter. The procedures contained in §§ 658.421(j), 658.422 and 658.423 of this chapter shall apply to such hearings.

(b) No other penalty shall be imposed by the employment service on such an employer other than as set forth in paragraph (a) of this section.

§ 655.211 Petition for higher meal charges.

(a) Until a new amount is set pursuant to this paragraph (a), the OFLC Administrator may permit an employer to charge workers up to $6.17 for providing them with three meals per day, if the employer justifies the charge and submits to the OFLC Administrator the documentary evidence required by paragraph (b) of this section. A denial in whole or in part shall be reviewable as provided in § 655.212 of this part. Each year the maximum charge allowed by this paragraph (a) will be changed by the 12-month percent change for the Consumer Price Index for All Urban Consumers for Food between December of the year just concluded and December of the year prior to that. The annual adjustments shall be effective on their publication by the OFLC Administrator in the **Federal Register**.

(b) Evidence submitted shall include the cost of goods and services directly related to the preparation and serving of meals, the number of workers fed, the number of meals served and the number of days meals were provided. The cost of the following items may be included: Food; kitchen supplies other than food, such as lunch bags and soap; labor costs which have a direct relation to food service operations, such as wages of cooks and restaurant supervisors; fuel, water, electricity, and other utilities used for the food service operations; other costs directly related to the food service operation. Charges for transportation, depreciation, overhead, and similar charges may not be included. Receipts and other cost records for a representative pay period shall be available for inspection by the Secretary's representatives for a period of one year.

§ 655.212 Administrative-judicial reviews.

(a) Whenever an employer has requested an administrative-judicial review of a denial of an application or a petition in accordance with §§ 655.204(d), 655.205(d), 655.206(c), or 655.211, the Chief Administrative Law Judge shall immediately assign an Administrative Law Judge to review the record for legal sufficiency, and the OFLC Administrator shall send a certified copy of the case file to the Chief Administrative Law Judge by means normally assuring next day delivery. The Administrative Law Judge shall not have authority to remand the case and shall not receive additional evidence. Any countervailing evidence advanced after decision by the OFLC Administrator shall be subject to provisions of 8 CFR 214.2(h)(3)(i).

(b) The Administrative Law Judge, within five working days after receipt of the case file shall, on the basis of the written record and due consideration of any written memorandums of law submitted, either affirm, reverse or modify the OFLC Administrator's denial by written decision. The decision of the Administrative Law Judge shall specify the reasons for the action taken and shall be immediately provided to the employer, OFLC Administrator, and DHS by means normally assuring next-day delivery. The Administrative Law Judge's decision shall be the final decision of the Department of Labor and no further review shall be given to the temporary labor certification determination by any Department of Labor official.

§ 655.215 Territory of Guam.

Subpart C of this part does not apply to temporary employment in the Territory of Guam, and the Department of Labor does not certify to the United States Citizenship and Immigration Services of the Department of Homeland Security (DHS) the temporary employment of nonimmigrant aliens under H–2B visas in the Territory of Guam. Pursuant to DHS regulations, that function is performed by the Governor of Guam, or the Governor's designated representative within the Territorial Government.

Title 29—Labor

8. Redesignate part 501 as part 502 and suspend newly designated Part 502.

9. Add part 501 to read as follows:

PART 501—ENFORCEMENT OF CONTRACTUAL OBLIGATIONS FOR TEMPORARY ALIEN AGRICULTURAL WORKERS ADMITTED UNDER SECTION 216 OF THE IMMIGRATION AND NATIONALITY ACT

Subpart A—General Provisions

Sec.

Subpart B—Enforcement of Work Contracts

Subpart C—Administrative Proceedings

Procedures Relating to Hearing

Rules of Practice

Referral for Hearing

Procedures Before Administrative Law Judge

Post-Hearing Procedures

Review of Administrative Law Judge's Decision

Record

Authority: 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188.

Subpart A—General Provisions

§ 501.0 Introduction.

These regulations cover the enforcement of all contractual obligations provisions applicable to the employment of H–2A workers under section 216 of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA). These regulations are also applicable to the employment of other workers hired by employers of H–2A workers in the occupations and for

the period of time set forth in the job order approved by ETA as a condition for granting H–2A certification, including any extension thereof. Such other workers hired by H–2A employers are hereafter referred to as engaged in corresponding employment.

§ 501.1 Purpose and scope.

(a) Statutory standard. Section 216(a) of the INA provides that—

(1) A petition to import an alien as an H–2A worker (as defined in subsection (i)(2) may not be approved by the Attorney General unless the petitioner has applied to the Secretary of Labor for a certification that—

(A) There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition, and

(B) The employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

(b) *Role of the ETA, USES.* The issuance and denial of labor certification under section 216 of the INA has been delegated by the Secretary of Labor to the Employment and Training Administration (ETA). In general, matters concerning the obligations of an employer of H–2A workers related to the labor certification process are administered and enforced by ETA. Included within ETA's jurisdiction are such issues as whether U.S. workers were available, whether positive recruitment was conducted, whether there was a strike or lockout, the methodology for establishing adverse effect wage rates, whether workers' compensation insurance was provided, whether employment was offered to U.S. workers for up to 50 percent of the contract period and other similar matters. The regulations pertaining to the issuance and denial of labor certification for temporary alien workers by the Employment and Training Administration are found in title 20 CFR part 655.

(c) Role of ESA, Wage and Hour Division. Section 216(g)(2) of the INA provides that—

[T]he Secretary of Labor is authorized to take such actions including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with terms and conditions of employment under this section.

Certain investigation, inspection and law enforcement functions to carry out the provisions of section 216 of the INA have been delegated by the Secretary of Labor to the Employment Standards Administration (ESA), Wage and Hour Division. In general, matters concerning the obligations of the work contract between an employer of H–2A workers and the H–2A workers and other workers in corresponding employment hired by H–2A employers are enforced by ESA. Included within the enforcement responsibility of ESA, Wage and Hour Division are such matters as the payment of required wages, transportation, meals and housing provided during the employment. The Wage and Hour Division has the responsibility to carry out investigations, inspections and law enforcement functions and in appropriate instances impose penalties, seek injunctive relief and specific performance of contractual obligations, including recovery of unpaid wages.

(d) *Effect of regulations.* The amendments to the INA made by title III of the IRCA apply to petitions and applications filed on and after June 1, 1987. Accordingly, the enforcement functions carried out by the Wage and Hour Division under the INA and these regulations apply to the employment of any H–2A worker and any other workers hired by H–2A employers in corresponding employment as the result of any petition or application filed with the Department on and after June 1, 1987.

§ 501.2 Coordination of intake between DOL agencies.

Complaints received by ETA, or any State Employment Service Agency regarding contractual H–2A labor standards between the employer and the employee will be immediately forwarded to the appropriate Wage and Hour office for appropriate action under these regulations.

§ 501.3 Discrimination prohibited.

No person shall intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any person who has:

(a) Filed a complaint under or related to section 216 of the INA or these regulations;

(b) Instituted or caused to be instituted any proceedings related to section 216 of the INA or these regulations;

(c) Testified or is about to testify in any proceeding under or related to section 216 of the INA or these regulations;

(d) Exercised or asserted on behalf of himself or others any right or protection afforded by section 216 of the INA or these regulations.

(e) Consulted with an employee of a legal assistance program or an attorney on matters related to section 216 of the INA (8 U.S.C. 1186), or to this subpart or any other DOL regulation promulgated pursuant to section 216 of the INA.

Allegations of discrimination in employment against any person will be investigated by Wage and Hour. Where Wage and Hour has determined through investigation that such allegations have been substantiated appropriate remedies may be sought. Wage and Hour may assess civil money penalties, seek injunctive relief, and/or seek additional remedies necessary to make the employee whole as a result of the discrimination, as appropriate, and may recommend to ETA that labor certification of any violator be denied in the future.

§ 501.4 Waiver of rights prohibited.

No person shall seek to have an H–2A worker, or other worker employed in corresponding employment by an H–2A employer, waive rights conferred under section 216 of the INA or under these regulations. Such waiver is against public policy. Any agreement by an employee purporting to waive or modify any rights inuring to said person under the Act or these regulations shall be void as contrary to public policy, except that a waiver or modification of rights or obligations hereunder in favor of the Secretary shall be valid for purposes of enforcement of the provisions of the Act or these regulations. This does not prevent agreements to settle private litigation.

§ 501.5 Investigation authority of Secretary.

(a) General. The Secretary, either pursuant to a complaint or otherwise, shall, as may be appropriate, investigate and, in connection therewith, enter and inspect such places and vehicles (including housing) and such records (and make transcriptions thereof), question such persons and gather such information as deemed necessary by the Secretary to determine compliance with contractual obligations under section 216 of the INA or these regulations.

(b) Failure to permit investigation. Where any person using the services of an H–2A worker does not permit an investigation concerning the employment of his or her workers the Wage and Hour Division shall report such occurrence to ETA and may recommend denial of future labor certifications to such person. In addition, Wage and Hour may take such action as may be appropriate, including the seeking of an injunction or assessing civil money penalties, against any person who has failed to permit Wage and Hour to make an investigation.

(c) Confidential investigation. The Secretary shall conduct investigations in a manner which protects the confidentiality of any complainant or other person who provides information to the Secretary in good faith.

(d) Report of violations. Any person may report a violation of the work contract obligations of section 216 of the INA or these regulations to the Secretary by advising any local office of the Employment Service of the various States, any office of ETA, any office of the Wage and Hour Division, ESA, U.S. Department of Labor, or any other authorized representative of the Secretary. The office or person receiving such a report shall refer it to the appropriate office of the Wage and Hour Division, ESA, for the area in which the reported violation is alleged to have occurred.

§ 501.6 Prohibition on interference with Department of Labor officials.

No person shall interfere with any official of the Department of Labor assigned to perform an investigation, inspection or law enforcement function pursuant to the INA and these regulations during the performance of such duties. Wage and Hour will seek such action as it deems appropriate, including an injunction to bar any such interference with an investigation and/or assess a civil money penalty therefor. In addition Wage and Hour may refer a report of the matter to ETA with a recommendation that the person's labor certification be denied in the future. (Federal statutes which prohibit persons from interfering with a Federal officer in the course of official duties are found at 18 U.S.C. 111 and 18 U.S.C. 1114.)

§ 501.7 Accuracy of information, statements, data.

Information, statements and data submitted in compliance with provisions of the Act or these regulations are subject to title 18, section 1001, of the U.S. Code, which provides:

Section 1001. Statements or entries generally.

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

§ 501.10 Definitions.

The definitions in paragraphs (a) through (d) are set forth for purposes of this part. In addition, the definitions in paragraphs (e) through (v) are promulgated at 20 CFR 655.100(b), are utilized herein, and are incorporated and set forth for information purposes.

(a) *Act and INA* mean the Immigration and Nationality Act, as amended (8 U.S.C. 1101 *et seq.*), with reference particularly to section 216.

(b) *Administrative Law Judge (ALJ)* means a person within the Department of Labor Office of Administrative Law Judges appointed pursuant to 5 U.S.C. 3105.

(c) *Administrator* means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, and such authorized representatives as may be designated to perform any of the functions of the Administrator under this part.

(d) *Work contract* means all the material terms and conditions of employment relating to wages, hours, working conditions, and other benefits, including those terms and conditions required by the applicable regulations in subpart B of 20 CFR part 655, Labor Certification Process for Temporary Agricultural Employment in the United States, and those contained in the Application for Alien Employment Certification and job offer under that subpart, which contract between the employer and the worker may be in the form of a separate written document. In the absence of a separate written work contract incorporating the required terms and conditions of employment, entered into between the employer and the worker, the work contract at a minimum shall be the terms of the job order included in the application for temporary labor certification, and shall be enforced in accordance with these regulations.

(e) *Adverse effect wage rate (AEWR)* means the wage rate which the Director has determined must be offered and paid, as a minimum, to every H–2A worker and every U.S. worker for a particular occupation and/or area in which an employer employs or seeks to employ an H–2A worker so that the wages of similarly employed U.S. workers will not be adversely affected.

(f) *Agricultural labor or services.* Pursuant to section 101(a)(15)(ii)(a) of the INA (8 U.S.C. 1101(a)(15)(H)(ii)(a)), ''agricultural labor or services'' is defined for the purposes of this subpart as either ''agricultural labor'' as defined and applied in section 3121(g) of the Internal Revenue Code of 1954 (26 U.S.C. 3121(g)) or ''agriculture'' as defined and applied in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)). An occupation included in either statutory definition shall be ''agricultural labor or services'', notwithstanding the exclusion of that occupation from the other statutory definition. For informational purposes, the statutory provisions are quoted below.

(1) *Agricultural labor.* Section 3121(g) of the Internal Revenue Code of 1954 (26 U.S.C. 3121(g)) quoted as follows, defines the term ''agricultural labor'' to include all service performed:

(1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife;

(2) Services performed in the employ of the owner or tenant or other operator of a farm, in connection with the operation, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(3) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the Agricultural Marketing Act, as amended (12 U.S.C. 1141j), or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(4)(A) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed;

(B) In the employ of a group of operators of farms (other than a cooperative organization) in the performance of service described in subparagraph (A), but only if such operators produced all of the commodity with respect to which such service is performed. For purposes of this subparagraph, any unincorporated group of operators shall be deemed a cooperative organization if the number of operators comprising such group is more than 20 at any time during the calendar quarter in which such service is performed;

(C) The provisions of subparagraphs (A) and (B) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

(5) On a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

As used in this subsection, the term farm includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(2) *Agriculture*. Section 203(f) of title 29, United States Code, (section 3(f) of the Fair Labor Standards Act of 1938), quoted as follows, defines agriculture to include:

(f) * * * farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, fur bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

(3) *Agricultural commodity*. Section 1141j(g) of title 12, United States Code, (section 15(g) of the Agricultural Marketing Act, as amended) quoted as follows, defines agricultural commodity to include:

(g) * * * in addition to other agricultural commodities, crude gum (oleoresin) from a living tree, and the following products as processed by the original producer of the crude gum (oleoresin) from which derived: Gum spirits of turpentine, and gum rosin, as defined in section 92 of title 7.

(iv) *Gum rosin*. Section 92 of title 7, United States Code, quoted as follows, defines gum spirits of turpentine and gum rosin as—

(c) *Gum spirits of turpentine* means spirits of turpentine made from gum (oleoresin) from a living tree.

(g) *Gum rosin* means rosin remaining after the distillation of gum spirits of turpentine.

(g) *Of a temporary or seasonal nature*—(1) *On a seasonal or other temporary basis*. For the purposes of this subpart of a temporary or seasonal nature means on a seasonal or other temporary basis, as defined in the Employment Standards Administration's Wage and Hour Division's regulation at 29 CFR 500.20 under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). For informational purposes § 500.20 as it pertains to seasonal or temporary basis is quoted below.

(2) *MSPA definition*. For information purposes, the definition of on a seasonal or other temporary basis, as set forth at § 500.20 of this title, is provided below: On a seasonal or other temporary basis means:

Labor is performed on a seasonal basis, where, ordinarily, the employment pertains to or is of the kind exclusively performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout the year. A worker who moves from one seasonal activity to another, while employed in agriculture or performing agricultural labor, is employed on a seasonal basis even though he may continue to be employed during a major portion of the year.

A worker is employed on other temporary basis where he is employed for a limited time only or the performance is contemplated for a particular piece of work, usually of short duration. Generally, employment, which is contemplated to continue indefinitely, is not temporary.

On a seasonal or other temporary basis does not include the employment of any foreman or other supervisory employee who is employed by a specific agricultural employer or agricultural association essentially on a year round basis.

On a seasonal or other temporary basis does not include the employment of any worker who is living at his permanent place of residence, when that worker is employed by a specific agricultural employer or agricultural association on essentially a year round basis to perform a variety of tasks for his employer and is not primarily employed to do field work.

(3) *Temporary*. For the purpose of this subpart, the definition of ''temporary'' in paragraph (c)(2)(ii) of this section refers to any job opportunity covered by this subpart where the employer needs a worker for a position, either temporary or permanent, for a limited period of time, which shall be for less than one year, unless the original temporary alien agricultural labor certification is extended based on unforeseen circumstances, pursuant to § 655.106(c)(3) of this title.

(h) *DOL* means the U.S. Department of Labor.

(i) *Employer* means a person, firm, corporation or other association or organization which suffers or permits a person to work and (1) which has a location within the United States to which U.S. workers may be referred for employment, and which proposes to employ workers at a place within the United States and (2) which has an employer relationship with respect to employees under this subpart as indicated by the fact that it may hire, pay, fire, supervise or otherwise control the work of any such employee. An association of employers shall be considered the sole employer if it alone has the indicia of an employer set forth in this definition. Such an association, however, shall be considered as a joint employer with an employer member if it shares with the employer member one or more of the definitional indicia.

(j) *Employment Service (ES)* and *Employment Service (ES) System* mean, collectively, the USES, the State agencies, the local offices, and the ETA regional offices.

(k) *Employment Standards Administration* means the agency within the Department of Labor (DOL), which includes the Wage and Hour Division, and which is charged with the carrying out certain functions of the Secretary under the INA.

(l) *Employment and Training Administration (ETA)* means the agency within the Department of Labor (DOL) which includes the U.S. Employment Service (USES).

(m) *H–2A worker* means any nonimmigrant alien admitted to the United States for agricultural labor or services of a temporary or seasonal nature under section 101(a)(15)(H)(ii)(a) of the INA (8 U.S.C. 1101(a)(15)(H)(ii)(a)).

(n) *Immigration and Naturalization Service (INS)* means the component of the U.S. Department of Justice which makes the determination under the INA on whether or not to grant visa petitions to employers seeking H–2A workers to perform temporary agricultural work in the United States.

(o) *Job offer* means the offer made by an employer or potential employer of H–2A workers to both U.S. and H–2A workers describing all the material terms and conditions of employment, including those relating to wages, working conditions, and other benefits.

(p) *Secretary* means the Secretary of Labor or the Secretary's designee.

(q) *State agency* means the State employment service agency designated under section 4 of the Wagner-Peyser Act to cooperate with the USES in the operation of the ES System.

(r) *Solicitor of Labor* means the Solicitor, U.S. Department of Labor, and includes employees of the Office of the Solicitor of Labor designated by the Solicitor to perform functions of the Solicitor under this subpart.

(s) *Temporary alien agricultural labor certification* means the certification made by the Secretary of Labor with respect to an employer seeking to file with INS a visa petition to import an alien as an H–2A worker, pursuant to sections 101(a)(15)(H)(ii)(a), 214 (a) and (c), and 216 of the INA that (1) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the agricultural labor or services involved in the petition, and (2) the employment of the alien in such agricultural labor or services will not

adversely affect the wages and working conditions of workers in the United States similarly employed (8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184 (a) and (c), and 1186).

(t) *United States Employment Service (USES)* means the agency of the U.S. Department of Labor, established under the Wagner-Peyser Act, which is charged with administering the national system of public employment offices and carrying out certain functions of the Secretary under the INA.

(u) *United States (U.S.) worker* means any worker who, whether a U.S. national, a U.S. citizen, or an alien, is legally permitted to work in the job opportunity within the United States (as defined at section 101(a)(38) of the INA (8 U.S.C. 1101(a)(38)).

(v) *Wages* means all forms of cash remuneration to a worker by an employer in payment for personal services.

Subpart B—Enforcement of Work Contracts

§ 501.15 Enforcement.

The investigations, inspections and law enforcement functions to carry out the provisions of section 216 of the INA, as provided in these regulations for enforcement by the Wage and Hour Division, pertain to the employment of any H–2A worker and any other worker employed in corresponding employment by an H–2A employer. Such enforcement includes those work contract provisions as defined in § 501.10(d). The work contract enforced includes the employment benefits which must be stated in the job offer, as prescribed in 20 CFR 655.102.

§ 501.16 General.

Whenever the Secretary believes that the H–2A provisions of the INA or these regulations have been violated such action shall be taken and such proceedings instituted as deemed appropriate, including (but not limited to) the following:

(a) Impose denial of labor certification against any person for a violation of the H–2A obligations of the INA or the regulations. ETA shall make all determinations regarding the issuance or denial of labor certification. ESA shall make all determinations regarding the enforcement functions listed in paragraphs (b) through (d) of this section.

(b) Institute appropriate administrative proceedings, including the recovery of unpaid wages, the enforcement of any other contractual obligations and the assessment of a civil money penalty against any person for a violation of the H–2A work contract obligations of the Act or these regulations.

(c) Petition any appropriate District Court of the United States for temporary or permanent injunctive relief, including the withholding of unpaid wages, to restrain violation of the H–2A provisions the Act or these regulations by any person;

(d) Petition any appropriate District Court of the United States for specific performance of contractual obligations.

§ 501.17 Concurrent actions.

The taking of any one of the actions referred to above shall not be a bar to the concurrent taking of any other action authorized by the H–2A provisions of the Act and these regulations, or the regulations of 20 CFR part 655.

§ 501.18 Representation of the Secretary.

(a) Except as provided in section 518(a) of title 28, United States Code, relating to litigation before the Supreme Court, the Solicitor of Labor may appear for and represent the Secretary in any civil litigation brought under the Act.

(b) The Solicitor of Labor, through the authorized representatives shall represent the Administrator and the Secretary in all administrative hearings under the H–2A provisions of the Act and these regulations.

§ 501.19 Civil money penalty assessment.

(a) A civil money penalty may be assessed by the Administrator for each violation of the work contract or these regulations.

(b) In determining the amount of penalty to be assessed for any violation of the work contract as provided in the H–2A provisions of the Act or these regulations the Administrator shall consider the type of violation committed and other relevant factors. The matters which may be considered include, but are not limited to, the following:

(1) Previous history of violation, or violations of the H–2A provisions of the Act and these regulations;

(2) The number of workers affected by the violation or violations;

(3) The gravity of the violation or violations;

(4) Efforts made in good faith to comply with the H–2A provisions of the Act and these regulations;

(5) Explanation of person charged with the violation or violations;

(6) Commitment to future compliance, taking into account the public health, interest or safety, and whether the person has previously violated the H–2A provisions of the Act;

(7) The extent to which the violator achieved a financial gain due to the violation, or the potential financial loss or potential injury to the workers.

(c) A civil money penalty for violation of the work contract will not exceed $1,000 for each violation committed against each worker. A civil money penalty for discrimination or interference with Wage and Hour investigative authority will not exceed $1,000 for each such act of discrimination or interference.

§ 501.20 Enforcement of Wage and Hour investigative authority.

Sections 501.5 through 501.7 of this part prescribe the investigation authority conferred upon the Wage and Hour Division for the purpose of enforcing the contractual obligations. These sections indicate the actions which may be taken upon failure to permit or interference with an investigation. No person shall interfere with any employee of the Secretary who is exercising or attempting to exercise this investigative or enforcement authority. As stated in §§ 501.5, 501.6 and in 501.19 of this part, a civil money penalty may be assessed for each failure to permit an investigation or interference therewith, and other appropriate relief may be sought. In addition Wage and Hour shall report each such occurrence to ETA and may recommend to ETA denial of future labor certifications. The taking of any one action shall not bar the taking of any additional action.

§ 501.21 Referral of findings to ETA.

Where Wage-Hour finds violations Wage and Hour shall so notify the appropriate representative of ETA and shall forward appropriate information, including investigative information to such representative for review and consideration.

§ 501.22 Civil money penalties—payment and collection.

Where the assessment is directed in a final order by the Administrator, by an Administrative Law Judge, or by the Secretary, the amount of the penalty is immediately due and payable to the U.S. Department of Labor. The person assessed such penalty shall remit promptly the amount thereof as finally determined, to the Administrator by certified check or by money order, made payable to the order of ''Wage and Hour Division, Labor.'' The remittance shall be delivered or mailed to the Wage and Hour Division Regional Office for the area in which the violations occurred.

Subpart C—Administrative Proceedings

§ 501.30 Applicability of procedures and rules.

The procedures and rules contained herein prescribe the administrative process which will be applied with respect to a determination to impose an assessment of civil money penalties and which may be applied to the enforcement of contractual obligations, including the collection of unpaid wages due as a result of any violation of the H–2A provisions of the Act or of these regulations. Except with respect to the imposition of civil money penalties, the Secretary may, in his discretion, seek enforcement action in Federal court without resort to any administrative proceedings.

Procedures Relating to Hearing

§ 501.31 Written notice of determination required.

Whenever the Administrator determines to assess a civil money penalty or to proceed administratively to enforce contractual obligations, including the recovery of unpaid wages, the person against whom such action is taken shall be notified in writing of such determination.

§ 501.32 Contents of notice.

The notice required by § 501.31 shall:

(a) Set forth the determination of the Administrator including the amount of any unpaid wages due or contractual obligations required and the amount of any civil money penalty assessment and the reason or reasons therefor.

(b) Set forth the right to request a hearing on such determination.

(c) Inform any affected person or persons that in the absence of a timely request for a hearing, the determination of the Administrator shall become final and unappealable.

(d) Set forth the time and method for requesting a hearing, and the procedures relating thereto, as set forth in § 501.33.

§ 501.33 Request for hearing.

(a) Any person desiring to request an administrative hearing on a determination referred to in § 501.32 shall make such request in writing to the official who issued the determination, at the Wage and Hour Division address appearing on the determination notice, no later than thirty (30) days after issuance of the notice referred to in § 501.32.

(b) No particular form is prescribed for any request for hearing permitted by this part. However, any such request shall:

(1) Be typewritten or legibly written;

(2) Specify the issue or issues stated in the notice of determination giving rise to such request;

(3) State the specific reason or reasons why the person requesting the hearing believes such determination is in error;

(4) Be signed by the person making the request or by an authorized representative of such person; and

(5) Include the address at which such person or authorized representative desires to receive further communications relating thereto.

(c) The request for such hearing must be received by the official who issued the determination, at the Wage and Hour Division address appearing on the determination notice, within the time set forth in paragraph (a) of this section. For the affected person's protection, if the request is by mail, it should be by certified mail.

Rules of Practice

§ 501.34 General.

Except as specifically provided in these regulations, the ''Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges'' established by the Secretary at 29 CFR part 18 shall apply to administrative proceedings described in this part.

§ 501.35 Commencement of proceeding.

Each administrative proceeding permitted under the Act and these regulations shall be commenced upon receipt of a timely request for hearing filed in accordance with § 501.33.

§ 501.36 Caption of proceeding.

(a) Each administrative proceeding instituted under the Act and these regulations shall be captioned in the name of the person requesting such hearing, and shall be styled as follows:

In the Matter of _____, Respondent.

(b) For the purposes of such administrative proceedings the Administrator shall be identified as plaintiff and the person requesting such hearing shall be named as respondent.

Referral for Hearing

§ 501.37 Referral to Administrative Law Judge.

(a) Upon receipt of a timely request for a hearing filed pursuant to and in accordance with § 501.33 the Administrator, by the Associate Solicitor for the Division of Fair Labor Standards or by the Regional Solicitor for the Region in which the action arose, shall, by Order of Reference, promptly refer a copy of the notice of administrative determination complained of, and the original or a duplicate copy of the request for hearing signed by the person requesting such hearing or by the authorized representative of such person, to the Chief Administrative Law Judge, for a determination in an administrative proceeding as provided herein. The notice of administrative determination and request for hearing shall be filed of record in the Office of the Chief Administrative Law Judge and shall, respectively, be given the effect of a complaint and answer thereto for purposes of the administrative proceeding, subject to any amendment that may be permitted under these regulations or 29 CFR part 18.

(b) A copy of the Order of Reference, together with a copy of these regulations, shall be served by counsel for the Administrator upon the person requesting the hearing, in the manner provided in 29 CFR 18.3.

§ 501.38 Notice of docketing.

Upon receipt of an Order of Reference, the Chief Administrative Law Judge shall appoint an Administrative Law Judge to hear the case. The Administrative Law Judge shall promptly notify all interested parties of the docketing of the matter and shall set the time and place of the hearing. The date of the hearing shall be not more than 60 days from the date on which the Order of Reference was filed.

§ 501.39 Service upon attorneys for the Department of Labor—number of copies.

Two copies of all pleadings and other documents required for any administrative proceeding provided herein shall be served on the attorneys for the Department of Labor. One copy shall be served on the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, and one copy on the Attorney representing the Department in the proceeding.

Procedures Before Administrative Law Judge

§ 501.40 Consent findings and order.

(a) *General.* At any time after the commencement of a proceeding under this part, but prior to the reception of evidence in any such proceeding, a party may move to defer the receipt of any evidence for a reasonable time to permit negotiation of an agreement containing consent findings and an order disposing of the whole or any part of the proceeding. The allowance of such deferment and the duration thereof shall be at the discretion of the Administrative Law Judge, after

consideration of the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement being reached which will result in a just disposition of the issues involved.

(b) *Content.* Any agreement containing consent findings and an order disposing of a proceeding or any part thereof shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the notice of administrative determination (or amended notice, if one is filed), and the agreement;

(3) A waiver of any further procedural steps before the Administrative Law Judge; and

(4) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.

(c) *Submission.* On or before the expiration of the time granted for negotiations, the parties or their authorized representatives or their counsel may:

(1) Submit the proposed agreement for consideration by the Administrative Law Judge; or

(2) Inform the Administrative Law Judge that agreement cannot be reached.

(d) *Disposition.* In the event an agreement containing consent findings and an order is submitted within the time allowed therefor, the Administrative Law Judge, within thirty (30) days thereafter, shall, if satisfied with its form and substance, accept such agreement by issuing a decision based upon the agreed findings.

Post-Hearing Procedures

§ 501.41 Decision and order of Administrative Law Judge.

(a) The Administrative Law Judge shall prepare, within 60 days after completion of the hearing and closing of the record, a decision on the issues referred by the Administrator.

(b) The decision of the Administrative Law Judge shall include a statement of findings and conclusions, with reasons and basis therefor, upon each material issue presented on the record. The decision shall also include an appropriate order which may affirm, deny, reverse, or modify, in whole or in part, the determination of the Administrator. The reason or reasons for such order shall be stated in the decision.

(c) The decision shall be served on all parties and the Secretary in person or by certified mail. The decision when served by the Administrative Law Judge shall constitute the final order of the Administrator unless the Secretary, as provided for in § 501.42 below determines to review the decision.

Review of Administrative Law Judge's Decision

§ 501.42 Procedures for initiating and undertaking review.

(a) A respondent, the Administrator or any other party wishing review of the decision of an Administrative Law Judge shall, within 30 days of the decision of the Administrative Law Judge, petition the Secretary to review the decision. Copies of the petition shall be served on all parties and on the Administrative Law Judge. If the Secretary does not issue a notice accepting a petition for review within 30 days after receipt of a timely filing of the petition, or within 30 days of the date of the decision if no petition has been received, the decision of the Administrative Law Judge shall be deemed the final agency action.

(b) Whenever the Secretary either on the Secretary's own motion or by acceptance of a party's petition, determines to review the decision of an Administrative Law Judge, a notice of the same shall be served upon the Administrative Law Judge and upon all parties to the proceeding in person or by certified mail.

§ 501.43 Responsibility of the Office of Administrative Law Judges.

Upon receipt of the Secretary's Notice pursuant to § 501.42 of these regulations, the Office of Administrative Law Judges shall promptly forward a copy of the complete hearing record to the Secretary.

§ 501.44 Additional information, if required.

Where the Secretary has determined to review such decision and order, the Secretary shall notify each party of:

(a) The issue or issues raised;

(b) The form in which submission shall be made (i.e., briefs, oral argument, etc.); and the time within which such presentation shall be submitted.

§ 501.45 Final decision of the Secretary.

The Secretary's final decision shall be issued within 90 days from the notice granting the petition and served upon all parties and the administrative law judge, in person or by certified mail.

Record

§ 501.46 Retention of official record.

The official record of every completed administrative hearing provided by these regulations shall be maintained and filed under the custody and control of the Chief Administrative Law Judge.

§ 501.47 Certification.

Upon receipt of a complaint seeking review of a decision issued pursuant to this part filed in a U.S. District Court, after the administrative remedies have been exhausted, the Chief Administrative Law Judge shall promptly index, certify and file with the appropriate U.S. District Court, a full, true, and correct copy of the entire record, including the transcript of proceedings.

PART 780—EXEMPTIONS APPLICABLE TO AGRICULTURE, PROCESSING OF AGRICULTURAL COMMODITIES, AND RELATED SUBJECTS UNDER THE FAIR LABOR STANDARDS ACT

10. The authority citation for part 780 is revised to read as follows:

Authority: Secs. 1–19, 52 Stat. 1060, as amended; 75 Stat. 65; 29 U.S.C. 201–219.

11. Redesignate § 780.115 as § 780.159 and suspend newly designated § 780.159.

12. Add § 780.115 to read as follows:

§ 780.115 Forest products.

Trees grown in forests and the lumber derived therefrom are not ''agricultural or horticultural commodities.'' Christmas trees, whether wild or planted, are also not so considered. It follows that employment in the production, cultivation, growing, and harvesting of such trees or timber products is not sufficient to bring an employee within section 3(f) unless the operation is performed by a farmer or on a farm as an incident to or in conjunction with his or its farming operations. On the latter point, see §§ 780.160 through 780.164 which discuss the question of when forestry or lumbering operations are incident to or in conjunction with farming operations so as to constitute ''agriculture.'' For a discussion of the exemption in section 13(a)(13) of the Act for certain forestry and logging operations in which not more than eight employees are employed, see part 788 of this chapter.

13. Redesignate § 780.201 as § 780.215 and suspend newly designated § 780.215.

14. Add § 780.201 to read as follows:

§ 780.201 Meaning of ''forestry or lumbering operations.''

The term ''forestry or lumbering operations'' refers to the cultivation and management of forests, the felling and trimming of timber, the cutting, hauling,

and transportation of timber, logs, pulpwood, cordwood, lumber, and like products, the sawing of logs into lumber or the conversion of logs into ties, posts, and similar products, and similar operations. It also includes the piling, stacking, and storing of all such products. The gathering of wild plants and of wild or planted Christmas trees are included. (See the related discussion in §§ 780.205 through 780.209 and in part 788 of this chapter which considers the section 13(a)(13) exemption for forestry or logging operations in which not more than eight employees are employed.) ''Wood working'' as such is not included in ''forestry'' or ''lumbering'' operations. The manufacture of charcoal under modern methods is neither a ''forestry'' nor ''lumbering'' operation and cannot be regarded as ''agriculture.''

15. Redesignate § 780.205 as § 780.216 and suspend newly designated § 780.216.

16. Add § 780.205 to read as follows:

§ 780.205 Nursery activities generally.

The employees of a nursery who are engaged in the following activities are employed in ''agriculture'':

(a) Sowing seeds and otherwise propagating fruit, nut, shade, vegetable, and ornamental plants or trees (but not Christmas trees), and shrubs, vines, and flowers;

(b) Handling such plants from propagating frames to the field;

(c) Planting, cultivating, watering, spraying, fertilizing, pruning, bracing, and feeding the growing crop.

17. Redesignate § 780.208 as § 780.217 and suspend newly designated § 780.217.

18. Add § 780.208 to read as follows:

§ 780.208 Forest and Christmas tree activities.

Operations in a forest tree nursery such as seeding new beds and growing and transplanting forest seedlings are not farming operations. The planting, tending, and cutting of Christmas trees do not constitute farming operations. If such operations on forest products are within section 3(f), they must qualify under the second part of the definition dealing with incidental practices. (See § 780.201.)

PART 788—FORESTRY OR LOGGING OPERATIONS IN WHICH NOT MORE THAN EIGHT EMPLOYEES ARE EMPLOYED

19. Redesignate § 788.10 as § 788.18 and suspend newly designated § 788.18.

20. Add § 788.10 to read as follows:

§ 788.10 ''Preparing * * * other forestry products.''

As used in the exemption, ''other forestry products'' mean plants of the forest and the natural properties or substances of such plants and trees. Included among these are decorative greens such as holly, ferns and Christmas trees, roots, stems, leaves, Spanish moss, wild fruit, and brush. Gathering and preparing such forestry products as well as transporting them to the mill, processing plant, railroad, or other transportation terminal are among the described operations. Preparing such forestry products does not include operations which change the natural physical or chemical condition of the products or which amount to extracting as distinguished from gathering, such as shelling nuts, or mashing berries to obtain juices.

Signed in Washington, DC, this 10th day of March 2009.

Douglas F. Small,

Deputy Assistant Secretary, Employment and Training Administration.

Shelby Hallmark,

Acting Assistant Secretary, Employment Standards Administration.

[FR Doc. E9–5562 Filed 3–16–09; 8:45 am]

BILLING CODE 4510–FP–P

Federal Register

Tuesday,
March 17, 2009

Part III

Department of Housing and Urban Development

Notice of Regulatory Waiver Requests Granted for the Fourth Quarter of Calendar Year 2008; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5217–N–04]

Notice of Regulatory Waiver Requests Granted for the Fourth Quarter of Calendar Year 2008

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the period beginning on October 1, 2008, and ending on December 31, 2008.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Aaron Santa Anna, Assistant General Counsel for Regulations, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500, telephone number 202–708–3055 (this is not a toll-free number). Persons with hearing-or speech-impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

For information concerning a particular waiver that was granted and for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waivers that have been granted in the fourth quarter of calendar year 2008.

SUPPLEMENTARY INFORMATION:

Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request; and

e. State how additional information about a particular waiver may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

This notice follows procedures provided in HUD's Statement of Policy on Waiver of Regulations and Directives issued on April 22, 1991 (56 FR 16337), as reiterated and updated in the Restatement of Policy on Waiver of Regulations published on December 17, 2008 (73 FR 76674). In accordance with those procedures and with the requirements of section 106 of the HUD Reform Act, waivers of regulations are granted by the Assistant Secretary with jurisdiction over the regulations for which a waiver was requested. In those cases in which a General Deputy Assistant Secretary granted the waiver, the General Deputy Assistant Secretary was serving in the absence of the Assistant Secretary in accordance with the office's Order of Succession.

This notice covers waivers of regulations granted by HUD from October 1, 2008, through December 31, 2008. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Panning and Development, the Office of Fair Housing and Equal Opportunity, the Office of Housing, and the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the regulatory section of title 24 of the Code of Federal Regulations (CFR) that is being waived. For example, a waiver of a provision in 24 CFR part 58 would be listed before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement that appears in 24 CFR and that is being waived. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver of regulations that involve the same initial regulatory citation are in time sequence beginning with the earliest-dated regulatory waiver.

Should HUD receive additional information about waivers granted during the period covered by this report (the fourth quarter of calendar year 2008) before the next report is published (the first quarter of calendar year 2009), HUD will include any additional waivers granted for the fourth quarter in the next report.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: March 6, 2009.

Linda M. Cruciani,

Deputy General Counsel for Operations.

Appendix

Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development October 1, 2008 Through December 31, 2008

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of regulatory waivers granted.

The regulatory waivers granted appear in the following order:

I. Regulatory Waivers Granted by the Office of Community Planning and Development.

II. Regulatory Waivers Granted by the Office of Housing.

III. Regulatory Waivers Granted by the Office of Public and Indian Housing.

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 58.22(a).

Project/Activity: The King County Housing Authority applied to the City of Federal Way for Community Development Block Grant funds for the renovation and expansion of Kings Court Community Building on May 14, 2007. The King County Housing Authority also intended to utilize Capital funds for the project. The Community Center is located in close proximity to public housing units and is intended for services such as after-school programs for youths and employment services for nearby residents and Section 8 recipients. King County Housing Authority committed nonfederal funds by issuing a letter of award for constructing the Community Center, an action that limits the choice of reasonable alternatives, before receiving an approved Request for Release of Funds.

Nature of Requirement: HUD's regulation at 24 CFR 58.22(a) requires that an environmental review be performed and a request for release of funds be completed and certified prior to the commitment of non-HUD funds to a project using HUD funds.

Granted by: Susan D. Peppler, Assistant Secretary for Community Planning and Development.

Date Granted: December 22, 2008.

Reason Waived: The waiver was granted based on the following findings: The project will furthered the objective of providing community development; the errors made in the environmental process for the commitment of non-HUD funds were made in good faith and King County Housing Authority did not willfully violate the applicable regulations; no HUD funds were committed; and, an environmental assessment and a site visit by HUD staff concluded that the granting of the waiver will not result in any unmitigated, adverse environmental impact.

Contact: Danielle Schopp, Office of Environment and Energy, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7250, Washington, DC 20410–7000, telephone number (202) 402–4442.

• *Regulation:* 24 CFR 58.22(a).

Project/Activity: On May 26, 2006, HUD received an application from Ponca Tribe of Nebraska for Indian Community Development Block Grant in the amount of $609,840 to acquire property and buildings to use for tribal program offices. Ponca Tribe's intended use is to acquire property and buildings to develop a Ponca Family Resource Center to provide a new ''one-stop'' service delivery system to provide comprehensive, quality programs and services that concentrate on strengthening families through prevention modes spanning the entire human lifecycle in a culturally appropriate manner. On January 25, 2007, Ponca Tribe committed nonfederal funds to acquire the property and buildings, an action that limits the choice of reasonable alternatives, before receiving an approved Request for Release of Funds.

Nature of Requirement: HUD's regulation at 24 CFR 58.22(a) requires that an environmental review be performed and a request for release of funds be completed and certified prior to the commitment of non-HUD funds to a project using HUD funds.

Granted by: Susan D. Peppler, Assistant Secretary for Community Planning and Development.

Date Granted: December 22, 2008.

Reason Waived: The waiver was granted based on the following findings: The project furthered HUD's program goal to develop viable Indian communities; the property was purchased in good faith and Ponca Tribe did not willfully violate the applicable regulations; no HUD funds were committed; and, an environmental assessment and a site visit by HUD staff concluded that the granting of the waiver will not result in any unmitigated, adverse environmental impact.

Contact: Danielle Schopp, Office of Environment and Energy, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7250, Washington, DC 20410–7000, telephone number (202) 402–4442.

• *Regulation:* 24 CFR 91.115(c)(2).

Project/Activity: The Commonwealth of Puerto Rico's Community Development Block Grant Program.

Nature of Requirement: The provisions of 24 CFR 91.115(c)(2) require that a minimum of 30 days be allowed for public comment following an amendment to a state's Consolidated Plan.

Granted by: Susan D. Peppler, Assistant Secretary for Community Development and Planning.

Date Granted: October 8, 2008.

Reason Waived: A reduced public comment period from 30 days to 7 days would allow the State to implement the amendment to the 2008 method of distribution and annual action plan expeditiously and enable the Commonwealth to provide assistance to affected UGLGs for disaster recovery in a timely manner. The Commonwealth's proposed amendment to reallocate recaptured funds or uncommitted funds for their current program year would provide the State with additional flexibility to address urgent needs quickly.

Contact: Diane Lobasso, Director, State and Small Cities Division, Office of Block Grant Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, Room 7184, 451 7th Street, SW., Washington, DC 20410–7000, telephone number 202–402–2191.

• *Regulation:* 24 CFR 92.2 and 92.254(b)(2).

Project/Activity: Prince George's County requested a waiver of the regulatory definitions of ''reconstruction'' and ''principal residence'' to allow the County to assist an otherwise eligible homeowner whose home was demolished as the result of an environmental hazard.

Nature of Requirement: The HOME regulations define ''reconstruction'' in part, as rebuilding on the same lot, of housing standing on a site at the time of project commitment. Additionally, under HUD's regulations, housing owned by an income-eligible individual qualifies as affordable housing only if the housing is the principal residence of the owner at time HOME funds are committed to the project.

Granted by: Susan D. Peppler, Assistant Secretary for Community Planning and Development.

Date Granted: December 17, 2008.

Reason Waived: In early 2003, there was an oil spill at the homeowner's residence. As a result, the homeowner and the homeowner's family were unable to continue to live in the house and due to the nature of the spill, the home was condemned and demolished as an environmental hazard by the Maryland Department of Environment. The homeowner successfully sued the oil company but was not awarded sufficient damages to both remediate the hazard and reconstruct her home. The County wished to provide the homeowner with HOME funds to enable her to complete the restoration of her home and resume her residency there.

Contact: Virginia Sardone, Deputy Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7158, Washington, DC 20410–7000, telephone number 202–708–2470.

• *Regulation:* 24 CFR 92.252(e).

Project/Activity: The State of Iowa Department of Economic Development (IDED) requested a waiver of the period of affordability for the Riverview Apartments in Coralville, Iowa, due to severe flooding that ended the useful life of the project. The participating jurisdiction would have been required to repay $141,893 in HOME funds because the project failed to meet the affordability period.

Nature of Requirement: The HOME regulations at § 92.252(e) require a 5 year period of affordability for rehabilitation or acquisition for existing rental housing receiving less than $15,000 of HOME subsidy per unit.

Granted by: Susan D. Peppler, Assistant Secretary for Community Planning and Development.

Date Granted: December 16, 2008.

Reason Waived: On June 13, 2008, severe flooding caused significant damage to Riverview Apartments, requiring all tenants to be relocated. At the time of the HOME investment, the properties were not located in a flood plan. Therefore flood insurance had not been secured. The bids to repair and refurbish the apartments exceeded 75% of the property value. Due to the severity of the damage to the property, rehabilitation was determined to be infeasible and the City of Coralville has denied issuance of a building permit. HUD has determined that due to the damage caused to the 16 HOME rental units by the June 13, 2008, flood, the project has no remaining useful life and that good cause existed to waive the affordability period requirement.

Contact: Virginia Sardone, Deputy Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7158, Washington, DC 20410–7000, telephone number 202–708–2470.

• *Regulation:* 24 CFR 92.500(d)(1)(B).

Project/Activity: The Orange HOME Consortium—City of Orange, Texas, which is located within a presidentially-declared major disaster area pursuant to Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, requested a waiver of its HOME Program commitment deadline requirement to facilitate its continued recovery from Hurricane Rita.

Nature of Requirement: The HOME regulations at 24 CFR 92.500(d)(1)(B) require that a participating jurisdiction (PJ) commit its annual allocation of HOME funds within 24 months after HUD notifies the PJ that HUD has executed the jurisdiction's HOME Investment Partnership Agreement. HUD must deobligate any HOME funds that a PJ has not committed under a legally binding written agreement by the deadline.

Granted by: Susan D. Peppler, Assistant Secretary for Community Planning and Development.

Date Granted: October 15, 2008.

Reason Waived: Hurricane Rita caused significant damage to structures throughout

the Orange Consortium Area. In the City of Orange alone 97 homes were completely destroyed and 5,997 sustained damage. This unforeseen damage in the Consortium Area resulted in an increased workload for City staff. Subsequently, HOME program timelines were missed. Because of the program delays caused by the Hurricane Rita and the County's need for funds to address storm-related damage, HUD determined that there was good cause to suspend the County's commitment deadline requirement pursuant to Section 290 of the Cranston-Gonzalez National Affordable Housing Act as amended.

Contact: Virginia Sardone, Deputy Director, Office of Affordable Housing Programs, Office of Community Planning and Development, 451 7th Street, SW., Room 7164, Washington, DC 20410–7000, telephone number 202–708–2470.

• *Regulation:* 24 CFR 574.320(a)(2).

Project/Activity: The State of Florida and its project sponsor AIDS Help, Inc. use HOPWA tenant-based rental assistance (TBRA) to provide support to eligible recipients in Monroe County and Key West.

Nature of Requirement: The provisions of 24 CFR 574.320(a) require that grant funds for rental assistance must be used in accordance with a rent standard that is no more than the published section 8 fair market rent or the HUD-approved community-wide exception rent for the unit size. On a unit by unit basis, the grantee may increase that amount by up to 10% for up to 20% of the units assisted.

Granted by: Susan D. Peppler, Assistant Secretary for Community Planning and Development.

Date Granted: January 16, 2009.

Reason Waived: Current actual market rents far exceed fair market rents, so it is not possible for the grantee to procure rental units for eligible persons living with HIV/AIDS. The grantee adequately documents that the rents presently charged and received for comparable units in the private unassigned market are at 145% of those authorized under the HOPWA regulation.

Contact: David Vos, Office of HIV/AIDS Housing, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7212, Washington, DC 20410–7000, telephone 202–708–1934.

II. Regulatory Waivers Granted by the Office of Housing—Federal Housing Administration (FHA)

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 5.801.

Project/Activity: Geneva Tower—Contract Numbers IA05–L000–001/IA05–M000–061, Cedar Rapids, Iowa. The owner submitted a written request to waive submission of annual financial statements for fiscal year ending July 31, 2008.

Nature of Requirement: HUD regulations at 24 CFR 5.801 implement uniform financial reporting standards for all HUD programs. Reports must be prepared in accordance with Generally Accepted Accounting Principles as further defined by HUD in supplementary guidance, submitted electronically to HUD through the Internet with reporting compliance dates.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 10, 2008.

Reason Waived: The regulation was waived because a finding was made that failure to comply with the regulation were due to reasons beyond the owner's control. The property sustained flood damage on June 13, 2008. This damage destroyed the financial and tenant records as well as the equipment on the first floor. This waiver is granted for a period of one year for this project only. Providing waiver of this regulation allowed the much needed affordable housing to be preserved.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6l60, Washington, DC 20410–8000, telephone number 202–708–3730.

• *Regulation:* 24 CFR 200.926d(f)(1)(i) and (2)(i).

Project/Activity: Waiver applicable in the following boroughs of Alaska: Juneau, Mantanuska-Susitna, Anchorage, Bethel, North Slope (Barrow), Fairbanks (North Star and Southeast) and the Kenai Peninsula.

Nature of Requirement: Existing regulations require that new construction, to be eligible for FHA insurance, must be capable of delivering a flow of 5 gallons per minute (GPM) over a 4 hour period in order to provide a continuing and sufficient supply of water.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 14, 2008.

Reason Waived: Waiving the regulations was granted so that new construction in the above-referenced boroughs of Alaska would be able to rely upon alternative sources of water. The alternative sources of water would allow the properties to become eligible for FHA-insured financing that are otherwise acceptable under state and local codes and where it is not feasible to procure water from conventional water systems.

Contact: Peter Gillispie, Home Valuation Policy Division, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 9270, Washington, DC 20410–8000, telephone number 202–708–2121.

• *Regulation:* 24 CFR 200.926d(f)(1)(i) and (2)(i).

Project/Activity: The waiver was requested for the following boroughs of Alaska: Juneau, Mantanuska-Susitna, Anchorage, Bethel, North Slope (Barrow), Fairbanks (North Star and Southeast) and the Kenai Peninsula.

Nature of Requirement: HUD's regulations at 24 CFR 200.926d(f)(1)(i) and (2)() require that new construction, to be eligible for FHA insurance, must be capable of delivering a flow of 5 gallons per minute (GPM) over a 4 hour period in order to provide a continuing and sufficient supply of water.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 14, 2008.

Reason Waived: Waiving the regulations so that new construction in the above referenced boroughs of Alaska can rely upon alternative sources of water would allow the properties to become eligible for FHA-insured financing that are otherwise acceptable under state and local codes and where it is not feasible to procure water from conventional water systems.

Contact: Peter Gillispie, Home Valuation Policy Division, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban and Development, 451 7th Street, SW., Room 9270, Washington, DC 20410–8000, telephone number 202–708–2121.

• *Regulation:* 24 CFR 2063.

Project/Activity: Home Equity Conversion Mortgages (HECM) originated by EverBank Mortgage between March 5, 2007 and April 2, 2008.

Nature of Requirement: Under the HECM program regulations, the expected average interest rate is used to calculate future payments to the HECM borrower by the establishment of the principal limit (future payments to the HECM borrower) and must be the same as the note interest rate.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 2, 2008.

Reason Waived: EverBank Mortgage relied on guidance issued by FHA in Mortgagee Letters 2003–16 and 2006–22 but misinterpreted the requirement that the expected average mortgage interest rate must be the same as the HECM note interest rate. This misinterpretation resulted in EverBank originating 661 HECM loans where the expected average interest rate and the HECM note interest rate were different. It was determined that EverBank Mortgage's interpretation that the mortgagee letters permitted it to use a note rate that differed from the expected average interest rate was made in good faith, and it was determined that it would have been inequitable to require EverBank to receive a lower interest rate for the loans originated between March 5, 2007 and April 2, 2008.

Contact: Erica Jessup, Home Valuation Policy Division, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410.

• *Regulation:* 24 CFR 206.32(a).

Project/Activity: Home Equity Conversion Mortgages (HECM) in Genesee County, Michigan.

Nature of Requirement: Under the HECM program regulations, HECM borrowers may not incur additional debt in conjunction with HECM.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 24, 2008.

Reason Waived: It was determined that the waiver would provide Metro Housing Partnership (MHP) of Genesee County,

Michigan, with the authorization to provide secondary financing to eligible residents of Genesee County whose HECM proceeds are insufficient to satisfy existing property indebtedness or cover required expenses to secure the MHP loan.

Contact: Erica Jessup, Home Valuation Policy Division, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 9278, Washington, DC 20410–8000, telephone number 202–708–2121.

• *Regulation:* 24 CFR 219.220(b).

Project/Activity: St. Anthony Place, Pocatello, Idaho—FHA Project Number 124–EH019. The property has 88 units and requires renovations to continue as a well-maintained source of affordable housing. Refinancing will provide sufficient funds for needed capital improvements at the property.

Nature of Requirement: Section 219.220(b) of HUD's regulations, which governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996, states: ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project * * *'' Either of these actions would typically terminate FHA involvement with the property, and the Flexible Subsidy loan would be repaid, in whole, at that time.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 29, 2008.

Reason Waived: This waiver was granted to allow the owner to amortize the flexible subsidy debt with the newly refinanced mortgage and to continue to operate the project after prepayment under a Use Agreement. There will be no monies leaving the project as a result of prepayment and there will be long-term preservation of this affordable housing.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6160, Washington, DC 20410–8000, telephone number 202 708–3730.

• *Regulation:* 24 CFR 219.220(b).

Project/Activity: The Russell House—FHA Project Number 051–EH013, Virginia Beach, Virginia. The property is a 119-unit Section 202 property and is in need of repairs.

Nature of Requirement: Section 219.220(b), which governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996, states: ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project * * *'' Either of these actions would typically terminate FHA involvement with the property, and the Flexible Subsidy loan would be repaid, in whole, at that time.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 4, 2008.

Reason Waived: The waiver was granted to permit much needed repairs at the property. The owner planned to refinance the Section 202 mortgage with a Section 223(f) insured loan; at initial closing of the new loan, the owner will pay all accrued interest and a one-time principal payment, reducing the balance and amortize the flexible subsidy debt with the newly refinanced mortgage. It was determined that these measures would allow the project to be maintained as much needed affordable housing.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6160, Washington, DC 20410–8000, telephone number 202–708–3730.

• *Regulation:* 24 CFR 236.725.

Project/Activity: Genesee Gateway Houses (aka River Park Commons)—FHA Project Number 014–033NI, Rochester, New York. The Buffalo Multifamily Hub has requested waiver of the regulation to permit the continuation of Rental Assistance Payments after the payoff of the non-insured Section 236 mortgage under a Section 236(e)(2) Decoupling transaction.

Nature of Requirement: HUD regulations at 24 CFR 236.725 requires that the rental assistance contract shall be limited to the term of the mortgage or 40 years from the date of the first payment made under the contract, whichever is the lesser.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 20, 2008.

Reason Waived: This waiver was granted predicated on the continuation of the Rental Assistance Payment assistance and required the developer to record a Use Agreement requiring the property to be maintained as a Section 236 low-income housing resource for 50 years from the closing of the Decoupling transaction. The Decoupling proposal plans for the demolition of the townhouse units, the relocation of all remaining residents, and the full renovation of the high-rise building.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6160, Washington, DC 20410–8000, telephone number 202–708–3730.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: WRC House, Incorporated, Dothan, AL, Project Number: 062–HD065/AL09–Q071–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 10, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Ivy Residence II, Philadelphia, PA, Project Number: 034–EE153/PA26–S071–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 21, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Morning Star Housing, Moline, IL, Project Number: 071–HD156/IL06–Q061–007.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 24, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Opportunity House, Ketcikan, Alaska, Project Number: 176–HD030/AK06–Q071–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 24, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: TRC Senior Village I, Chicago, IL, Project Number: 071–EE212/IL06–S051–006.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.
Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: November 4, 2008.
Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Breakthrough Phase I, Knoxville, TN, Project Number: 087–HD051/TN37–Q071–002.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.
Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: November 4, 2008.
Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Options Supportive Housing Project XIII, Shirley, NY, Project Number: 012–HD138/NY36–Q071–003.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.
Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: December 3, 2008
Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: ASI Owatonna, Owatonna, MN, Project Number: 092–HD070/MN46–Q071–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.
Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: December 3, 2008
Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Vista Gallinas, Las Vegas, NM, Project Number: 116–HD030/NM16–Q061–002.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.
Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: December 5, 2008.
Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Burke Place Apartments, Forks, WA, Project Number: 127–HD040/WA19–Q071–004.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.
Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: December 8, 2008.
Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Roberts Place Apartments, Monroe, LA, Project Number: 064–HD109/LA48–Q071–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.
Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: December 9, 2008.
Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing. Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Llangollen Hope House, New Castle, DE, Project Number: 032–HD035/DE26–Q061–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.
Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: December 10, 2008.
Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Marian Heights, New Britain, CT, Project Number: 017–EE097/CT26–S061–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.
Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: December 10, 2008.
Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Mosaic Housing XVII—Beatrice, Omaha, NE, Project Number: 103–HD036/ND99–Q071–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.
Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: December 24, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Prairie View Villas, Pekin, IL, Project Number: 072–HD152/IL06–Q071–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 24, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: St. Francis Xavier Apartments, McKean, PA, Project Number: 033–EE127/PA28–S061–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 24, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Acres Homes Garden Apartments, Houston, TX, Project Number: 114–HD031/TX24–Q051–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 26, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. The sponsor/owner required additional time to obtain additional funds.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Gabriel Place, Suffolk, VA, Project Number: 051–HD128/VA36–Q041–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 9, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. The sponsor/owner required additional time to obtain additional funds.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Providence Manor Apartments, Atlanta, GA, Project Number: 061–EE159/GA06–S061–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 24, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. The sponsor/owner required additional time to achieve an initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.320(b).

Project/Activity: Center of Hope, Southbridge, MA, Project Number: 023HD221/MA06–Q051–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.320(b) provides projects should not be located adjacent to the following facilities: schools or daycare centers for persons with disabilities, workshops, medical facilities, or other housing primarily serving persons with disabilities, or in areas where such facilities are concentrated.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 5, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources and the service plan is designed to promote the integration of the residents into the community.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Dauphin County VOA Living Center, Harrisburg, PA Project Number: 034–HD087/PA266–Q051–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 1, 2008.

Reason Waived: Additional time was needed for contractor to obtain a Performance Bond and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Garrett House, Wilmington, DE, Project Number: 032–HD036/DE26–Q061–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 10, 2008.

Reason Waived: The sponsor/owner needed additional time for the initial closing to take place.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Hale Maaolu Ehiku, Kihei-Maui, HI, Project Number:140–EE028/HI10–S021–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 10, 2008.

Reason Waived: The sponsor/owner needed additional time for this mixed finance project to secure the executed Recipient Agreements for HOME financing from the County of Maui and for initial/final closing to take place.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Kaaterskill Manor, Catskill, NY, Project Number: 014–EE252/NY06–S051–008.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 14, 2008.

Reason Waived: Additional time was needed for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Lyons Place, Dayton, OH, Project Number: 046–EE078/OH10–S051–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 17, 2008.

Reason Waived: The sponsor/owner needed additional time to complete the bond sales and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Transitional Services for New York, New York, NY, Project Number: 012–HD128/NY36–Q051–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 24, 2008.

Reason Waived: Additional time was needed for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Octavia Court, San Francisco, CA, Project Number:121–HD087/CA39–Q061–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 27, 2008.

Reason Waived: Additional time was needed to clarify issues with the firm commitment application and for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Clearlake Oaks Manor, Clearlake Oaks, CA, Project Number: 121–EE174/CA39–S041–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 29, 2008.

Reason Waived: The owner/sponsor needed additional time for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Victory Cathedral VOA Elderly Housing, Hartford, CT, Project Number: 017–EE098/CT26–S061–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 30, 2008.

Reason Waived: The sponsor/owner needed additional time to resolve firm commitment application issues and for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Living Solutions II, Mora, MN, Project Number: 092–HD123/MN46–S061–009.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 2, 2008.

Reason Waived: The sponsor/owner needed additional time to complete the submission of initial closing documents and for the project to achieve an initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Capps Villa, Spartanburg, SC, Project Number: 054–HD115/SC16–Q061–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 3, 2008.

Reason Waived: Additional time was needed for the owner/sponsor to resolve an

identity of interest issue with the site, for the firm commitment to be issued and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: JSDD Supportive Living II, Whippany, NJ, Project Number: 031–HD149/NJ39–Q061–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 3, 2008.

Reason Waived: The sponsor/owner needed additional time to secure secondary funding, for the firm commitment application to be processed, and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Vista California Supportive Housing, Vista, CA, Project Number: 129–HD030/CA33–Q041–001.

Nature Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 3, 2008.

Reason Waived: The sponsor/owner needed additional time secure secondary funding, and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Corozal Hope for the Elderly, Corozal, PR, Project Number: 056–EE064/RQ46–S041–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 4, 2008.

Reason Waived: The sponsor/owner needed additional time to secure control of a new site and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Henderson Supportive Housing, Henderson, NV, Project Number: 125–HD074/NV25–Q061–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 4, 2008.

Reason Waived: The sponsor/owner needed additional time for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

• *Project/Activity:* Common Ground Senior Housing, Brooklyn, NY, Project Number: 012–EE338/NY36–S051–004.

• *Nature of Requirement:* Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

• *Granted by:* Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

• *Date Granted:* November 4, 2008.

Reason Waived: The sponsor/owner needed additional time for the closing documents to be submitted and processed and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Victory Crest, Chillum, MD, Project Number: 000–EE066/MD39–S061–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 4, 2008.

Reason Waived: The sponsor/owner needed additional time for the firm commitment application to be reprocessed and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130 Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Llangollen Hope House, New Castle, DE, Project Number: 032–HD035/DE26–Q061–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 4, 2008.

Reason Waived: The sponsor/owner needed additional time to redesign the building, the firm commitment application to be processed, and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Casitas on East Broadway, Tucson, AZ, Project Number: 123–EE104/AZ20–S061–010.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 8, 2008.

Reason Waived: The sponsor/owner needed additional time to clarify issues of the site plan review, secure secondary funding and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Oakridge Park Apartments, Lake Oswego, OR, Project Number: 126–EE059/OR16–S061–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 12, 2008.

Reason Waived: The sponsor/owner needed additional time to resolve litigation

issues and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Silvercrest Senior Housing, Briarwood, NY, Project Number: 012–EE349/NY36–S061–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 12, 2008.

Reason Waived: The sponsor/owner needed additional time for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Kappa House II Apartments, Cleveland, OH, Project Number: 042–EE206/OH12–S061–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 12, 2008.

Reason Waived: The sponsor/owner needed additional time to secure secondary funding, submit the firm commitment application, and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Emerald Rose I Apartments, Burton, OH, Project Number: 042–HD141/OH12–Q061–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 12, 2008.

Reason Waived: The sponsor/owner needed additional time to secure secondary funding, and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Mary Rose Estates, Willoughby, OH, Project Number: 042–EE208/OH12–S061–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 12, 2008.

Reason Waived: The sponsor/owner needed additional time to submit the firm commitment application and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Leonia Retirement Housing, Leonia, NJ, Project Number: 031–EE069/NJ39–S061–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 12, 2008.

Reason Waived: The sponsor/owner needed additional time for the firm commitment application to be processed and issued and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130 Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: St. Francis Xavier Apartments, McKean, PA, Project Number: 033–EE127/PA26–S061–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 14, 2008.

Reason Waived: The sponsor/owner needed additional time for the firm commitment to be processed and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Arbor Court (fka Laurel Homes), Fresno, CA, Project Number: 121–HD083/CA39–Q041–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 14, 2008.

Reason Waived: The sponsor/owner needed additional time to secure additional funding, the firm commitment application to be processed and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Bernie's Blessing, Roxboro, NC, Project Number: 053–EE173/NC19–S061–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 17, 2008.

Reason Waived: The sponsor/owner needed additional time to resolve appraisal issues with the site, for the firm commitment to be issued, and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Folsom Oaks, Folsom, CA, Project Number: 136–HD017/CA30–Q041–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 17, 2008.

Reason Waived: The sponsor/owner needed additional time for the firm commitment application to be processed and issued and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Tartan Village II, Kilmarnock, VA, Project Number: 051–EE111/VA36–S051–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 17, 2008.

Reason Waived: The sponsor/owner needed additional time to resolve site plan issues required by the Virginia Department of Transportation and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Saint Claire Court, Redding, CA, Project Number: 136–HD020/CA30–Q061–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 17, 2008.

Reason Waived: The sponsor/owner needed additional time for the site to be approved and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: North Highlands VOA Living Center, North Highlands, CA, Project Number: 136–HD019/CA30–Q061–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 18, 2008.

Reason Waived: The sponsor/owner needed more time to secure additional funding, submit the firm commitment application, and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Lovejoy Road, North Andover, MA, Project Number: 023–HD220/MA06–Q051–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 18, 2008.

Reason Waived: The sponsor/owner needed additional time to modify architectural designs to satisfy new state requirements and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Desert Sol, Phoenix, AZ, Project Number: 123–HD040/AZ20–Q061–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 19, 2008.

Reason Waived: The sponsor/owner needed additional time to secure additional funding and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Sierra Manor II, Reno, NV, Project Number: 125–EE129/NV25–S061–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 19, 2008.

Reason Waived: The sponsor/owner needed additional time to secure additional funding, for approval of the new site, and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Eskaton Roseville Manor, Roseville, CA, Project Number: 136–EE081/CA30–S061–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 19, 2008.

Reason Waived: The sponsor/owner needed additional funding, obtain approval of the parcel split, submit the firm commitment application and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Shawnee Supportive Housing, Shawnee, KS, Project Number: 084–EE054/KS16–Q061–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 19, 2008.

Reason Waived: The sponsor/owner needed additional time to resolve development cost issues and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Accessible Space, Incorporated, Mesa, AZ, Project Number: 123–HD041/AZ20–Q061–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 21, 2008.

Reason Waived: The sponsor/owner needed additional time to secure additional funding and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Casa Del Pueblo II, Tucson, AZ, Project Number: 123–EE103/AZ20–S061–009.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 21, 2008.

Reason Waived: The sponsor/owner needed additional time for the city of Tucson to approve a lot split and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: NCR of East Dublin Granville Road, Columbus, OH, Project Number: 043–EE119/OH16–S061–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 10, 2008.

Reason Waived: The sponsor/owner needed additional time to resolve judgment liens and delinquent tax issues against the land seller and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Maranatha Housing, Amsterdam, NY, Project Number: 014–EE264/NY06–S061–009.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 16, 2008.

Reason Waived: The sponsor/owner needed additional time to submit the firm commitment application and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Parham House, Vista, CA, Project Number: 129–HD031/CA33–Q061–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 16, 2008.

Reason Waived: The sponsor/owner needed additional time to secure additional funds, resolve site issues, and for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Independence Manor III, Braintree, MA, Project Number: 023–EE169/MA06–S031–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 17, 2008.

Reason Waived: The sponsor/owner needed additional time for Mass Housing Board to approve partial releases of two land parcels and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Johnnie B. Moore Towers II, Atlanta, GA, Project Number: 061–EE160/GA06–S061–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 19, 2008.

Reason Waived: The sponsor/owner needed additional time for the firm commitment application to be processed and issued and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.310(b)(1).

Project/Activity: Nassau AHRC Development 2005, North Baldwin, NY, Project Number: 012–HD129/NY36–Q051–003.

Nature of Requirement: Section 891.310(b)(1) requires that all entrances, common areas, units to be occupied by resident staff, and amenities must be readily accessible to and usable by persons with disabilities.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 25, 2008.

Reason Waived: The cost to achieve full accessibility in both houses was determined not to be economical. The high acquisition cost of the houses coupled with costly renovations that would be necessary to make both houses accessible would be financially prohibitive.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.165, 24 CFR 891.805, 24 CFR 891.830(b) and 891.830(c)(4).

Project/Activity: Armstrong Place, San Francisco, CA, Project Number: 121–EE194/CA39–S061–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis. Section 891.805 requires that the general partner in the for-profit limitied partnership be a Private Nonprofit Organization. Section 891.830(b) requires that capital advance funds be drawn down only in an approved ratio to other funds in accordance with a drawndown schedule approved by HUD. Section 891.830(c)(4) prohibits the capital advance funds from paying off bridge or construction financing, or repaying or collateralizing bonds.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 20, 2008.

Reason Waived: Additional time was needed for the firm commitment to be issued and for the project to be initially/finally closed in order to not delay the construction

of this mixed finance project and to allow other funds to pay for the construction of the project prior to release of the capital advance funds.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.530 and 24 CFR 891.205.

Project/Activity: Rohlffs Memorial Manor—FHA Project Number 121–SH049, Napa California. The San Francisco Multifamily Hub has requested waiver of the requirement for nonprofit ownership of a Section 202 Property and waiver of the transfer of physical assets requirement.

Nature of Requirement: Under § 891.530, prepayment priviliges or the assignment or transfer of physical and financial assets of any Section 202 project is prohibited, unless HUD gives prior written approval. HUD may not grant approval unless it is determined that the loan is part of a transaction that will ensure the continued operation of the project until the original maturity date of the loan and at least as advantageous to existing and future tenants as the terms required by the original Section 202 loan agreement. Requirements set forth in § 891.205 apply to Section 202 Supportive Housing for the Elderly only and to applicants, sponsors and owners under that program. Section 891.205 relates to the definition of nonprofit organization, eligible applicants, and requirements for the acquisition of existing housing and related facilities to be used as supportive housing for the elderly.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 16, 2008.

Reason Waived: This waiver was granted to allow the property to transfer ownership of the property to a Low Income Housing Tax credit limited partnership and subordinate the existing Section 202 loan at the time of sale to make way for a new first lien mortgage tied to the issuance of the tax-exempt bonds. Subordination of the Section 202 loan will allow the new ownership entity to make needed capital improvements to the property. The property is not eligible to prepay under Notice H 2002–16, instead, the existing loan will continue to amortize and will be subordinate to new tax credit financing. Payments on the existing Section 202 loan will continue until the maturity date of February 1, 2016. The benefits to the residents upon completion of the sale include continued affordability of the property to the tenants until 2063, a new 20-year Section 8 contract for 16 units currently under the contract; and expansion of the Service Coordinator program to work with the residents and family members.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6160, Washington, DC 20410–8000, telephone number 202–708–3730.

• *Regulation:* 24 CFR 891.805 and 24 CFR 891.830(b) and 891.830(c)(4).

Project/Activity: Leonia Retirement Housing II, Leonia, NJ, Project Number: 031–EE063/NJ39–S061–003.

Nature of Requirement: Section 891.805 requires that the general partner in the for-profit limitied partnership be a Private Nonprofit Organization. Section 891.830(b) requires that capital advance funds be drawn down only in an approved ratio to other funds in accordance with a draw down schedule approved by HUD. Section 891.830(c)(4) prohibits the capital advance funds from paying off bridge or construction financing, or repaying or collateralizing bonds.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 19, 2008.

Reason Waived: The waiver of § 891.805 complies with statutory requirements that the entity be a nonprofit organization. The waiver was granted in order to not delay the construction of this mixed finance project and to allow other funds to pay for the construction of the project prior to draw down of the capital advance funds and to pay off that portion of bridge or construction financing that relate to capital advance eligible costs.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.310(b)(1).

Project/Activity: Options Supportive Housing Project XIII, Shirley, NY, Project Number: 012–HD138/NY36–Q071–003.

Nature of Requirement: Section 891.310(b)(1) requires Section 811 project entrances, common areas, units to be occupied by resident staff, and amenities must be readily accessible to and usable by persons with disabilities.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 25, 2008.

Reason Waived: The waiver was granted because it was determined that one bedroom and all common areas would be fully accessible in one of the homes resulting in 8 percent accessibility in the total property.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number 202–708–3000.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Corinthian Arbors, Corinth, Mississippi—FHA Project Number 065–EE001. The project is experiencing difficulty leasing units to the very low-income elderly.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959, as amended by Section 801 of the National Affordable Housing Act of 1990. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 24, 2008.

Reason Waived: This waiver was granted to allow the managing agent to lease units to very low-income, near elderly applicants when there are no very low-income elderly applicants on the waiting list. Despite aggressive marketing the property continues to experience vacancies. It was determined that the waiver would allow stabilization of the project's current financial status and prevent foreclosure of the property.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6160, Washington, DC 20410–8000, telephone number 202–708–3730.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: John Fischer Manor—FHA Project Number 075–EH388, Appleton, Wisconsin. The property is located in a very rural area and has been experiencing difficulty in leasing units to the very-low income elderly.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959, as amended by Section 801 of the National Affordable Housing Act of 1990. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 7, 2008.

Reason Waived: This regulatory waiver was granted to allow the owner to stabilize the project's current financial status and prevent foreclosure. It was determined that waiver of this regulation would permit admission of applicants who meet the definition of low-income, near elderly, enabling them to rent up the 13 vacant units currently existing at the property, and develop a waiting list. The commitment was made that first priority would be given to all qualified eligible applicants who meet the Section 202 very low-income guidelines.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6160, Washington, DC 20410–8000, telephone number 202–708–3730.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Howard Wynne Villa—FHA Project Number 075–EE070, Reedsburg, Wisconsin. This project is located in a very rural area with few conveniences for senior citizens. The owner/managing agent has requested waiver of the very low-income and elderly restriction to permit admission of lower-income, near-elderly applicants to alleviate current vacancy problems at the property.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959, as amended by Section 801 of the National Affordable Housing Act of 1990. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 7, 2008.

Reason Waived: This regulatory waiver was granted to assist the property with its current vacancy problems. There is insufficient demand to fill the units with very low-income elderly applicants. It was determined that the owner/managing agent would have the flexibility to lease to qualified low-income near elderly applicants only when there are no very low-income elderly applicants on the waiting list. The waiver was granted to allow the project to operate successfully and achieve full occupancy so that the project will not fail.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6160, Washington, DC 20410–8000, telephone number 202–708–3730.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Maple Leaf Housing—FHA Project Number 103–EE006, Plymouth, Nebraska. This project is located in a very rural area with few conveniences for senior citizens. The owner/managing agent is having difficulty in maintaining full occupancy at the project.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959, as amended by Section 801 of the National Affordable Housing Act of 1990. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 9, 2008.

Reason Waived: Waiver of this requirement was granted to allow the owner/managing agent flexibility in renting up vacant units. At the time the waiver was requested, the property had 6 vacant units with no one on the waiting list. It was determined that providing a waiver of the very low-income elderly restricting would assist in stabilizing the project's current financial status and prevent foreclosure.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6160, Washington, DC 20410–8000, telephone number 202–708–3730.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Shepherd Place Apartments—FHA Project Number 083–EH268, Carlisle, Kentucky. The owner has requested waiver of the age and income requirement for this Supportive Housing for the Elderly project to assist with the vacancy problems they are experiencing.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959, as amended by Section 801 of the National Affordable Housing Act of 1990. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 3, 2008.

Reason Waived: Waiver of this regulation was granted to allow the owner/managing agent to rent vacant units to applicants who are low-income and near-elderly. The owner/managing agent has aggressively marketed the property with local housing authorities, news media, churches and various civic organizations. At the time the waiver was requested, the property had 3 vacant units and no waiting list. It was determined that providing for a waiver of this requirement would allow the project to stabilize its current financial status and prevent foreclosure.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6160, Washington, DC 20410–8000, telephone number 202–708–3730.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Douglas/Elkhorn Apartments, FHA Project Number 083–EE092, Phelps, Kentucky. Douglas/Elkhorn is a Supportive Housing for the Elderly project which is located in the rural Appalachian Mountain region with few amenities such as shopping, medical facilities and pharmacies, to attract qualified applicants.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959, as amended by Section 801 of the National Affordable Housing Act of 1990. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 3, 2008.

Reason Waived: Waiver of the regulations governing age and income requirements was granted to permit admission of low-income, near elderly applicants. The owner/managing agent was unable to attract very low-income elderly persons despite aggressive marketing efforts with the local Central Wisconsin Action Council and news media. At the time the waiver was requested, the property had 6 vacant units and no waiting list. It was determined that the waiver would allow flexibility in renting units and allow the project to operate successfully and achieve full occupancy.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6160, Washington, DC 20410–8000, telephone 202–708–3730.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Southwood Village—FHA Project Number 061–EE136, Cuthbert, Georgia. The project is experiencing difficulty in leasing units to the very low-income elderly. The project is located in a rural area with a countrywide population of approximately 7,791 residents.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959, as amended by Section 801 of the National Affordable Housing Act of 1990. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 3, 2008.

Reason Waived: Waiver of the regulations governing age and income requirements was granted to permit admission of low-income, near elderly applicants. The owner/managing agent was unable to attract very low-income elderly persons despite aggressive marketing efforts through the local authorities, media and community organizations. At the time the waiver was requested, the property had 50 percent occupancy and was unable to maintain proper functioning of the project. It was determined that providing a waiver would allow the owner to rent up vacant units, thereby stabilizing the project's current financial status and prevent foreclosure.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6160, Washington, DC 20410–8000, telephone number 202–708–3730.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Biimaadiiziiwiin—FHA Project Number 092–EE086, White Earth, Minnesota. This project is experiencing difficulty in maintaining sustaining occupancy.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959, as amended by Section 801 of the National Affordable Housing Act of 1990. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 24, 2008.

Reason Waived: Waiver of the regulations governing age and income requirements was granted to assist the project in reaching full

occupancy. The property is located on an Indian Reservation and there was insufficient demand to fill vacancies with very low-income elderly applicants. The owner/managing agent continued to market the property to all ethnic groups and with the local housing authorities and news media. It was determined that providing for this waiver would allow the owner/managing agent to expand their leasing options, and stabilize the project's current financial status and prevent foreclosure.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6160, Washington, DC 20410–8000, telephone number 202–708–3730.

• *Regulation:* 24 CFR 891.830(b).

Project/Activity: Common Ground Senior Housing, Brooklyn NY, Project Number: 012–EE338/NY36–S051–004.

Nature of Requirement: Section 891.830(b) requires that capital advance funds be drawn down only in an approved ratio to other funds in accordance with a drawndown schedule approved by HUD.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 25, 2008.

Reason Waived: In order to limit the out-of-pocket interest costs of the mixed-financed owner, the waiver was granted to permit the capital advance funds to be drawn down using a different mechanism, than a pro rata basis. With this approval, the mixed-finance owner was able to keep the undisbursed bond proceeds invested, and the interest earned on the investment will be used to offset the interest that is accruing on the tax-exempt bonds, thereby reducing the cost to develop the project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6134, Washington, DC 20410–8000, telephone number 202–798–3000.

• *Regulation:* 24 CFR 891.830(c)(4).

Project/Activity: Senior City, Federal Way, WA, Project Number: 127–EE061/WA19–S071–002.

Nature of Requirement: Section 891.830(c)(4) prohibits the capital advance funds from paying off bridge or construction financing, or repaying or collateralizing bonds.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 30, 2008.

Reason Waived: The waiver was granted in order to not delay the construction of this mixed finance project and to allow other funds to pay for the construction of the project prior to release of the capital advance funds.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6134, Washington, DC 20410–8000, telephone number 202–798–3000.

• *Regulation:* 24 CFR 891.830(c)(4).

Project/Activity: Girard Manor Apartments, Warren, OH, Project Number: 042–EE216/OH12–S071–002.

Nature of Requirement: Section 891.830(c)(4) prohibits the capital advance funds from paying off bridge or construction financing, or repaying or collateralizing bonds.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 29, 2008.

Reason Waived: In order to not delay the construction and to reduce the financing cost of the tax-exempt bonds, the waiver was granted to permit the capital advance funds to be drawn down using a different mechanism than a pro-rata share in order to collateralize the bonds.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6134, Washington, DC 20410–8000, telephone number (202) 798–3000.

III. Regulatory Waivers Granted by the Office of Public and Indian Housing

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 5.801.

Project/Activity: New York City Department of Housing Preservation and Development, (NY110), New York, NY.

Nature of Requirement: HUD's regulation at 24 CFR 5.801 establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than 9 months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: October 15, 2008.

Reason Waived: The HA requested a waiver of the Uniform Financial Reporting Standards (UFRS) audited electronic submission requirements for the Financial Assessment Subsystem (FASS) for FYE December 31, 2007, and December 31, 2008, since the City of New York has a June 30 FYE. The HA was approved for a FYE change to June 30 to correspond with the City of New York FYE. Because, the HA is a Section 8 only entity and is part of the City of New York, the waiver grants the HA additional time to submit its FYE December 31, 2007, audited financial data by not later than March 31, 2009, and it's audited financial data for the period of January 1, 2008 through June 30, 2009, by no later than March 31, 2010.

Contact: Myra E. Newbill, Program Manager, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone number 202–475–8988.

• *Regulation:* 24 CFR 5.801.

Project/Activity: Housing Authority of the City of Rockwall, Rockwall, TX.

Nature of Requirement: HUD's regulation at 24 CFR 5.801 establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than 9 months after the housing authority's (HA) fiscal year end (FYE) in accordance with the Single Audit Act, and OMB Circular A–133.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: October 16, 2008.

Reason Waived: The HA's audited financial submission for FYE September 30, 2007, was rejected by the Financial Assessment Subsystem (FASS) staff and the HA was given 15 days to correct and resubmit the financial data. The HA made the corrections but failed to ''click'' the submit button. As a result, the submission was not electronically submitted to the REAC by the resubmission due date causing the HA to receive a Late Presumptive Failure (LPF) score of zero. The waiver granted invalidation of the LPF and resubmission of the audited financial data.

Contact: Myra E. Newbill, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone number 202–475–8988.

• *Regulation:* 24 CFR 5.801.

Project/Activity: Housing Authority of the City of Stanton, Stanton, TX.

Nature of Requirement: HUD's regulation at 24 CFR 5.801 establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE) in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: November 14, 2008.

Reason Waived: The HA's audited financial data for FYE December 31, 2007, was completed and inputted into the on-line system and ready for auditor review. The auditor was unable to complete the agreed upon procedure portion of the financial submission due to system access problems that could not be corrected in time because the HA's Executive Director broke her leg just two weeks prior to the audited financial submission due date resulting in the HA receiving a Late Presumptive Failure (LPF) score of zero for its financial submission. The waiver was granted because the circumstances that prevented the HA from submitting the audited financial data by the due date were beyond the control of the HA.

Contact: Myra E. Newbill, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone number 202–475–8988.

• *Regulation:* 24 CFR 5.801.

Project/Activity: Englewood Housing Authority, Englewood, NJ.

Nature of Requirement: HUD's regulation at 24 CFR 5.801 establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than 9 months after the housing authority's (HA) fiscal year end (FYE) in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: November 20, 2008.

Reason Waived: The HA's audited financial submission for FYE December 31, 2007, was rejected by the Financial Assessment Subsystem (FASS) staff and the HA was given 15 days to correct and resubmit the financial data. Due to medical issues and communication error with their auditor, the submission was not electronically submitted to the REAC by the resubmission due date resulting in a Late Presumptive Failure (LPF) score of zero. The waiver was granted because the circumstances that prevented the HA from resubmitting the audited financial data by the due date were beyond the control of the HA.

Contact: Myra E. Newbill, Program Manager, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone number 202–475–8988.

• *Regulation:* 24 CFR 5.801.

Project/Activity: Town of Brookhaven Housing Authority, Farmingdale, NY.

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: November 20, 2008.

Reason Waived: The HA, a Section 8-only entity, requested additional time to submit their FYE December 31, 2007, audit financial submission because the town's fixed asset records were not finalized. Accordingly, the Town of Brookhaven requested and received a Single Audit extension to December 10, 2008, to submit the audited financial data.

Contact: Myra E. Newbill, Program Manager, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone number 202–475–8988.

• Regulation: 24 CFR 5.801.

Project/Activity: Amsterdam Housing Authority, Amsterdam, NY.

Nature of Requirement: HUD's regulation at 24 CFR 5.801 establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than 9 months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: November 26, 2008.

Reason Waived: The HA was unaware that their auditor was under a suspension order from the New York State Board of Public Accountants. The suspension prohibits auditors from providing audits or attesting under Government Accounting Standards. Subsequently, the HA retained a new auditor. The waiver was granted because the circumstances preventing resubmission by the due date were beyond the control of the HA.

Contact: Myra E. Newbill, Program Manager, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone number 202–475–8988.

• *Regulation:* 24 CFR 5.801.

Project/Activity: Fort Worth Housing Authority, Fort Worth, TX.

Nature of Requirement: HUD's regulation at 24 CFR 5.801 establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than 9 months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: December 4, 2008.

Reason Waived: The HA audited financial submission for FYE December 31, 2007, was rejected by the Financial Assessment Subsystem (FASS) staff and the HA was given 15 days to correct and resubmit the financial data. However, as result of a technical computer problem, corrections and the resubmission were not submitted to the REAC by the due date causing the HA to receive a Late Presumptive Failure (LPF) score of zero. The waiver was granted because the circumstances that prevented the HA from resubmitting were beyond the control of the HA.

Contact: Myra E. Newbill, Program Manager, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone number 202–475–8988.

• *Regulation:* 24 CFR 5.801.

Project/Activity: Viroqua Housing Authority, Viroqua, WI.

Nature of Requirement: HUD's regulation at 24 CFR 5.801 establishes certain reporting compliance dates. The audited financial statements are to be submitted to the Real Estate Assessment Center (REAC) no later than 9 months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: December 24, 2008.

Reason Waived: The due date of the financial audit was extended and the zero score for Late Presumptive Failure was removed due to temporary incapacitation of the auditor.

Contact: Myra E. Newbill, Program Manager, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone number 202–475–8988.

• *Regulation:* 24 CFR 5.801.

Project/Activity: Housing Authority of St. Louis County, St. Louis, MO.

Nature of Requirement: HUD's regulation at 24 CFR 5.801 establishes certain reporting compliance dates. The audited financial statements are to be submitted to the Real Estate Assessment Center (REAC) no later than 9 months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: December 30, 2008.

Reason Waived: The due date of the financial audit was extended due to a communications error between the HA and auditor.

Contact: Myra E. Newbill, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone number 202–475–8988.

• *Regulation:* 24 CFR 902.20.

Project/Activity: Housing Authority of the City of Opelousas, Opelousas, LA.

Nature of Requirement: The objective of this regulation is to determine whether a housing authority (HA) is meeting the standard of decent, safe, sanitary, and in good repair for its developments. The Real Estate Assessment Center (REAC) provides for an independent physical inspection of a HA's property of properties that includes a statistically valid sample of the units.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: October 27, 2008.

Reason Waived: The HA requested a waiver from physical inspections for the fiscal year ending June 30, 2008, due to severe damage to multiple units/buildings at all of the HA's sites incurred during Hurricanes Gustav and Ike. The waiver was granted based on confirmation provided by the New Orleans Field Office's on-site visit. The circumstances surrounding the waiver were beyond the HA's control.

Contact: Myra E. Newbill, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone number 202–475–8988.

• *Regulation:* 24 CFR 902.20.
Project/Activity: Housing Authority of the City of Beaumont, Beaumont, TX
Nature of Requirement: The objective of this regulation is to determine whether a housing authority (HA) is meeting the standard of decent, safe, sanitary, and in good repair. The Real Estate Assessment Center (REAC) provides for an independent physical inspection of all HA's property of properties that includes a statistically valid sample of the units.
Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.
Date Granted: November 20, 2008.
Reason Waived: The HA requested a waiver from physical inspections for fiscal year ending (FYE) September 30, 2008, due to severe damage to all the development sites during Hurricane Ike. The waiver was granted based on confirmation of the damages by the Houston Field Office. The circumstances surrounding the waiver are beyond the HA's control.
Contact: Myra E. Newbill, Program Manager, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone number 202–475–8988.

• *Regulation:* 24 CFR 941.606(n)(1)(ii)(B).
Project/Activity: Muncie Housing Authority (MHA), Muncie, IN
Nature of Requirement: The regulation states that if the partner and/or owner entity wants to serve as the general contractor, it may award itself the construction contract only if it can demonstrate to HUD's satisfaction that its bid is the lowest, competitive bid.
Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.
Date Granted: October 28, 2008.
Reason Waived: The waiver was granted because MHA's third party cost estimate had construction and infrastructure costs less than the construction analysis.
Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4130, Washington, DC 20140–5000, telephone number 202–402–4181.

• *Regulation:* 24 CFR 941.606(n)(l)(ii)(B).
Project/Activity: Charleston Kanawha Housing Authority (CKHA) Charleston, WV
Nature of Requirement: This regulation requires that if the owner entity wants to serve as a general contractor, it may award itself the construction contract only if it can demonstrate to HUD's satisfaction that its bid is the lowest, competitive bid.
Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.
Date Granted: October 31, 2008.
Reason Waived: The waiver was granted because CKHA submitted a certification by an independent estimator that the plans, specifications and construction costs were reasonable for the market area.
Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4130, Washington, DC 20140–5000, telephone number 202-402–4181.

• *Regulation:* 24 CFR 941.606(n)(l)(ii)(B).
Project/Activity: San Antonio Housing Authority (SAHA), San Antonio, TX
Nature of Requirement: The regulation requires that if the owner entity wants to serve as a general contractor, it may award itself the construction contract only if it can demonstrate to HUD's satisfaction that its bid is the lowest, competitive bid.
Granted by: Paula O. Blunt, General Assistant Deputy Secretary for Public and Indian Housing.
Date Granted: December 16, 2008.
Reason Waived: The waiver was granted because SAHA submitted an independent cost estimate verifying that the contractor's square foot cost was less than construction estimates.
Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, 451 7th Street, SW., Room 4130, Washington, DC 20140–5000, telephone number 202–402–4181.

• *Regulation:* 24 CFR 941.606(n)(l)(ii)(B).
Project/Activity: Housing Authority of the City of Texarkana (HATT), Texarkana, TX.
Nature of Requirement: The regulation requires that if the owner entity wants to serve as a general contractor, it may award itself the construction contract only if it can demonstrate to HUD's satisfaction that its bid is the lowest, competitive bid.
Granted by: Paula O. Blunt, General Assistant Deputy Secretary for Public and Indian Housing.
Date Granted: December 24, 2008.
Reason Waived: The waiver was granted because HATT submitted an independent cost estimate for Covington Townhomes Phase II. The estimate provided by the affiliate of the developer illustrated that the residential construction costs were below the independent cost review prepared. As cost was below that of the independent cost estimates, HUD's condition is satisfied.
Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, 451 7th Street, SW., Room 4130, Washington, DC 20140–5000, telephone number 202–402–4181.

• *Regulation:* 24 CFR 941.610(a)(1)–(a)(7).
Project/Activity: Charleston Kanawha Housing Authority, Charleston, WV.
Nature of Requirement: This regulation requires HUD review and approval of certain legal documents relating to mixed-finance development prior to closing and release of funds.
Granted by: Paula Blunt, General Deputy Assistant Secretary for Public and Indian Housing.
Date Granted: October 29, 2008.
Reason Waived: The waiver was granted to streamline the review and expedite closing. Justification included the fact that CRH Phase 3 has the same unit mix, partners, financing and legal documents as approved by HUD in 2006 for CRH Phase 1.
Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4130, Washington, DC 20410–5000, telephone number 202–402–4181.

• *Regulation:* 24 CFR 941.610(a)(1)–(a)(7).
Project/Activity: San Antonio Housing Authority(SAHA), San Antonio, TX.
Nature of Requirement: This regulation requires HUD review and approval of certain legal documents relating to mixed-finance development prior to closing and release of funds.
Granted by: Paula Blunt, General Deputy Assistant Secretary for Public and Indian Housing.
Date Granted: December 16, 2008.
Reason Waived: The waiver was granted to streamline the review and expedite closing. Justification included the findings that SAHA has extensive mixed-finance experience and that the development partners have experience in both HOPE VI and mixed-finance.
Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4130, Washington, DC 20410–5000, telephone number 202–402–4181.

• *Regulation:* 24 CFR 941.610(a)(1)–(a)(7).
Project/Activity: Housing Authority of the City of Milwaukee (HACM), Milwaukee, WI.
Nature of Requirement: This regulation requires HUD review and approval of certain legal documents relating to mixed-finance development prior to closing and release of funds.
Granted by: Paula Blunt, General Deputy Assistant Secretary for Public and Indian Housing.
Date Granted: December 19, 2008.
Reason Waived: The waiver was granted to streamline the review and expedite closing. Justification included the findings that HACM has extensive experience through four existing HOPE VI projects with mixed financing.
Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4130, Washington, DC 20410–5000, telephone number 202–402–4181.

• *Regulation:* 24 CFR 982.505(c)(3).
Project/Activity: Columbus Housing Authority (CHA), Columbus, Georgia.
Nature of Requirement: HUD's regulation at 24 CFR 982.505(c)(3) states that if the amount on the payment standard (PS) schedule is decreased during the term of the HAP contract, the lower PS amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.
Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.
Date Granted: October 2, 2008.
Reason Waived: The CHA requested a waiver of PS requirements to permit it to

implement reduced PSs earlier than required to avoid termination of housing assistance payments (HAP) contracts during calendar year 2008 due to insufficient funding. The waiver was granted because this cost-saving measure would enable the CHA to both manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone number 202–708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Housing Authority of the City of Los Angeles (HACLA), Los Angeles, CA.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: October 17, 2008.

Reason Waived: The HACLA requested a waiver regarding exception payment standards so that it could provide a reasonable accommodation to persons with disabilities. The participant is a 19-year-old woman that is the legal guardian of her five siblings including one, a nine-year-old disabled child with Downs Syndrome who needs to remain in his current unit as it is well suited to accommodating his disability. She was also paying approximately 65 percent of the family's adjusted income toward her share of the rent as a result of a large rent increase. To provide a reasonable accommodation so that this participant would pay no more than 40 percent of her adjusted income toward the family share, the HACLA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone number 202–708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Sioux Falls Housing and Redevelopment Commission (SFHRC), Sioux Falls, South Dakota.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: October 24, 2008.

Reason Waived: The SFHRC requested a waiver regarding exception payment standards so that it could provide a reasonable accommodation to persons with disabilities. The applicant, a single person with disabilities, required an accessible, two-bedroom ground floor unit in close proximity to the medical facility where care is received. To provide a reasonable accommodation so that this applicant would pay no more than 40 percent of her adjusted income toward the family share, the SFHC was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone number 202–708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Housing Authority of Asotin County (HAAC), Clarkston, WA.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: November 24, 2008.

Reason Waived: The HAAC requested a waiver regarding exception payment standards so that it could provide a reasonable accommodation to a person with disabilities. The applicant, who is unable to walk, needed to remain in her current wheelchair accessible three-bedroom mobile home as documented by her physician. To provide a reasonable accommodation so that this applicant would pay no more than 40 percent of her adjusted income toward the family share, the HAAC was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone number 202–708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Georgia Department of Community Affairs (GDCA), Carrollton, GA.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: November 12, 2008.

Reason Waived: The GDCA requested a waiver regarding exception payment standards so that it could provide a reasonable accommodation to a person with disabilities. The participant, who is a person with disabilities that required a single-family home, was required to move to a unit that had limited carpeting and was free of mildew, mold, mice droppings and inadequate heating. To provide a reasonable accommodation so that this participant would pay no more than 40 percent of her adjusted income toward the family share, the GDCA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone number 202–708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Housing Authority of the City of Los Angeles (HACLA), Los Angeles, CA.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: November 6, 2008.

Reason Waived: The HACLA requested a waiver regarding exception payment standards so that it could provide a reasonable accommodation to a person with disabilities. The participant, who is a paraplegic, was required to move to a ground level wheelchair-accessible unit as verified by her physician. To provide a reasonable accommodation so that participant payment was no more than 40 percent of her adjusted income, the HACLA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone number 202–708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Alaska Housing Finance Corporation (AHFC), Anchorage, AK

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher

payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: November 6, 2008.

Reason Waived: The AHFC requested a waiver regarding exception payment standards so that it could provide a reasonable accommodation to persons with disabilities. The applicant, a disabled single-member family with significant respiratory issues and very limited mobility, was unable to locate an accessible unit within the AHFC's maximum payment standard. To provide a reasonable accommodation so that this applicant would pay no more than 40 percent of his adjusted income toward the family share, the AHFC was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR for an accessible unit.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone number 202–708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Boone County Housing Authority (BCHA), Boone County, IL.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(c)(3) states that if the amount on the PS schedule is decreased during the term of the HAP contract, the lower PS amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: December 10, 2008.

Reason Waived: The BCHA requested a waiver of payment standard (PS) requirements to permit it to implement reduced PSs earlier than required to avoid termination of housing assistance payments (HAP) contracts during calendar year 2009 due to insufficient funding. The waiver was granted because this cost-saving measure would enable the BCHA to both manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone number 202–708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Housing Authority of Thurston County (HATC), Olympia, WA.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: December 23, 2008.

Reason Waived: The HATC requested a waiver regarding exception payment standards so that it could provide a reasonable accommodation to a person with disabilities. The participant, who is unable to walk, was unable to search for a new unit as documented by her health care provider. Consequently, the participant was paying over 75 percent of her monthly adjusted income toward her family share. To provide a reasonable accommodation so participant payment was no more than 40 percent of her adjusted income, the HALC was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone number 202–708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Housing Authority of Lincoln County (HALC), Newport, OR.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: October 2, 2008.

Reason Waived: The HAS requested a waiver of requirements regarding the Agreement to Enter Into a Housing Assistance Payments (HAP) Contract (Agreement) to permit it to continue rental assistance under a HAP contract for Verandah Apartments. The waiver was granted since the project was financed with a FHA 221(d)(4) insured mortgage and the financing source was subject to the same requirements as the Agreement. The Georgia Office of Multifamily Housing verified that the property complied with the requirements of the Agreement.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone number 202–708–0477.

• *Regulation:* 24 CFR 984.303(b)(2).

Project/Activity: State of California Department of Housing and Community Development; Sacramento, CA.

Nature of Requirement: HUD's Family Self-Sufficiency (FSS) program regulation at 24 CFR 984.303(b)(2) requires each FSS family that is receiving welfare assistance have an interim goal of being welfare-free for at least one year before the expiration of the term of their FSS Contract of Participation.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: December 30, 2008.

Reason Waived: Although the FSS program participant was welfare-free and had complied with all other aspects of her FSS Contract of Participation, serious health problems prevented her from completing the interim goal within the term of her FSS contract. The waiver allowed the participant to receive the FSS escrow funds that were calculated based on the increases in her earned income during the term of her FSS contract.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone 202–708–0477.

• *Regulation:* 24 CFR 990.185(a).

Project/Activity: Housing Authority of the County of Chester (HACC), West Chester, PA.

Nature of Requirement: The Energy Policy Act of 2005 amended Section 9(e)(2)(C) of the Housing Act of 1937 by changing the contract period from 12 to 20 years, yet HUD's regulation at 24 CFR 990.185(a) had not yet conformed to the amended statutory period and continued to present a maximum period of 12 years.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: November 21, 2008.

Reason Waived: HACC was undertaking an energy project and anticipated energy conservation measures whose life cycle expectations and costs were expected to exceed the 12-year regulatory limitation in 24 CFR 990.185(a). Based upon anticipated savings and benefits to HACC and its residents, the waiver was granted to allow a longer payback period, contingent on HUD's provisions.

Contact: Nicole Faison, Director, Office of Public Housing Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4226, Washington, DC 20410–5000, telephone number 202–708–0744.

• *Regulation:* 24 CFR 990.315.

Project/Activity: San Francisco Housing Authority (SFHA), San Francisco, CA.

Nature of Requirement: The regulation requires timely submission of operating budgets for HUD approval.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: November 24, 2008.

Reason Waived: The deadline requirement was waived and extended because HUD requested revised alignments of asset management projects, causing re-negotiation of labor agreements simultaneously with the appointment of a new Executive Director.

Contact: Gregory A. Byrne, Director, Financial Management Division, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone number 202–475–8632.

• *Regulation:* 24 CFR 1000.224.

Project/Activity: Village of Stony River, Alaska.

Nature of Requirement: HUD's regulation at 24 CFR 1000.224 provides authority to waive Indian Housing Plan (IHP) requirements when there are circumstances beyond the control of the Tribe.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: November 21, 2008.

Reason Waived: The Alaska Village Council of Presidents Regional Housing Authority (AVCPRHA) is the Tribally designated housing entity (TDHE) for 48 Tribes, including the Stony River Traditional Council (SRTC). AVCPRHA attempted to obtain tribal certification from SRTC for the FY 2008 IHP, but was unsuccessful due to lack of a legal quorum of SRTC for the past 9 months. Tribal certification was waived so to reserve $73,786 for the Village of Stony River.

Contact: Rodger J. Boyd, Deputy Assistant Secretary, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4126, Washington, DC 20410; (202) 401–7914.

[FR Doc. E9–5653 Filed 3–16–09; 8:45 am]

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