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1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
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**WHEN:** Tuesday, March 18, 2008  
9:00 a.m.-Noon

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Washington, DC 20002

**RESERVATIONS:** (202) 741-6008



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## Presidential Documents

Title 3—

Presidential Determination No. 2008-13 of February 28, 2008

The President

**Waiver of Restriction on Providing Funds to the Palestinian Authority**

### Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 650(b) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008 (Division J, Public Law 110-161) (the "Act"), I hereby certify that it is important to the national security interests of the United States to waive the provisions of section 650(a) of the Act, in order to provide funds appropriated to carry out chapter 4 of part II of the Foreign Assistance Act of 1961, as amended, to the Palestinian Authority.

You are directed to transmit this determination to the Congress, with a report pursuant to section 650(d) of the Act, and to publish the determination in the **Federal Register**.

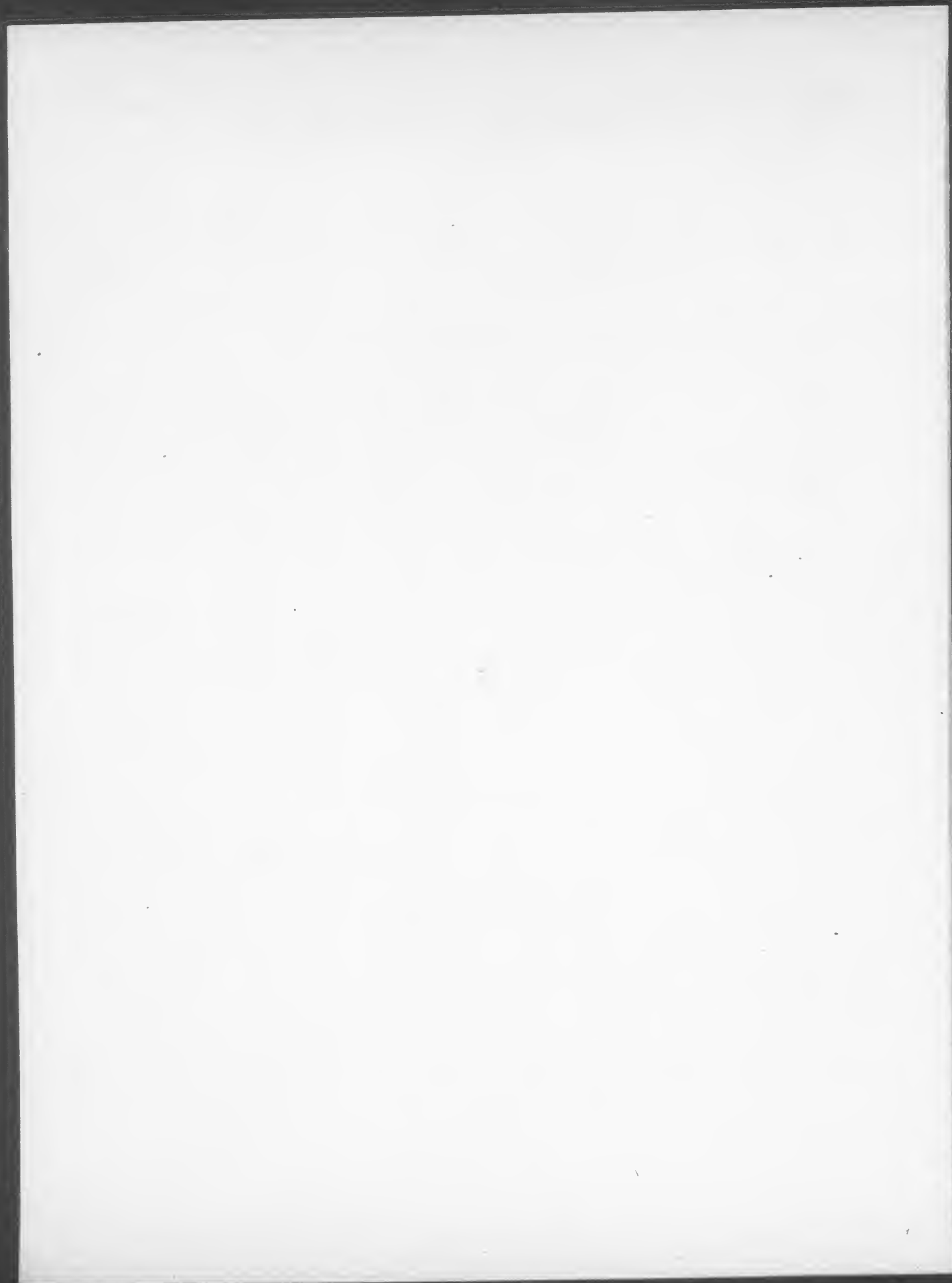


THE WHITE HOUSE,  
Washington, February 28, 2008.

[FR Doc. 08-990

Filed 3-6-08; 8:45 am]

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# Rules and Regulations

Federal Register

Vol. 73, No. 46

Friday, March 7, 2008

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF HOMELAND SECURITY

### Bureau of Customs and Border Protection

#### 19 CFR Part 122

[USCBP-2007-0017; CBP Dec. 08-01]

#### Addition of San Antonio International Airport to List of Designated Landing Locations for Certain Aircraft

**AGENCY:** Customs and Border Protection; Department of Homeland Security.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs and Border Protection (CBP) Regulations by adding the San Antonio International Airport (SAT), located in San Antonio, Texas, to the list of designated airports at which certain aircraft arriving in the continental United States from certain areas south of the United States must land for CBP processing. This amendment is made to improve the effectiveness of CBP enforcement efforts to combat the smuggling of contraband by air into the United States from the south.

**DATES:** April 7, 2008.

**FOR FURTHER INFORMATION CONTACT:** Fred Ramos, Program Manager, Admissibility and Passenger Programs, Office of Field Operations, Customs and Border Protection at (202) 344-3726.

#### SUPPLEMENTARY INFORMATION:

##### Background

In a Notice of Proposed Rulemaking (NPRM) published in the *Federal Register* on September 11, 2007, CBP proposed to amend its regulations by adding the San Antonio International Airport (SAT), located in San Antonio, Texas, to the list of designated airports at which certain aircraft arriving in the continental United States from certain areas south of the United States must

land for CBP processing. *See* 72 FR 51730.

As part of CBP's efforts to combat drug-smuggling activities, CBP air commerce regulations were amended in 1975 by Treasury Decision (T.D.) 75-201, to impose special reporting requirements and control procedures on certain aircraft arriving in the continental United States via the U.S./Mexican border, the Pacific Coast, the Gulf of Mexico, or the Atlantic Coast from certain locations in the southern portion of the Western Hemisphere. These special reporting requirements apply to all aircraft except the following: Public aircraft; those aircraft operated on a regularly published schedule, pursuant to a certificate of public convenience and necessity or foreign aircraft permit issued by the Department of Transportation authorizing interstate, overseas air transportation; and those aircraft with a seating capacity of more than 30 passengers or a maximum payload capacity of more than 7,500 pounds which are engaged in air transportation for compensation or hire on demand. *See* 19 CFR 122.23(a). Thus, since 1975, commanders of such aircraft have been required to furnish CBP with notice one hour prior to crossing the coastline or border, and to land at the nearest airport to the point of crossing designated by CBP for processing.

Specifically, the regulations provide that subject aircraft arriving in the continental United States from certain areas south of the United States must furnish a notice of intended arrival to the designated airport located nearest the point of crossing. 19 CFR 122.23. Section 122.24(b) provides that, unless exempt, such aircraft must land at designated airports for CBP processing and delineates the airports designated for reporting and processing purposes for these aircraft. 19 CFR 122.24(b).

During the previous six years, aircraft subject to the special reporting requirements entering the United States from the specified foreign areas at a point of crossing near San Antonio, were required to land at San Antonio International Airport (SAT) for processing by CBP. These international flights have been arriving at SAT since November 2000, when SAT was temporarily designated as an airport where aircraft arriving from certain southern areas could land pursuant to

section 1453 of the Tariff Suspension and Trade Act of 2000 (Pub. L. 106-476, Nov. 9, 2000). The Miscellaneous Trade and Technical Corrections Act of 2004 (Pub. L. 108-429, Dec. 3, 2004) effectively extended the airport's designation through November 9, 2006.

This statutory designation has now expired. Community officials from San Antonio, Texas and the surrounding region have written CBP requesting that SAT be designated by regulation as an airport where aircraft arriving from certain southern areas must land.

During the six years that SAT has been statutorily designated as an airport at which these aircraft arriving from the south may land for customs processing, CBP has reported no incidents or problems arising from this designation. Such a designation will impose no additional burdens on CBP as CBP already has a significant presence at SAT, processing international passengers arriving on scheduled commercial airliners as a landing rights airport. These same CBP personnel have been processing passengers arriving from the south since SAT was temporarily designated as an airport where aircraft arriving from the south could land pursuant to the Tariff Suspension and Trade Act of 2000. SAT provides facilities and security and law enforcement support services, at no charge to CBP, to assist in the processing of aircraft. Consequently, CBP proposed in the NPRM to permanently designate SAT as an airport where certain aircraft, arriving in the United States from south of the United States, are authorized to land for CBP processing.

#### Analysis of Comments and Conclusion

CBP received 34 comments in response to the NPRM. These comments were all in favor of the proposal. Each comment was favorable in its entirety; no alternate courses of action, limitations or possible problems were presented by the commenters. As CBP continues to believe that this amendment will improve the effectiveness of CBP enforcement efforts to combat the smuggling of contraband by air into the United States from the south, CBP is, as proposed, adding SAT to the list of designated airports at which certain aircraft arriving in the continental United States from certain

areas south of the United States must land for CBP processing.

#### Authority

This change is made under the authority of 5 U.S.C. 301, 19 U.S.C. 1433, 1644a, 1624, and 6 U.S.C. 203.

#### The Regulatory Flexibility Act and Executive Order 12866

This amendment expands the list of designated airports at which certain aircraft may land for customs processing. As described in this document, certain international flights have been arriving at SAT, pursuant to statute, from November 2000, through November 9, 2006. The expansion of the list of designated airports to include SAT will not result in any new impact on affected parties but will result in a continuation of the previous situation. Therefore, CBP certifies that this rule will not have significant economic impact on a substantial number of small entities. Accordingly, the document is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Office of Management and Budget has determined that this rule is not a significant regulatory action as defined under Executive Order 12866.

#### Signing Authority

This amendment to the regulations is being issued in accordance with 19 CFR 0.2(a) pertaining to the authority of the Secretary of Homeland Security (or his or her delegate) to prescribe regulations not related to customs revenue functions.

#### List of Subjects in 19 CFR Part 122

Air carriers, Aircraft, Airports, Customs duties and inspection, Freight.

#### Amendments to Regulations

■ Part 122, Code of Federal Regulations (19 CFR part 122) is amended as set forth below:

#### PART 122—AIR COMMERCE REGULATIONS

■ 1. The authority citation for part 122, 19 CFR, continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

\* \* \* \* \*

#### § 122.24 [Amended]

■ 2. In § 122.24(b) the chart is amended by adding to the list of airports, in alphabetical order in the "Location" column, "San Antonio Tex" and on the

same line, in the "Name" column, "San Antonio International Airport."

Dated: March 3, 2008.

Michael Chertoff,  
Secretary.

[FR Doc. E8-4578 Filed 3-6-08; 8:45 am]

BILLING CODE 9111-14-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 526

#### Intramammary Dosage Forms; Cephapirin Benzathine

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Fort Dodge Animal Health, Division of Wyeth. The supplemental NADA provides for a revision to the labeling of cephapirin benzathine intramammary infusion administered to dairy cows entering their dry period for the treatment of mastitis.

**DATES:** This rule is effective March 7, 2008.

**FOR FURTHER INFORMATION CONTACT:** Cindy L. Burnsteel, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240-276-8341, e-mail: [cindy.burnsteel@fda.hhs.gov](mailto:cindy.burnsteel@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** Fort Dodge Animal Health, Division of Wyeth, 800 Fifth St. NW., Fort Dodge, IA 50501, filed a supplement to NADA 108-114 that revises labeling of CEFA-DRI (cephapirin benzathine) Intramammary Infusion administered to dairy cows entering their dry period for the treatment of mastitis. The application is approved as of February 7, 2008, and the regulations are amended in 21 CFR 526.363 to reflect the approval, an editorial change, and a current format.

Approval of this supplemental NADA did not require review of additional safety or effectiveness data or information. Therefore, a freedom of information summary is not required.

FDA has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore,

neither an environmental assessment nor an environmental impact statement is required.

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

#### List of Subjects in 21 CFR Part 526

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 526 is amended as follows:

#### PART 526—INTRAMAMMARY DOSAGE FORMS

■ 1. The authority citation for 21 CFR part 526 continues to read as follows:

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

#### § 526.363 [Amended]

■ 2. In § 526.363, at the end of paragraph (d)(2), add "including penicillin-resistant strains"; and in the second sentence of paragraph (d)(3), remove "use" and add in its place "used".

Dated: February 27, 2008.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. E8-4473 Filed 3-6-08; 8:45 am]

BILLING CODE 4160-01-S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 600

[Docket No. FDA-2008-N-0135] (formerly Docket No. 2007N-0284)

#### Revision of the Requirements for Live Vaccine Processing; Confirmation of Effective Date

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** The Food and Drug Administration (FDA) is confirming the effective date of March 18, 2008, for the direct final rule that appeared in the *Federal Register* of October 18, 2007 (72 FR 59000). The direct final rule amends the biologics regulations by providing options to the existing requirements for the processing of live vaccines. This document confirms the effective date of the direct final rule.

**DATES:** Effective date confirmed: March 18, 2008.

**FOR FURTHER INFORMATION CONTACT:** Stephen Ripley, Center for Biologics Evaluation and Research (HFM-17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852-1448, 301-827-6210.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of October 18, 2007 (72 FR 59000), FDA solicited comments concerning the direct final rule for a 75-day period ending January 2, 2008. FDA stated that the effective date of the direct final rule would be on March 18, 2008, 75 days after the end of the comment period, unless any significant adverse comment was submitted to FDA during the comment period. FDA received two letters of comment on the direct final rule. However, neither of these constitutes significant adverse comment. Therefore, FDA is confirming the effective date of the direct final rule. The two comments received were from private industry and an individual. The comments received and FDA's responses to the comments are discussed as follows:

Both comments requested clarification of the change under the new 21 CFR 600.11(e)(4)(i)(B), the language for which was taken directly from the existing 21 CFR 600.11(e)(4). One comment asked whether the requirements under this section are intended to cover research and development. The comment also asked for the definition of "microorganism" and whether "test" refers to viral inactivation.

The new provision mirrors the last sentence in the existing provision. The requirements under 21 CFR 600.11(e)(4)(i)(B) apply to buildings and equipment used for the manufacture of biological products regulated by FDA, not for research and development. We do not believe it is necessary to define the term "microorganism," as this is a generally understood term, and is used throughout 21 CFR part 600. The terms "test" and "test procedures" do not refer to manufacturing steps such as viral inactivation.

Another comment asked whether the industry practice of using biological indicators for equipment or materials sterilization qualification is consistent with the requirements in new 21 CFR 600.11(e)(4)(i)(B).

This direct final rule does not apply to microorganisms used as biological indicators for validation, qualification or monitoring of sterilization cycles. The rule does not change the requirements for those products set forth in 21 CFR 600.11(e)(2).

**Authority:** Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, the amendments issued thereby become effective on March 18, 2008.

Dated: February 29, 2008.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E8-4471 Filed 3-6-08; 8:45 am]

BILLING CODE 4160-01-S

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9385]

RIN 1545-BG65

#### Diversification Requirements for Variable Annuity, Endowment, and Life Insurance Contracts

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations concerning the diversification requirements of section 817(h) of the Internal Revenue Code (Code). The regulations expand the list of holders whose beneficial interests in an investment company, partnership, or trust do not prevent a segregated asset account from looking through to the assets of the investment company, partnership, or trust, to satisfy the requirements of section 817(h). The regulations also remove the sentence in § 1.817-5(a)(2) that provides that the payment required to remedy an inadvertent diversification failure must be based on the tax that would have been owed by the policyholders if they were treated as receiving the income on the contract. The regulations affect insurance companies that issue variable contracts and affect policyholders who purchase such contracts.

**DATES:** *Effective/applicability date:* These regulations are effective as of March 7, 2008.

**FOR FURTHER INFORMATION CONTACT:** James Polfer, (202) 622-3970 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 817(d) defines a variable contract for purposes of part I of subchapter L of the Code (sections 801-818). For a contract to be a variable contract, it must provide for the

allocation of all or a part of the amounts received under the contract to an account that, pursuant to state law or regulation, is segregated from the general asset accounts of the issuing insurance company. In addition, for a life insurance contract to be a variable contract, it must qualify as a life insurance contract for Federal income tax purposes, and the amount of the death benefits (or the period of coverage) must be adjusted on the basis of the investment return and the market value of the segregated asset account; for an annuity contract to be a variable contract, it must provide for the payment of annuities, and the amounts paid in, or the amount paid out, must reflect the investment return and the market value of the segregated asset account; for a contract that provides funding of insurance on retired lives to be a variable contract, the amounts paid in, or the amounts paid out, must reflect the investment return and the market value of the segregated asset account.

Section 817(h)(1) provides that a variable contract that is based on a segregated asset account is not treated as an annuity, endowment, or life insurance contract unless the segregated asset account is adequately diversified in accordance with regulations prescribed by the Secretary. If a segregated asset account is not adequately diversified for a calendar quarter, then the contracts supported by that segregated asset account are not treated as annuity, endowment, or life insurance contracts for that period and subsequent periods, even if the segregated asset account is adequately diversified in those subsequent periods. Under § 1.817-5(a), if a segregated asset account is not adequately diversified, income earned by that segregated asset account is treated as ordinary income received or accrued by the policyholders. Section 1.817-5(a)(2) provides conditions an issuer of a variable contract must satisfy in order to correct an inadvertent failure to diversify. Rev. Proc. 92-25, 1992-1 CB 741, see § 601.601(d)(2) of this chapter, sets forth in more detail the procedure by which an issuer may request the relief described in § 1.817-5(a)(2).

Congress enacted the diversification requirements of section 817(h) to "discourage the use of tax-preferred variable annuity and variable life insurance primarily as investment vehicles." H.R. Conf. Rep. No. 98-861, at 1055 (1984). In section 817(h)(1), Congress granted the Secretary broad regulatory authority to develop rules to carry out this intent. Congress directed that these standards be imposed because "by limiting a customer's ability to

select specific investments underlying a variable contract, [adequate diversification] will help ensure that a customer's primary motivation in purchasing the contract is more likely to be the traditional economic protections provided by annuities and life insurance." S. Prt. 98-169, Vol. I at 546 (1984). A primary directive from Congress to Treasury in enacting the standards was to "deny annuity or life insurance treatment for investments that are publicly available to investors." H.R. Conf. Rep. No. 98-861, at 1055 (1984).

Section 817(h)(4) provides a look-through rule under which taxpayers do not treat the interest in a regulated investment company (RIC) or trust as a single asset of the segregated asset account but rather apply the diversification tests by taking into account the assets of the RIC or trust. Section 817(h) further provides that the look-through rule applies only if all of the beneficial interests in a RIC or trust are held by one or more insurance companies (or affiliated companies) in their general account or segregated asset accounts, or by fund managers (or affiliated companies) in connection with the creation or management of the RIC or trust.

Under § 1.817-5(f)(1), if look-through treatment is available, a beneficial interest in a RIC, real estate investment trust, partnership, or trust that is treated under sections 671 through 679 as owned by the grantor or another person ("investment company, partnership or trust") is not treated as a single investment of a segregated asset account for purposes of testing diversification. Instead, a pro rata portion of each asset of the investment company, partnership, or trust is treated as an asset of the segregated asset account. Section 1.817-5(f)(2)(i) provides that the look-through rule applies to any investment company, partnership, or trust if (1) all the beneficial interests in the investment company, partnership, or trust are held by one or more segregated asset accounts of one or more insurance companies; and (2) public access to the investment company, partnership, or trust is available exclusively through the purchase of a variable contract (except as otherwise permitted in § 1.817-5(f)(3)).

Under § 1.817-5(f)(3), look-through treatment is not prevented by reason of beneficial interests in an investment company, partnership, or trust that are

(1) Held by the general account of a life insurance company or a corporation related to a life insurance company, but only if the return on such interests is computed in the same manner as the return on an interest held by a

segregated asset account is computed, there is no intent to sell such interests to the public, and a segregated asset account of such life insurance company also holds or will hold a beneficial interest in the investment company, partnership, or trust;

(2) Held by the manager, or a corporation related to the manager, of the investment company, partnership or trust, but only if the holding of the interests is in connection with the creation or management of the investment company, partnership or trust, the return on such interest is computed in the same manner as the return on an interest held by a segregated asset account is computed, and there is no intent to sell such interests to the public;

(3) Held by the trustee of a qualified pension or retirement plan; or

(4) Held by the public, or treated as owned by the policyholders pursuant to Rev. Rul. 81-225, see § 601.601(d)(2) of this chapter, but only if (A) the investment company, partnership or trust was closed to the public in accordance with Rev. Rul. 82-55, 1982-1 CB 12, see § 601.601(d)(2) of this chapter, or (B) all the assets of the segregated asset account are attributable to premium payments made by policyholders before September 26, 1981, to premium payments made in connection with a qualified pension or retirement plan, or to any combination of such premium payments.

On July 31, 2007, the Treasury Department and the IRS published a notice of proposed rulemaking (REG-118719-07) under section 817 in the *Federal Register* (72 FR 41651). The proposed regulations would expand the list of holders whose beneficial interests in an investment company, partnership, or trust do not prevent a segregated asset account from looking through to the assets of the investment company, partnership, or trust, to satisfy the requirements of section 817(h). The proposed regulations also would remove the sentence in § 1.817-5(a)(2) that provides that the payment required to remedy an inadvertent diversification failure must be based on the tax that would have been owed by the policyholders if they were treated as receiving the income on the contract. One written comment was received in response to the notice of proposed rulemaking, and no public hearing was requested or held. After consideration of the comment, the proposed regulations are adopted as final regulations with the change discussed below.

## Summary of Comment and Explanation of Revisions

### Comment on the Proposed Regulation

#### A. Amendment to § 1.817-5(a)(2) (Remedy for Inadvertent Nondiversification)

The regulations remove the sentence in § 1.817-5(a)(2) that provides that the payment required to remedy an inadvertent diversification failure must be based on the tax that would have been owed by the policyholders if they were treated as receiving the income on the contract.

The commentator supports the removal of the sentence. The commentator also suggested that the correction procedures under section 817(h) should be modified to (1) provide flexibility to more appropriately address various fact patterns, (2) encourage taxpayers to establish compliance practices and procedures, (3) promote compliance by providing limited fees for voluntary corrections, (4) provide for fees and sanctions in graduated steps to ensure that there is always an incentive for prompt correction, and (5) provide for sanctions that are reasonable in light of the nature, extent, and severity of the violation. The Treasury Department and the IRS will consider these comments in the course of evaluating what steps, if any, to take in response to submissions received concerning correction procedures more generally under Notice 2007-15, 2007-7 I.R.B. 503 (February 12, 2007).

#### B. Expansion of List of Permitted Investors Under § 1.817-5(f)(3)

The regulations expand the list of permitted investors in § 1.817-5(f)(3) to include (i) qualified tuition programs as defined in section 529, (ii) trustees of pension or retirement plans established and maintained outside of the United States primarily for the benefit of individuals substantially all of whom are nonresident aliens, and (iii) an account which, pursuant to Puerto Rican law or regulation, is segregated from the general asset accounts of the life insurance company that owns the account, provided the requirements of section 817(d) and (h) are satisfied.

The commentator supports such an expansion of the list of permitted investors and urged that the list be further expanded to include segregated asset accounts of any foreign insurer that makes an election under section 953(d) to be treated as a domestic corporation for U.S. tax purposes. A general rule to this effect would be beyond the scope of the proposed regulations and may require a more



specific examination of the manner in which such accounts are segregated under the applicable foreign law. Accordingly, such an expansion is not provided in these regulations, but the Treasury Department and IRS will consider the issue for possible future published guidance.

The commentator also urged that guidance is needed concerning (1) what steps must be taken to verify that an entity is a permitted investor, and (2) what happens if, despite verification efforts, the entity in question was never a permitted investor or subsequently loses its status as such. The Treasury Department and IRS are aware of this issue, but have concluded it is beyond the scope of the proposed regulations and at this time might better be addressed by Internal Revenue Bulletin guidance or by letter ruling. Accordingly, the issue is not addressed in these final regulations, but the Treasury Department and IRS will consider the issue for possible future published guidance.

Finally, the commentator suggested that the language of the amendment that expands the list of permitted investors to include certain Puerto Rican accounts should be clarified to eliminate confusion. Specifically, in the notice of proposed rulemaking, the proviso clause of the amendment stated that such an account will be a permitted investor "provided the requirements of section 817(d) and (h) are satisfied." The commentator expressed concern that the language of the amendment as written in the notice of proposed rulemaking could be read to present an issue of circularity (that is, to be a permitted investor, the account must satisfy section 817(h), but to satisfy section 817(h), the account must be a permitted investor.) To eliminate this potential confusion, the final regulations state that, solely for purposes of § 1.817-5(f)(3)(vi), the requirement under section 817(d)(1) that the account be segregated pursuant to State law or regulation shall be disregarded and § 1.817-5(f)(1) shall be applied without regard to the Puerto Rican segregated asset account.

#### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the

Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### Drafting Information

The principal author of these final regulations is James Polfer, Office of the Associate Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, personnel from other offices of the Treasury Department and the IRS participated in their development.

#### List of Subjects in 26 CFR Part 1

Income taxes, reporting and recordkeeping requirements.

#### Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

#### PART 1—INCOME TAX

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*  
Section 1.817-5 also issued under 26 U.S.C. 817(h).

■ **Par. 2.** Section 1.817-5 is amended as follows:

- 1. The last sentence of paragraph (a)(2)(iii) is removed.
- 2. Paragraph (f)(3)(iii) is revised.
- 3. Paragraph (f)(3)(iv) is redesignated as paragraph (f)(3)(vii).
- 4. New paragraphs (f)(3)(iv) through (vi) are added.
- The revisions and additions read as follows:

#### § 1.817-5 Diversification requirements for variable annuity, endowment, and life insurance contracts.

\* \* \* \* \*  
(f) \* \* \*  
(3) \* \* \*

(iii) Held by the trustee of a qualified pension or retirement plan;

(iv) Held by a qualified tuition program as defined in section 529;

(v) Held by the trustee of a pension plan established and maintained outside of the United States, as defined in section 7701(a)(9), primarily for the benefit of individuals substantially all of whom are nonresident aliens, as defined in section 7701(b)(1)(B);

(vi) Held by an account which, pursuant to Puerto Rican law or

regulation, is segregated from the general asset accounts of the life insurance company that owns the account, provided the requirements of section 817(d) and (h) are satisfied. Solely for purposes of this paragraph (f)(3)(vi), the requirement under section 817(d)(1) that the account be segregated pursuant to State law or regulation shall be disregarded and § 1.817-5(f)(1) shall be applied without regard to the Puerto Rican segregated asset account; or

\* \* \* \* \*

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: February 29, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8-4577 Filed 3-6-08; 8:45 am]

BILLING CODE 4830-01-P

#### DEPARTMENT OF THE TREASURY

#### Internal Revenue Service

#### 26 CFR Part 1

[TD 9383]

RIN 1545-BH21

#### Guidance Under Section 1502; Amendment of Matching Rule for Certain Gains on Member Stock

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final and temporary regulations.

**SUMMARY:** This document contains final and temporary regulations concerning the treatment of certain intercompany gain with respect to consolidated group member stock. These amendments provide for the redetermination of an intercompany gain as excluded from gross income in certain member stock transactions. These regulations affect corporations filing consolidated returns. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

**DATES:** *Effective Date:* These regulations are effective on **March 7, 2008**.

*Applicability Date:* For dates of applicability, see § 1.1502-13T(c)(6)(ii)(C)(2) and (f)(7)(ii).

**FOR FURTHER INFORMATION CONTACT:** John F. Tarrant or Ross E. Poulsen, (202) 622-7790 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

## Background

Section 1.1502-13 provides rules governing the timing and characterization of items resulting from transactions between consolidated group members. Section 1.1502-13(c) provides general rules under which the timing and character of such items can be deferred or recharacterized to clearly reflect the taxable income (and tax liability) of the group as a whole. These rules generally apply a "matching" principle under which, in a property transaction, the seller's (S) timing is linked to the buyer's (B) use of its basis in the property and S and B's characterizations are subject to redetermination in order to effectuate single entity principles.

Section 1.1502-13(c)(6)(i) provides a general rule that S's intercompany item might be redetermined under § 1.1502-13(c)(1)(i) to be excluded from gross income or treated as a noncapital, nondeductible amount where B's corresponding item is excluded or nondeductible. However, § 1.1502-13(c)(6)(ii) provides that, notwithstanding the general rule in paragraph (c)(1)(i), S's intercompany income or gain is redetermined to be excluded from gross income only to the extent it involves one of three specific situations. S's intercompany income or gain is redetermined to be excluded from gross income to the extent B's corresponding item is a deduction or loss and, in the taxable year the item is taken into account under § 1.1502-13, it is permanently and explicitly disallowed under another provision of the Internal Revenue Code or regulations. § 1.1502-13(c)(6)(ii)(A). For this purpose, an amount is not permanently and explicitly disallowed to the extent that, among other things, the Internal Revenue Code or regulations provide that the amount is not recognized (for example, a loss that is realized but not recognized under section 332 or section 355(c)). § 1.1502-13(c)(6)(ii)(A)(1). S's intercompany income or gain is redetermined to be excluded from gross income to the extent B's corresponding item is a loss that is realized but not recognized under section 311(a) on a distribution to a nonmember. § 1.1502-13(c)(6)(ii)(B). Finally, S's intercompany item of income or gain is redetermined to be excluded from gross income to the extent "the Commissioner determines that treating S's intercompany item as excluded from gross income is consistent with the purposes of § 1.1502-13 and other provisions of the Internal Revenue Code and regulations." § 1.1502-13(c)(6)(ii)(C).

The IRS has received ruling requests asking the Commissioner to determine that S's gain with respect to member stock should be redetermined as excluded from gross income, as described in § 1.1502-13(c)(6)(ii)(C). In considering these requests, the IRS has concluded that the principles set out in § 1.1502-13(c)(6)(ii)(C) guiding the Commissioner's exercise of discretion are not clear enough to justify the redetermination of such gain as excludible. In the context of gain with respect to member stock, the intercompany transaction regulations, and the consolidated return regulations in general, reflect a balancing of single and separate entity concerns. Gain with respect to member stock is often derivative and duplicative of potential gain with respect to the member's underlying assets. The consolidated return regulations permit but do not require the mitigation of this duplication. In many instances, the allowed mitigation is tailored very narrowly to protect against any possible implication of other consolidated return policies. See §§ 1.1502-13(c)(6)(ii)(A), 1.1502-13(f)(5), and 1.1502-13(f)(6). Thus, for example, although § 1.1502-13(a) provides that the purpose of the intercompany transaction rules is to clearly reflect the taxable income of the group as a whole (which includes the elimination of duplicated gain), § 1.1502-13(c)(6)(ii)(A)(1) explicitly contemplates possible gain duplication where S's intercompany item is taken into account due to a section 332 or section 355(c) transaction. Accordingly, the IRS generally does not foresee situations in which it would exercise its discretion to redetermine intercompany gain on member stock to be excludible under § 1.1502-13(c)(6)(ii)(C).

The IRS and Treasury Department also do not foresee situations in which it should be necessary to invoke § 1.1502-13(c)(6)(ii)(C) (the "Commissioner's Discretionary Rule") with respect to intercompany gain on property other than stock. Nevertheless, in the Proposed Rules section in this issue of the **Federal Register** (REG-137573-07), the IRS and Treasury Department request comments on whether any such situations are not appropriately addressed by other provisions of § 1.1502-13. The Commissioner's Discretionary Rule will be retained while the IRS and Treasury Department consider such comments. However, absent compelling comments, the IRS and Treasury Department anticipate ultimately eliminating the Commissioner's Discretionary Rule.

The IRS and Treasury Department, however, have identified one additional

situation in which it would be appropriate to allow the exclusion of intercompany gain with respect to member stock. Accordingly, these temporary regulations redesignate current § 1.1502-13(c)(6)(ii)(C) as § 1.1502-13(c)(6)(ii)(D) and add a new specific exception to the rule limiting redetermination of intercompany income or gain in § 1.1502-13(c)(6)(ii). This new rule has the advantage of clarity, and avoids requiring the IRS to exercise its discretion on an ad hoc basis.

## Explanation of Provisions

These temporary regulations provide a rule under which, notwithstanding § 1.1502-13(c)(6)(ii)(A)(1), an intercompany gain with respect to member stock is redetermined to be excluded from gross income to the extent that (1) such gain is the common parent's (P) intercompany item, (2) immediately before the intercompany gain is taken into account, P holds the member stock with respect to which the intercompany gain was realized, (3) P's basis in such member stock that reflects the intercompany gain that is taken into account is eliminated without the recognition of gain or loss (and that basis is not further reflected in the basis of any successor asset), (4) the group has not and will not derive any Federal income tax benefit from the intercompany transaction that gave rise to such intercompany gain or the redetermination of the intercompany gain (including any adjustment to basis in member stock under § 1.1502-32), and (5) the effects of the intercompany transaction have not previously been reflected, directly or indirectly, on the group's consolidated return. For this purpose, the redetermination of P's intercompany gain is not in and of itself a Federal income tax benefit that would preclude redetermination under this rule.

The purpose of the provision is to prevent the effective duplication of gain within a consolidated group that would result from taking an intercompany gain into account without any corresponding tax basis (or other resulting tax benefit). The provision's five requirements are intended to ensure that any intercompany gain with respect to member stock may only be redetermined to be excluded from gross income to the extent that it is not reflected in basis after the transaction (or does not result in some other tax benefit). Accordingly, where some tax benefit has been derived from the intercompany transaction, a portion of the intercompany gain may still be redetermined to be excluded from gross

income to the extent that no additional tax benefits were or would be derived and the provision's other requirements are satisfied. See § 1.1502-13T(f)(7)(i) *Example 8*.

For this purpose, the term "Federal income tax benefit" is intended to be construed broadly. For example, the term includes, but is not limited to, the reduction of an excess loss account that would otherwise be taken into account in the transaction. The effects of the intercompany transaction may be reflected on the group's consolidated return, for example, to the extent that any increase in the basis of the member's stock as a result of the intercompany transaction is taken into account and alters the reduction of any member's attributes under sections 108 and 1017 and § 1.1502-28.

In the Proposed Rules section in this issue of the **Federal Register** (REG-137573-07), the IRS and Treasury Department are requesting comments as to whether the rule should be broadened to apply to additional situations that would result in the effective duplication of gain. For example, should the rule be broadened to apply to other transactions involving member stock, or similar transactions involving nonmember stock?

#### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has been determined, pursuant to 5 U.S.C. 553(b)(B), that good cause exists for dispensing with the notice and public comment procedures and that, pursuant to 5 U.S.C. 553(d)(3), good cause exists to dispense with a delayed effective date. The regulations are necessary to provide immediate guidance and relief to taxpayers regarding certain intercompany gains with respect to member stock. For the applicability of the Regulatory Flexibility Act refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

#### Drafting Information

The principal author of these regulations is John F. Tarrant, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS

and Treasury Department participated in their development.

#### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

#### PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Section 1.1502-13T also issued under 26 U.S.C. 1502. \* \* \*

■ **Par. 2.** Section 1.1502-13 is amended as follows:

- 1. Paragraph (c)(6)(ii)(C) is redesignated as (c)(6)(ii)(D).
- 2. Paragraph (c)(6)(ii)(C) is added.
- 3. Paragraph (f)(7) is redesignated as paragraph (f)(7)(i) and a new paragraph heading is added.
- 4. Newly-designated paragraph (f)(7)(i) *Examples 7 and 8*, and paragraph (f)(7)(ii) are added.

The revisions and additions read as follows:

#### § 1.1502-13 Intercompany transactions.

\* \* \* \* \*

(c) \* \* \*  
(6) \* \* \*  
(ii) \* \* \*

(C) [Reserved]. For further guidance, see § 1.1502-13T(c)(6)(ii)(C).

\* \* \* \* \*

(f) \* \* \*

(7) *Examples*—(i) *In general.* \* \* \*

\* \* \* \* \*

*Example 7* [Reserved]. For further guidance, see § 1.1502-13T(f)(7)(i) *Example 7*.

*Example 8* [Reserved]. For further guidance, see § 1.1502-13T(f)(7)(i) *Example 8*.

(ii) [Reserved]. For further guidance, see § 1.1502-13T(f)(7)(ii).

■ **Par. 3.** Section 1.1502-13T is added to read as follows:

#### § 1.1502-13T Intercompany transactions (temporary).

(a) through (c)(6)(ii)(B) [Reserved]. For further guidance, see § 1.1502-13(a) through (c)(6)(ii)(B).

(C) *Certain intercompany gains on member stock*—(1) *In general.* Notwithstanding § 1.1502-13(c)(6)(ii)(A)(1), intercompany gain with respect to member stock is redetermined to be excluded from gross income to the extent that—

(i) The gain is the common parent's (P) intercompany item;

(ii) Immediately before the intercompany gain is taken into account, P holds the member stock with respect to which the intercompany gain was realized;

(iii) P's basis in such member stock that reflects the intercompany gain that is taken into account is eliminated without the recognition of gain or loss (and such eliminated basis is not further reflected in the basis of any successor asset);

(iv) The group has not and will not derive any Federal income tax benefit from the intercompany transaction that gave rise to such intercompany gain or the redetermination of the intercompany gain (including any adjustment to basis in member stock under § 1.1502-32); and

(v) The effects of the intercompany transaction have not previously been reflected, directly or indirectly, on the group's consolidated return. For this purpose, the redetermination of the intercompany gain is not in and of itself considered a Federal income tax benefit.

(2) *Effective/applicability date*—(i) *In general.* This paragraph (c)(6)(ii)(C) applies with respect to items taken into account on or after *March 7, 2008*.

(ii) *Expiration date.* The applicability of this paragraph (c)(6)(ii)(C) will expire on *March 7, 2011*.

(c)(6)(ii)(D) through (f)(7)(i) *Example 6* [Reserved]. For further guidance, see § 1.1502-13(c)(6)(ii)(D) through (f)(7)(i) *Example 6*.

*Example 7. Intercompany stock sale followed by section 332 liquidation into common parent.* (i) *Facts.* P owns all of the stock of S, S owns all the stock of T, and T owns all of the stock of T1. On January 1 of Year 1, S distributes all of the T stock to P in a distribution to which section 301 applies. At the time of this distribution, the value of the T stock is \$100 and S has a \$40 basis in the T stock. Under section 311(b), S recognizes a \$60 gain. Under section 301(d), P's basis in the T stock is \$100. S will take its \$60 gain into account under the matching rule in paragraph (c) of this section. On January 1 of Year 4, in an independent transaction, S distributes all of its assets to P in a complete liquidation to which section 332 applies, and, under paragraph (j)(2) of this section, P succeeds to S's \$60 gain. On January 1 of Year 7, T distributes all of its T1 stock to P in a transaction to which section 355 applies. At the time of this distribution, P has a basis in the T stock of \$100, the value of the T stock (without regard to T1) is \$75, and the value of the T1 stock is \$25. Under section 358, P allocates \$25 of its \$100 basis in the T stock to the T1 stock, and, under paragraph (j)(1) of this section, the T1 stock becomes a successor asset to the T stock. On January 1 of Year 9, in an independent transaction, when T's assets .

have a value of \$75, T distributes all of its assets to P in a complete liquidation to which section 332 applies.

(ii) *Analysis.* Under paragraphs (b)(1) and (f)(2) of this section, S's distribution of the T stock to P is an intercompany transaction, S is the selling member, and P is the buying member. In Year 9 when T liquidates, P has \$0 of unrecognized gain or loss under section 332 because P has a \$75 basis in the stock of T and receives a \$75 distribution with respect to its T stock. Under paragraph (b)(3)(ii) of this section, P's \$0 of unrecognized gain or loss with respect to the T stock under section 332 is a corresponding item. P takes \$45 of its intercompany gain into account under the matching rule in Year 9 to reflect the difference between P's \$0 of unrecognized gain and P's \$45 of recomputed unrecognized gain. (If P and S were divisions of a single corporation, P would have had a \$40 basis in the T stock, and, after the Year 7 distribution of the T1 stock, would have held the T stock with a \$30 basis.) Paragraph (c)(6) of this section does not prevent the redetermination of P's intercompany gain as excluded from gross income to the extent that the gain is P's intercompany item, P holds the T stock with respect to which this portion of the intercompany gain was realized, P's basis in the T stock that reflects the \$45 intercompany gain taken into account is eliminated without the recognition of gain or loss (and this eliminated basis is not further reflected in the basis of any successor asset), the group has not derived any Federal income tax benefit from the basis in the T stock and will not derive any Federal income tax benefit from a redetermination of this portion of the gain, and the effects of the intercompany transaction have not previously been reflected, directly or indirectly, on the P group's consolidated return. (See paragraph (c)(6)(ii)(C) of this section.) Accordingly, under paragraph (c)(6)(ii)(C) of this section, the \$45 intercompany gain that P takes into account is redetermined to be excluded from gross income.

*Example 8. Intercompany stock sale followed by section 355 distribution by the common parent.* (i) *Facts.* The facts are the same as *Example 7*, except that T does not distribute the stock of T1, instead, in Year 7, T makes a distribution of \$50 to P in a transaction to which section 301 applies. Under § 1.1502-32, P's basis in its T stock is reduced by \$50 and, under paragraph (f)(2)(ii) of this section, the intercompany distribution is excluded from P's gross income. Further, in Year 9, instead of liquidating T, P distributes the T stock to its shareholders in a transaction to which section 355 applies.

(ii) *Analysis.* On the distribution of the T stock, P has \$0 of unrecognized gain under section 355(c) because P has a \$50 basis in the stock of T which has a value of \$50. Under paragraph (b)(3)(ii) of this section, P's \$0 of unrecognized gain or loss with respect to the T stock under section 355(c) is a corresponding item. P takes its \$60 intercompany gain into account under the matching rule in Year 9 to reflect the difference between P's \$0 of unrecognized gain and P's \$60 of recomputed gain (\$50

unrecognized gain and \$10 recognized gain). (If P and S were divisions of a single corporation, P would have had a \$40 basis in the T stock, and, after the Year 7 distribution, would have held the T stock with a \$10 excess loss account.) Paragraph (c)(6) of this section does not prevent the redetermination of P's intercompany gain as excluded from gross income to the extent that the gain is P's intercompany gain, P holds the T stock with respect to which this portion of the intercompany gain was realized, P's basis in the T stock that reflects the \$60 intercompany gain taken into account is eliminated without the recognition of gain or loss (and this eliminated basis is not further reflected in any successor asset), the group has not derived any Federal income tax benefit from the basis in the T stock and will not derive any Federal income tax benefit from a redetermination of this portion of the gain, and the effects of the intercompany transaction have not previously been reflected, directly or indirectly, on the P group's consolidated return. (See paragraph (c)(6)(ii)(C) of this section.) The intercompany transaction with respect to the T stock resulted in an increase in the basis of the T stock, and this increase in the basis of the T stock prevented P from holding the T stock with a \$10 excess loss account (as a result of the Year 7 distribution) at the time of the section 355 distribution. Accordingly, the group derived a Federal income tax benefit from the intercompany transaction to the extent of \$10. As such, under paragraph (c)(6)(ii)(C) of this section, only \$50 of the \$60 intercompany gain that P takes into account is redetermined to be excluded from gross income.

(iii) *Application of section 355(e).* If it was determined that section 355(e) applied to P's distribution of the T stock, P would recognize \$0 of gain and derive a Federal income tax benefit to the extent of the full \$60 increase in the basis of the T stock. Therefore, no portion of P's intercompany gain would be redetermined to be excluded from gross income under paragraph (c)(6)(ii)(C) of this section.

(ii) *Effective/applicability date—(A) In general.* Paragraph (f)(7)(i) *Examples 7 and 8* of this section apply with respect to items taken into account on or after *March 7, 2008*.

(B) *Expiration date.* The applicability of paragraph (f)(7)(i) *Examples 7 and 8* of this section will expire on *March 7, 2011*.

(g) through (m) [Reserved]. For further guidance, see § 1.1502-13(g) through (m).

Approved: March 3, 2008.

Linda E. stiff,

Deputy Commissioner for Services and Enforcement.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8-4573 Filed 3-6-08; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9384]

RIN 1545-BG33

#### Qualified Films Under Section 199

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations involving the deduction for income attributable to domestic production activities under section 199. The final regulations revise certain rules and examples relating to the definitions of a qualified film produced by the taxpayer under section 199(c)(4)(A)(i)(II) and (c)(6) and an expanded affiliated group under section 199(d)(4). The final regulations affect taxpayers who produce qualified films and taxpayers who are members of expanded affiliated groups.

**DATES:** *Effective Date:* These regulations are effective March 7, 2008.

*Applicability Date:* For dates of applicability, see § 1.199-8(i)(8) and (9).

**FOR FURTHER INFORMATION CONTACT:**

Concerning § 1.199-3(k), David McDonnell, at (202) 622-3040; concerning § 1.199-7, Ken Cohen (202) 622-7790 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

#### Background

This document amends §§ 1.199-3(k) and 1.199-7 of the Income Tax Regulations (26 CFR Part 1). Section 1.199-3(k) relates to the definition of qualified film produced by the taxpayer under section 199(c)(4)(A)(i)(II) and (c)(6) of the Internal Revenue Code (Code) and § 1.199-7 involves expanded affiliated groups under section 199(d)(4). Section 199 was added to the Code by section 102 of the American Jobs Creation Act of 2004 (Pub. L. 108-357, 118 Stat. 1418), and amended by section 403(a) of the Gulf Opportunity Zone Act of 2005 (Pub. L. 109-135, 119 Stat. 25), section 514 of the Tax Increase Prevention and Reconciliation Act of 2005 (Pub. L. 109-222, 120 Stat. 345), and section 401 of the Tax Relief and Health Care Act of 2006 (Pub. L. 109-432, 120 Stat. 2922).

On June 7, 2007, the IRS and Treasury Department published proposed regulations under section 199 (72 FR 31478). The proposed regulations revise certain rules and examples in TD 9263 (71 FR 31268) relating to qualified films produced by the taxpayer under section



199(c)(4)(A)(i)(II) and (c)(6) and expanded affiliated groups under section 199(d)(4). No comments were received responding to the notice of proposed rulemaking and no public hearing was requested or held. Therefore, the proposed regulations are adopted without change by this Treasury decision.

### Explanation of Provisions

#### General Overview

Section 199(a)(1) allows a deduction equal to 9 percent (3 percent in the case of taxable years beginning in 2005 or 2006, and 6 percent in the case of taxable years beginning in 2007, 2008, or 2009) of the lesser of (A) the qualified production activities income (QPAI) of the taxpayer for the taxable year, or (B) taxable income (determined without regard to section 199) for the taxable year (or, in the case of an individual, adjusted gross income).

Section 199(c)(1) defines QPAI for any taxable year as an amount equal to the excess (if any) of (A) the taxpayer's domestic production gross receipts (DPGR) for such taxable year, over (B) the sum of (i) the cost of goods sold (CGS) that are allocable to such receipts; and (ii) other expenses, losses, or deductions (other than the deduction under section 199) that are properly allocable to such receipts.

Section 199(c)(4)(A)(i) provides that the term DPGR means the taxpayer's gross receipts that are derived from any lease, rental, license, sale, exchange, or other disposition of (I) qualifying production property (QPP) that was manufactured, produced, grown, or extracted by the taxpayer in whole or in significant part within the United States; (II) any qualified film produced by the taxpayer; or (III) electricity, natural gas, or potable water produced by the taxpayer in the United States.

Section 199(c)(6) defines a qualified film to mean any property described in section 168(f)(3) if not less than 50 percent of the total compensation relating to production of the property is compensation for services performed in the United States by actors, production personnel, directors, and producers. The term does not include property with respect to which records are required to be maintained under 18 U.S.C. 2257 (generally, films, videotapes, or other matter that depict actual sexually explicit conduct and are produced in whole or in part with materials that have been mailed or shipped in interstate or foreign commerce, or are shipped or transported or are intended for shipment or transportation in interstate or foreign commerce).

Section 199(d)(4)(A) provides that all members of an expanded affiliated group (EAG) are treated as a single corporation for purposes of section 199. Under section 199(d)(4)(B), an EAG is an affiliated group as defined in section 1504(a), determined by substituting "more than 50 percent" for "at least 80 percent" each place it appears and without regard to section 1504(b)(2) and (4).

#### Qualified Film Produced by the Taxpayer

Under section 199(c)(4)(A)(i)(II), a taxpayer's gross receipts qualify as DPGR if the receipts are derived from any lease, rental, license, sale, exchange, or other disposition of any qualified film (as defined in section 199(c)(6)) produced by the taxpayer. A film must be both a "qualified film" under section 199(c)(6) and "produced by the taxpayer" under section 199(c)(4)(A)(i)(II) in order for the gross receipts to qualify as DPGR. However, as discussed in the preamble to the proposed regulations published on June 7, 2007 (72 FR 31478), the "by the taxpayer" compensation fraction in § 1.199-3(k)(5) in TD 9263 (71 FR 31268) may have resulted in a film that was produced entirely within the United States as not qualifying under section 199(c)(6) if less than 50 percent of the total compensation relating to production was paid "by the taxpayer."

This Treasury decision revises the "by the taxpayer" compensation fraction in § 1.199-3(k)(5) in TD 9263 (71 FR 31268) for determining the not-less-than-50-percent-of-the-total-compensation requirement under § 1.199-3(k)(1). Under the revised fraction in § 1.199-3(k)(5), the numerator of the revised fraction is the compensation for services performed in the United States and the denominator is the total compensation for services regardless of where the production activities are performed. The revised fraction essentially compares (in the numerator) the sum of the compensation for services paid by the taxpayer for services performed in the United States and the compensation for services paid by others for services performed in the United States to (in the denominator) the sum of the total compensation for services paid by the taxpayer for services and the total compensation for services paid by others for services regardless of location.

Under § 1.199-3(k)(6), a film that is a qualified film under § 1.199-3(k)(1) will be treated as "produced by the taxpayer" for purposes of section 199(c)(4)(A)(i)(II) if the production activity performed by the taxpayer is

substantial in nature within the meaning of § 1.199-3(g)(2). Thus, a qualified film will be treated as produced by the taxpayer if the production of the qualified film by the taxpayer is substantial in nature taking into account all of the facts and circumstances, including the relative value added by, and relative cost of, the taxpayer's production activity, the nature of the qualified film, and the nature of the production activity that the taxpayer performs.

The revised fraction in § 1.199-3(k)(5) follows the statutory language in section 199(c)(6) by referencing all compensation for services related to the production as opposed to the more limited "by the taxpayer" compensation fraction in TD 9263 (71 FR 31268). Because taxpayers may have difficulty obtaining information related to the compensation paid by others, this Treasury decision provides a safe harbor in § 1.199-3(k)(7) that treats a film as a qualified film if not less than 50 percent of the total compensation for services paid by the taxpayer is compensation for services performed in the United States. The safe harbor further provides that a qualified film will be treated as produced by the taxpayer if the taxpayer satisfies the safe harbor in § 1.199-3(g)(3) with respect to the qualified film, which requires that the direct labor and overhead costs incurred by the taxpayer to produce the qualified film within the United States account for 20 percent or more of the total costs of the film. Thus, a taxpayer will be treated as having produced a qualified film if, in connection with the qualified film, the direct labor and overhead of the taxpayer to produce the qualified film within the United States account for 20 percent or more of the taxpayer's CGS of the qualified film, or in a transaction without CGS (for example, a lease, rental, or license) account for 20 percent or more of the taxpayer's "unadjusted depreciable basis" (as defined in § 1.199-3(g)(3)(ii)) in the qualified film.

#### Expanded Affiliated Groups

As discussed in the preamble to the proposed regulations published on June 7, 2007 (72 FR 31478), § 1.199-7(e), *Example 10*, in TD 9263 (71 FR 31268) misapplies § 1.1502-13 of the consolidated return regulations. Accordingly, § 1.199-7(e), *Example 10*, has been revised to correctly apply the consolidated return regulations. In addition, as also discussed in the preamble to the proposed regulations published on June 7, 2007 (72 FR 31478), the section 199 closing of the books method under § 1.199-7(f)(1)(ii) in TD 9263 (71 FR 31268) could have

created a larger section 199 deduction than is warranted. Accordingly, this Treasury decision removes the section 199 closing of the books method and revises the *Example* in § 1.199-7(g)(3) to apply the pro rata allocation method.

#### Effective/Applicability Dates

Sections 1.199-3(k) and 1.199-7(e), *Example 10*, (f)(1), and (g)(3) are applicable to taxable years beginning on or after March 7, 2008. A taxpayer may apply §§ 1.199-3(k) and 1.199-7(e), *Example 10*, to taxable years beginning after December 31, 2004, and before March 7, 2008. However, for taxable years beginning before June 1, 2006, a taxpayer may rely on § 1.199-3(k) only if the taxpayer does not apply Notice 2005-14 (2005-1 CB 498) (see § 601.601(d)(2)(ii)(b)) or REG-105847-05 (2005-2 CB 987) (see § 601.601(d)(2)(ii)(b)) to the taxable year.

#### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### Drafting Information

The principal author of these regulations is David H. McDonnell, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

#### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

#### PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read, in part, as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

■ **Par. 2.** Section 1.199-0 is amended by:

- 1. Revising the entries for § 1.199-3(k)(6) and (7).
- 2. Adding new entries for §§ 1.199-3(k)(7)(i) and (ii); (8), (9), and (10); and 1.199-8(i)(8) and (9).
- 3. Removing the entries for § 1.199-7(f)(1)(i), (ii), and (iii).

The additions and revisions read as follows:

#### § 1.199-0 Table of contents.

\* \* \* \* \*

§ 1.199-3 Domestic production gross receipts.

\* \* \* \* \*

- (k) \* \* \*
- (6) Produced by the taxpayer.
- (7) Qualified film produced by the taxpayer—safe harbor.
- (i) Safe harbor.
- (ii) Determination of 50 percent.
- (8) Production pursuant to a contract.
- (9) Exception.
- (10) Examples.

\* \* \* \* \*

#### § 1.199-8 Other rules.

\* \* \* \* \*

- (i) \* \* \*
- (8) Qualified film produced by the taxpayer.
- (9) Expanded affiliated groups.

\* \* \* \* \*

■ **Par. 3.** Section 1.199-3 is amended by:

- 1. Revising paragraphs (k)(1), (k)(4), and (k)(5).
- 2. Redesignating paragraph (k)(6) as (k)(9).
- 3. Redesignating paragraph (k)(7) as (k)(10).
- 4. Adding new paragraphs (k)(6), (k)(7), and (k)(8).
- 5. Revising *Example 6* of newly redesignated paragraph (k)(10)

The revisions and additions read as follows:

#### § 1.199-3 Domestic production gross receipts.

\* \* \* \* \*

(k) *Definition of qualified film*—(1) *In general.* The term *qualified film* means any motion picture film or video tape under section 168(f)(3), or live or delayed television programming (film), if not less than 50 percent of the total compensation relating to the production of such film is compensation for services performed in the United States by actors, production personnel, directors, and producers. For purposes of this paragraph (k), the term *actors* includes players, newscasters, or any other persons who are compensated for their performance or appearance in a film. For purposes of this paragraph (k),

the term *production personnel* includes writers, choreographers and composers who are compensated for providing services during the production of a film, as well as casting agents, camera operators, set designers, lighting technicians, make-up artists, and other persons who are compensated for providing services that are directly related to the production of the film. Except as provided in paragraph (k)(2) of this section, the definition of a qualified film does not include tangible personal property embodying the qualified film, such as DVDs or videocassettes.

\* \* \* \* \*

(4) *Compensation for services.* For purposes of this paragraph (k), the term *compensation for services* means all payments for services performed by actors, production personnel, directors, and producers relating to the production of the film, including participations and residuals. Payments for services include all elements of compensation as provided for in § 1.263A-1(e)(2)(i)(B) and (3)(ii)(D). Compensation for services is not limited to W-2 wages and includes compensation paid to independent contractors. In the case of a taxpayer that uses the income forecast method of section 167(g) and capitalizes participations and residuals into the adjusted basis of the qualified film, the taxpayer must use the same estimate of participations and residuals in determining compensation for services. In the case of a taxpayer that excludes participations and residuals from the adjusted basis of the qualified film under section 167(g)(7)(D)(i), the taxpayer must use the amount expected to be paid as participations and residuals based on the total forecasted income used in determining income forecast depreciation in determining compensation for services.

(5) *Determination of 50 percent.* The not-less-than-50-percent-of-the-total-compensation requirement under paragraph (k)(1) of this section is calculated using a fraction. The numerator of the fraction is the compensation for services performed in the United States and the denominator is the total compensation for services regardless of where the production activities are performed. A taxpayer may use any reasonable method that is satisfactory to the Secretary based on all of the facts and circumstances, including all historic information available, to determine the compensation for services performed in the United States and the total compensation for services regardless of where the production activities are

performed. Among the factors to be considered in determining whether a taxpayer's method of allocating compensation is reasonable is whether the taxpayer uses that method consistently from one taxable year to another.

(6) *Produced by the taxpayer.* A qualified film will be treated as produced by the taxpayer for purposes of § 199(c)(4)(A)(i)(II) if the production activity performed by the taxpayer is substantial in nature within the meaning of paragraph (g)(2) of this section. The special rules of paragraph (g)(4) of this section regarding a contract with an unrelated person and aggregation apply in determining whether the taxpayer's production activity is substantial in nature. Paragraphs (g)(2) and (4) of this section are applied by substituting the term *qualified film* for QPP and disregarding the requirement that the production activity must be within the United States. The production activity of the taxpayer must consist of more than the minor or immaterial combination or assembly of two or more components of a film. For purposes of paragraph (g)(2) of this section, the relative value added by affixing trademarks or trade names as defined in § 1.199-2(b)(10)(i) will be treated as zero.

(7) *Qualified film produced by the taxpayer—safe harbor.* A film will be treated as a qualified film under paragraph (k)(1) of this section and produced by the taxpayer under paragraph (k)(6) of this section (qualified film produced by the taxpayer) if the taxpayer meets the requirements of paragraphs (k)(7)(i) and (ii) of this section. A taxpayer that chooses to use this safe harbor must apply all the provisions of this paragraph (k)(7).

(i) *Safe harbor.* A film will be treated as a qualified film produced by the taxpayer if not less than 50 percent of the total compensation for services paid by the taxpayer is compensation for services performed in the United States and the taxpayer satisfies the safe harbor in paragraph (g)(3) of this section. The special rules of paragraph (g)(4) of this section regarding a contract with an unrelated person and aggregation apply in determining whether the taxpayer satisfies paragraph (g)(3) of this section. Paragraphs (g)(3) and (4) of this section are applied by substituting the term *qualified film* for QPP but not disregarding the requirement that the direct labor and overhead of the taxpayer to produce the qualified film must be within the United States. Paragraph (g)(3)(ii)(A) of this section includes any election under section 181.

(ii) *Determination of 50 percent.* The not-less-than-50-percent-of-the-total-compensation requirement under paragraph (k)(7)(i) of this section is calculated using a fraction. The numerator of the fraction is the compensation for services paid by the taxpayer for services performed in the United States and the denominator is the total compensation for services paid by the taxpayer regardless of where the production activities are performed. For purposes of this paragraph (k)(7)(ii), the term *paid by the taxpayer* includes amounts that are treated as paid by the taxpayer under paragraph (g)(4) of this section. A taxpayer may use any reasonable method that is satisfactory to the Secretary based on all of the facts and circumstances, including all historic information available, to determine the compensation for services paid by the taxpayer for services performed in the United States and the total compensation for services paid by the taxpayer regardless of where the production activities are performed. Among the factors to be considered in determining whether a taxpayer's method of allocating compensation is reasonable is whether the taxpayer uses that method consistently from one taxable year to another.

(8) *Production pursuant to a contract.* With the exception of the rules applicable to an expanded affiliated group (EAG) under § 1.199-7 and EAG partnerships under § 1.199-3(i)(8), only one taxpayer may claim the deduction under § 1.199-1(a) with respect to any activity related to the production of a qualified film performed in connection with the same qualified film. If one taxpayer performs a production activity pursuant to a contract with another party, then only the taxpayer that has the benefits and burdens of ownership of the qualified film under Federal income tax principles during the period in which the production activity occurs is treated as engaging in the production activity.

\* \* \* \* \*

(10) \* \* \*  
*Example 6.* X creates a television program in the United States that includes scenes from films licensed by X from unrelated persons Y and Z. Assume that Y and Z produced the films licensed by X. The not-less-than-50-percent-of-the-total-compensation requirement under paragraph (k)(1) of this section is determined by reference to all compensation for services paid in the production of the television program, including the films licensed by X from Y and Z, and is calculated using a fraction as described in paragraph (k)(5) of this section. The numerator of the fraction is the compensation for services performed in the United States and the denominator is the

total compensation for services regardless of where the production activities are performed. However, for purposes of calculating the denominator, in determining the total compensation paid by Y and Z, X need only include the total compensation paid by Y and Z to actors, production personnel, directors, and producers for the production of the scenes used by X in creating its television program.

\* \* \* \* \*

■ **Par. 4.** Section 1.199-7 is amended by:

- 1. Revising *Example 10* of paragraph (e).
- 2. Revising paragraphs (f)(1) and (g)(3).

The revisions read as follows:

§ 1.199-7 Expanded affiliated groups.

\* \* \* \* \*

(e) \* \* \*

*Example 10.* (i) *Facts.* Corporation P owns all of the stock of Corporations S and B. P, S, and B file a consolidated Federal income tax return on a calendar year basis. P, S, and B each uses the section 861 method for allocating and apportioning their deductions. In 2010, S MPGE QPP in the United States at a cost of \$1,000. On November 30, 2010, S sells the QPP to B for \$2,500. On February 28, 2011, P sells 60% of the stock of B to X, an unrelated person. On June 30, 2011, B sells the QPP to U, another unrelated person, for \$3,000.

(ii) *Consolidated group's 2010 QPAI.* Because S and B are members of a consolidated group in 2010, pursuant to § 1.199-7(d)(1) and § 1.1502-13, neither S's \$1,500 of gain on the sale of QPP to B nor S's \$2,500 gross receipts from the sale are taken into account in 2010. Accordingly, neither S nor B has QPAI in 2010.

(iii) *Consolidated group's 2011 QPAI.* B becomes a nonmember of the consolidated group at the end of the day on February 28, 2011, the date on which P sells 60% of the B stock to X. Under § 1.199-7(d)(1) and § 1.1502-13(d), S takes the intercompany transaction into account immediately before B becomes a nonmember of the consolidated group. Pursuant to § 1.1502-13(d)(1)(ii)(A)(1), because the QPP is owned by B, a nonmember of the consolidated group immediately after S's gain is taken into account, B is treated as selling the QPP to a nonmember for \$2,500, B's adjusted basis in the property, immediately before B becomes a nonmember of the consolidated group. Accordingly, immediately before B becomes a nonmember of the consolidated group, S takes into account \$1,500 of QPAI (S's \$2,500 DPGR received from B—S's \$1,000 cost of MPGE the QPP).

(iv) *B's 2011 QPAI.* Pursuant to § 1.1502-13(d)(2)(i)(B), the attributes of B's corresponding item, that is, its sale of the QPP to U, are determined as if the S division (but not the B division) were transferred by the P, S, and B consolidated group (treated as a single corporation) to an unrelated person. Thus, S's activities in MPGE the QPP before the intercompany sale of the QPP to B continue to affect the attributes of B's sale of the QPP. As such, B is treated as having

MPGE the QPP. Accordingly, upon its sale of the QPP, B has \$500 of QPAI (B's \$3,000 DPGR received from U minus B's \$2,500 cost of MPGE the QPP).

\* \* \* \* \*

(f) *Allocation of income and loss by a corporation that is a member of the expanded affiliated group for only a portion of the year*—(1) *In general.* A corporation that becomes or ceases to be a member of an EAG during its taxable year must allocate its taxable income or loss, QPAI, and W-2 wages between the portion of the taxable year that it is a member of the EAG and the portion of the taxable year that it is not a member of the EAG. This allocation of items is made by using the pro rata allocation method described in this paragraph (f)(1). Under the pro rata allocation method, an equal portion of a corporation's taxable income or loss, QPAI, and W-2 wages for the taxable year is assigned to each day of the corporation's taxable year. Those items assigned to those days that the corporation was a member of the EAG are then aggregated.

\* \* \* \* \*

(g) \* \* \*

(3) *Example.* The following example illustrates the application of paragraphs (f) and (g) of this section:

*Example.* (i) *Facts.* Corporations X and Y, calendar year corporations, are members of the same EAG for the entire 2010 taxable year. Corporation Z, also a calendar year corporation, is a member of the EAG of which X and Y are members for the first half of 2010 and not a member of any EAG for the second half of 2010. During the 2010 taxable year, neither X, Y, nor Z joins in the filing of a consolidated Federal income tax return. Assume that X, Y, and Z each has W-2 wages in excess of the section 199(b) wage limitation for all relevant periods. In 2010, X has taxable income of \$2,000 and QPAI of \$600, Y has a taxable loss of \$400 and QPAI of (\$200), and Z has taxable income of \$1,400 and QPAI of \$2,400.

(ii) *Analysis.* Pursuant to the pro rata allocation method, \$700 of Z's 2010 taxable income and \$1,200 of Z's 2010 QPAI are allocated to the first half of the 2010 taxable year (the period in which Z is a member of the EAG) and \$700 of Z's 2010 taxable income and \$1,200 of Z's 2010 QPAI are allocated to the second half of the 2010 taxable year (the period in which Z is not a member of any EAG). Accordingly, in 2010, the EAG has taxable income of \$2,300 (X's \$2,000 + Y's (\$400) + Z's \$700) and QPAI of \$1,600 (X's \$600 + Y's (\$200) + Z's \$1,200). The EAG's section 199 deduction for 2010 is therefore \$144 (9% of the lesser of the EAG's \$2,300 of taxable income or \$1,600 of QPAI). Pursuant to § 1.199-7(c)(1), this \$144 deduction is allocated to X, Y, and Z in proportion to their respective QPAI. Accordingly, X is allocated \$48 of the EAG's section 199 deduction, Y is allocated \$0 of the EAG's section 199 deduction, and Z is

allocated \$96 of the EAG's section 199 deduction. For the second half of 2010, Z has taxable income of \$700 and QPAI of \$1,200. Therefore, for the second half of 2010, Z has a section 199 deduction of \$63 (9% of the lesser of its \$700 taxable income or \$1,200 QPAI for the second half of 2010). Accordingly, X's 2010 section 199 deduction is \$48, Y's 2010 section 199 deduction is \$0, and Z's 2010 section 199 deduction is \$159, the sum of the \$96 section 199 deduction of the EAG allocated to Z for the first half of 2010 and Z's \$63 section 199 deduction for the second half of 2010.

\* \* \* \* \*

■ Par. 5. Section 1.199-8 is amended by:

- 1. Adding two sentences at the end of paragraph (a).
- 2. Adding new paragraphs (i)(8) and (i)(9).

The revisions and additions read as follows:

**§ 1.199-8 Other rules.**

(a) *In general.* \* \* \* For purposes of §§ 1.199-1 through 1.199-9, use of terms such as *payment, paid, incurred, or paid or incurred* is not intended to provide any specific rule based upon the use of one term versus another. In general, the use of the term *payment, paid, incurred, or paid or incurred* is intended to convey the appropriate standard under the taxpayer's method of accounting.

\* \* \* \* \*

(i) \* \* \*

(8) *Qualified film produced by the taxpayer.* Section 1.199-3(k) is applicable to taxable years beginning on or after March 7, 2008. A taxpayer may apply § 1.199-3(k) to taxable years beginning after December 31, 2004, and before March 7, 2008. However, for taxable years beginning before June 1, 2006, a taxpayer may rely on § 1.199-3(k) only if the taxpayer does not apply Notice 2005-14 (2005-1 CB 498) (see § 601.601(d)(2)(ii)(b) of this chapter) or REG-105847-05 (2005-2 CB 987) (see § 601.601(d)(2)(ii)(b) of this chapter) to the taxable year.

(9) *Expanded affiliated groups.* Section 1.199-7(e), *Example 10*, (f)(1), and (g)(3) are applicable to taxable years beginning on or after March 7, 2008. A taxpayer may apply § 1.199-7(e), *Example 10*, to taxable years beginning after December 31, 2004, and before March 7, 2008.

Linda E. Stiff,  
Deputy Commissioner for Services and Enforcement.

Approved: March 3, 2008.

Eric Solomon,  
Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8-4575 Filed 3-6-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

DEPARTMENT OF JUSTICE

31 CFR Part 901

[A.G. Order No. 2918-2007]

Treasury RIN 1510-AA91  
Justice RIN 1105-AB26

Standards for the Administrative Collection of Claims

AGENCIES: Department of the Treasury; Department of Justice.

ACTION: Interim rule with request for comments.

**SUMMARY:** The Federal Claims Collection Standards (FCCS), provide governmentwide debt collection procedures and policies for agencies collecting non-tax debts owed to the United States. This rule revises part 901, which specifies the order in which a federal agency is required to apply a partial or installment payment to the various components of a delinquent, non-tax debt owed to the United States. Under the current rule, payments are required to be applied first to penalties, then to administrative costs, then to interest, and last to principal. As revised, the rule would require agencies to apply payments first to administrative costs that are paid out of amounts collected from the debtor (referred to as "contingency fees") when such costs are added to the debt, second to penalties, third to administrative costs other than contingency fees, fourth to interest, and last to principal. Additionally, the term "administrative charges" is being replaced with "administrative costs" for consistency and clarity.

**DATES:** This rule is effective April 7, 2008. Comments must be received by April 7, 2008.

**ADDRESSES:** All comments should be addressed to Thomas Dungan, Policy Analyst, Debt Management Services, Financial Management Service, Department of the Treasury, 401 14th Street, SW., Room 435, Washington, DC 20227. A copy of this interim rule is being made available for downloading from the Financial Management Service Web site at the following address: <http://www.fms.treas.gov/debt>. Comments also may be sent electronically through <http://www.regulations.gov> using the electronic comment form provided on that site. An electronic copy of this document is also available at the <http://www.regulations.gov> Web site.

**FOR FURTHER INFORMATION CONTACT:** Thomas Dungan, Policy Analyst,



Financial Management Service, Department of the Treasury, at (202) 874-6660; Ellen Neubauer, Senior Attorney, Financial Management Service, Department of the Treasury, at (202) 874-6680; or Ruth Harvey, Commercial Litigation Branch, Civil Division, Department of Justice, at (202) 307-0388.

**SUPPLEMENTARY INFORMATION:** The Federal Claims Collection Standards (FCCS), codified at 31 CFR parts 900 through 904, provide governmentwide debt collection procedures and policies for agencies collecting non-tax debts owed to the United States. Part 901 of the FCCS governs how agencies assess interest, penalties, and administrative costs on delinquent debts. Paragraph (f) of section 901.9 of the FCCS governs how a debtor's partial or installment payments are to be applied to the various components of a debt. Specifically, section 901.9(f) states: "When a debt is paid in partial or installment payments, amounts received by the agency shall be applied first to outstanding penalties, second to administrative charges, third to interest, and last to principal." This rule revises section 901.9(f) of the FCCS by changing the order in which partial or installment payments are to be applied to certain administrative charges, also known as "administrative costs."

Administrative costs are the costs incurred by a federal agency to collect a delinquent debt. Such costs include fees paid to another federal agency or to a private collection contractor for debt collection services when those fees are paid from amounts collected from the debtor. See 31 U.S.C. 3711(g)(6) and 31 CFR 901.1(f) (authorizing agencies operating Treasury-designated debt collection centers to charge fees that may be paid out of amounts collected) and 31 U.S.C. 3718(d) and 31 CFR 901.5(c) (authorizing agencies to pay private collection contractors out of amounts collected). Such fees, commonly referred to as "contingency fees," must be added to the debt as an administrative cost to the Government, except as otherwise provided by law. See 31 U.S.C. 3717(e)(1) and 31 CFR 901.9(a) and (c). Agencies may calculate the amount to be added to the debt as an administrative cost based either on the actual costs incurred or on cost analyses establishing an average cost for processing and handling the agency's delinquent debts. Adding the contingency fee to the delinquent debt based on actual cost provides the best method of ensuring that the components of the debt balance accurately reflect how the amounts collected from the

debtor were actually applied by the agency. This revision to the rule affects how an agency applies partial or installment payments only in those cases in which the agency adds the actual amount of the contingency fee to the debt as an administrative cost.

As revised, section 901.9(f) will require agencies to apply partial or installment payments first to contingency fees added to the debt, second to penalties, third to administrative costs other than contingency fees, fourth to interest, and last to principal. The revision will provide consistency between how contingency fees are actually paid out of a debtor's payments and how a debtor's payments are applied to debt components, thereby allowing agencies to more accurately account for the payment of contingency fees from amounts collected.

*Example:* To illustrate the effect of this change, the following example is provided. Assume a debtor owes \$1,500 to the Government, as follows:

\$200	Penalty
100	Administrative Costs (excluding contingency fees of \$20)
200	Accrued Interest
1,000	Principal
<hr/>	
1,500	Balance Due

If a private collection agency (PCA) that charges the Government a 20% contingency fee collects \$100 from a debtor, the PCA is paid \$20 from the \$100 collection before the remaining \$80 is returned to the federal agency collecting the debt. The debtor receives a credit of \$100 for the amount paid.

Under the current FCCS, the \$100 paid by the debtor in this example would be applied first to any penalties owed by the debtor, rather than to the contingency fee paid from the amount collected. Since the debtor in our example owed \$200 in penalties, the entire \$100 collection would be applied to the debtor's penalties even though the federal agency would have only received \$80 in actual cash to apply toward that part of the debt.

Additionally, the agency would add the fee charged by the PCA (\$20) to the debt as an administrative cost, thereby not reflecting the fact that the debtor had, in effect, paid the contingency fee at the time of making the payment on the debt. Thus, after application of the entire payment to the penalty under the current FCCS, the outstanding balance on the debt would be \$1,420, as follows:

\$100	Penalty (after applying the \$100 received from the debtor);
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120	Administrative Costs (after adding the PCA charge of \$20);
200	Accrued Interest
1,000	Principal
<hr/>	
1,420	Balance Due

As revised, the FCCS would require the federal agency to apply \$20 to the contingency fee paid, and to apply the remaining \$80 to penalties. After application of the payment to the contingency fee and the penalty, the outstanding balance on the debt would be \$1,420, as follows:

\$0	Contingency fee (after adding \$20 to the debt, and then subtracting \$20 as paid);
120	Penalty (after applying the remaining \$80 paid by the debtor, the net amount actually received by the agency);
100	Administrative Costs (other than contingency fees);
200	Accrued Interest
1,000	Principal
<hr/>	
1,420	Balance Due

For an agency that does not add the cost of the contingency fee to the debt, this revision to the FCCS will have no practical effect. If the debt in our example was owed to an agency that does not add the contingency fee to the debt, the \$100 payment made by the debtor would be applied entirely to the penalty as follows:

\$100	Penalty (after applying the \$100 paid by the debtor without deduction for the contingency fee paid by the agency to the PCA);
100	Administrative Costs (other than contingency fees);
200	Accrued Interest
1,000	Principal
<hr/>	
1,400	Total

This rule also replaces the term "administrative charges" in paragraphs 901.9(f) and 901.9(g) with the term "administrative costs" for consistency and clarity.

#### Regulatory Flexibility Act

The Department of the Treasury and Department of Justice are promulgating this interim rule without opportunity for prior public comment pursuant to the Administrative Procedure Act, 5 U.S.C. 553 (the "APA"). The notice and comment requirements of the APA do not apply to the interim rule for two reasons. First, the interim rule concerns accounting methods as applied to a component of a debt (that is, certain administrative costs) and does not result

in any change to balances due by a debtor on any debt owed to the United States. The interim rule therefore addresses an internal "agency \* \* \* procedure, or practice" within the meaning of section 553(b)(3)(A). Second, and relatedly, the Departments have determined that a comment period would be "unnecessary" under section 553(b)(3)(B), as the interim rule does not alter or affect the rights, interests, or duties of any person or entity. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

The public is invited to submit comments on the interim rule, which will be taken into account before a final rule is issued.

#### Regulatory Analysis

This action is limited to agency organization and management as described by Executive Order 12866 ((3)(d)(3) and, therefore, is not a "regulation" as defined by that Executive Order. Accordingly, review of this action by the Office of Management and Budget is not required.

#### Congressional Review Act

This action pertains to agency organization and management and does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a "rule" as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

#### List of Subjects in Part 901

Administrative practice and procedure, Claims, Federal employees, Penalties, Privacy.

#### Authority and Issuance

■ For the reasons set forth in the preamble, part 901 of title 31 of the Code of Federal Regulations is amended as follows:

#### PART 901—STANDARDS FOR THE ADMINISTRATIVE COLLECTION OF CLAIMS

■ 1. The authority citation for part 901 continues to read as follows:

**Authority:** 31 U.S.C. 3701, 3711, 3716, 3717, 3718 and 3720B.

■ 2. In § 901.9, revise paragraph (f) to read as follows:

#### § 901.9 Interest, penalties and administrative costs.

\* \* \* \* \*

(f) When a debt is paid in partial or installment payments, amounts received by the Government shall be applied first to any contingency fees added to the debt, second to outstanding penalties, third to administrative costs other than contingency fees, fourth to interest, and last to principal. For purposes of this paragraph (f), "contingency fees" are administrative costs resulting from fees paid by a Federal agency to other Federal agencies or private collection contractors for collection services rendered when the fees are paid from the amounts collected from a debtor.

\* \* \* \* \*

■ 3. In § 901.9, revise paragraph (g) by removing the word "charges" in the first sentence and adding in its place the word "costs".

Dated: February 28, 2008.

**Henry M. Paulson, Jr.,**  
*Secretary of the Treasury.*

Dated: November 6, 2007.

**Peter D. Keisler,**  
*Acting Attorney General.*

[FR Doc. E8-4586 Filed 3-6-08; 8:45 am]

BILLING CODE 4810-35-P

## DEPARTMENT OF DEFENSE

### Department of the Navy

#### 32 CFR Part 700

[USN-2007-0050]

RIN 0703-AA84

#### Fraternization and Sexual Harassment

**AGENCY:** Department of Navy, DoD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is amending its rules to remove existing sections relating to Fraternalization and Sexual Harassment among naval personnel. These rules relate solely to internal personnel matters. Therefore, it has been determined that these rules are not required to be published in the Code of Federal Regulations.

**DATES:** *Effective Date:* This rule is effective March 7, 2008.

**FOR FURTHER INFORMATION CONTACT:** LT Tanya Cruz, JAGC, U.S. Navy, Legislation and Regulations Branch, Administrative Law Division, (Code 13), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374-5066, telephone: 703-604-8200.

**SUPPLEMENTARY INFORMATION:** On September 14, 1990, the Secretary of the Navy issued, revised, and amended the

Navy Regulations in accordance with 10 U.S.C. Section 6011. In 1993, the Secretary of the Navy amended two articles of the Navy Regulations relating to Fraternalization and Sexual Harassment among naval personnel. The 1993 amendment was not reflected in the **Federal Register** publication of the Navy Regulations, 64 FR 56061 dated October 15, 1999. The Department of the Navy seeks to remove these two sections from the Code of Federal Regulations. In accordance with 5 U.S.C. Section 552, it has been determined that these rules are not required to be published as they relate solely to internal personnel matters. The Navy Regulations articles on Fraternalization and Sexual Harassment remain in effect and may be accessed at the Department of the Navy Directives Web site at <http://neds.daps.dla.mil/>.

#### List of Subjects in 32 CFR Part 700

Military personnel, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Department of the Navy hereby amends 32 CFR part 700 as follows:

#### PART 700—UNITED STATES NAVY REGULATIONS AND OFFICIAL RECORDS

■ 1. The authority citation for 32 CFR part 700 continues to read as follows:

**Authority:** 10 U.S.C. 6011.

§§ 700.1165 and 700.1166 [Removed]

■ 2. Remove §§ 700.1165 and 700.1166.

Dated: February 28, 2008.

**T.M. Cruz,**

*Lieutenant, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. E8-4210 Filed 3-6-08; 8:45 am]

BILLING CODE 3810-FF-P

## POSTAL SERVICE

### 39 CFR Part 20

#### Revised Standards for First-Class Mail International™ Service; Correction

**AGENCY:** Postal Service™.

**ACTION:** Final rule; correction.

**SUMMARY:** The Postal Service published in the **Federal Register** of February 20, 2008, a document reflecting the change to shape-based standards for First-Class Mail International. Inadvertently, a table in the section titled *Country Rate Groups and Weight Limits*; the two right-most columns had duplicate mail-

shape headings. This document amends those headings.

**DATES:** *Effective Date:* 12:01 a.m. on May 12, 2008.

**FOR FURTHER INFORMATION CONTACT:** Christy Bonning, 202-268-2108.

**SUPPLEMENTARY INFORMATION:** In *Federal Register* of February 20, 2008, Vol. 73, No. 34, 9191-9197 [E8-2920], make the following correction:

On page 9194, in the table titled *Country Rate Groups and Weight Limits*,

change the second from right column heading to read: FCMI, Lg. Env., (Flats), Max., Wt., lbs. Change the right-most column heading to read: FCMI, Pkgs., (Sm. Packets), Max., Wt., lbs. Revised headings to appear as follows:

Country	<sup>1</sup> GXG rate group <sup>5</sup>	<sup>1</sup> GXG max wt. lbs.	<sup>2</sup> PMI rate group <sup>5</sup>	<sup>2</sup> PMI max wt. lbs.	<sup>2</sup> PMI flat-rate box max wt. lbs.	<sup>3</sup> EMI rate group <sup>5</sup>	<sup>3</sup> EMI max wt. lbs.	<sup>4</sup> FCMI rate group <sup>5</sup>	<sup>4</sup> FCMI letters max wt. oz.	<sup>4</sup> FCMI lg. env. (flats) max wt. lbs.	<sup>4</sup> FCMI pkgs. (small packets) max wt. lbs.
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Dated: February 22, 2008.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E8-4454 Filed 3-6-08; 8:45 am]

BILLING CODE 7710-12-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

[EPA-HQ-OAR-2006-0406, FRL-8540-2]

RIN 2060-AM74

### National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities; and Gasoline Dispensing Facilities; Correction

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

**ACTION:** Final rule; correction.

**SUMMARY:** This action corrects certain text of the final rules entitled "National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities; and Gasoline Dispensing Facilities." The final rules were published in the *Federal Register* on January 10, 2008.

**DATES:** *Effective Date:* March 7, 2008.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen Shedd, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143-01), EPA, Research Triangle Park, NC 27711, telephone: (919) 541-5397, facsimile number: (919) 685-3195, e-mail address: [shedd.steve@epa.gov](mailto:shedd.steve@epa.gov).

#### SUPPLEMENTARY INFORMATION:

#### I. What Is the Background for the Corrections?

On January 10, 2008 (73 FR 1916), EPA issued final rules in which EPA promulgated national emission

standards for hazardous air pollutants for gasoline distribution bulk terminals, bulk plants, and pipeline facilities and for gasoline dispensing facilities. EPA subsequently determined that certain sections of the final rules contained incorrect references to paragraphs within those and other sections. This action corrects those technical errors.

These corrections do not affect the substance of the final rules, nor do they change the rights or obligations of any party. Rather, this action merely corrects certain technical errors in the references in the final rules. Thus, it is proper to issue these corrections to the final rules without notice and comment. Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making this action final without prior proposal and opportunity for comment because the changes to the final rules are minor technical corrections, are noncontroversial, and do not substantively change the agency actions taken in the final rules. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

#### II. What Are the Corrections to the Final Rules (73 FR 1916)?

This notice corrects the following errors. In adding four test methods to 40 CFR 63.14 through Incorporation by Reference, we incorrectly assigned new paragraph numbers to be added to 40 CFR 63.14 that were already in use. To correct this error, it is necessary to change the paragraph numbers that we are assigning to the four test methods being incorporated by reference. The test method added as § 63.14(b)(63) should have been added as

§ 63.14(b)(65) and the three test methods added as § 63.14(l)(1), (2), and (3) should have been added as § 63.14(m)(1), (2), and (3).

EPA has also determined that the text of 40 CFR 63.11092 and 40 CFR 63.11095 of subpart BBBBBB and 40 CFR 63.11117 of subpart CCCCCC contains incorrect references. In 40 CFR 63.11092 of subpart BBBBBB, paragraph (a)(3) included a reference to conduct an initial performance test within 180 days of the "rule promulgation" date. The rule mistakenly referred to the "promulgation" date instead of the "compliance" date. Thus, the text "rule promulgation" will be replaced with the text "compliance date specified in § 63.11083". Also, in 40 CFR 63.11092 of subpart BBBBBB, paragraph (b)(1)(i)(B)(1) included a reference to "(b)(1)(i)(B)(1)(i), (ii), and (iii) of this section" when the reference should be to "(b)(1)(i)(B)(1)(i), (ii), and (iii) of this section". In 40 CFR 63.11095 of subpart BBBBBB, paragraph (c) included a reference to "(a)(3) and (b)(4) of this section" when the reference should be to "(a)(3) and (b)(5) of this section". In subpart CCCCCC, 40 CFR 63.11117, paragraph (e) included a reference to "§ 63.11124(b)" when the reference should be to "§ 63.11124(a)". In 40 CFR 63.11118, paragraph (c) included two improper references to "paragraphs (a) and (b)" and "§ 63.11116" when the references should be to "paragraph (b)" and "§ 63.11117", respectively. Also, in 40 CFR 63.11124, paragraph (a) refers to "(a)(1) through (4) of this section" but section (a)(4) does not exist, so the text will be corrected to refer to "(a)(1) through (3) of this section". Additionally, in 40 CFR 63.11124, paragraph (a)(1)(iii) refers to "(a), (b) and (c)(1) or paragraph (c)(2) of § 63.11117" but, while paragraph (c) exists, paragraphs (c)(1) and (c)(2) do not exist, so the text will be corrected to refer to "(a) through (c) of § 63.11117". In 40 CFR 63.11124, paragraph (b)(1)(iii) refers to "(a)

through (d) of § 63.11118” but paragraph (d) does not have options for the owner or operator to choose from and therefore notification information is not needed, so the text will be corrected to refer to “(a) through (c) of § 63.11118”.

### III. Statutory and Executive Order Reviews

Under Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and is, therefore, not subject to review by the Office of Management and Budget (OMB). This action is a correction to certain text in the final rules and is not a “major rule” as defined by 5 U.S.C. 804(2). The final rules themselves, however, were reviewed by OMB. The corrections do not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). Because EPA has made a “good cause” finding that this action is not subject to notice-and-comment requirements under the APA or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of the UMRA. This technical correction action also does not significantly or uniquely affect the communities of tribal governments, as specified in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 2000). The corrections do 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, Federalism (64 FR 43255, August 10, 1999). The corrections also are not subject to Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) because the final rules were determined not to be subject to this order and this action does not significantly change the final rules.

This technical correction action does not involve changes to the technical standards related to test methods or monitoring methods; thus, the requirements of section 12(d) of the National Technology Transfer and

Advancement Act of 1995 (15 U.S.C. 272) do not apply. The corrections also do not involve special consideration of environmental justice-related issues as required by Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994).

The corrections are not subject to Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) because this action is not a significant regulatory action under Executive Order 12866.

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this final action and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of this action in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This correction is effective March 7, 2008.

EPA’s compliance with the above statutes and Executive Orders for the underlying rule is discussed in the January 10, 2008 **Federal Register** notice containing “National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities; and Gasoline Dispensing Facilities” (73 FR 1916).

#### List of Subjects for 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Incorporations by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: February 29, 2008.

**Robert J. Meyers,**

*Principal Deputy Assistant Administrator.*

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

#### PART 63—[AMENDED]

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

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

#### Subpart A—[Amended]

##### § 63.14 [Amended]

■ 2. Section 63.14 is amended as follows:

- a. By redesignating paragraph (b)(63) as paragraph (b)(65).
- b. By redesignating paragraph (l) as paragraph (m).

#### Subpart BBBB—[Amended]

##### § 63.11092 [Amended]

■ 3. Section 63.11092 is amended as follows:

- a. In paragraph (a)(3) by removing the words “rule promulgation” and adding in their place the words “compliance date specified in § 63.11083”.
- b. In paragraph (b)(1)(i)(B)(1) by removing the words “(b)(1)(i)(B)(1)(i), (ii), and (iii) of this section.” and adding in their place the words “(b)(1)(i)(B)(1)(i), (ii), and (iii) of this section.”

##### § 63.11095 [Amended]

■ 4. Section 63.11095 is amended in paragraph (c) by removing the citation “(b)(4)” and adding in its place “(b)(5)”.

#### Subpart CCCCC—[Amended]

##### § 63.11117 [Amended]

■ 5. In § 63.11117, paragraph (e) is amended by removing the citation “§ 63.11124(b)” and adding in its place the citation “§ 63.11124(a)”.

##### § 63.11118 [Amended]

■ 6. In § 63.11118, paragraph (c) introductory text is amended by removing the words “paragraphs (a) and (b) of this section, but must comply with the requirements in § 63.11116.” and adding in their place the words “paragraph (b) of this section, but must comply with the requirements in § 63.11117.”

##### § 63.11124 [Amended]

■ 7. Section 63.11124 is amended as follows:

- a. In paragraph (a) introductory text is amended by removing the citation “(4)” and adding in its place the citation “(3)”.
- b. In paragraph (a)(1)(iii) introductory text is amended by removing the citation “(a), (b) and (c)(1) or paragraph (c)(2)” and adding in its place the citation “(a) through (c)”.
- c. In paragraph (b)(1)(iii) introductory text is amended by removing the citation “(a) through (d)” and adding in its place the citation “(a) through (c)”.

[FR Doc. E8-4554 Filed 3-6-08; 8:45 am]

BILLING CODE 6560-50-P



**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 271**

[EPA-R08-RCRA-2006-0127; FRL-8538-1]

**Utah: Final Authorization of State Hazardous Waste Management Program Revisions**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

**SUMMARY:** The Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act (RCRA), allows the Environmental Protection Agency (EPA) to authorize States to operate their hazardous waste management programs in lieu of the federal program. Utah has applied to EPA for final authorization of the changes to its hazardous waste program under RCRA. EPA has determined that these changes satisfy all requirements needed to qualify for final authorization and is authorizing the State's changes through this immediate final action.

**DATES:** This final authorization will become effective on May 6, 2008, unless the EPA receives adverse written comment by April 7, 2008. If adverse comment is received, EPA will publish a timely withdrawal of the immediate final rule in the *Federal Register* informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-RCRA-2006-0127, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>.

Follow the on-line instructions for submitting comments.

- *E-mail:* [daly.carl@epa.gov](mailto:daly.carl@epa.gov).
- *Fax:* (303) 312-6341.
- *Mail:* Send written comments to Carl Daly, Solid and Hazardous Waste Program, EPA Region 8, Mailcode 8P-HW, 1595 Wynkoop Street, Denver, Colorado 80202-1129.
- *Hand Delivery or Courier:* Deliver your comments to Carl Daly, Solid and Hazardous Waste Program, EPA Region 8, Mailcode 8P-HW, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Such deliveries are only accepted during the Regional Office's normal hours of operation. The public is advised to call in advance to verify the business hours. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R08-RCRA-2006-

0127. EPA's policy is that all comments received will be included in the public docket without change, 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 <http://www.regulations.gov>, or e-mail. The federal Web site, <http://www.regulations.gov>, 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 <http://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 or 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>.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information may not be publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at: EPA Region 8, from 9 a.m. to 4 p.m., 1595 Wynkoop Street, Denver, Colorado, contact: Carl Daly, phone number (303) 312-6416, or the Utah Department of Environmental Quality (UDEQ), from 8 a.m. to 5 p.m., 288 North 1460 West, Salt Lake City, Utah 84114-4880, contact: Susan Toronto, phone number (801) 538-6776. The public is advised to call in advance to verify the business hours.

**FOR FURTHER INFORMATION CONTACT:** Carl Daly, Solid and Hazardous Waste Program, EPA Region 8, 1595 Wynkoop

Street, Denver, Colorado 80202, (303) 312-6416, [daly.carl@epa.gov](mailto:daly.carl@epa.gov).

**SUPPLEMENTARY INFORMATION:****A. Why Are Revisions to State Programs Necessary?**

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the federal program. As the federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

**B. What Decisions Have We Made in This Rule?**

We conclude that Utah's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Utah final authorization to operate its hazardous waste program with the changes described in the authorization application. Utah has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders, except in Indian country, and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New federal requirements and prohibitions imposed by federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Utah, including issuing permits, until Utah is authorized to do so.

**C. What Is the Effect of This Authorization Decision?**

This decision means that a facility in Utah subject to RCRA will now have to comply with the authorized state requirements instead of the equivalent federal requirements in order to comply with RCRA. Utah has enforcement responsibilities under its state hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to: (1) Conduct

inspections; require monitoring, tests, analyses, or reports; (2) enforce RCRA requirements; suspend or revoke permits; and, (3) take enforcement actions regardless of whether Utah has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which Utah is being authorized by this action are already effective and are not changed by this action.

#### D. Why Wasn't There a Proposed Rule Before This Rule?

EPA did not publish a proposal before this rule because we view this as a routine program change. We are providing an opportunity for the public to comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

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

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

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

#### F. For What Has Utah Previously Been Authorized?

Utah initially received final authorization on October 10, 1984, effective October 24, 1984 (49 FR 39683) to implement its base hazardous waste management program. Utah received authorization for revisions to its program on February 21, 1989 (54 FR 7417), effective March 7, 1989; May 23, 1991 (56 FR 23648) and August 6, 1991 (56 FR 37291), both effective July 22, 1991; May 15, 1992 (57 FR 20770),

effective July 14, 1992; February 12, 1993 (58 FR 8232) and May 5, 1993 (58 FR 26689), both effective April 13, 1993; October 14, 1994 (59 FR 52084), effective December 13, 1994; May 20, 1997 (62 FR 27501), effective July 21, 1997; January 13, 1999 (64 FR 02144), effective March 15, 1999; October 16, 2000 (65 FR 61109), effective January 16, 2001, May 7, 2002 (67 FR 30599), effective July 7, 2002; and June 11, 2003 (68 FR 34829), effective June 11, 2003.

#### G. What Changes Are We Authorizing With This Action?

On September 30, 2003, Utah submitted a complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that Utah's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Therefore, we grant Utah final authorization for the following program changes (the federal citation followed by the analog from the Utah Administrative Code (R315), revised September 15, 2003): Hazardous Air Pollutant Standards; Technical Corrections (65 FR 42292, 07/10/00)(Checklist 188), (66 FR 24270, 05/14/01)(Checklist 188.1), and (66 FR 35087, 07/03/01)(Checklist 188.2)/R315-13-2-26, R315-3-4.3, and R315-8-15.1(b)(1)&(3); Chlorinated Aliphatics Listing and LDRs for Newly Identified Wastes (65 FR 67068, 11/08/00)(Checklist 189)/R315-2-10(f), R315-13-1, R315-50-9, and R315-50-10; Mixture and Derived-From Rules Revisions (66 FR 27266, 05/16/01)(Checklist 192A)/R315-2-3(a)(2)(iii)&(iv), R315-2-3(c)(2)(i), R315-2-3(f); Land Disposal Restrictions Correction (66 FR 27266, 05/16/01)(Checklist 192B)/R315-13-1; Change of Official EPA Mailing Address (66 FR 34374, 06/28/01)(Checklist 193)/R315-1-2(a); Mixture and Derived-From Rules Revision II (66 FR 50332, 10/03/01)(Checklist 194)/R315-2-3(a)(2)(iv) through (iv)(C); R315-2-3(f)(4); Inorganic Chemical Manufacturing Wastes Identification and Listing (66 FR 58258, 11/20/01)(Checklist 195)/R315-2-4(b)(15), R315-2-10(f), R315-13-1; and R315-50-9; CAMU Amendments (67 FR 02962, 01/22/02)(Checklist 196)/R315-1-1(b), and R315-8-21; Hazardous Air Pollutant Standards for Combustors: Interim Standards (67 FR 06792, 02/13/02)(Checklist 197)/R315-3-2.10(e), R315-3-2.13, R315-3-6.3, R315-3-6.6, R315-3-9.1(a)&(b), R315-7-22.1(b)(1)&(3), R315-8-15.1(b)(1)&(4), and R315-14-7; Hazardous Air

Pollutant Standards for Combustors: Corrections (67 FR 06968, 02/14/02)(Checklist 198)/R315-3-4.3 and R315-14-7; Vacatur of Mineral Processing Spent Materials Being Reclaimed as Solid Wastes and TCLP Use with MGP waste (67 FR 11251, 03/13/02)(Checklist 199)/R315-2-2(c)(3), R315-2-4(a)(17), and R315-2-9(g)(1); Treatment Variance for Radioactively Contaminated Batteries (67 FR 62618, 10/07/02)(Checklist 201)/R315-13-1.

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

Utah did not adopt the exclusion for hazardous waste containing radioactive waste at 40 CFR 261.3(h) in this rulemaking. This makes the State more stringent. Utah did not change any previously more stringent or broader-in-scope provisions to be equivalent to the federal rules.

#### I. Who Handles Permits After the Authorization Takes Effect?

Utah will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which were issued prior to the effective date of this authorization until Utah has equivalent instruments in place. We will not issue any new permits or new portions of permits for the provisions listed in section G after the effective date of this authorization. EPA previously suspended issuance of permits for other provisions on the effective date of Utah's final authorization for the RCRA base program and each of the revisions listed in Item F. EPA will continue to implement and issue permits for HSWA requirements for which Utah is not yet authorized.

#### J. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Utah?

This program revision does not extend to "Indian country" as defined in 18 U.S.C. 1151. Indian country includes:

1. Lands within the exterior boundaries of the following Indian reservations located within or abutting the State of Utah:
  - a. Goshute Indian Reservation
  - b. Navajo Indian Reservation
  - c. Northwestern Band of Shoshoni Nation of Utah (Washakie) Indian Reservation
  - d. Paiute Indian Tribe of Utah Indian Reservation
  - e. Skull Valley Band of Goshute Indians of Utah Indian Reservation

f. Uintah and Ouray Indian Reservation (see below)

g. Ute Mountain Indian Reservation;

2. Any land held in trust by the

United States for an Indian tribe; and,

3. Any other areas which are "Indian country" within the meaning of 18 U.S.C. 1151.

With respect to the Uintah and Ouray Indian Reservation, federal courts have determined that certain lands within the exterior boundaries of the Reservation do not constitute Indian country. This State program revision approval will extend to those lands which the courts have determined are not Indian country.

#### K. What Is Codification and Is EPA Codifying Utah's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing a State's statutes and regulations that comprise the State's authorized hazardous waste program into the CFR. We do this by referencing the authorized State rules in 40 CFR part 272. Utah's rules, up to and including those revised on February 2, 1996, have previously been codified through the incorporation-by-reference effective March 15, 1999 (66 FR 58964, November 26, 2001). We reserve the amendment of 40 CFR part 272, subpart TT for the codification of Utah's updated program until a later date.

#### L. Statutory and Executive Order Reviews

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by state law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and

the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes state requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211. "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S.

Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective *May 6, 2008*.

#### List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation-by-Reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: February 22, 2008.

Robert E. Roberts,

Regional Administrator, Region 8.

[FR Doc. E8-4251 Filed 3-6-08; 8:45 am]

BILLING CODE 6560-50-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 76

[MB Docket No. 07-29; FCC 07-169]

#### Implementation of the Cable Television Consumer Protection and Competition Act of 1992 and Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act—Sunset of Exclusive Contract Prohibition

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; announcement of effective date.

**SUMMARY:** The Federal Communications Commission adopted rules revising the procedures applicable to program access complaint proceedings. Certain changes to the rules require Office of Management and Budget (OMB) approval to become effective. This document announces the effective date of these rules.

**DATES:** The rules published on October 4, 2007, 72 FR 56645, amending 47 CFR 76.1003(e)(1) and (j) are effective March 7, 2008.

**FOR FURTHER INFORMATION CONTACT:** For further information on this proceeding, contact David Konczal, [David.Konczal@fcc.gov](mailto:David.Konczal@fcc.gov), of the Media

Bureau, Policy Division, (202) 418-2120. Questions concerning the OMB control number should be directed to Cathy Williams, Federal Communications Commission, 202-418-2918, or via the Internet at [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov).

**SUPPLEMENTARY INFORMATION:** In a *Report and Order* ("Order") released on October 1, 2007, FCC 07-169, and published in the *Federal Register* on October 4, 2007, 72 FR 56645, the Federal Communications Commission adopted rules revising the procedures applicable to program access complaint proceedings which contained information collection requirements subject to the Paperwork Reduction Act. The *Report and Order* stated that the rule changes requiring OMB approval would become effective immediately upon announcement of OMB approval in the *Federal Register*. On February 15, 2008, the OMB approved the information collection requirements contained in 47 CFR 76.1003(e)(1) and (j). This information collection is assigned OMB Control Number 3060-0888. This publication satisfies the statement that the Commission would publish a document announcing the effective date of the rule changes requiring OMB approval.

Federal Communications Commission.  
Marlene H. Dortch,  
Secretary.

[FR Doc. E8-4452 Filed 3-6-08; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 300

[Docket No. 071218860-8246-02]

RIN 0648-AW26

#### Pacific Halibut Fisheries; Catch Sharing Plan

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

**ACTION:** Final rule.

**SUMMARY:** The Assistant Administrator for Fisheries, NOAA (AA), on behalf of the International Pacific Halibut Commission (IPHC), publishes annual management measures promulgated as regulations by the IPHC and approved by the Secretary of State governing the Pacific halibut fishery. The AA also announces modifications to the Catch

Sharing Plan (CSP) for Area 2A (waters off the U.S. West Coast) and implementing regulations for 2008, and announces approval of the Area 2A CSP. These actions are intended to enhance the conservation of Pacific halibut and further the goals and objectives of the Pacific Fishery Management Council (PFMC) and the North Pacific Fishery Management Council (Council).

**DATES:** Effective March 8, 2008.

**ADDRESSES:** Additional requests for information regarding this action may be obtained by contacting: the International Pacific Halibut Commission, P.O. Box 95009, Seattle, WA 98145-2009; or Sustainable Fisheries Division, NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Ellen Sebastian, Records Officer; or Sustainable Fisheries Division, NMFS Northwest Region, 7600 Sand Point Way, NE, Seattle, WA 98115. This final rule also is accessible via the Internet at the Government Printing Office's website at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** For waters off Alaska, Peggy Murphy, 907-586-8743, e-mail at [peggy.murphy@noaa.gov](mailto:peggy.murphy@noaa.gov); or, for waters off the U.S. West Coast, Jamie Goen, 206-526-4646, email at [jamie.goen@noaa.gov](mailto:jamie.goen@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The IPHC has promulgated regulations governing the Pacific halibut fishery in 2008 under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, D.C., on March 29, 1979). The IPHC regulations have been approved by the Secretary of State of the United States under section 4 of the Northern Pacific Halibut Act (Halibut Act, 16 U.S.C. 773-773k).

The Halibut Act provides the Secretary with the authority and general responsibility to carry out the requirement of the Convention and the Halibut Act. Regulations that are not in conflict with approved IPHC regulations may be recommended by the North Pacific Fishery Management Council and implemented by the Secretary through NMFS to allocate harvesting privileges among the U.S. fishermen in and off of Alaska. The Council has exercised this authority most notably in the development of its Individual Fishing Quota (IFQ) Program, codified

at 50 CFR 679, and subsistence halibut fishery management measures, codified at 50 CFR 300.65. The Council also has been developing a regulatory program to manage the guided sport charter vessel fishery for halibut. Work on this program is ongoing and includes harvest restrictions and a moratorium on new entry into the charter vessel fishery. NMFS took regulatory action in 2007 to reduce sport fish harvest of halibut in Area 2C by amending the two fish bag limit with the restriction that at least one of the two halibut retained is no longer than 32 in (81.3 cm) with its head on. Given continued concern for the poundage of halibut harvested by the guided sport charter vessel fishery in Area 2C, NMFS published a proposed rule that would reduce sport fishing mortality of halibut in the Area 2C charter vessel fishery to a level comparable to the Council's Guideline Harvest Level (GHL). NMFS provides annual notice of the guideline harvest level (GHL) for Areas 2C and 3A to meet regulatory requirements and inform the public. Notice was published this year on February 5, 2008 (73 FR 6709).

Pursuant to regulations at 50 CFR 300.62, the approved IPHC regulations setting forth the 2008 IPHC annual management measures are published in the *Federal Register* to provide notice of their effectiveness, and to inform persons subject to the regulations of the restrictions and requirements. These management measures are effective until superseded by the 2009 management measures, which NMFS will publish in the *Federal Register*. As noted, NMFS anticipates implementing more restrictive regulations for the Area 2C charter vessel fishery and participants in that fishery are advised to check the current federal and state regulations prior to fishing.

The IPHC held its annual meeting in Portland, Oregon, January 15-18, 2008, and adopted regulations for 2008. The substantive changes to the previous IPHC regulations (72 FR 11792, March 14, 2007) include:

1. New halibut catch limits in all regulatory areas (areas);
2. A prohibition on tagging halibut except as authorized by IPHC;
3. Addition of a net-weight definition that applies to all halibut fishing;
4. Changes to the regulations regarding possession of Area 4 halibut on a vessel with a Vessel Monitoring System (VMS);
5. Restriction on the filleting of halibut on board sport fishing vessels in waters in and off Alaska;
6. New commercial halibut fishery opening dates;



7. Approval of a new logbook for Area 2A; and

8. Adoption of the revised CSP and 2008 recreational management measures for Area 2A.

Non-substantive changes to the previous IPHC regulations include: clarifying the weight referred to in paragraph 17(5) is the scale weight; replacing the redundant reference to Areas 4A, 4B, 4C or 4D in paragraph 18(4) with reference to Area 4; and a reorganization of paragraph 25, Sport Fishing for Halibut. Paragraph 25 was reorganized to create a new general sport fish paragraph that applies to all IPHC regulatory areas. The remaining sport regulations were then grouped by regulations specific to IPHC regulatory areas, resulting in a new paragraph 26 for Area 2A, new paragraph 27 for Area 2B, and new paragraph 28 for Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, 4E. Previous paragraph 26, Previous Regulations Superseded, is now paragraph 29.

#### Catch Limits

The IPHC recommended to the governments of Canada and the United States catch limits for 2008 totaling 60,400,000 pounds (27,397 mt), a 7.3 percent reduction from the 2007 catch limit. The decline in biomass is attributed to the exceptionally strong 1987 and 1988 year classes passing out of the fishery. Recruitment of the 1994 and 1995 year classes is above average and the 1999 and 2000 year classes are also estimated to be above average but several years away from making major contributions to the exploitable biomass of the stock.

The IPHC staff reported on the 2007 assessment of the Pacific halibut stock that implemented a coastwide estimation of biomass, compared with previous assessments which assessed stock biomass for each individual IPHC regulatory area. The IPHC and its advisory bodies endorsed the coastwide assessment and accepted staff's recommended constant exploitation yield (CEY) estimates for the areas.

The IPHC recommended a 20 percent harvest rate for Areas 2A through Area 4A and adopted catch limits in Areas 4B and 4CDE based on a harvest rate of 15 percent. Low levels of recruitment and lower levels of productivity in Areas 4B and 4CDE support lower harvest rates in these areas. The IPHC staff is concerned about the harvest rate in Area 4A and will evaluate optimum harvest rates for all of Area 4 during the coming year. In 2008, the IPHC will also repeat the standardized setline assessment survey in the eastern Bering Sea done in 2006 and expand it to the eastern Bering Sea flats.

#### Tagging

The IPHC regulation stipulates conditions for retention, landing, reporting and accounting of halibut that bear an IPHC external tag (Paragraph 21). The IPHC adopted a new regulation restricting who may tag a halibut (Paragraph 17(13)): No person shall tag halibut unless the tagging is authorized by IPHC permit or by a Federal or State agency. Halibut are to be tagged for scientific purposes authorized by IPHC or Federal and State agencies. Unauthorized individuals and organizations will be required to obtain a permit from IPHC to tag halibut. This requirement aids coordination of halibut research and data collection, and application of best practices for tagging to maximize fish survival.

#### Net weight

IPHC regulation at paragraph 3(1), which defines net weight, is reworded and expanded from "halibut that is gutted, head-off, and without ice and slime" to: Net weight of a halibut means the weight of halibut that is without gills and entrails, head-off, washed, and without ice and slime. If a halibut is weighed with the head on or with ice and slime, the required conversion factors for calculating net weight are a 2% deduction for ice and slime and a 10% deduction for the head.

The definition includes a percentage of the fish weight that can be attributed to the head and to ice and slime. The purpose of adding the percentage is to standardize conversion of a weighed halibut to net weight and to assist enforcement. The percentages represent the amount of fish weight that is deducted from the weighed halibut to estimate the net weight. These conversion amounts are in agreement with the Condition of License in British Columbia and quota share regulations in Alaska. This interpretation applies generally to all halibut fishing.

#### Area 4 VMS

New provisions in paragraph 18, Fishing Multiple Regulatory Areas, paragraph (3) allow possession on board a vessel of halibut that have been caught in more than one of the Areas 4A, 4B, 4C, or 4D when the operator of the vessel has an operational Vessel Monitoring System (VMS) on board actively transmitting in all regulatory areas fished. The provision limits possession of halibut on board a vessel with an actively transmitting VMS to no more halibut than the IFQ available for harvest to all permit holders on board the vessel in the area the vessel is fishing independent of areas where the vessel has fished previously. The

allowance to retain halibut caught in multiple areas of Area 4 provided each halibut's area of capture have not changed remains. The area specific possession limit of IFQ holders on board the vessel also remains. The new VMS provision has potential to reduce the number of times a vessel transits to and from the fishing grounds and provides additional flexibility in monitoring and enforcement of catch.

#### Change to Alaska sport fishing regulations

The allowable condition of halibut in a person's possession in waters in and off Alaska has been modified in paragraph 28(2), Sport Fishing for Halibut—Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, 4E to read as follows:

In Convention waters off the coast of Alaska, no person shall possess on board a fishing vessel, including charter vessels and pleasure craft used for fishing, halibut that has been filleted, mutilated, or otherwise disfigured in any manner except that each halibut may be cut into no more than 2 ventral, 2 dorsal pieces, and 2 cheeks, with skin on. The description of fishing vessel includes charter vessels and pleasure craft used for fishing. The exception to cut halibut into identifiable dorsal, ventral and cheek pieces is intended to improve identification of the number of retained halibut that are sport-caught in Alaska.

#### Commercial halibut fishery opening dates

The opening date for the tribal commercial fishery in Area 2A and for the commercial halibut fisheries in Areas 2B through 4E is March 8, 2008. The date takes into account a number of factors including, tides, timing of halibut migration and spawning, marketing for seasonal holidays, and interest in getting product in the processing plants before the herring season opens. The close of the commercial halibut fishery is November 15, 2008.

In the Area 2A directed fishery, each fishing period shall begin at 0800 hours and terminate at 1800 hours local time on June 11, June 25, July 9, July 23, August 6, August 20, September 3 and September 17 unless the Commission specifies otherwise. These 10-hour openings will occur until the quota is taken and the fishery is closed.

#### Logbook

The IPHC regulations identify the logbooks that must be used in the U.S. commercial halibut fisheries. The Commission approved the Washington Department of Fish and Wildlife (WDFW) voluntary sablefish logbook as a logbook for use by U.S. operators in

the Area 2A commercial halibut fishery. The IPHC worked with WDFW to incorporate all needed data elements in the logbook. Adoption of this logbook reduces duplication of logbooks for sablefish fishermen who retain halibut in Area 2A.

#### Catch Sharing Plan (CSP) and 2008 Recreational Management Measures for Area 2A

This action also implements the CSP for regulatory Area 2A. This plan was developed by the PFMC under authority of the Halibut Act. Section 5 of the Halibut Act (16 U.S.C. 773c) provides the Secretary of Commerce (Secretary) with general responsibility to carry out the Convention and to adopt such regulations as may be necessary to implement the purposes and objectives of the Convention and the Halibut Act. The Secretary's authority has been delegated to the AA. Section 5 of the Halibut Act (16 U.S.C. 773c(c)) also authorizes the Regional Fishery Management Council having authority for the geographic area concerned to develop regulations governing the Pacific halibut catch in United States Convention waters that are in addition to, but not in conflict with, regulations of the IPHC. Pursuant to this authority, the PFMC's Area 2A CSP allocates the halibut catch limit for Area 2A among treaty Indian, non-treaty commercial, and non-treaty sport fisheries in and off Washington, Oregon, and California.

For 2008 and beyond, PFMC recommended changes to the CSP to modify the Pacific halibut fisheries in Area 2A to: 1. Reopen the Washington North Coast subarea June sport fishery on the first Tuesday following June 16; 2. Clarify that the Saturday offshore opener in the Washington North Coast subarea June sport fishery is contingent on available quota; 3. Provide flexibility in the date that the entire Washington North Coast subarea sport fishery reopens for one day after June 24; 4. Retain the opening date of May 1 for the Washington South Coast subarea primary sport fishery in 2008 and, starting in 2009, revise the opening date to May 1 if it is a Sunday, otherwise, open on the first Sunday following May 1; 5. Set the Washington South Coast subarea primary sport fishery as a 2-day per week fishery, open Sunday and Tuesday; 6. Set aside 10 percent of the Washington South Coast subarea quota for the nearshore sport fishery once the primary fishery has closed; 7. Set the Washington South Coast subarea nearshore sport fishery as a 4-day per week fishery, open Friday, Saturday, Sunday, and Tuesday; 8. Remove outdated language referring to the

25,000 lb annual tribal allocation resulting from *U.S. v. Washington*; 9. Edit language referring to the number of sport subareas to clarify that there are six rather than seven; and 10. Revise the flexible in-season management provisions for the sport fisheries to allow modification of subarea quotas in all subareas. NMFS published a proposed rule to implement the PFMC's recommended changes to the CSP, and to implement the 2008 Area 2A sport fishing season regulations on January 2, 2008 (73 FR 140).

This final rule announces approval of revisions to the Area 2A CSP and implements the Area 2A CSP and management measures for 2008. These halibut management measures are effective until superseded by the 2009 halibut management measures, which will be published in the **Federal Register**.

#### Comments and Responses

NMFS accepted comments through February 1, 2008, on the proposed rule to implement the 2008 Area 2A CSP and received one letter of comment apiece from Washington Department of Fish and Wildlife (WDFW) and Oregon Department of Fish and Wildlife (ODFW), plus two comments from members of the public. Comments from the public were not relevant to the subject of the proposed rule, Area 2A halibut fisheries, and are, therefore, not addressed in this Comments and Responses section. NMFS also received a letter from the United States Department of Interior indicating that it had no comments to offer.

*Comment 1:* The WDFW held a public meeting on January 29, 2008, to review the results of the 2007 Puget Sound halibut fishery, and to develop season dates for the 2008 sport halibut fishery. Based on the 2008 Area 2A total allowable catch of 1.22 million pounds (553.4 mt.) the halibut quota for the Puget Sound sport fishery is 59,354 lb (26.9 mt.) Applying WDFW's Fishing Equivalent Day (FED) method for estimating the Puget Sound fishery's season length, and applying the highest catch per FED in the past five years, there are 76 FEDs available in 2008. WDFW recommends that the regions within the Puget Sound sport halibut fishery will be open 5 days a week (Thursday through Monday) as follows: Eastern Region to be open April 10 through June 13, 2008; and Western Region to be open May 22 through July 21, 2008.

*Response:* NMFS agrees with WDFW's recommended Puget Sound season dates and has implemented them via this final rule.

*Comment 2:* ODFW held a public meeting on January 24, 2008, to gather comments on the open dates for the recreational all-depth fishery in Oregon's Central Coast sub-area. Since 2004, the number of open fishing days that could be accommodated in the Spring fishery has been roughly constant. The catch limit for this sub-area's Spring season will be 159,577 lb (72.4 mt) in 2008, based on the IPHC's 2008 TAC for Area 2A. Given the relatively constant effort pattern in recent years, and the similar quota level in 2008 to that in 2007, ODFW recommends setting a Central Coast all-depth fishery of 15 days, with 9 additional back-up dates, in case the sub-area's Spring quota is not taken in the initial 15 days. ODFW recommends the following days for the Spring fishery, within this sub-area's parameters for a Thursday-Saturday season and with weeks of adverse tidal conditions skipped (except for the opening weekend): regular open days of May 8–10, May 15–17, May 22–24, May 29–31, and June 12–14; back-up open days of June 26–28, July 10–12, and July 24–26. For the Summer fishery in this sub-area, ODFW recommended following the CSP's parameters of opening the first Friday in August, with open days to occur every other Friday-Sunday, unless modified in-season within the parameters of the CSP. Under the CSP, the 2008 summer all-depth fishery in Oregon's Central Coast sub-area would occur: August 1–3, August 15–17, August 29–31, September 12–14, September 26–28, October 10–12, and October 24–26.

*Response:* NMFS agrees with ODFW's recommended Central Coast season dates and has implemented them via this final rule.

#### Changes from the Proposed Rule

On January 2, 2008, NMFS published a proposed rule on changes to the CSP and recreational management measures for Area 2A (73 FR 140). In the proposed rule on page 142, the rule said that the Washington North Coast sport fishery would start on May 15. This was incorrect. Paragraph (f) (1) (ii) of the CSP states that "the fishery will open on the first Tuesday between May 9 and May 15 ..." According to the CSP, that date should be May 13 in 2008. This final rule includes the corrected Washington North Coast sport halibut fishery start date in Section 26. (8) (b) (i) (A).

#### Annual Halibut Management Measures

The annual management measures that follow for the 2008 Pacific halibut

fishery are those adopted by the IPHC and approved by the Secretary of State.

### 1. Short Title

These regulations may be cited as the Pacific Halibut Fishery Regulations.

### 2. Application

(1) These Regulations apply to persons and vessels fishing for halibut in, or possessing halibut taken from, the maritime area as defined in Section 3

(2) Sections 3 to 6 apply generally to all halibut fishing.

(3) Sections 7 to 20 apply to commercial fishing for halibut.

(4) Section 21 applies to tagged halibut caught by any vessel.

(5) Section 22 applies to the United States treaty Indian fishery in Subarea 2A-1.

(6) Section 23 applies to customary and traditional fishing in Alaska.

(7) Section 24 applies to Aboriginal groups fishing for food, social and ceremonial purposes in British Columbia.

(8) Sections 25 to 28 apply to sport fishing for halibut.

(9) These Regulations do not apply to fishing operations authorized or conducted by the Commission for research purposes.

### 3. Interpretation

(1) In these Regulations,

(a) *Authorized officer* means any State, Federal, or Provincial officer authorized to enforce these regulations including, but not limited to, the National Marine Fisheries Service (NMFS), Canada's Department of Fisheries and Oceans (DFO), Alaska Wildlife Troopers (AWT), United States Coast Guard (USCG), Washington Department of Fish and Wildlife (WDFW), and the Oregon State Police (OSP);

(b) *Authorized clearance personnel* means an authorized officer of the United States, a representative of the Commission, or a designated fish processor;

(c) *Charter vessel* means a vessel used for hire in sport fishing for halibut, but not including a vessel without a hired operator;

(d) *Commercial fishing* means fishing, other than

(i) treaty Indian ceremonial and subsistence fishing as referred to in section 22,

(ii) customary and traditional fishing as referred to in section 23 and defined by and regulated pursuant to NMFS regulations published at 50 CFR part 300, the resulting catch of which is sold or bartered; or is intended to be sold or bartered, and

(iii) Aboriginal groups fishing in British Columbia as referred to in section 24;

(e) *Commission* means the International Pacific Halibut Commission;

(f) *Daily bag limit* means the maximum number of halibut a person may take in any calendar day from Convention waters;

(g) *Fishing* means the taking, harvesting, or catching of fish, or any activity that can reasonably be expected to result in the taking, harvesting, or catching of fish, including specifically the deployment of any amount or component part of setline gear anywhere in the maritime area;

(h) *Fishing period limit* means the maximum amount of halibut that may be retained and landed by a vessel during one fishing period;

(i) *Land or offload* with respect to halibut, means the removal of halibut from the catching vessel;

(j) *License* means a halibut fishing license issued by the Commission pursuant to section 4;

(k) *Maritime area*, in respect of the fisheries jurisdiction of a Contracting Party, includes without distinction areas within and seaward of the territorial sea and internal waters of that Party;

(l) *Net weight of a halibut* means the weight of halibut that is without gills and entrails, head-off, washed, and without ice and slime. If a halibut is weighed with the head on or with ice and slime, the required conversion factors for calculating net weight are a 2% deduction for ice and slime and a 10% deduction for the head;

(m) *Operator, with respect to any vessel*, means the owner and/or the master or other individual on board and in charge of that vessel;

(n) *Overall length of a vessel* means the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern (excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments);

(o) *Person* includes an individual, corporation, firm, or association;

(p) *Regulatory area* means an area referred to in section 6;

(q) *Setline gear* means one or more stationary, buoyed, and anchored lines with hooks attached;

(r) *Sport fishing* means all fishing other than

(i) commercial fishing,

(ii) treaty Indian ceremonial and subsistence fishing as referred to in section 22,

(iii) customary and traditional fishing as referred to in section 23 and defined in and regulated pursuant to NMFS

regulations published in 50 CFR part 300, and

(iv) Aboriginal groups fishing in British Columbia as referred to in section 24;

(s) *Tender* means any vessel that buys or obtains fish directly from a catching vessel and transports it to a port of landing or fish processor;

(t) *VMS transmitter* means a NMFS-approved vessel monitoring system transmitter that automatically determines a vessel's position and transmits it to a NMFS-approved communications service provider<sup>1</sup>.

(2) In these Regulations, all bearings are true and all positions are determined by the most recent charts issued by the United States National Ocean Service or the Canadian Hydrographic Service.

### 4. Licensing Vessels for Area 2A

(1) No person shall fish for halibut from a vessel, nor possess halibut on board a vessel, used either for commercial fishing or as a charter vessel in Area 2A, unless the Commission has issued a license valid for fishing in Area 2A in respect of that vessel.

(2) A license issued for a vessel operating in Area 2A shall be valid only for operating either as a charter vessel or a commercial vessel, but not both.

(3) A vessel with a valid Area 2A commercial license cannot be used to sport fish for Pacific halibut in Area 2A.

(4) A license issued for a vessel operating in the commercial fishery in Area 2A shall be valid for one of the following, but not both

(a) The directed commercial fishery during the fishing periods specified in paragraph (2) of section 8 and the incidental commercial fishery during the sablefish fishery specified in paragraph (3) of section 8; or

(b) The incidental catch fishery during the salmon troll fishery specified in paragraph (4) of section 8.

(5) A license issued in respect of a vessel referred to in paragraph (1) of the section must be carried on board that vessel at all times and the vessel operator shall permit its inspection by any authorized officer.

(6) The Commission shall issue a license in respect of a vessel, without fee, from its office in Seattle, Washington, upon receipt of a completed, written, and signed "Application for Vessel License for the Halibut Fishery" form.

(7) A vessel operating in the directed commercial fishery or the incidental

<sup>1</sup> Call NOAA Enforcement Division, Alaska Region, at 907-586-7225 between the hours of 0800 and 1600 local time for a list of NMFS-approved VMS transmitters and communications service providers.

commercial fishery during the sablefish fishery in Area 2A must have its "Application for Vessel License for the Halibut Fishery" form postmarked no later than 11:59 PM on April 30, or on the first weekday in May if April 30 is a Saturday or Sunday.

(8) A vessel operating in the incidental commercial fishery during the salmon troll season in Area 2A must have its "Application for Vessel License for the Halibut Fishery" form postmarked no later than 11:59 PM on March 31, or the first weekday in April if March 31 is a Saturday or Sunday.

(9) Application forms may be obtained from any authorized officer or from the Commission.

(10) Information on "Application for Vessel License for the Halibut Fishery" form must be accurate.

(11) The "Application for Vessel License for the Halibut Fishery" form shall be completed and signed by the vessel owner.

(12) Licenses issued under section 4 shall be valid only during the year in which they are issued.

(13) A new license is required for a vessel that is sold, transferred, renamed, or redocumented.

(14) The license required under section 4 is in addition to any license, however designated, that is required under the laws of the United States or any of its States.

(15) The United States may suspend, revoke, or modify any license issued under section 4 under policies and procedures in 15 CFR part 904.

#### 5. In-Season Actions

(1) The Commission is authorized to establish or modify regulations during the season after determining that such action:

(a) Will not result in exceeding the catch limit established pre-season for each regulatory area;

(b) Is consistent with the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, and applicable domestic law of either Canada or the United States; and

(c) Is consistent, to the maximum extent practicable, with any domestic catch sharing plans or other domestic allocation programs developed by the United States or Canadian governments.

(2) In-season actions may include, but are not limited to, establishment or modification of the following:

- (a) Closed areas;
- (b) Fishing periods;
- (c) Fishing period limits;
- (d) Gear restrictions;
- (e) Recreational bag limits;

(f) Size limits; or

(g) Vessel clearances.

(3) In-season changes will be effective at the time and date specified by the Commission.

(4) The Commission will announce in-season actions under section 5 by providing notice to major halibut processors; Federal, State, United States treaty Indian, and Provincial fishery officials; and the media.

#### 6. Regulatory Areas

The following areas shall be regulatory areas (see Figure 1) for the purposes of the Convention:

(1) Area 2A includes all waters off the states of California, Oregon, and Washington;

(2) Area 2B includes all waters off British Columbia;

(3) Area 2C includes all waters off Alaska that are east of a line running 340° true from Cape Spencer Light (58°11'54" N. latitude, 136°38'24" W. longitude) and south and east of a line running 205° true from said light;

(4) Area 3A includes all waters between Area 2C and a line extending from the most northerly point on Cape Aklek (57°41'15" N. latitude, 155°35'00" W. longitude) to Cape Ikolik (57°17'17" N. latitude, 154°47'18" W. longitude), then along the Kodiak Island coastline to Cape Trinity (56°44'50" N. latitude, 154°08'44" W. longitude), then 140° true;

(5) Area 3B includes all waters between Area 3A and a line extending 150° true from Cape Lutke (54°29'00" N. latitude, 164°20'00" W. longitude) and south of 54°49'00" N. latitude in Isanotski Strait;

(6) Area 4A includes all waters in the Gulf of Alaska west of Area 3B and in the Bering Sea west of the closed area defined in section 10 that are east of 172°00'00" W. longitude and south of 56°20'00" N. latitude;

(7) Area 4B includes all waters in the Bering Sea and the Gulf of Alaska west of Area 4A and south of 56°20'00" N. latitude;

(8) Area 4C includes all waters in the Bering Sea north of Area 4A and north of the closed area defined in section 10 which are east of 171°00'00" W. longitude, south of 58°00'00" N. latitude, and west of 168°00'00" W. longitude;

(9) Area 4D includes all waters in the Bering Sea north of Areas 4A and 4B, north and west of Area 4C, and west of 168°00'00" W. longitude;

(10) Area 4E includes all waters in the Bering Sea north and east of the closed area defined in section 10, east of 168°00'00" W. longitude, and south of 65°34'00" N. latitude.

#### 7. Fishing in Regulatory Area 4E and 4D

(1) Section 7 applies only to any person fishing, or vessel that is used to fish for, Area 4E Community Development Quota (CDQ) or Area 4D CDQ halibut provided that the total annual halibut catch of that person or vessel is landed at a port within Area 4E or 4D.

(2) A person may retain halibut taken with setline gear in Area 4E CDQ and 4D CDQ fishery that are smaller than the size limit specified in section 13, provided that no person may sell or barter such halibut.

(3) The manager of a CDQ organization that authorizes persons to harvest halibut in the Area 4E or 4D CDQ fisheries must report to the Commission the total number and weight of undersized halibut taken and retained by such persons pursuant to section 7, paragraph (2). This report, which shall include data and methodology used to collect the data, must be received by the Commission prior to November 1 of the year in which such halibut were harvested.

#### 8. Fishing Periods

(1) The fishing periods for each regulatory area apply where the catch limits specified in section 11 have not been taken.

(2) Each fishing period in the Area 2A directed fishery<sup>2</sup> shall begin at 0800 hours and terminate at 1800 hours local time on June 11, June 25, July 9, July 23, August 6, August 20, September 3, and September 17 unless the Commission specifies otherwise.

(3) Notwithstanding paragraph (7) of section 11, an incidental catch fishery<sup>3</sup> is authorized during the sablefish seasons in Area 2A in accordance with regulations promulgated by NMFS.

(4) Notwithstanding paragraph (2), and paragraph (7) of section 11, an incidental catch fishery is authorized during salmon troll seasons in Area 2A in accordance with regulations promulgated by NMFS.

(5) The fishing period in Areas 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall begin at 1200 hours local time on March 8 and terminate at 1200 hours local time on November 15, unless the Commission specifies otherwise.

(6) All commercial fishing for halibut in Areas 2A, 2B, 2C, 3A, 3B, 4A, 4B, 4C,

<sup>2</sup> The directed fishery is restricted to waters that are south of Point Chehalis, Washington (46°53'18" N. latitude) under regulations promulgated by NMFS and published in the *Federal Register*.

<sup>3</sup> The incidental fishery during the directed, fixed gear sablefish season is restricted to waters that are north of Point Chehalis, Washington (46°53'18" N. latitude) under regulations promulgated by NMFS at 50 CFR 300.63.



4D, and 4E shall cease at 1200 hours local time on November 15.

#### 9. Closed Periods

(1) No person shall engage in fishing for halibut in any regulatory area other than during the fishing periods set out in section 8 in respect of that area.

(2) No person shall land or otherwise retain halibut caught outside a fishing period applicable to the regulatory area where the halibut was taken.

(3) Subject to paragraphs (7), (8), (9), and (10) of section 19, these Regulations do not prohibit fishing for any species of fish other than halibut during the closed periods.

(4) Notwithstanding paragraph (3), no person shall have halibut in his/her possession while fishing for any other species of fish during the closed periods.

(5) No vessel shall retrieve any halibut fishing gear during a closed period if the vessel has any halibut on board.

(6) A vessel that has no halibut on board may retrieve any halibut fishing gear during the closed period after the operator notifies an authorized officer or representative of the Commission prior to that retrieval.

(7) After retrieval of halibut gear in accordance with paragraph (6), the vessel shall submit to a hold inspection at the discretion of the authorized officer or representative of the Commission.

(8) No person shall retain any halibut caught on gear retrieved referred to in paragraph (6).

(9) No person shall possess halibut aboard a vessel in a regulatory area during a closed period unless that vessel is in continuous transit to or within a port in which that halibut may be lawfully sold.

#### 10. Closed Area

All waters in the Bering Sea north of 55°00'00" N. latitude in Isanotski Strait that are enclosed by a line from Cape Sarichef Light (54°36'00" N. latitude, 164°55'42" W. longitude) to a point at 56°20'00" N. latitude, 168°30'00" W. longitude; thence to a point at 58°21'25" N. latitude, 163°00'00" W. longitude; thence to Strogonof Point (56°53'18" N. latitude, 158°50'37" W. longitude); and then along the northern coasts of the Alaska Peninsula and Unimak Island to the point of origin at Cape Sarichef Light are closed to halibut fishing and no person shall fish for halibut therein or have halibut in his/her possession while in those waters except in the course of a continuous transit across those waters. All waters in Isanotski Strait between 55°00'00" N. latitude and

54°49'00" N. latitude are closed to halibut fishing.

#### 11. Catch Limits

(1) The total allowable catch of halibut to be taken during the halibut fishing periods specified in section 8 shall be limited to the net weights expressed in pounds or metric tons shown in the following table:

Regulatory Area	Catch Limit	
	Pounds	Metric tons
2A: directed commercial, and incidental commercial during salmon troll fishery	251,381	114.0
2A: incidental commercial during sablefish fishery	70,000	31.8
2B <sup>4</sup>	9,000,000	4,081.6
2C	6,210,000	2,816.3
3A	24,220,000	10,984.1
3B	10,900,000	4,943.3
4A	3,100,000	1,405.9
4B	1,860,000	843.5
4C	1,769,000	802.3
4D	1,769,000	802.3
4E	352,000	159.6

<sup>4</sup>Area 2B includes combined commercial and sport catch limits which will be allocated by DFO.

(2) Notwithstanding paragraph (1), regulations pertaining to the division of the Area 2A catch limit between the directed commercial fishery and the incidental catch fishery as described in paragraph (4) of section 8 will be promulgated by NMFS and published in the **Federal Register**.

(3) The Commission shall determine and announce to the public the date on which the catch limit for Area 2A will be taken.

(4) Notwithstanding paragraph (1), Area 2B will close only when all Individual Vessel Quotas (IVQs) assigned by DFO are taken, or November 15, whichever is earlier.

(5) Notwithstanding paragraph (1), Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E will each close only when all IFQs and all CDQs issued by NMFS have been taken, or November 15, whichever is earlier.

(6) If the Commission determines that the catch limit specified for Area 2A in paragraph (1) would be exceeded in an unrestricted 10-hour fishing period as specified in paragraph (2) of section 8, the catch limit for that area shall be considered to have been taken unless fishing period limits are implemented.

(7) When under paragraphs (2), (3), and (6) the Commission has announced a date on which the catch limit for Area 2A will be taken, no person shall fish for halibut in that area after that date for the rest of the year, unless the Commission has announced the reopening of that area for halibut fishing.

(8) Notwithstanding paragraph (1), the total allowable catch of halibut that may be taken in the Area 4E directed commercial fishery is equal to the combined annual catch limits specified for the Area 4D and Area 4E CDQ fisheries. The annual Area 4D CDQ catch limit will decrease by the equivalent amount of halibut CDQ taken in Area 4E in excess of the annual Area 4E CDQ catch limit.

(9) Notwithstanding paragraph (1), the total allowable catch of halibut that may be taken in the Area 4D directed commercial fishery is equal to the combined annual catch limits specified for the Area 4C and Area 4D. The annual Area 4C catch limit will decrease by the equivalent amount of halibut taken in Area 4D in excess of the annual Area 4D catch limit.

#### 12. Fishing Period Limits

(1) It shall be unlawful for any vessel to retain more halibut than authorized by that vessel's license in any fishing period for which the Commission has announced a fishing period limit.

(2) The operator of any vessel that fishes for halibut during a fishing period when fishing period limits are in effect must, upon commencing an offload of halibut to a commercial fish processor, completely offload all halibut on board said vessel to that processor and ensure that all halibut is weighed and reported on State fish tickets.

(3) The operator of any vessel that fishes for halibut during a fishing period when fishing period limits are in effect must, upon commencing an offload of halibut other than to a commercial fish processor, completely offload all halibut on board said vessel and ensure that all halibut are weighed and reported on State fish tickets.

(4) The provisions of paragraph (3) are not intended to prevent retail over-the-side sales to individual purchasers so long as all the halibut on board is ultimately offloaded and reported.

(5) When fishing period limits are in effect, a vessel's maximum retainable catch will be determined by the Commission based on

(a) The vessel's overall length in feet and associated length class;

(b) The average performance of all vessels within that class; and

(c) The remaining catch limit.

(6) Length classes are shown in the following table:

Overall Length (in feet)	Vessel Class
1-25	A
26-30	B
31-35	C
36-40	D
41-45	E
46-50	F
51-55	G
56+	H

(7) Fishing period limits in Area 2A apply only to the directed halibut fishery referred to in paragraph (2) of section 8.

### 13. Size Limits

(1) No person shall take or possess any halibut that

(a) With the head on, is less than 32 inches (81.3 cm) as measured in a straight line, passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail, as illustrated in Figure 2; or

(b) With the head removed, is less than 24 inches (61.0 cm) as measured from the base of the pectoral fin at its most anterior point to the extreme end of the middle of the tail, as illustrated in Figure 2.

(2) No person on board a vessel fishing for, or tendering, halibut caught in Area 2A shall possess any halibut that has had its head removed.

### 14. Careful Release of Halibut

(1) All halibut that are caught and are not retained shall be immediately released outboard of the roller and returned to the sea with a minimum of injury by

(a) Hook straightening;

(b) Cutting the gangion near the hook; or

(c) Carefully removing the hook by twisting it from the halibut with a gaff.

(2) Except that paragraph (1) shall not prohibit the possession of halibut on board a vessel that has been brought aboard to be measured to determine if the minimum size limit of the halibut is met and, if sublegal-sized, is promptly returned to the sea with a minimum of injury.

### 15. Vessel Clearance in Area 4

(1) The operator of any vessel that fishes for halibut in Areas 4A, 4B, 4C, or 4D must obtain a vessel clearance before fishing in any of these areas, and before the landing of any halibut caught in any of these areas, unless specifically exempted in paragraphs (10), (13), (14), (15), or (16).

(2) An operator obtaining a vessel clearance required by paragraph (1) must obtain the clearance in person from the authorized clearance personnel and sign the IPHC form documenting that a clearance was obtained, except that when the clearance is obtained via VHF radio referred to in paragraphs (5), (8), and (9), the authorized clearance personnel must sign the IPHC form documenting that the clearance was obtained.

(3) The vessel clearance required under paragraph (1) prior to fishing in Area 4A may be obtained only at Nazan Bay on Atka Island, Dutch Harbor or Akutan, Alaska, from an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(4) The vessel clearance required under paragraph (1) prior to fishing in Area 4B may only be obtained at Nazan Bay on Atka Island or Adak, Alaska, from an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(5) The vessel clearance required under paragraph (1) prior to fishing in Area 4C and 4D may be obtained only at St. Paul or St. George, Alaska, from an authorized officer of the United States, a representative of the Commission, or a designated fish processor by VHF radio and allowing the person contacted to confirm visually the identity of the vessel.

(6) The vessel operator shall specify the specific regulatory area in which fishing will take place.

(7) Before unloading any halibut caught in Area 4A, a vessel operator may obtain the clearance required under paragraph (1) only in Dutch Harbor or Akutan, Alaska, by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(8) Before unloading any halibut caught in Area 4B, a vessel operator may obtain the clearance required under paragraph (1) only in Nazan Bay on Atka Island or Adak, by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor by VHF radio or in person.

(9) Before unloading any halibut caught in Area 4C and 4D, a vessel

operator may obtain the clearance required under paragraph (1) only in St. Paul, St. George, Dutch Harbor, or Akutan, Alaska, either in person or by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor. The clearances obtained in St. Paul or St. George, Alaska, can be obtained by VHF radio and allowing the person contacted to confirm visually the identity of the vessel.

(10) Any vessel operator who complies with the requirements in section 18 for possessing halibut on board a vessel that was caught in more than one regulatory area in Area 4 is exempt from the clearance requirements of paragraph (1) of section 15, provided that:

(a) The operator of the vessel obtains a vessel clearance prior to fishing in Area 4 in either Dutch Harbor, Akutan, St. Paul, St. George, Adak, or Nazan Bay on Atka Island by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor. The clearance obtained in St. Paul, St. George, Adak, or Nazan Bay on Atka Island can be obtained by VHF radio and allowing the person contacted to confirm visually the identity of the vessel. This clearance will list the Areas in which the vessel will fish; and

(b) Before unloading any halibut from Area 4, the vessel operator obtains a vessel clearance from Dutch Harbor, Akutan, St. Paul, St. George, Adak, or Nazan Bay on Atka Island by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor. The clearance obtained in St. Paul or St. George can be obtained by VHF radio and allowing the person contacted to confirm visually the identity of the vessel. The clearance obtained in Adak or Nazan Bay on Atka Island can be obtained by VHF radio.

(11) Vessel clearances shall be obtained between 0600 and 1800 hours, local time.

(12) No halibut shall be on board the vessel at the time of the clearances required prior to fishing in Area 4.

(13) Any vessel that is used to fish for halibut only in Area 4A and lands its total annual halibut catch at a port within Area 4A is exempt from the clearance requirements of paragraph (1).

(14) Any vessel that is used to fish for halibut only in Area 4B and lands its total annual halibut catch at a port within Area 4B is exempt from the clearance requirements of paragraph (1).

(15) Any vessel that is used to fish for halibut only in Areas 4C or 4D or 4E and lands its total annual halibut catch at a

port within Areas 4C, 4D, 4E, or the closed area defined in section 10, is exempt from the clearance requirements of paragraph (1).

(16) Any vessel that carries a transmitting VMS transmitter while fishing for halibut in Area 4A, 4B, 4C, or 4D and until all halibut caught in any of these areas is landed is exempt from the clearance requirements of paragraph (1) of section 15, provided that:

(a) The operator of the vessel complies with NMFS' vessel monitoring system regulations published at 50 CFR 679.28(f)(3), (4) and (5); and

(b) The operator of the vessel notifies NOAA Fisheries Office for Law Enforcement at 800-304-4846 (select option 1 to speak to an Enforcement Data Clerk) between the hours of 0600 and 0000 (midnight) local time within 72 hours before fishing for halibut in Area 4A, 4B, 4C, or 4D and receives a VMS confirmation number.

#### 16. Logs

(1) The operator of any U.S. vessel fishing for halibut that has an overall length of 26 feet (7.9 meters) or greater shall maintain an accurate log of halibut fishing operations. The operator of a vessel fishing in waters in and off Alaska must use one of the following logbooks: the Groundfish/IFQ Daily Fishing Longline and Pot Gear Logbook provided by NMFS; the Alaska hook-and-line logbook provided by Petersburg Vessel Owners Association or Alaska Longline Fisherman's Association; the Alaska Department of Fish and Game (ADF&G) longline-pot logbook; or the logbook provided by IPHC. The operator of a vessel fishing in Area 2A must use either the Washington Department of Fish and Wildlife (WDFW) Voluntary Sablefish Logbook, or the logbook provided by IPHC.

(2) The logbook referred to in paragraph (1) must include the following information:

(a) The name of the vessel and the state (ADF&G, WDFW, Oregon Department of Fish and Wildlife, or California Department of Fish and Game) vessel number;

(b) The date(s) upon which the fishing gear is set or retrieved;

(c) The latitude and longitude or loran coordinates or a direction and distance from a point of land for each set or day;

(d) The number of skates deployed or retrieved, and number of skates lost; and

(e) The total weight or number of halibut retained for each set or day.

(3) The logbook referred to in paragraph (1) shall be

(a) Maintained on board the vessel;

(b) Updated not later than 24 hours after midnight local time for each day

fished and prior to the offloading or sale of halibut taken during that fishing trip;

(c) Retained for a period of two years by the owner or operator of the vessel;

(d) Open to inspection by an authorized officer or any authorized representative of the Commission upon demand; and

(e) Kept on board the vessel when engaged in halibut fishing, during transits to port of landing, and until the offloading of all halibut is completed.

(4) The log referred to in paragraph (1) does not apply to the incidental halibut fishery during the salmon troll season in Area 2A defined in paragraph (4) of section 8.

(5) The operator of any Canadian vessel fishing for halibut shall maintain an accurate log recorded in the British Columbia Integrated Groundfish Fishing Log provided by DFO.

(6) The logbook referred to in paragraph (5) must include the following information:

(a) The name of the vessel and the DFO vessel number;

(b) The date(s) upon which the fishing gear is set or retrieved;

(c) The latitude and longitude or loran coordinates or a direction and distance from a point of land for each set or day;

(d) The number of skates deployed or retrieved, and number of skates lost; and

(e) The total weight or number of halibut retained for each set or day.

(7) The logbook referred to in paragraph (5) shall be

(a) Maintained on board the vessel;

(b) Retained for a period of two years by the owner or operator of the vessel;

(c) Open to inspection by an authorized officer or any authorized representative of the Commission upon demand;

(d) Kept on board the vessel when engaged in halibut fishing, during transits to port of landing, and until the offloading of all halibut is completed;

(e) Mailed to the DFO (white copy) within seven days of offloading; and

(f) Mailed to the Commission (yellow copy) within seven days of the final offload if not collected by a Commission employee.

(8) No person shall make a false entry in a log referred to in section 16.

#### 17. Receipt and Possession of Halibut

(1) No person shall receive halibut caught in Area 2A from a United States vessel that does not have on board the license required by section 4.

(2) No person shall possess on board a vessel a halibut other than whole or with gills and entrails removed. Except that this paragraph shall not prohibit the possession on board a vessel:

(a) Halibut cheeks cut from halibut caught by persons authorized to process

the halibut on board in accordance with NMFS regulations published at 50 CFR part 679;

(b) Fillets from halibut that have been offloaded in accordance with section 17 may be possessed on board the harvesting vessel in the port of landing up to 1800 hours local time on the calendar day following the offload<sup>5</sup>; and

(c) Halibut with their heads removed in accordance with section 13.

(3) No person shall offload halibut from a vessel unless the gills and entrails have been removed prior to offloading<sup>6</sup>.

(4) It shall be the responsibility of a vessel operator who lands halibut to continuously and completely offload at a single offload site all halibut on board the vessel.

(5) A registered buyer (as that term is defined in regulations promulgated by NMFS and codified at 50 CFR part 679) who receives halibut harvested in IFQ and CDQ fisheries in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E, directly from the vessel operator that harvested such halibut must weigh all the halibut received and record the following information on federal catch reports: date of offload; name of vessel; vessel number; scale weight obtained at the time of offloading, including the scale weight (in pounds) of halibut purchased by the registered buyer, the scale weight (in pounds) of halibut offloaded in excess of the IFQ or CDQ, the scale weight of halibut (in pounds) retained for personal use or for future sale, and the scale weight (in pounds) of halibut discarded as unfit for human consumption.

(6) The first recipient, commercial fish processor, or buyer in the United States who purchases or receives halibut directly from the vessel operator that harvested such halibut must weigh and record all halibut received and record the following information on state fish tickets: the date of offload; vessel number; total weight obtained at the time of offload including the weight (in pounds) of halibut purchased; the weight (in pounds) of halibut offloaded in excess of the IFQ, CDQ, or fishing period limits; the weight of halibut (in pounds) retained for personal use or for future sale; and the weight (in pounds) of halibut discarded as unfit for human consumption.

(7) The individual completing the state fish tickets for the Area 2A fisheries as referred to in paragraph (6)

<sup>5</sup> DFO has more restrictive regulations; therefore, section 17(2)b does not apply to fish caught in Area 2B or landed in British Columbia.

<sup>6</sup> DFO did not adopt this regulation; therefore, section 17 paragraph (3) does not apply to fish caught in Area 2B.

must additionally record whether the halibut weight is of head-on or head-off fish.

(8) For halibut landings made in Alaska, the requirements as listed in paragraph (5) and (6) can be met by recording the information in the Interagency Electronic Reporting Systems, eLandings.

(9) The master or operator of a Canadian vessel that was engaged in halibut fishing must weigh and record all halibut on board said vessel at the time offloading commences and record on Provincial fish tickets or Federal catch reports the date; locality; name of vessel; the name(s) of the person(s) from whom the halibut was purchased; and the scale weight obtained at the time of offloading of all halibut on board the vessel including the pounds purchased, pounds in excess of IVQs, pounds retained for personal use, and pounds discarded as unfit for human consumption.

(10) No person shall make a false entry on a State or Provincial fish ticket or a Federal catch or landing report referred to in paragraphs (5), (6), and (9) of section 17.

(11) A copy of the fish tickets or catch reports referred to in paragraphs (5), (6), and (9) shall be

(a) Retained by the person making them for a period of three years from the date the fish tickets or catch reports are made; and

(b) Open to inspection by an authorized officer or any authorized representative of the Commission.

(12) No person shall possess any halibut taken or retained in contravention of these Regulations.

(13) When halibut are landed to other than a commercial fish processor, the records required by paragraph (6) shall be maintained by the operator of the vessel from which that halibut was caught, in compliance with paragraph (9).

(14) It shall be unlawful to enter an IPHC license number on a State fish ticket for any vessel other than the vessel actually used in catching the halibut reported thereon.

(15) No person shall tag halibut unless the tagging is authorized by IPHC permit or by a Federal or State agency.

#### 18. Fishing Multiple Regulatory Areas

(1) Except as provided in section 18, no person shall possess at the same time on board a vessel halibut caught in more than one regulatory area.

(2) Halibut caught in more than one of the Regulatory Areas 2C, 3A, or 3B may be possessed on board a vessel at the same time providing the operator of the vessel:

(a) Has a NMFS-certified observer on board when required by NMFS regulations<sup>7</sup> published at 50 CFR 679.7(f)(4); and

(b) Can identify the regulatory area in which each halibut on board was caught by separating halibut from different areas in the hold, tagging halibut, or by other means.

(3) Halibut caught in more than one of the Regulatory Areas 4A, 4B, 4C, or 4D may be possessed on board a vessel at the same time providing the operator of the vessel:

(a) Has a NMFS-certified observer on board the vessel as required by NMFS regulations<sup>7</sup> published at 50 CFR 679.7(f)(4), or has an operational Vessel Monitoring System (VMS) on board actively transmitting in all regulatory areas fished; and

(b) Does not possess at any time on board the vessel more halibut than the IFQ available for harvest to all permit holders on board the vessel in the area which the vessel is fishing, even if some of the catch occurred earlier in a different area; and

(c) Can identify the regulatory area in which each halibut on board was caught by separating halibut from different areas in the hold, tagging halibut, or by other means.

(4) If halibut from Area 4 are on board the vessel, the vessel can have halibut caught in Regulatory Areas 2C, 3A, and 3B on board if in compliance with paragraph (2).

#### 19. Fishing Gear

(1) No person shall fish for halibut using any gear other than hook and line gear, except that vessels licensed to catch sablefish in Area 2B using sablefish trap gear as defined in the Condition of Sablefish Licence can retain halibut caught as bycatch under regulations promulgated by the Canadian Department of Fisheries and Oceans.

(2) No person shall possess halibut taken with any gear other than hook and line gear, except that vessels licensed to catch sablefish in Area 2B using sablefish trap gear as defined by the Condition of Sablefish Licence can retain halibut caught as bycatch under regulations promulgated by the Canadian Department of Fisheries and Oceans.

(3) No person shall possess halibut while on board a vessel carrying any trawl nets or fishing pots capable of catching halibut, except that in Areas

<sup>7</sup> Without an observer, a vessel cannot have on board more halibut than the IFQ for the area that is being fished, even if some of the catch occurred earlier in a different area.

2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E, halibut heads, skin, entrails, bones or fins for use as bait may be possessed on board a vessel carrying pots capable of catching halibut, provided that a receipt documenting purchase or transfer of these halibut parts is on board the vessel.

(4) All setline or skate marker buoys carried on board or used by any United States vessel used for halibut fishing shall be marked with one of the following:

(a) The vessel's state license number; or

(b) The vessel's registration number. (5) The markings specified in paragraph (4) shall be in characters at least four inches in height and one-half inch in width in a contrasting color visible above the water and shall be maintained in legible condition.

(6) All setline or skate marker buoys carried on board or used by a Canadian vessel used for halibut fishing shall be

(a) Floating and visible on the surface of the water; and

(b) Legibly marked with the identification plate number of the vessel engaged in commercial fishing from which that setline is being operated.

(7) No person on board a vessel from which setline gear was used to fish for any species of fish anywhere in Area 2A during the 72-hour period immediately before the opening of a halibut fishing period shall catch or possess halibut anywhere in those waters during that halibut fishing period.

(8) No vessel from which setline gear was used to fish for any species of fish anywhere in Area 2A during the 72-hour period immediately before the opening of a halibut fishing period may be used to catch or possess halibut anywhere in those waters during that halibut fishing period.

(9) No person on board a vessel from which setline gear was used to fish for any species of fish anywhere in Areas 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E during the 72-hour period immediately before the opening of the halibut fishing season shall catch or possess halibut anywhere in those areas until the vessel has removed all of its setline gear from the water and has either

(a) Made a landing and completely offloaded its entire catch of other fish; or

(b) Submitted to a hold inspection by an authorized officer.

(10) No vessel from which setline gear was used to fish for any species of fish anywhere in Areas 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E during the 72-hour period immediately before the opening of the halibut fishing season may be used to catch or possess halibut



anywhere in those areas until the vessel has removed all of its setline gear from the water and has either

(a) Made a landing and completely offloaded its entire catch of other fish; or

(b) Submitted to a hold inspection by an authorized officer.

(11) Notwithstanding any other provision in these regulations, a person may retain, possess and dispose of halibut taken with trawl gear only as authorized by Prohibited Species Donation regulations of NMFS.

#### 20. Supervision of Unloading and Weighing

The unloading and weighing of halibut may be subject to the supervision of authorized officers to assure the fulfillment of the provisions of these Regulations.

#### 21. Retention of Tagged Halibut

(1) Nothing contained in these Regulations prohibits any vessel at any time from retaining and landing a halibut that bears a Commission external tag at the time of capture, if the halibut with the tag still attached is reported at the time of landing and made available for examination by a representative of the Commission or by an authorized officer.

(2) After examination and removal of the tag by a representative of the Commission or an authorized officer, the halibut

(a) May be retained for personal use; or

(b) May be sold only if the halibut is caught during commercial halibut fishing and complies with the other commercial fishing provisions of these regulations.

(3) Externally tagged fish must count against commercial IVQs, CDQs, IFQs, or daily bag or possession limits unless otherwise exempted by state, provincial, or federal regulations.

#### 22. Fishing by United States Treaty Indian Tribes

(1) Halibut fishing in Subarea 2A-1 by members of United States treaty Indian tribes located in the State of Washington shall be regulated under regulations promulgated by NMFS and published in the **Federal Register**.

(2) Subarea 2A-1 includes all waters off the coast of Washington that are north of 46°53'18" N. latitude and east of 125°44'00" W. longitude, and all inland marine waters of Washington.

(3) Section 13 (size limits), section 14 (careful release of halibut), section 16 (logs), section 17 (receipt and possession of halibut) and section 19 (fishing gear), except paragraphs (7) and

(8) of section 19, apply to commercial fishing for halibut in Subarea 2A-1 by the treaty Indian tribes.

(4) Commercial fishing for halibut in Subarea 2A-1 is permitted with hook and line gear from March 8 through November 15, or until 397,000 pounds (180.0 metric tons) net weight is taken, whichever occurs first.

(5) Ceremonial and subsistence fishing for halibut in Subarea 2A-1 is permitted with hook and line gear from January 1 through December 31, and is estimated to take 30,000 pounds (13.6 metric tons) net weight.

#### 23. Customary and Traditional Fishing in Alaska

(1) Customary and traditional fishing for halibut in Regulatory Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall be governed pursuant to regulations promulgated by NMFS and published in 50 CFR part 300.

(2) Customary and traditional fishing is authorized from January 1 through December 31.

#### 24. Aboriginal Groups Fishing for Food, Social and Ceremonial Purposes in British Columbia

(1) Fishing for halibut for food, social and ceremonial purposes by Aboriginal groups in Regulatory Area 2B shall be governed by the Fisheries Act of Canada and regulations as amended from time to time.

#### 25. Sport Fishing for Halibut- General

(1) No person shall engage in sport fishing for halibut using gear other than a single line with no more than two hooks attached; or a spear.

(2) Any minimum overall size limit promulgated under IPHC or NMFS regulations shall be measured in a straight line passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail.

(3) Any halibut brought aboard a vessel and not immediately returned to the sea with a minimum of injury will be included in the daily bag limit of the person catching the halibut.

(4) No person may possess halibut on a vessel while fishing in a closed area.

(5) No halibut caught by sport fishing shall be offered for sale, sold, traded, or bartered.

(6) No halibut caught in sport fishing shall be possessed onboard a vessel when other fish or shellfish aboard said vessel are destined for commercial use, sale, trade, or barter.

(7) The operator of a charter vessel shall be liable for any violations of these regulations committed by a passenger aboard said vessel.

#### 26. Sport Fishing for Halibut-Area 2A

(1) The total allowable catch of halibut shall be limited to:

(a) 220,238 pounds (99.9 metric tons) net weight in waters off Washington; and

(b) 251,381 pounds (114.0 metric tons) net weight in waters off California and Oregon.

(2) The Commission shall determine and announce closing dates to the public for any area in which the catch limits promulgated by NMFS are estimated to have been taken.

(3) When the Commission has determined that a subquota under paragraph (8) of section 26 is estimated to have been taken, and has announced a date on which the season will close, no person shall sport fish for halibut in that area after that date for the rest of the year, unless a reopening of that area for sport halibut fishing is scheduled in accordance with the Catch Sharing Plan for Area 2A, or announced by the Commission.

(4) In California, Oregon, or Washington, no person shall fillet, mutilate, or otherwise disfigure a halibut in any manner that prevents the determination of minimum size or the number of fish caught, possessed, or landed.

(5) The possession limit on a vessel for halibut in the waters off the coast of Washington is the same as the daily bag limit. The possession limit on land in Washington for halibut caught in U.S. waters off the coast of Washington is two halibut.

(6) The possession limit on a vessel for halibut caught in the waters off the coast of Oregon is the same as the daily bag limit. The possession limit for halibut on land in Oregon is three daily bag limits.

(7) The possession limit on a vessel for halibut caught in the waters off the coast of California is one halibut. The possession limit for halibut on land in California is one halibut.

(8) The sport fishing subareas, subquotas, fishing dates, and daily bag limits are as follows, except as modified under the in-season actions in 50 CFR 300.63(c). All sport fishing in Area 2A is managed on a "port of landing" basis, whereby any halibut landed into a port counts toward the quota for the area in which that port is located, and the regulations governing the area of landing apply, regardless of the specific area of catch.

(a) The area in Puget Sound and the U.S. waters in the Strait of Juan de Fuca, east of a line extending from 48°17.30' N. lat., 124°23.70' W. long. north to 48°24.10' N. lat., 124°23.70' W. long., is

not managed in-season relative to its quota. This area is managed by setting a season that is projected to result in a catch of 59,354 lb (26.9 mt).

(i) The fishing season in eastern Puget Sound (east of 123°49.50' W. long., Low Point) is April 10 through June 13 and the fishing season in western Puget Sound (west of 123°49.50' W. long., Low Point) is May 22 through July 21, 5 days a week (Thursday through Monday).

(ii) The daily bag limit is one halibut of any size per day per person.

(b) The quota for landings into ports in the area off the north Washington coast, west of the line described in paragraph (2)(a) of section 26 and north of the Queets River (47°31.70' N. lat.), is 109,991 lb (49.9 mt).

(i) The fishing seasons are:

(A) Commencing on May 13 and continuing 3 days a week (Tuesday, Thursday, and Saturday) until 79,194 lb (35.9 mt) are estimated to have been taken and the season is closed by the Commission.

(B) On June 17 and 19, the fishery will open only in the nearshore areas defined at the end of this paragraph. If there is sufficient quota, the fishery will open for one day on June 21 in the entire north coast subarea. If sufficient quota remains, the fishery would reopen, as a first priority, in the entire north coast subarea for one day following June 24. If there is insufficient quota remaining to reopen the entire north coast subarea for another day, then the nearshore areas described below would reopen following June 24, up to four days per week (Thursday-Sunday), until the overall quota of 109,991 lb (49.9 mt) are estimated to have been taken and the area is closed by the Commission, or until September 30, whichever is earlier. After June 19, any fishery opening will be announced on the NMFS hotline at 800-662-9825. No halibut fishing will be allowed after June 19 unless the date is announced on the NMFS hotline. The nearshore areas for Washington's North Coast fishery are defined as follows:

(1) WDFW Marine Catch Area 4B, which is all waters west of the Sekiu River mouth, as defined by a line extending from 48°17.30' N. lat., 124°23.70' W. long. north to 48°24.10' N. lat., 124°23.70' W. long., to the Bonilla-Tatoosh line, as defined by a line connecting the light on Tatoosh Island, WA, with the light on Bonilla Point on Vancouver Island, British Columbia (at 48°35.73' N. lat., 124°43.00' W. long.) south of the International Boundary between the U.S. and Canada (at 48°29.62' N. lat., 124°43.55' W. long.), and north of the

point where that line intersects with the boundary of the U.S. territorial sea.

(2) Shoreward of the recreational halibut 30-fm boundary line, a modified line approximating the 30-fm depth contour from the Bonilla-Tatoosh line south to the Queets River. The recreational halibut 30-fm boundary line is defined by the following coordinates in the order listed:

(1) 48°24.79' N. lat., 124°44.07' W. long.;

(2) 48°24.80' N. lat., 124°44.74' W. long.;

(3) 48°23.94' N. lat., 124°44.70' W. long.;

(4) 48°23.51' N. lat., 124°45.01' W. long.;

(5) 48°22.59' N. lat., 124°44.97' W. long.;

(6) 48°21.75' N. lat., 124°45.26' W. long.;

(7) 48°21.23' N. lat., 124°47.78' W. long.;

(8) 48°20.32' N. lat., 124°49.53' W. long.;

(9) 48°16.72' N. lat., 124°51.58' W. long.;

(10) 48°10.00' N. lat., 124°52.58' W. long.;

(11) 48°05.63' N. lat., 124°52.91' W. long.;

(12) 47°56.25' N. lat., 124°52.57' W. long.;

(13) 47°40.28' N. lat., 124°40.07' W. long.; and

(14) 47°31.70' N. lat., 124°37.03' W. long.

(ii) The daily bag limit is one halibut of any size per day per person.

(iii) Recreational fishing for groundfish and halibut is prohibited within the North Coast Recreational Yelloweye Rockfish Conservation Area (YRCA). It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the North Coast Recreational YRCA. A vessel fishing in the North Coast Recreational YRCA may not be in possession of any halibut. Recreational vessels may transit through the North Coast Recreational YRCA with or without halibut on board. The North Coast Recreational YRCA is a C-shaped area off the northern Washington coast intended to protect yelloweye rockfish. The North Coast Recreational YRCA is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

(1) 48°18.00' N. lat.; 125°18.00' W. long.;

(2) 48°18.00' N. lat.; 124°59.00' W. long.;

(3) 48°11.00' N. lat.; 124°59.00' W. long.;

(4) 48°11.00' N. lat.; 125°11.00' W. long.;

(5) 48°04.00' N. lat.; 125°11.00' W. long.;

(6) 48°04.00' N. lat.; 124°59.00' W. long.;

(7) 48°00.00' N. lat.; 124°59.00' W. long.;

(8) 48°00.00' N. lat.; 125°18.00' W. long.;

and connecting back to 48°18.00' N. lat.; 125°18.00' W. long.

(c) The quota for landings into ports in the area between the Queets River, WA (47°31.70' N. lat.) and Leadbetter Point, WA (46°38.17' N. lat.), is 44,700 lb (20.3 mt).

(i) The fishing season commences on May 1 and continues 2 days a week (Sunday and Tuesday) in all waters (the primary fishery), except that in the area from 47°25.00' N. lat. south to 46°58.00' N. lat. and east of 124°30.00' W. long. (the Washington South coast, northern nearshore area), the fishing season commences on May 1 and continues 4 days a week (Friday, Saturday, Sunday, and Tuesday). The south coast subarea quota will be allocated as follows: 40,230 lb (18.2 mt), 90 percent, for the primary fishery, and 4,470 lb (2.0 mt), 10 percent, for the northern nearshore fishery, once the primary fishery has closed. The primary fishery will continue from May 1 until 40,230 lb (18.2 mt) is estimated to have been taken and the season is closed by the Commission, or until September 30, whichever is earlier. Subsequent to this closure, if there is insufficient quota remaining to reopen the primary fishery for another fishing day, then any remaining quota may be used to accommodate incidental catch in the northern nearshore area from 47°25.00' N. lat. south to 46°58.00' N. lat. and east of 124°30.00' W. long. on Fridays and Saturdays, until 44,700 lb (20.3 mt) is projected to be taken and the fishery is closed by the Commission. If the fishery is closed prior to September 30, and there is insufficient quota remaining to reopen the northern nearshore area for another fishing day, then any remaining quota may be transferred in-season to another Washington coastal subarea by NMFS via an update to the recreational halibut hotline.

(ii) The daily bag limit is one halibut of any size per day per person.

(iii) Recreational fishing for groundfish and halibut is prohibited within the South Coast Recreational YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the South Coast Recreational YRCA. A vessel fishing in the South Coast Recreational YRCA may not be in possession of any halibut. Recreational vessels may transit through



the South Coast Recreational YRCA with or without halibut on board. The South Coast Recreational YRCA is an area off the southern Washington coast intended to protect yelloweye rockfish. The South Coast Recreational YRCA is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

(1) 46°58.00' N. lat., 124°48.00' W. long.;

(2) 46°55.00' N. lat., 124°48.00' W. long.;

(3) 46°55.00' N. lat., 124°49.00' W. long.;

(4) 46°58.00' N. lat., 124°49.00' W. long.;

and connecting back to 46°58.00' N. lat., 124°48.00' W. long.

(d) The quota for landings into ports in the area between Leadbetter Point, WA (46°38.17' N. lat.) and Cape Falcon, OR (45°46.00' N. lat.), is 18,762 lb (8.5 mt).

(i) The fishing season commences on May 1, and continues 7 days a week until 13,133 lb (6.0 mt) are estimated to have been taken and the season is closed by the Commission or until July 20, whichever is earlier. The fishery will reopen on August 1 and continue 3 days a week (Friday through Sunday) until 18,762 lb (8.5 mt) have been taken and the season is closed by the Commission, or until September 30, whichever is earlier. Subsequent to this closure, if there is insufficient quota remaining in the Columbia River subarea for another fishing day, then any remaining quota may be transferred in-season to another Washington and/or Oregon subarea by NMFS via an update to the recreational halibut hotline. Any remaining quota would be transferred to each state in proportion to its contribution.

(ii) The daily bag limit is one halibut of any size per day per person.

(iii) Pacific Coast groundfish may not be taken and retained, possessed or landed, except sablefish and Pacific cod when allowed by Pacific Coast groundfish regulations, if halibut are on board the vessel.

(e) The quota for landings into ports in the area off Oregon between Cape Falcon (45°46.00' N. lat.) and Humbug Mountain (42°40.50' N. lat.), is 231,271 lb (104.9 mt).

(i) The fishing seasons are:

(A) The first season (the "inside 40-fm" fishery) commences May 1 and continues 7 days a week through October 31, in the area shoreward of a boundary line approximating the 40-fm (73-m) depth contour, or until the sub-quota for the central Oregon "inside 40-fm" fishery (18,502 lb (8.4 mt)) or any in-season revised subquota is estimated

to have been taken and the season is closed by the Commission, whichever is earlier. The boundary line approximating the 40-fm (73-m) depth contour between 45°46.00' N. lat. and 42°40.50' N. lat. is defined by straight lines connecting all of the following points in the order stated:

(1) 45°46.00' N. lat., 124°04.49' W. long.;

(2) 45°44.34' N. lat., 124°05.09' W. long.;

(3) 45°40.64' N. lat., 124°04.90' W. long.;

(4) 45°33.00' N. lat., 124°04.46' W. long.;

(5) 45°32.27' N. lat., 124°04.74' W. long.;

(6) 45°29.26' N. lat., 124°04.22' W. long.;

(7) 45°20.25' N. lat., 124°04.67' W. long.;

(8) 45°19.99' N. lat., 124°04.62' W. long.;

(9) 45°17.50' N. lat., 124°04.91' W. long.;

(10) 45°11.29' N. lat., 124°05.19' W. long.;

(11) 45°05.79' N. lat., 124°05.40' W. long.;

(12) 45°05.07' N. lat., 124°05.93' W. long.;

(13) 45°03.83' N. lat., 124°06.47' W. long.;

(14) 45°01.70' N. lat., 124°06.53' W. long.;

(15) 44°58.75' N. lat., 124°07.14' W. long.;

(16) 44°51.28' N. lat., 124°10.21' W. long.;

(17) 44°49.49' N. lat., 124°10.89' W. long.;

(18) 44°44.96' N. lat., 124°14.39' W. long.;

(19) 44°43.44' N. lat., 124°14.78' W. long.;

(20) 44°42.27' N. lat., 124°13.81' W. long.;

(21) 44°41.68' N. lat., 124°15.38' W. long.;

(22) 44°34.87' N. lat., 124°15.80' W. long.;

(23) 44°33.74' N. lat., 124°14.43' W. long.;

(24) 44°27.66' N. lat., 124°16.99' W. long.;

(25) 44°19.13' N. lat., 124°19.22' W. long.;

(26) 44°15.35' N. lat., 124°17.37' W. long.;

(27) 44°14.38' N. lat., 124°17.78' W. long.;

(28) 44°12.80' N. lat., 124°17.18' W. long.;

(29) 44°09.23' N. lat., 124°15.96' W. long.;

(30) 44°08.38' N. lat., 124°16.80' W. long.;

(31) 44°08.30' N. lat., 124°16.75' W. long.;

(32) 44°01.18' N. lat., 124°15.42' W. long.;

(33) 43°51.60' N. lat., 124°14.68' W. long.;

(34) 43°42.66' N. lat., 124°15.46' W. long.;

(35) 43°40.49' N. lat., 124°15.74' W. long.;

(36) 43°38.77' N. lat., 124°15.64' W. long.;

(37) 43°34.52' N. lat., 124°16.73' W. long.;

(38) 43°28.82' N. lat., 124°19.52' W. long.;

(39) 43°23.91' N. lat., 124°24.28' W. long.;

(40) 43°20.83' N. lat., 124°26.63' W. long.;

(41) 43°17.96' N. lat., 124°28.81' W. long.;

(42) 43°16.75' N. lat., 124°28.42' W. long.;

(43) 43°13.98' N. lat., 124°31.99' W. long.;

(44) 43°13.71' N. lat., 124°33.25' W. long.;

(45) 43°12.26' N. lat., 124°34.16' W. long.;

(46) 43°10.96' N. lat., 124°32.34' W. long.;

(47) 43°05.65' N. lat., 124°31.52' W. long.;

(48) 42°59.66' N. lat., 124°32.58' W. long.;

(49) 42°54.97' N. lat., 124°36.99' W. long.;

(50) 42°53.81' N. lat., 124°38.58' W. long.;

(51) 42°50.00' N. lat., 124°39.68' W. long.;

(52) 42°49.14' N. lat., 124°39.92' W. long.;

(53) 42°46.47' N. lat., 124°38.65' W. long.;

(54) 42°45.60' N. lat., 124°39.04' W. long.;

(55) 42°44.79' N. lat., 124°37.96' W. long.;

(56) 42°45.00' N. lat., 124°36.39' W. long.;

(57) 42°44.14' N. lat., 124°35.16' W. long.;

(58) 42°42.15' N. lat., 124°32.82' W. long.;

and

(59) 42°40.50' N. lat., 124°31.98' W. long.;

(B) The second season (spring season), which is for the "all-depth" fishery, is open on May 8, 9, 10, 15, 16, 17, 22, 23, 24, 29, 30, 31, and June 12, 13, 14. The projected catch for this season is 159,577 lb (72.4 mt). If sufficient unharvested catch remains for additional fishing days, the season will re-open. Dependent on the amount of unharvested catch available, the potential season re-opening dates will be: June 26, 27, 28, and July 10, 11, 12, 24, 25, 26. If NMFS decides in-season to

allow fishing on any of these re-opening dates, notice of the re-opening will be announced on the NMFS hotline (206) 526-6667 or (800) 662-9825. No halibut fishing will be allowed on the re-opening dates unless the date is announced on the NMFS hotline.

(C) If sufficient unharvested catch remains, the third season (summer season), which is for the "all-depth" fishery, will be open on August 1, 2, 3, 15, 16, 17, 29, 30, 31, and September 12, 13, 14, 26, 27, 28, and October 10, 11, 12, 24, 25, 26, or until the combined spring season and summer season quotas in the area between Cape Falcon and Humbug Mountain, OR, totaling 212,769 lb (96.5 mt), are estimated to have been taken and the area is closed by the Commission, or October 31, whichever is earlier. NMFS will announce on the NMFS hotline in July whether the fishery will re-open for the summer season in August. No halibut fishing will be allowed in the summer season fishery unless the dates are announced on the NMFS hotline. Additional fishing days may be opened if a certain amount of quota remains after August 3 and August 31. If after August 3, greater than or equal to 60,000 lb (27.2 mt) remains in the combined all-depth and inside 40-fm (73-m) quota, the fishery may re-open every Friday through Sunday, beginning August 8 - 10, and ending October 31. If after August 31, greater than or equal to 30,000 lb (13.6 mt) remains in the combined all-depth and inside 40-fm (73-m) quota, and the fishery is not already open every Friday through Sunday, the fishery may re-open every Friday through Sunday, beginning September 5 - 7, and ending October 31. After August 31, the bag limit may be increased to two fish of any size per person, per day. NMFS will announce on the NMFS hotline whether the summer all-depth fishery will be open on such additional fishing days, what days the fishery will be open and what the bag limit is.

(ii) The daily bag limit is one halibut of any size per day per person, unless otherwise specified. NMFS will announce on the NMFS hotline any bag limit changes.

(iii) During days open to all-depth halibut fishing, no Pacific Coast groundfish may be taken and retained, possessed or landed, except sablefish when allowed by Pacific Coast groundfish regulations, if halibut are on board the vessel.

(iv) When the all-depth halibut fishery is closed and halibut fishing is permitted only shoreward of a boundary line approximating the 40-fm (73-m) depth contour, halibut possession and retention by vessels operating seaward of a boundary line approximating the 40-fm (73-m) depth contour is prohibited.

(v) Recreational fishing for groundfish and halibut is prohibited within the Stonewall Bank YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the Stonewall Bank YRCA. A vessel fishing in the Stonewall Bank YRCA may not be in possession of any halibut. Recreational vessels may transit through the Stonewall Bank YRCA with or without halibut on board. The Stonewall Bank YRCA is an area off central Oregon, near Stonewall Bank, intended to protect yelloweye rockfish. The Stonewall Bank YRCA is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

(1) 44°37.46 N. lat.; 124°24.92 W. long.;

(2) 44°37.46 N. lat.; 124°23.63 W. long.;

(3) 44°28.71 N. lat.; 124°21.80 W. long.;

(4) 44°28.71 N. lat.; 124°24.10 W. long.;

(5) 44°31.42 N. lat.; 124°25.47 W. long.;

and connecting back to 44°37.46 N. lat.; 124°24.92 W. long.

(f) The area south of Humbug Mountain, Oregon (42°40.50' N. lat.) and off the California coast is not managed in-season relative to its quota. This area is managed on a season that is projected to result in a catch of 7,541 lb (3.4 mt).

(i) The fishing season will commence on May 1 and continue 7 days a week until October 31.

(ii) The daily bag limit is one halibut of any size per day per person.

#### 27. Sport Fishing for Halibut-Area 2B

(1) In all waters off British Columbia<sup>8</sup>

(a) The sport fishing season is from February 1 to December 31;

(b) The daily bag limit is two halibut of any size per day per person.

(2) In British Columbia, no person shall fillet, mutilate, or otherwise disfigure a halibut in any manner that prevents the determination of minimum size or the number of fish caught, possessed, or landed.

(3) The possession limit for halibut in the waters off the coast of British Columbia is three halibut.

#### 28. Sport Fishing for Halibut-Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, 4E

(1) In waters in and off Alaska<sup>9</sup>

(a) The sport fishing season is from February 1 to December 31;

(b) The daily bag limit is two halibut of any size per day per person<sup>10</sup>.

(2) In Convention waters off the coast of Alaska, no person shall possess on board a fishing vessel, including charter vessels and pleasure craft used for fishing, halibut that has been filleted, mutilated, or otherwise disfigured in any manner except that each halibut may be cut into no more than 2 ventral, 2 dorsal pieces, and 2 cheeks with skin on.

(3) In waters in and off Alaska, no person may possess more than two daily bag limits.

#### 29. Previous Regulations Superseded

These regulations shall supersede all previous regulations of the Commission, and these regulations shall be effective each succeeding year until superseded.

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<sup>8</sup>DFO could implement more restrictive regulations for the sport fishery, therefore anglers are advised to check the current federal or provincial regulations prior to fishing.

<sup>9</sup>NMFS has implemented more restrictive regulations for the charter vessel fishery and participants in this fishery are advised to check the current federal or state regulations prior to fishing.

<sup>10</sup>Modifications to the daily bag limit for the Area 2C charter vessel fishery are set forth at 50 CFR 300.65.

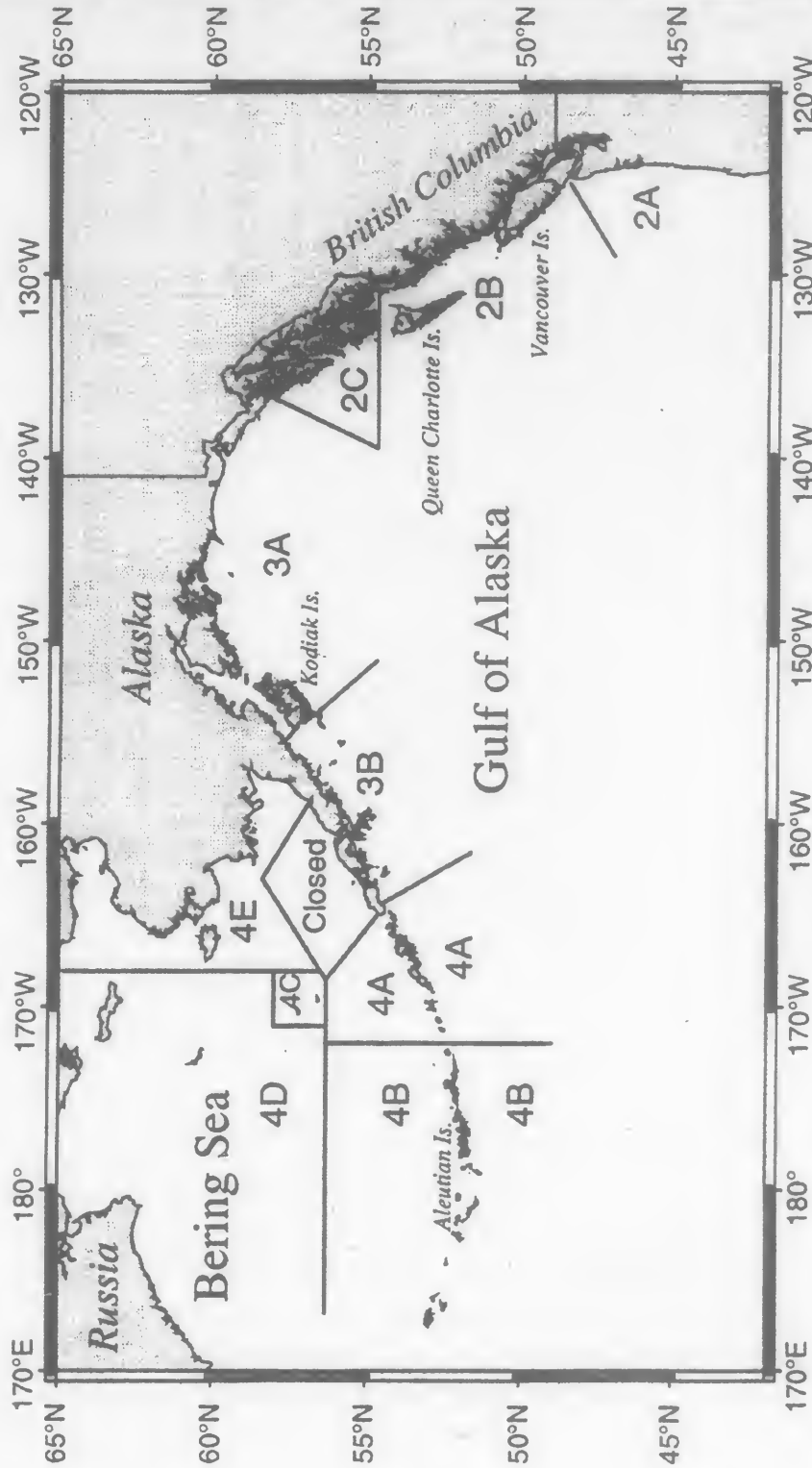


Figure 1. Regulatory areas for the Pacific halibut fishery.

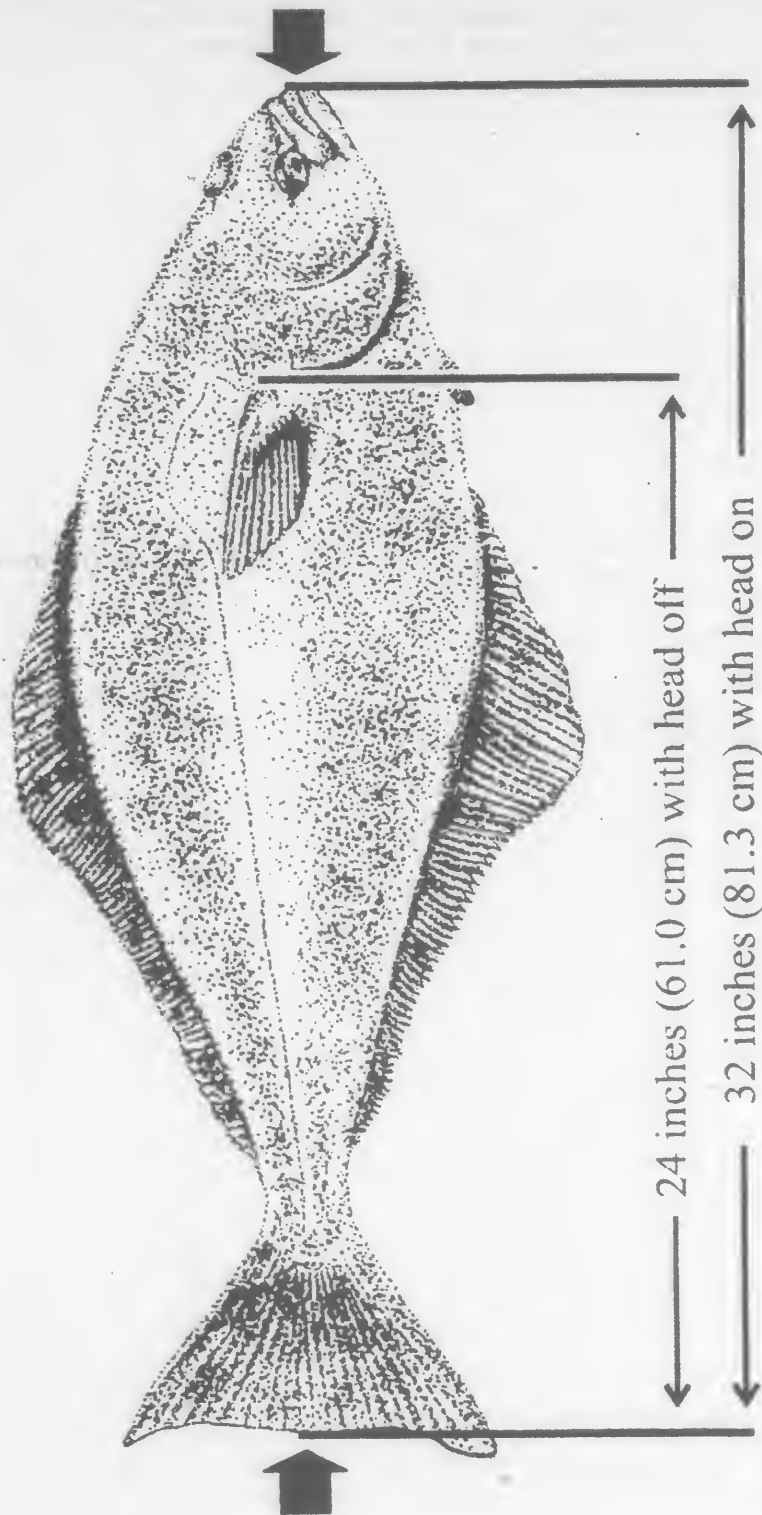


Figure 2. Minimum commercial size.

## Classification

### IPHC Regulations

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

The notice-and-comment and delay-in-effectiveness date requirements of the Administrative Procedure Act (APA), 5 U.S.C. 553, are inapplicable to this notice of the effectiveness and content of the IPHC regulations because this regulation involves a foreign affairs function of the United States, 5 U.S.C. 553(a)(1). Furthermore, no other law requires prior notice and public comment for this rule. Because prior notice and an opportunity for public comment are not required to be provided for these portions of this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable.

### Catch Sharing Plan and 2008 Recreational Management Measures for Area 2A

As explained above in the preamble, the recreational management measures for Area 2A are promulgated through a different process than the process for the IPHC regulations themselves. NMFS proposed these management measures on January 2, 2008 (73FR140). The different regulatory process requires a different classification section for these recreational management measures.

This action has been determined to be not significant for purposes of Executive Order 12866.

The AA finds good cause to waive the requirement to provide a 30-day delay in effectiveness (5 U.S.C. 553(d)) because it is contrary to the public interest to delay the effectiveness date of this rule for 30 days. This rule must be made effective for the opening of the 2008 Pacific halibut fishing season on March 8, 2008. Because the annual quotas and management measures are ultimately determined by an international commission, the IPHC, the AA is constrained and cannot publish the final rule until after the IPHC has adopted the annual quotas and management measures for the year. NMFS's implementation of the CSP in Area 2A could not begin until after January 18, 2008, when the IPHC adopted annual quotas and management measures for 2008. There was not enough time between when the IPHC adopted the annual quotas and management measures for 2008 and the scheduled March 8, 2008, start of the fishing season to publish the regulations in the *Federal Register* with enough time for a 30-day delay in effectiveness.

In addition, it would be contrary to the public interest to delay this portion of the rulemaking because it may cause confusion to implement only a portion of the Pacific halibut regulations and management measures. The public has been provided opportunity for public comment through the PFMC process and state meetings between September 2007 and January 2008. This portion of the Pacific halibut regulations and management measures is guided by the CSP for Area 2A and not changed from the proposed rule other than adding specific dates and quotas. The proposed rule provided estimates of these dates and quotas. The sport fishery management measures are largely unchanged from year to year, so the public is aware of how this fishery operates and, therefore, would not benefit from a delay in effectiveness.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) in association with the proposed rule for this action. A final regulatory flexibility analysis (FRFA) incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, if any, and NMFS responses to those comments, and a summary of the analyses completed to support the action. NMFS received no comments on the IRFA. A copy of the FRFA is available from the NMFS Northwest Region (see **ADDRESSES**) and a summary of the FRFA follows:

This rule is needed to implement the CSP and annual domestic management measures in Area 2A. The main objective for the Pacific halibut fishery in Area 2A is to manage the fisheries to remain within the TAC for Area 2A, while also allowing each commercial, recreational, and tribal fishery to target halibut in the manner most appropriate for the users' needs within that fishery. This rule is intended to enhance the conservation of Pacific halibut, to protect yellow eye rockfish and other overfished species from incidental catch in the halibut fisheries, and to provide greater angler opportunity where available.

The agency received five letters of comment on the proposed rule, but none of the comments received addressed the IRFA or the effects of this action on small entities. Two letters of comment discussed the effects of halibut management in Alaska, which was not within the scope of the proposed rule or IRFA for Area 2A. Therefore, those letters are not addressed in the FRFA. No issues were raised by the public regarding the IRFA for Area 2A. Therefore, no changes were made to the proposed rule as a result of these comments.

A fish-harvesting business is considered a "small" business by the Small Business Administration (SBA) if it has annual receipts not in excess of \$4.0 million. For related fish-processing businesses, a small business is one that employs 500 or fewer persons. For wholesale businesses, a small business is one that employs not more than 100 people. For marinas and charter/party boats, a small business is one with annual receipts not in excess of \$6.5 million. All of the businesses that would be affected by this action are considered small businesses under Small Business Administration guidance.

This action finalizes the following changes to the CSP, which allocates the catch of Pacific halibut among users in Washington, Oregon and California: (1) reopen the Washington North Coast subarea June sport fishery on the first Tuesday following June 16; (2) clarify that the Saturday offshore opener in the Washington North Coast subarea June sport fishery is contingent on available quota; (3) provide flexibility in the date that the entire Washington North Coast subarea sport fishery reopens for one day after June 24; (4) retain the opening date of May 1 for the Washington South Coast subarea primary sport fishery in 2008 and, starting in 2009, revise the opening date to May 1 if it is a Sunday, otherwise, open on the first Sunday following May 1; (5) set the Washington South Coast subarea primary sport fishery as a 2-day per week fishery, open Sunday and Tuesday; (6) set aside 10 percent of the Washington South Coast subarea quota for the nearshore sport fishery once the primary fishery has closed; (7) set the Washington South Coast subarea nearshore sport fishery as a 4-day per week fishery, open Friday, Saturday, Sunday, and Tuesday; (8) remove outdated language referring to the 25,000 lb annual tribal allocation resulting from the *U.S. v. Washington case*; (9) edit language referring to the number of sport subareas to clarify that there are six rather than seven; and (10) revise the flexible in-season management provisions for the sport fisheries to allow modification of subarea quotas in all subareas. This action also implements sport fishery management measures for Area 2A and revises Catch sharing plan and domestic management measures in Area 2A specified at 50 CFR 300.63. These actions are intended to enhance the conservation of Pacific halibut, to provide greater angler opportunity where available, and to protect yelloweye rockfish and other overfished



groundfish species from incidental catch in the halibut fisheries.

In 1995, NMFS implemented the Plan, when the TAC was 520,000 pounds (236 mt). In each of the intervening years between 1995 and the present, minor revisions to the Plan have been made to adjust for the changing needs of the fisheries, even though the TAC reached levels of over 1,000,000 pounds (454 mt), with a peak of 1,480,000 pounds (671 mt) in 2004. Since 2004, there has been very little change in the total allowable catch and sector allocations. In 2006, the Area 2A Halibut TAC set by the IPHC was 1.38 million pounds (626 mt) and for 2007 it was 1.34 million pounds (608 mt). However, the 2008 TAC is lower than the TAC levels since 2001. The 2008 Area 2A TAC of 1.22 million pounds (553.4 mt) is lower than previous years due to the IPHC's new stock assessment information, revised selectivity assumptions and revised harvest policy. This is a 9-percent decline from the 2007 TAC.

Six hundred fifty-nine vessels were issued IPHC licenses to retain halibut in 2007. IPHC issues licenses for: the directed commercial fishery in Area 2A, including licenses issued to retain halibut caught incidentally in the primary sablefish fishery (225 licenses in 2007); incidental halibut caught in the salmon troll fishery (292 licenses in 2007); and the charterboat fleet (142 licenses in 2007). No vessel may participate in more than one of these three fisheries per year. Individual recreational anglers and private boats are the only sectors that are not required to have an IPHC license to retain halibut.

Specific data on the economics of halibut charter operations is unavailable. However, in January 2004, the Pacific States Marine Fisheries Commission (PSMFC) completed a report on the overall West Coast charterboat fleet. In surveying charterboat vessels concerning their operations in 2000, the PSMFC estimated that there were about 315 charterboat vessels in operation off Washington and Oregon. In 2000, IPHC licensed 130 vessels to fish in the halibut sport charter fishery. Comparing the total charterboat fleet to the 130 and 142 IPHC licenses in 2000 and 2007, respectively, approximately 41 to 45 percent of the charterboat fleet could participate in the halibut fishery. The PSMFC has developed preliminary estimates of the annual revenues earned by this fleet and they vary by size class of the vessels and home state. Small charterboat vessels range from 15 to 30 ft (4.572 to 9.144 m), and typically carry 5 to 6 passengers. Medium charterboat

vessels range from 31 to 49 ft (9.44 to 14.93 m) in length and typically carry 19 to 20 passengers. (Neither state has large vessels of greater than 49 ft (14.93 m) in their fleet.) Average annual revenues from all types of recreational fishing, whale watching and other activities ranged from \$7,000 for small Oregon vessels to \$131,000 for medium Washington vessels. Estimates from the RIR show the recreational halibut fishery generated approximately \$2.5 million in personal income to West Coast communities, while the non-tribal commercial halibut fishery generated approximately \$2.2 million in income impacts. Because these estimated impacts for the entire halibut fishery overall are less than the SBA criteria for individual businesses, these data confirm that charterboat and commercial halibut vessels qualify as small entities under the Regulatory Flexibility Act (RFA).

These changes are authorized under the Pacific Halibut Act, implementing regulations at 50 CFR 300.60 through 300.65, and the Pacific Council process of annually evaluating the utility and effectiveness of Area 2A Pacific halibut management under the Plan. Given the TAC, the sport management measures implement the Plan by managing the recreational fishery to meet the differing fishery needs of the various areas along the coast according to the Plan's objectives. The measures are very similar to last year's management measures. The changes to the Plan and domestic management measures are minor changes and are intended to help prolong the halibut season, provide increased recreational harvest opportunities, or clarify sport fishery management for fishermen and managers. There are no large entities involved in the halibut fisheries; therefore, none of these changes to the Plan and domestic management measures will have a disproportionate negative effect on small entities versus large entities.

These changes do not include any reporting or recordkeeping requirements. These changes will also not duplicate, overlap or conflict with other laws or regulations. These changes to the Plan and annual domestic Area 2A halibut management measures are not expected to have a "significant" economic impact on a "substantial number" of small entities, as that term is defined in the RFA.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to

assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of halibut management in Area 2A, NMFS maintains a toll-free telephone hotline where members of the public may call in to receive current information on seasons and requirements to participate in the halibut fisheries in Area 2A. This hotline also serves as small entity compliance guide. Copies of this final rule are available from the NMFS Northwest Regional Office upon request (See ADDRESSES). To hear the small entity compliance guide associated with this final rule, call the NMFS hotline at 800-662-9825.

Pursuant to Executive Order 13175, the Secretary recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. At section 305(b)(5), the Magnuson-Stevens Fishery Conservation and Management Act establishes a seat on the Pacific Council for a representative of an Indian tribe with federally recognized fishing rights from California, Oregon, Washington, or Idaho. The U.S. government formally recognizes that 12 Washington Tribes have treaty rights to fish for Pacific halibut. In general terms, the quantification of those rights is 50 percent of the harvestable surplus of Pacific halibut available in the tribes' usual and accustomed fishing areas (described at 50 CFR 300.64). Each of the treaty tribes has the discretion to administer their fisheries and to establish their own policies to achieve program objectives. Accordingly, tribal allocations and regulations, including the changes to the CSP, have been developed in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

#### List of Subjects in 50 CFR Part 300

Fishing, Fisheries, Indian fisheries, Reporting and recordkeeping requirements, Treaties.

Dated: March 3, 2008.

John Oliver

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

#### PART 300—INTERNATIONAL FISHERIES REGULATIONS

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*

■ 2. In § 300.63, paragraph (c)(2)(v) is revised to read as follows:

**§ 300.63 Catch sharing plan and domestic management measures in Area 2A.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(v) Modification of subarea quotas.

\* \* \* \* \*

[FR Doc. 08-982 Filed 3-6-08; 8:45 am]

BILLING CODE 3510-22-S

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 071106671-8010-02]

RIN 0648-XG12

**Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Offshore Component in the Western Regulatory Area of 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 Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allocation of the 2008 total allowable catch (TAC) of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area of the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), March 4, 2008, until 1200 hrs, A.l.t., September 1, 2008.

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

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the 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 A season allocation of the 2008 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area of the GOA is 1,167 metric tons (mt) as established by the 2008 and 2009 harvest specifications for groundfish of the GOA (73 FR 10562, February 27, 2008).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2008 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,017 mt, and is setting aside the remaining 150 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 Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area 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 Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area 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 3, 2008.

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

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

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

Dated: March 3, 2008.

Alan D. Risenhoover,

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

[FR Doc. 08-981 Filed 3-4-08; 2:44 pm]

BILLING CODE 3510-22-S

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 071106671-8010-02]

RIN 0648-XG09

**Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 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 630 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the B season allowance of the 2008 total allowable catch (TAC) of pollock for Statistical Area 630 in the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), March 10, 2008, through 1200 hrs, A.l.t., May 31, 2008.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Hogan, 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 2008 TAC of pollock in Statistical Area 630 of the GOA is 1,709 metric tons (mt) as established by the 2008 and 2009 harvest specifications for groundfish of the GOA (73 FR 10562, February 27, 2008).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the B season allowance of the 2008 TAC of pollock in Statistical

Area 630 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,699 mt, and is setting aside the remaining 10 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 630 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 630 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 February 29, 2008.

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

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

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

Dated: March 3, 2008.

**Alan D. Risenhoover**

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

[FR Doc. E8-4543 Filed 3-6-08; 8:45 am]

**BILLING CODE 3510-22-S**

# Proposed Rules

Federal Register

Vol. 73, No. 46

Friday, March 7, 2008

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

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2008-0256; Directorate Identifier 2007-SW-01-AD]

RIN 2120-AA64

#### Airworthiness Directives; Agusta S.p.A. Model AB 139 and AW 139 Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for Agusta S.p.A. Model AB 139 and AW 139 helicopters. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The European Aviation Safety Agency (EASA), the Technical Agent for Italy, with which we have a bilateral agreement, states in the MCAI:

Tests have shown that the Agusta AB/AW 139's Fuselage Frame 5700 middle section is prone to fatigue damage. To prevent cracks or structural failure in this area, a repetitive inspection has been introduced \* \* \*

The proposed AD would require actions that are intended to address this unsafe condition of cracks in the fuselage frame structure.

**DATES:** We must receive comments on this proposed AD by April 7, 2008.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

**FOR FURTHER INFORMATION CONTACT:** Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193-0111, telephone (817) 222-5122, fax (817) 222-5961.

#### SUPPLEMENTARY INFORMATION:

##### Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. This streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This proposed AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The proposed AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

##### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2008-0256; Directorate Identifier 2007-SW-01-AD" at the beginning of

your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

##### Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued a MCAI in the form of EASA Airworthiness Directive No. 2006-0357, dated November 29, 2006 (referred to after this as "the MCAI"), to correct an unsafe condition for these Italian-certificated helicopters. The MCAI states:

Tests have shown that the Agusta AB/AW 139's Fuselage Frame 5700 middle section is prone to fatigue damage. To prevent cracks or structural failure in this area, a repetitive inspection has been introduced \* \* \*

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

##### Relevant Service Information

Agusta S.p.A. has issued Bollettino Tecnico No. 139-018, Revision B, dated October 18, 2006. The actions described in the MCAI are intended to correct the same unsafe condition as that identified in the service information.

##### FAA's Determination and Requirements of This Proposed AD

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

##### Differences Between This AD and the MCAI

This AD differs from the MCAI in that the MCAI states "When damage or

cracks are found, before next flight, contact the TC Holder for further instructions." This AD requires repairing the crack before further flight in accordance with an FAA-approved procedure if a crack is found. Also, this AD requires that the inspection be performed based on "hours time-in-service" rather than "flight hours", as stated in the MCAI.

#### Costs of Compliance

We estimate that this proposed AD would affect about 17 helicopters of U.S. registry. We also estimate that it would take about 1 work-hour per helicopter to comply with the initial and each subsequent recurring inspection of this proposed AD. The average labor rate is \$80 per work-hour. Assuming that 3 recurring inspections would be performed on each of the affected helicopters every year after the initial inspection and that 2 of the affected helicopters would require repairs to the fuselage middle frame section at \$10,000 per repair during the service life of these helicopters, we estimate the cost of the proposed AD as follows:

- Initial Inspection Costs:  $1 \times 80 \times 17 = \$1360$ .
- Subsequent Recurring Inspection Costs over the next 20 years:  $1 \times 3 \times 20 \times 80 \times 17 = \$81,600$ .
- Repair Costs:  $2 \times 10,000 = \$20,000$ .

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$102,960, or \$6,056 per helicopter.

#### Authority for This Rulemaking

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

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

#### Regulatory Findings

We determined that this proposed AD would not have federalism implications

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

Agusta S.p.A: Docket No. FAA-2008-0256; Directorate Identifier 2007-SW-01-AD.

#### Comments Due Date

(a) We must receive comments by April 7, 2008.

#### Other Affected ADs

(b) None.

#### Applicability

(c) This AD applies to Agusta S.p.A Model AB 139 and AW 139 helicopters, certificated in any category.

#### Reason

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

Tests have shown that the Agusta AB/AW 139's Fuselage Frame 5700 middle section is prone to fatigue damage. To prevent cracks or structural failure in this area, a repetitive inspection has been introduced \* \* \*.

#### Actions and Compliance

(e) Required as indicated, unless already done.

(1) Within the next 10 hours time-in-service (TIS), or upon accumulating 100 hours TIS since new, whichever occurs later, inspect the fuselage frame 5700 middle section in accordance with the Compliance Instructions, paragraphs 1. through 4., of Agusta Bolletino Tecnico No. 139-018, Revision B, dated October 18, 2006;

(2) Thereafter, at intervals not exceeding 100 hours TIS, repeat the inspection as required by paragraph (e)(1) of this AD;

(3) If a crack is found, before further flight, repair the crack in accordance with an FAA-approved procedure.

#### Differences Between the FAA AD and the MCAI

(f) This AD differs from the MCAI as follows:

(1) The MCAI states "When damage or cracks are found, before next flight, contact the TC Holder for further instructions." If a crack is found, this AD requires repairing the crack before further flight in accordance with an FAA-approved procedure.

(2) This AD requires that the inspection be performed based on "hours time-in-service" not "flight hours."

#### Subject

(g) Air Transportation of America (ATA) Code 5700: Fuselage frame-middle section.

#### Other Information

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, Safety Management Group, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193-0111, telephone (817) 222-5122, fax (817) 222-5961.

(2) Airworthy Product: Use only FAA-approved corrective actions. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent) if the State of Design has an appropriate bilateral agreement with the United States. You are required to assure the product is airworthy before it is returned to service.

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

#### Related Information

(i) MCAI European Aviation Safety Agency (EASA) Airworthiness Directive No. 2006-0357, dated November 29, 2006, contains related information.

Issued in Fort Worth, Texas, on February 14, 2008.

#### Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E8-4461 Filed 3-6-08; 8:45 am]

BILLING CODE 4910-13-P



## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. FAA-2007-27339; Directorate Identifier 2006-NM-280-AD]

RIN 2120-AA64

**Airworthiness Directives; McDonnell Douglas Model DC-10-10 and DC-10-10F Airplanes, Model DC-10-15 Airplanes, Model DC-10-30 and DC-10-30F (KC-10A and KDC-10) Airplanes, Model DC-10-40 and DC-10-40F Airplanes, Model MD-10-10F and MD-10-30F Airplanes, and Model MD-11 and MD-11F Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

**SUMMARY:** We are revising an earlier proposed airworthiness directive (AD) for certain transport category airplanes identified above. The original NPRM would have required modifying the fuel boost pumps. The original NPRM resulted from a fuel boost pump found with blown thermal fuses and a fractured thrust washer. This action revises the original NPRM by referring to new service information, which would require more work. We are proposing this supplemental NPRM to prevent failure of the fuel boost pumps, which could lead to the potential of ignition sources inside fuel tanks. This condition, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

**DATES:** We must receive comments on this supplemental NPRM by April 1, 2008.

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

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Fax:** 202-493-2251.

- **Mail:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- **Hand Delivery:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Boeing Commercial

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

**Examining the AD Docket**

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

**FOR FURTHER INFORMATION CONTACT:**

Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM-140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5262; fax (562) 627-5210.

**SUPPLEMENTARY INFORMATION:****Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2007-27339; Directorate Identifier 2006-NM-280-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

**Discussion**

We issued a notice of proposed rulemaking (NPRM) (the "original NPRM") to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain McDonnell Douglas Model DC-10-10 and DC-10-10F airplanes, Model DC-10-15 airplanes, Model DC-10-30 and DC-10-30F (KC-10A and KDC-10) airplanes, Model DC-10-40 and DC-10-40F airplanes, Model MD-10-10F and MD-10-30F airplanes, and Model MD-11 and MD-11F airplanes. That original

NPRM was published in the **Federal Register** on February 26, 2007 (72 FR 8307). That original NPRM proposed to require modifying the fuel boost pumps.

**Actions Since Original NPRM Was Issued**

Since we issued the original NPRM, Boeing and Crane Hydro-Aire have revised their service information for modifying certain fuel boost pumps. The original NPRM referred to Boeing Alert Service Bulletin DC10-28A254 and Boeing Alert Service Bulletin MD11-28A134, both dated September 8, 2006, which in turn refer to Crane Hydro-Aire Service Bulletin 60-847-28-3, dated May 1, 2006, as an additional source of service information for accomplishing the modification. This supplemental NPRM refers to the revised service information, which would require more work. The additional work involves rerouting the stator-to-connector wire leads for fuel boost pumps modified according to the original issue of Crane Hydro-Aire Service Bulletin 60-847-28-3.

**Relevant Service Information**

We have reviewed the following service bulletins:

- Boeing Alert Service Bulletin DC10-28A254, Revision 1, dated September 12, 2007, for Model DC-10-10 and DC-10-10F airplanes, Model DC-10-15 airplanes, Model DC-10-30 and DC-10-30F (KC-10A and KDC-10) airplanes, Model DC-10-40 and DC-10-40F airplanes, and Model MD-10-10F and MD-10-30F airplanes.

- Boeing Alert Service Bulletin MD11-28A134, Revision 1, dated September 6, 2007, for Model MD-11 and MD-11F airplanes.

Revision 1 of the service bulletins describe procedures for modifying fuel boost pumps, part numbers (P/Ns) 60-847-1A, -2, and -3, as applicable. The service bulletins also refer to Crane Hydro-Aire Service Bulletin 60-847-28-3, Revision 1, dated July 2, 2007, as an additional source of service information for modifying the fuel boost pumps. The modification involves upgrading the rotor assembly by replacing the Stellite thrust washer with a stainless steel thrust washer manufactured after a certain date, inspecting the stator assembly wire leads, replacing the stator assembly with a new assembly if necessary, rerouting the stator-to-connector wire leads if necessary, and replacing the washers, screws, and other hardware with new parts. Fuel boost pumps modified according to the original issue of Crane Hydro-Aire Service Bulletin 60-847-28-3 need to be reworked by rerouting

the stator-to-connector wire leads to prevent damage to the wire leads during pump assembly.

Revision 1 of Crane Hydro-Aire Service Bulletin 60-847-28-3 specifies prior accomplishment of Crane Hydro-Aire Service Bulletin 60-847-1A-28-6, dated February 15, 1973, for fuel boost pump P/N 60-847-1A. Crane Hydro-Aire Service Bulletin 60-847-28-3 also specifies prior accomplishment of Crane Hydro-Aire Service Bulletin 60-847-3-28-13, dated March 17, 1975, for fuel boost pump P/N 60-847-2.

#### Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received from the one commenter.

#### Request To Limit the Scope of the Modification

Boeing requests that we limit the scope of the proposed modification to replacing the Stellite thrust washer with a steel washer. Boeing suggests that we revise paragraph (g) of the supplemental NPRM to specify that operators must modify the fuel boost pump by replacing the Stellite thrust washer with a steel thrust washer. Boeing also suggests that we delete the sentence regarding the modification details from the "Relevant Service Information" section of the original NPRM and replace it with the following sentences: "The primary required modification involves upgrading the rotor assembly to include a new thrust washer. The service information also includes instructions for inspecting the stator assembly wire leads, and rerouting the stator-to-connector wire leads with sleeving, if necessary. Washers, screws, and other miscellaneous hardware are also replaced." As justification, Boeing states that modification of the fuel boost pumps is solely driven by the need to replace the Stellite thrust washer, and that this action alone will address the unsafe condition. Boeing also states that the other actions mentioned in the "Relevant Service Information" section of the original NPRM are not related to the unsafe condition. Boeing states that those other actions depend on the serviceability of certain components within the pump assembly, which is determined during pump disassembly and the inspection. Boeing asserts that the related information was included in Crane Hydro-Aire Service Bulletin 60-847-28-3 to highlight certain component serviceability checks that are done as part of any pump disassembly and should be emphasized as part of the required action. According to Boeing, this is particularly true for

rerouting the stator-to-connector wire leads, since the connector must be removed and replaced with a new connector in order to reroute the wire leads. Boeing states that if the connector is serviceable, the wire leads do not need to be rerouted. Additionally, replacement of the existing attachment hardware, screws, and washers is a consequence of disassembly/assembly of the pump, as part of thrust washer replacement.

We agree that the primary action of the modification is to replace the Stellite thrust washer with a stainless steel thrust washer. We also agree that replacement of the electrical connector of the pump assembly depends upon the inspection results. We have revised the "Relevant Service Information" section of this supplemental NPRM to specify that the modification involves replacing the stator assembly with a new assembly if necessary, and rerouting the stator-to-connector wire leads if necessary.

However, we have determined that both the physical integrity of the thrust washer and the critical configuration control of the routing of the stator lead wires must be addressed in order to minimize potential ignition sources associated with failure of a fuel boost pump. This is accomplished by replacing the Stellite thrust washer, inspecting the stator wire leads, and replacing the stator assembly if necessary. Operators must also verify that the stator-to-connector wire leads are properly routed, and reroute the wire leads if necessary. Therefore, we have not revised paragraph (g) of this supplemental NPRM.

#### FAA's Determination and Proposed Requirements of the Supplemental NPRM

We are proposing this supplemental NPRM because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design. Certain changes described above expand the scope of the original NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this supplemental NPRM.

#### Costs of Compliance

We estimate that this proposed AD would affect 360 airplanes of U.S. registry. We also estimate that it would take about 3 work-hours per fuel boost pump to comply with this proposed AD. The average labor rate is \$80 per work-hour. Required parts would cost about \$640 per fuel boost pump. Depending on the airplane configuration, there are

between 10 and 19 fuel boost pumps per product. Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be between \$3,168,000 and \$6,019,200, or between \$8,800 and \$16,720 per product.

#### Authority for This Rulemaking

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

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

#### Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866,
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

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

**McDonnell Douglas:** Docket No. FAA-2007-27339; Directorate Identifier 2006-NM-280-AD.

**Comments Due Date**

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

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) McDonnell Douglas Model DC-10-10 and DC-10-10F airplanes, Model DC-10-15 airplanes, Model DC-10-30 and DC-10-30F (KC-10A and KDC-10) airplanes, Model DC-10-40 and DC-10-40F airplanes, and Model MD-10-10F and MD-10-30F airplanes; as identified in Boeing Alert Service Bulletin DC10-28A254, Revision 1, dated September 12, 2007.

(2) McDonnell Douglas Model MD-11 and MD-11F airplanes, as identified in Boeing Alert Service Bulletin MD11-28A134, Revision 1, dated September 6, 2007.

**Unsafe Condition**

(d) This AD results from a fuel boost pump found with blown thermal fuses and a fractured thrust washer. We are issuing this AD to prevent failure of the fuel boost pumps, which could lead to the potential of ignition sources inside fuel tanks. This condition, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

**Compliance**

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

**Service Bulletin Reference**

(f) The term "service bulletin," as used in this AD, means the following service bulletins, as applicable:

(1) For the airplanes identified in paragraph (c)(1) of this AD, Boeing Alert Service Bulletin DC10-28A254, Revision 1, dated September 12, 2007.

(2) For the airplanes identified in paragraph (c)(2) of this AD, Boeing Alert Service Bulletin MD11-28A134, Revision 1, dated September 6, 2007.

**Note 1:** Boeing Alert Service Bulletin DC10-28A254, Revision 1, dated September 12, 2007; and Boeing Alert Service Bulletin MD11-28A134, Revision 1, dated September 6, 2007; refer to Crane Hydro-Aire Service Bulletin 60-847-28-3, Revision 1, dated July 2, 2007, as an additional source of service

information for accomplishing the modification in paragraph (g) of this AD.

**Modification**

(g) At the applicable compliance time specified in paragraph (g)(1) or (g)(2) of this AD, modify the fuel boost pumps having part numbers 60-847-1A, -2, and -3, in accordance with the Accomplishment Instructions of the applicable service bulletin.

(1) For fuel boost pumps identified as Configuration 1 or 2 in Table 1 of paragraph 1.E. of the applicable service bulletin, do the modification within 120 months after the effective date of this AD.

(2) For fuel boost pumps identified as Configuration 3 in Table 1 of paragraph 1.E. of the applicable service bulletin, do the modification within 72 months after the effective date of this AD.

**Alternative Methods of Compliance (AMOCs)**

(h)(1) The Manager, Los Angeles Aircraft Certification Office, FAA, ATTN: Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM-140L, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5262; fax (562) 627-5210; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

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

Issued in Renton, Washington, on March 3, 2008.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E8-4475 Filed 3-6-08; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2008-0258; Directorate Identifier 2007-SW-22-AD]

**RIN 2120-AA64**

**Airworthiness Directives; Bell Helicopter Textron Canada Models 206L, L-1, L-3, L-4, and 407 Helicopters**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for the

specified Bell Helicopter Textron Canada (BHTC) helicopters. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The Aviation Authority of Canada with whom we have a bilateral agreement states in the MCAI:

Horizontal stabilizers part numbers 206-023-119-167 and 407-023-801-109 may have manufacturing flaws on the inside surface of the upper and/or lower skin at the tailboom attachment inserts. These flaws may result in cracking of the skin and failure of the horizontal stabilizer.

The manufacturer's service information states that in addition to cracks, the horizontal stabilizer may have deformation or debonding around and between the inserts. The proposed AD would require actions that are intended to address all these unsafe conditions.

**DATES:** We must receive comments on this proposed AD by April 7, 2008.

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

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Fax: 202-493-2251.

- Mail: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- Hand Delivery: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Examining the AD Docket**

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

**FOR FURTHER INFORMATION CONTACT:** Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193-0111, telephone (817) 222-5122, fax (817) 222-5961.

**SUPPLEMENTARY INFORMATION:****Streamlined Issuance of AD**

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. This streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This proposed AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The proposed AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2008-0258; Directorate Identifier 2007-SW-22-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

**Discussion**

Transport Canada, which is the aviation authority for Canada, has issued an MCAI in the form of Canadian Airworthiness Directive No. CF-2007-03, dated March 27, 2007 (referred to after this as "the MCAI"), to correct an unsafe condition for these Canadian-certificated products. The MCAI states:

Horizontal stabilizers part numbers 206-023-119-167 and 407-023-801-109 may have manufacturing flaws on the inside surface of the upper and/or lower skin at the tailboom attachment inserts. These flaws may result in cracking of the skin and failure of the horizontal stabilizer.

The manufacturer's service information states that in addition to cracks, the horizontal stabilizer may

have deformation or debonding around and between the inserts. The proposed AD would require actions that are intended to address all these unsafe conditions.

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

**Relevant Service Information**

Transport Canada has issued Alert Service Bulletins 206L-06-141 and 407-06-72, both dated September 12, 2006. The actions described in the MCAI are intended to correct the same unsafe condition as that identified in the service information.

**FAA's Determination and Proposed Requirements**

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

**Differences Between This AD and the MCAI**

We have reviewed the MCAI and related service information and, in general, agree with their substance. However, we have changed the alternate compliance time from May 9, 2007, to within 30 days, and we have not mandated replacing the horizontal stabilizer by a certain date. In making this change, we do not intend to differ substantively from the information provided in the MCAI.

Differences are highlighted in the "Differences Between the FAA AD and the MCAI" section in the proposed AD.

**Costs of Compliance**

We estimate that this proposed AD would affect 59 horizontal stabilizers (27-206L and 32-407 models) on about 1156 products of U.S. registry. We also estimate that it would take about:

- 2.5 work hours to determine if the affected part is installed on the helicopter,
- 4 work hours to perform the initial and 600-hour recurring inspection, and
- 8 work hours to remove and replace an affected part.
- The average labor rate is \$80 per work-hour.
- Required parts would cost about \$20,173 for the Model 206L series and \$25,669 for the Model 407 helicopters.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators would be \$1,663,519, assuming operators of the entire fleet would need to determine whether they have an affected part installed; the 59 helicopters with the affected parts would undergo the initial inspection; 30 helicopters with the affected part would undergo one recurring 600-hour inspection; and all 59 affected parts would be replaced.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.



**The Proposed Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

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

**Bell Helicopter Textron Canada:** Docket No. FAA-2008-0258; Directorate Identifier 2007-SW-22-AD.

**Comments Due Date**

(a) We must receive comments by April 7, 2008.

**Other Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Models 206L, 206L-1, 206L-3, and 206L-4 with horizontal stabilizer, part number (P/N) 206-023-119-167, and Model 407 with horizontal stabilizer, P/N 407-023-801-109, installed, certificated in any category.

**Reason**

(d) The mandatory continuing airworthiness information (MCAI) states: Horizontal stabilizers part numbers 206-023-119-167 and 407-023-801-109 may have manufacturing flaws on the inside surface of the upper and/or lower skin at the tailboom attachment inserts. These flaws may result in cracking of the skin and failure of the horizontal stabilizer.

The manufacturer's service information states that in addition to cracks, the horizontal stabilizer may have deformation or debonding around and between the inserts. The proposed AD would require actions that are intended to address all these unsafe conditions.

**Actions and Compliance**

(e) Within the next 100 hours time-in-service (TIS) or 30 days, whichever occurs first, unless done previously.

(1) Determine whether you have an affected serial numbered horizontal stabilizer installed by removing the elevators from the horizontal stabilizer. Access the horizontal stabilizer identification tag containing the horizontal stabilizer serial number as shown in Figure 1 and remove the elevators by following the Accomplishment Instructions, Part I, of Bell Helicopter Textron Canada (BHTC) Alert Service Bulletin (ASB) No. 206L-06-141, dated September 12, 2006, applicable to the Model 206L series helicopter (206L ASB) or BHTC ASB No. 407-06-72, dated September 12, 2006, applicable to the Model 407 helicopters (407 ASB).

(2) If the serial number on the identification tag is a serial number listed in

Table 1 of the 206L ASB or 407 ASB, inspect the horizontal stabilizer as follows:

(i) Using a 10x or higher magnifying glass, inspect the horizontal stabilizer for a crack or deformation around the areas of the inserts. Also, using a tap test method, inspect for debonding between the inserts by following the Accomplishment Instructions, Part II, of either the 206L ASB or 407 ASB, as applicable.

(ii) If you find a crack, deformation, or debonding, replace the horizontal stabilizer with an airworthy horizontal stabilizer that does not have a serial number listed in Table 1 of the 206L ASB or 407 ASB. Replace the horizontal stabilizer by following the Accomplishment Instructions, Part III, of either the 206L ASB or the 407 ASB, as applicable.

(iii) If you do not find a crack, deformation, or debonding, thereafter, at intervals not to exceed 600 hours TIS or during each annual inspection, whichever occurs first, repeat the inspection required by paragraph (e)(2)(i) of this AD.

(f) Replacing any horizontal stabilizer containing a serial number listed in Table 1 of 206L ASB or 407 ASB with a horizontal stabilizer that does not contain such a serial number by following the Accomplishment Instructions, Part III, of either the 206L ASB or 407 ASB, as applicable, constitutes terminating actions for the requirements of this AD.

**Differences Between the FAA AD and the MCAI**

(g) The MCAI requires compliance "within the next 100 hours air time but no later than 9 May 2007." This AD requires compliance within the next 100 hours TIS or 30 days, whichever occurs first, unless done previously. Also, the MCAI requires replacing the horizontal stabilizer by September 30, 2008, and we have not mandated a compliance time for replacing the horizontal stabilizer.

**Subject**

(h) Air Transport Association of America (ATA) Code: 5510 Horizontal Stabilizer Structure.

**Other Information**

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Safety Management Group, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193-0111, telephone (817) 222-5122, fax (817) 222-5961.

(2) *Airworthy Product:* Use only FAA-approved corrective actions. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent) if the State of Design has an appropriate bilateral agreement with the United States. You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the

provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

**Related Information**

(j) MCAI Transport Canada Airworthiness Directive No. CF-2007-03, dated March 27, 2007, contain related information.

Issued in Fort Worth, Texas, on February 28, 2008.

**Mark R. Schilling,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. E8-4495 Filed 3-6-08; 8:45 am]

BILLING CODE 4910-13-P

**DEPARTMENT OF COMMERCE****National Institute of Standards and Technology****15 CFR Part 296**

[Docket No: 071106659-7661-01]

RIN 0693-AB59

**Technology Innovation Program**

**AGENCY:** National Institute of Standards and Technology, United States Department of Commerce.

**ACTION:** Notice of proposed rulemaking; request for comments.

**SUMMARY:** The Director of the National Institute of Standards and Technology (NIST), United States Department of Commerce, requests comments on proposed regulations which implement the Technology Innovation Program (TIP). The proposed rule prescribes policies and procedures for the award of financial assistance (grants and/or cooperative agreements) under TIP. In addition, NIST is revising the heading of Subchapter K of its regulations to accurately reflect the current contents of that subchapter.

**DATES:** Comments must be received no later than April 21, 2008.

**ADDRESSES:** Comments must be submitted in writing to: National Institute of Standards and Technology, Technology Innovation Program NPRM, 100 Bureau Drive, Mail Stop 4700, Gaithersburg, MD 20899-4700, or via the *Federal e-Rulemaking Portal*:

[www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Barbara Lambis via e-mail at [barbara.lambis@nist.gov](mailto:barbara.lambis@nist.gov) or telephone (301) 975-4447.

**SUPPLEMENTARY INFORMATION:** The America Creating Opportunities to



Meaningfully Promote Excellence in Technology, Education, and Sciences (COMPETES) Act, Public Law 110-69, was enacted on August 9, 2007, to invest in innovation through research and development and to improve the competitiveness of the United States. Section 3012 of the COMPETES Act established TIP for the purpose of assisting United States businesses and institutions of higher education or other organizations, such as national laboratories and nonprofit research institutions, to support, promote, and accelerate innovation in the United States through high-risk, high-reward research in areas of critical national need. High-risk, high-reward research is research that has the potential for yielding transformational results with far-ranging or wide-ranging implications; addresses areas of critical national need that support, promote, and accelerate innovation in the United States and is within NIST's areas of technical competence; and is too novel or spans too diverse a range of disciplines to fare well in the traditional peer review process. Section 3012(f) of the America COMPETES Act requires the NIST Director to promulgate regulations implementing the TIP.

This notice solicits comments on proposed regulations for the TIP. When the comment period is concluded, NIST will analyze the comments received, incorporate comments as appropriate, and publish the final regulation.

Examples of NIST's technical competencies are summarized on the NIST Web site at [http://www.nist.gov/public\\_affairs/labs2.htm](http://www.nist.gov/public_affairs/labs2.htm). However, this summary is not exhaustive and may not include all competencies required for NIST to respond to the diverse industry needs for measurement methods, tools, data, technology and standard reference materials. NIST competencies evolve as the recognition for the needs of measurement science in that area evolves. NIST competencies are more expansive than just the physical and engineering sciences. NIST translates its physical and engineering science competencies to meet the needs of emerging areas where scientific boundaries are advancing.

For each TIP competition, the Program will solicit proposals through an announcement in the **Federal Register**. The notices will include a description of the areas of critical national need that will be addressed in that competition. Critical national need areas are those for which government attention is demanded because the magnitude of the problem is large and the societal challenges that need to be overcome are not being addressed. In

determining which areas of critical national need will be addressed in a competition, TIP may solicit input from within NIST, from the TIP Advisory Board, and from the public. Information about the TIP Advisory Board may be found on the TIP Web site at <http://www.nist.gov/tip>. TIP may engage experts in scientific and technology policy to ensure that the areas of critical national need that will be considered are those that entail significant societal challenges that are not already being addressed by others and could be addressed through high-risk, high-reward research. Specific societal challenges within selected areas of critical national need will be the focus of TIP funding.

In addition to information provided in the **Federal Register** announcement, TIP will post a Federal Funding Opportunity at the Grants.gov Web site at [www.Grants.gov](http://www.Grants.gov). TIP may also communicate information about the Program and the competition through means such as the publication of the Proposal Preparation Kit, public meetings, and posting information on the Program's Web site at <http://www.nist.gov/tip>. NIST notes the proposed rule, in section 296.22, requires that proposals must demonstrate that reasonable and thorough efforts have been made to secure funding from alternative funding sources and no other alternative funding sources are reasonably available. NIST seeks comment on how it should determine if such efforts have been made, what criteria NIST should examine in determining the reasonableness and thoroughness of such efforts, and what demonstrations applicants must make to satisfy such criteria.

In addition, NIST is revising the heading of Subchapter K of its regulations to accurately reflect the current contents of that subchapter. The current heading of Subchapter K is "Advanced Technology Program," but the subchapter contains regulations pertaining to that Program, the Hollings Manufacturing Extension Partnership Program, and now the TIP. The new heading of Subchapter K will be "NIST Extramural Programs."

**Request for Public Comment:** Persons interested in commenting on the proposed regulations should submit their comments in writing to the above address. All comments received in response to this notice will become part of the public record and will be available for inspection and copying at the Department of Commerce Central Reference and Records Inspection

Facility, Room 6228, Herbert C. Hoover Building, Washington, DC 20230.

#### **Additional Information**

##### *Executive Order 12866*

This rulemaking is a significant regulatory action under Sections 3(f)(3) and 3(f)(4) of Executive Order 12866, as it materially alters the budgetary impact of a grant program and raises novel policy issues. This rulemaking, however, is not an "economically significant" regulatory action under Section 3(f)(1) of the Executive Order, as it does not have an effect on the economy of \$100 million or more in any one year, and it does not have a material adverse effect on the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

##### *Executive Order 13132*

This rule does not contain policies with Federalism implications as defined in Executive Order 13132.

##### *Regulatory Flexibility Act*

Because notice and comment are not required under 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. As such, a regulatory flexibility analysis is not required, and none has been prepared.

##### *Paperwork Reduction Act*

Notwithstanding any other provision of the law, no person is required to, nor shall any person be subject to penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

This proposed rule does not contain collection of information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). The TIP Proposal Preparation Kit, which contains all necessary forms and information requirements, will be submitted to OMB for approval. The OMB Control Number for the information collection requirements will be published in all **Federal Register** notices soliciting proposals under the Program.

##### *National Environmental Policy Act*

This rule will not significantly affect the quality of the human environment. Therefore, an environmental assessment or Environmental Impact Statement is not required to be prepared under the

National Environmental Policy Act of 1969.

#### List of Subjects in 15 CFR Part 296

Business and industry; grant programs—science and technology; Inventions and patents; Reporting and recordkeeping requirements; Research; Science and technology.

Dated: March 3, 2008.

Richard F. Kayser,

Acting Deputy Director.

For reasons set forth in the preamble, under the authority of 15 U.S.C. 278n (Pub. L. 110–69 section 3012), it is proposed that title 15 of the Code of Federal Regulations be amended as follows:

1. The heading of chapter II, subchapter K is revised to read as follows:

#### Subchapter K—NIST Extramural Programs

2. In 15 CFR chapter II, subchapter K, add a new part 296 as follows:

### PART 296—TECHNOLOGY INNOVATION PROGRAM

#### Subpart A—General

Sec.

- 296.1 Purpose.
- 296.2 Definitions.
- 296.3 Types of assistance available.
- 296.4 Limitations on assistance.
- 296.5 Eligibility requirements for companies and joint ventures.
- 296.6 Valuation of transfers.
- 296.7 Joint venture registration.
- 296.8 Joint venture agreement.
- 296.9 Activities not permitted for joint ventures.
- 296.10 Third party in-kind contribution of research services.
- 296.11 Intellectual property rights.
- 296.12 Reporting and auditing requirements.

#### Subpart B—The Competition Process

- 296.20 The Selection process.
- 296.21 Evaluation criteria.
- 296.22 Award criteria.

#### Subpart C—Monitoring, Evaluation and Dissemination of Program Results

- 296.30 Monitoring and evaluation.
- 296.31 Dissemination of results.
- 296.32 Technical and educational services.
- 296.33 Annual report.

**Authority:** 15 U.S.C. 278n (Pub. L. 110–69 section 3012).

#### Subpart A—General

##### 296.1 Purpose.

(a) The purpose of the Technology Innovation Program (TIP) is to assist United States businesses and institutions of higher education or other organizations, such as national laboratories and nonprofit research institutes, to support, promote, and

accelerate innovation in the United States through high-risk, high-reward research in areas of critical national need within NIST's areas of technical competence.

(b) The rules in this part prescribe policies and procedures for the award and administration of financial assistance (grants and/or cooperative agreements) under the TIP. While the TIP is authorized to enter into grants, cooperative agreements, and contracts to carry out the TIP mission, the rules in this part address only the award of grants and/or cooperative agreements.

##### 296.2 Definitions.

(a) The term *award* means Federal financial assistance made under a grant or cooperative agreement.

(b) The term *business* or *company* means a for-profit organization, including sole proprietors, partnerships, limited liability companies (LLCs), and corporations.

(c) The term *contract* means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

(d) The term *contractor* means the legal entity to which a contract is made and which is accountable to the recipient, subrecipient, or contractor making the contract for the use of the funds provided.

(e) The term *cooperative agreement* refers to a Federal assistance instrument used whenever the principal purpose of the relationship between the Federal government and the recipient is to transfer something of value, such as money, property, or services to the recipient to accomplish a public purpose of support or stimulation authorized by Federal statute instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the Federal government; and substantial involvement is anticipated between the Federal government and the recipient during performance of the contemplated activity.

(f) The term *critical national need* means an area that demands government attention because the magnitude of the problem is large and the societal challenges that need to be overcome are not being addressed, but could be addressed through high-risk, high-reward research.

(g) The term *direct costs* means costs that can be identified readily with activities carried out in support of a particular final objective. A cost may not be allocated to an award as a direct cost if any other cost incurred for the same purpose in like circumstances has

been assigned to an award as an indirect cost. Because of the diverse characteristics and accounting practices of different organizations, it is not possible to specify the types of costs which may be classified as direct costs in all situations. However, typical direct costs could include salaries of personnel working on the TIP project, travel, equipment, materials and supplies, subcontracts, and other costs not categorized in the preceding examples. NIST shall determine the allowability of direct costs in accordance with applicable Federal cost principles.

(h) The term *Director* means the Director of the National Institute of Standards and Technology (NIST).

(i) The term *eligible company* means a small-sized or medium-sized business or company that satisfies the ownership and other requirements stated in this part.

(j) The term *grant* means a Federal assistance instrument used whenever the principal purpose of the relationship between the Federal government and the recipient is to transfer something of value, such as money, property, or services to the recipient to accomplish a public purpose of support or stimulation authorized by Federal statute instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the Federal government; and no substantial involvement is anticipated between the Federal government and the recipient during performance of the contemplated activity.

(k) The term *high-risk, high-reward research* means research that:

(1) has the potential for yielding transformational results with far-ranging or wide-ranging implications;

(2) addresses areas of critical national need that support, promote, and accelerate innovation in the United States and is within NIST's areas of technical competence; and

(3) is too novel or spans too diverse a range of disciplines to fare well in the traditional peer-review process.

(l) The term *indirect costs* means those costs supported for common or joint objectives that cannot be readily identified with activities carried out in support of a particular final objective. A cost may not be allocated to an award as an indirect cost if any other cost incurred for the same purpose in like circumstances has been assigned to an award as a direct cost. Because of diverse characteristics and accounting practices it is not possible to specify the types of costs which may be classified as indirect costs in all situations.

However, typical examples of indirect costs include general administration expenses, such as the salaries and expenses of executive officers, personnel administration, maintenance, library expenses, and accounting. NIST shall determine the allowability of indirect costs in accordance with applicable Federal cost principles.

(m) The term *institution of higher education* means an educational institution in any State that—

(1) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) is legally authorized within such State to provide a program of education beyond secondary education;

(3) provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree;

(4) is a public or other nonprofit institution; and

(5) is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary of Education for the granting of preaccreditation status, and the Secretary of Education has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time (20 U.S.C. 1001). For the purpose of this paragraph (1) only, the term State includes, in addition to the several States of the United States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Freely Associated States. The term *Freely Associated States* means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

(n) The term *intellectual property* means an invention patentable under title 35, United States Code, or any patent on such an invention, or any work for which copyright protection is available under title 17, United States Code.

(o) The term *joint venture* means a business arrangement that:

(1) includes either:

(i) at least two separately owned companies that are both substantially involved in the project and both of which are contributing to the cost-

sharing required under the TIP statute, with the lead company of the joint venture being an eligible company; or

(ii) at least one eligible company and one institution of higher education or other organization, such as a national laboratory, governmental laboratory (not including NIST), or nonprofit research institute, that are both substantially involved in the project and both of which are contributing to the cost-sharing required under the TIP statute, with the lead entity of the joint venture being either the eligible company or the institution of higher education; and

(2) may include additional for-profit companies, institutions of higher education, and other organizations, such as national laboratories and nonprofit research institutes, that may or may not contribute non-Federal funds to the project.

(p) The term *large-sized business* means any business, including any parent company plus related subsidiaries, having annual revenues in excess of the amount published by the Program in the relevant *Federal Register* notice of availability of funds in accordance with § 296.20. In establishing this amount, the Program may consider the dollar value of the total revenues of the 1000th company in Fortune magazine's Fortune 1000 listing.

(q) The term *matching funds* or *cost sharing* means that portion of project costs not borne by the Federal government. Sources of revenue to satisfy the required cost share include cash and third party in-kind contributions. Cash may be contributed by any non-Federal source, including but not limited to recipients, state and local governments, companies, and nonprofits (except contractors working on a TIP project). Third party in-kind contributions include but are not limited to equipment, research tools, software, supplies, and/or services. The value of in-kind contributions shall be determined in accordance with § 14.23 of this title and will be prorated according to the share of total use dedicated to the TIP project. NIST shall determine the allowability of matching share costs in accordance with applicable Federal cost principles.

(r) The term *medium-sized business* means any business that does not qualify as a *small-sized business* or a *large-sized business* under the definitions in this section.

(s) The term *member* means any entity that is identified as a joint venture member in the award and is a signatory on the joint venture agreement required by § 296.8.

(t) The term *nonprofit research institute* means a nonprofit research and development entity or association organized under the laws of any state for the purpose of carrying out research and development.

(u) The term *participant* means any entity that is identified as a recipient, subrecipient, or contractor on an award to a joint venture under the Program.

(v) The term *person* will be deemed to include corporations and associations existing under or authorized by the laws of the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

(w) The term *Program* or *TIP* means the Technology Innovation Program.

(x) The term *recipient* means an organization receiving an award directly from NIST under the Program.

(y) The term *small-sized business* means a business that is independently owned and operated, is organized for profit, has fewer than 500 employees, and meets the other requirements found in 13 CFR part 121.

(z) The term *societal challenge* means a problem or issue confronted by society that when not addressed could negatively affect the overall function and quality of life of the nation, and as such demands government attention.

(aa) Except for the use of the term *State* for the limited purpose described in paragraph (l) of this section, the term *State* means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under the United States Housing Act of 1937.

(bb) The term *subaward* means an award of financial assistance made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the legal agreement is called a contract, but does not include procurement of goods and services.

(cc) The term *subrecipient* means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided.

(dd) The term *transformational results* means potential project outcomes that enable disruptive changes over and above current methods and strategies. Transformational results have the potential to radically improve our understanding of systems and technologies, challenging the status quo

of research approaches and applications.

(ee) The term *United States owned company* means a for-profit organization, including sole proprietors, partnerships, limited liability companies (LLCs), and corporations, that has a majority ownership by individuals who are citizens of the United States.

#### § 296.3 Types of assistance available.

Subject to the limitations of this section and § 296.4, assistance under this part is available to eligible companies or joint ventures that request either of the following:

(a) Single Company Awards: No award given to a single company shall exceed a total of \$3,000,000 over a total of 3 years.

(b) Joint Venture Awards: No award given to a joint venture shall exceed a total of \$9,000,000 over a total of 5 years.

#### § 296.4 Limitations on assistance.

(a) The Federal share of a project funded under the Program shall not be more than 50 percent of total project costs.

(b) Federal funds awarded under this Program may be used only for direct costs and not for indirect costs, profits, or management fees.

(c) No large-sized business may receive funding as a recipient or subrecipient of an award under the Program. When procured in accordance with procedures established under the Procurement Standards required by part 14 of chapter I of this title, recipients may procure supplies and other expendable property, equipment, real property and other services from any party, including large-sized businesses.

(d) If a project ends before the completion of the period for which an award has been made, after all allowable costs have been paid and appropriate audits conducted, the unspent balance of the Federal funds shall be returned by the recipient to the Program.

#### § 296.5 Eligibility requirements for companies and joint ventures.

Companies and joint ventures must be eligible in order to receive funding under the Program and must remain eligible throughout the life of their awards.

(a) A company shall be eligible to receive an award from the Program only if:

(1) The company is a small-sized or medium-sized business that is incorporated in the United States and does a majority of its business in the United States; and

(2) Either

(i) The company is a United States owned company; or

(ii) The company is owned by a parent company incorporated in another country and the Program finds that:

(A) the company's participation in TIP would be in the economic interest of the United States, as evidenced by investments in the United States in research, development, and manufacturing (including, for example, the manufacture of major components or subassemblies in the United States); significant contributions to employment in the United States; and agreement with respect to any technology arising from assistance provided by the Program to promote the manufacture within the United States of products resulting from that technology, and to procure parts and materials from competitive United States suppliers; and

(B) that the parent company is incorporated in a country which affords to United States-owned companies opportunities, comparable to those afforded to any other company, to participate in any joint venture similar to those authorized to receive funding under the Program; affords to United States-owned companies local investment opportunities comparable to those afforded to any other company; and affords adequate and effective protection for the intellectual property rights of United States-owned companies.

(b) NIST may suspend a company or joint venture from continued assistance if it determines that the company, the country of incorporation of the company or a parent company, or any member of the joint venture has failed to satisfy any of the criteria contained in paragraph (a) of this section, and that it is in the national interest of the United States to do so.

(c) Members of joint ventures that are companies must be incorporated in the United States and do a majority of their business in the United States and must comply with the requirements of paragraph (a)(2) of this section. For a joint venture to be eligible for assistance, it must be comprised as defined in § 296.2(o).

#### § 296.6 Valuation of transfers.

(a) This section applies to transfers of goods, including computer software, and services provided by the transferor related to the maintenance of those goods, when those goods or services are transferred from one joint venture member to another separately-owned joint venture member.

(b) The greater amount of the actual cost of the transferred goods and services as determined in accordance with applicable Federal cost principles, or 75 percent of the best customer price of the transferred goods and services, shall be deemed to be allowable costs. Best customer price means the GSA schedule price, or if such price is unavailable, the lowest price at which a sale was made during the last twelve months prior to the transfer of the particular good or service.

#### § 296.7 Joint venture registration.

Joint ventures selected for assistance under the Program must notify the Department of Justice and the Federal Trade Commission under section 6 of the National Cooperative Research Act of 1984, as amended (15 U.S.C. 4305). No funds will be released prior to receipt by the Program of copies of such notification.

#### § 296.8 Joint venture agreement.

NIST shall not issue a TIP award to a joint venture and no costs shall be incurred under a TIP project by the joint venture members until such time as a joint venture agreement has been executed by all of the joint venture members and approved by NIST.

#### § 296.9 Activities not permitted for joint ventures.

The following activities are not permissible for TIP-funded joint ventures:

(a) exchanging information among competitors relating to costs, sales, profitability, prices, marketing, or distribution of any product, process, or service that is not reasonably required to conduct the research and development that is the purpose of such venture;

(b) entering into any agreement or engaging in any other conduct restricting, requiring, or otherwise involving the marketing, distribution, or provision by any person who is a party to such joint venture of any product, process, or service, other than the distribution among the parties to such venture, in accordance with such venture, of a product, process, or service produced by such venture, the marketing of proprietary information, such as patents and trade secrets, developed through such venture, or the licensing, conveying, or transferring of intellectual property, such as patents and trade secrets, developed through such venture; and

(c) entering into any agreement or engaging in any other conduct:

(1) to restrict or require the sale, licensing, or sharing of inventions or developments not developed through such venture; or



(2) To restrict or require participation by such party in other research and development activities, that is not reasonably required to prevent misappropriation of proprietary information contributed by any person who is a party to such venture or of the results of such venture.

**§ 296.10 Third party in-kind contribution of research services.**

NIST shall not issue a TIP award to a single recipient or joint venture whose proposed budget includes the use of third party in-kind contribution of research as cost share, and no costs shall be incurred under such a TIP project, until such time as an agreement between the recipient and the third party contributor of in-kind research has been executed by both parties and approved by NIST.

**§ 296.11 Intellectual property rights and procedures.**

(a) *Rights in Data.* Except as otherwise specifically provided for in an award, authors may copyright any work that is subject to copyright and was developed under an award. When claim is made to copyright, the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Federal government sponsorship shall be affixed to the work when and if the work is delivered to the Federal government, is published, or is deposited for registration as a published work in the U.S. Copyright Office. The copyright owner shall grant to the Federal government, and others acting on its behalf, a paid up, nonexclusive, irrevocable, worldwide license for all such works to reproduce, publish, or otherwise use the work for Federal purposes.

(b) *Invention Rights.* (1) Ownership of inventions developed from assistance provided by the Program under § 296.3(a) shall be governed by the requirements of chapter 18 of title 35 of the United States Code.

(2) Ownership of inventions developed from assistance provided by the Program under § 296.3(b) may vest in any participant in the joint venture, as agreed by the members of the joint venture, notwithstanding § 202 (a) and (b) of Title 35, United States Code. Title to any such invention shall not be transferred or passed, except to a participant in the joint venture, until the expiration of the first patent obtained in connection with such invention. In accordance with § 296.8, joint ventures will provide to NIST a copy of their written agreement that defines the disposition of ownership rights among the participants of the joint venture, including the principles governing the

disposition of intellectual property developed by contractors and subcontractors, as appropriate, and that complies with these regulations.

(3) The United States reserves a nonexclusive, nontransferable, irrevocable paid-up license, to practice or have practiced for or on behalf of the United States any inventions developed using assistance under this section, but shall not in the exercise of such license publicly disclose proprietary information related to the license. Nothing in this subsection shall be construed to prohibit the licensing to any company of intellectual property rights arising from assistance provided under this section.

(4) Should the participants in a joint venture cease to exist prior to the expiration of the first patent obtained in connection with any invention developed from assistance provided under the Program, in the course of the bankruptcy or other dissolution process for the last participant of the joint venture, title to such patent may be transferred or passed to a United States entity that can commercialize the technology in a timely fashion.

(c) *Patent Procedures.* Each award by the Program will include provisions assuring the retention of a governmental use license in each disclosed invention, and the government's retention of march-in rights. In addition, each award by the Program will contain procedures regarding reporting of subject inventions by the recipient through the Interagency Edison extramural invention reporting system (iEdison), including the subject inventions of recipients, including members of the joint venture (if applicable), subrecipients, and contractors of the recipient or joint venture members.

**§ 296.12 Reporting and auditing requirements.**

Each award by the Program shall contain procedures regarding technical, business, and financial reporting and auditing requirements to ensure that awards are being used in accordance with the Program's objectives and applicable Federal cost principles. The purpose of the technical reporting is to monitor "best effort" progress toward overall project goals. The purpose of the business reporting is to monitor project performance against the Program's mission as required by the Government Performance and Results Act (GPRA) mandate for program evaluation. The purpose of the financial reporting is to monitor the status of project funds. The audit standards to be applied to TIP awards are the "Government Auditing Standards" (GAS) issued by the

Comptroller General of the United States and any Program-specific audit guidelines or requirements prescribed in the award terms and conditions. To implement paragraph (f) of § 14.25, Revision of budget and program plans, of this title, audit standards and award terms may stipulate that "total Federal and non-Federal funds authorized by the Grants Officer" means the total Federal and non-Federal funds authorized by the Grants Officer annually.

**Subpart B—The Competition Process**

**§ 296.20 The selection process.**

(a) To begin a competition, the Program will solicit proposals through an announcement in the **Federal Register**, which will contain information regarding that competition, including the areas of critical national need that proposals must address. An Evaluation Panel(s) will be established to evaluate proposals and ensure that all proposals receive careful consideration.

(b) A preliminary review will be conducted to determine whether the proposal:

- (1) Is in accordance with § 296.3, Types of Assistance Available;
- (2) Complies with either paragraph (a) or paragraph (c) of § 296.5, Eligibility Requirements for Companies and Joint Ventures;
- (3) Addresses the award criteria of paragraphs (a) through (c) of § 296.22, Award Criteria;
- (4) Was submitted to a previous TIP competition and if so, has been substantially revised; and
- (5) Is complete.

Complete proposals that meet the preliminary review requirements described above will be considered further. Proposals that are incomplete or do not meet any one of these preliminary review requirements will normally be eliminated.

(c) The Evaluation Panel(s) will then conduct a multi-disciplinary peer review of the remaining proposals based on the evaluation criteria listed in § 296.21 and the award criteria listed in § 296.22. In some cases NIST may conduct oral reviews and/or site visits. The Evaluation Panel(s) will present funding recommendations to the Selecting Official in rank order for further consideration. The Evaluation Panel(s) will not recommend for further consideration any proposal determined not to meet all of the eligibility and award requirements of this part and the **Federal Register** notice announcing the availability of funds.

(d) In making final selections, the Selecting Official will select funding



recipients based upon the Evaluation Panel's rank order of the proposals and the following selection factors: assuring an appropriate distribution of funds among technologies and their applications, availability of funds, and/or Program priorities. The selection of proposals by the Selecting Official is final.

(e) NIST reserves the right to negotiate the cost and scope of the proposed work with the proposers that have been selected to receive awards. This may include requesting that the proposer delete from the scope of work a particular task that is deemed by NIST to be inappropriate for support against the evaluation criteria. NIST also reserves the right to reject a proposal where information is uncovered that raises a reasonable doubt as to the responsibility of the proposer. The final approval of selected proposals and award of assistance will be made by the NIST Grants Officer as described in the **Federal Register** notice announcing the competition. The award decision of the NIST Grants Officer is final.

#### § 296.21 Evaluation criteria.

A proposal must be determined to be competitive against the Evaluation Criteria set forth in this section to receive funding under the Program. Additionally, no proposal will be funded unless the Program determines that it has scientific and technical merit and that the proposed research has strong potential for meeting identified areas of critical national need.

(a) The proposer(s) adequately addresses the scientific and technical merit and how the research may result in intellectual property vesting in a United States entity including evidence that:

(1) The proposed research is novel;  
(2) The proposed research is high-risk, high-reward;

(3) The proposer(s) demonstrates a high level of relevant scientific/technical expertise for key personnel, including contractors and/or informal collaborators, and have access to the necessary resources, for example research facilities, equipment, materials, and data, to conduct the research as proposed;

(4) The research result(s) has the potential to address the technical needs associated with a major societal challenge not currently being addressed; and

(5) The proposed research plan is scientifically sound with tasks, milestones, timeline, decision points and alternate strategies.

Total weight of (a)(1) through (5) is 50%.

(b) The proposer(s) adequately establishes that the proposed research has strong potential for advancing the state-of-the-art and contributing significantly to the United States science and technology base and to address areas of critical national need through transforming the Nation's capacity to deal with a major societal challenge(s) that is not currently being addressed, and generate substantial benefits to the Nation that extend significantly beyond the direct return to the proposer including an explanation in the proposal:

(1) Of the potential magnitude of transformational results upon the Nation's capabilities in an area;

(2) Of how and when the ensuing transformational results will be useful to the Nation; and

(3) Of the capacity and commitment of each award participant to enable or advance the transformation to the proposed research results (technology).

Total weight of (b)(1) through (3) is 50%.

#### § 296.22 Award criteria.

NIST must determine that a proposal successfully meets all of the Award Criteria set forth in this section for the proposal to receive funding under the Program. The Award Criteria are:

(a) The proposal explains why TIP support is necessary, including evidence that the research will not be conducted within a reasonable time period in the absence of financial assistance from TIP;

(b) The proposal demonstrates that reasonable and thorough efforts have been made to secure funding from alternative funding sources and no other alternative funding sources are reasonably available to support the proposal;

(c) The proposal explains the novelty of the research (technology) and demonstrates that other entities have not already developed, commercialized, marketed, distributed, or sold similar research results (technologies);

(d) The proposal establishes that the research has strong potential for advancing the state-of-the-art and contributing significantly to the United States science and technology knowledge base;

(e) The proposal has scientific and technical merit and may result in intellectual property vesting in a United States entity that can commercialize the technology in a timely manner; and

(f) The proposal establishes that the proposed transformational research (technology) has strong potential to address areas of critical national need through transforming the Nation's

capacity to deal with major societal challenges that are not currently being addressed, and generate substantial benefits to the Nation that extend significantly beyond the direct return to the proposer.

#### Subpart C—Dissemination of Program Results

##### § 296.30 Monitoring and evaluation.

The Program will provide monitoring and evaluation of areas of critical national need and its investments through periodic analyses. It will develop methods and metrics for assessing impact at all stages. These analyses will contribute to the establishment and adoption of best practices.

##### § 296.31 Dissemination of results.

Results stemming from the analyses required by § 296.30 will be disseminated in periodic working papers, fact sheets, and meetings, which will address the progress that the Program has made from both a project and a portfolio perspective. Such disseminated results will serve to educate both external constituencies as well as internal audiences on research results, best practices, and recommended changes to existing operations based on solid analysis.

##### § 296.32 Technical and educational services.

(a) Under the Federal Technology Transfer Act of 1986, NIST has the authority to enter into cooperative research and development agreements with non-Federal parties to provide personnel, services, facilities, equipment, or other resources except funds toward the conduct of specified research or development efforts which are consistent with the missions of the laboratory. In turn, NIST has the authority to accept funds, personnel, services, facilities, equipment and other resources from the non-Federal party or parties for the joint research effort. Cooperative research and development agreements do not include procurement contracts or cooperative agreements as those terms are used in sections 6303, 6304, and 6305 of Title 31, United States Code.

(b) In no event will NIST enter into a cooperative research and development agreement with a recipient of an award under the Program which provides for the payment of Program funds from the award recipient to NIST.

(c) From time to time, TIP may conduct public workshops and undertake other educational activities to foster the collaboration of funding Recipients with other funding resources

for purposes of further development and diffusion of TIP-related technologies. In no event will TIP provide recommendations, endorsements, or approvals of any TIP funding Recipients to any outside party.

#### § 296.33 Annual report.

The Director shall submit annually to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science and Technology of the House of Representatives a report describing the Technology Innovation Program's activities, including a description of the metrics upon which award funding decisions were made in the previous fiscal year, any proposed changes to those metrics, metrics for evaluating the success of ongoing and completed awards, and an evaluation of ongoing and completed awards. The first annual report shall include best practices for management of programs to stimulate high-risk, high-reward research.

[FR Doc. E8-4562 Filed 3-6-08; 8:45 am]

BILLING CODE 3510-13-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-137573-07]

RIN 1545-BH20

#### Guidance Under Section 1502; Amendment of Matching Rule for Certain Gains on Member Stock

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** In the Rules and Regulations section of this issue of the *Federal Register*, the IRS is issuing temporary regulations concerning the treatment of certain intercompany gains with respect to member stock within a consolidated group. The text of those regulations also serves as the text of these proposed regulations. These regulations affect corporations filing consolidated returns.

**DATES:** Written or electronic comments and requests for a public hearing must be received by June 5, 2008.

**ADDRESSES:** Send submissions to CC:PA:LPD:PR (REG-137573-07), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday

between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-137573-07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG-137573-07).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, John F. Tarrant or Ross E. Poulsen, (202) 622-7790; concerning submission of comments and/or requests for a public hearing, Kelly Banks, (202) 622-0932 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the *Federal Register* amend the Income Tax Regulations (26 CFR part 1) under section 1502 relating to the filing of consolidated returns. The temporary regulations revise § 1.1502-13(c)(6)(ii)(C) to provide for the redetermination of an intercompany gain as excluded from gross income in certain member stock transactions. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

##### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations primarily affect affiliated groups of corporations, which tend to be larger businesses. Moreover, the number of taxpayers affected is minimal and the regulations provide relief in certain narrow circumstances. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

#### Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and 8 copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. In particular, the IRS and Treasury Department do not foresee situations in which it should be necessary to invoke § 1.1502-13(c)(6)(ii)(C) (the "Commissioner's Discretionary Rule") with respect to intercompany gain on property other than stock. Nevertheless, the IRS and Treasury Department request comments on whether any such situations are not appropriately addressed by other provisions of § 1.1502-13. The Commissioner's Discretionary Rule will be retained while the IRS and Treasury Department consider such comments. However, absent compelling comments, the IRS and Treasury Department anticipate ultimately eliminating the Commissioner's Discretionary Rule. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the *Federal Register*.

#### Drafting Information

The principal author of these regulations is John F. Tarrant, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

#### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

#### PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*  
Section 1.1502-13 also issued under 26 U.S.C. 1502. \* \* \*

**Par. 2.** Section 1.1502-13 is amended by revising paragraphs (c)(6)(ii)(C),

(f)(7)(i) and (f)(7)(ii)(A) to read as follows:

**§ 1.1502-13 Intercompany transactions.**

(c) \* \* \*

(6) \* \* \*

(ii) \* \* \*

(C) [The text of proposed § 1.1502-13(c)(6)(ii)(C) is the same as the text of § 1.1502-13T(c)(6)(ii)(C) published elsewhere in this issue of the **Federal Register**].

(1) [The text of proposed § 1.1502-13(c)(6)(ii)(C)(1) is the same as the text of § 1.1502-13T(c)(6)(ii)(C)(1) published elsewhere in this issue of the **Federal Register**].

(C)(2) [The text of proposed § 1.1502-13(c)(6)(ii)(C)(2) is the same as the text of § 1.1502-13T(c)(6)(ii)(C)(2) published elsewhere in this issue of the **Federal Register**].

(C)(2)(i) [The text of proposed § 1.1502-13(c)(6)(ii)(C)(2)(i) is the same as the text of § 1.1502-13T(c)(6)(ii)(C)(2)(i) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(f) \* \* \*

(7) [The text of proposed § 1.1502-13(f)(7) is the same as the text of § 1.1502-13T(f)(7) published elsewhere in this issue of the **Federal Register**].

(i) [The text of proposed § 1.1502-13(f)(7)(i) is the same as the text of § 1.1502-13T(f)(7)(i) published elsewhere in this issue of the **Federal Register**].

(ii) [The text of proposed § 1.1502-13(f)(7)(ii) is the same as the text of § 1.1502-13T(f)(7)(ii) published elsewhere in this issue of the **Federal Register**].

(A) [The text of proposed § 1.1502-13(f)(7)(ii)(A) is the same as the text of § 1.1502-13T(f)(7)(ii)(A) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

**Linda E. Stiff,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. E8-4571 Filed 3-6-08; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

[REG-127391-07]

**RIN 1545-BH02**

**Guidance Under Section 664 Regarding the Effect of Unrelated Business Taxable Income on Charitable Remainder Trusts**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notice of hearing.

**SUMMARY:** This document contains proposed regulations that provide guidance under Internal Revenue Code (Code) section 664 on the tax effect of unrelated business taxable income (UBTI) on charitable remainder trusts. The proposed regulations reflect the changes made to section 664(c) by section 424(a) and (b) of the Tax Relief and Health Care Act of 2006. The proposed regulations affect charitable remainder trusts that have UBTI in taxable years beginning after December 31, 2006. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by May 6, 2008. Outlines of topics to be discussed at the public hearing scheduled for April 11, 2008, must be received by March 28, 2008.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-127391-07), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-127391-07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC; or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-127391-07).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Cynthia Morton at (202) 622-3060; concerning submissions of comments, the hearing, and/or access list to attend the hearing, contact Richard Hurst at (202) 622-7180 (not toll-free numbers) or e-mail at [Richard.A.Hurst@irscounsel.treas.gov](mailto:Richard.A.Hurst@irscounsel.treas.gov).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

The collections of information in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP; Washington, DC 20224. Comments on the collection of information should be received by May 6, 2008.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in the proposed regulation is in § 1.664-1(c). This information is required to report the excise tax imposed by section 664(c) of the Code. The likely respondents are trustees of charitable remainder trusts.

*Estimated total annual reporting and/or recordkeeping burden:* 50 hours.

*Estimated average annual burden per respondent and/or recordkeeper:* .5 hours.

*Estimated number of respondents and/or recordkeepers:* 100.

*Estimated annual frequency of responses:* Once.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books and records relating to a collection of information must be retained as long as their contents may

become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### Background

For taxable years beginning before January 1, 2007, section 664(c) provided that a charitable remainder trust (whether a charitable remainder annuity trust or a charitable remainder unitrust) would not be exempt from income tax for any year in which the trust had any UBTI (within the meaning of section 512). Instead, such trust was taxed for each such year under subchapter J as though it were a nonexempt, complex trust. The proposed regulations reflect the changes to section 664(c) made by section 424 of the Tax Relief and Health Care Act of 2006 (Act) Public Law 109-432, 120 Stat. 2922. Section 424(a) of the Act, which applies to taxable years beginning after December 31, 2006, provides that charitable remainder trusts that have UBTI remain exempt from Federal income tax, but imposes a 100-percent excise tax on their UBTI. Pursuant to section 664(c)(2)(A), the amount of UBTI is determined pursuant to section 512. Under section 512, UBTI is computed with the modifications in section 512(b) including the \$1,000 deduction in section 512(b)(12). The excise tax imposed under section 664(c)(2)(A) is treated as imposed under the excise tax rules that apply to private foundations and other tax-exempt organizations, other than the rules for abatement of first and second-tier taxes (chapter 42, other than subchapter E of chapter 42).

Pursuant to section 664(b), distributions from a charitable remainder trust for the year that the annuity or unitrust amount is required to be distributed are treated in the following order as: (1) Ordinary income to the extent of the trust's ordinary income for that year and undistributed ordinary income for all prior years; (2) Capital gains to the extent of the trust's capital gain for that year and undistributed capital gain for all prior years; (3) Other income (for example, tax-exempt income) to the extent of the trust's other income for that year and undistributed other income for all prior years; and (4) Corpus.

For purposes of determining the character of the distribution made to the beneficiary, the charitable remainder trust income that is UBTI is considered income of the trust. Specifically, income of the charitable remainder trust is allocated among the trust income categories in Treasury Regulation § 1.664-1(d)(1) without regard to

whether any part of that income constitutes UBTI under section 512. Section 1.664-1(d)(1) assigns charitable remainder trust income to one of three categories (ordinary income, capital gains, or other income) in the year in which it is required to be taken into account by the trust.

### Explanation of Provisions

The proposed regulations amend the regulations under section 664(c) to provide that charitable remainder trusts with UBTI in taxable years beginning after December 31, 2006, are exempt from Federal income tax, but are subject to a 100-percent excise tax on the UBTI of the charitable remainder trust. The proposed regulations provide that the excise tax is reported and payable in accordance with the appropriate forms and instructions. Currently, the appropriate form to report and pay the excise tax on charitable remainder trusts with UBTI is Form 4720, "Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code." The rules that apply with respect to charitable remainder trusts that have UBTI in taxable years beginning before January 1, 2007, are contained in § 1.664-1(c) as in effect for taxable years beginning before January 1, 2007. (See 26 CFR part 1 § 1.664-1(c) revised as of April 2, 2007).

The proposed regulations clarify that, consistent with § 1.664-1(d)(2), the excise tax imposed upon a charitable remainder trust with UBTI is treated as paid from corpus and the trust income that is UBTI is income of the trust for purposes of determining the character of the distribution made to the beneficiary. The proposed regulations provide examples illustrating the tax effects of UBTI on a charitable remainder trust for taxable years beginning after December 31, 2006. Finally, the proposed regulations amend § 1.664-1(d)(2) to conform with section 424 of the Act.

### Proposed Effective Date

The proposed regulations are proposed to be effective for taxable years beginning after December 31, 2006.

### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to the regulations. It is hereby certified that the collection of information in these regulations will not have a

significant economic impact on a substantial number of small entities. This certification is based upon the fact that any burden on taxpayers is minimal. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601) (RFA) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 11, 2007, at 10 a.m., in the IRS Auditorium, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by March 28, 2007. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

### Drafting Information

The principal author of the proposed regulations is Cynthia Morton, Office of the Associate Chief Counsel (Passthroughs and Special Industries).



**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

**PART 1—INCOME TAXES**

**Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805. \* \* \*

**Par. 2.** Section 1.664-1 is amended as follows:

1. In paragraph (a)(1)(i), the last sentence is revised and a sentence is added to the end of the paragraph.

2. Paragraph (c) is revised.

3. In paragraph (d)(2), the fourth sentence is revised.

The revisions and addition read as follows:

**§ 1.664-1 Charitable remainder trusts.**

(a) \* \* \* (1) \* \* \* (i) \* \* \* A trust created after July 31, 1969, which is a charitable remainder trust, is exempt from all of the taxes imposed by subtitle A of the Code for any taxable year of the trust, except a taxable year beginning before January 1, 2007, in which it has unrelated business taxable income. For taxable years beginning after December 31, 2006, an excise tax, treated as imposed by chapter 42, is imposed on charitable remainder trusts that have unrelated business taxable income. See paragraph (c) of this section.

\* \* \* \* \*

(c) *Excise Tax on Charitable Remainder Trusts—(1) In general.* For each taxable year beginning after December 31, 2006, in which a charitable remainder annuity trust or a charitable remainder unitrust has any unrelated business taxable income, an excise tax is imposed on that trust in an amount equal to the amount of such unrelated business taxable income. For this purpose, unrelated business taxable income is as defined in section 512, determined as if part III, subchapter F, chapter 1 subtitle A of the Internal Revenue Code applied to such trust. Such excise tax is treated as imposed by chapter 42 (other than subchapter E) and is reported and payable in accordance with the appropriate forms and instructions. Such excise tax shall be allocated to corpus and, therefore, is not deductible in determining taxable income distributed to a beneficiary. (See paragraph (d)(2) of this section.) The charitable remainder trust income that is unrelated business taxable income

constitutes income of the trust for purposes of determining the character of the distribution made to the beneficiary. Income of the charitable remainder trust is allocated among the charitable remainder trust income categories in paragraph (d)(1) of this section without regard to whether any part of that income constitutes unrelated business taxable income under section 512.

(2) *Examples.* The application of the rules in this paragraph (c) may be illustrated by the following examples:

*Example 1.* For 2007, a charitable remainder annuity trust with a taxable year beginning on January 1, 2007, has \$60,000 of ordinary income, including \$10,000 of gross income from a partnership that constitutes unrelated business taxable income to the trust. The trust has no deductions that are directly connected with that income. For that same year, the trust has administration expenses (deductible in computing taxable income) of \$16,000, resulting in net ordinary income of \$44,000. The amount of unrelated business taxable income is computed by taking gross income from an unrelated trade or business and deducting expenses directly connected with carrying on the trade or business, both computed with modifications under section 512(b). Section 512(b)(12) provides a specific deduction of \$1,000 in computing the amount of unrelated business taxable income. Under the facts presented in this example, there are no other modifications under section 512(b). The trust, therefore, has unrelated business taxable income of \$9,000 (\$10,000 minus the \$1,000 deduction under section 512(b)(12)). Undistributed ordinary income from prior years is \$12,000 and undistributed capital gains from prior years are \$50,000. Under the terms of the trust agreement, the trust is required to pay an annuity of \$100,000 for year 2007 to the noncharitable beneficiary. Because the trust has unrelated business taxable income of \$9,000, the excise tax imposed under section 664(c) is equal to the amount of such unrelated business taxable income, \$9,000. The character of the \$100,000 distribution to the noncharitable beneficiary is as follows: \$56,000 of ordinary income (\$44,000 from current year plus \$12,000 from prior years), and \$44,000 of capital gains. The \$9,000 excise tax is allocated to corpus, and does not reduce the amount in any of the categories of income under paragraph (d)(1) of this section. At the beginning of year 2008, the amount of undistributed capital gains is \$6,000, and there is no undistributed ordinary income.

*Example 2.* During 2007, a charitable remainder annuity trust with a taxable year beginning on January 1, 2007, sells real estate generating gain of \$40,000. Because the trust had obtained a loan to finance part of the purchase price of the asset, some of the income from the sale is treated as debt-financed income under section 514 and thus constitutes unrelated business taxable income under section 512. The unrelated debt-financed income computed under section 514 is \$30,000. Assuming the trust receives no other income in 2007, the trust

will have unrelated business taxable income under section 512 of \$29,000 (\$30,000 minus the \$1,000 deduction under section 512(b)(12)). Except for section 512(b)(12), no other exceptions or modifications under sections 512-514 apply when calculating unrelated business taxable income based on the facts presented in this example. Because the trust has unrelated business taxable income of \$29,000, the excise tax imposed under section 664(c) is equal to the amount of such unrelated business taxable income, \$29,000. The \$29,000 excise tax is allocated to corpus, and does not reduce the amount in any of the categories of income under paragraph (d)(1) of this section. Regardless of how the trust's income might be treated under sections 511-514, the entire \$40,000 is capital gain for purposes of section 664 and is allocated accordingly to and within the second of the categories of income under paragraph (d)(1) of this section.

(3) *Effective/Applicability date.* Paragraph (c) is effective for taxable years beginning after December 31, 2006. The rules that apply with respect to taxable years beginning before January 1, 2007, are contained in 1.664-1(c) in effect prior to the date these regulations are published as final regulations in the **Federal Register**. (See 26 CFR part 1, § 1.664-1(c)(1) revised as of April 2, 2007.)

(d) \* \* \*

(2) \* \* \* All taxes imposed by chapter 42 of the Code (including without limitation taxes treated under section 664(c)(2) as imposed by chapter 42) and, for taxable years beginning prior to January 1, 2007, all taxes imposed by subtitle A of the Code for which the trust is liable because it has unrelated business taxable income, shall be allocated to corpus. \* \* \*

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E8-4576 Filed 3-6-08; 8:45 am]

BILLING CODE 4830-01-P

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 117**

[Docket No. USCG-2008-0010]

RIN 1625-AA09

**Drawbridge Operation Regulations; Mill Neck Creek, Oyster Bay, NY**

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the drawbridge operating



regulations governing the operation of the Bayville Bridge, mile 0.1, across Mill Neck creek at Oyster Bay, New York. This proposed rule would allow the bridge to open on signal between 7 a.m. and 11 p.m. from May 1 through October 31 and between 7 a.m. and 5 p.m., Monday through Friday, from November 1 through April 30. At all other times the bridge would open after a two-hour advance notice is given by calling the number posted at the bridge. The purpose of this rule is to help relieve the bridge owner from the burden of crewing the bridge during time periods that the bridge receives few requests to open while continuing to meet the reasonable needs of navigation.

**DATES:** Comments and related material must reach the Coast Guard on or before April 7, 2008.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number (USCG-2008-0010) to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online:* <http://www.regulations.gov>.

(2) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building ground floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC. 20590-0001.

(3) *Hand Delivery:* Room W12-140, 1200 New Jersey Avenue SE., Washington, DC., 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366-9329.

(4) *Fax:* (202) 493-2251.

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

If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

#### Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2008-0010), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and materials by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and materials by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

#### Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> at any time. Enter the docket number for this rulemaking (USCG-2008-001) in the Search box, and click "Go>>." You may also visit either the Docket Management Facility in Room W12-140, on the ground floor of the DOT West Building 1200 New Jersey Avenue, SE., Washington, DC, 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or First Coast Guard District, Bridge Branch, One South Street, New York, NY 10004 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

#### Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment), if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit <http://DocketsInfo.dot.gov>.

#### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request

for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

#### Background and Purpose

The Bayville Bridge has a vertical clearance of 9 feet at mean high water, and 16 feet at mean low water in the closed position. The existing drawbridge operating regulations listed at 33 CFR 117.5, require the bridge to open on signal at all times.

On March 8, 2007, the bridge owner, the County of Nassau Department of Public Works, requested a change to the drawbridge operation regulations to help provide relief from the burden of providing a draw tender at the bridge during time periods when the bridge seldom receives a request to open.

On April 13, 2007, the Coast Guard authorized a temporary deviation with a request for public comment in order to test the proposed rule change. The temporary test deviation was in effect from May 25, 2007 through November 20, 2007, with a comment period open until November 30, 2007.

The Coast Guard received no comments or complaints from mariners in response to the temporary test deviation.

As a result of all the above information, the Coast Guard is now proposing to permanently change the drawbridge operation regulations for the Bayville Bridge, mile 0.1, across Mill Neck Creek at Oyster Bay, New York.

Under this notice of proposed rulemaking the Bayville Bridge would be required to open on signal between 7 a.m. and 11 p.m., from May 1 through October 31, and between 7 a.m. and 5 p.m., Monday through Friday, from November 1 through April 30. At all other times the draw would open on signal after at least a two-hour advance notice is provided by calling the number posted at the bridge.

#### Discussion of Proposed Rule

This notice of proposed rulemaking would change the existing drawbridge operation regulations to help relieve the bridge owner from the burden of maintaining a draw tender at the bridge during time periods the bridge seldom receives a request to open.

The Coast Guard believes this proposed change to the drawbridge operation regulations is justified and that the reasonable needs of navigation will continue to be met as a result.

### Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This conclusion is based on the fact that vessel traffic will still be able to transit through the Bayville Bridge at any time provided they give a two-hour advance notice during time periods the bridge is not crewed.

### Small Entities

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

The Coast Guard certifies under section 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This conclusion is based on the fact that vessel traffic will still be able to transit through the Bayville Bridge at any time provided they give a two-hour advance notice during time periods the bridge is not crewed.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for

compliance, please contact, Commander (dpb), First Coast Guard District, Bridge Branch, One South Street, New York, NY 10004. The telephone number is (212) 668-7165. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

### Federalism

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

### Unfunded Mandates Reform Act

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

### Taking of Private Property

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

### Civil Justice Reform

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

### Protection of Children

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

### Indian Tribal Governments

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

### Energy Effects

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

### Technical Standards

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

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

### Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment because it simply promulgates the operating regulations or procedures for drawbridges. We seek

any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### List of Subjects in 33 CFR Part 117

Bridges.

#### Words of Issuance and Proposed Regulatory Text

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

2. Add § 117.800 to read as follows:

##### § 117.800 Mill Neck Creek.

The draw of the Bayville Bridge, mile 0.1, at Oyster Bay, New York, shall open on signal between 7 a.m. and 11 p.m., from May 1 through October 31, and between 7 a.m. and 5 p.m., Monday through Friday, from November 1 through April 30. At all other times the draw shall open on signal provided at least a two-hour advance notice is given by calling the number posted at the bridge.

Dated: February 28, 2008.

**Timothy S. Sullivan,**

*Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.*

[FR Doc. E8–4470 Filed 3–6–08; 8:45 am]

BILLING CODE 4910–15–P

#### DEPARTMENT OF HOMELAND SECURITY

##### Coast Guard

##### 33 CFR Part 165

[Docket No. USCG–2008–0114]

RIN 1625–AA87

#### Security Zone; Anacostia River, Washington, DC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a temporary security zone encompassing certain waters of the Anacostia River in order to safeguard the public and high-ranking public officials attending a papal Mass on April 17, 2008, from terrorist acts and incidents. This action is necessary to ensure the safety of persons and

property, and prevent terrorist acts or incidents. This rule would prohibit vessels and people from entering the security zone and would require vessels and persons in the security zone to depart the security zone, unless specifically exempt under the provisions in this rule or granted specific permission from the Coast Guard Captain of the Port Baltimore.

**DATES:** Comments and related material must reach the Coast Guard on or before April 7, 2008.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number USCG–2008–0114 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online:* <http://www.regulations.gov>.

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

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

#### SUPPLEMENTARY INFORMATION:

##### Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

##### Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–0114),

indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them. Given the amount of time remaining before the papal Mass, after considering comments we anticipate making the temporary final rule effective less than 30 days after publication. If we do so, we will explain in that publication, as required by 5 U.S.C. 553(d)(3), our good cause for doing so.

##### Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> at any time, click on "Search for Dockets," and enter the docket number for this rulemaking (USCG–2008–0114) in the Docket ID box, and click enter. You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or the Commander, U.S. Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Building 70, Waterways Management Division, Baltimore, Maryland, 21226–1791 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

##### Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register**

published on April 11, 2000 (65 FR 19477), or you may visit <http://DocketsInfo.dot.gov>.

#### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

#### Background and Purpose

The ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide. Due to increased awareness that future terrorist attacks are possible, the Coast Guard, as lead federal agency for maritime homeland security, has determined that the Coast Guard Captain of the Port Baltimore must have the means to be aware of, deter, detect, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while still maintaining our freedoms and sustaining the flow of commerce. This security zone is part of a comprehensive port security regime designed to safeguard human life, vessels, and waterfront facilities against sabotage or terrorist attacks.

The Vatican has announced that during his scheduled visit to the United States, Pope Benedict XVI will be conducting Mass at Nationals Park, the new baseball stadium in southeast Washington, DC, on Thursday, April 17, 2008. The 2-hour papal Mass is scheduled to occur at 10 a.m., with "pre-Mass events" scheduled. Up to 45,000 attendees can be expected during the event. The security of high-ranking officials and the public at large in Washington, DC requires that persons and vessels be kept at a safe distance from the waterfront stadium during the papal Mass.

The Captain of the Port Baltimore is proposing to establish a security zone to address the aforementioned security concerns and to take steps to prevent the catastrophic impact that a terrorist attack against a large number of participants attending the papal Mass, and the surrounding waterfront area and communities, in Washington, DC. This temporary security zone would apply to all waters of the Anacostia River, from shoreline to shoreline, from a line

connecting the following points, beginning at 38°51'50" N, 077°00'41" W thence to 38°51'44" N, 077°00'26" W, upstream to the Officer Kevin J. Welsh Memorial (11th Street) Bridge. Interference with normal port operations will be kept to the minimum considered necessary to ensure the security of life and property on the navigable waters immediately before, during, and after the scheduled event. This zone will help the Coast Guard to prevent vessels or persons from bypassing security measures for the event and engaging in terrorist actions against a large number of participants during this highly-publicized papal Mass.

#### Discussion of Proposed Rule

The Coast Guard proposes to establish a security zone on all waters of the Anacostia River, from shoreline to shoreline, from a line connecting the following points, beginning at 38°51'50" N, 077°00'41" W thence to 38°51'44" N, 077°00'26" W, upstream to the Officer Kevin J. Welsh Memorial (11th Street) Bridge, between 7:30 a.m. through 2 p.m. local time, on April 17, 2008, to ensure the security of participants immediately prior to, during, and following the highly-publicized Mass to be conducted by Pope Benedict XVI at Nationals Park.

Vessels underway at the time this security zone is implemented would have to immediately proceed out of the zone. We will issue written and broadcast Notices to Mariners to further publicize the security zone and any revisions to the zone. Except for Public vessels and vessels at berth, mooring or at anchor, this rule would require all vessels in the designated security zone as defined by this rule to depart the security zone for the duration of its 6½ hour effective period.

#### Regulatory Evaluation

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analysis based on 13 of these statutes or executive orders.

#### Executive Order 12866

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that

a full Regulatory Evaluation is unnecessary. The operational restrictions of the security zone are tailored to provide the minimal disruption of vessel operations necessary to provide immediate, improved security for persons, vessels, and the waters of the Anacostia River.

#### Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit, operate or anchor in a portion of the Anacostia River, from shoreline to shoreline, from a line connecting the following points, beginning at 38°51'50" N, 077°00'41" W thence to 38°51'44" N, 077°00'26" W, upstream to the Officer Kevin J. Welsh Memorial (11th Street) Bridge, from 7:30 a.m. through 2 p.m. on April 17, 2008. Although the security zone applies to the entire width of the river, this zone will not have a significant economic impact on a substantial number of small entities due to a lack of seasonal vessel traffic associated with recreational boating and commercial fishing during the effective period. Vessels with a compelling need to enter the security zone and transit the security zone may seek permission from the Captain of the Port Baltimore. Also, before the effective period, we would issue maritime advisories widely available to users of the Anacostia River.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this proposed rule so that



they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. Ronald Houck, at Coast Guard Sector Baltimore, Waterways Management Division, at telephone number (410) 576-2674 or (410) 576-2693. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### Federalism

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

#### Unfunded Mandates Reform Act

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

#### Taking of Private Property

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

#### Civil Justice Reform

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

#### Protection of Children

We have analyzed this proposed rule under Executive Order 13045,

Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

#### Energy Effects

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

#### Technical Standards

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

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

#### Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment. A preliminary "Environmental Analysis Check List" supporting this preliminary determination is available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### List of Subjects in 33 CFR Part 165

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

#### Words of Issuance and Proposed Regulatory Text

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.T08-012 to read as follows:

#### § 165.T08-012 Security Zone; Anacostia River, Washington, DC.

(a) *Location.* The following area is a security zone: All waters of the Anacostia River, from shoreline to shoreline, from a line connecting the following points, beginning at 38°51'50" N, 077°00'41" W thence to 38°51'44" N, 077°00'26" W, upstream to the Officer Kevin J. Welsh Memorial (11th Street) Bridge. These coordinates are based upon North American Datum 1983.

(b) *Regulations.* (1) Entry into or remaining in the security zone described in paragraph (a) of this section is prohibited unless authorized by the Coast Guard Captain of the Port, Baltimore.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 410-576-2693 or on VHF channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted,



all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

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

(c) *Effective period.* This section is effective from 7:30 a.m. through 2 p.m. on April 17, 2008.

Dated: February 25, 2008.

**Brian D. Kelley,**

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

[FR Doc. E8-4463 Filed 3-6-08; 8:45 am]

BILLING CODE 4910-15-P

## POSTAL SERVICE

### 39 CFR Part 111

#### New Standards Prohibit the Mailing of Replica or Inert Munitions

**AGENCY:** Postal Service™.

**ACTION:** Proposed rule.

**SUMMARY:** The Postal Service is proposing new standards to prohibit the mailing of replica or inert munitions such as grenades or other simulated explosive devices.

**DATES:** We must receive your comments on or before April 7, 2008.

**ADDRESSES:** Mail or deliver written comments to the Manager, Mailing Standards, U.S. Postal Service, 475 L'Enfant, Plaza, SW., Room 3436, Washington, DC 20260-3436. You may inspect and photocopy all written comments at USPS Headquarters Library, 475 L'Enfant, Plaza, SW., 11th Floor N, Washington, DC between 9 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:**

Michael F. Lee, 202-268-7263.

**SUPPLEMENTARY INFORMATION:** Current Postal Service standards do not prohibit look-alike weapons from the mail. In order to ensure safety of postal employees and prevent damage to postal property or other mailpieces, inert munitions have been handled as "live ammunition" when found in the mail. In the past, facilities have been evacuated when inert replicas have been identified in the mailstream. In 2006, the Postal Service recorded 849 suspicious incidents involving mail that exhibited characteristics of possible explosives. Postal facilities were evacuated on 100 separate occasions due to these occurrences. Postal Inspectors or local emergency first responders reacted to each of these occurrences to assess the items.

Evacuations cost the Postal Service time and money, create unnecessary stress for employees, and can impact service commitments.

Most importantly, employee safety can be jeopardized when facsimiles of potentially dangerous items are permitted in the mail. Both real and replica explosives have been found in the mail and the replicas often are not readily distinguishable from the real articles. The Postal Service is concerned that without prohibition of these types of mail pieces, continued exposure to replicated munitions, over time, will lead to desensitized reactions should an employee encounter items in the mail that should be regarded as dangerous.

This proposed rule is part of our ongoing commitment to increase the safety of the mail and provide a safe working environment for our employees.

Although we are exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. of 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revisions to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), incorporated in the *Code of Federal Regulations*. See 39 CFR 111.1.

#### List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

#### PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001-3011, 3201-3219, 3403-3406, 3621, 3622, 3626, 3632, 3633 and 5001.

2. Revise the following sections of *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM) as follows:

\* \* \* \* \*

#### 600 Basic Standards for All Mailing Services

##### 601 Mailability

\* \* \* \* \*

#### 11.0 Other Restricted and Nonmailable Matter

\* \* \* \* \*

[Renumber current 11.5 through 11.20 as 11.6 through 11.21. Insert new 11.5 to read as follows:]

#### 11.5 Replica or Inert Munitions

Replica or inert munitions that bear a realistic appearance, such as simulated

grenades or other simulated explosive devices, are not permitted in the mail.

\* \* \* \* \*

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes if the proposal is adopted.

**Neva R. Watson,**

*Attorney, Legislative.*

[FR Doc. E8-4459 Filed 3-6-08; 8:45 am]

BILLING CODE 7710-12-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 122

[EPA-HQ-OW-2005-0037; FRL-8539-9]

RIN 2040-AE94

#### Revised National Pollutant Discharge Elimination System Permit Regulations for Concentrated Animal Feeding Operations; Supplemental Notice of Proposed Rulemaking

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

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** This action is a supplemental notice of proposed rulemaking (SNPRM) to EPA's June 30, 2006, notice of proposed rulemaking (NPRM) revising the National Pollutant Discharge Elimination System (NPDES) permitting requirements for concentrated animal feeding operations (CAFOs), in response to the order issued by the U.S. Court of Appeals for the Second Circuit in *Waterkeeper Alliance et al. v. EPA*, 399 F.3d 486 (2d Cir. 2005). In the June 2006 NPRM, EPA proposed to require only CAFOs that discharge or propose to discharge to seek coverage under a permit. In this SNPRM, EPA is proposing a voluntary option for CAFOs to certify that the CAFO does not discharge or propose to discharge based on an objective assessment of the CAFO's design, construction, operation, and maintenance. The June 2006 proposal also discussed the terms of the nutrient management plan (NMP) that would need to be incorporated into NPDES permits. This SNPRM proposes a framework for identifying the terms of the NMP and three alternative approaches for addressing rates of application of manure, litter, and process wastewater when identifying terms of the NMP to be included in the permit. This supplemental proposal focuses solely on certification and terms of the NMP and is not opening any other provisions of the June 2006 proposal and existing NPDES regulations or

Effluent Limitations Guidelines and Standards for public comment.

**DATES:** Comments must be received on or before April 7, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OW-2005-0037 by one of the following methods:

(1) *http://www.regulations.gov*: Follow the online instructions for submitting comments.

(2) *E-mail: ow-docket@epa.gov*, Attention Docket ID No. EPA-HQ-OW-2005-0037.

(3) *Mail:* Send the original and three copies of your comments to: Water Docket, Environmental Protection Agency, Mail Code 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW-2005-0037.

(4) *Hand Delivery:* Deliver your comments to: EPA Docket Center, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. OW-2005-0037. 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-OW-2005-0037. 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*.

*Docket:* All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Water Docket, EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Water Docket is (202) 566-2426.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Roose, Water Permits Division, Office of Wastewater Management (4203M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564-0758; e-mail address: *roose.rebecca@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

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**I. General Information**

*A. Does This Action Apply to Me?*

This action applies to concentrated animal feeding operations (CAFOs), included as point sources in section 502(14) of the Clean Water Act and defined in the NPDES regulations at 40 CFR 122.23. The following table provides a list of standard industrial codes for operations covered under this revised rule.

TABLE 1.—ENTITIES POTENTIALLY REGULATED BY THIS RULE

Category	Examples of regulated entities	North American industry code (NAIC)	Standard industrial classification code
Federal, State, and Local Government Industry .....	Operators of animal production operations that meet the definition of a CAFO:		
	Beef cattle feedlots (including veal) .....	112112	0211
	Beef cattle ranching and farming .....	112111	0212
	Hogs .....	11221	0213
	Sheep .....	11241, 11242	0214
	General livestock except dairy and poultry .....	11299	0219
	Dairy farms .....	11212	0241
	Broilers, fryers, and roaster chickens .....	11232	0251
	Chicken eggs .....	11231	0252
	Turkey and turkey eggs .....	11233	0253
	Poultry hatcheries .....	11234	0254
	Poultry and eggs .....	11239	0259

TABLE 1.—ENTITIES POTENTIALLY REGULATED BY THIS RULE—Continued

Category	Examples of regulated entities	North American industry code (NAIC)	Standard industrial classification code
	Ducks .....	112390	0259
	Horses and other equines .....	11292	0272

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility may be regulated under this rulemaking, you should carefully examine the applicability criteria in 40 CFR 122.23. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

**B. What Should I Consider as I Prepare my Comments for EPA?**

1. *Submitting Confidential Business Information.* Do not submit this information to EPA through [www.regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* It will be helpful if you follow these guidelines as you prepare your written comments:

- i. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions—The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible.

viii. Make sure to submit your comments by the comment period deadline identified.

**II. Background**

Congress enacted the Federal Water Pollution Control Act (1972), also known as the Clean Water Act (CWA), to “restore and maintain the chemical, physical, and biological integrity of the nation’s waters” (CWA section 101(a)). Among the core provisions, the CWA establishes the NPDES permit program to authorize and regulate the discharge of pollutants from point sources to waters of the U.S. (CWA section 402). Section 502(14) of the CWA specifically includes CAFOs in the definition of the term “point source.” Section 502(12) defines the term “discharge of a pollutant” to mean “any addition of any pollutant to navigable waters from any point source” (emphasis added). EPA has issued comprehensive regulations that implement the NPDES program at 40 CFR part 122. The Act also provides for the development of technology-based and water quality-based effluent limitations that are imposed through NPDES permits to control the discharge of pollutants from point sources. CWA sections 301(a) and (b).

EPA began regulating wastewater and manure from CAFOs in the 1970s. EPA initially issued national effluent limitations guidelines and standards for feedlots on February 14, 1974 (39 FR 5,704), and NPDES CAFO regulations on March 18, 1976 (41 FR 11,458).

In February 2003, EPA issued revisions to these regulations, focusing on the 5% of the nation’s animal feeding operations (AFOs) that present the highest risk of impairing water quality and public health (68 FR 7,176) (“the 2003 CAFO rule”). The 2003 CAFO rule

required the owners or operators of all CAFOs<sup>1</sup> with a potential to discharge to apply for an NPDES permit. A number of CAFO industry organizations (American Farm Bureau Federation, National Pork Producers Council, National Chicken Council, and National Turkey Federation (NTF), although NTF later withdrew its petition) and several environmental groups (Waterkeeper Alliance, Natural Resources Defense Council, Sierra Club, and American Littoral Society) filed petitions for judicial review of certain aspects of the 2003 CAFO rule. This case was brought before the U.S. Court of Appeals for the Second Circuit. On February 28, 2005, the court ruled on these petitions and upheld most provisions of the 2003 rule but vacated and remanded others. *Waterkeeper Alliance, et al. v. EPA*, 399 F.3d 486 (2d Cir. 2005). Provisions of the 2003 CAFO rule that were challenged by the petitioners but upheld by the court include the Agency’s land application regulatory framework and interpretation of “agricultural stormwater,” and the Agency’s determination regarding effluent limitations guidelines pertaining to groundwater controls and best available technology for waste management. The court vacated the 2003 rule requirement that all CAFOs must apply for permits or demonstrate that they do not have the potential to discharge. The court also found that the terms of the nutrient management plan (NMP) are themselves “effluent limitations” and, therefore, must be made part of the permit and be enforceable as required by CWA sections 301 and 402, made subject to public comment, and reviewed and approved by the permitting authority. The court also remanded several aspects of the 2003 CAFO rule for further clarification and analysis.

On June 30, 2006, EPA published a proposed rule to revise several aspects of the Agency’s regulations governing discharges from CAFOs in response to

<sup>1</sup> The Clean Water Act regulates the conduct of persons, which includes the owners and operators of CAFOs, rather than the facilities or their discharges. To improve readability in this preamble, reference is made to “CAFOs” as well as “owners and operators of CAFOs.” No change in meaning is intended.

the *Waterkeeper* decision. 71 FR 37,744. EPA is briefly describing the proposed revisions to the 2003 CAFO here for context only. The proposed provisions in response to the *Waterkeeper* decision are beyond the scope of this final rule, and EPA is not addressing those provisions in this final rule.

In summary, EPA proposed to require only owners or operators of those CAFOs that discharge or propose to discharge to seek authorization to discharge under a permit. Second, EPA proposed to require CAFOs seeking authorization to discharge under individual permits to submit their NMPs with their permit applications or, under general permits, with their notices of intent. Permitting authorities would be required to review the NMP and provide the public with an opportunity for meaningful public review and comment. Permitting authorities would also be required to incorporate terms of the NMP as NPDES permit conditions. The proposed rule also addressed the remand of issues for further clarification and analysis. These issues concern clarifications regarding the applicability of water quality-based effluent limitations (WQBELs); new source performance standards for swine, poultry, and veal CAFOs; and "best conventional technology" effluent limitations guidelines for fecal coliform.

In addition to the proposed revisions in the 2006 proposed rule, EPA has extended certain deadlines in the NPDES permitting requirements and ELGs in two separate rulemakings in order to allow the Agency adequate time to complete this rulemaking in response to the *Waterkeeper* decision, in advance of those deadlines. The first rule revised dates established in the 2003 CAFO rule by which facilities newly defined as CAFOs were required to seek permit coverage and by which all permitted CAFOs were required to develop and implement nutrient management plans. 71 FR 6978. Because EPA was unable to complete this final rule prior to July 31, 2007, EPA again revised the compliance dates on July 24, 2007, further extending those dates from July 31, 2007, to February 27, 2009. 72 FR 40248.

### III. This Proposal

This notice supplements the 2006 proposed rule by proposing additional options being considered by EPA for inclusion in the rulemaking to respond to the Second Circuit's decision in the *Waterkeeper* case. EPA is only seeking comment on the issues presented in this supplemental proposal. No provisions promulgated in the 2003 final rule are affected or reopened by this supplemental proposal, nor is EPA

reopening the comment period on the 2006 proposed rule. In addition, EPA is taking comment on the compliance deadlines established in the second date change rule.

#### A. No Discharge Certification

In this notice, the Agency is proposing a new provision that would allow CAFOs to voluntarily certify that the CAFO does not discharge or propose to discharge. This supplemental proposal seeks comment on this voluntary certification option, described below.

##### 1. Background

The 2003 CAFO rule required all CAFOs to seek coverage under an NPDES permit unless the Director determined that the CAFO has no potential to discharge. 68 FR 7176 (Feb. 12, 2003). This duty to apply for a permit based on a potential discharge was successfully challenged. *Waterkeeper Alliance et al. v. EPA*, 399 F.3d 486 (2nd Cir. 2005). The court found that the duty to apply, which the Agency had based on a presumption that most CAFOs have at least a potential to discharge, was invalid because the CWA subjects only actual discharges to permitting requirements rather than potential discharges. *Waterkeeper*, 399 F.3d at 506. The court acknowledged EPA's policy considerations for seeking to impose a duty to apply solely on the basis of a CAFO's potential to discharge but found that the Agency lacked statutory authority to do so.

In June 2006, in response to the *Waterkeeper* decision, EPA proposed to amend the duty to apply provision for CAFOs, found at 40 CFR 122.23(d), to require all CAFOs that "discharge or propose to discharge" to seek NPDES permit coverage. 71 FR 37744 (June 30, 2006). As discussed in the preamble to the 2006 proposed rule, the CAFO operator would decide whether or not to apply for a permit. 71 FR 37749. EPA received several hundred comments on the 2006 proposed rule related to how a CAFO operator would decide whether to seek permit coverage. In particular, many commenters asked EPA to specify conditions at a CAFO that would clearly trigger the requirement to apply for a permit, while others stated the position that there is no "duty to apply" for CAFOs in advance of any discharge because an NPDES permit is only required for actual discharges. In response to these comments EPA has developed an option that would allow a CAFO that determines it does not need to seek permit coverage to certify to the Director that the operation does not

discharge or propose to discharge. The proposal would establish clear criteria, described in detail below, that a CAFO must meet in order to be eligible for the certification. The certification option proposed in this notice would not change the duty to apply requirement proposed in 2006 that CAFOs that discharge or propose to discharge would be required to seek permit coverage. It would, however, provide a structured process for CAFOs that wish to certify to establish that they do not discharge or propose to discharge. EPA believes that such a structured process would be helpful to CAFOs as they determine whether or not to seek permit coverage. Furthermore, a CAFO with a valid no discharge certification would not be subject to liability for violation of the duty to apply at 122.23(d) in the unlikely event that a discharge should occur, though it would still be liable for violation of the prohibition on unpermitted discharges in CWA section 301. EPA wishes to emphasize that submission of a no discharge certification is voluntary. Only CAFOs that discharge or propose to discharge would be subject to NPDES permit requirements, whether or not they submit a certification.

##### 2. Overview of Certification

EPA is proposing a voluntary option for CAFOs to certify to the Director that the CAFO does not discharge or propose to discharge based on an objective assessment of the CAFO's design, construction, operation, and maintenance. This objective assessment would take into account the CAFO's production area design and construction and its operating parameters as described in its nutrient management plan (NMP). The CAFO operator would certify that the CAFO does not discharge or propose to discharge by signing and submitting a certification statement to the Director. A CAFO's no discharge certification would not be subject to approval by the permitting authority and there would not be an opportunity for the public to comment and request a hearing regarding the certification. The proposed eligibility requirements, submission requirements, and conditions for a valid certification are discussed in detail below.

##### 3. Certification Eligibility Criteria

EPA is proposing to establish specific eligibility criteria for CAFO certification at 40 CFR 122.23(h)(2). Meeting these criteria would establish that the CAFO does not "discharge or propose to discharge" for purposes of proposed § 122.23(d), for as long as the certification is valid. The two proposed



criteria are as follows: (1) An objective evaluation of the production area design, construction, operation, and maintenance, which shows that the production area will not discharge, and (2) development, implementation, and maintenance on-site of a nutrient management plan (NMP) that addresses the elements set forth in 40 CFR 122.42(e)(1) and 412.37(c), including operation and maintenance practices for the production area and land application areas under the control of the CAFO. While a description of how the CAFO meets the eligibility criteria would be required to be submitted to the Director, this proposed rule would not require that the documents necessary to meet the eligibility criteria be submitted to the permitting authority, nor would they be subject to permitting authority approval. However, during the certification period a properly certified CAFO would be required to maintain such documents on site or make them readily available, along with any associated records created to support the basis for the certification. Certified CAFOs, like any other permitted or unpermitted CAFO, would be subject to potential inspection by EPA or State inspectors, during which they could be required to produce the documentation showing that the CAFO meets the eligibility criteria, including that the CAFO has been and is being operated and maintained in accordance with the NMP.

The first proposed eligibility criterion for valid certification would cover the design, construction, operation, and maintenance of the CAFO's production area. Proposed § 122.23(h)(2)(i) would require the CAFO to maintain documentation on site to demonstrate that the CAFO's production area is designed, constructed, operated, and maintained so as not to discharge. This demonstration would be the same as the demonstration provided for in proposed 40 CFR 412.46 (71 FR 37786), which would allow swine, poultry, and veal calf operations subject to new source performance standards (NSPS) to demonstrate that there will be no discharge from their production area. However, the no discharge certification would be available to all unpermitted CAFOs that do not discharge or propose to discharge, not just new sources in the swine, poultry and veal calf sectors with open storage. Due to the variations in production area design based on the type of containment system used at the operation, the proposed regulatory text for the first eligibility criterion has two parts: the first for open manure storage

structures and the second for any part of the production area not considered to be open containment.

EPA is proposing that any CAFO with an open surface manure storage structure seeking to certify that it does not discharge or propose to discharge would be required to perform a technical evaluation. This evaluation would include the same elements as the technical evaluation required for open storage new source swine, poultry and veal calf operations seeking to demonstrate no discharge under 40 CFR 412.46(a)(1). In the 2006 proposed rule, EPA proposed to revise the provisions at 40 CFR 412.46(a)(1) to allow such new sources with open containment to meet the no discharge requirement for their NPDES permit using best management practices based in part on a rigorous site-specific technical evaluation that includes use of the Soil Plant Air Water (SPAW) Hydrology Tool or equivalent model. See the 2006 proposed regulation at 71 FR 37786–87 and corresponding preamble discussion at 71 FR 37760–62. Under this proposed certification, any unpermitted CAFO with open storage seeking to certify its operation as no discharge, not just new source swine, poultry, and veal calf operations, would be required to undertake a technical evaluation in accordance with the elements of the technical evaluation in § 412.46(a)(1)(i)–(vii) to demonstrate that it meets the production area requirement for certification under proposed § 122.23(h)(2)(i)(A). Today's proposed rule does not reopen for additional comment the 2006 proposed revisions to section 412.46 relating to NSPS. The comment period on the revised NSPS requirements is closed. Rather, EPA is now seeking comment on whether the elements of the technical evaluation set forth in proposed § 412.46(a)(1)(i)–(vii) provide an appropriate basis for an unpermitted CAFO to certify, on the basis of its design, construction, operation, and maintenance, that its open surface manure storage structure will not discharge.

In order to meet the second part of the first eligibility criterion, this proposed rule would require, in § 122.23(h)(2)(i)(B), that any certifying CAFO must demonstrate that all of its production area, as defined at 40 CFR 122.23(b)(8), not just open surface containment structures, is designed, constructed, operated, and maintained such that there will be no discharge of manure, litter, process wastewater, or raw materials, such as feed, to surface waters. For a CAFO without open containment, this provision would require a demonstration of no discharge

from the entire production area. For a CAFO that has an open containment structure, this provision would require a demonstration that the remainder of the production area (other than the open containment structure subject to the demonstration in 122.23(h)(2)(i)(A)), also will not discharge. Because of the special risk of discharge from open manure storage structures, greater specificity is provided regarding the elements of the demonstration in 122.23(h)(2)(i)(A); however, the demonstration in 122.23(h)(2)(i)(B) must also be technically sound and must be adequate to demonstrate that the production area is designed, constructed, operated and maintained for no discharge. This demonstration must be based on an evaluation of site-specific characteristics, including, among others, the amount of manure generated during the storage period, the size of the storage structure, control measures to ensure diversion of clean water, and seasonal restrictions on land application. Some CAFOs may have a combination of open manure storage structures and covered structures, while others will house all animals and store all manure, feed and by-products under cover. In either case, all parts of the production area will need to be covered by the demonstrations required under § 122.23(h)(2)(i)(A) and (B). In addition, like permitted new source swine, poultry, and veal calf operations, any unpermitted CAFO seeking to certify no discharge would be required to implement the measures set forth in 40 CFR 412.37(a) and (b) for the production area. These additional measures pertain to operation and maintenance and include provisions for visual inspections, depth markers for all open surface liquid impoundments, corrective action, mortality handling and recordkeeping. Since both these permitted new source operations and unpermitted certified CAFOs would need to ensure no discharge from the production area under the permit and certification requirements, respectively, EPA believes it is appropriate to rely, in part, on those provisions to establish eligibility criteria for no discharge certification. The documents that would be necessary to satisfy this eligibility requirement would include design documentation and all recordkeeping and operation and maintenance planning necessary to address the elements of proposed § 122.23(h)(2)(i), which includes the measures set forth in § 412.37(a) and (b). EPA is considering developing a recordkeeping checklist for use by certified CAFOs. Such a checklist would be made available to all CAFO



operators through EPA guidance published subsequent to issuance of the final CAFO rule. EPA requests comment on whether such a checklist would be useful.

The second eligibility criterion would require the CAFO to develop, implement, and maintain on site an NMP that addresses, at a minimum, the elements set forth in 40 CFR 122.42(e)(1) and 40 CFR 412.37(c), and addresses all operation and maintenance practices necessary to ensure that the CAFO will not discharge. The NMP would include provisions regarding nutrient management in the production area as well as in all land application areas under the control of the CAFO where the CAFO will land-apply manure. EPA believes that implementation of an NMP is an essential component of any CAFO's efforts to ensure that it will not discharge from its production or land application areas. EPA notes that a comprehensive nutrient management plan (CNMP), developed in accordance with Natural Resources Conservation Service (NRCS) technical guidance for CNMPs,<sup>2</sup> would be sufficient to meet this eligibility criterion as long as the CNMP addresses the minimum elements set forth in 40 CFR 122.42(e)(1) and § 412.37(c), and the CAFO addresses all the necessary operation and maintenance protocols either in the CNMP or one or more operation and maintenance plans. It is common for an operation to have one or more operation and maintenance plans in order to properly implement a number of NRCS conservation practice standards simultaneously. Also, to the extent that the necessary operation and maintenance requirements to implement any provision of the NMP are not included in the NMP itself, those requirements would need to be included in an operation and maintenance plan to be implemented and maintained on site.

Proper certification would require the CAFO to revise its NMP if any of the design specifications, practices or other NMP provisions changed over time. For example, if the CAFO decided to land-apply manure on a field that was not included in the NMP, the CAFO would need to calculate rates of application in accordance with the protocols required by § 122.42(e)(1)(viii) and revise the NMP to include the new field and the corresponding application rates. Because valid certification would require the CAFO to at all times be

designed, constructed, operated, and maintained such that it meets the eligibility criteria to establish that the operation does not discharge or propose to discharge (see proposed § 122.23(h)(4), discussed below), to maintain a valid certification, a CAFO should make the adjustments necessary to accommodate a change in circumstances, before the circumstances change. For example, if an increase in animals would cause the operation to exceed the existing storage capacity for precipitation, manure and process wastewater required for no discharge, to remain certified the CAFO would need to remedy the storage capacity problem prior to bringing the additional animals to the operation.

EPA would encourage a CAFO preparing the documents necessary for the proposed certification to consult with a professional engineer and an NRCS-certified technical service provider (TSP) or other qualified nutrient management planner. Any professional consulted by the CAFO should have the requisite training, experience and expertise to conduct and/or substantively review the required analyses, and to advise the owner or operator as to whether the CAFO is, in fact, designed, constructed, operated, and maintained such that it will not discharge.

#### 4. Submitting the Certification

Under the proposed certification option, a CAFO seeking to certify that it does not discharge or propose to discharge would be required to submit the certification to the permitting authority. Under proposed § 122.23(h)(3), the submission to the Director would include: (1) The CAFO owner or operator's name, address and phone number; (2) information regarding the CAFO's location, including latitude and longitude; (3) a description of the manner in which the CAFO satisfies the eligibility requirements of § 122.23(h)(2); (4) the certification statement set forth in proposed § 122.23(h)(3)(iv); and (5) an official signature that meets the signatory requirements of 40 CFR 122.22. The signed certification would make the CAFO legally responsible for its representations to the Director regarding the design, construction, operation, and maintenance of the CAFO. The language regarding legal liability for making a false statement under the proposed option is consistent with language in 40 CFR 122.26(g) which applies to facilities seeking to obtain a "no exposure" exclusion for industrial storm water.

Today's proposed rule would make no changes to the existing regulations concerning how CAFOs may make Confidential Business Information (CBI) claims with respect to information they must submit to the permitting authority and how those claims will be evaluated. A facility may make a claim of confidentiality under the existing regulations at 40 CFR part 2, subpart B.

The third item the Agency is proposing for submission to the Director, as listed above, is a statement describing the manner in which the CAFO satisfies the certification eligibility criteria. EPA believes that, at a minimum, the description to be submitted to the Director should include: (1) The type and number of animals; (2) the type and capacity of manure and wastewater storage and/or containment; (3) storm size used as basis for containment design; (4) whether the CAFO consulted with a professional engineer or TSP; (5) identification of the documents maintained on site in accordance with the eligibility criteria; and (6) any technical standards, tools (e.g., RUSLE and Phosphorus Index) and formulas used to calculate application rates of manure, litter, and process wastewater. EPA seeks comment on whether this is the scope and type of information that should be submitted, as well as suggestions of other information that should be included in the eligibility description submitted for certification.

The authority given to the permitting authority under section 308 of the CWA to conduct inspections at point source operations would not be affected by this proposed rule. Therefore, any CAFO, whether it is certified, permitted, or neither, may be subject to an information gathering request or inspection, at the Director's discretion and for any of the reasons provided by section 308 of the Clean Water Act. 33 U.S.C. 1318.

Under the proposal, the certification would become effective upon submission to the Director. The proposed rule would require the use of certified mail or equivalent method of documentation for identifying the date of submission.

#### 5. Limitations on Certification

This proposed rule also includes several limitations on certification related to the term of a valid certification, reporting, and recertification when a certification becomes invalid. EPA proposes that the certification would be valid for five years from the date of certification or would terminate when the CAFO has either discharged or ceases to be

<sup>2</sup> Technical Guidance for Developing Comprehensive Nutrient Management Plans, USDA Natural Resources Conservation Service (2003), available at <http://policy.nrcs.usda.gov/viewerFS.aspx?id=3073>.

designed, constructed, operated and maintained in accordance with the documentation supporting the certification (i.e., its production area design documentation and nutrient management plan), whichever is sooner. See proposed § 122.23(h)(4). EPA is proposing that a valid certification would need to be renewed, if desired by the CAFO, every five years. This is the maximum statutory term of an NPDES permit. The permit renewal process provides the opportunity for operations of a permitted CAFO to be reviewed to ensure that they still meet the requirements of the Clean Water Act and for new conditions to be imposed as necessary. EPA believes that a five-year term for no discharge certifications will similarly prompt the CAFO to periodically reevaluate whether it is designed, constructed, operated, and maintained so as not to discharge and make adjustments to operations where necessary. EPA seeks comment on whether five years is an appropriate length of time for a no discharge certification.

In the unlikely event of a discharge from a certified CAFO, the CAFO operator, although subject to liability for the discharge itself, would not be liable for a violation of the duty to apply in § 122.23(d), but the certification would cease to be valid. Similarly, should a CAFO fail to continue to meet any of the eligibility criteria, the CAFO's certification would no longer be valid. Circumstances that could result in the certification becoming invalid would include, for example, an increase in animals that exceeds the capacity of the production area for manure storage and handling, a loss of land application areas such that the assumptions in the NMP concerning land application would no longer be appropriate, and a discharge of pollutants to waters of the United States (other than discharges of agricultural stormwater from the land application area, which is exempt from permitting requirements).

Once a certification ceased to be valid, the operator would not be able to rely on it if an enforcement action were brought for a subsequent violation of the duty to apply for a permit. In sum, a discharge by the CAFO or failure of a certified CAFO to continue to be designed, constructed, operated, and maintained in accordance with the eligibility criteria and certification statement would render the certification invalid and put the CAFO in the same position as any other unpermitted and uncertified CAFO.

Failure to continue to meet the eligibility requirements for certification in proposed § 122.23(h)(2) would not, in

and of itself, be a violation of any regulatory requirement, since certification would be strictly voluntary. For example, failure to implement the measures set forth in § 412.37(a)-(b), which would be required for no discharge certification eligibility under proposed § 122.23(h)(2)(i), would not be a violation of § 412.37(a)-(b) but would render the certification invalid.

Under proposed § 122.23(h)(5) a CAFO could withdraw its certification at anytime by notifying the Director, by certified mail or equivalent method of documentation, that it was withdrawing its certification. The certification would be withdrawn on the date the notification was submitted to the Director. If a CAFO certification becomes invalid, proposed § 122.23(h)(5) would require the CAFO operator to withdraw its certification within three days of the date on which the CAFO's no discharge certification became invalid.

The CAFO operator would not be required to notify the Director of the reason for withdrawing the certification, or even if it was withdrawn because some change in circumstances had rendered it invalid or merely because the operator no longer chooses to maintain it. For example, an operator might decide that particular recordkeeping requirements needed for certification were more burdensome than the certification was worth, and choose to withdraw the certification so as not to have to keep such records. While EPA believes it is important for permitting authorities to have an accurate and up-to-date record of which unpermitted CAFOs have a valid no discharge certification, and thus to require operators to withdraw any certification which ceases to be valid, EPA also wishes to emphasize that certification is strictly voluntary, and can be withdrawn by the operator without explanation at any time.

If a certification is withdrawn because it ceases to be valid, the operator could seek to re-certify that the CAFO does not discharge or propose to discharge by revising its operations to address the deficiency and submitting a new certification statement. If the certification was rendered invalid by a discharge, under proposed § 122.23(h)(5), in order to re-certify, a CAFO would have to submit to the Director the information required under § 122.23(h)(3) and additional information describing the discharge, including the time, date, cause, and approximate volume of the discharge, and the steps taken by the CAFO to permanently address the cause of the discharge, i.e., to ensure that no

discharge from this cause occurs in the future. While review and approval of the technical basis for certification by the permitting authority is not generally required, EPA believes it is appropriate in situations where a certified CAFO has in fact discharged and still believes that it can certify that it does not discharge or propose to discharge, for the operator to provide sufficient information to assure the Director that the cause of the discharge has been adequately addressed to ensure that there will not be future such discharges. EPA would generally consider a recurring discharge as evidence that a CAFO is not eligible for certification or re-certification and would need to seek permit coverage.

#### 6. Additional Rationale

As stated above, under the 2006 proposed revisions to 40 CFR 122.23(d)(1), a CAFO that does not discharge or propose to discharge would not be subject to the duty to apply for an NPDES permit. However, as discussed in the preamble to the 2006 proposed rule, if an unpermitted CAFO discharges, the CAFO would be in violation of section 301(a) of the CWA due to the unpermitted discharge and could be in violation of the duty to apply if the CAFO could have reasonably foreseen that the discharge would occur and did not seek permit coverage prior to discharge. A valid certification, however, would document the CAFO operator's basis for making an informed decision not to seek permit coverage because the CAFO does not discharge or propose to discharge, and would protect the CAFO from being held liable for not applying for the permit prior to discharge. In the unlikely event that a properly certified CAFO discharges, the CAFO would not be subject to liability for failure to seek permit coverage prior to discharge in violation of 40 CFR 122.23(d) and section 308 of the CWA. However, any discharge even from a properly certified CAFO would be an unpermitted discharge in violation of CWA section 301 subject to applicable injunctive relief and penalties.

EPA believes that providing protection from liability for violation of 40 CFR 122.23(d) and section 308 for a properly certified CAFO is reasonable and justified. Certification would require a CAFO owner or operator to undertake and document a rigorous analysis of the operation's structure and design, and to be committed to operation and maintenance protocols designed to ensure no discharge. As stated above, certification is entirely voluntary for a CAFO that does not discharge or propose to discharge. EPA

believes that a CAFO owner or operator that would make the effort and take the steps needed to certify no discharge should be afforded protection from enforcement for failure to have applied for a permit prior to discharge if, in the future, there is an unanticipated discharge from the CAFO, so long as there has been no lapse in the CAFO's eligibility for certification. The operator of an unpermitted CAFO choosing not to make and document this certification in accordance with each element listed in 40 CFR 122.23(h)(2)–(3) would not receive the liability protection provided by a no discharge certification.

Unlike the 2003 rule that required all CAFOs to seek permit coverage in order to operate unless they obtained a determination of "no potential to discharge," the certification provision proposed here would be entirely voluntary. The purpose of the certification would be to provide a mechanism by which a CAFO can document that it does not discharge or propose to discharge and be assured that even if the CAFO does discharge in the future, it would not face an enforcement action for failure to apply for a permit. The certification process would not, in and of itself, establish whether the CAFO must apply for a permit. As proposed in 2006, the requirement for a CAFO to apply for a permit would be triggered only when a CAFO discharges or proposes to discharge. 71 FR 37,784. The decision to seek permit coverage or no discharge certification would be made by the operator based on an objective assessment of conditions at the facility, in contrast to the 2003 rule, which required the operator either to seek permit coverage or prove to the satisfaction of the Director that the CAFO had no potential to discharge. Therefore, under this proposed rule and § 122.23(d)(1), the operator would decide whether (1) to obtain permit coverage; (2) to certify under the provisions at 122.23(h); or (3) to operate without either a permit or certification. EPA notes that a CAFO that chooses to operate without a permit implicitly faces more stringent requirements than permitted CAFOs because discharges in any size storm event are prohibited from unpermitted CAFOs, while certain exceptions may be applicable to permitted CAFOs. NPDES permit coverage reduces CAFO operator risk and provides certainty to CAFO operators regarding activities and actions that are necessary to comply with the Clean Water Act.

#### B. Terms of the Nutrient Management Plan

In this notice, the Agency is proposing a framework for identifying the terms of the nutrient management plan (NMP) that must be enforceable requirements of a CAFO's NPDES permit. The proposed framework includes three alternative approaches for specifying terms of the NMP with respect to rates of application, which are needed to satisfy the requirement that the NMP include "protocols to land apply manure, litter or process wastewater \* \* \* that ensure appropriate agricultural utilization of the nutrients." 40 CFR 122.42(e)(1)(viii). For Large CAFOs, these proposed alternatives would also satisfy the requirements set forth in 40 CFR 412.4. The proposed framework would include supplemental annual reporting requirements for permitted CAFOs to accompany these proposed alternative approaches. In addition, this supplemental proposal includes two revisions to the 2006 proposed rule with respect to changes to a CAFO's NMP, including revisions to the proposed conditions that would constitute substantial change to the terms of the NMP. This supplemental proposal seeks comment on the proposed framework for specifying terms of the NMP to be included in an NPDES permit, and on the proposals for changes to the NMP included in this notice. No NMP provisions promulgated in the 2003 final rule are affected or reopened by this supplemental proposal, nor is EPA reopening the comment period on the 2006 proposed rule.

##### 1. Background

As discussed in the June 2006 proposed rule, the *Waterkeeper* court held that the "terms of the NMP" are effluent limitations that must be included in the permit. *Waterkeeper Alliance v. EPA*, 399 F.3d 486, 502 (2d Cir. 2005). In the preamble to the proposed rule, EPA discussed how the "terms" of a CAFO's NMP could be identified and included in the permit. As stated in the June 2006 proposed rule, the terms of the NMP would need to address the nine minimum required elements in 40 CFR 122.42(e)(1)(i)–(ix) and 412.4(c) (for Large CAFOs, as applicable). 71 FR 37753.

The 2006 proposed rule preamble identified a number of factors that are necessary to the development of an NMP, including: The maximum amount of manure that the CAFO may apply to land application areas under its control; an inventory of the fields for land application and the associated acreage,

soil types, soil tests and testing protocols; setbacks and other conservation measures; and a list of all of the crops the CAFO may wish to grow on each of those fields with a matrix of the associated realistic yield expectations and land application rates consistent with the various field conditions. 71 FR 37755. The Agency also stated that the NMP should include calculations necessary to determine rates of application for the array of crops most likely to be planted in accordance with the cropping system utilized by the CAFO operator and could include likely alternative scenarios for other crops that could be planted. In the Agency's view, listing alternative cropping plans would allow a CAFO some flexibility in utilizing different combinations of crops and crop rotations for land application. However, the Agency added that the NMP should reasonably forecast the practices most likely to be utilized by the CAFO. In the proposed rule preamble, EPA solicited comment on the degree of flexibility that should be allowed in NMPs, particularly regarding the terms of the NMP included as permit conditions, and highlighted the advantages and disadvantages of allowing some flexibility to the CAFO operator. 71 FR 37753–55.

With respect to portions of the NMP that would be incorporated as permit terms, the Agency also proposed regulatory language for accommodating changes to the NMP that involve changes to the terms during the permit period. The proposed rule identified changes to the terms of the NMP that would be considered substantial changes and those that would be considered nonsubstantial changes. The items listed as constituting a substantial change to the terms of the NMP included changes that could result in an increase in runoff of manure, litter, or process wastewater from the facility and changes that could result in an increase in the rate of nutrients from manure, litter, or process wastewater applied to the land application area that is significant in relation to technical standards established by the Director. 71 FR 37,756.

EPA received many comments on the NMP issues highlighted in the proposed rule preamble. Commenters stressed the complexity associated with nutrient management planning, particularly with respect to land application, and the need to address changes in operation as well as changes due to circumstances beyond the CAFO's control arising during the permit term, especially where such changes would lead to different rates of application of manure, litter, and process wastewater. Many

commenters wanted clarification of the terms associated with land application, and a number of commenters suggested factors that should be included as terms of the NMP.

In reviewing these comments, the Agency has determined that a provision specifically identifying the terms of the NMP required to be included in the permit would address a number of these concerns. In particular, the comments indicated a need to clarify what constitutes the terms of the NMP regarding rates of application, given the complexity of factors used to determine rates of application and the dynamics associated with such factors. This clarification would facilitate a common understanding of the terms of the NMP required in a CAFO's permit, and thereby reduce the likelihood of confusion and promote better awareness of what the permitting authority must do to ensure that the permit complies with the Clean Water Act and these regulations and of what a CAFO must do to comply with its permit. Moreover, specifically identifying the terms that must be included for each CAFO would enhance the public's ability to participate meaningfully in the development, revision, and enforcement of the terms of the NMP as called for by the Second Circuit in the *Waterkeeper* decision.

## 2. Supplemental Proposal for Terms of the NMP To Be Included in the Permit

In light of these concerns, EPA is supplementing the June 2006 proposed rule with a proposal to specify in the regulation what elements of the NMP would be terms of the NMP that would be required to be included as enforceable terms of a CAFO's NPDES permit. The rule would require that the terms of the NMP must include the information, protocols, best management practices, and other conditions identified in a CAFO's nutrient management plan and determined by the permitting authority to be necessary to meet the requirements of 40 CFR 122.42(e)(1). For Large CAFOs subject to the land application requirements of the effluent limitations guideline, the terms would include the best management practices in 40 CFR 412.4(c) in addition to the requirements of part 122.

The "information, protocols, best management practices, and other conditions" that would constitute the terms of the NMP would include what the CAFO operator would be required to do to properly implement its NMP and determinative conditions upon which such actions are based. For example, both the structural design capacity

necessary to satisfy the storage requirement of § (e)(1)(i) and the associated operational and maintenance conditions necessary to ensure adequate storage, would be considered terms of the NMP. Likewise, the terms of the NMP would need to ensure, for example, proper management of mortalities and diversion of clean water. However, the number of animals confined would not necessarily need to be a term of the NMP because a CAFO operator would be required to properly operate and maintain the CAFO's storage facilities regardless of the number of animals or the volume of manure, litter, or process wastewater generated. On the other hand, the Director could, for example, include an upper limit on the number of animals as a term.

For CAFOs that land apply manure, litter, and process wastewater, the fields the CAFO plans to use for land application would be a term of the NMP. Similarly, as discussed in greater detail below, field-specific, crop-specific application rates would be terms of the NMP, as would certain factors needed to determine the rates. However, background information that is fixed and unchangeable, such as actual historic yields used in the development of an NMP, while important for determining rates of application, would not need to be terms of the NMP.

## 3. Rates of Application

40 CFR 122.42(e)(1)(viii) requires the nutrient management plan to include "protocols to land apply manure, litter or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater." As EPA noted in the June 2006 proposed rule, the *Waterkeeper* court focused on rates of application as perhaps the most important term of the NMP, in particular the provisions of the effluent limitations guidelines in 40 CFR 412.4(c), and emphasized their site-specific nature. 71 FR 37753. In considering the elements of an NMP that should be identified as the minimum terms with respect to land application rates, in light of comments received on the 2006 proposed rule, two general principles emerged. First, rates of application depend on the information on which they are based, such as information about the field, crops, and nutrient content of the manure. Second, this information can change, and in order to address changing circumstances during the period of a permit (ordinarily five

years), there is a need for some flexibility in establishing rates of application. The Agency proposes three alternative approaches, discussed below, which vary in the degree of flexibility with respect to expressing rates of application and factors to be included in the permit as terms of the NMP. However, all three approaches would ensure that legally-enforceable field- and crop-specific application rates are included in the permit.

Rates of application are field-specific and are designed to ensure that crops receive sufficient nutrients to meet yield goals, while minimizing the amounts of nutrients that could be transported from the field. The total amount of plant available nutrients necessary to meet yield goals includes residual nutrients already in the field and the nutrients added for a particular crop. Residual nutrients are those in the soil or on the field remaining from prior applications of manure, litter, process wastewater, or chemical fertilizer, or from other sources such as crop residues and nitrogen fixing legumes. The addition of nutrients to a field includes application of chemical fertilizer, as well as application of manure, litter, or process wastewater.

The NMP must consider the capacity of the field for manure, litter, or process wastewater application, generally depending on the capacity of the soil to retain phosphorus. State technical standards generally require the use of the phosphorus index or a similar tool for assessing the potential for nutrient transport from a field and for determining the limiting nutrient (phosphorus or nitrogen) for application of manure, litter, or process wastewater. The outcome of the assessment of the potential for phosphorus transport does not typically change from year to year. However, because soil phosphorus levels tend to change incrementally depending upon the buffering capacity of the soil, this assessment may limit the amount of phosphorus, and thus the amount of manure, litter, and process wastewater, that may be added to a field.

Once the residual nutrients and potential for nutrient transport from the fields has been determined, the next step is to identify the crops to be planted, or other uses, for each field where land application will occur and the nitrogen and phosphorus needs of these crops or other uses. The NMP also must identify the realistic yield expected from the crop or crops planted in the field, in order to calculate the proper amount of nutrients to apply. A crop's nutrient needs are generally determined in accordance with the



nutrient recommendations for a given crop (or other planting, such as forage or pasture) and the per acre realistic yield goal for such crop, both of which are typically set by the State land grant university or based on equations provided by the land grant university. The realistic yield rate can also be based on historic field-specific yield data.

Finally, the amount of manure, litter, or process wastewater, in tons or gallons, to be land applied in order to meet, but not exceed, crop nutrient needs (after considering residual nutrients and potential for nutrient transport from fields) depends on the nutrient content of the manure, litter, and process wastewater, as well as the source and form of nutrients to be land applied and the method and timing of land application. Whereas one CAFO operator may wish to follow the planned sequence of steps for planting crops and applying manure, litter, and process wastewater described in the NMP submitted to the Director, another operator may want or need to vary from that linear sequence of events, due to choices made in the course of normal operations, or in response to events or circumstances beyond the CAFO's control, such as weather, crop failure, or market conditions. EPA addressed these concerns in the preamble to the 2006 proposed rule, and stated that the proposed approach could accommodate such changes.

In the proposed rule preamble discussion concerning changes to the terms of the nutrient management plan, EPA encouraged CAFO operators to develop NMPs that anticipate contingencies and changes in operations that may occur over the term of the permit. Such contingencies may include other potential crops that could be planted, or possible crop rotations or other alterations in cropping patterns with accompanying field-specific calculations for manure, litter, and process wastewater application rates based on realistic crop yield goals, soil characteristics, typical weather patterns, and other site-specific field conditions. The Agency noted that the public would then have the opportunity to review all anticipated operational scenarios and associated field-specific manure, litter, and process wastewater application rates, including the calculations on which these rates were based. The Agency viewed this approach as allowing an NMP to address most year-to-year changes in nutrient management practices anticipated during the period of permit coverage and greatly reduce the need for NMP and associated permit modifications, as the NMP would have

already accounted for a range of potential operational scenarios.

With respect to identifying annual rates of application as terms of the NMP, a number of commenters stated that it was unrealistic for EPA to expect all CAFOs to be able to establish rates of application as terms of the NMP for the full period of permit coverage and asked EPA for a process to establish rates on an annual basis. They based their comments on the variability, range, and interdependency of factors associated with the determination of rates of application. Some commenters preferred greater flexibility for CAFO operators in setting such rates, while others thought that application rates should be made available for public comment each year.

In this supplemental proposal, EPA is proposing to include in the rule three distinct alternative approaches for expressing the terms of the nutrient management plan with respect to rates of application. Each approach would establish annual maximum rates of application of manure, litter, and process wastewater by field and crop for each year of permit coverage and would identify the minimum required terms of the NMP specific to that approach. Each approach would also require annual reporting requirements to provide actual data that would be publicly available concerning compliance with permit requirements during the previous year.

The three approaches would express field-specific maximum rates of application, respectively, as follows: (1) As tons or gallons of manure, litter, and process wastewater to be applied; (2) as the amount of nitrogen and phosphorus from manure, litter, and process wastewater to be applied; or (3) as a narrative rate for calculating the amount of manure, litter, and process wastewater to be applied. The first approach would require a permit modification to exceed the amount of manure, litter, and process wastewater specified for a particular crop or field in the original permit. The second approach is more flexible in that it would allow CAFOs to adjust the level, method and timing of manure, litter, and process wastewater application as long as the field- and crop-specific amounts of nutrients were not exceeded without having to seek permit modifications. The third approach is the most flexible, because it would use a methodology and actual field data to calculate in real time the amount of manure, litter, and process wastewater to be land applied, and is thus best suited to allow the operator to adjust application rates in response to changes in field specific conditions.

All three approaches would require the CAFO operator to develop an NMP that projects for each field and for each year of permit coverage the crops to be planted, crop rotation, crop nutrient needs, expected yield, and projected rates of application of manure, litter, and process wastewater. However, each approach is different in identifying which of these projections would be required to be "terms of the NMP." Each approach would result in annual rates of application of manure, litter, and process wastewater that are maximum application rates stated in the permit and that would be enforceable, and each would require that application rates be specific for each crop that would be planted on a specific field.

A properly developed NMP must evaluate the condition of the fields to be used for land application based on soil test levels, the form(s) and amount(s) of manure, litter, or process wastewater generated by the CAFO, and the uses for each field; for example, crop, pasture, or fallow land. An NMP must also describe on a field-by-field basis how the application rates are calculated, which for large CAFOs must be in accordance with State technical standards.

These calculations must also take into account, with respect to each crop to be grown or other agricultural use, the source and form of nutrients to be land applied, the method of application of manure, litter, and process wastewater, and the timing of when application will occur. Although a properly developed NMP involves consideration of all of these factors, some operators may have multiple sources of manure, litter, or process wastewater and may need to make the determination as to which source to draw from for land application to a particular field in a given year at some point in time after the NMP has been developed. The method of application depends on the source and form of manure, litter, or process wastewater, on the location of a particular field and the equipment available for such field, and on the crop to be planted. For example, wastewater may be spray-irrigated, surface applied, or injected, whereas poultry litter is most likely to be surface applied by a manure spreader.

The forms of plant available nitrogen and phosphorus to be factored into calculations for rates of application should be identified in the technical standards established by the Director or in other documentation referenced in the State's technical standards. Typically, the amounts of plant available phosphorus are determined based on the amount of phosphate and the amount of organic phosphorus that



will mineralize during the growing season, and the amount of plant available nitrogen is based on the amount of nitrate and ammonium-nitrogen and the amount of organic nitrogen that will mineralize during the growing season. As previously discussed, it is the plant available forms of nitrogen and phosphorus that are relevant in determining rates of application. If there is any disagreement as to the appropriate forms of nitrogen and phosphorus to be factored into these calculations, the Director would determine the acceptable approach. The amount of plant available nitrogen also depends on the nitrogen volatilization rate associated with the source of nutrients and the timing and method of land application.

EPA expects a complete NMP to also account for any other additions of crop available nutrients during the crop year, such as chemical fertilizer, irrigation water (groundwater may have measurable concentrations of nutrients), and biosolids, where applied. Crediting for all residual nitrogen and phosphorus in the field that will be plant available, including crediting for additions from each prior year of the permit term, as well as accounting for other additions of nitrogen and phosphorus, should be done in accordance with the directions provided in the technical standards (required for all permitted Large CAFOs). Since organic forms of nutrients typically become plant available when they are converted to inorganic forms, such as nitrate, ammonium, and phosphate, crediting generally identifies the amount of organic nutrients likely to be converted to inorganic forms that will be plant available. Credits would be based on the soil test results included in the NMP and projected applications of nutrients from manure, litter, and process wastewater during intervening years, as well as other additions, including from crops (e.g., where crops are plowed under or residues are left on the field), commercial fertilizer, and other sources of nutrients remaining on the field that would be plant available during the next growing season. Credits would also be based on mineralization rates and crop uptake of nutrients.

Because a CAFO operator could plant more than one crop on a field in a given year, the plant available amount of nitrogen and phosphorus would need to be calculated with reference to the nutrient needs of all the crops to be planted on such field in a given year in order to be accurate. This would include accounting for other field uses for agricultural purposes, such as pasture and cover crops, because EPA expects a

complete NMP to account for other uses of a field.

Under all three of the proposed approaches, the terms of the NMP would be required to include specific factors used for the development of rates of application. These would include:

- The outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field;
- The crop or crops to be planted in each field or any other uses such as pasture or fallow fields;
- The realistic annual yield goal for each crop or use identified for each field; and
- The nitrogen and phosphorus recommendations from sources acceptable to the Director for each crop or use identified for each field.

The phrase "outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field" reflects the terminology typically associated with the use of the phosphorus index in accordance with the USDA conservation practice standard 590 that has been adopted by many States. However, EPA contemplates that, since the 590 standard allows States to use other methodologies, such as soil test phosphorus and phosphorus threshold, any one of these would satisfy the requirements of this proposed rule. Ultimately, the purpose of the field-specific assessment of the potential for nitrogen and phosphorus transport is to determine the appropriate limiting nutrient for developing land application rates, i.e., whether phosphorus or nitrogen limits the amount of manure, litter, or process wastewater that can be applied and the degree to which the limiting nutrient restricts land application.

Each of the three approaches differ in the way that they would account for other information necessary for determining the appropriate rates of application. This information relates to: (1) Credits for residual nitrogen and phosphorus available in each successive year during the five-year term of the permit; (2) accounting for additions of commercial fertilizer and other additions of nitrogen and phosphorus during each successive year; (3) the form (liquid, solid) and source (e.g., lagoon, compost, process wastewater) of the material to be land applied; (4) nitrogen and phosphorus content of the manure, litter, or process wastewater; (5) timing of application; and (6) method of application (e.g. spreading, spray, injection).

The following three sections of the preamble describe the specific aspects

of each of the approaches and how each approach accounts for these factors. See the table that summarizes what the terms would be for each of the three approaches, available in the docket for this rulemaking, EPA-HQ-OW-2005-0037.

(a) Linear Approach—Rates Expressed in Tons and Gallons of Manure, Litter, and Process Wastewater

The first proposed approach would allow the CAFO to express rates of application as tons of manure or litter, and gallons of manure or wastewater. The terms of the NMP would include maximum application rates for each year of permit coverage, for each crop identified in the NMP, in tons of manure or litter, or gallons of manure or process wastewater, per acre, per year, for each field to be used for land application. In addition, the terms of the NMP would include:

- The outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field;
- The crop or crops to be planted in each field or any other uses such as pasture or fallow fields;
- The realistic annual yield goal for each crop or use identified for each field;
- The nitrogen and phosphorus recommendations from sources acceptable to the Director for each crop or use identified for each field;
- Credits for all nitrogen and phosphorus in the field that will be plant available;
- Accounting for all other additions of plant available nitrogen and phosphorus to the field;
- The form and source of manure, litter, and process wastewater to be land applied; and
- The timing and method of land application.

This approach is considered a "linear" approach because it is based on the use of only those crops included in the planned crop rotations in the NMP; the amounts of manure, litter, and process wastewater to be land applied according to the planned schedule for land application (including source and method and timing of application); and the projected values for plant available nitrogen and phosphorus from other sources. Under this approach, rates would follow the conventions by which NMPs have been developed and would require the CAFO to follow the sequence identified in the NMP for each field-specific crop rotation and each planned step for land application of manure, litter or process wastewater.

While important to the development of the NMP, some underlying factors necessary for calculating rates of application using this linear approach in the NMP, and necessary to be included in the NMP, would not be required to be terms of the NMP. These factors include the methodology for determining rates of application, and the values and formulas used in the methodology for calculating volatilization rates for nitrogen and mineralization rates for organic nitrogen and phosphorus. Because the maximum rates of application using this approach are expressed as amounts of manure, litter, or process wastewater and are terms of the NMP, and are based on the use of these factors, these factors themselves do not need to be terms of the NMP. Whether these factors been applied correctly and whether the rates as calculated in the NMP are consistent with applicable requirements, are issues which are properly addressed when the NMP is subject to review by the Director and by the public. These are analogous to the types of calculations and data submitted in a permit application and found in the fact sheet that accompanies a draft NPDES permit for other types of permitted point sources.

Under this approach, the CAFO would land apply manure, litter, and process wastewater, in the amounts specified for each field in the NMP, following the schedule and the methods of application described in the NMP. However, Large CAFOs would need to take into account the annual manure test results required by the 2003 final rule, so as to not exceed the nutrient needs of the crops, and limit actual rates of application by adjusting the amount of manure, litter, and process wastewater to be applied if the concentrations of nitrogen or phosphorus in the manure were higher than those projected in the plan.

The environmental and operational integrity of this approach hinges on the CAFO making accurate predictions in the NMP that are not disrupted by changes to the CAFO's operation or by circumstances beyond the control of the CAFO operator. Any changes to the terms of the NMP would constitute a change to the terms of the permit, which would require a permit modification. (See discussion of substantial changes below.) For example, any changes to the planned crop sequence, such as the addition of a second crop to a field, where a CAFO might need to land apply more than the maximum amount of manure, litter, or process wastewater in a given year would require a permit modification.

On the other hand, the advantage of this approach is simplicity for the CAFO operators with predictable land application needs and for the public. This would be particularly suitable for operations that consistently plant one crop or two crops in rotation on the same fields, using the same source and form of manure, litter, or process wastewater, and that land apply on a regular annual schedule using the same application method(s).

EPA notes that even under the linear approach, operators could retain some flexibility by specifying more than one field-specific crop rotation plan in the NMP, with application rates of manure, litter, and process wastewater specified for each alternative plan and included in the permit. This might be practical for operators who are reasonably confident that they will follow one of two or three potential crop rotations. EPA has developed the other two approaches for operators needing a greater degree of flexibility.

**(b) Matrix Approach: Application Rates Expressed as Pounds of Phosphorus and Nitrogen**

The second proposed approach ("matrix approach") would express, for each year of permit coverage, rates of application as the maximum amount of plant available nitrogen and phosphorus, in pounds, from manure, litter, and process wastewater that could be land applied for a particular crop on a given field in a given year, rather than amounts, in tons or gallons, of the manure, litter, and process wastewater. Also, under this approach, operators would be able to identify for each field alternative crops that they would reasonably expect to plant in a given year, along with allowable rates of application for nitrogen and phosphorus for each specified crop on the field.

This option would provide more flexibility to operators than the first approach because it would allow the operator to vary the sequence of crops in the planned rotation or substitute other crops for those identified in the planned rotation if the permit specified different maximum rates of application of nitrogen and phosphorus for each crop and field for a given year, without relying on permit modifications to allow such changes. Such flexibility would be possible because credits, when utilizing such flexibility, would be based on the "baseline" amount of residual nitrogen and phosphorus determined when the NMP was developed and then used to calculate maximum rates of application for each of the crops identified in the NMP for a given field. Addition or substitution of other crops identified in

the NMP and changes to the sequence described in the NMP would then result in the CAFO being limited to use of the crop-specific maximum rates of nitrogen and phosphorus from manure litter and process wastewater for the crop actually planted.

Typically, an NMP is written with crop rotations that extend over several years and generalized schedules for land application of manure, litter, or process wastewater. EPA is proposing that CAFO operators who choose this approach for expressing rates of application would be allowed to identify in the NMP other crops that could be planted on a field in the form of a matrix, with field-specific yield goals, nutrient recommendations, and maximum rates of nitrogen and phosphorus application for each crop.

Unlike the linear approach, which would rely on projections of the amount, in tons or gallons, of manure, litter, and process wastewater to be land-applied, based on prescribed sources, methods of application, and timing, in the matrix approach, the terms of the NMP would include maximum limitations on the amount of nitrogen and phosphorus, in pounds, from manure, litter, and process wastewater that could be land applied and the methodology by which these factors would be used to calculate how much manure, litter, and process wastewater would be allowed to be applied so that the maximum application rates of nitrogen and phosphorus would not be exceeded. This would provide flexibility to the CAFO in selecting the source of manure, litter or process wastewater, and the choice of method of application, all of which could vary during the period of permit coverage. This approach would ensure that the amount of manure, litter, or process wastewater allowed to be land-applied would be based on the results of the most recent annual manure test (which, for permitted Large CAFOs, must be done at least annually, as required by 40 CFR 412.4(c)(3)), rather than on manure tests and projections used in the development of the NMP.

For CAFOs using the matrix approach, the minimum factors used to determine the rates of application in the CAFO's NMP that would be required to be included as terms of the NMP would be:

- The outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field;
- The crop or crops to be planted in each field or any other uses such as pasture or fallow fields;

- The realistic annual yield goal for each crop or use identified for each field;

- The nitrogen and phosphorus recommendations from sources acceptable to the Director for each crop or use identified for each field;

- Credits for all nitrogen and phosphorus in the field that will be plant available;

- And accounting for all other supplemental plant available additions of nitrogen and phosphorus to the field.

In addition, this second approach would add as a term of the NMP the methodology by which the NMP accounts for the following factors when calculating the amounts of manure, litter, and process wastewater to be land applied:

- The form and source of manure, litter, and process wastewater;

- The timing and method of application; and

- The values and formulas used to calculate volatilization of nitrogen and mineralization of organic nitrogen and phosphorus, which are necessary for determining the availability of nitrogen and phosphorus for crop uptake in different forms of manure, depending on method and timing of land application.

Under this approach, none of these latter factors would itself be a term of the NMP. Rather, the methodology used in the NMP, which would be a term, would allow the Director and the public to predict how rates of application of manure, litter, and process wastewater would be calculated based upon consistent use of the methodology in accounting for all of these factors.

Most CAFO operators plan a specific crop rotation around several crops that may be planted on a given field. Although crops are generally planted in a manner that follows established crop rotations, an operator may make farming decisions that result in a different crop being planted than was scheduled for a given year in the CAFO's NMP. A CAFO may change its rotation for any number of reasons including but not limited to, drought, excessive rainfall, or changed market conditions. The advantage of the matrix approach is that it would not lock the CAFO into a single planting sequence for each field, nor into applying manure from a particular source, at a particular time, in a particular way, thus reducing the need for CAFOs to seek permit modifications.

A concern associated with the matrix approach is that, in determining maximum rates of application when deviating from the planned rotation, the levels of crop available nutrients in the soil used for calculating rates would be

the baseline levels established when the NMP is developed and so would not take into account any changes in crop available nitrogen and phosphorus on the field up to that point in the term of the permit. Instead, the methodology would need to estimate current levels of crop available nutrients by estimating residuals remaining from the prior year(s) of crops, land application, and other additions of nutrients since the beginning of the permit period. Thus, a CAFO applying at the maximum levels of nitrogen and phosphorus allowed by the permit could actually overapply nitrogen and phosphorus if the amount of crop available nitrogen or phosphorus in the field were in fact higher than the amounts estimated using the soil test data available when the NMP was developed. Conversely, if the crop available nitrogen or phosphorus on the field was lower than the amount used in calculating the maximum rates incorporated into the permit, a CAFO applying at the maximum rate allowed by the permit might be applying less nitrogen and phosphorus from manure, litter, and process wastewater than the amount needed for the crop, and would need to seek a permit modification if more nutrients from manure, litter, and process wastewater were needed.

This problem also exists to a lesser degree for the linear approach, in that factors not under the control of the operator (eg, actual crop yields) might affect the residual nutrients on the field and thus the appropriate amounts of manure, litter, and process wastewater to apply. Where the maximum application rates, under either approach, are too high, because residual nutrients on the field are higher than projected, the operator may adjust the application rates downward to reflect these changes. However, where the maximum rates are insufficient to provide for the nutrient needs of the crops, the operator will need to either (1) increase the supply of nutrients from other sources (eg, commercial fertilizer) or (2) apply for a change to the permit. EPA expects that operators will generally use realistic yield assumptions that will minimize, but not eliminate, the need for such permit changes. The third approach for determining permit terms, discussed below, avoids this problem by allowing the operator to recalculate the specific amounts of manure, litter, and process wastewater to be applied based on field-specific conditions in the year of application.

(c) Narrative Rate Approach—Rates Derived From Total Amounts of Crop Available Nitrogen and Phosphorus

EPA is proposing a third approach that would allow rates of application to be expressed as a narrative rate that includes the total amount of crop available nutrients from all sources combined with a specific, quantitative method for calculating the amount, in tons or gallons, of manure, litter, and process wastewater to be land applied. For this quantitative approach, the terms of the NMP would include the maximum amounts of total nitrogen and phosphorus from all sources of nutrients for each year of permit coverage for each crop or other field use identified in the nutrient management plan in chemical forms determined to be acceptable to the Director in pounds per acre per year for each field.

The narrative rate approach would include as terms the four terms required under all three approaches:

- The outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field;

- The crop or crops to be planted in each field or any other uses such as pasture or fallow fields;

- The realistic annual yield goal for each crop or use identified for each field; and

- The nitrogen and phosphorus recommendations from sources acceptable to the Director for each crop or use identified for each field.

In addition, as in the matrix approach, this second approach would include as a term of the NMP the methodology by which the NMP accounts for certain factors when calculating the amounts of manure, litter, and process wastewater to be land applied.

Unlike the linear approach, the amount of manure, litter, and process wastewater to be applied as projected in the NMP submitted with the permit application or NOI would not be a term of the NMP. Instead, the rate would be the amount of manure, litter, and process wastewater calculated using the methodology and based on actual amounts of plant available nitrogen and phosphorus from all sources at the time of land application. The amounts of total nitrogen and phosphorus from all sources would include the amounts, in pounds, of plant available nitrogen and phosphorus already on the field and applied as commercial fertilizer, as well as the amounts in the manure, litter, and process wastewater to be land applied.

This approach would eliminate certain issues associated with a five-year planning cycle previously discussed in

connection with the two approaches presented above. A key difference of this proposed approach is that it would require the use of annual soil tests for determining actual soil phosphorus levels. EPA is proposing this approach to allow CAFOs that may need to adjust their rates of application of manure, litter, and process wastewater due to changes in soil levels of nitrogen and phosphorus to do so without requiring the permit to be modified. Therefore, it is important to ensure that the actual changes in soil levels of plant available nitrogen and phosphorus are taken into account, rather than relying on projected fluctuations provided in the NMP. The results of the annual soil test and manure test data would be used to calculate, in real time, the amount of manure, litter and wastewater to be applied, to supply the remaining nitrogen and phosphorus needed for the actual crop being planted on the field.

In addition to accounting for the crop and field information, the methodology for making this calculation would be required to account for a number of other variables, including the form and source of the manure, litter, and process wastewater and the timing and method of application. In other words, the maximum application rate for land application of manure, litter, and process wastewater would be a requirement that the operator apply not more than the maximum amount of nitrogen and phosphorus calculated using the methodology.

As stated above, the terms of the NMP would include the complete methodology for calculating the amount of manure, litter, or process wastewater to be applied. The proposed rule would require the methodology to account for the following factors:

- Results of soil tests conducted in accordance with protocols identified in the nutrient management plan, as required by 40 CFR 122.42 (e)(1)(vii);
- Credits for all nitrogen and phosphorus in the field that will be plant available;
- The amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied;
- All other additions of plant available nitrogen and phosphorus to the field;
- The form and source of manure, litter, and process wastewater;
- The timing and method of land application; and
- The values and formulas used to calculate volatilization of nitrogen and mineralization of organic nitrogen and phosphorus.

The factors listed above would not themselves be terms in the narrative rate

approach, but the methodology used to account for them in the CAFO's permit would be. Thus, the terms of the NMP under this approach would not include the amount of nitrogen and phosphorus in the manure, litter, or process wastewater to be land-applied as set forth in the NMP. Nor would the terms of the NMP include the predicted source, form, timing, and method of application of manure, litter, or process wastewater set forth in the NMP. These factors would be subject to recalculation during the period of permit coverage, using the methodology in the NMP for calculating the amount of manure, litter or process wastewater allowed to be applied.

Under this proposed approach, the NMP would include planned crop rotations for each field and corresponding projected amounts, in tons or gallons, of manure, litter, and process wastewater to be applied, including all of the calculations for determining such projected amounts, for the period of permit coverage. This would give the permitting authority and the public an opportunity to review, prior to permit issuance, the adequacy of the CAFO's methodology and the way the CAFO would use the methodology to calculate the appropriate amount of manure, litter, and process wastewater to be applied, based on the operator's planned crop rotation at the time of permit issuance.

The narrative rate approach would require the CAFO to recalculate the application rates projected in the NMP, in tons and gallons, of manure, litter, and process wastewater, using the methodology in the NMP, at least once a year, throughout the period of permit coverage. In recalculating these rates, a CAFO would be required to use annual soil tests and concurrent calculations of credits for all plant available nitrogen and phosphorus in the field. The CAFO would then calculate the maximum amount of nitrogen and phosphorus from manure, litter, and process wastewater allowed to be applied, as a portion of the total amount of nitrogen and phosphorus from all sources, using the methodology in the NMP. In order to ensure that such recalculations are made available to the Director and the public, the recalculations and the new data from which they are derived would be required to be reported in the CAFO's annual report for the previous twelve months. In other words, the rate of application would be an objective, enforceable rate, because the permit would specify the methodology required for calculating the rate, certain values or sources of information required to be used in the methodology, and would

limit the total amount of nitrogen and phosphorus from all sources for each year of the permit. Failure to comply with the rate established under the permit would be a violation of the permit.

EPA believes that the flexibility of this proposed approach would reduce the burden on permitting authorities and CAFO operators by decreasing the number of substantial changes to the permit, which require public notice and comment, arising from changes to the CAFO's crop rotations, while ensuring that all effluent limitations applicable to a permitted CAFO are incorporated as terms of the permit, as required by the *Waterkeeper* decision.

As many commenters on the 2006 proposed rule pointed out and EPA recognizes, there may be changes in field conditions or practices at a CAFO, including, for example, those that alter the projected levels of crop available nitrogen and phosphorus in the soil, or in the manure, over the period of permit coverage. Such changes introduce some uncertainty in setting application rates for five years as enforceable terms of the permit. This third approach is designed to accommodate these concerns, by allowing a CAFO to compensate for changes in soil levels of crop available nutrients, in manure content, or in the timing and method of application, by adjusting the application rates accordingly without the need for a permit modification. However, the operator would be limited to the total crop-specific amount of nitrogen and phosphorus from all sources and would have to adhere to a methodology that would establish the way in which such rates could be calculated. Thus, in the second and later years of the permit term, this approach would provide an accurate and verifiable means of achieving realistic production goals while minimizing transport of phosphorus and nitrogen from the field. This would help CAFOs to avoid the possibility of over-application of nitrogen or phosphorus because of increased levels of nutrients in the soil, compared to what was projected at the time of permit issuance, and, conversely, the possibility of failing to meet crop agronomic needs due to under-application of nitrogen or phosphorus.

#### 4. Changes to Nutrient Management Plans

It is well understood that agricultural operations modify their nutrient management and farming practices during the normal course of their operations. Such alterations may require



changes to a permitted CAFO's NMP during the period of permit coverage.

As discussed in the preamble to the 2006 proposed rule, the permit does not need to be modified for all operating changes. Because of the way NMPs are developed, most routine changes at a facility should not require changes to the NMP itself. To minimize the need for revision, nutrient management plans should anticipate and accommodate routine variations inherent in agricultural operations such as anticipated changes in crop rotation, as well as changes in numbers of animals and volume of manure, litter, or process wastewater resulting from normal fluctuations or a facility's planned expansion. Typically, an NMP is developed to accommodate, for example, normal fluctuations in herd or flock size, capacity for manure, litter, and process wastewater storage, the fields available for land application and their capacity for nutrient applications. Moreover, as discussed in this preamble, EPA would encourage operators to develop an NMP that includes reasonably predictable alternatives that a CAFO may implement during the period of permit coverage. However, unanticipated changes to a nutrient management plan may nevertheless be necessary.

In the 2006 proposed rule, EPA proposed a process that CAFOs and the permitting authority would need to follow when a CAFO makes changes to its NMP. The proposal also included criteria for determining when a change to a CAFO's NMP should be considered a substantial change. In this supplemental notice, the Agency is soliciting comment on several modifications to the 2006 proposal.

#### (a) Changes to a Permitted CAFO's Nutrient Management Plan

EPA is proposing to revise the proposed list of changes to the NMP that would constitute a substantial change to the terms of a facility's NMP, thus triggering public notice and permit modification. Substantial changes would include: (1) Addition of new land application areas not previously included in the CAFO's nutrient management plan; (2) any changes to the maximum field-specific land application rates for nitrogen and phosphorus, as expressed in accordance with either the linear approach, the matrix approach or the narrative rate approach; (3) addition of any crop not included in the terms of the CAFO's nutrient management plan and corresponding field-specific rates of application; and (4) changes to field-specific components of the CAFO's

nutrient management plan, where such changes are likely to increase the risk of nitrogen and phosphorus transport from the field to waters of the U.S.

EPA is also proposing one exception to the first type of substantial change (a land application area being added to the nutrient management plan), where such additional land is already included in the terms of another existing nutrient management plan incorporated into an existing NPDES permit. If, under the revised NMP, the CAFO owner or operator applies manure, litter, or process wastewater on such land application area in accordance with the existing field-specific terms of the existing permit, such addition of new land would not be a substantial change to the terms of the CAFO owner or operator's nutrient management plan.

The Agency believes that these revised proposed criteria are better designed to address changes that most directly affect fundamental components of the NMP that relate to the land application of manure, litter, and process wastewater, which was a primary focus of the *Waterkeeper* decision. First, by proposing the addition of new land application areas not originally included in the terms of the NMP as a substantial change, the Agency makes clear that the fields to be used for land application would be fundamental permit conditions, as all permitted CAFOs would be required to land apply manure, litter, and process wastewater at field-specific agronomic rates. The identification of land application areas in the NMP is essential for determining the effluent limitations applicable to a particular CAFO, which the *Waterkeeper* decision required be made available for public review and comment and incorporated into the permit. Under *Waterkeeper*, the public must have such opportunity to review the fields planned for land application during both the initial permit issuance phase and any subsequent permit modification phase. The proposed exception for the addition of new fields already covered by an existing NPDES permit is consistent with the *Waterkeeper* decision because the rates of application for those land application areas will have already been publicly reviewed, approved, and incorporated into a permit as required by *Waterkeeper*.

The second proposed substantial change is any change to the field-specific maximum rates of application. The *Waterkeeper* decision makes clear the importance of these rates as terms of the NMP.

The third proposed substantial change is the addition to the NMP of crops not

previously included in the CAFO's NMP, together with the corresponding maximum field-specific rates of application for those crops. Because rates of application are based on the yield goals for each specific crop, any crops newly added to the plan will require corresponding newly calculated rates of application. Because the maximum rates of application must be made available to the public for review prior to incorporation as terms of the permit, consistent with *Waterkeeper*, the addition of new crops and their corresponding rates of application would be considered a substantial change.

Finally, any change to field-specific components of the CAFO's nutrient management plan that is likely to increase the risk of nitrogen and phosphorus transport from the field to waters of the U.S. would be a substantial change. The Agency recognizes a number of changes as potentially triggering this requirement, including the following examples: (1) Alternate timing of land application that would diminish the potential for plant nutrient uptake; (2) methods of land application not provided for in the NMP calculation of amount of manure, litter, and process wastewater to be applied; (3) changes to conservation practices; and (4) changes in the CAFO's procedures for handling, storage, or treatment of manure, litter, and process wastewater. The actual crop planted, timing and method of land application, crop uptake, and conservation practices utilized with respect to the land application areas are all key factors that affect nitrogen and phosphorus runoff from the land application area. Changes to any of the planning considerations listed above can directly (and measurably) alter the outcome of the decisions made in an NMP and the efficacy of that plan in ensuring appropriate agricultural utilization of those nutrients that are land applied.

Such substantial changes would apply to all permitted CAFOs, regardless of which of the three proposed approaches for expressing rates of application was followed in the CAFO's NMP. However, the specific changes that would constitute substantial changes would necessarily, to some extent, be dependent on which of the three proposed approaches was used. For example, while a change to the method or timing of application might be a substantial change under the linear approach, if it increased the risk of nutrient transport to surface waters, it would not be a substantial change under the matrix or calculated rate approaches, provided that the



methodology (itself a permit term) for converting maximum amounts of nutrients into allowable amounts of manure, litter, or process wastewater was able to appropriately account for the change in method or timing.

#### (b) Limited Exceptions

Because changes to the NMP could result in a change to a permit term, the 2006 proposed rule provided that whenever a CAFO makes any change to its NMP, the owner or operator would be required to provide the Director with the revised NMP and identify the changes from the previous version submitted. EPA is proposing a limited exception for CAFOs following either the second ("matrix") or third ("quantitative") approaches described above for the terms of the NMP regarding rates of application. Such CAFOs would not be required to submit to the Director any changes in crop rotations so long as the rates of application of nitrogen and phosphorus are in accordance with the outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport, do not exceed the maximum application rates identified in the nutrient management plan for the crop actually planted, and account for any residual nitrogen and phosphorus in the field.

#### 5. Annual Reporting Requirements

In the 2006 proposed rule, EPA discussed the use of annual reports to balance greater flexibility for CAFO operators in making cropping decisions with ensuring appropriate permitting authority and public oversight of permit compliance. The preamble solicited comment as to whether the annual report requirements should be modified to require all permitted CAFOs to submit information in their annual reports indicating how the CAFO achieved substantive compliance with the terms of the NMP as set forth in the permit. In this supplemental notice, the Agency is proposing additional annual reporting requirements for CAFOs that relate to the proposed provisions in this notice regarding the terms of the NMP. This proposal would not affect any of the annual report requirements promulgated in the 2003 CAFO rule, and EPA is not taking comment on any revisions to the requirements promulgated in 2003.

The Agency is proposing to require all permitted CAFOs to include in their annual reports the actual crop(s) planted and actual yield(s) for each field, the actual nitrogen and phosphorus content of the manure, litter, and process wastewater, and the amount of manure,

litter, or process wastewater applied to each field during the previous 12 months. The Agency believes that it would be important for the permitting authority to obtain this information on an annual basis in order to ensure that the CAFO has been operating in compliance with the terms of its permit. The annual report would inform the Director and the public how the operator has operated, given the flexibility proposed for the terms of the NMP incorporated into the permit.

The Agency is also proposing to require CAFOs that follow the third ("narrative rate") approach for describing rates of application in the NMP to submit as part of their annual report the results of all soil testing and concurrent calculations to account for residual nitrogen and phosphorus in the soil, all recalculations, and the new data from which they are derived. The CAFO would be required to report the amounts of manure, litter, process wastewater and the amount of chemical fertilizer applied to each field during the preceding 12 months. Together with the total amount of crop available nitrogen and phosphorus from all sources, the information that would be required to be included in the annual report would provide the information necessary to determine that the CAFO was adhering to the terms of its permit when recalculating rates of application. The Agency seeks comment on these proposed annual reporting requirements for each of the approaches to identifying terms of the NMP for rates of application.

#### C. Compliance Deadlines

As discussed in the Background section of this notice, EPA has twice extended the compliance dates for several requirements which were originally established in the 2003 final rule. February 27, 2009, is the date by which the following must occur: (1) Operations defined as CAFOs as of April 14, 2003, that were not defined as CAFOs prior to that date, must seek NPDES permit coverage; (2) operations that become defined as CAFOs after April 14, 2003, due to operational changes that would not have made them a CAFO prior to April 14, 2003, and that are not new sources, must seek NPDES permit coverage; and (3) permitted CAFOs are required to develop and implement nutrient management plans. As explained in the preamble to the second compliance date revision, February 27, 2009, is an appropriate deadline for these requirements because it would provide additional time from the date of the final rule in response to the *Waterkeeper* decision for States, the

regulated community, and other stakeholders to adjust to the new regulatory requirements. See 72 FR 40,248 (July 24, 2007).

EPA plans to complete the regulatory revisions in response to *Waterkeeper* in the summer of 2008, since the Agency has had adequate time to consider the comments submitted on the 2006 proposed rule and the scope of this supplemental notice of proposed rulemaking is narrow relative to the context of what was proposed in 2006. This would leave six to eight months from promulgation of the final rule until the February 27, 2009, deadline for AFOs not previously defined as CAFOs to submit permit applications, for CAFOs to submit nutrient management plans to their permitting authorities, and for permitting authorities to incorporate the terms of these nutrient management plans as enforceable permit conditions in accordance with the provisions of the final rule. Given that both operators and permitting authorities have known for several years generally what will be required under the final rule, EPA believes that six to eight months is sufficient time for these remaining permitting actions to be completed, and is thus not intending at this time to extend those deadlines. However, the Agency is interested in taking comment on this issue.

#### IV. Statutory and Executive Order Reviews

##### A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51,735, October 4, 1993), this action is not a "significant regulatory action."

##### B. Paperwork Reduction Act

The information collection requirements in this supplemental notice have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 1989.05.

This SNPRM contains three proposed regulatory actions that would add to the paperwork burden associated with the CAFO NPDES regulations as presented in the PRA analysis for the 2006 proposed rule. First, today's notice proposes supplemental annual reporting requirements for permitted CAFOs as part of all three proposed approaches for specifying terms of the NMP with respect to rates of application. In addition, the notice proposes a no discharge certification option and a new

narrative rate approach for incorporating the terms of an NMP into the permit. The no discharge certification and the quantitative approach would both be optional for CAFOs. Nevertheless, EPA has assessed the administrative burden associated with these approaches in order to characterize the burden likely to be experienced by facilities that elect to pursue these options.

This impact analysis covers a three year period from 2008–2010. Over this time period, the industry is expected to experience slight growth from approximately 20,700 facilities in 2008 to 22,100 facilities in 2010. Projections for burden hours according to the various additional requirements in this supplemental proposal were derived using these projections, and then annualized over the three years in calculating overall results. These analyses are very complex in that they also take into account the activities that are already occurring in the field in some cases, and rough estimates of the number of facilities that will be meeting these requirements, which grows over the three year period. Therefore, some of the impact results presented below and how they match up with the number of CAFOs and the projected burden hours will not be immediately apparent. For example, as described below, due to the additional annual reporting requirements, the Agency estimates an annual burden of 15,800 hours. The basis for this burden estimate is that for 2008 it is estimated that approximately 15,300 CAFOs would incur an additional hour of time to meet this requirement. On the surface, that would equate to an added annual burden of 15,300 hours. However, because this is an analysis that is annualized over a 3 year period, the burden is actually calculated to be 15,800 hours, which takes into account the growth of the industry over the 3 years. The Agency directs the reader to the public docket to review the draft ICR report which provides details of all calculations.

Compared to the 2006 proposed rule, the total administrative burden is expected to increase by approximately \$1.4 million (52,600 hours) annually due expressly to the proposed options in this supplemental notice. This change derives from annual increases of \$480,000 (15,800 hours) due to the expanded requirements for annual reporting, \$460,000 (14,500 hours) due to the added cost of certification, and \$470,000 (22,300 hours) due to the added cost of the new narrative rate approach.

For purposes of costing the burden increment that would arise from the

additional requirements for annual reporting, EPA assumed that the new requirements would add an extra hour of labor burden to the existing costs per facility for annual reporting. This new burden would be incurred by all permitted CAFOs annually as part of completing the required annual reports, with the result that the burden increment would be experienced by an estimated 15,300 CAFOs as of 2008.

For purposes of costing the burden increment due to certification, EPA assumed that the burden per CAFO for certification would add 6.5 hours of labor burden every five years when a facility submits its certification. EPA's burden calculations further assumed that the certification option would be chosen by 25 percent of all CAFOs, yielding an estimate of approximately 5,400 CAFOs that would choose to certify as of 2008.

To cost the burden for soil sampling under the narrative rate approach, EPA assumed that CAFOs would incur an average of 10 hours of additional labor burden per facility annually to complete the sampling. In addition, the burden estimate is based on an assumption that one-half of permitted CAFOs that land-apply would use the proposed narrative rate approach for expressing rates of application. This assumption resulted in a projection that as of 2008, roughly 5,900 CAFOs would use the narrative rate approach—approximately 30 percent of the current projection of 20,700 total CAFOs for 2008. Note that EPA discounted the sampling burden for CAFOs in states that are already requiring this practice. EPA's estimate of the PRA burden impact due to the narrative rate approach also took into account the burden reduction that permitting authorities could potentially experience as a result of needing to process fewer permit modifications due to changes to NMPs. For this aspect of the analysis, EPA estimated that permitting authorities would process roughly 300 fewer permit modifications annually, each representing a labor savings of approximately 12 hours. These calculations represent a projected burden reduction compared to the number of permit modifications projected for the PRA analysis originally presented for the 2006 proposed rule.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and

maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR Part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this proposed rule, which includes this ICR, under Docket ID number EPA-HQ-OW-2005-0037. Submit any comments related to the ICR for this proposed rule to EPA and OMB. See ADDRESSES section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after March 7, 2008, a comment to OMB is best assured of having its full effect if OMB receives it by April 7, 2008. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

#### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's supplemental notice on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration (SBA) at 13 CFR 121.201 size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a

population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's supplemental notice of proposed rulemaking on small entities, I certify that this action will not have a significant adverse economic impact on a substantial number of small entities. The proposed approaches for incorporating the terms of an NMP into the permit are generally consistent with the 2006 proposed rule, but with greater specificity. Within these approaches, the expanded annual reporting requirements for permitted facilities would not impose a "significant adverse economic impact" on any small entities. With the exception of the soil sampling data, the information that would be reported is all information that small entities are required to prepare and maintain under the 2003 CAFO rule; only the requirement to include this information in the annual report to the Director is new.

The other two revisions proposed in today's notice, the no discharge certification option and the new narrative rate approach, would be voluntary, so presumably small entities will only choose them if they see an economic advantage from doing so.

This supplemental notice would not affect small governments, as the permitting authorities are State or federal agencies. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

#### 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 UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and to 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.

EPA has determined that this supplemental notice would not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's supplemental notice is in fact anticipated to result in a net reduction in burden to State permitting authorities as a consequence of needing to process fewer permit modifications due to changes to NMPs. Specifically, State permitting authorities are projected to experience a net burden reduction of approximately \$169,000 (4,200 hours) annually. The supplemental notice would increase the burden to CAFOs by approximately \$1.6 million (56,800 hours) annually due collectively to activities called for under the new annual reporting requirements, the certification option, and the new quantitative approach. Thus, today's supplemental notice is not subject to the requirements of sections 202 and 205 of the UMRA. For the same reason, EPA has determined that this supplemental notice contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's supplemental notice is not subject to the requirements of section 203 of UMRA.

#### E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in

the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6(b) of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. Under section 6(c) of Executive Order 13132, EPA may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

EPA has concluded that this supplemental notice does not have Federalism implications. It will not have any 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. In addition, EPA does not expect this rule to have any impact on local governments.

Further, the revised regulations would not alter the basic State-Federal scheme established in the Clean Water Act under which EPA authorizes States to carry out the NPDES permitting program. EPA expects the revised regulations to have little effect on the relationship between, or the distribution of power and responsibilities among, the Federal and State governments. Thus, Executive Order 13132 does not apply to this proposed rule.

Consistent with EPA policy, EPA nonetheless consulted with representatives of State governments early in the process of developing the Agency's response to the *Waterkeeper* court ruling to permit them to have meaningful and timely input into its development. Through a variety of meetings with State associations, States have been apprised of the issues related to addressing the court's decisions. States provided input during these meetings. State concerns generally focused on the process for incorporating NMPs into permits and the related public review process, and also on guidance related to what is a discharge from a CAFO given that the 2006 proposed rule would require only those

operations that discharge or propose to discharge to apply for a permit. This supplemental notice provides additional guidance addressing both of these concerns.

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 comment on this supplemental notice from State and local officials.

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

Executive Order 13175, entitled, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications."

This supplemental notice does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this supplemental notice from tribal officials.

*G. Executive Order 13045: Protection of Children From Environmental Health 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 E.O. 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 supplemental notice is not subject to Executive Order 13045 because it is not economically significant as defined under E.O. 12866,

and because the Agency does not have reason to believe the environmental health and safety risks addressed by this action present a disproportionate risk to children. The benefits analysis performed for the 2003 CAFO rule determined that the rule would result in certain significant benefits to children's health. (Please refer to the *Benefits Analysis* in the record for the 2003 CAFO final rule.) Today's action does not affect the environmental benefits of the rule.

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

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not 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, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The 2006 proposed rule involved the use of technical standards for land application of manure and elimination of discharges from the production area. In the 2006 proposal, EPA noted that the specific standards applicable to a specific operator are generally determined by the permitting authority on a State-wide or site-specific best professional judgment basis. Today's supplemental notice does not pertain to this aspect of the CAFO rulemaking, and EPA continues to encourage the use by permitting authorities of voluntary consensus standards, such as those developed by USDA, in establishing the site-specific technical requirements in CAFO permits.

**List of Subjects in 40 CFR Part 122**

Environmental protection, Administrative practice and procedure,

Confidential business information, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

Dated: March 3, 2008.

**Stephen L. Johnson,**  
*Administrator.*

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend 40 CFR part 122 as follows:

**PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

1. The authority citation for part 122 continues to read as follows:

**Authority:** The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Section 122.23 is amended by revising paragraph (h) to read as follows:

**§ 122.23 Concentrated animal feeding operations (applicable to State NPDES programs, see § 123.25).**

\* \* \* \* \*

(h) *No Discharge Certification Option.*

(1) The owner or operator of a CAFO that meets the eligibility criteria in paragraph (h)(2) of this section may certify to the Director that the CAFO does not discharge or propose to discharge. A CAFO owner or operator who certifies that the CAFO does not discharge or propose to discharge is not required to seek coverage under an NPDES permit pursuant to paragraph (d)(1) of this section, provided that the CAFO is designed, constructed, operated, and maintained in accordance with the documents and certification required by paragraphs (h)(2) through (3) of this section, and subject to the limitations in paragraph (h)(4) of this section.

(2) *Eligibility Criteria.* In order to certify that a CAFO does not discharge or propose to discharge, the owner or operator of a CAFO must document, based on an objective assessment of the conditions at the CAFO, that the CAFO is designed, constructed, operated, and maintained in a manner such that the CAFO will not discharge, as follows:

(i) The CAFO's production area is designed, constructed, operated, and maintained so as not to discharge. The CAFO must maintain documentation on site that demonstrates that:

(A) Any open surface manure storage structures are designed, constructed, operated, and maintained to achieve no discharge based on a technical evaluation in accordance with the elements of the technical evaluation set forth in 40 CFR 412.46(a)(1)(i)-(vii);



(B) Any part of the CAFO's production area that is not addressed by paragraph (h)(2)(i)(A) of this section is designed, constructed, operated, and maintained such that there will be no discharge of manure, litter, or process wastewater; and

(C) The CAFO implements the additional measures set forth in 40 CFR 412.37(a) and (b); and

(ii) The CAFO maintains on site and implements an up-to-date nutrient management plan that addresses, at a minimum, the elements of § 122.42(e)(1)(i) through (ix) and 40 CFR 412.37(c), and that includes all land application areas under the control of the CAFO where the CAFO will land-apply manure, litter, or process wastewater, and that includes all operation and maintenance practices necessary to ensure that the CAFO will not discharge.

(3) *Submission to the Director.* In order to certify that a CAFO does not discharge or propose to discharge, the CAFO owner or operator must complete and submit to the Director, by certified mail or equivalent method of documentation, a certification that includes, at a minimum, the following information:

(i) The legal name, address and phone number of the CAFO owner or operator (see ¶122.21(b));

(ii) The CAFO name and address, the county name and the latitude and longitude where the CAFO is located;

(iii) A statement that describes the manner in which the CAFO satisfies the eligibility requirements identified in paragraph (h)(2) of this section; and

(iv) The following certification statement: "I certify under penalty of law that I am the owner or operator of a concentrated animal feeding operation (CAFO), identified as [Name of CAFO], and that said CAFO meets the requirements of 40 CFR 122.23(h). I have read and understand the eligibility requirements of 40 CFR 122.23(h)(2) for certifying that a CAFO does not discharge or propose to discharge and further certify that this CAFO satisfies the eligibility requirements. As part of this certification, I am including the information required by 40 CFR 122.23(h)(3). I also understand the conditions set forth in 40 CFR 122.23(h)(5) regarding loss of certification. I certify under penalty of law that this document and all other documents required for this certification were prepared under my direction or supervision and that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons directly involved in gathering and evaluating the

information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."; and

(v) The certification must be signed in accordance with the signatory requirements of 40 CFR 122.22.

(4) *Term of Certification.* Certification shall be effective for five years from the date on which it is submitted or until the certification is no longer valid or is withdrawn, whichever occurs first. A certification is no longer valid when a discharge has occurred or when the CAFO ceases to meet the eligibility criteria in paragraph (h)(2) of this section.

(5) *Withdrawal of Certification; Re-certification.* (i) At any time, a CAFO may withdraw its certification by notifying the Director by certified mail or equivalent method of documentation. A certification is withdrawn on the date the notification is submitted to the Director. The CAFO does not need to specify any reason for the withdrawal in its notification to the Director.

(ii) If a certification becomes invalid in accordance with paragraph (h)(4) of this section, the CAFO must withdraw its certification within three days of the date on which the CAFO's certification becomes invalid. Such a CAFO remains subject to the requirement under paragraph (d) of this section to seek permit coverage if it discharges or proposes to discharge.

(iii) A previously certified CAFO may re-certify in accordance with paragraph (h) of this section, provided the following additional criteria are met if the previous certification was invalidated due to an actual discharge from the CAFO:

(A) The owner or operator modifies the CAFO's design, construction, operation, and/or maintenance as necessary to permanently address the cause of the discharge and ensure that no discharge from this cause occurs in the future; and

(B) In addition to the certification submission requirements provided in paragraph (h)(3) of this section, the CAFO submits to the Director a description of the discharge, including the date, time, cause, duration, and approximate volume of the discharge, and a detailed explanation of the steps taken by the CAFO to permanently address the cause of the discharge.

[FR Doc. E8-4504 Filed 3-6-08; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

[EPA-R08-RCRA-2006-0127; FRL-8538-2]

### Utah: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

**SUMMARY:** Utah has applied to EPA for final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The EPA proposes to grant final authorization to the hazardous waste program changes submitted by Utah. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the State's program changes as an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe these actions are not controversial and do not expect comments to oppose them. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments opposing this authorization during the comment period, the immediate final rule will become effective and the Agency will not take further action on this proposal. If we receive comments that oppose these actions, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect. EPA will then address public comments in a later final rule based on this proposal. Any parties interested in commenting on these actions must do so at this time. EPA may not provide further opportunity for comment.

**DATES:** Comments must be received on or before April 7, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-RCRA-2006-0127, by one of the following methods:

• *Federal eRulemaking Portal:* <http://www.regulations.gov>.

Follow the on-line instructions for submitting comments.

• *E-mail:* [daly.carl@epa.gov](mailto:daly.carl@epa.gov).

• *Fax:* (303) 312-6341.

• *Mail:* Send written comments to Carl Daly, Solid and Hazardous Waste Program, EPA Region 8, Mailcode 8P-HW, 1595 Wynkoop Street, Denver, Colorado 80202-1129.

• *Hand Delivery or Courier:* Deliver your comments to Carl Daly, Solid and Hazardous Waste Program, EPA Region 8, Mailcode 8P-HW, 1595 Wynkoop



Street, Denver, Colorado 80202-1129. Such deliveries are only accepted during the Regional Office's normal hours of operation. The public is advised to call in advance to verify the business hours. Special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-R08-RCRA-2006-0127. EPA's policy is that all comments received will be included in the public docket without change, 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 <http://www.regulations.gov>, or e-mail. The federal Web site <http://www.regulations.gov> 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 <http://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 or 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>.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information may not be publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at: EPA Region 8, from 9 a.m. to 4 p.m., 1595 Wynkoop Street, Denver, Colorado, contact: Carl Daly, phone number (303) 312-6416, or the Utah Department of Environmental Quality

(UDEQ), from 8 a.m. to 5 p.m., 288 North 1460 West, Salt Lake City, Utah 84114-4880, contact: Susan Toronto, phone number (801) 538-6776.

**FOR FURTHER INFORMATION CONTACT:** Carl Daly, Solid and Hazardous Waste Program, U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202, (303) 312-6416, [daly.carl@epa.gov](mailto:daly.carl@epa.gov).

**SUPPLEMENTARY INFORMATION:** For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: February 22, 2008.

**Robert E. Roberts,**

*Regional Administrator, Region 8.*

[FR Doc. E8-4253 Filed 3-6-08; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 45 CFR Part 95

RIN 0970-AC33

#### State Systems Advance Planning Document (APD) Process

**AGENCY:** Administration for Children and Families, HHS.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The Advance Planning Document (APD) process governs the procedure by which States obtain approval for Federal financial participation in the cost of acquiring automated data processing equipment and services. This NPRM reduces the submission requirements for lower-risk information technology (IT) projects and procurements and increases oversight over higher-risk IT projects and procurements by making technical changes, conforming changes and substantive revisions in the documentation required to be submitted by States, counties, and territories for approval of their Information Technology plans and acquisition documents.

**DATES:** Consideration will be given to comments received by May 6, 2008.

**ADDRESSES:** Send comments to: Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade, SW., 4th floor, Washington, DC 20447. Attention: Director, Division of State and Tribal Systems; Mail Stop: ACF/OCSE/DSTS 4th floor West. Comments will be available for public inspection Monday through Friday from 8:30 a.m. to 5 p.m. on the 4th floor of the

Department's offices at the above address.

In addition, a copy of this regulation may be downloaded from [www.regulations.gov](http://www.regulations.gov). You may transmit written comments electronically via the Internet. To transmit comments electronically, via the Internet go to <http://regulations.acf.hhs.gov> and follow any instructions provided.

**FOR FURTHER INFORMATION CONTACT:** Robin Rushton, Director, Division of State and Tribal Systems, Office of Child Support Enforcement, (202) 690-1244. E-mail:

[Robin.Rushton@acf.hhs.gov](mailto:Robin.Rushton@acf.hhs.gov). Do not e-mail comments on the Proposed Rule to this address.

#### SUPPLEMENTARY INFORMATION:

##### I. Statutory Authority

This notice of proposed rulemaking (NPRM) is published under the general authority of 5 U.S.C. 301, 42 U.S.C. 622(b), 629b(a), 652(a), 652(d) 654A, 671(a), 1302, and 1396a(a) of the Act. The notice of proposed rulemaking is published under the authority granted to the Secretary of the U.S. Department of Health and Human Services, (the Secretary) by Section 1102 of the Social Security Act (the Act), 42 U.S.C. 1302. This section authorizes the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which he is responsible under the Act.

##### II. Background

State public assistance agencies acquire automated data processing (ADP) equipment and services for computer operations that support the Child Support Enforcement, Medicaid, Child Welfare, Foster Care and Adoption Assistance programs. Prior to the enactment of the Personal Responsibility and Work Opportunity Act of 1996 (PRWORA), the Aid to Families with Dependent Children (AFDC) and Job Opportunities and Basic Skills (JOBS) programs were also covered by these rules. The references to these programs are being deleted from the rules. Additionally, the reference to the Office of Refugee Resettlement is no longer necessary, since the State Legalization Impact Assistance Grants program, which was subject to these regulations, was a time-limited program that has expired. The Department of Health and Human Services (HHS) provides national leadership and direction in planning, managing, and coordinating the nationwide administration and financing of these comprehensive State systems to support programs for children and families—to

ensure that they are being operated as intended by law and regulation and that the expenditure of Federal funds is made in accordance with Federal regulation.

The APD process was designed to mitigate financial risks, avoid incompatibilities among systems, and ensure that the system supports the program goals and objectives.

The regulations at 45 CFR part 95 require the States to submit three different types of documents for Federal approval. These three types of documents are Implementation Advance Planning Documents (APD), updates to these APDs, and acquisition documents.

Implementation Advance Planning Documents can include a statement of needs and objectives; a requirements analysis, feasibility study, a cost-benefit analysis; a statement of the alternatives considered; a project management plan, a proposed budget, and prospective cost allocations (if applicable). There are two major types of APD submissions, planning and implementation, which are used at different stages in the State development and acquisition process.

APD updates to the planning and implementation document are used to keep the agency informed of the project status and to request funding approval for the system development. There are two types of APD Updates, an Annual APD Update and an As-needed APD Update. The As-needed APD Update is required if there is a project cost increase of \$1 million or more for regular funded projects and \$100,000 or more for enhanced funded projects, a schedule extension of major milestones of more than 60 days, a significant change in the procurement approach, a change in system concept or scope, or a change to the approved cost allocation methodology.

Prior approval of Information Technology (IT) acquisition documents is required. States, counties, and territories must request prior approval of specific procurement documents related to IT system projects that exceed defined cost parameters. Contracts and contract amendments must be submitted to the Federal government for prior approval. Failure to obtain prior approval results in denial of the Federal match for that acquisition.

#### *Need for Regulatory Revisions*

The NPRM groups the discussion of the proposed revisions in the following manner:

- Part 1—Technical revisions that delete or update obsolete references,
- Part 2—Conforming revisions to regulations that previously cross-

referenced grant provisions in 45 CFR part 74, and

- Part 3—New or modified revisions that eliminate or reduce the documentation required to be submitted for Federal approval.

Technical revisions listed in part 1 of the Summary of Regulatory Revisions are prompted in part by changes made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which eliminated the JOBS program and replaced the AFDC program with a Temporary Assistance for Needy Families (TANF) block grant that is not subject to 45 CFR part 95. Other technical amendments are due to the name change from Health Care Financing Administration to Centers for Medicare & Medicaid Services.

The conforming revisions that are listed in part 2 were required by the transfer of HHS entitlement programs from 45 CFR part 74 to part 92. The final rule relating to the transfer was published in the *Federal Register* (68 FR 52843) and became effective on September 8, 2003. The affected programs must comply with part 95, which addresses program-specific rules that large State public assistance programs must follow. However, the current regulations at 45 CFR part 95 contain six references to part 74 that must be updated.

Part 3 provides substantive revisions prompted by a variety of studies and recommendations from a wide range of State, Federal and private organizations over the last decade. They include the following sources:

In March 1998, the U.S. General Accounting Office, now known as the Government Accountability Office (GAO), and the Nelson A. Rockefeller Institute of Government jointly established the GAO/Rockefeller Institute Working Seminar on Social Program Information Systems. The working seminar had about 30 members, including congressional staff, Federal and State program and information technology managers, and welfare researchers. The working seminar met eight times and discussed how shifting human services landscape had transformed States automated systems needs. The three key challenges identified by participants at this conference were: (1) Simplifying the approval process for obtaining Federal funding for information systems, (2) enhancing strategic collaboration among different levels of government and (3) obtaining staff expertise in project management and information technology.

On July 9, 2002, the Subcommittee on Technology and Procurement Policy,

House Government Reform Committee, held a congressional hearing on State and Local Information Technology Management. The hearing included testimony from State and Federal IT officials, the National Association of State Information Resource Executives (NASIRE), representatives from the IT vendor community, and GAO.

The National Association of State Chief Information Officers (NASCIO) and the American Public Human Services Association (APHSA) have also been actively involved in this issue and submitted proposals on how to reform the Federal oversight of State IT projects and procurement approval process.

In 2002, GAO reviewed the statutory and regulatory requirements for Federal approval and funding of State IT development and acquisition projects. The review examined how Agency processes for reviewing, approving, and funding State IT development acquisition projects for these programs hinder or delay States' efforts to obtain approval for these projects, and how Food and Nutrition Service (FNS), ACF and Centers for Medicare & Medicaid Services (CMS) ensure that they consistently apply the OMB Circular A-87 to fund IT development and acquisition projects. The GAO found that in fiscal years 2000 and 2001 States had submitted 866 planning and acquisition documents.

In their analysis of these submissions, GAO determined that 92 to 96 percent of the State requests submitted to child support enforcement, child welfare, and CMS were responded to within the required 60 days but only 74 percent of the State requests involving multiple programs were responded to within the 60 days.

The Office of Management and Budget (OMB) has also raised concerns about the information paperwork burden imposed on States by the APD prior approval process. Normally the renewal of the OMB Information Collection authority is granted for a three-year period, but in 2003 and 2004 OMB limited the renewal to one year increments and has asked to be kept informed of the Agencies' efforts to reduce or streamline the APD process. In April 2005, OMB approved the current APD process for an additional three years based partially on the progress that has been made on this reform effort.

The revisions to the regulations in Part 3 are designed to address the concerns of States and other parties that the APD regulations have not kept pace with advances in technology by redefining submission requirements to be based on risk, to develop risk criteria

other than just financial, and to revise the submission thresholds so they are based on the type of services or, in the case of acquisition documents, the risk associated with the type of procurement. For example, a project that has been developed and implemented and is currently in Operations and Software Maintenance mode is inherently less risky than a project in planning or implementation of new software application development. A procurement of IT hardware services involves less risk than a procurement of new software application development. Sole source procurement involves higher risk than a competitive procurement for the same IT services. The exercise of an option year on a multi-year contract involves less risk and needs less oversight than a contract amendment. A contract amendment that is within the initial scope and within a certain percentage of the costs associated with the base contract involves less risk than a contract that exceeds the scope of the original contract or substantially exceeds the initial contract amount.

These proposed regulations are intended to be consistent with OMB Circular A-87. However, if there is any inconsistency between the provisions and OMB A-87, the OMB A-87 would take precedent.

### III. Summary of Regulatory Revisions

#### Part 1—Technical Updates

Many of the proposed revisions simply update terminology, such as replacing "Health Care Financing Administration (HCFA)" with "Centers for Medicare & Medicaid Services (CMS)," or deleting references to AFDC and JOBS. These revisions include:

- *Section 95.4 Definitions*—delete references to obsolete "Office of Human Development Services" and to the "Office of Child Support Enforcement" and replace with "Administration for Children and Families."

- *Section 95.31 Waiver for good cause*—update names of components. Update reference from Health Care Financing Administration to "." Delete references to "Office of Human Development Services", "Social Security Administration", "Office of Refugee Resettlement" and "Office of Child Support Enforcement" and replace with "Administration for Children and Families."

- *Section 95.505 Definition of Operating Division*—update references to obsolete "Office of Human Development Services" and replace with "Administration for Children and Families."

- *Section 95.601 Scope and applicability*—eliminate title IV-A, and title IV chapter 2 of the Immigration and Nationality Act as these programs are no longer subject to subpart F.

- *Section 95.605 Definitions*—replace the definition of "Advance Planning Document" in all its permutations with "Information Technology Document." Therefore, "Planning Advance Planning Document" is now called "Planning Information Technology Document"; the "Implementation Advance Planning Document" is now called "Implementation Information Technology Document"; the "Annual and As-Needed Advance Planning Document Updates" are now called "Annual and As-Needed Information Technology Document Updates." (These new terms now are addressed in a separate regulatory section, rather than in the Definitions section.) This change is proposed for the purpose of consistency with terminology used in the State approval process for information technology services and also to avoid any confusion with the abbreviation, ADP, which refers to Automated Data Processing.

- *Section 95.605 Definition of Automated Data Processing*—replace the word "Automatic" with "Automated," so the phrase reads "Automated Data Processing." The definition of ADP does not change.

- *Section 95.605 Definition of Approving components*—revise references in definition of approving components to remove obsolete terms.

- *Section 95.605 Definition of Project*—revise to eliminate reference to "AFDC."

- *Section 95.611(a)(3) Prior approval conditions*—no change in intent, but reword section for better clarity.

- *Section 95.611(a)(4) Prior approval conditions*—replace reference to "Office of State Systems" with "Department's Secretary and his/her designee," and clarify how many copies should be sent to which offices.

- *Section 95.611(a)(5) Prior approval conditions, request submission*—explain that requests that affect the program of only one entity (CMS, OCSE, Children's Bureau) should be sent to that applicable entity's office and regional office.

- *Section 95.611(a)(6) Prior approval conditions, Information prior to approval*—replace the term "APD" with "ITD" and refer to the new section on the submission of the ITD.

- *Sections 95.611(b)(1)(i), (b)(1)(ii), (b)(2)(i), and (b)(2)(ii) Prior approval conditions, Specific prior approval*

*requirements*—replace the term "APD" with "ITD."

- *Section 95.611(b)(1)(iii) Prior approval conditions, Specific prior approval requirements*—replace the terminology "RFP" with the broader term, "acquisition solicitation documents," and move last sentence to a separate section. Delete language from paragraph (iii) and (iv) related to the threshold amounts for submitting acquisition documents and move to new § 95.611(b)(1)(v).

- *Section 95.611(c)(2)(ii)(B) Prior approval conditions, Specific approval requirements*—eliminate the "AFDC" reference.

- *Section 95.611(c)(2)(ii)(B) Disallowance of Federal Financial participation (FFP)*—delete reference to suspension of APD for enhanced funding for AFDC, which is no longer applicable now that the AFDC program has been replaced with TANF, a block grant.

- *Section 95.621(e)(2) ADP review, service agreement*—delete all of paragraph (2) as it is no longer applicable.

- *Section 95.612 Disallowance of Federal Financial Participation (FFP)*—update terminology: "advance planning document" is changed to "information technology document"; "APD" is changed to "ITD". Revise the last sentence of 95.612 related to suspension of approval of an APD to update the citations under child support and child welfare regulations related to enhanced funding for systems. Eliminate the reference to 45 CFR 205.37(c), which is no longer applicable because TANF systems are funded through a block grant and no longer subject to the Part 95. Eliminate the child support reference to 45 CFR 307.35(d), which is no longer valid. Add a reference to 45 CFR 1355.56, to reflect the authority under the child welfare regulations.

- *Section 95.623 Waiver of prior approval requirements*—remove the provisions of this section on waiver of prior approval requirements, which referred to a situation occurring prior to December 1, 1985. Create a new § 95.623 related to reconsideration of denied FFP for failure to obtain prior approval, described in Part 3 of this preamble summary of regulatory revisions.

- *Section 95.631 Cost identification for purpose of FFP claims*—replace the term "APD" with "ITD."

- *Section 95.641 Applicability of rules for charging equipment in Subpart G of this part*—In the final sentence, replace the term "APD" with "ITD."

### Part 2—Conforming Amendments

These proposed changes reflect transfer of HHS grant authority from 45 CFR part 74 to part 92. Specifically:

- *Section 95.605 Definition of Service agreement*—in § 95.605(f) eliminate the phrase “and requires the provider to comply with 45 CFR part 74 Subpart P for procurements related to service agreement.” Subpart P was eliminated in 1996. This notice of proposed rulemaking revises the reference to make service agreements subject to 45 CFR 95.613.

- *Section 95.613 Procurement standards*—revise to incorporate much of the procurement language currently in 45 CFR part 74. Maintain the long-standing procurement standards for State information technology contracts, specifically for the definition of sole source justification, requiring all procurement transactions to be conducted in a manner to provide, to the maximum extent practical, open and free competition. Address grantee responsibilities, codes of conduct, competition, procurement procedures, and access to records.

- *Section 95.615 Access to systems and records*—eliminate the reference to 45 CFR part 74.

- *Section 95.621(d) ADP reviews (authority to conduct reviews on procurements under the submission threshold)*—eliminate the phrase “were made in accordance with 45 CFR part 74.” This notice of proposed rulemaking would replace reference to 45 CFR part 74 with 45 CFR 95.613.

- *Section 95.705 Equipment costs—FFP, General rule*—eliminate the references to cost principles in subpart Q of 45 CFR part 74. Substitutes the cost principles in 45 CFR part 92.

- *Section 95.707 Equipment management and disposition*—eliminate the reference to the property rules in subpart O of 45 CFR part 74. Substitutes the property rules in 45 CFR part 92.32.

### Part 3—Revisions to the Current Requirements and New Regulatory Provisions Designed To Reduce the Amount of Federal Oversight and Monitoring Based on Risk

- *Section 95.605 Definitions*—

We add new definitions for Acquisition checklist, Alternative Approach to IT requirements, Base contract, Commercial off the shelf software (COTS), Grantee, Noncompetitive, Service Oriented Architecture, and Software maintenance, which are necessitated by proposed revisions to §§ 95.610 and 95.611.

The revision in 95.611(b)(1)(iii) to permit exemption from prior approval of certain acquisition solicitation documents requires a definition of Acquisition checklist, which can be utilized in lieu of State’s submittal of a competitive RFP. The revisions in § 95.611(a) and § 95.611(b)(1)(v)(B) to base submission thresholds on the type of information technology services requires a definition of Software maintenance and COTS software.

The revision to § 95.611(b)(1)(iv) to exempt contract amendments that cumulatively do not exceed 20 percent of the base contract requires a definition of Base contract.

The elimination of the cross reference to Part 74 in § 95.613 procurement standards requires a definition of Noncompetitive acquisitions.

The creation of a new section § 95.610(c)(3) on Operations and Software Maintenance ITDU requires a definition of Software maintenance.

- *Section 95.610 New section on Advance Planning Document requirements*—

Under the current regulations, the requirements of the Advance Planning Document, including Annual and As-Needed Updates, are contained in the Definition section, § 95.605. This notice of proposed rulemaking would move this regulatory authority to a newly created section, § 95.610, specifying the requirements for Planning, Implementation, Annual and As-Needed Information Technology Documents. In addition to moving the language on Advance Planning Documents from the definitions in § 95.605 to its own new section, there is a global change to replace Advance Planning Document with Information Technology Document, throughout the regulation. This change is proposed to make the terminology more consistent with the terminology used in the State Information Technology approval process. Almost all States called their similar State approval process, Information Technology review or Information Systems approval. No State or territory had an approval process called APD approval. In addition, the States indicated that APD was often confused with ADP or Automated Data Processing. Therefore, this notice of proposed rulemaking amends every section to replace the term “Advance Planning” with the term “Information Technology.”

We propose to change “Planning Advance Planning Document (PAPD)” at § 95.605 under Advance Planning Document (1) to a “Planning Information Technology Document (PITD)” at § 95.610(a).

We proposed to change “Implementation Advance Planning Document (IAPD)” at § 95.605 under Advance Planning Document (2) to an “Implementation Information Technology Document (IITD)” at § 95.610(b). We propose to insert the phrase “the use of service oriented architecture” into the description of a Feasibility Study to reflect Information Memorandum 05–04 which clarified that States and Territories are free to consider, along with new application development and system transfer, the use of service oriented architecture software in the development of automated human services systems.

We propose to change “Annual Advance Planning Document Update (AAPDU)” at § 95.605 under Advance Planning Document (3)(a) to an “Annual Information Technology Document Update (AITDU)” at § 95.610(c)(1).

We propose to change “As-Needed Advance Planning Document Update (AN-APDU)” at § 95.605(3)(b) under Advance Planning Document to “As-Needed Information Technology Document Update (AN-ITDU)” at § 95.610(3)(c)(2).

This notice of proposed rulemaking would transfer the requirements for Information Technology Document Updates (ITDU) from the definitions section and create a new § 95.610(c) that provides the requirements for ITD Updates. In keeping with the intent to base the degree of Federal oversight on the risk of the IT services, we propose to establish a new type of Annual Information Technology Document Update for Operations and Software Maintenance (O&SM). Instead of the detail required in an Annual or As-Needed ITD, if the project has transitioned to Operations and Software Maintenance mode with no system development, then the lower risk justifies a reduced level of Federal oversight and the requirements for submission would be limited to an annual report of as few as two pages, depending on the scope of the activities, which includes a summary of O&SM activities, acquisitions, and budget. This limited information is required to authorize funding in the Department’s financial system and track activities that may be of interest to other states or entities. This limited annual submission will also allow the identification of potential problems that could have an impact on the funding a state receives.

This NPRM proposes under § 95.610(c)(1)(viii) to amend current requirements for an annual report on cost benefits in the Annual ITD update and to change the requirement for an annual cost benefit analysis report. The



current regulations under Advance Planning Document Update at § 95.605(3)(a)(vii) require the submittal of an annual cost benefit analysis update. This notice of proposed rulemaking revises the requirements of an Annual ITD Update to eliminate the need for an annual cost benefit analysis report to be provided in the annual ITD update report. Consistent with other provisions designed to focus on high risk IT projects and procurements, we believe that the Independent Validation and Verification requirements in § 95.626 and disallowance of FFP provisions in § 95.612 provide the needed information and authority to encourage States to select the most cost effective methods for automating a program requirement. Nevertheless, we also propose to revise the requirements of the Annual ITD Update to require a close-out cost benefit report to be submitted no later than two years after full implementation and at three-year intervals until the cost benefit is achieved.

• *Section 95.611 Prior approval conditions—*

We propose adding a sentence to § 95.611(a)(1), General acquisition requirements, to clarify that acquisitions that are limited to only operations and software maintenance are exempt from prior approval.

This notice of proposed rulemaking would revise the language in § 95.611(b)(1)(iii) to make the technical amendments noted in Part I of this preamble. The current regulations at § 95.611(b)(1)(iii) contain language that requires Requests for Proposals (RFPs) and contracts to be submitted for prior approval, unless "specifically exempted by the Department." However, during discussions with State systems representatives in 2003 and 2004, the State staff stated that this exemption authority is not well publicized, and different analysts in the different Federal programs often had different and sometimes conflicting interpretations of those requirements. Therefore, the agencies subject to 45 CFR part 95 and the Food and Nutrition Service, which has separate regulations regarding the Food Stamp automation, jointly developed an acquisition checklist that would standardize the type of information that needs to be submitted by the States seeking an exemption from prior approval of the RFP. While § 95.611(b)(1)(iii) retains authority for exemption from prior approval for contracts and contract amendments, the workgroup agreed to limit the initial use of the checklist to a competitively procured Request for Proposal (RFP) or Invitation for Bid

(IFB). This acquisition checklist enables the States to self-certify that they are in compliance with the Federal and State procurement requirements. The States retain the option of submitting the RFP or IFB to the Federal government for Federal review, analysis and prior approval. The information in the acquisition checklist in Information Memorandum 05-03 dated May 2, 2005, provides the Federal agency with essential information including the type of the procurement, estimated cost, and the competitive nature of the procurement, and the time frame for vendors to respond to the solicitation.

Although § 95.611 already provides the Federal agencies with discretion to exempt a RFP, contract or contract amendment from prior approval, we propose to add a new definition of "Acquisition checklist" to the definitions in § 95.605. Furthermore, we propose to modify § 95.611 to improve clarity and to move the last sentence about submission of acquisition documents under the submission threshold in § 95.611(b)(1)(iii) to a new § 95.611(b)(1)(v) to clarify that this provision applies to all acquisitions not otherwise subject to prior approval.

We propose to amend § 95.611(a)(1), General acquisition requirements, to eliminate the need to submit competitive acquisitions for Operations and Software Maintenance RFPs, contracts and contract amendments.

Current regulations at § 95.611(b)(1) base submission thresholds for IT acquisitions on only one risk category, the size of the acquisition, regardless of the type of IT service being acquired. This notice of proposed rulemaking would establish different dollar submission thresholds based on the different types of competitive procurements. The threshold in the current regulation is \$5 million for all types of acquisitions, and the proposed change would retain the \$5 million threshold for software application development, which continues to be the highest risk type. However it would establish a \$20 million threshold for hardware procurements and eliminate the requirement that competitively procured contracts limited to Operations and Software Maintenance be submitted for prior approval. If the procurement combines different types of activities, for example, hardware acquisition with software application development, then the lower threshold applies.

In addition, the current requirement for submission of contract amendments for prior Federal approval is \$1,000,000. We propose to amend § 95.611(b)(1)(vi) to permit contract amendments to a

competitively procured contract that do not exceed 20 percent of the base contract and are within the scope of the initial contract to be exempt from prior approval and sole source justification. We propose to add a new definition of "Base contract" to § 95.605. A Base contract is defined as the initial contract activity that is allowed during a defined period of time. The base contract does include option years but does not include amendments. This flexibility of 20 percent over the base contract applies to all types of IT services being procured such as hardware, software application development, additional Commercial off the Shelf (COTS) software licenses, but does not extend to situations where the amendment expands the scope of the contract nor does it permit a fragmentation of the amendments to circumvent the percentage threshold. The 20 percent over base contract is a cumulative amount. Whenever the cumulative amount of contract amendments exceeds 20 percent of the base contract, then we propose that submission to the Federal agency for prior approval is required. As specified earlier, competitively procured O&M contracts and contract amendments are exempted from prior approval.

We propose to amend § 95.611(b)(2)(iii) and (iv) to increase prior submission acquisition requirements for enhanced funded projects for RFPs, contracts, and contract amendments from \$100,000 to \$300,000. Section 95.611(c)(2) regarding enhanced funded As-Needed, would be changed from the current \$100,000 submission threshold to \$300,000.

We propose to amend § 96.611(c), Specific approval requirements for enhanced funded projects, the threshold for submitting an As-Needed APD Update, by raising the threshold from \$100,000 to \$300,000.

Both § 95.611(b)(1)(iii) Request for Proposal and Contract and § 95.611(b)(iv) Contract Amendments of the current regulations contain language that requires the State to submit RFP, contract and contract amendments under these threshold amounts on an exception basis or if the acquisition strategy is not adequately described and justified in an ITD. This NPRM proposes a new regulatory section to specify that this authority addresses not just acquisitions under the threshold, but ITD submissions including the new Operations and Software Maintenance ITDU. States will be required to submit acquisition documents, and ITDUs that were otherwise under the submission threshold amount if requested to do so in writing by the Department.



• *Section 95.623 New Section on Reconsideration of denied FFP for failure to obtain plan approval—*

Section 95.623, waiver of prior approval requirements, of the current regulations is limited to situations prior to December 1, 1985. We propose deleting this language and replacing it with new regulatory language that specifies the conditions for requesting reconsideration of FFP denial for failure to request prior approval. This codifies in regulation, the process and procedure that was outlined in Action Transmittal OSSP-00-01 dated March 13, 2000.

Under proposed § 95.623, for ADP equipment and services acquired by a State without prior written approval, the Department may waive the prior approval requirement if the State requests reconsideration of a denial by request to the head of the grantor agency within 30 days of the initial written disallowance determination.

• *Section 95.626 New Section on Independent Validation and Verification—*

This notice of proposed rulemaking would also create a new § 95.626 to require Independent Validation and Verification (IV&V) Services for certain ITD projects. This regulatory provision is derived from existing authority and language in 45 CFR 307.15(b)(10) of the child support automation regulations. In addition to § 307.15(b)(10), other Federal programs have required IV&V services for troubled ITD projects based on the authority granted to them under 45 CFR 92.12.

• *Section 95.627 New Section on waiver authority—*

This notice of proposed rulemaking would create a new § 95.627 that

permits a waiver of any ITD requirement in 45 CFR part 95 by presenting an alternative approach. This authority currently exists in the child support automation regulations in 45 CFR 307.5(b) and is intended to give the Secretary increased authority to grant waivers of ITD and acquisition prior approvals beyond the authority specified in part 95.

Under the proposed rule, a State may apply for a waiver of any requirement in 45 CFR Subpart F by presenting an alternative approach. Waiver requests must be submitted and approved as part of a State's ITD or ITD Update. The Secretary may grant a State a waiver if the State demonstrates that it has an alternative approach to a requirement in this chapter that will safeguard the State and Federal governments' interest and that enables the State to be in substantial compliance with the other requirements of this chapter.

Under this proposed new section, the State's requests for approval of an alternative approach or waiver of a requirement in this chapter must demonstrate why meeting the condition is unnecessary, diminishes the State's ability to meet program requirements, or that the alternative approach leads to a more efficient, economical, and effective administration of the programs for which federal financial participation is provided, benefiting both the State and Federal Governments.

The Secretary, or his or her designee, will review waiver requests to assure that all necessary information is provided, that all processes provide for effective economical and effective program operation, and that the conditions for waiver in this section are

met. When a waiver is approved by an agency, it becomes part of the State's approved ITD and is applicable to the approving agency. A waiver is subject to the ITD suspension provisions in § 95.611(c)(3). When a waiver is disapproved, the entire ITD will be disapproved. The ITD disapproval is a final administrative decision and is not subject to administrative appeal.

• *Section 95.635 New Section on Disallowance of Federal Financial participation in automated systems that fail to comply substantially with program regulations—*

We propose to create a new section that permits the Federal agency to disallow all or part of any costs in systems projects that fail to comply substantially with applicable regulations for the applicable programs.

#### IV. Impact Analysis

##### *Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), HHS is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or record keeping requirements in a proposed or final rule. In April 2005, OMB approved the current APD process for three years based partially on the progress that has been made on this reform effort. The proposed revisions in this NPRM to the requirements at 45 CFR part 95 reduce the documentation required to be submitted by States and territories to the Federal government. The current information collection burden, before this proposed rule is implemented is as follows:

Instrument	Estimated number of respondents	Proposed frequency of response	Average burden per response	Total annual burden
Advance Planning Document .....	50	1.84	60	5,520
RFP and Contract .....	50	1.54	1.5	115.5
Emergency Funding Request .....	27	1	1	27
Service Agreements .....	14	1	1	14
Biennial Security reports .....	50	1	1.5	75

The NPRM will result in the following reductions:

In Advance Planning Documents—a reduction in the average burden hours for projects that are implemented in Operations and Software Maintenance mode. Instead of having to submit a full Annual or As-Needed ITDU, States with projects in maintenance and operation mode will only have to submit a one- to two-page document. The Department also plans to develop a process for the states to submit this O&SM IT document

update electronically. Since the majority of States and territories appear to be continuing to do ongoing software enhancements as part of continuing performance, we are estimating only a small reduction in the average burden hours associated with reducing the documentation required for annual O&SM IT submissions. We estimate a reduction from 60 hours to 58 or 5,336 total burden hours for information technology Documents. The proposal to require a close-out cost benefit report

also is factored into this net burden reduction.

In RFP and contracts—a reduction is made in the average burden hours per RFP due to several revisions, including: An increased use of the Acquisition Checklist, an elimination of maintenance and operation RFPs, higher submission thresholds for contracts and contract amendments, elimination of the need to submit hardware and commercial software acquisition documents under \$20 million if

competitively procured and an elimination of the need to submit contract amendments if within scope and cumulatively the amendments do

not exceed 20 percent of the base contract. We believe that this will reduce the average frequency of responses by half, from 1.54 to .75 and

reduce the total burden hours to 56.25 hours.

The revised annual burden estimates based on this NPRM is as follows:

Instrument	Estimated number of respondents	Proposed frequency of response	Average burden per response	Total annual burden
Advance Planning Document .....	50	1.84	58	5,336
RFP and Contract .....	50	.75	1.5	56.25
Emergency Funding Request .....	27	1	1	27
Service Agreements .....	14	1	1	14
Biennial Security reports .....	50	1	1.5	75

The respondents affected by this information collection are State agencies and territories.

The Department will consider comments by the public on this proposed collection of information in the following areas:

- Evaluating whether the proposed collection activity is necessary for the proper performance and function of the Department, including whether the information will have a practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used,
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technology, e.g. permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations 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. This does not affect the deadline for the public to comment to the Department of the proposed regulations. Written comments may be sent to OMB for the proposed information collection either by FAX to 202 395-6974 or by e-mail to [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov). Please mark all comments "Attn: Desk Officer for ACF."

We are submitting this information collection to OMB for approval. 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. The e-mail address is [Robert.Sargis@acf.hhs.gov](mailto:Robert.Sargis@acf.hhs.gov).

#### Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that this rule will not result in a significant impact on a substantial number of small entities. The primary impact is on State and Territorial governments. State and Territorial governments are not considered small entities under the Act. The intent of these proposed rules is to reduce the submission requirements for lower-risk information technology (IT) projects and procurements and increase oversight over higher-risk IT projects and procurements by making technical changes, conforming changes and substantive revisions in the documentation required to be submitted by States, counties, and territories for approval of their Information Technology plans and acquisition documents.

#### Regulatory Impact Analysis

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this proposed rule is consistent with these priorities and principles. Since it significantly reduces the documentation required to be submitted by the States and Territories related to lower risk Information Technology projects and procurement, costs are reduced. Examples of documentation that is no longer required to be submitted for prior approval under this proposed rule are competitive hardware acquisitions under \$20 million instead of the current \$5 million threshold and instead of having to submit a full annual or As-Needed ITDU, States with projects in maintenance and operation mode will only have to submit a document with as few as 2 pages, depending on

the scope of activities. The current information collection burden is reduced to reflect these reduced costs to States and Territories. To estimate the savings we are utilizing the same methodology and State and contractor average annual rate as we recommend to the States to use for their costs estimates in our Planning Advance Planning Document training. In those training documents we recommend an average standard hourly rate of \$100 for state systems staff and \$175 for contractor state staff. So the reduction of 59.25 hours for APD's would translate to a cost savings of \$5,925 for State staff or \$10,368, if the RFP is prepared by a Quality Assurance contractor. The reduction of 184 hours for submission of RFP's would translate to a cost savings of \$18,400 if prepared by State staff and \$32,000 if prepared by contractor staff. So the estimate of cost savings related to the reduction in information collection budget would be \$24,325 to \$49,493.

#### Assessment of Federal Regulations and Policies on Families

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

#### Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments in the aggregate, or by the private sector, of \$100 million adjusted for inflation, or more in any one year.

If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

We have determined that this rule will not result in the expenditure by State, local, and Tribal governments in the aggregate, or by the private sector, of more than \$100 million in any one year. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small governments.

#### Congressional Review

This rule is not a major rule as defined in 5 U.S.C. chapter 8.

#### Executive Order 13132

Executive Order 13132 prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. We do not believe the regulation has federalism impact as defined in the Executive Order. Consistent with Executive Order 13132, the Department specifically solicits comments from State and local government officials on this proposed rule.

#### List of Subjects in 45 CFR Part 95

Administrative practice and procedure, Claims, Computer Technology, Grant programs—health, Grant programs, Social programs.

Approved: November 29, 2007.

Michael O. Leavitt,

Secretary of Health and Human Services.

For the reasons set forth above, HHS proposes to amend title 45 CFR part 95 as follows:

#### PART 95—GENERAL ADMINISTRATION—GRANT PROGRAMS (PUBLIC ASSISTANCE, MEDICAL ASSISTANCE AND STATE CHILDREN'S HEALTH INSURANCE PROGRAMS)

1. The authority citation for 45 CFR part 95 is revised to read as follows:

**Authority:** 5 U.S.C. 301, 42 U.S.C. 622(b), 629b(a), 652(a), 652(d), 654A, 671(a), 1302, and 1396a(a).

#### Subpart A—Time Limits for States to File Claims

2. In § 95.4 revise the definition of “We, our and us” to read as follows:

##### § 95.4 Definitions.

\* \* \* \* \*

*We, our, and us* refer to HHS' Centers for Medicare & Medicaid Services and the Administration for Children and Families, depending on the program involved.

3. In § 95.31 revise paragraph (a) to read as follows:

##### § 95.31 Where to send a waiver request for good cause.

(a) A request which affects the program(s) of only one HHS agency [(CMS), or the Administration for Children and Families (ACF)] and does not affect the programs of any other agency or Federal Department should be sent to the appropriate HHS agency.

\* \* \* \* \*

#### Subpart E—Cost Allocation Plans

4. In § 95.505 revise the definition of “Operating Divisions” to read as follows:

##### § 95.505 Definitions.

\* \* \* \* \*

*Operating Divisions* means the Department of Health and Human Services (HHS) organizational components responsible for administering public assistance programs. These components are the Administration for Children and Families (ACF) and the Centers for Medicare & Medicaid Services (CMS).

\* \* \* \* \*

#### Subpart F—Automated Data Processing Equipment and Services—Conditions for Federal Financial Participation (FFP)

5. Remove the authority citation for subpart F.

6. Revise § 95.601 to read as follows:

##### § 95.601 Scope and applicability.

This subpart prescribes part of the conditions under which the Department of Health and Human Services will approve the Federal Financial Participation (FFP) at the applicable rates for the costs of automated data processing incurred under an approved State plan for titles IV-B, IV-D, IV-E, or XIX of the Social Security Act. The conditions of approval of this subpart add to the statutory and regulatory

requirements for acquisition of Automated Data Processing (ADP) equipment and services under the specified titles of the Social Security Act.

7. Amend § 95.605 to:

a. Remove the definitions of “Advance Planning Document,” including its sub-definitions “Planning APD,” “Implementation APD,”

“Advance Planning Document Update.” b. Add the definitions “Acquisition checklist,” “Alternative approach to IT requirements,” “Base contract,” “Commercial off the shelf software,” “Grantee,” “Noncompetitive,” “Service Oriented Architecture,” and “Software maintenance.”

c. Revise the definition of “Approving component.”

d. Remove the definition heading “Automatic data processing” and add in its place “Automated data processing.”

e. Remove the definition heading “Automatic data processing equipment” and add in its place “Automated data processing equipment.”

f. Remove the definition heading “Automatic data processing services” and add in its place “Automated data processing services.”

g. Revise the definition of “Project.”

h. Revise paragraphs (d), (e), and (f) under the definition of “Service agreement.”

##### § 95.605 Definitions.

\* \* \* \* \*

*Acquisition checklist* means the standard Department checklist that States can submit to meet prior written approval requirements instead of submitting the actual Request for Proposal (RFP). The Acquisition Checklist allows States to self-certify that their RFPs, or similar document, meet State and Federal procurement requirements, are competitive, contain appropriate language about software ownership and licensing rights in compliance with § 95.617, and provide access to documentation in compliance with § 95.615.

\* \* \* \* \*

*Alternative approach to IT requirements* means that the State has developed an ITD that does not meet all conditions for ITD approval in § 95.610 resulting in the need for a waiver under § 95.627(a).

*Approving component* means an organization within the Department that is authorized to approve requests for the acquisition of ADP equipment or ADP services. The approving component is the Administration for Children and Families (ACF) for titles IV-B (child welfare services), IV-E (foster care and adoption assistance), and IV-D (child

support enforcement), and the Centers for Medicare & Medicaid Services (CMS) for title XIX (Medicaid) of the Social Security Act.

*Base contract* means the initial contractual activity, including all option years, allowed during a defined unit of time, for example, 2 years. The base contract includes option years but does not include amendments.

*Commercial off the shelf (COTS) software* means proprietary software products that are ready-made and available for sale to the general public at established catalog or market prices. Examples of COTS include: Standard word processing, database, and statistical packages.

*Grantee* means an organization receiving financial assistance directly from an HHS awarding agency to carry out a project or program.

\* \* \* \* \*

*Noncompetitive* means solicitation of a proposal from only one source, or after solicitation of a number of sources, negotiation with selected sources based on a finding that competition is inadequate. Procurement by noncompetitive proposals may be used only when competitive award of a contract is infeasible and one of the following circumstances applies:

- (i) The item is available only from a single source;
- (ii) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- (iii) The federal awarding agency authorizes noncompetitive proposals; or
- (iv) After solicitation of a number of sources, competition is determined inadequate.

*Project* means a defined set of information technology related tasks, undertaken by the State to improve the efficiency, economy and effectiveness of administration and/or operation of one or more of its human services programs. For example, a State may undertake a comprehensive, integrated initiative in support of its Child Support, Child Welfare and Medicaid programs' intake, eligibility and case management functions. A project may also be a less comprehensive activity such as office automation, enhancements to an existing system or an upgrade of computer hardware.

\* \* \* \* \*

*Service agreement* \* \* \*

(d) Includes assurances that services provided will be timely and satisfactory; preferably through a service level agreement;

(e) Includes assurances that information in the computer system as

well as access, use and disposal of ADP data will be safeguarded in accordance with provisions of all applicable federal statutes and regulations, including 45 CFR 205.50 and 307.13;

(f) Requires the provider to obtain prior approval pursuant to 45 CFR 95.611(a) from the Department for ADP equipment and ADP services that are acquired from commercial sources primarily to support the titles covered by this subpart and requires the provider to comply with 45 CFR 95.613 for procurements related to the service agreement. ADP equipment and services are considered to be primarily acquired to support the titles covered by this subpart when the human service programs may reasonably be expected to either: be billed for more than 50 percent of the total charges made to all users of the ADP equipment and services during the time period covered by the service agreement, or directly charged for the total cost of the purchase or lease of ADP equipment or services;

\* \* \* \* \*

*Service Oriented Architecture (SOA)*, also referred to as Service Component Based Architecture, describes a means of organizing and developing Information Technology capabilities as collaborating services that interact with each other based on open standards. Agency SOA artifacts may include models, approach documents, inventories of services or other descriptive documents.

*Software maintenance* means routine support activities that normally include corrective, adaptive, and perfective changes, without introducing additional functional capabilities. Corrective changes are tasks to correct minor errors or deficiencies in software. Adaptive changes are minor revisions to existing software to meet changing requirements. Perfective changes are minor improvements to application software so it will perform in a more efficient, economical, and/or effective manner. Software maintenance can include activities such as revising/creating new reports, making limited data element/data base changes, and making minor alterations to data input and display screen designs. Software maintenance that substantially increases risk or cost or functionality will require an as-needed ITD.

\* \* \* \* \*

8. Add a new § 95.610 to read as follows:

**§ 95.610 Submission of information technology documents.**

Initial Information Technology document or Initial ITD is a written plan of action to request funding approval for

a project which will require the use of ADP services or equipment. The term ITD refers to a Planning ITD, or to a planning and/or development and implementation action document, i.e., Implementation ITD, or Information Technology Document Update. Requirements are detailed in paragraphs (a), (b), and (c) of this section.

(a) *Planning ITD.*

(1) A Planning ITD is a written plan of action which requests FFP to determine the need for, feasibility, and cost factors of an ADP equipment or services acquisition and to perform one or more of the following: Prepare a Functional Requirements Specification; assess other States' systems for transfer, to the maximum extent possible, of an existing system; prepare an Implementation ITD; prepare a request for proposal (RFP) and/or develop a General Systems Design (GSD).

(2) A separate planning effort and Planning ITD is optional, but highly recommended, and generally applies to large Statewide system developments and/or major hardware acquisitions. States with large, independent counties requesting funding at the regular match rate for county systems are strongly encouraged to engage in planning activities commensurate with the complexity of the projected IT project and to submit a Planning ITD to allow for time and to provide funding for its planning activities. Therefore, states must consider the scope and complexity of a project to determine whether to submit a Planning ITD as a separate document to HHS or whether to combine the two phases of planning and implementation into one ITD covering both the Planning ITD and the Implementation ITD requirements.

(3) The Planning ITD is a relatively brief document, usually not more than 6-10 pages, which must contain:

- (i) A statement of the problem/need that the existing capabilities can not resolve, new or changed program requirements or opportunities for improved economies and efficiencies and effectiveness of program and administration and operations;
- (ii) A project management plan that addresses the planning project organization, planning activities/deliverables, State and contractor resource needs, planning project procurement activities and schedule;
- (iii) A specific budget for the planning phase of the project;
- (iv) An estimated total project cost and a prospective State and Federal cost allocation/distribution, including planning and implementation;
- (v) A commitment to conduct/prepare the problem(s) needs assessment.



feasibility study, alternatives analysis, cost benefit analysis, and to develop a Functional Requirements Specification and/or a General Systems Design (GSD);

(vi) A commitment to define the State's functional requirements, based on the state's business needs which may be used for the purpose of evaluating the transfer of an existing system, including the transfer of another State's General System Design that the State may adapt to meet State specific requirements; and

(vii) Additional Planning ITD content requirements, for enhanced funding projects as contained in 45 CFR 307.15 and 1355.50 through 1355.57.

(b) *Implementation ITD*. The Implementation ITD is a written plan of action to acquire the proposed ITD services or equipment. The Implementation ITD shall include:

(1) The results of the activities conducted under a Planning ITD, if any;

(2) A statement of problems/needs and outcomes/objectives;

(3) A requirements analysis, feasibility study and a statement of alternative considerations including, where appropriate, the use of service oriented architecture and a transfer of an existing system and an explanation of why such a transfer is not feasible if another alternative is identified;

(4) A cost benefit analysis;

(5) A personnel resource statement indicating availability of qualified and adequate numbers of staff, including a project director to accomplish the project objectives;

(6) A detailed description of the nature and scope of the activities to be undertaken and the methods to be used to accomplish the project;

(7) The proposed activity schedule for the project;

(8) A proposed budget (including an accounting of all possible Implementation ITD activity costs, e.g., system conversion, vendor and state personnel, computer capacity planning, supplies, training, hardware, software and miscellaneous ADP expenses) for the project;

(9) A statement indicating the duration the State expects to use the equipment and/or system;

(10) An estimate of the prospective cost allocation/distribution to the various State and Federal funding sources and the proposed procedures for distributing costs;

(11) A statement setting forth the security and interface requirements to be employed and the system failure and disaster recovery/business continuity procedures available or to be implemented; and

(12) Additional requirements, for acquisitions for which the State is requesting enhanced funding, as contained at 45 CFR 1355.54 through 1355.57, 45 CFR 307.15 and 42 CFR subchapter C, part 433.

(c) *Information Technology Document Update (ITDU)*. The Information Technology Document Update (ITDU) is a document submitted annually (Annual ITDU) to report project status and/or post implementation cost-savings, or, on an as needed (As Needed ITDU) basis, to request funding approval for project continuation when significant project changes are anticipated; for incremental funding authority and project continuation when approval is being granted by phase; or to provide detailed information on project and/or budget activities, as follows:

(1) The *Annual ITDU*, which is due 60 days prior to the anniversary date of the Planning ITD, Implementation ITD, or prior Annual ITD Update approved anniversary and includes:

(i) A reference to the approved ITD and all approved changes;

(ii) A project activity report which includes the status of the past year's major project tasks and milestones, addressing the degree of completion and tasks/milestones remaining to be completed, and discusses past and anticipated problems or delays in meeting target dates in the approved ITD and approved changes to it and provides a risk management plan that assesses project risk and identifies risk mitigation strategies;

(iii) A report of all project deliverables completed in the past year and degree of completion for unfinished products and tasks;

(iv) An updated project activity schedule for the remainder of the project;

(v) A revised budget for the life of the project's entire life-cycle, including operational and development cost categories;

(vi) A project expenditures report that consists of a detailed accounting of all expenditures for project development over the past year and an explanation of the differences between projected expenses in the approved ITD and actual expenditures for the past year;

(vii) A report of any approved or anticipated changes to the allocation basis in the ITD's approved cost allocation methodology; and

(viii) Once the State begins operation, either on a pilot basis or under a phased implementation, it must track costs, benefits and savings. The State will submit an initial cost-savings report no later than 2 years after initial implementation and every 3 years after

that until HHS determines projected cost savings and benefits have been achieved. The cost benefit report is not required if the project is limited to only O&M.

(2) The *As Needed ITDU* is a document that requests approval for additional funding and/or authority for project continuation when significant changes are anticipated, when the project is being funded on a phased implementation basis, or to clarify project information requested as an approval condition of the Planning ITD, Annual ITDU, or Implementation ITD. The *As Needed ITDU* may be submitted any time as a stand-alone funding or project continuation request, or may be submitted as part of the Annual ITDU. The *As Needed ITDU* is submitted:

(i) When the State anticipates incremental project expenditures (exceeding specified thresholds);

(ii) When the State anticipates a schedule extension of more than 60 days for major milestones;

(iii) When the State anticipates major changes in the scope of its project, e.g., a change in its procurement plan, procurement activities, system concept or development approach;

(iv) When the State anticipates significant changes to its cost distribution methodology or distribution of costs among Federal programs; and/or

(v) When the State anticipates significant changes to its cost-benefit projections.

The *As needed ITDU* shall provide supporting documentation to justify the need for a change to the approved budget.

(3) The *Operations & Software Maintenance Information Technology Document Update, (O & M ITDU)* is an annual report of no more than two pages, including:

(i) Summary of activities;

(ii) Acquisitions and,

(iii) Annual budget by project/system receiving funding through the programs covered under this part.

9. In § 95.611 revise paragraphs (a)(1), (a)(3) through (a)(6), (b)(1)(i) through (b)(1)(iv), (b)(2)(i) through (b)(2)(iv), (c)(1)(i) through (c)(1)(ii), and (c)(2); and add paragraphs (b)(1)(v), (b)(1)(vi), and (e) to read as follows:

**§ 95.611 Prior approval conditions.**

(a) *General acquisition requirements.*

(1) A State shall obtain prior written approval from the Department as specified in paragraph (b) of this section, when the State plans to acquire ADP equipment or services with proposed FFP at the regular matching rate that it anticipates will have total



acquisition costs of \$5,000,000 or more in Federal and State funds. States will be required to submit Operations and Software Maintenance (O&M) only acquisitions if they are non-competitive and exceed the threshold requiring Federal approval, or for competitive procurements on an exception basis after the receipt of a written request from the Department. See definition of software maintenance under § 95.605.

\* \* \* \*

(3) A State shall obtain prior written approval from the Department for a sole source/non-competitive acquisition, for ADP equipment or services, that has a total State and Federal acquisition cost of \$1,000,000 or more.

(4) Except as provided for in paragraph (a)(5) of this section, the State shall submit multi-program requests for Department approval, signed by the appropriate State official, to the Department's Secretary or his/her designee. For each HHS component that has federal funding participation in the project, an additional copy must be provided to the applicable program office and respective Regional Administrator(s).

(5) States shall submit requests for approval which affect only one entity of HHS (CMS, OCSE, or Children's Bureau), to the applicable entity's office and Regional Administrator.

(6) The Department will not approve any Planning or Implementation ITD that does not include all information required in § 95.610.

(b) \* \* \*

(1) \* \* \*

(i) For the Planning ITD subject to the dollar thresholds specified in paragraph (a) of this section.

(ii) For the Implementation ITD subject to the dollar thresholds specified in paragraph (a) of this section.

(iii) For acquisition solicitation documents, unless specifically exempted by the Department, prior to release when the resulting base contract is anticipated to exceed \$5,000,000 for competitive procurement and \$1,000,000 for noncompetitive procurements:

(iv) For noncompetitive acquisitions, including contract amendments, when the resulting contract is anticipated to exceed \$1,000,000, States will be required to submit a sole source justification in addition to the acquisition document.

(v) For the contract, prior to the execution, States will be required to submit the contract when it is anticipated to exceed the following thresholds, unless specifically exempted by the Department:

(A) Software application development—\$5,000,000 or more (competitive) and \$1,000,000 or more (noncompetitive);

(B) Hardware including Commercial Off the Shelf (COTS) software—\$20,000,000 or more (competitive) and \$1,000,000 or more (noncompetitive);

(C) Operations and Software Maintenance acquisitions combined with hardware, COTS or software application development—the thresholds stated in § 95.611(b)(1)(v)(A) and (B) would apply.

(vi) For contract amendments within the scope of the base contract, unless specifically exempted by the Department, prior to execution of the contract amendment involving contract cost increases which cumulatively exceed 20 percent of the base contract cost. For example: If the base contract is \$20 million with three option years of \$5 million each, the base contract value would be \$35 million. When a single contract amendment or the accumulated value of all contract amendments exceeds \$7 million (20 percent of the \$35 million base contract value), prior approval requirements would apply.

(2) \* \* \*

(i) For the Planning ITD.

(ii) For the Implementation ITD.

(iii) For the acquisition solicitation documents and contract, unless specifically exempted by the Department, prior to release of the acquisition solicitation documents or prior to execution of the contract when the contract is anticipated to or will exceed \$300,000.

(iv) For contract amendments, unless specifically exempted by the Department, prior to execution of the contract amendment, involving contract cost increases exceeding \$300,000 or contract time extensions of more than 60 days.

\* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) For an annual ITDU for projects with a total cost of more than \$5,000,000, when specifically required by the Department for projects with a total cost of less than \$5,000,000.

(ii) (A) For an As Needed ITDU when changes cause any of the following:

(1) A projected cost increase of \$1,000,000 or more.

(2) A schedule extension of more than 60 days for major milestones;

(3) A significant change in procurement approach, and/or scope of procurement activities beyond that approved in the ITD;

(4) A change in system concept, or a change to the scope of the project;

(5) A change to the approved cost allocation methodology.

(B) The State shall submit the As Needed ITDU to the Department, no later than 60 days after the occurrence of the project changes to be reported in the As Needed ITDU.

(2) For enhanced FFP requests.

(i) For an Annual ITDU.

(ii) For an "As needed" ITDU when changes cause any of the following:

(A) A projected cost increase of \$300,000 or 10 percent of the project cost, whichever is less;

(B) A schedule extension of more than 60 days for major milestones;

(C) A significant change in procurement approach, and/or a scope of procurement activities beyond that approved in the ITD;

(D) A change in system concept or scope of the project;

(E) A change to the approved cost methodology;

(F) A change of more than 10 percent of estimated cost benefits.

The State shall submit the "As Needed ITDU" to the Department, no later than 60 days after the occurrence of the project changes to be reported in the "As Needed ITDU".

\* \* \* \*

(e) *Acquisitions not subject to prior approval.* States will be required to submit acquisition documents, contracts and contract amendments under the threshold amounts on an exception basis if requested to do so in writing by the Department.

10. Revise § 95.612 to read as follows:

**§ 95.612 Disallowance of Federal Financial Participation (FFP).**

If the Department finds that any ADP acquisition approved or modified under the provisions of § 95.611 fails to comply with the criteria, requirements, and other activities described in the approved information technology document to the detriment of the proper, efficient, economical and effective operation of the affected program, payment of FFP may be disallowed. In the case of a suspension of the approval of a Child Support ITD for enhanced funding, see 45 CFR 307.40(a). In the case of a suspension of an ITD for a State Automated Child Welfare Information System (SACWIS) project, see 45 CFR 1355.56.

11. Revise § 95.613 to read as follows:

**§ 95.613 Procurement Standards.**

(a) *General.* Procurements of ADP equipment and services are subject to the following procurement standards in paragraphs (b), (c), (d), (e), and (f) of this section regardless of any conditions for prior approval. These standards include

a requirement for maximum practical open and free competition regardless of whether the procurement is formally advertised or negotiated. These standards are established to ensure that such materials and services are obtained in a cost effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. The standards apply where the cost of the procurement is treated as a direct cost of an award.

(b) *Grantee responsibilities.* The standards contained in this section do not relieve the Grantee of the contractual responsibilities arising under its contract(s). The grantee is the responsible authority, without recourse to the HHS awarding agency, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, and protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

(c) *Codes of conduct.* The grantee shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, or any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the grantee shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, grantees may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employers, or agents of the grantees.

(d) *Competition.* All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The grantee shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or

eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft grant applications, or contract specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the grantee, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the grantee. Any and all bids or offers may be rejected when it is in the grantee's interest to do so.

(e) *Procurement procedures.* (1) All grantees shall establish written procurement procedures. These procedures shall provide, at a minimum, that:

- (i) Grantees avoid purchasing unnecessary items;
- (ii) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the grantee and the Federal Government; and
- (iii) Solicitations for goods and services provide for all of the following:
  - (A) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.
  - (B) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.
  - (C) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.
  - (D) The specific features of brand name or equal descriptions that bidders are required to meet when such items are included in the solicitation.
  - (E) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.
  - (F) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(2) Positive efforts shall be made by grantees to utilize small businesses, minority-owned firms, and women's

business enterprises, whenever possible. Grantees of HHS awards shall take all of the following steps to further this goal.

(i) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(ii) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(iii) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(iv) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(v) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(3) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the grantee but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used.

(4) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of E.O.s 12549 and 12689, "Debarment and Suspension." (See 45 CFR part 76.)

(5) Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to

determine reasonableness, allocability and allowability.

(6) Procurement records and files for purchases in excess of the simplified acquisition threshold shall include the following at a minimum:

- (i) Basis for contractor selection;
- (ii) Justification for lack of competition when competitive bids or offers are not obtained; and
- (iii) Basis for award cost or price.

(7) A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Grantees shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

(8) The grantee shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts, which shall also be applied to subcontracts:

(i) Contracts in excess of the simplified acquisition threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(ii) All contracts in excess of the simplified acquisition threshold (currently \$100,000) shall contain suitable provisions for termination by the grantee, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(f) All negotiated contracts (except those for less than the simplified acquisition threshold) awarded by grantees shall include a provision to the effect that the grantee, the HHS awarding agency, the U.S. Comptroller General, or any of their duly authorized representatives, shall have access to any books, documents, papers and records and staff of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

12. Revise § 95.615 to read as follows:

**§ 95.615 Access to systems and records.**

The State agency must allow the Department access to the system in all of its aspects, including pertinent state

staff, design developments, operation, and cost records of contractors and subcontractors at such intervals as are deemed necessary by the Department to determine whether the conditions for approval are being met and to determine the efficiency, economy and effectiveness of the system.

13. In § 95.621 revise paragraphs (d) and (e) to read as follows:

**§ 95.621 ADP Reviews.**

\* \* \* \* \*

(d) *Acquisitions not subject to prior approval.* Reviews will be conducted on an audit basis to assure that system and equipment acquisition costing less than \$200,000 were made in accordance with 45 CFR 95.613 and the conditions of this subpart and to determine the efficiency, economy and effectiveness of the equipment or service.

(e) *State Agency Maintenance of Service Agreements.* The State agency will maintain a copy of each service agreement in its files for Federal review.

\* \* \* \* \*

14. Revise § 95.623 to read as follows:

**§ 95.623 Reconsideration of denied FFP for failure to obtain prior approval.**

For ADP equipment and services acquired by a State without prior written approval, the State may request reconsideration of the disallowance of FFP by written request to the head of the grantor agency within 30 days of the initial written disallowance determination. In such a reconsideration, the agency may take into account overall federal interests.

15. Add new § 95.626 to read as follows:

**§ 95.626 Independent Validation and Verification.**

(a) Independent Verification and Validation (IV&V), refers to a well-defined standard process for examining the organizational, management, and technical aspects of a project to determine the effort's adherence to industry standards and best practices, to identify risks, and make recommendations for remediation, where appropriate. These activities will be performed by an agency that is not under the control of the organization that is developing the software.

(b) An assessment for independent validation and verification (IV&V) analysis of a State's system development effort may be required in the case of ITD projects that:

- (1) Miss statutory or regulatory deadlines for automation that is intended to meet program requirements;
- (2) Fail to meet a critical milestone;
- (3) Indicate the need for a new project or total system redesign;

(4) Are developing systems under waivers pursuant to sections 452(d)(3) or 627 of the Social Security Act;

(5) Are at risk of failure, significant delay, or significant cost overrun in their systems development efforts; or

(6) Fail to timely and completely submit ITD updates or other required systems documentation.

(c) Independent validation and verification efforts must be conducted by an entity that is independent from the State (unless the State receives an exception from the Department) and the entity selected must:

(1) Develop a project workplan. The plan must be provided directly to the Department at the same time it is given to the State.

(2) Review and make recommendations on both the management of the project, both State and vendor, and the technical aspects of the project. The IV&V provider must give the results of its analysis directly to the federal agencies that required the IV&V at the same time it reports to the State.

(3) Consult with all stakeholders and assess the user involvement and buy-in regarding system functionality and the system's ability to support program business needs.

(4) Conduct an analysis of past project performance sufficient to identify and make recommendations for improvement.

(5) Provide risk management assessment and capacity planning services.

(6) Develop performance metrics which allow tracking project completion against milestones set by the State.

(d) The RFP and contract for selecting the IV&V provider (or similar documents if IV&V services are provided by other State agencies) must include requirements regarding the experience and skills of the key personnel proposed for the IV&V analysis. The contract (or similar document if the IV&V services are provided by other State agencies) must specify by name the key personnel who actually will work on the project. The RFP and contract for required IV&V services must be submitted to the Department for prior written approval.

16. Add new § 95.627 to read as follows:

**§ 95.627 Waivers.**

(a) *Application for a waiver.* A State may apply for a waiver of any requirement in 45 CFR subpart F by presenting an alternative approach. Waiver requests must be submitted and approved as part of the State's ITD or ITD Update.

(b) *Waiver approvals.* The Secretary may grant a State a waiver if the State demonstrates that it has an alternative approach to a requirement in this chapter that will safeguard the State and Federal governments' interest and that enables the State to be in substantial compliance with the other requirements of this chapter.

(c) *Contents of waiver request.* The State's request for approval of an alternative approach or waiver of a requirement in this chapter must demonstrate why meeting the condition is unnecessary, diminishes the State's ability to meet program requirements, or that the alternative approach leads to a more efficient, economical, and effective administration of the programs for which federal financial participation is provided, benefiting both the State and Federal Governments.

(d) *Review of waiver requests.* The Secretary, or his or her designee, will review waiver requests to assure that all necessary information is provided, that all processes provide for effective economical and effective program operation, and that the conditions for waiver in this section are met.

(e) *Agency's response to a waiver request.* When a waiver is approved by an agency, it becomes part of the State's approved ITD and is applicable to the approving agency. A waiver is subject to the ITD suspension provisions in § 95.611(c)(3). When a waiver is disapproved, the entire ITD will be disapproved. The ITD disapproval is a final administrative decision and is not subject to administrative appeal.

17. Amend § 95.631 by removing "APD" and adding in its place "ITD" in the introductory text, and by revising paragraph (a) to read as follows:

**§ 95.631 Cost Identification for purpose of FFP claims.**

\* \* \* \* \*

(a) *Development costs.* (1) Using its normal departmental accounting system to the extent consistent with the cost principles set forth in OMB Circular A-87, the State agency shall specifically identify what items of costs constitute development costs, assign these costs to specific project cost centers, and distribute these costs to funding sources based on the specific identification, assignment and distribution outlined in the approved ITD;

(2) The methods for distributing costs set forth in the ITD should provide for assigning identifiable costs, to the extent practicable, directly to program/ functions. The State agency shall amend the cost allocation plan required by subpart E of this part to include the approved ITD methodology for the

identification, assignment and distribution of the development costs.

\* \* \* \* \*

18. Add new § 95.635 to read as follows:

**§ 95.635 Disallowance of Federal financial participation automated systems that failed to comply substantially with requirements.**

(a) Federal financial participation at the applicable matching rate is available for automated data processing (ADP) system expenditures that meet the requirements specified under the approved ITD including the approved cost allocation plan.

(b) All or part of any costs for system projects that fail to comply substantially with an ITD approved under applicable regulation at 45 CFR part 95.611, or for the Title IV-D program contained in 45 CFR part 307, the applicable regulations for the Title IV-E and Title IV-B programs contained in Chapter 13, subchapter G, 45 CFR 1355.55, or the applicable regulations for the Title XIX program contained in 42 CFR chapter 4 subchapter C, part 433, are subject to disallowance by the Department.

19. Amend § 95.641 by removing "APD" and adding in its place "ITD" wherever it appears.

**Subpart G—Equipment Acquired Under Public Assistance Programs**

20. Revise paragraph (a) of § 95.705 to read as follows:

**§ 95.705 Equipment costs—Federal financial participation.**

(a) *General rule.* In computing claims for Federal financial participation, equipment having a unit acquisition cost of \$25,000 or less may be claimed in the period acquired or depreciated, at the option of the State agency. Equipment having a unit acquisition cost of more than \$25,000 shall be depreciated. For purposes of this section, the term depreciate also includes use allowances computed in accordance with the cost principles prescribed in 45 CFR part 92.

\* \* \* \* \*

21. Revise paragraph (a) and the introductory text of paragraph (b) of § 95.707 to read as follows:

**§ 95.707 Equipment management and disposition.**

(a) Once equipment, whose costs are claimed for Federal financial participation (i.e., equipment that is capitalized and depreciated or is claimed in the period acquired), has reached the end of its useful life (as defined in an approved ITD), the equipment shall be subject to the property disposal rules in 45 CFR 92.32.

(b) The State agency is responsible for adequately managing the equipment, maintaining records on the equipment, and taking periodic physical inventories. Physical inventories may be made on the basis of statistical sampling.

\* \* \* \* \*

[FR Doc. E8-4009 Filed 3-6-08; 8:45 am]

BILLING CODE 4184-01-P

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Part 571**

**Federal Motor Vehicle Safety Standards No. 121; Air Brake Systems**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** This Notice denies a petition by Mr. Wayne Walch of TP Trucking in which the petitioner requested three changes to Federal Motor Vehicle Safety Standard (FMVSS) No. 121, *Air brake systems*, related to the air compressor operation and low air pressure warning system. After reviewing the petition and the available real world data, the agency has decided to deny it in its entirety because one of the suggested changes is already in the standard, the second would not result in any measurable safety benefit, and the third was, among other things, not described in sufficient detail for the agency to evaluate its function or purpose.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may contact Mr. Jeff Woods, Office of Crash Avoidance Standards, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590 (Telephone: 202-366-6206) (FAX: 202-366-7002). For legal issues, you may contact Mr. Ari Scott, Office of the Chief Counsel, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590 (Telephone: 202-366-2992) (FAX: 202-366-3820).

**SUPPLEMENTARY INFORMATION:**

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- I. Background
- II. General Description of Air Brake Systems and FMVSS No. 121 Requirements
- III. Function of Low Air Pressure Warning and Gauges in Normal and Emergency Braking Conditions
- IV. Real World Data
- V. Agency Analysis and Decision
- VI. Conclusion



## I. Background

The agency received a petition for rulemaking dated October 20, 2006, from Mr. Wayne Walch of TP Trucking, located in Eagle Point, Oregon. The petitioner suggested three improvements related to the air compressor operation and low air pressure warning system, which he believed would make air brake systems safer, and requested that Federal Motor Vehicle Safety Standard (FMVSS) No. 121, *Air brake systems*, be changed accordingly. These suggestions include:

- A warning device that would activate when the air compressor begins a new cycle.
- A warning device that would activate if the air compressor exceeds a predetermined amount of time to reach the cut-out pressure.
- A warning device that would activate just before the beginning of the air compressor cycle.

In his petition, Mr. Walch describes the typical operation of a low pressure warning system in which an audible warning signal is activated when the reservoir pressure is at 55 pounds per square inch (psi) or below, or one half of the compressor governor cutout pressure, whichever is less. The petitioner states that he believes this system is not robust as it provides no indication of continual air loss or when the compressor is constantly running and this can result in a dangerous situation.

In arguing the merits of the petition, the petitioner describes several scenarios in which the recommended systems would operate. First, the petitioner describes a scenario in which a system has an air leak and the compressor keeps running continuously. As the driver applies the brakes, the compressor cannot maintain the needed pressure, and the driver loses his brakes. If the truck is traveling down hill, the driver could have a serious crash in this situation. The petitioner states that even if the spring-operated parking brakes activate, they do not have the stopping efficiency as the normal service brakes. The petitioner further states that if the parking brakes activate due to that condition, the vehicle could stop in an unsafe area, and that most drivers will not know how to release the spring parking brakes. As such, the petition asks for the above three changes to FMVSS No. 121 to make air brakes safer. They are as follows:

1. Provide an indication to the driver upon air compressor cut-in. Thus if the driver is aware that the air compressor is cycling but the brakes aren't being

used, the driver would be alerted to air system leakage.

2. Set the time on new vehicles for the air compressor to increase system pressure from cut-in to cut-out pressure. If the system is taking too long to build pressure, then a warning needs to be displayed to the driver.

3. Require a low air pressure warning device that activates just before the start of the air compressor cycle. Items 1 and 2 above will prevent this.

## II. General Description of Air Brake Systems and FMVSS No. 121 Requirements

The operation of an air brake system relies on compressed air stored in reservoirs (tanks) mounted on the vehicle (truck, bus, or trailer). By storing compressed air in the reservoirs, the air is readily available to make rapid application of the brakes possible. When the driver applies the service brakes, the compressed air flows from the reservoirs into the service brake chambers that actuate the brake mechanism at each wheel. The air in the reservoirs is replenished by an air compressor on the engine of the truck or bus, which is controlled by a governor that activates the air compressor (cut-in pressure) and then turns off the air compressor once the reservoirs are fully charged (cut-out pressure). Trailers are also equipped with reservoirs, which receive their air supply from a towing vehicle that is typically a truck or truck tractor. In the case of multiple trailer combination vehicles, the tractor supplies air to all of the trailers in the combination.

As the driver applies the brakes, the air flows from the reservoirs into the service brake chambers at a pressure corresponding to the position of the brake pedal (treadle valve). Therefore, a light brake application would typically result in 10 to 20 psi of compressed air in the brake chambers, and a hard brake application would typically result in 40 psi or higher pressures in the brake chambers. Since the brake chambers are filled with compressed air taken from the reservoirs and upon releasing the service brakes the air is vented to the atmosphere, the air pressure in the reservoirs becomes slightly depleted whenever the brakes are applied. When the reservoir pressure drops to cut-in pressure, the governor activates the air compressor to build the system pressure back up to the cut-out pressure.

The process of the air compressor activating at reservoir cut-in pressure, then building to reservoir cut-out pressure, is known as compressor cycling, and the time between cycles can vary greatly among vehicle types and the type of driving that is

experienced. The most frequent compressor cycling occurs in stop-and-go operations, such as experienced by transit buses and refuse trucks, whereas the least frequent compressor cycling would typically be on a tractor trailer combination vehicle being operated at highway speeds with infrequent brake applications.

The service brake system on air braked vehicles is typically split into a primary and a secondary air system. The primary system usually controls the brakes on the drive axle(s) and the secondary system controls the brakes on the steer axle. Both systems have their own reservoirs that are typically fed by a supply reservoir that receives air directly from the air compressor. The primary and secondary air reservoirs are equipped with check valves for isolation so that a loss of pressure in one system does not cause a loss of pressure in the other system. In case one system loses pressure, the remaining system still provides an emergency braking capability on the vehicle, as well as continuing to operate any trailer service brakes, and keeps the parking brakes in the released position. Most parking brakes on heavy vehicles are of the spring brake design that require adequate brake system air pressure in order to release them so the vehicle can be moved.

FMVSS No. 121 has several requirements relating to the reservoirs and air compressor systems on trucks, buses, and trailers. The minimum size of the reservoirs is specified in FMVSS No. 121 so that an adequate reserve of air is available to repeatedly apply the brakes without an excessive loss of system air pressure. For trucks and buses, S5.1.2.1 requires that the total reservoir volume (combined volume of primary, secondary, and supply reservoirs) is at least 12 times the combined volume of all of the service brake chambers on the vehicle. Slight exceptions are provided in *Table V—Brake Chamber Rated Volumes*, so that vehicle manufacturers can install long-stroke brake chambers in place of standard-stroke brake chambers without having to increase the size of the reservoirs. For trailers, S5.2.1.1 requires that trailers have a reservoir capacity that is at least eight times the combined volume of the brake chambers, and again an exception is provided via *Table V* for the use of long-stroke brake chambers.

S5.1.1 *Air compressor* requires that an air compressor has sufficient capacity to increase the pressure in the reservoirs from 85 psi to 100 psi within the time, in seconds, expressed by the equation: [Actual reservoir capacity ×



25] + [required reservoir capacity], with the engine at maximum recommended r.p.m. Thus if a truck had minimum-sized air reservoirs, the compressor must be able to reach 100 psi from 85 psi within 25 seconds with the engine at maximum recommended rated speed. S5.1.1.1 *Air compressor cut-in pressure* requires that the governor cut-in pressure is at least 85 psi for a bus and at least 100 psi for a truck.

S5.1.4 *Pressure gauge* requires a pressure gauge that is visible to the driver for each service brake system. In a typical split air brake system there are two independent air subsystems (primary and secondary) that each have a reservoir or series of reservoirs. The air pressure gauge has two pressure indicators (pointers)—one for the primary system, and one for the secondary system, or, two separate gauges can be used with one gauge provided for each system.

S5.1.5 *Warning signal* requires a low air pressure warning signal that is either visible to the driver, or if it is not directly in front of the driver, is both visible and audible. The warning signal must activate when the pressure in any reservoir system is below 60 psi and the vehicle's ignition is in the "on" position.

### III. Function of Low Air Pressure Warning and Gauges in Normal and Emergency Braking Conditions

During normal driving, the reservoir systems are automatically recharged by the air compressor, and the driver can monitor the air pressure gauges to see that the air pressure in the reservoirs is staying between the cut-in and cut-out pressure limits. Most drivers of air-braked vehicles are aware of the function of the low air pressure warning signal and air pressure gauges on heavy vehicles. The vast majority of drivers of air-braked vehicles have commercial drivers licenses (CDL's). In order to obtain a CDL with an endorsement to drive vehicles with air brakes, drivers are required to demonstrate that they possess the knowledge and skills to operate a vehicle equipped with air brakes. After starting the engine, the air brake system builds pressure in the primary and secondary systems as indicated by the gauges, and the low pressure warning turns off indicating normal system operation. However, the minimum pressure for the low air pressure warning system activation as required in FMVSS No. 121 is "below 60 psi" which is slightly higher than stated by the petitioner (55 psi, or one-half the compressor governor cut-out pressure, whichever is less). The petitioner cited the North American

Standard Out-of-Service Criteria for the low pressure warning device published by the Commercial Vehicle Safety Alliance and these air pressure values are slightly lower than required by FMVSS No. 121 that applies to the manufacturers of new vehicles. To ensure compliance with the "below 60 psi" requirement in FMVSS No. 121, the actual low pressure warning typically activates slightly above 60 psi when measured on vehicles.

There are several common types of brake system failures that can cause the low pressure warning signal to activate. To begin, minor leaks in the system can often be overcome by the capacity of the air compressor to re-supply air to the brake system. However, this discussion focuses on substantial leaks and failures that the air compressor cannot overcome, as well as failures of the air compressor itself.

A substantial leak in a brake hose supplying a service brake chamber, or in a service brake chamber (e.g., due to a failed diaphragm), will result in leakage whenever the brake pedal is applied. If the leak is sufficiently large and the brake pedal is applied for a long duration, the pressure in either the primary or secondary reservoir may become sufficiently low to activate the warning signal, which is required to activate when the air pressure in the service reservoir system is below 60 psi. However, the remaining service brake system (secondary or primary) will remain intact and provide for an emergency braking capability, and will continue to keep the parking brakes released. The driver would be able to determine by viewing the air pressure gauges the rate of pressure loss and whether the loss was in the primary or secondary system.

Failures or leaks can also occur in the air supply portion of the system, including the governor, air compressor, compressor discharge hose, and the air dryer located between the air compressor and the service reservoirs. Whether the compressor does not cut-in, or its discharge air is vented to atmosphere because of a hose failure downstream of the compressor, the result is that as the driver depletes air in both reservoir systems during the application of the service brakes, the pressure in both the primary and secondary systems continues to drop until the low-pressure warning system activates. Typically, the primary system will activate the low pressure warning signal first while the secondary system will have a higher pressure. At this point the vehicle is in emergency braking mode and the driver has the ability to pull off the roadway. If for

some reason the brakes were repeatedly applied, the pressure in both the primary and secondary systems would become further depleted and the spring brakes would eventually apply automatically which would also bring the vehicle to a stop. Truck drivers with CDLs are generally knowledgeable about these aspects of air brake system failures and the importance and meaning of low pressure warning signals.

### IV. Real World Data

The petitioner cites two scenarios for truck crashes that it states are related to the inadequacy of the currently required low air pressure warning system. The first is runaway trucks on downgrades that the petitioner claims is caused by air leaks. The petitioner provided no data to support this conclusion. Similarly, the agency is not aware that this is a prevalent crash mode. Our experience indicates that runaway truck crashes are most often due to brake fade from overheated and/or out-of-adjustment S-cam drum brakes that result in a loss of brake effectiveness, often exacerbated by excessive speed on a downgrade. We have no indications that runaway truck crashes are being caused by air leaks or contributed to by inadequate low pressure warning systems.

The other crash scenario presented by the petitioner was a truck stopping in an unsafe area because of an air leak that caused the parking brakes to apply and most drivers would not know how to move the vehicle. While it is true that this can happen, the agency has no indications of widespread problems with trucks being stranded on roadways or in unsafe areas due to loss of air pressure in the brake system and being involved in crashes. The petitioner also did not provide such data. Additionally, as we have previously stated, the current low-pressure warning system already alerts the driver of a substantial loss of air pressure and the truck's braking system can be operating in the emergency braking mode. As such, the driver can still make several brake applications to safely bring the truck to a stop off of a travel lane.

### V. Agency Analysis and Decision

The first requested change made by the petitioner is:

There needs to be a way to make the driver aware of when the air compressor is starting a new cycle. This lets the driver know there is a loss of air in the system. If he is not using the brakes and the air compressor is cycling he should stop the vehicle and do an inspection for an air leak or call for repairs to the air system before continuing on or before a possible accident on a downhill grade.

The agency believes that this change would mean that a lamp on the instrument panel would illuminate (or some other type of indicator would signal) every time that the air compressor cycled on at cut-in pressure. Since cycling of the compressor occurs during normal operation of a vehicle equipped with an air brake system, the agency believes that most truck drivers would find this to be a nuisance, particularly when driving at night. The agency's fleet evaluation experience in the early 1990's with antilock brake systems (ABS) warning lamps was that drivers would sometimes remove the bulb or cover it with opaque tape because of a perceived nuisance (when in fact it was indicating a malfunction in the ABS that, under hard braking, could result in a loss-of-control crash). A warning system that activates during normal operation may have a limited safety benefit, and activations are more effective when they only occur when there is a condition that warrants some type of intervention by the driver. Therefore, we do not believe it would be appropriate to adopt the petitioner's first request. However, we note that neither FMVSS No. 101, *Controls and Displays*, nor FMVSS No. 121 prohibits the addition of a compressor cycling lamp, if a truck operator chooses to have such a system installed.

The second requested change is:

They need to set the time on new vehicles at the factory on how long it takes the air compressor at the start of its cycle to meet the cut off pressure. If it is taking to[o] long or continuous running occurs there needs to be something to warn the driver there is a major problem. This is a very unsafe situation and should have a priority warning to the driver.

Regarding the requested change by the petitioner to set the required time for air pressure build time, we note that this facet of air brake systems is addressed in the previously discussed section S5.1.1 in FMVSS No. 121, which requires the air compressor to have sufficient capacity to increase the air system pressure from 85 to 100 psi in the specified amount of time. However, this requirement allows for some variation in the amount of time needed to charge the air system. Under FMVSS No. 121, the time for charging the air system is measured with the engine at maximum rated speed, so the actual charging time during normal driving can vary based upon actual engine speed and gear selection. Compared to charging time with the engine at maximum rated speed, the charging time would be longer when the truck is sitting at idle. Other factors, such as the frequency of brake application, number

of towed units, air being supplied to increase air suspension pressure, etc., would cause air to be depleted at the same time the air compressor is charging the system. Therefore, these would also affect the charging time, and we believe that requiring a warning to activate when a constant time period has elapsed is an impracticable requirement, given the variable nature of the charging period under the current regulatory scheme. We note that our safety standard already regulates performance in the area of air pressure charging time, but we believe that it does so more appropriately than the proposed change. For this reason, we are not adopting the petitioner's second request.

The final requested change is:

It would be some help to have a low air pressure warning device that comes on just before the start of the air compressor cycle. When this low air warning comes on the vehicle is in a dangerous situation. Number 1 and 2 will prevent this.

The third requested change in the petition is not clearly defined for the agency to fully evaluate. The statement "just before the start of the air compressor cycle" has two meanings. The first meaning is a pressure slightly above the cut-in pressure, e.g., approximately 105 to 110 psi. The second meaning is a pressure slightly below the cut-in pressure, e.g., approximately 90 to 95 psi. Based upon the information in the petition, the agency does not understand the concept of this warning lamp, and how its operation differs from the currently-required low pressure warning signal required in FMVSS No. 121, other than being set to activate at a higher air pressure. It also seems nearly identical to/redundant with the petitioner's first requested change, as this warning would activate just before the start of a new air compressor cycle, and then the warning from the first request would activate when the compressor began that new cycle. Furthermore, we note that activation of a warning signal at either of these pressures would result in the warning being activated extremely frequently, including during normal driving operations. Given these reasons, we are denying the petitioner's third requested change.

#### VI. Conclusion

Based upon this review of the petition, the agency is denying it. In summary, it appears that one or two warning lamps would be required to activate upon each cut-in of the compressor cycle, and this would not provide additional information to the driver beyond the information that is

already available from the existing air pressure gauges. In addition, we believe that warning systems that activate frequently during normal driving conditions can be perceived as a nuisance, and may have limited safety effect. Finally, we are not aware of any known safety problems not addressed by the existing low pressure warning signal requirements in FMVSS No. 121.

Issued: March 3, 2008.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E8-4460 Filed 3-6-08; 8:45 am]

BILLING CODE 4910-59-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 070917520-8258-02]

RIN 0648-AW06

### Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Fisheries of the Bering Sea and Aleutian Islands Management Area

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues a proposed rule that would implement Amendment 89 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) to establish Bering Sea habitat conservation measures. Amendment 89, if approved, would prohibit nonpelagic trawling in certain waters of the Bering Sea subarea to protect bottom habitat from the potential adverse effects of nonpelagic trawling. Amendment 89 also would establish the Northern Bering Sea Research Area for studying the impacts of nonpelagic trawling on bottom habitat. This proposed rule is necessary to protect Bering Sea subarea bottom habitat from the potential effects of nonpelagic trawling and to provide the opportunity to further study the effects of nonpelagic trawling on bottom habitat. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

**DATES:** Written comments must be received by April 21, 2008.

**ADDRESSES:** Send comments to Sue Salvesson, Assistant Regional

Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by 0648-AW06, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at <http://www.regulations.gov>.

- Mail: P. O. Box 21668, Juneau, AK 99802.

- Fax: (907) 586-7557.
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Copies of the FMP amendment, maps of the Bering Sea subarea nonpelagic trawl closure areas and Northern Bering Sea Research Area, and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for this action may be obtained from the Alaska Region NMFS address above or from the Alaska Region NMFS website at <http://www.fakr.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Melanie Brown, 907-586-7228 or email at [melanie.brown@noaa.gov](mailto:melanie.brown@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The Bering Sea and Aleutian Islands Management Area (BSAI) groundfish fisheries are managed under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations implementing the FMP appear at 50 CFR parts 679 and 680. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The Council has submitted Amendment 89 for review by the Secretary of Commerce, and a notice of availability of the amendment was published in the *Federal Register* on February 27, 2008 (73 FR 10415), with comments on the amendment invited through April 28, 2008. Comments may address the FMP amendment, the proposed rule, or both, but must be

received by April 28, 2008, to be considered in the approval/disapproval decision on the FMP amendment. All comments received by that time, whether specifically directed to the FMP amendment or to the proposed rule, will be considered in the approval/disapproval decision on the FMP amendment.

#### Background

In 2006, NMFS implemented essential fish habitat (EFH) protection measures for the Aleutian Islands subarea, Gulf of Alaska, and adjacent State of Alaska (State) waters (71 FR 36694, June 28, 2006, and corrected 72 FR 63500, November 9, 2007). The background on the development of the EFH protection measures is available in the proposed rule for that action (71 FR 14470, March 22, 2006). The EFH protection measures did not include the Bering Sea subarea as the Council recommended that additional analysis was needed to identify bottom habitat concerns and to develop potential conservation measures.

In June 2007, the Council recommended, and the Secretary proposes, closing areas to nonpelagic trawling as a precautionary measure to prevent the potential adverse effects of nonpelagic trawling on portions of bottom habitat of the Bering Sea subarea. These closed areas would include locations that have not been previously fished with nonpelagic trawl gear, nearshore bottom habitat areas that support subsistence marine resources, and a research area for further study of the potential impacts of nonpelagic trawling on bottom habitat. The proposed closed areas that extend into State waters would apply to federally permitted vessels operating in State waters. Maps of the proposed areas to be closed to nonpelagic trawling and the proposed research area are available from the Alaska Region NMFS website at <http://www.fakr.noaa.gov/habitat/efh.htm>. Each closed area and the research area are described in detail below.

#### Bering Sea Habitat Conservation Area

The Council recommended, and the Secretary proposes, limiting nonpelagic trawling in the Bering Sea subarea to areas that have historically been or are presently being fished with nonpelagic trawl gear. This action is intended to prevent expansion of the nonpelagic trawl fisheries into areas not previously fished with nonpelagic trawl gear and to provide for the developing arrowtooth flounder fishery. The remainder of the Bering Sea subarea would be closed to nonpelagic trawling. This action would

provide protection from the potential effects of nonpelagic trawling for areas where substantial amounts of nonpelagic trawling has not occurred.

The center of distribution of the arrowtooth flounder fishery is shifting to the northwest, and the Council intended that this fishery have the opportunity to target concentrations of arrowtooth flounder to ensure an efficient fishery. This potential movement of the arrowtooth flounder stock distribution may be related to an increase in the mean bottom water temperature in the Bering Sea subarea and is further described in the EA/RIR/IRFA for this action (see **ADDRESSES**).

The Council, working with the fishing industry and environmental organizations, identified the portion of the Bering Sea subarea that would be left open to nonpelagic trawling based on more than one occurrence of nonpelagic trawl fishing through 2005, and to provide for potential northwest shifting of the arrowtooth flounder distribution. Historical and present nonpelagic trawling is primarily on the continental slope extending into the southern portions of statistical areas 514 and 524. Several trawl closures currently exist within and to the south of this location. These include the Red King Crab Savings Area, Pribilof Island Area Habitat Conservation Zone, Chinook Salmon Savings Area, Chum Salmon Savings Area, and Nearshore Bristol Bay trawl closures under §§ 679.22(a) and 679.21(e)(7). In addition, waters north of Kuskokwim Bay are included in several additional nonpelagic trawl closures under this action and are further explain below. Most of the Bering Sea subarea west of the current trawled area does not have existing nonpelagic trawl closures.

The Bering Sea subarea east of the current trawled area is currently closed to nonpelagic trawling or is proposed to be closed to nonpelagic trawling under this action. The Council intends, and the Secretary proposes, to limit the nonpelagic trawl footprint in the Bering Sea subarea by establishing a nonpelagic trawl closed area in waters of the Bering Sea subarea to the west of areas that have been trawled with nonpelagic gear.

To provide a clear delineation of the location where nonpelagic trawling is prohibited, the proposed rule would establish the Bering Sea Habitat Conservation Area (BSHCA). The BSHCA would encompass waters of the Bering Sea subarea west of areas that have been trawled by nonpelagic gear along the shelf break of the continental slope. The BSHCA would include waters where no more than one occurrence of nonpelagic trawling has

occurred and where the future arrowtooth flounder fishery is not likely to occur. This area would be closed to nonpelagic trawling and would cover 46,776 square nautical miles (nm<sup>2</sup>).

The BSHCA would be located in statistical area 530 and portions of areas 518, 523, 533, and 531. The eastern border of the area generally follows the shelf break of the continental slope, provides for the expansion of the arrowtooth flounder fishery and meets the goal of prohibiting nonpelagic trawling where no more than one event of nonpelagic trawling has occurred. The southern boundary of the area follows the northern borders of the statistical areas of the Aleutian Islands subarea (areas 541, 542, and 543) with two deviations around the northern portions of the Bowers Ridge Habitat Conservation Zone (BRHCZ). The BRHCZ was established with the EFH protection measures for the Aleutian Islands (71 FR 36694, June 28, 2006) and is closed to mobile bottom contact gear, including nonpelagic trawling. The western boundary follows the edge of statistical area 550 and the limits of the U. S. Exclusive Economic Zone. The proposed BSHCA boundaries would

facilitate enforcement of the closure by generally following established statistical areas and present closed area boundaries. The BSHCA is depicted in Figure 16 in the proposed regulations below.

#### **St. Lawrence Island Habitat Conservation Area**

The Council recommended, and the Secretary proposes, closing waters surrounding St. Lawrence Island to nonpelagic trawl gear to conserve blue king crab habitat and minimize potential interactions with community use and subsistence fisheries taking place in nearshore areas. The boundaries of this area are based on the areas likely to support subsistence resources and along latitude and longitude lines to facilitate enforcement of the closure. This closure would cover 7,052 nm<sup>2</sup>. The St. Lawrence Island Habitat Conservation Area is depicted in Figure 17 in the proposed regulations below.

#### **St. Matthew Island Habitat Conservation Area**

The proposed rule would close waters near St. Matthew Island to nonpelagic trawling to protect bottom habitat for

blue king crab. Various life stages of blue king crab occur in waters surrounding St. Matthew Island. Waters southwest of the island contain juvenile, non-ovigerous female and male blue king crab habitat, and waters to the northeast contain ovigerous females. The blue king crab stock is severely depleted; the last pot survey found only 5 legal male blue king crab in the St. Matthew Island area. Some flatfish nonpelagic trawling has occurred near St. Matthew Island as the distribution of arrowtooth flounder, rock sole, flathead sole, and Alaska plaice has moved north in the Bering Sea subarea (Section 3 of the EA/RIR/IRFA, see **ADDRESSES**). Flatfish fishing near St. Matthew Island may increase if the flatfish fishery continues to move north. The Council recommended that the area near St. Matthew Island be closed to nonpelagic trawling given the depleted blue king crab stock and the potential effects of nonpelagic trawling on blue king crab habitat. The recommended closed area includes the waters where blue king crab have been found and is shaped using straight lines to facilitate enforcement of the closure (Figure 1). This closure would cover 4,013 nm<sup>2</sup>.

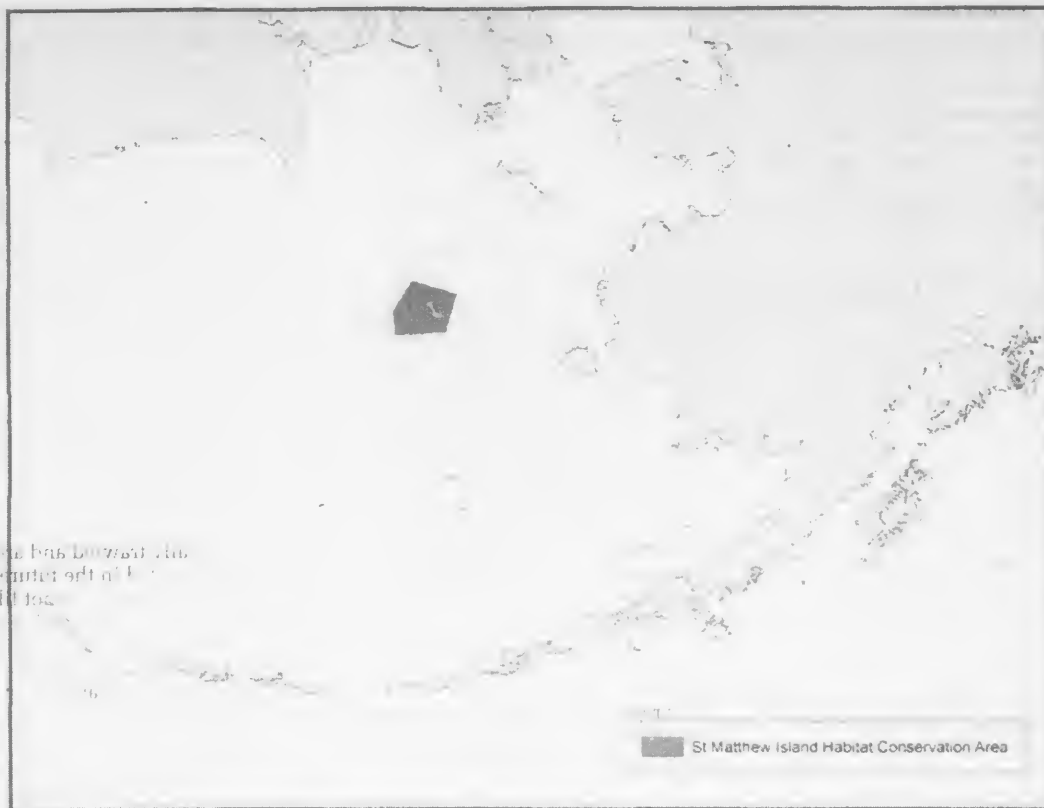


Figure 1. St. Matthew Island Habitat Conservation Area

**Nunivak Island, Etolin Strait, and Kuskokwim Bay Habitat Conservation Area**

The Council consulted with a workgroup of fishing industry and subsistence resource users to identify bottom habitat supporting subsistence marine resources for protection. These resources include marine mammals, fish, and seabirds harvested by subsistence users from coastal and interior Alaska. Based on the results of the workgroup, the Council recommended, and the Secretary proposes, prohibiting nonpelagic trawling in waters surrounding Nunivak Island and within Etolin Strait and Kuskokwim Bay. The northern and western edges of the area include waters with bottom habitat supporting subsistence resources and follow latitude and longitude lines to facilitate enforcement of the nonpelagic trawl closure. The southern boundary of the area is based on negotiations between the fishing industry and subsistence marine resource users. The boundaries of the closure area ensure access to important flatfish fishing locations

while providing protection of important bottom habitat supporting subsistence marine resources. This closure would cover 9,777 nm<sup>2</sup>. The Nunivak Island, Etolin Strait, and Kuskokwim Bay Habitat Conservation Area is depicted in Figure 21 in the proposed regulations text.

**Northern Bering Sea Research Area**

The Council also recommended, and the Secretary proposes, to establish the Northern Bering Sea Research Area (NBSRA) to further understand the potential effects of nonpelagic trawling on Bering Sea subarea bottom habitat. This area would include waters with little or no nonpelagic trawling north of the open area for nonpelagic trawling described above under the BSHCA description and north of the Nunivak Island, Etolin Strait, and Kuskokwim Bay Habitat Conservation Area. The proposed rule would close the NBSRA to commercial nonpelagic trawling to provide a controlled area to study the potential effects of nonpelagic trawling on bottom habitat. This area would include the northern portions of

statistical areas 514 and 524, exclusive of the closures around St. Lawrence. This closure would cover 65,859 nm<sup>2</sup>. The NBSRA is depicted in Figure 17 in the proposed regulations below.

The proposed rule would allow nonpelagic trawling within the NBSRA only within the scope of a nonpelagic trawling effects research plan. The Council intends that a research plan would be developed, in cooperation with the Alaska Fisheries Science Center, NMFS, that addresses potential protection measures for species that may depend on bottom habitat, including king and snow crabs, marine mammals, Endangered Species Act-listed species, and subsistence marine resources for Western Alaska communities. This research plan would be reviewed by the Council within 24 months after the publication of the final rule implementing Amendment 89. Any future nonpelagic trawling in the NBSRA would be limited to fishing under an exempted fishing permit issued under § 679.6 that meets the purposes of the approved research plan.



### Regulatory Amendments

The proposed rule would add definitions to § 679.2 and new coordinate tables and figures for the areas proposed to be closed to nonpelagic trawling and the research area. Because of the complexity of the area boundaries, the definitions for the BSHCA; NBSRA; and Nunivak Island, Etolin Strait, and Kuskokwim Bay Habitat Conservation Area would refer to Tables 42, 43, and 44, and Figures 16, 17, and 21 to part 679, respectively. The definitions for the St. Lawrence Island Habitat Conservation Area and St. Matthew Island Habitat Conservation Area would refer to Tables 45 and 46 to part 679 for the area boundaries; no figures are necessary due to the simple shapes of these closures.

The proposed rule would add to § 679.22(a)(16) through (20) to close the BSHCA, St. Matthew Island, St. Lawrence Island, Nunivak Island, Etolin Strait, Kuskokwim Bay habitat conservation areas, and NBSRA to nonpelagic trawling.

### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Acting Assistant Administrator has determined that this proposed rule is consistent with Amendment 89 to the FMP for Groundfish of the BSAI, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

NMFS prepared an initial regulatory flexibility analysis (IRFA), as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. Descriptions of the action, the reasons it is under consideration, and its objectives and legal basis, are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see ADDRESSES).

Fishing vessels, both catcher vessels and catcher/processors (CPs), are considered small, for RFA purposes, if their gross receipts, from all their economic activities combined, as well as those of any and all their affiliates anywhere in the world, (including fishing in federally-managed non-groundfish fisheries, and in Alaska-managed fisheries), are less than or

equal to \$4.0 million annually. Further, fishing vessels were considered to be large if they were affiliated with an American Fisheries Act fishing cooperative in 2004. The members of these cooperatives had combined revenues that exceeded the \$4.0 million threshold.

The entities that would be directly regulated by the alternatives are those vessels that fish for groundfish with nonpelagic trawl gear in the eastern Bering Sea off Alaska. Section 5.6 of the RIR provides a description of these fisheries and estimates the numbers of unique vessels that presently participate (see ADDRESSES). Approximately 22 to 24 vessels have participated in the nonpelagic trawl CP fishery off Alaska in recent years. Based on analysis of total annual gross revenues, two of the vessels should be classified as small entities. Six Community Development Quota groups and their associated communities are considered small entities and are directly regulated by this action because their allocation of BSAI species harvested by nonpelagic trawl gear occurs within the areas defined by this action.

This regulation does not impose new recordkeeping and reporting requirements on the regulated small entities.

The IRFA did not reveal any Federal rules that duplicate, overlap, or conflict with the proposed action.

The Council considered three alternatives (Alternatives 1, 2, and 3) and five options (Options 1, 2, 3, 4, and 5) to the alternatives for this action. The suite of alternatives and options were developed in consultation with members of the nonpelagic trawl CP fleet to minimize potential adverse economic effects on directly regulated entities. The preferred alternative and options constituting the "proposed action" reflect the least burdensome of management structures available in terms of directly regulated small entities, while fully achieving the conservation and management purposes articulated by the Council.

Alternative 1, the no action alternative, would not meet the objectives of this action. This alternative would allow nonpelagic trawling to expand into areas not previously trawled and would not meet the objective to protect certain bottom habitat in the Bering Sea subarea. Alternative 3, which would modify flatfish trawl gear to reduce contact with the bottom, was not recommended by the Council at this time because the gear is currently under development, and gear standards are not yet ready for implementation.

Under Alternative 2 for the BSHCA, the boundaries of the closure area were established in locations that have not been trawled more than once and are not likely to be trawled in the future. In addition, the boundary of the BSHCA was adjusted to allow for potential future development of the arrowtooth flounder fishery. These features of the BSHCA mitigate potential adverse economic effects on small entities by allowing continued fishing where substantial amounts of fishing have already occurred and to allow for future expansion of the arrowtooth flounder fishery.

The boundaries for the nonpelagic trawl closures under Options 1, 3, 4, and 5 also were developed in consultation with members of the nonpelagic trawl CP fleet. Under Options 1 and 5, the waters near St. Matthew and St. Lawrence Islands were not substantially trawled and are not likely to be trawled in the future, so the closures in these areas are not likely to result in an adverse economic effect on small entities. Option 2 closed waters near Nunivak Island and Etolin Strait but would not close waters within Kuskokwim Bay to nonpelagic trawling. Option 3 expanded on the closures under Option 2 by establishing the Nunivak Island, Etolin Strait, and Kuskokwim Bay closure boundaries. Option 3 closures were carefully negotiated between members of the nonpelagic trawl CP fleet and some users of the subsistence marine resources in the area. Adjustments were made to the boundaries to ensure the flatfish fleet had access to concentrations of flatfish while still maintaining overall protection to bottom habitat from the potential effects of nonpelagic trawling. These boundary adjustments reduce potential adverse economic effects on small entities participating in the flatfish trawl fishery.

Under Option 4 for the NBSRA, the southern boundary of the area was also based on consultation with members of the affected trawl CP fleet to ensure the closure would not prevent fishing in areas currently fished and allowed for some northern movement of the fleet if fish stocks also move north with global warming. The southern boundary of the NBSRA would mitigate any potential adverse economic impact on small entities by allowing continued fishing in locations historically fished and permitting some flexibility with any future movement of fish stocks.

Executive Order (E.O.) 13175 of November 6, 2000 (25 U.S.C. 450 note), the Executive Memorandum of April 29, 1994 (25 U.S.C. 450 note), and the

American Indian and Alaska Native Policy of the U. S. Department of Commerce (March 30, 1995) outline the responsibilities of NMFS in matters affecting tribal interests. Section 161 of Public Law (P.L.) 108-199 (188 Stat. 452), as amended by section 518 of P.L. 109-447 (118 Stat. 3267), extends the consultation requirements of E. O. 13175 to Alaska Native corporations.

NMFS will contact tribal governments and Alaska Native corporations which may be affected by the proposed action, provide them with a copy of this proposed rule, and offer them an opportunity to consult.

**List of Subjects in 50 CFR Part 679**

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: March 3, 2008.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

For reasons set out in the preamble, NMFS proposes to amend 50 CFR part 679 as follows:

**PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA**

1. The authority citation for part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108 447.

2. In § 679.2, add in alphabetical order definitions for “Bering Sea Habitat Conservation Area”, “Northern Bering Sea Research Area”, “Nunivak Island, Etolin Strait, and Kuskokwim Bay Habitat Conservation Area”, “St. Lawrence Island Habitat Conservation Area”, and “St. Matthew Island Habitat Conservation Area” to read as follows:

**§ 679.2 Definitions.**

\* \* \* \* \*

*Bering Sea Habitat Conservation Area* means a habitat protection area specified at Table 42 and Figure 16 to this part.

\* \* \* \* \*

*Northern Bering Sea Research Area* means a habitat research area specified at Table 43 and Figure 17 to this part.

*Nunivak Island, Etolin Strait, and Kuskokwim Bay Habitat Conservation Area* means a habitat protection area specified at Table 44 and Figure 21 to this part.

\* \* \* \* \*

*St. Lawrence Island Habitat Conservation Area* means a habitat protection area specified at Table 45 to this part.

*St. Matthew Island Habitat Conservation Area* means a habitat

protection area specified at Table 46 to this part.

\* \* \* \* \*

3. In § 679.22, paragraphs (a)(16) through (a)(20) are added to read as follows:

**§ 679.22 Closures.**

(a) \* \* \*

(16) *Bering Sea Habitat Conservation Area.* No federally permitted vessel may fish with nonpelagic trawl gear in the Bering Sea Habitat Conservation Area specified at Table 42 and Figure 16 to this part.

(17) *Northern Bering Sea Research Area.* No federally permitted vessel may fish with nonpelagic trawl gear in the Northern Bering Sea Research Area specified at Table 43 and Figure 17 to this part.

(18) *Nunivak Island, Etolin Strait, and Kuskokwim Bay Habitat Conservation Area.* No federally permitted vessel may fish with nonpelagic trawl gear in the Nunivak Island, Etolin Strait, and Kuskokwim Bay Habitat Conservation Area specified at Table 44 and Figure 21 to this part.

(19) *St. Lawrence Island Habitat Conservation Area.* No federally permitted vessel may fish with nonpelagic trawl gear in the St. Lawrence Island Habitat Conservation Area specified at Table 45 to this part.

(20) *St. Matthew Island Habitat Conservation Area.* No federally permitted vessel may fish with nonpelagic trawl gear in the St. Matthew Island Habitat Conservation Area specified at Table 46 to this part.

\* \* \* \* \*

4. Tables 42 through 46 are added to part 679 to read as follows:

**TABLE 42 TO PART 679 – BERING SEA HABITAT CONSERVATION AREA.**

Longitude	Latitude
179 19.95 W	59 25.15 N
177 51.76 W	58 28.85 N
175 36.52 W	58 11.78 N
174 32.36 W	58 8.37 N
174 26.33 W	57 31.31 N
174 0.82 W	56 52.83 N
173 0.71 W	56 24.05 N
170 40.32 W	56 1.97 N
168 56.63 W	55 19.30 N
168 0.08 W	54 5.95 N
170 0.00 W	53 18.24 N
170 0.00 W	55 0.00 N
178 46.69 E	55 0.00 N
178 27.25 E	55 10.50 N
178 6.48 E	55 0.00 N
177 15.00 E	55 0.00 N
177 15.00 E	55 5.00 N
176 0.00 E	55 5.00 N
176 0.00 E	55 0.00 N
172 6.35 E	55 0.00 N
173 59.70 E	56 16.96 N

Note: The area is delineated by connecting the coordinates in the order listed by straight lines. The last set of coordinates for each area is connected to the first set of coordinates for the area by a straight line. The projected coordinate system is North American Datum 1983, Albers.

**TABLE 43 TO PART 679 – NORTHERN BERING SEA RESEARCH AREA.**

Longitude	Latitude
168 7.48 W	65 37.48N*
165 1.54 W	60 45.54 N
167 59.98 W	60 45.55 N
171 9.92 W	60 3.52 N
172 0.00 W	60 54.00 N
174 1.24 W	60 54.00 N
176 13.51 W	62 6.56 N
172 24.00 W	63 57.03 N
172 24.00 W	62 42.00 N
168 24.00 W	62 42.00 N
168 24.00 W	64 0.00 N
172 17.42 W	64 0.01 N
168 58.62 W	65 30.00 N
168 58.62 W	65 37.48 N

Note: The area is delineated by connecting the coordinates in the order listed by straight lines except as noted by \* below. The last set of coordinates for each area is connected to the first set of coordinates for the area by a straight line. The projected coordinate system is North American Datum 1983, Albers.

\* This boundary extends in a clockwise direction from this set of geographic coordinates along the shoreline at mean lower-low tide line to the next set of coordinates.

TABLE 44 TO PART 679 – NUNIVAK ISLAND, ETOLIN STRAIT, AND KUSKOKWIM BAY HABITAT CONSERVATION AREA.

Longitude	Latitude
165 1.54 W	60 45.54 N*
162 7.01 W	58 38.27 N
162 10.51 W	58 38.35 N
162 34.31 W	58 38.36 N
162 34.32 W	58 39.16 N
162 34.23 W	58 40.48 N
162 34.09 W	58 41.79 N
162 33.91 W	58 43.08 N
162 33.63 W	58 44.41 N
162 33.32 W	58 45.62 N
162 32.93 W	58 46.80 N
162 32.44 W	58 48.11 N
162 31.95 W	58 49.22 N
162 31.33 W	58 50.43 N
162 30.83 W	58 51.42 N
162 30.57 W	58 51.97 N
163 17.72 W	59 20.16 N
164 11.01 W	59 34.15 N
164 42.00 W	59 41.80 N
165 0.00 W	59 42.60 N
165 1.45 W	59 37.39 N
167 40.20 W	59 24.47 N
168 0.00 W	59 49.13 N
167 59.98 W	60 45.55 N

Note: The area is delineated by connecting the coordinates in the order listed by straight lines, except as noted by \* below. The last set of coordinates for each area is connected to the first set of coordinates for the area by a straight line. The projected coordinate system is North American Datum 1983, Albers.

\* This boundary extends in a clockwise direction from this set of geographic coordinates along the shoreline at mean lower-low tide line to the next set of coordinates.

TABLE 45 TO PART 679 – ST. LAWRENCE ISLAND HABITAT CONSERVATION AREA.

Longitude	Latitude
168 24.00 W	64 0.00 N
168 24.00 W	62 42.00 N
172 24.00 W	62 42.00 N
172 24.00 W	63 57.03 N
172 17.42 W	64 0.01 N

Note: The area is delineated by connecting the coordinates in the order listed by straight lines. The last set of coordinates for each area is connected to the first set of coordinates for the area by a straight line. The projected coordinate system is North American Datum 1983, Albers.

TABLE 46 TO PART 679 – ST. MATTHEW ISLAND HABITAT CONSERVATION AREA.

Longitude	Latitude
172 0.00 W	60 54.00 N
171 59.92 W	60 3.52 N
174 0.50 W	59 42.26 N
174 24.98 W	60 9.98 N
174 1.24 W	60 54.00 N

Note: The area is delineated by connecting the coordinates in the order listed by straight lines. The last set of coordinates for each area is connected to the first set of coordinates for the area by a straight line. The projected coordinate system is North American Datum 1983, Albers.

5. Figures 16 and 17 are added to part 679 to read as follows:

BILLING CODE 3510-22-S



Figure 16 to part 679. Bering Sea Habitat Conservation Area



Figure 17 to part 679. Northern Bering Sea Research Area and St. Lawrence Island Habitat Conservation Area

6. Figure 21 is added to part 679 to read as follows:



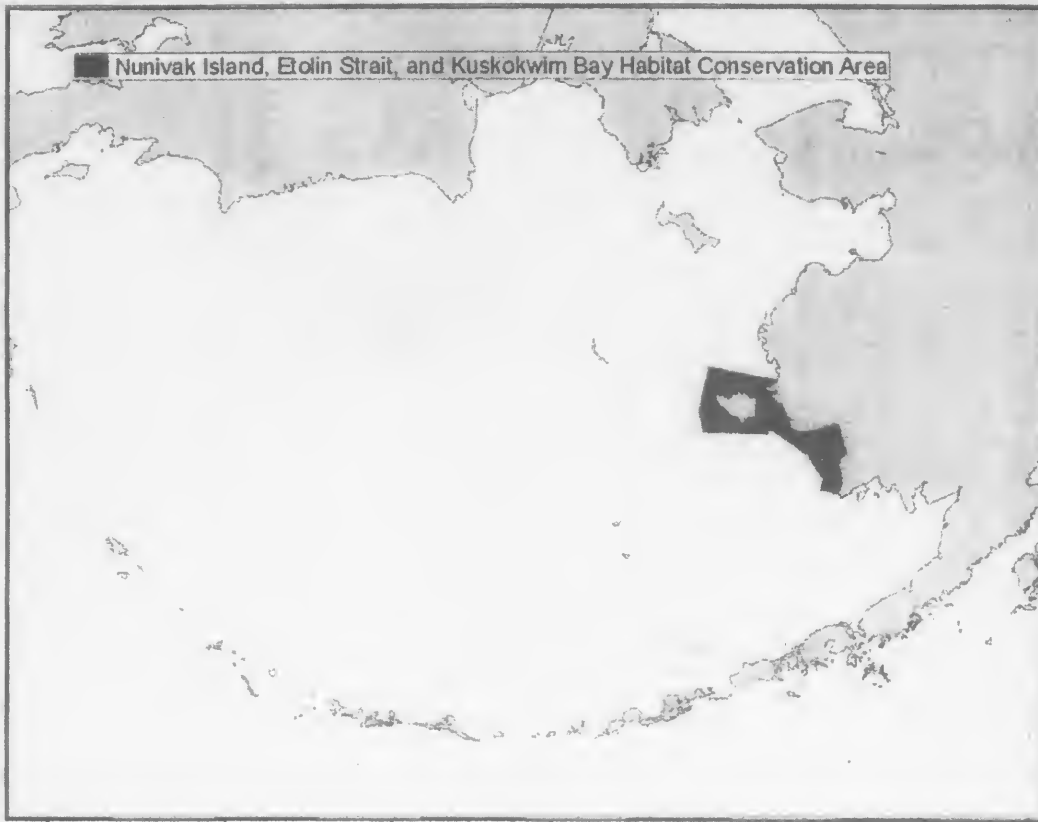


Figure 21 to part 679. Nunivak Island, Etolin Strait, and Kuskokwim Bay Habitat Conservation Area

[FR Doc. 08-988 Filed 3-6-08; 8:45 am]  
BILLING CODE 3510-22-C

## Notices

Federal Register

Vol. 73, No. 46

Friday, March 7, 2008

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

### COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

#### Procurement List; Proposed Additions and Deletions

**ACTION:** Proposed Additions to and Deletions from the Procurement List.

**SUMMARY:** The Committee is proposing to add to the Procurement List a product and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products and services previously furnished by such agencies.

*Comments Must Be Received on or Before:* April 6, 2008.

*Address:* Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202-3259.

*For Further Information or To Submit Comments Contact:* Kimberly M. Zeich, Telephone: (703) 603-7740, Fax: (703) 603-0655, or e-mail [CMTEFedReg@jwod.gov](mailto:CMTEFedReg@jwod.gov).

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

#### Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the product and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

#### Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities.

The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the product and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the product and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

#### End of Certification

The following product and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

#### Product

Peel & Stick, Non-Skid Kits

NSN: 2040-00-NIB-0333—Traction Material, 25 ft RBS USCG Boat Kit-770.

NSN: 2040-00-NIB-0336—Traction Material, 41 ft MLB USCG Boat Kit-770.

NSN: 2040-00-0339—Traction Material, 45 ft RBM USCG Boat Kit-770, 370, 310.

NSN: 2040-00-NIB-0342—Traction Material, 47 ft MLB USCG Boat Kit-770.

NSN: 2040-00-NIB-0345—Traction Material, 55 ft ANB USCG Boat Kit-770.

NSN: 2040-00-NIB-0348—Traction Material, 75 ft USCG Boat Kit-770.

NSN: 2040-00-NIB-0351—Traction Material, 87 ft WBP USCG Boat Kit-770.

NSN: 2040-00-NIB-0356—Traction Material, 110 ft USCG Boat Kit-770 (280).

NSN: 2040-00-NIB-0357—Traction Material, 110 ft USCG Boat Kit-770 (264).

NSN: 2040-00-NIB-0359—Traction Material, 27 ft UTM USCG Boat Kit-770.

NSN: 2040-00-NIB-0360—Traction Material, 23 ft UTM USCG Boat Kit-770.

NSN: 2040-00-NIB-0361—Traction Material, CBLII Boat Kit-770.

NSN: 2040-00-NIB-0362—Traction Material, 25 ft RB-HS USCG Boat Kit-770.

NSN: 2040-00-NIB-0363—Traction Material, 33 ft SPCLC USCG Boat Kit-770.

NSN: 2040-00-NIB-0364—Traction Material, 123 ft USCG Boat Kit-770.

NSN: 2040-00-NIB-0365—Traction Material, 225 ft USCG Boat Kit-770.

NPA: Louisiana Association for the Blind, Shreveport, LA.

Coverage: C-List for the requirements of the U.S. Coast Guard.

Contracting Activity: U.S. Coast Guard, Lockport, LA.

#### Services

Service Type/Location: Custodial Services, U.S. Department of Agriculture, Forest Service—District Office, 4000 I-75 Business Spur, Sault Sainte Marie, MI.

NPA: Northern Transitions, Inc., Sault Sainte Marie, MI.

Contracting Activity: Hiawatha National Forest, Escanaba, MI.

Service Type/Location: Document Destruction, Internal Revenue Service, 600 Main Street, Richmond, VA.

NPA: Goodwill Services, Inc., Richmond, VA.

Service Type/Location: Document Destruction, Internal Revenue Service, 806 Governors Drive SW, Huntsville, AL.

Service Type/Location: Document Destruction, Internal Revenue Service, 2204 Lakeshore Drive, Suite 210, Birmingham, AL.

Service Type/Location: Document Destruction, Internal Revenue Service, 204 S. Walnut St., Florence, AL.

NPA: United Cerebral Palsy of Greater Birmingham, Inc., Birmingham, AL.

Service Type/Location: Document Destruction, Internal Revenue Service, 2203 N. Lois Avenue, Tampa, FL.

Service Type/Location: Document Destruction, Internal Revenue Service, 3848 W. Columbus Drive, Tampa, FL.

Service Type/Location: Document Destruction, Internal Revenue Service, 9450 Koger Boulevard, St. Petersburg, FL.

NPA: Louise Graham Regeneration Center, Inc., St. Petersburg, FL.

Contracting Activity: U.S. Department of the Treasury, Internal Revenue Service, Chamblee, GA.

Service Type/Location: Grounds Maintenance, Naval Submarine Base, New London, Basewide, Groton, CT.

NPA: CW Resources, Inc., New Britain, CT.

Contracting Activity: Naval Facilities Engineering Command, Mid-Atlantic, Groton, CT.

#### Deletions

##### Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action should not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the product and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the product and service proposed for deletion from the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

#### End of Certification

The following product and service are proposed for deletion from the Procurement List:

#### Product

Paperweight, Shotfilled  
NSN: 7510-00-286-6985

NPA: New Mexico Industries for the Blind, Albuquerque, NM.

Contracting Activity: General Services Administration, Office Supplies & Paper Products Acquisition Ctr., New York, NY.

#### Service

Service Type/Location: Janitorial/Custodial, Abingdon Memorial USARC, Abingdon, VA.

NPA: Highlands Community Services Board, Bristol, VA.

Contracting Activity: 99th USAR Regional Support Command, Coraopolis, PA.

Kimberly M. Zeich,

Director, Program Operations.

[FR Doc. E8-4537 Filed 3-6-08; 8:45 am]

BILLING CODE 6353-01-P

### COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

#### Procurement List: Addition and Deletions

**AGENCY:** Committee for Purchase from People Who Are Blind or Severely Disabled.

**ACTION:** Addition to and Deletions from the Procurement List.

**SUMMARY:** This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products and services previously furnished by such agencies.

**DATES: Effective Date:** April 6, 2008.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202-3259.

**FOR FURTHER INFORMATION CONTACT:** Kimberly M. Zeich, Telephone: (703) 603-7740, Fax: (703) 603-0655, or e-mail [CMTEFedReg@jwod.gov](mailto:CMTEFedReg@jwod.gov).

#### SUPPLEMENTARY INFORMATION:

#### Addition:

On January 11, 2008, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (73 FR 2003) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

#### Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the service proposed for addition to the Procurement List.

#### End of Certification

Accordingly, the following service is added to the Procurement List:

#### Service:

Service Type/Location: Warehousing & Distribution of the IRS Incentive Awards for BRAVO! Awards Program, Internal Revenue Service Business Operations Offices, 333 Market Street, San Francisco, CA

NPA: Bobby Dodd Institute, Inc., Atlanta, GA  
Contracting Activity: Department of the Treasury, Internal Revenue Service, San Francisco, CA

#### Deletions:

On January 4 and January 11, 2008, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (73 FR 841; 2004) of proposed deletions to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

#### Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action should not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the products and services deleted from the Procurement List.

#### End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

#### Products:

Cover, Map

NSN: 8460-00-287-2137

NSN: 8460-00-287-2140

NPA: Goodwill Industries of the Valleys, Inc., Roanoke, VA

Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, PA

Pencil, Mechanical, Bold Point

NSN: 7520-01-354-2304

NPA: San Antonio Lighthouse for the Blind, San Antonio, TX

Contracting Activity: General Services Administration, Office Supplies & Paper Products Acquisition Ctr., New York, NY

#### Services:

Service Type/Location: Janitorial/Custodial, Federal Aviation Administration Facilities, Albany County Airport, Albany, NY

NPA: Albany County Chapter, NYSARC, Inc., Slingerlands, NY

Contracting Activity: Federal Aviation Administration, John F. Kennedy International Airport, Jamaica, NY

Service Type/Location: Janitorial/Mechanical Maintenance, U.S. Federal Building, U.S. Post Office, 403 West Lewis Street, Pasco, WA

NPA: Columbia Industries, Kennewick, WA

Contracting Activity: General Services Administration, Public Buildings Service, Region 10

Kimberly M. Zeich,

Director, Program Operations.

[FR Doc. E8-4538 Filed 3-6-08; 8:45 am]

BILLING CODE 6353-01-P

**COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED**

**Clarification of Scope of Procurement List Additions; 2007 Commodities Procurement List; Quarterly Update of the A-List and Movement of Products Between the A-List, B-List and C-List**

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Publication of the quarterly update of the A-list and movement of products between the A-list, B-list and C-list as of January 1, 2008.

**SUMMARY:** The Committee for Purchase From People Who Are Blind or Severely Disabled, in accordance with the procedures published on December 1, 2006 (71 FR 69535-69538), has updated the scope of the Program's procurement preference requirements for the products listed below between and among the Committee's A-list, B-list and C-list. A-list products are suitable for the Total Government Requirement as aggregated by the General Services Administration, the B-list are those products suitable for the Broad Government Requirement as aggregated by the General Services Administration, and C-list products are suitable for the requirements of one or more specified agency(ies). The lists below track changes to A-, B-, C-designations that occurred between November 26, 2007 and March 4, 2008.

**DATES:** The effective date for the quarterly update of the A-list and movement of products between and among the A-list, B-list and C-list is April 1, 2008.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202-3259.

**FOR FURTHER INFORMATION CONTACT:** Emily A. Covey, Telephone: (703) 603-7740, Fax: (703) 603-0655, or e-mail [cmtefedreg@jwod.gov](mailto:cmtefedreg@jwod.gov).

Products moved from B-list to A-list: None.

Products moved from C-list to A-list: None.

Products moved from A-list to B-list: None.

Products moved from A-list to C-list: None.

Products moved from B-list to C-list: None.

Products moved from C-list to B-list: None.

The complete A-list is available at [http://www.jwod.gov/jwod/p\\_and\\_s/alist2007.htm](http://www.jwod.gov/jwod/p_and_s/alist2007.htm).

Kimberly M. Zeich,  
Director, Program Operations.  
[FR Doc. E8-4540 Filed 3-6-08; 8:45 am]  
BILLING CODE 6353-01-P

**DEPARTMENT OF COMMERCE**

**Bureau of the Census**

[Docket Number 070306047-8100-02]

**Final Procedures for Participation in the 2010 Decennial Census Local Update of Census Addresses Program**

**AGENCY:** Bureau of the Census, Department of Commerce.

**ACTION:** Final notice.

**SUMMARY:** This notice documents the final procedures for the 2010 Decennial Census Local Update of Census Addresses (LUCA) program, as well as the comments received on the proposed procedures published in the June 22, 2007, *Federal Register* notice (72 FR 34434). The Bureau of the Census (Census Bureau) is using the LUCA program to help develop the housing unit and group quarters (e.g., college dormitory, nursing home, correctional facility, etc.) address information that it will need to conduct the 2010 Decennial Census LUCA program. The LUCA program is offered to tribal, state, and local units of general-purpose governments, such as cities and townships, and the District of Columbia and Puerto Rico (or their designated representatives), in areas where the Census Bureau performs a precensus address canvassing operation. Participants have three options for reviewing and annotating the 2010 Decennial Census LUCA program materials.

A future notice will announce the establishment, outside the Department of Commerce (DOC), of the Census Address List Appeals process that will be established by the Office of Management and Budget (OMB) for the 2010 Census LUCA program. The Census Bureau and the OMB will publish a separate *Federal Register* notice seeking comments on this Appeals process at a later date.

**DATES:** These LUCA program procedures, which reflect revisions based on public comment following publication of draft procedures, will go into effect on March 7, 2008.

**ADDRESSES:** Please send any correspondence about the 2010 Census LUCA program procedures to Ms.

Teresa Angueira, Associate Director for Decennial Census, U.S. Census Bureau, Washington, DC 20233.

**FOR FURTHER INFORMATION CONTACT:** For information about the Census Bureau's 2010 Census LUCA program, contact Ms. Linda M. Franz, Assistant Division Chief for Geographic Partnership Programs, Geography Division, U.S. Census Bureau, Washington, DC 20233-7400; telephone (301) 763-9061; fax (301) 763-4710; or by e-mail at [linda.m.franz@census.gov](mailto:linda.m.franz@census.gov).

**SUPPLEMENTARY INFORMATION:**

**The Census Address List Improvement Act of 1994**

The Census Address List Improvement Act of 1994 (Pub. L. 103-430, 108 Stat. 4393 (1994)) mandates the establishment of a program to be used by the Census Bureau for developing the decennial census address list, and address lists for other censuses and surveys conducted by the Census Bureau. The Act's provisions direct the Secretary of Commerce to: (1) Publish standards defining the content and structure of address information that tribal, state, and local governments may submit to be used for developing a national address list; (2) develop and publish a timetable for the Census Bureau to receive, review, and respond to submissions; and (3) provide a response to the submissions regarding the Census Bureau's determination for each address. The Act provides further that OMB's Administrator of the Office of Information and Regulatory Affairs, acting through the Chief Statistician and in consultation with the Census Bureau, shall develop a process for tribal, state, and local governments to appeal determinations of the Census Bureau. The Act also directs the U.S. Postal Service to provide the Secretary of Commerce with address information, as appropriate, for use by the Census Bureau.

The Act authorizes the Census Bureau to provide designated officials of tribal, state, and local governments with access to census addresses information. Prior to Census 2000, the Census Bureau was limited to providing block summary totals of addresses to tribal, state, and local governments. Census 2000 marked the first decennial census where tribal and local governments were able to review the census address list.

**Summary of Comments Received in Response to the Proposed Program**

On June 22, 2007, the Census Bureau issued a *Federal Register* notice (72 FR 34434) requesting comments on the proposed procedures for developing the

specific components of the 2010 Decennial Census LUCA program. Three comments were received on the proposal during the comment period. After the comment period closed, other communications that did not cite the notice of proposed procedures, but raised concerns about aspects of the proposed LUCA program, were received and considered by the Census Bureau. This notice issues final procedures that incorporate changes made as a result of comments received.

A summary of the public comments and the Census Bureau's response are provided below.

*Comment 1.* One commenter suggested that the Census Bureau should not have a program to check the address list that is separate from the census itself. The Census Bureau did not adopt this suggestion because doing so would not allow it to meet the statutory requirement to conduct an address list review by tribal and local governments, including an appeals process to be completed prior to Census Day.

*Comment 2.* Another commenter suggested that LUCA program materials reflecting the results of the Master Address File/Topologically Integrated Geographic Encoding and Referencing Accuracy Improvement Program (MTAIP) be made available by November 2007. The Census Bureau did not adopt this suggestion because the contract for the MTAIP calls for an April 2008 completion and cannot be further accelerated because of contractor capacity and availability of source materials.

*Comment 3.* A commenter indicated that the notice did not specify which addresses would be eligible for appeal. The Census Bureau has not yet determined which addresses would be eligible for appeal. As stated in the notice of June 22, 2007, the Census Bureau and OMB will address this subject and will jointly solicit public comments in a future *Federal Register* notice.

*Comment 4.* A comment was received that expressed concern about no special LUCA procedures having been specified for Gulf Coast hurricane-affected areas. The Census Bureau, as part of its planning process, considered this issue in its discussions with officials in the Gulf Coast area (who offered no suggestions for modifications of the LUCA program for their area). Beyond scheduling LUCA outreach and training earlier for the Gulf Coast areas, the Census Bureau determined that no further special LUCA procedures were required, as these procedures provided adequate opportunities for these areas to

participate. However, the Census Bureau is considering the adoption of special procedures for the address updating operations planned for the Gulf Coast areas.

*Comment 5.* Another comment suggested that the Census Bureau needed a system for tracking the return of confidential materials. Such a system is already part of the LUCA program plan.

*Comment 6.* A commenter requested more advanced LUCA outreach, especially through state officials, as well as separate promotional and technical LUCA workshops. This comment was based on the commenter's observations of the 2008 Census Dress Rehearsal of the LUCA program. The Census Bureau acknowledges the need for more outreach and had already taken steps to incorporate workshops/meetings/outreach events for the 2010 LUCA program prior to receiving this comment.

*Comment 7.* A comment indicated that there needs to be further testing of the Census Bureau-provided Geographic Information System (GIS) tool available to LUCA participants. The Census Bureau agrees that further testing of the GIS tool was necessary and conducted additional user testing in cooperation with local officials.

*Comment 8.* A commenter expressed support for a prior U.S. Government Accountability Office recommendation that the Census Bureau collect data from governments that register for the LUCA program, but neither provided address list changes nor stated why no changes were provided. The Census Bureau agrees that this information would be useful and will request it from governments that register for the LUCA program but do not provide updates.

After the close of the comment period, the Census Bureau received a number of comments objecting to the suppression of all addresses contained within the boundary of any federally-recognized American Indian reservation or off-reservation trust land from the address lists provided to other governments, the boundaries of which overlap or are encompassed by the reservation boundaries. As a result, the Census Bureau has revised the LUCA program to permit access to census address lists to all local units of general purpose government without regard to boundary or location. These addresses were to appear only on LUCA materials provided to participating tribal governments. This was premised upon the Census Bureau's recognition of the unique government-to-government relationship between the federal government and federally-recognized

tribal governments. While the proposed procedures would not have provided non-tribal local governments within a reservation with the addresses for their jurisdiction, the Census Bureau recognized the need for accurate data and encouraged tribal governments to coordinate their work with non-tribal governments in overlapping areas to ensure that all addresses are identified for census purposes. If a tribal government chose not to participate in the LUCA program, the Census Bureau encouraged the tribe to delegate authority to review the address list to a state, county, or local government.

We note that the LUCA program is not, and never has been, intended to imply, directly or indirectly, sovereignty, jurisdiction, or other oversight by one governmental entity over another. Any contrary understanding of the purpose of this program is not intended by the Census Bureau. The statute contemplates that the Secretary of Commerce will provide officials of all local units of general purpose government access to census address information. The statute neither addresses issues of sovereignty nor authorizes the Census Bureau to determine issues of sovereignty between federally-recognized Indian reservations and other local units government, including those located wholly or partly within the boundaries of federally-recognized Indian reservations. Thus, access to addresses must be granted without consideration of sovereignty issues.

Therefore, understanding the concerns raised in comments received and to ensure compliance with the statutory obligation to provide address lists for review to local units of general purpose government and acquisition of the most accurate address lists possible, the Census Bureau determined that it would invite local governments within tribal areas to participate fully in the LUCA program. This change does not in any way affect the ability of tribal governments to participate in the LUCA program. However, it should advance inclusiveness and further the Census Bureau's goal of developing the most accurate address lists possible.

#### The 2010 Census LUCA Program Process

The Census Bureau is conducting the 2010 Census LUCA program to help develop the address information it needs to conduct the 2010 Census. The purpose of the 2010 Census LUCA program is to ensure that the Census Bureau develops, with the cooperation of tribal, state, and local units of general purpose governments (or their



designated representatives) in areas for which the Census Bureau is developing its address list in advance of the 2010 Census, the most accurate address list possible, in order to undertake the most accurate census possible. This vital activity ensures not only accurate representation in the U.S. House of Representatives, but also the accurate distribution of over \$300 billion in federal funds to tribal, state, and local governments. The 2010 Census LUCA program is available to tribal, state, and local governments (or their designated representatives) in areas for which the Census Bureau is developing its address list in advance of the 2010 Census.

Jurisdictions or parts of jurisdictions with special enumeration needs are not eligible to receive 2010 Census LUCA materials. The Census Bureau will not prepare advance address lists for jurisdictions or parts of jurisdictions for certain situations. These areas may include remote, sparsely populated areas, and/or resort areas. For such areas, where practicable, the Census Bureau will provide the opportunity for a local government designee to check the address list and provide information to assist the Census Bureau in locating suspected missing living quarters in a single field revisit prior to the end of the enumeration. This activity is not part of the LUCA program and does not result in feedback to any government entity, nor does it include an appeals process.

Beginning in January 2007, the Census Bureau mailed pre-invitation letters and LUCA information booklets (called the Advance Notification package) to tribal, state, and local governments eligible to participate in the nationwide 2010 Census LUCA program. The purpose of the Advance Notification package was to provide eligible governments with samples of the LUCA program materials and lead time to begin planning their strategy for participation in the 2010 Census LUCA program.

In August 2007, the Census Bureau mailed the LUCA invitation letters and registration materials to eligible governments, formally inviting them to participate in the 2010 Census LUCA program. The Census Bureau conducted a telephone follow-up to nonresponding governments, followed by a final reminder postcard in November 2007 to all nonresponding governments.

The 2010 Census LUCA program differs from the Census 2000 LUCA program. One notable change is that, for the first time, states are invited to participate and review the Census Bureau's address list for, at each state's option, the entire state, selected substate areas, and/or selected address types.

Using information gathered from various surveys and evaluations of the Census 2000 LUCA program, the Census Bureau also has streamlined the 2010 Census LUCA program. For the 2010 Census LUCA program, all eligible LUCA participants will review their entire address list at one time, instead of in phases based on address type as was done for the Census 2000 LUCA program. Tribal, state, and local governments that participate in the 2010 Census LUCA program will have 120 calendar days from the time they receive their LUCA materials to conduct their review of the census address list and maps, subject to the registration deadline described below.

The Census Bureau accepted 2010 Census LUCA registration packages from tribal, state, and local governments until December 31, 2007. The earlier **Federal Register** notice on the LUCA program (June 22, 2007; 72 FR 34434) required tribal, state, and local governments to return their completed registration package to the Census Bureau by November 19, 2007, to be assured the full 120-day review period. Governments that registered by that date will have 120 days from when they received their materials to review them and submit updates to the Census Bureau. Participants who registered between November 19, 2007, and December 31, 2007, will have 120 days from when they received their materials, or until April 4, 2008, whichever comes first. This schedule will permit the Census Bureau to review and process the submissions in time for a nationwide field check called the Address Canvassing operation.

The Address Canvassing operation is planned to begin in the spring of 2009 to verify the census address list, including the qualifying updates supplied by 2010 Census LUCA participants. During this operation, Census Bureau field staff will add, delete, and correct entries on the census address list and make needed corrections to the census maps. Census Bureau feedback to LUCA participants will be based on the results of Address Canvassing.

For the 2010 Census LUCA program, participants could choose from one of three options described below. (Puerto Rico participants were restricted to Option 1 because of address-matching complexities unique to Puerto Rico.) Participants received review materials in either paper or computer-readable formats, or are using Census Bureau-supplied software to update their jurisdiction's map features and address list. Jurisdictions with more than 6,000

addresses are required to participate using a computer-readable address list.

Section 3 of the Census Address List Improvement Act of 1994 requires the Administrator of the Office of Information and Regulatory Affairs at the OMB, in consultation with the Census Bureau, to develop an Appeals process outside the DOC to resolve any disagreements that may remain after participating governments receive the Census Bureau's Detailed Feedback/Final Determination materials. The Census Bureau and OMB will jointly publish, at a later date, a separate **Federal Register** notice describing the Appeals process.

Described below are the three participation options for the 2010 Census LUCA program.

#### **Option 1—Title 13 Full Address List Review**

The Full Address List Review option requires that the participant sign the Confidentiality Agreement in accordance with Title 13, United States Code. Jurisdictions selecting this option should first determine that they have the time and resources to review and comment on the 2010 Census LUCA Address List. This option is also the only option that governments could choose if their jurisdiction contains only noncity-style addresses (e.g., rural route/box number, post office box, general delivery, descriptive addresses), because it is the only option that allows the participant to challenge the count of addresses in a census block, as described below.

The Full Address List Review participants received the 2010 Census Address List, the Address Count List (a count of addresses within each census block), and maps or digital shape files of their jurisdiction. Participants who selected this option must have the means to secure the census address list and maps or shape files containing Title 13 information, according to the 2010 LUCA Security Guidelines (included in the invitation package and on the Web). The 2010 Census Address List and the Address Count List were offered as a paper or computer-readable product. The Census Bureau maps were available in paper format for tribal and local governments (not state) or shape files for use in their GIS. Alternatively, the participant could choose to use the Census Bureau-supplied software that combines the census address list and shape files within an easy-to-use GIS tool. Details regarding this software were contained within the promotional materials that eligible tribal, state, and local governments have been sent and

were covered in the training workshops held in summer/fall of 2007.

Although the 2010 Census Address List contains city-style (house number and street name, used for mail delivery or E-911), as well as noncity-style addresses, participants can only add and/or provide updates (including deletions) for city-style addresses. Each address added by a participant must be "geocoded," that is, associated with a census tract and census block number identifying its location. The census tract and census block numbers appear on the Census Bureau-supplied maps, digital shape files, and the Census Bureau-supplied GIS software tool.

The Census Bureau limits address updates to city-style addresses because noncity-style addresses are not usually locational and are subject to change. However, participants may challenge the address count for a census block on the Address Count List regardless of the type of addresses it contains. Participants do this by providing what they believe is the correct number of addresses for the census block. Participants cannot provide both updates for individual addresses on the 2010 Census Address List and challenge the count of addresses on the Address Count List for the same census block.

As is true for all three options, the LUCA participant may make updates and/or corrections to the features and boundaries on the Census Bureau maps (with one exception: State participants cannot update boundaries unless they are the designated reviewer for a county, township, city, town, or reservation). The Census Bureau maps were available to participants in paper format, or as digital shape files for use in their GIS. Alternatively, participants could choose to use the Census Bureau-supplied software that combines the Address List, the Address Count List, and shape files within an easy-to-use GIS tool.

A nationwide field check, called the Address Canvassing operation, is planned to begin in the spring of 2009 to verify the census address list, including the qualifying updates (those that are timely and consistent with Census Bureau instructions) supplied by 2010 Census LUCA participants. During this operation, Census Bureau field staff will add, delete, and correct entries on the confidential census address list, and make needed corrections to the census maps.

#### **Option 2—Title 13 Local Address List Submission**

The Title 13 Local Address List Submission option requires that the participant sign the Confidentiality Agreement in accordance with Title 13,

United States Code (U.S.C.). Participants who selected this option must have the means to secure the census address list and maps or shape files containing Title 13 information, according to the 2010 LUCA Security Guidelines (included in the invitation package and on the Web). Title 13 Local Address List Submission is a new 2010 Census LUCA option intended for those participants who may not have the time or resources to update the 2010 Census LUCA Address List, but who wish to submit their local address list for Census Bureau use. For Option 2, the 2010 Census Address List and the Address Count List were available only as computer-readable products. The Census Bureau maps were made available to participants in paper format or as shape files for use with their GIS. Alternatively, participants could select the Census Bureau-supplied software that combines the census Address List, Address Count List, and shape files within an easy-to-use GIS tool.

Option 2 LUCA participants received the 2010 Census LUCA Address List containing city-style and noncity-style addresses and the Address Count List. These materials are to be used for reference purposes only. Option 2 LUCA participants must submit their local city-style address list in a Census Bureau-defined computer-readable format. The Census Bureau cannot accept a LUCA participant's local address list in paper format and cannot accept computer-readable local address lists containing noncity-style addresses. Each address submitted by a participant must be "geocoded," that is, associated with a census tract and census block number identifying its location. The census tract and census block numbers appear on the Census Bureau-supplied maps, digital shape files, and the Census Bureau-supplied GIS software tool.

As is true for all three options, the LUCA participant may make updates and/or corrections to the features and boundaries on the Census Bureau maps (with one exception: State participants cannot update boundaries unless they are the designated reviewer for a county, township, city, town, or reservation). The Census Bureau maps were made available to participants in paper format or as shape files for use in their GIS. Alternatively, participants could choose to use the Census Bureau-supplied software that combines the Address List, Address Count List, and shape files within an easy-to-use GIS tool.

A nationwide field check, called the Address Canvassing operation, is planned to begin in the spring of 2009 to verify the census address list, including the qualifying updates

supplied by 2010 Census LUCA participants. During this operation, Census Bureau field staff will add, delete, and correct entries on the census address list and make needed corrections to the census maps.

#### **Option 3—Non-Title 13 Local Address List Submission**

Non-Title 13 Local Address List Submission is a new LUCA option for the 2010 Census. It is intended for those participants who may not have the time or resources to update the 2010 Census LUCA Address List and/or are unable to meet Title 13 security requirements, but who wish to submit their local address list for Census Bureau use. The Non-Title 13 Local Address List Submission option does not require participants to sign the Confidentiality Agreement, since they will not receive Title 13 data. Instead, participants received only the 2010 Census LUCA Address Count List in computer-readable format, which they may use for reference purposes only. The Census Bureau maps were made available to participants in paper format or as shape files for use in their GIS. Alternatively, participants could choose to use the Census Bureau-supplied software that combines the census Address Count List and shape files within an easy-to-use GIS tool.

Option 3 LUCA participants must submit their local city-style address list in a Census Bureau-defined, computer-readable format. The Census Bureau cannot accept Option 3 LUCA local address lists in paper format and cannot accept noncity-style addresses contained in a computer-readable local address list. Each address submitted by a participant must be "geocoded," (i.e., associated with a census tract and census block number identifying its location). The census tract and census block numbers appear on the Census Bureau-supplied maps, digital shape files, and the Census Bureau-supplied GIS software tool.

As is true for all three options, the LUCA participant may make updates and/or corrections to the features and boundaries on the Census Bureau maps (with one exception: State participants cannot update boundaries unless they are the designated reviewer for a county, township, city, town, or reservation). The Census Bureau maps were made available to participants in paper format or as shape files for use in their GIS. Alternatively, participants could choose to use the Census Bureau-supplied software that combines the Address Count List and shape files within an easy-to-use GIS tool.

A nationwide field check, called the Address Canvassing operation, is

planned to begin in the spring of 2009 to verify the census address list, including the qualifying updates supplied by 2010 Census LUCA participants. During this operation, Census Bureau field staff will add, delete, and correct entries on the census address list and make needed corrections to the census maps.

#### **LUCA Feedback Process for Option 1— Title 13 Full Address List Review**

The Census Bureau will review and computer-match each participant-submitted address and provisionally update the census address list with the qualifying submissions, and then verify the addresses during the Address Canvassing operation. The Address Canvassing operation will ensure that all the addresses exist and that they are in the correct census block.

The Census Bureau will provide 2010 Census LUCA Feedback materials to each tribal, state, and local government that submitted an acceptable list of city-style addresses. The Census Bureau will provide the 2010 Census LUCA Feedback materials on a flow basis to qualifying jurisdictions beginning in the fall of 2009, after completion of the Address Canvassing operation.

The 2010 Census LUCA Feedback materials will document which 2010 Census LUCA address submissions the Census Bureau could and could not verify in the Address Canvassing operation. The 2010 Census LUCA Feedback materials, which will be provided in the media originally requested by the participant, include:

(1) A 2010 Census LUCA Feedback Report covering the specific address updates submitted by the participant and actions taken on those addresses by the Census Bureau.

(2) An updated 2010 Census LUCA Feedback Address List that contains all of the census addresses verified by the 2010 Census Address Canvassing operation within the participating jurisdiction's boundary.

(3) An updated Address Count List documenting the number of housing unit and group quarters addresses in each census block within the participating jurisdiction's boundary.

(4) An updated Address Count List displaying just the blocks challenged by participants. This list will document the block count provided by the participant and the final block count from the Address Canvassing operation.

(5) A set of updated Census Bureau maps or shape files covering the participating jurisdiction.

If participants disagree with the 2010 Census LUCA Address List or Address Count Feedback materials, they may file

an appeal through the process that will be established by OMB outside DOC.

#### **LUCA Feedback Process for Option 2— Title 13 Local Address List Submission**

The Census Bureau will review and computer-match each participant-submitted address and provisionally update the census address list with the qualifying submissions, and then verify the addresses during the Address Canvassing operation. The Address Canvassing operation will ensure that all the addresses exist and are in the correct census block.

The Census Bureau will provide 2010 Census LUCA Feedback materials to each tribal, state, and local government that submitted an acceptable list of city-style addresses. The Census Bureau will provide the 2010 Census LUCA Feedback materials on a flow basis to qualifying jurisdictions beginning in the fall of 2009, after completion of the Address Canvassing operation.

The 2010 Census LUCA Feedback materials will document which 2010 Census LUCA address submissions the Census Bureau verified in the field and which ones it could not verify. The 2010 Census LUCA Feedback materials, which will be provided in the media originally requested by the participant, include:

(1) A 2010 Census LUCA Feedback Report covering the specific address updates submitted by the participant and actions taken on those addresses by the Census Bureau.

(2) An updated 2010 Census LUCA Address List that contains all of the census addresses verified by the 2010 Census Address Canvassing operation within the participating jurisdiction's boundary.

(3) An updated Address Count List documenting the number of housing unit and group quarters addresses in each census block within the participating jurisdiction's boundary.

(4) A set of updated Census Bureau maps or shape files covering the participating jurisdiction.

If participants disagree with the 2010 Census LUCA Feedback on their submitted address list, they may file an appeal through the process that will be established by OMB outside DOC.

#### **LUCA Feedback Process for Option 3— Non-Title 13 Local Address List Submission**

The Census Bureau will review and computer-match each participant-submitted address and provisionally update the census address list with the qualifying submissions, and then verify the addresses during the Address Canvassing operation. The Address

Canvassing operation will ensure that all addresses exist and that they are in the correct census block.

The Census Bureau will provide 2010 Census LUCA Feedback materials to each tribal, state, and local government that submitted an acceptable list of city-style addresses. The Census Bureau will provide the 2010 Census LUCA Feedback materials on a flow basis to qualifying jurisdictions beginning in the fall of 2009 after completion of the Address Canvassing operation.

The 2010 Census LUCA Feedback materials, which will be provided in the media originally requested by the participant, include:

(1) An updated Address Count List documenting the number of addresses in each census block within the jurisdiction.

(2) A set of updated Census Bureau maps or shape files for the jurisdiction.

Option 3 participants will not be able to file an appeal since their Non-Title 13 status means they will not receive the detailed address level feedback necessary for an appeal. For Option 3 participants, the Census Bureau's 2010 Census LUCA program will be officially completed at the time the Census Bureau provides the LUCA Feedback materials to the participant.

#### **Executive Order 12866**

This notice has been determined to not be significant under Executive Order 12866.

#### **Paperwork Reduction Act**

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current, valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C., Chapter 35, the Census Bureau requested, and the OMB granted its clearance for the information collection requirements for this program on August 6, 2007 (OMB Control Number 0607-0795, expires on February 29, 2008). The Census Bureau's request for an extension of this clearance until September 30, 2008 was sent to the OMB on January 29, 2008.

Dated: March 3, 2008.

**Steve H. Murdock,**

*Director, Bureau of the Census.*

[FR Doc. E8-4457 Filed 3-6-08; 8:45 am]

BILLING CODE 3510-07-P

**DEPARTMENT OF COMMERCE****Foreign-Trade Zones Board**

[Docket 12-2008]

**Foreign-Trade Zone 265 - Conroe, Texas, Application for Subzone Status, Sondex, L.P. (Oil and Gas Field Services Equipment), Conroe, Texas**

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Conroe, Texas, grantee of FTZ 265, requesting special-purpose subzone status for the oil and gas field services equipment facility of Sondex, L.P. (Sondex), located in Conroe, Texas. The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on February 21, 2008.

The proposed subzone would include Sondex's warehousing facility (20 employees, 20,000 sq. ft., 10 acres) at a site in Conroe, Texas, located at 2418 North Frazier Street. The facility is used for the warehousing, distribution, testing and repair of foreign-origin and domestic downhole-wireline equipment and measuring-while-drilling equipment and parts (duty rates range from duty-free to 2.5 percent) for the U.S. market and export. FTZ procedures would be utilized to support Sondex's distribution activity that competes with facilities located abroad.

FTZ procedures would exempt Sondex from Customs duty payments on foreign products that are re-exported. Some twenty percent of the facility's shipments are exported. On domestic sales, the company would be able to defer payments until merchandise is shipped from the facility and entered for U.S. consumption. Sondex also plans to realize logistical benefits through the use of weekly customs entry procedures. The application indicates that all of the above-cited savings from FTZ procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 6, 2008. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 21, 2008.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations: U.S. Department of Commerce Export Assistance Center, 1919 Smith Street, Suite 1026, Houston, Texas 77002; and the Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2111, 1401 Constitution Avenue, NW, Washington, DC 20230.

For further information, contact Kathleen Boyce at (202) 482-1346 or Kathleen\_Boyce@ita.doc.gov.

Dated: February 21, 2008.

**Andrew McGilvray,***Executive Secretary.*

[FR Doc. E8-4550 Filed 3-6-08; 8:45 am]

BILLING CODE 3510-DS-S

**DEPARTMENT OF COMMERCE****Foreign-Trade Zones Board**

[Docket 11-2008]

**Foreign-Trade Zone 64 - Jacksonville, Florida, Application for Manufacturing Authority Bacardi USA, Inc. (Alcoholic Beverages)**

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Jacksonville Port Authority, grantee of FTZ 64, requesting manufacturing authority on behalf of Bacardi USA, Inc. (Bacardi) at the OutSource Logistics, Inc. (Outsource Logistics) facility, within FTZ 64 in Jacksonville, Florida. The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on February 21, 2008.

The Bacardi/Outsource Logistics facility (60 employees) is located within Site 1A of FTZ 64, at the Ineson International Industrial Park in Jacksonville. The facility will be used for the kitting, warehousing/distribution, and storage of liquor gift packs (HTSUS duty rates 2208.50, 2208.60, 2204.10; duty rates range from duty-free to 19.8 cents/liter). Materials sourced from abroad (representing 90 percent of the value of the finished product) include: imported alcoholic beverages and glasses or flutes (HTSUS 2208.50, 2208.60, 2204.10, and 2013.28; duty rates range from duty-free to 22.5%).

The application also requests authority to produce gin gift sets, vodka gift sets, and champagne gift sets (duty rates range from duty-free to 22.4 cents per liter) from imported gin, vodka,

champagne and glasses (duty rates range from duty-free to 38%) that Bacardi may assemble into kits under FTZ procedures in the future. New major activity involving these inputs/products would require review by the FTZ Board.

FTZ procedures would exempt Bacardi from customs duty payments on the foreign components used in export production. The company anticipates that some ten percent of the facility's shipments will be exported. On its domestic sales, Bacardi would be able to choose the duty rate during customs entry procedures that apply to finished liquor packs for the foreign inputs noted above. The request indicates that the savings from FTZ procedures would help improve the facility's international competitiveness. In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 6, 2008. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 21, 2008.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations: U.S. Department of Commerce Export Assistance Center, 3 Independent Drive, Jacksonville, Florida 32202-5004; and, the Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2111, 1401 Constitution Avenue, NW, Washington, DC 20230.

For further information, contact Kathleen Boyce at (202) 482-1346 or Kathleen\_Boyce@ita.doc.gov.

Dated: February 21, 2008.

**Andrew McGilvray,***Executive Secretary.*

[FR Doc. E8-4551 Filed 3-6-08; 8:45 am]

BILLING CODE 3510-DS-S

**DEPARTMENT OF COMMERCE****Foreign-Trade Zones Board**

[Docket 10-2008]

**Foreign-Trade Zone 64 - Jacksonville, Florida, Application for Expansion**

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Jacksonville Port



Authority, grantee of FTZ 64, requesting authority to expand its zone in the Jacksonville, Florida, area, adjacent to the Jacksonville, Florida CBP port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on February 21, 2008.

FTZ 64 was approved on December 29, 1980 (Board Order 170, 46 FR 1330, 01/06/81). The general-purpose zone currently consists of the following sites: *Site 1* (67 acres) -- within the Jacksonville International Airport at Pecan Park and Terrell Roads; *Temporary Site 1a* (75 acres) located at One Imeson Park Boulevard, within the central western portion of the Imeson International Park (expires 12/31/08); *Site 2* (43 acres) warehouse facility located at 2201 North Ellis Road; *Site 3* (856 acres) JPA Blount Island Terminal Complex and 133-acre JPA Talleyrand Docks and Terminal Facility, at 2701 Talleyrand Avenue; *Site 4* (200 acres) within the International Tradeport Complex on Airport Road; and, *Site 5* (4 acres) located at 1501 Dennis Street.

The applicant is requesting authority to include *Temporary Site 1a* on a permanent basis and to expand the zone to an additional site in the Jacksonville, Florida area: *Proposed Site 7* (800,000 sq. ft., 44 acres) located at Westlake Industrial Park at 9767 Pritchard Road. The site is owned by Johnson Development Associates, Inc. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 6, 2008. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (May 21, 2008).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations: U.S. Export Assistance Center, 3 Independent Drive, Jacksonville, Florida 32202-5004; and the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce,

1401 Constitution Avenue, NW, Washington, DC 20230.

For further information, contact Kathleen Boyce at 202-482-1346 or Kathleen\_Boyce@ita.doc.gov.

Dated: February 21, 2008.

**Andrew McGilvray,**  
Executive Secretary.

[FR Doc. E8-4553 Filed 3-6-08; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-583-816]

#### Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

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

**EFFECTIVE DATE:** March 7, 2008.

**FOR FURTHER INFORMATION CONTACT:** John Drury of Judy Lao, AD/CVD Operations, Office of Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482-0195 and (202) 482-7924, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On June 1, 2007, the Department of Commerce ("the Department") published a notice of opportunity to request an administrative review of the antidumping duty order on stainless steel butt-weld pipe fittings ("SSBWPF") from Taiwan for the period of review ("POR") of June 1, 2006, through May 31, 2007. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72 FR 30542 (June 1, 2007). On June 28, 2007, Flowline Division of Markovitz Enterprises, Inc. ("Flowline Division"), Gerlin, Inc., Shaw Alloy Piping Products, Inc., and Taylor Forge Stainless, Inc. (collectively, "petitioners") requested an antidumping duty administrative review for sales of SSBWPF from Taiwan produced by Ta Chen Stainless Pipe Co., Ltd. ("Ta Chen"), Liang Feng Stainless Steel Fitting Co., Ltd., Tru-Flow Industrial Co., Ltd., Censor International Corporation, and PFP Taiwan Co., Ltd. On June 28, 2007, Ta Chen also requested an administrative review of its sales to the United States during the

POR. On July 26, 2007, the Department published the notice initiating this administrative review. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation In Part*, 72 FR 41057 (July 26, 2007). The preliminary results are currently due not later than March 1, 2008.

#### Extension of Time Limits for Preliminary Results of Review

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 351.213(h)(2), the Department may extend the deadline for completion of the preliminary results of a review by 120 days if it determines that it is not practicable to complete the preliminary results within 245 days after the last day of the anniversary month of the date of publication of the order for which the administrative review was requested. Due to the complexity of the issues involved, including questions of affiliation and Ta Chen's reported costs of production, and the time required to analyze Ta Chen's supplemental questionnaire responses, as well as the demands of other proceedings handled by the office administering this review, the Department has determined that it is not practicable to complete this review within the original time period. Accordingly, the Department is extending the time limit for the preliminary results by 120 days to not later than June 29, 2008, in accordance with section 751(a)(3)(A) of the Act. However, as that date falls on a Sunday, the preliminary results will be due not later than the next business day, June 30, 2008.

The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: February 29, 2008.

**Stephen J. Claeys,**

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8-4592 Filed 3-6-08; 8:45 am]

BILLING CODE 3510-DR-S

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Application for Duty-Free Entry of a Scientific Instrument

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub.



L. 89-651; as amended by Pub. L. 106-36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Ave., NW., Room 2104, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Room 2104, U.S. Department of Commerce.

**Docket Number:** 08-003. **Applicant:** Rice University, 6100 Main Street, Houston, TX 77005. **Instrument:** Variable Temperature High Magnetic Field Nanometer-Precision Probe Station. **Manufacturer:** Attocube Systems AG, Germany.

**Intended Use:** The instrument is intended to be used to allow multiterminal electronic measurement of novel materials, particularly those difficult to wire up in traditional geometries. This instrument will enable additional analytical physics and chemistry research involving nanomaterials. This instrument can supply a cryostat and magnet system with four independently nanopositionable probes. This variable temperature probe system is unique and is essential to enable a variety of physics and chemistry research efforts involving nanomaterials. Application accepted by Commissioner of Customs: January 31, 2008.

Dated: March 3, 2008.

**Faye Robinson,**

*Director, Statutory Import Programs Staff,  
Import Administration.*

[FR Doc. 08-984 Filed 3-6-08; 8:45 am]

BILLING CODE 3510-DS-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### University of Washington, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 2104, U.S. Department of Commerce,

14th and Constitution Avenue, NW., Washington, DC.

**Docket Number:** 07-072. **Applicant:** University of Washington, Seattle, WA 98105. **Instrument:** Electron Microscope, Model Tecnai G2 F20 Twin. **Manufacturer:** FEI Company, Netherlands. **Intended Use:** See notice at 73 FR 7250, February 7, 2008.

**Docket Number:** 08-002. **Applicant:** University of Texas at Austin, Austin, TX 78721. **Instrument:** Electron Microscope, Model Quanta 600 FEG. **Manufacturer:** FEI Company, Czech Republic. **Intended Use:** See notice at 73 FR 7250, February 7, 2008.

**Comments:** None received. **Decision:** Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. **Reasons:** Each foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: March 3, 2008.

**Faye Robinson,**

*Director, Statutory Import Programs Staff,  
Import Administration.*

[FR Doc. E8-4532 Filed 3-6-08; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-549-817]

#### Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Notice of Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review

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

**EFFECTIVE DATE:** March 7, 2008.

**FOR FURTHER INFORMATION CONTACT:** Dena Crossland or Stephen Bailey, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3362 or (202) 482-0193, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On December 7, 2007, the Department of Commerce ("the Department") published the preliminary results of the administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products ("hot-rolled steel") from Thailand, covering the period November 1, 2005, through October 31, 2006. See *Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission*, 72 FR 69187 (December 7, 2007) ("*Preliminary Results*"). The final results of this review are currently due no later than April 5, 2008.

### Extension of Time Limit for Final Results of Review

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), the Department shall make a final determination in an administrative review of an antidumping duty order within 120 days after the date on which the preliminary results are published. However, section 751(a)(3)(A) of the Act allows the Department to extend the 120-day period to 180 days after the preliminary results, if it determines it is not practicable to complete the review within the foregoing time period.

The Department finds that it is not practicable to complete the final results of the administrative review of hot-rolled steel from Thailand within the 120-day period due to the complexity of two issues which were briefed by petitioner, respondent, and domestic interested party. First, the Department applied facts otherwise available to G Steel Public Company Limited ("G Steel") in the *Preliminary Results* because we were unable to verify G Steel's yield strength data in both the home market and U.S. market. Second, in the *Preliminary Results*, we determined that G Steel and Nakornthai Strip Mill Public Company Limited ("NSM"), another respondent in this administrative review, became affiliated at the end of the POR, but that the requirements had not been met to collapse the two companies. We need additional time to analyze parties' comments regarding both of these issues.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for completion of the final results of this review by 60 days to 180 days after the date on which the preliminary results were published. Accordingly, the final results are now due no later than June 4, 2008.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: March 3, 2008.

**Gary Taverman,**

*Acting Deputy Assistant Secretary for Import Administration.*

[FR Doc. E8-4547 Filed 3-6-08; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-549-813]

#### **Canned Pineapple Fruit from Thailand: Notice of Initiation of Changed Circumstances Review of the Antidumping Duty Order, Preliminary Results of Changed Circumstances Review, and Intent to Revoke Antidumping Duty Order**

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

**SUMMARY:** In response to a request for a changed circumstances review from the Thai Food Processors Association (TFPA), and pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216 and 351.221(c)(3), the Department of Commerce is initiating a changed circumstances review of the antidumping duty order on canned pineapple fruit (CPF) from Thailand. The domestic interested party for this proceeding is Maui Pineapple Company Ltd. (petitioner).

**EFFECTIVE DATE:** March 7, 2008.

**FOR FURTHER INFORMATION CONTACT:**

Douglas Kirby, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3782.

**SUPPLEMENTARY INFORMATION:**

#### **Background**

The Department of Commerce (the Department) published the antidumping duty order on CPF from Thailand on July 18, 1995. See *Notice of Antidumping Duty Order and Amended Final Determination: Canned Pineapple Fruit from Thailand*, 60 FR 36775 (July 18, 1995) (*Antidumping Duty Order*). On January 23, 2008, the Department received a request for a changed circumstances review from the TFPA. The TFPA requested that the Department revoke the antidumping duty order because Maui Pineapple Company Ltd. (petitioner) ceased

production of CPF on October 31, 2007. On January 25, 2008, we received a letter from petitioner indicating that petitioner had no objection to the changed circumstances review and the revocation of the antidumping duty order.

#### **Scope of the Order**

The product covered by this order is CPF, defined as pineapple processed and/or prepared into various product forms, including rings, pieces, chunks, tidbits, and crushed pineapple, that is packed and cooked in metal cans with either pineapple juice or sugar syrup added. CPF is currently classifiable under subheadings 2008.20.0010 and 2008.20.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). HTSUS 2008.20.0010 covers CPF packed in a sugar-based syrup; HTSUS 2008.20.0090 covers CPF packed without added sugar (i.e., juice-packed). Although these HTSUS subheadings are provided for convenience and for customs purposes, the written description of the scope is dispositive. There have been no scope rulings for the subject order.

#### **Initiation of Changed Circumstances Review, Preliminary Results, and Intent to Revoke Antidumping Duty Order**

Pursuant to section 751(d)(1) of the Act, the Department may revoke an antidumping order based on a review under section 751(b) of the Act (i.e., a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review. Pursuant to 19 CFR 351.222(g), the Department will conduct a changed circumstances review under 19 CFR 351.216 and may revoke an order (in whole or in part) if it determines that producers accounting for substantially all of the production of the domestic like product to which the order (or the part of the order to be revoked) pertains have expressed a lack of interest in the relief provided by the order, in whole or in part, or if changed circumstances exist sufficient to warrant revocation. In addition, in the event that the Department concludes that expedited action is warranted, 19 CFR 351.221(c)(3)(ii) permits the Department to combine the notices of initiation and preliminary results.

The TFPA claims in its January 23, 2008 letter that it has satisfied the criteria to warrant a changed circumstances review. See 19 CFR 351.216(d). Specifically, TFPA claims that Maui Pineapple Company (Maui), the sole domestic producer of CPF, has

ceased the production of canning solid-pack pineapple fruit. Therefore the TFPA alleges that the antidumping duty order can no longer protect a domestic industry in the United States from material injury as required under the statute for the maintenance of an antidumping duty order. The TFPA provided with its January 23, 2008 letter newspaper articles<sup>1</sup> which announced that Maui would cease canning solid-pack pineapple fruit in Kahaului, Hawaii, on June 30, 2007. In addition, the TFPA also included this announcement with a Form 8-K filing with the Securities and Exchange Commission (SEC) which also states that Maui would cease canning solid-pack pineapple products effective June 30, 2007. Furthermore, the TFPA provided evidence that demonstrates that Maui auctioned off its canning equipment on October 31, 2007 (e.g., *The Maui News*, October 31, 2007, "Last Pineapple cannery in the U.S. is gone"). To conclude, the TFPA requests that the review be expedited based on the evidence submitted by the TFPA that Maui has ceased production of CPF.

In this case, the Department finds that the information submitted provides sufficient evidence of changed circumstances to warrant a review. Therefore, in accordance with section 751(d)(1) of the Act, and 19 CFR 351.216 and 351.222(g), based on the information provided by TFPA, we are initiating this changed circumstances review. Furthermore, since the information on record indicates there is no longer any U.S. production of the domestic like product, we determine that expedited action is warranted and we preliminarily determine that the continued relief provided by the order with respect to CPF from Thailand is no longer of interest to domestic interested parties. Because we have concluded that expedited action is warranted, we are combining these notices of initiation and preliminary results. Therefore, we are notifying the public of our intent to revoke the antidumping duty order with respect to imports of CPF from Thailand, effective October 31, 2007. If we make a final determination to revoke, we intend to instruct U.S. Customs and Border Protection (CBP) to liquidate without regard to antidumping duties and to refund any estimated antidumping duties collected, for all entries of CPF from Thailand, made on or after October 31, 2007, the final date

<sup>1</sup> (e.g., Honolulu Advertiser, April 30, 2007, (ML&P to end canned pineapple operations June 30); Business Wire, April 30, 2007, (Maui Pineapple Company to Consolidate Fresh Pineapple Operation))

of production of the subject merchandise by the sole domestic producer. The current requirement for a cash deposit of estimated antidumping duties on CPF from Thailand will continue unless and until we publish a final determination to revoke.

#### Public Comment

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of the issue, and (2) a brief summary of the argument. Any interested party may request a hearing within 10 days of the date of publication of this notice. Any hearing, if requested, will be held no later than 25 days after the date of publication of this notice, or the first workday thereafter. Case briefs may be submitted by interested parties not later than 15 days after the date of publication of this notice. Rebuttal briefs, limited to the issues raised in the case briefs, may be filed not later than 20 days after the date of publication of this notice. All written comments shall be submitted in accordance with 19 CFR 351.303. Persons interested in attending the hearing should contact the Department for the date and time of the hearing. The Department will publish the final results of this changed circumstances review, including the results of its analysis of issues raised in any written comments.

This notice of initiation is in accordance with section 751(b)(1) of the Act, 19 CFR 351.216(b) and (d), and 19 CFR 351.221(b)(1).

Dated: February 29, 2008.

**Stephen J. Claeys,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E8-4555 Filed 3-6-08; 8:45 am]

BILLING CODE 3510-DS-S

#### DEPARTMENT OF COMMERCE

##### International Trade Administration

[A-570-879]

#### Polyvinyl Alcohol from the People's Republic of China: Notice of Rescission of Antidumping Duty Administrative Review

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

**EFFECTIVE DATE:** March 7, 2008.

**FOR FURTHER INFORMATION CONTACT:** Paul Stolz, AD/CVD Operations, Office 8, Import Administration, Room 1870, International Trade Administration,

U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4474.

#### Background

On October 1, 2007, the Department of Commerce ("the Department") published a notice of opportunity to request an administrative review of the antidumping duty order on polyvinyl alcohol ("PVA") from the People's Republic of China ("PRC"). See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review*, 72 FR 55741 (October 1, 2007). On October 30, 2007, E.I. Dupont de Nemours and Co. and Celanese Chemicals, Ltd. ("Petitioners") requested that the Department conduct an administrative review of Sinopec Vinylon Works ("SVW"). The Department published a notice of initiation of the antidumping duty administrative review of PVA from the PRC for the period October 1, 2006, through September 30, 2007. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 72 FR 65938 (November 26, 2007).

#### Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. On February 15, 2008, 2007, Petitioners timely withdrew their request for an administrative review of SVW within 90 days of the publication of the notice of initiation of this review. Therefore, in accordance with 19 CFR 351.213(d)(1), the Department hereby rescinds the administrative review of PVA from the PRC for the period October 1, 2006, through September 30, 2007. The Department intends to issue assessment instructions to U.S. Customs and Border Protection 15 days after the publication of this notice of rescission of administrative review.

This notice is issued and published in accordance with section 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: February 29, 2008.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E8-4549 Filed 3-6-08; 8:45 am]

BILLING CODE 3510-DS-S

#### DEPARTMENT OF COMMERCE

##### International Trade Administration

A-570-806

#### Silicon Metal From the People's Republic of China: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review

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

**EFFECTIVE DATE:** March 7, 2008.

**SUMMARY:** The Department of Commerce ("Department") is currently conducting the 2006/2007 administrative review of the antidumping duty order on silicon metal from the People's Republic of China ("PRC"). The period of review ("POR") for this administrative review is June 1, 2006, through May 31, 2007. Fifteen companies reported that they had no shipments of subject merchandise during the POR; therefore, we are preliminarily rescinding our review of these companies. We preliminarily determine that three companies, Hunan Provincial Import & Export Group Co (PRC) ("Hunan Provincial"), Gather Hope Int'l Co., Ltd. ("Gather Hope"), and Alloychem Impex Corp. ("Alloychem"), have failed to cooperate by not acting to the best of their ability to cooperate with the Department's requests for information and, as a result, should be assigned a rate based on adverse facts available ("AFA"). If these preliminary results are adopted in our final results of these reviews, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the POR for which the importer-specific assessment rates are above *de minimis*.

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

**FOR FURTHER INFORMATION CONTACT:** Scot Fullerton or Michael Quigley, 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) 482-1386 and (202) 482-4047, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On June 1, 2007, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on silicon

metal from the PRC for the POR June 1, 2006, through May 31, 2007. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72 FR 61859 (June 1, 2007). On July 2, 2007, Globe Metallurgical Inc. ("Petitioner"), requested that the Department conduct an administrative review of 18 companies (collectively "Respondents"). On August 6, 2007, the Department published a notice of initiation of an antidumping duty administrative review on silicon metal from the PRC, in which it initiated a review of these Respondents. See *Notice of Initiation of the Administrative Review of the Antidumping Duty Order on Silicon Metal from the People's Republic of China* ("Initiation Notice"), 72 FR 43597, (August 6, 2007).

On August 24, 2007, the Department sent quantity and value ("Q&V") questionnaires to the Respondents listed in the *Initiation Notice*. The Department sent a second round of Q&V questionnaires to companies that did not respond to the first round on September 17, 2007. On October 22, 2007, the Department sent three additional Q&V questionnaires to companies which had not responded.

In response to the Q&V questionnaires that the Department sent on August 24, 2007, the following seven companies replied that they had no shipments of subject merchandise to the United States during the POR: Jiangxi Gangyuan Silicon Industry ("Gangyuan"); MPM Silicones, LLC ("MPM United States"); GE Silicones Canada ("MPM Canada"); Global Minerals Corp.; Transtrading House Ltd.; Lorbec Metals Ltd.; and Carbonsi Metallurgical Inc. In response to the Q&V questionnaires that the Department sent on September 17, 2007, the following three companies replied that they had no shipments of subject merchandise under review to the United States during the POR: Crown All Corporation; Ferro-Alliages & Mineraux Inc.; and Chemical & Alloy Inc. In response to the Q&V questionnaires that the Department sent on October 22, 2007, the following two companies replied that they had no shipments of subject merchandise under review to the United States during the POR: IMMECC Resources Inc. and Bomet (Canada) Inc.

In addition to the 12 companies listed above which provided the Department with no-shipment responses, the Department was unable to find correct addresses for these three companies: Coldstone Metals Inc. ("Coldstone"); Global Minerals (Canada); and SeaView Trading. The Department's August 24,

2007, Q&V questionnaire to SeaView Trading was returned to the Department, and its August 24, 2007, Q&V questionnaire to Global Minerals Canada was "undeliverable" due to an "incorrect address." The Department's August 24, 2007, Q&V questionnaire to Coldstone was delivered, but its September 17, 2007, Q&V questionnaire was "undeliverable." Federal Express informed the Department that Coldstone had moved.

For three other companies, the Department sent its Q&V questionnaire twice, received confirmation of their delivery, but received no response from the companies. Both Hunan Provincial and Gather Hope received the Q&V questionnaires the Department sent on August 24, 2007, and September 17, 2007. As for Alloychem, the August 24, 2007, Q&V questionnaire was returned to the Department, but the Department sent this company the Q&V questionnaire again on both September 5, 2007, and October 22, 2007, and both of those mailings were successfully delivered.

On October 3, 2007, Petitioner requested that the Department clarify discrepancies between the testimony of MPM United States and MPM Canada (collectively, "MPM") to the Foreign Trade Zone Board and documentation on the record of the 2005/2006 New Shipper Review of Gangyuan. On October 31, 2007, Petitioner also requested that the Department issue additional questions to MPM related to the possible transshipment of silicon metal. Similarly, on November 13, 2007, Petitioner submitted comments on the Q&V responses submitted by Ferro-Alliages, Chemical and Alloy Inc., and Crown All Corporation, and requested that the Department request additional information from Ferro-Alliages regarding the source of the silicon metal that it exported to the United States and the ultimate disposition of the silicon metal that it imported into Canada from China.

On November 27, 2007, the Department reviewed the requests made by Petitioner. The Department noted that Gangyuan, MPM United States, and MPM Canada have each filed no-shipment responses in this review, and this information has not been contradicted by CBP data for imports of subject merchandise during the POR. See Memorandum to David M. Spooner, Assistant Secretary for Import Administration, from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, regarding "2006/2007 Antidumping Duty Administrative Review of Silicon Metal from the People's Republic of China: Responses

to Quantity and Value Questionnaire," dated November 27, 2007. On February 20, 2008, Petitioner repeated its November 13, 2007, request that the Department obtain additional information from Ferro-Alliages regarding the source of the silicon metal that it exported to the United States. In addition, Petitioner withdrew its request for review of Bomet (Canada) Inc., Carbonsi Metallurgical Inc., Chemical and Alloy Inc., Crown All Corp., Global Minerals (Canada), Global Minerals Corp., IMMECC Resources Inc., Lorbec Metals Ltd., SeaView Trading, and Transtrading House Ltd. Petitioner noted that although its withdrawal request was beyond the 90 days after the date of publication of the notice of initiation, the Department has discretion to extend this time limit if it decides that it is reasonable to do so.

#### Scope of the Order

The product covered by the order is silicon metal containing at least 96.00 but less than 99.99 percent of silicon by weight, and silicon metal with a higher aluminum content containing between 89 and 96 percent silicon by weight. The subject merchandise is currently classifiable under item numbers 2804.69.10 and 2804.69.50 of the *Harmonized Tariff Schedule of the United States* ("HTSUS") as a chemical product, but is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTSUS) is not subject to this order. This order is not limited to silicon metal used only as an alloy agent or in the chemical industry. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

#### Preliminary Partial Rescission of 2006/2007 Administrative Review

Several companies indicated they did not export silicon metal to the United States during the POR. In order to corroborate these submissions, we reviewed PRC silicon metal shipment data maintained by CBP, and found no discrepancies with the statements made by these firms.

Therefore, for the reasons mentioned above, we are preliminarily rescinding the administrative review with respect to these twelve companies: Gangyuan; MPM United States; MPM Canada; Global Minerals Corp.; Transtrading House Ltd.; Lorbec Metals Ltd.; Carbonsi Metallurgical Inc.; Crown All Corporation; Ferro-Alliages & Mineraux Inc.; Chemical & Alloy Inc.; IMMECC



Resources Inc.; and Bomet (Canada) Inc. Each of these twelve companies reported having made no shipments of subject merchandise during the POR, and the Department found no information to indicate otherwise. With respect to Petitioner's February 20, 2008, withdrawal request for certain companies, as discussed above, we do not find any reasonable basis exists upon which to extend the time limit for withdrawal requests in this review.

The Department also indicated that it was unable to directly serve three companies with its Q&V questionnaire. See Memorandum to the File from Kristina Horgan, Senior International Trade Analyst, AD/CVD Operations, Office 9, regarding "Antidumping Duty Administrative Review of Silicon Metal from the People's Republic of China: Proof of Non-Delivery to Global Minerals (Canada) and SeaView Trading," dated November 9, 2007. See also Memorandum to the File from Michael Quigley, International Trade Analyst, AD/CVD Operations, Office 9, regarding "Antidumping Duty Administrative Review of Silicon Metal from the People's Republic of China: Record of Mailings to Coldstone Metals Inc.," dated November 20, 2007. Therefore, the Department preliminarily rescinds the review with respect to these companies, in accordance with our practice. See, e.g., *Certain Steel Concrete Reinforcing Bars from Turkey: Preliminary results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 26455, 26457 (May 5, 2006).

#### Facts Available

For the reasons outlined below, we have applied total AFA to Hunan Provincial, Gather Hope, and Alloychem. Section 776(a)(2) of the Tariff Act of 1930, as amended ("Act") provides that, if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to section 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Section 782(d) of the Act provides that when the Department finds that a respondent has not complied with a request for information, the Department shall inform the respondent of the deficiency and allow them an

opportunity to remedy or explain the deficiency.

We find that Hunan Provincial, Gather Hope, and Alloychem have failed to provide information requested by the Department. Accordingly, we find it appropriate to apply facts otherwise available consistent with section 776(a)(2)(A).

In addition, pursuant to section 776(b) of the Act, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See *Statement of Administrative Action ("SAA")* accompanying the Uruguay Round Agreements Act ("URAA"), H.R. Rep. No. 103-316, Vol. 1 (1994) at 870.

The Department sent the Q&V questionnaire to Hunan Provincial, Gather Hope, and Alloychem twice. Evidence on the record confirms that the questionnaire was delivered to each of these parties on both occasions. Hunan Provincial, Gather Hope, and Alloychem, however, made no attempt to respond to the questionnaire. By not responding to the Department's Q&V questionnaire, Hunan Provincial, Gather Hope, and Alloychem failed to provide critical information to be used for the Department's respondent selection process. Under these circumstances, the Department finds that Hunan Provincial, Gather Hope, and Alloychem have failed to cooperate to the best of their ability. Accordingly, the Department finds it necessary, pursuant to section 776(b) of the Act, to use AFA as the basis for these preliminary results of review for Hunan Provincial, Gather Hope, and Alloychem.

In addition, because the above-referenced companies did not submit a separate rate application or certification, the Department was unable to determine whether or not they qualified for a separate rate. Therefore, they are not eligible to receive a separate rate and will be part of the PRC-wide entity, subject to the PRC-wide rate.

#### Selection of AFA Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from (1) the petition, (2) a final determination in the less-than-fair-value ("LTFV") investigation, (3) any previous review or determination, or (4)

any information placed on the record. In reviews, the Department normally selects, as AFA, the highest rate on the record of any segment of the proceeding. See, e.g., *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 68 FR 19504, 19506 (April 21, 2003). The Court of International Trade ("CIT") and the Court of Appeals for the Federal Circuit have upheld the Department's practice in this regard. See *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990) ("*Rhone Poulenc*"); *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in the LTFV investigation), *aff'd*, 481 F.3d 1355 (Fed. Cir. 2007); see also *Shanghai Taoen International Trading Co., Ltd. v. United States*, 360 F. Supp 2d 1339, 1348 (CIT 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review); and *Kompass Food Trading Int'l v. United States*, 24 CIT 678, 689 (2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent).

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse "as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner." See *Static Random Access Memory Semicconductors from Taiwan; Final Determination of Sales at Less than Fair Value*, 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See SAA at 870; see also *Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910, 76912 (December 23, 2004); *D&L Supply Co. v. United States*, 113 F.3d 1220, 1223 (Fed. Cir. 1997). In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin "reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule,



would have produced current information showing the margin to be less." *Rhone Poulenc*, 899 F.2d at 1190. Consistent with the statute, court precedent, and its normal practice, the Department has assigned the rate of 139.49 percent, the highest rate on the record of any segment of the proceeding, to the PRC-wide entity, which includes Hunan Provincial, Gather Hope, and Alloychem, as AFA. See, e.g., *Notice of Final Results of Antidumping Duty Administrative Review: Silicon Metal from the People's Republic of China*, 68 FR 35383 (June 13, 2003) ("2001/2002 Silicon Metal Final Results"). As discussed further below, this rate has been corroborated.

#### Corroboration of Facts Available

Section 776(c) of the Act requires that the Department corroborate, to the extent practicable, a figure which it applies as facts available. To be considered corroborated, information must be found to be both reliable and relevant. We are applying as AFA the highest rate from any segment of this administrative proceeding, which is the rate currently applicable to all exporters subject to the PRC-wide rate. The AFA rate in the current review (i.e., the PRC-wide rate of 139.49 percent) represents the highest rate from the petition in the LTFV investigation. See *Antidumping Duty Order: Silicon Metal From the People's Republic of China*, 56 FR 26649 (June 10, 1991).

To be considered corroborated, information must be found to be both reliable and relevant. Unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only sources for calculated margins are administrative determinations. The information upon which the AFA rate we are applying for the current review was corroborated most recently in the 2001/2002 administrative review of silicon metal from the PRC. See *Silicon Metal from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 11369 (March 10, 2003), unchanged in *2001/2002 Silicon Metal Final Results*. Furthermore, no information has been presented in the current review that calls into question the reliability of this information. Thus, the Department finds that the information is reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the

Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico; Final Results of Antidumping Administrative Review*, 61 FR 6812, 6814 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. The information used in calculating this margin was based on sales and production data submitted by the petitioner in the LTFV investigation, together with the most appropriate surrogate value information available to the Department chosen from submissions by the parties in the LTFV investigation, as well as information gathered by the Department itself. Furthermore, the calculation of this margin was subject to comment from interested parties in the 2001/2002 administrative review. As there is no information on the record of this review that demonstrates that this rate is not appropriately used as AFA, we determine that this rate has relevance.

As the 139.49 percent rate is both reliable and relevant, we determine that it has probative value. Accordingly, we determine that the calculated rate of 139.49 percent, which is the current PRC-wide rate, is in accordance with the requirement of section 776(c) of the Act that secondary information be corroborated to the extent practicable (i.e., that it has probative value). We have assigned this AFA rate to exports of the subject merchandise by the PRC-wide entity.

#### Preliminary Results of Review

We preliminarily determine that the following margin exists during the period June 1, 2006, through May 31, 2007:

Silicon Metal from the PRC	
PRC-Wide Entity <sup>1</sup> .....	139.49

<sup>1</sup> PRC-Wide Entity includes Hunan Provincial, Gather Hope and Alloychem.

Any interested party may request a hearing within 30 days of publication of this notice. Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3)

a list of issues to be discussed. See 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in case and rebuttal briefs. Case briefs from interested parties may be submitted not later than 30 days of the date of publication of this notice, pursuant to 19 CFR 351.309(c). Rebuttal briefs, limited to issues raised in the case briefs, will be due five days later, pursuant to 19 CFR 351.309(d). Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will issue the final results of this review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

#### Assessment Rates

Pursuant to 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of the final results of this review. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any assessment rate calculated in the final results of this review is above *de minimis*. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

#### Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: (1) for Hunan Provincial, Gather Hope, and Alloychem, the cash deposit rate will be established in the final results of this review; (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a

separate rate, the cash deposit rate will be the PRC-wide rate of 139.49 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

#### Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213.

Dated: February 29, 2008.

**Stephen J. Claeys,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E8-4529 Filed 3-6-08; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-533-810]

#### Stainless Steel Bar From India: Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

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

**SUMMARY:** The Department of Commerce is conducting an administrative review of the antidumping duty order on stainless steel bar from India. The period of review is February 1, 2006, through January 31, 2007. This review covers imports of stainless steel bar from two producers/exporters. We preliminarily find that sales of the subject merchandise have been made below normal value. Also, we are rescinding this administrative review with respect to a third producer/exporter. If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection to assess antidumping duties on appropriate entries. Interested parties

are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

**DATES:** *Effective Date:* March 7, 2008.

**FOR FURTHER INFORMATION CONTACT:** Devta Ohri or Scott Holland, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482-3853 and (202) 482-1279, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On February 21, 1995, the Department of Commerce (the "Department") published in the *Federal Register* the antidumping duty order on stainless steel bar ("SSB") from India. See *Antidumping Duty Orders: Stainless Steel Bar from Brazil, India and Japan*, 60 FR 9661 (February 21, 1995). On February 2, 2007, the Department published a notice in the *Federal Register* providing an opportunity for interested parties to request an administrative review of the antidumping duty order on SSB from India for the period of review ("POR") February 1, 2006, through January 31, 2007. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 72 FR 5007 (February 2, 2007).

On February 27, 2007, we received a timely request for review from Venus Wire Industries Private Limited ("Venus"). On February 28, 2007, we received a timely request for review from D.H. Exports Pvt. Ltd. ("DHE"), Chandan Steel Ltd. ("Chandan"), Facor Steels, Ltd. ("Facor"), Mukand Ltd. ("Mukand"), and Sunflag Iron & Steel Co. Ltd. ("Sunflag"). On March 7, 2007, we received a letter from Mukand and Facor withdrawing their requests for review. On March 20, 2007, we received a letter from Venus withdrawing its request for review.

On March 28, 2007, in accordance with section 751(a) of the Tariff Act of 1930, as amended ("the Act"), we initiated an administrative review on Chandan, DHE, and Sunflag. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 72 FR 14516 (March 28, 2007) ("Initiation Notice").

On March 28, 2007, the Department issued antidumping duty questionnaires to the respondents. The respondents submitted their initial responses to the antidumping questionnaire in May, June, August, and September 2007. The

petitioners<sup>1</sup> submitted comments on the questionnaire responses in May, June, July, September, October, and November 2007; and February 2008. We issued supplemental questionnaires to the respondents to clarify or correct information contained in the initial questionnaire responses.

On May 25, 2007, we received a letter from Chandan withdrawing its request for administrative review.

On June 19, 2007, the petitioners alleged that DHE made sales below the cost of production ("COP"). The petitioners submitted information to supplement their June 19, 2007, below-cost allegation on June 21, 2007. We found that the petitioners' allegation provided a reasonable basis to believe or suspect that sales by DHE in the home market had been made at prices below the COP, and initiated a sales-below-cost investigation on July 24, 2007. See Memorandum from Chris Zimpo, Office of Accounting, to Susan Kuhbach, Senior Office Director, Office 1, AD/CVD Operations, "Petitioners' Allegation of Sales Below the Cost of Production for D.H. Exports Pvt. Ltd.," dated July 24, 2007 ("DHE Sales-Below-Cost Memorandum"). On July 24, 2007, we requested that DHE respond to the Section D COP section of the Department's original questionnaire. DHE filed its response to Section D on September 3, 2007.

On June 22, 2007, the petitioners alleged that Sunflag made sales below the COP. We found that the petitioners' allegation provided a reasonable basis to believe or suspect that sales by Sunflag in the home market had been made at prices below the COP and initiated a sales-below-cost investigation on June 25, 2007. See Memorandum from Devta Ohri, International Trade Compliance Analyst, to Susan Kuhbach, Senior Office Director, Office 1, AD/CVD Operations, "Petitioners' Allegation of Sales Below the Cost of Production for Sunflag Iron & Steel Co. Ltd.," dated July 25, 2007 ("Sunflag Sales-Below-Cost Memorandum"). On July 25, 2007, we requested that Sunflag respond to the Section D COP section of the Department's original questionnaire. Sunflag filed its response to Section D on August 29, 2007.

On October 18, 2007, the Department found that, due to the complexity of the issues in this case, including affiliation and COP, and outstanding supplemental responses, it was not practicable to complete this review within the time period prescribed. Accordingly, we

<sup>1</sup> Carpenter Technology Corporation, Valbruna Slater Stainless, Inc., Electralloy Corporation, a Division of G.O. Carlson, Inc.

extended the time limit for completing the preliminary results of this review to no later than February 28, 2008, in accordance with section 751(a)(3)(A) of the Act. See *Stainless Steel Bar from India: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review*, 72 FR 60639 (October 25, 2007).

On February 8, 2008, the petitioners filed a request asking the Department to apply total adverse facts available pursuant to section 776 of the Act against Sunflag on the allegation that Sunflag has withheld information regarding numerous affiliated parties, many of which petitioners claim are directly or indirectly involved with subject merchandise. In addition, the petitioners argued that even for those companies that Sunflag has previously acknowledged as being affiliated parties, Sunflag has failed to disclose the involvement of these companies with subject merchandise. The Department plans to issue a supplemental questionnaire following the preliminary results to examine this issue further.

#### Scope of the Order

Imports covered by the order are shipments of SSB. SSB means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut-to-length flat-rolled products (*i.e.*, cut-to-length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes, and sections.

The SSB subject to these reviews is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45,

7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

On May 23, 2005, the Department issued a final scope ruling that SSB manufactured in the United Arab Emirates out of stainless steel wire rod from India is not subject to the scope of this order. See Memorandum from Team to Barbara E. Tillman, "Antidumping Duty Orders on Stainless Steel Bar from India and Stainless Steel Wire Rod from India: Final Scope Ruling," dated May 23, 2005, which is on file in the Central Records Unit in room 1117 of the main Department building. See also *Notice of Scope Rulings*, 70 FR 55110 (September 20, 2005).

#### Period of Review

The POR is February 1, 2006, through January 31, 2007.

#### Applicable Statute

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, all references to the Department of Commerce's regulations are to 19 CFR 351 (2007).

#### Partial Rescission of Administrative Review

The Department's regulations state that the Department will rescind an administrative review if the party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. See 19 CFR 351.213(d)(1). As noted above, the Department initiated this antidumping duty administrative review on March 28, 2007. See *Initiation Notice*. On May 25, 2007, we received a letter from Chandan withdrawing its request for administrative review. Chandan's withdrawal request was within 90 days of initiation. Accordingly, we are rescinding this administrative review with respect to Chandan.

#### Fair Value Comparisons

To determine whether sales of SSB by Sunflag to the United States were made at less than NV, we compared export price ("EP") to normal value ("NV"). To determine whether sales of SSB by DHE to the United States were made at less than NV, we compared constructed export price ("CEP") to NV. See "Export Price and Constructed Export Price" and

"Normal Value" sections of this notice. Pursuant to section 777A(d)(2) of the Act, we compared the EPs and CEPs of individual U.S. transactions to the weighted-average NV of the foreign-like product, where there were sales made in the ordinary course of trade, as discussed in the "Cost of Production Analysis" section, below.

#### Product Comparisons

In accordance with section 771(16) of the Act, we considered all products sold by the respondents in the comparison market covered by the description in the "Scope of the Order" section, above, to be foreign-like products for purposes of determining appropriate product comparisons to U.S. sales. In accordance with section 773(a)(1)(C)(ii) of the Act, in order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign-like product to the volumes of its U.S. sales of the subject merchandise. See the "Normal Value" section, below, for further details.

We compared U.S. sales to monthly weighted-average prices of contemporaneous sales made in the home market based on the following criteria: (1) General type of finish, (2) Grade, (3) Remelting, (4) Type of final finishing operation, (5) Shape, and (6) Size. This was consistent with our practice in the original investigation. See *Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination: Stainless Steel Bar from India*, 59 FR 39733-35 (August 4, 1994); unchanged in the final. See *Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Bar from India*, 59 FR 66915 (December 28, 1994). Where there were no home market sales of foreign-like product that were identical in these respects to the merchandise sold in the United States, we compared U.S. products with the most similar merchandise sold in the home market based on the characteristics listed above, in that order of priority.

#### Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP, as defined in sections 772(a) and 772(b) of the Act, respectively. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold before the date of importation by the producer or exporter outside of the United States to an unaffiliated purchaser in the United States or to an

unaffiliated purchaser for exportation to the United States, as adjusted under section 772(c) of the Act. Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772(c) and (d) of the Act.

We made company-specific adjustments as follows:

(A) DHE

In accordance with section 772(b) of the Act, we calculated CEP for those sales to the first unaffiliated purchaser that took place after importation into the United States. We based CEP on packed CIF and C&F duty-paid prices to unaffiliated purchasers in the United States. We identified the starting price and made deductions for movement expenses, including domestic inland freight, international freight, marine insurance, brokerage and handling, U.S. customs duties, and other transportation expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct and indirect selling expenses. We recalculated DHE's indirect selling expenses based upon information submitted by DHE for its affiliate in the United States. See Memorandum from the Team to the File "Preliminary Results Calculation Memorandum for D.H. Exports Pvt. Ltd.," dated February 28, 2008 ("DHE Preliminary Results Calculation Memorandum"). Lastly, we made an adjustment for profit in accordance with section 772(d)(3) of the Act.

(B) Sunflag

We calculated EP because the merchandise was sold prior to importation by the exporter or producer outside the United States to the first unaffiliated purchaser in the United States, and because CEP methodology was not otherwise warranted. We based EP on the packed, CFR price to unaffiliated purchasers in the United States. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included, where appropriate, warehousing charges at the port of loading, inland freight incurred in transporting merchandise to the Indian port, inland insurance expenses, domestic brokerage and handling expenses, and international freight. See

Memorandum from the Team to the File "Preliminary Results Calculation Memorandum for Sunflag Iron & Steel Co. Ltd.," dated February 28, 2008 ("Sunflag Preliminary Results Calculation Memorandum").

**Duty Drawback**

Section 772(c)(1)(B) of the Act provides that EP or CEP shall be increased by among other things, "the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States." The Department determines that an adjustment to U.S. price for claimed duty drawback is appropriate when a company can demonstrate that: (1) The "import duty and rebate are directly linked to, and dependent upon, one another;" and (2) "the company claiming the adjustment can show that there were sufficient imports of the imported raw materials to account for the drawback received on the exported product." *Rajinder Pipes, Ltd. v. United States*, 70 F. Supp. 2d 1350, 1358 (Ct. Int'l Trade 1999).

DHE claimed a duty drawback adjustment based on its participation in the Indian government's Duty Entitlement Passbook Program. The Department finds that DHE has not provided substantial evidence on the record to establish the necessary link between the import duty and the reported duty drawback. Therefore, because DHE has failed to meet the Department's requirements, we are denying DHE's request for a duty drawback adjustment for the preliminary results. See DHE Preliminary Results Calculation Memorandum.

Sunflag did not claim a duty drawback adjustment.

**Normal Value**

*A. Home Market Viability*

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign-like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the EP and CEP. Section 773(a)(1)(B)(ii)(II) of the Act contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign-like product to its volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

DHE and Sunflag reported that their home market sales of SSB during the POR were more than five percent of their sales of SSB to the United States. Therefore, DHE's and Sunflag's home markets were viable for purposes of calculating NV. Accordingly, DHE and Sunflag reported their home market sales.

To derive NV for the respondents, we made the adjustments detailed in the "Calculation of Normal Value Based on Home Market Prices" section below.

*B. Level of Trade*

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade ("LOT") as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.*; see also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the "chain of distribution"),<sup>4</sup> including selling functions,<sup>5</sup> class of customer ("customer category"), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either comparison market or third

<sup>4</sup> The marketing process in the United States and comparison market begins with the producer and extends to the sale to the final user or customer. The chain of distribution between the two may have many or few links, and each respondent's sales occur somewhere along this chain. In performing this evaluation, we considered each respondent's narrative response to properly determine where in the chain of distribution the sale occurs.

<sup>5</sup> Selling functions associated with a particular chain of distribution help us to evaluate the LOT(s) in a particular market. For purposes of these preliminary results, we have organized the common selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services.



country prices),<sup>6</sup> we consider the starting prices before any adjustments. For CEP sales, we consider only the selling expenses reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. See *Micron Technology, Inc. v. United States*, 243 F. 3d 1301, 1314–1315 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales to sales of the foreign-like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if an NV LOT is more remote from the factory than the CEP LOT and we are unable to make an LOT adjustment, the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61745 (November 19, 1997).

In this review, we determined the following, with respect to the LOT, for each respondent.

(A) DHE

We obtained information from DHE regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed for each channel of distribution. DHE did not request an LOT adjustment. Our LOT findings are summarized below.

DHE reported that it sells to manufacturers and trading companies in the home market, and to trading companies in the United States. DHE reported that it made CEP sales in the U.S. market through a single channel of distribution: sales of DHE-produced SSB to its U.S. affiliate Liaison Stainless Inc. ("LSI"). Therefore, we find that all CEP sales constitute one LOT.

With respect to the home market, DHE reported a single LOT and a single channel of distribution (*i.e.*, factory direct sales) through which it sold SSB to unaffiliated customers. According to DHE, its direct sales to manufacturers and trading companies constitute one distinct LOT in the home market.

Finally, we compared the CEP LOT to the home market LOT and found that

the selling functions performed for home market sales are either performed at the same degree of intensity as, or vary only slightly from, the selling functions performed on U.S. sales. Specifically, we found that the sales process, freight and delivery, advertising activities, technical service and warranty service are performed by DHE at the same level of intensity in both the U.S. and home markets. With respect to warehouse/inventory maintenance, we found that there is a difference in intensity between U.S. and home markets which is not a sufficient basis to determine separate LOTs between the two markets. Therefore, we find that the U.S. LOT is similar to the home market LOT and an LOT adjustment or CEP offset is not necessary. See section 773(a)(7)(A) of the Act.

(B) Sunflag

We obtained information from Sunflag regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed for each channel of distribution. Our LOT findings are summarized below.

Sunflag reported three channels of distribution and a single LOT in the home market. Sunflag reported a single channel of distribution and a single LOT in the U.S. market. Sunflag claimed that its sales in both markets were at the same LOT. Sunflag did not request an LOT adjustment. See December 20, 2007, Supplemental Questionnaire Response ("SQR") at 019, *see also* January 24, 2008, SQR at 005.

In the first home market channel of distribution (channel 1), Sunflag reported direct sales to end users and traders. See May 14, 2007, Section A Questionnaire Response at A-12. Sunflag indicated that channel 1 sales comprised the majority of its sales in the home market. *Id.* In the second home market channel of distribution (channel 2), Sunflag reported a small quantity of sales through its yards (distribution warehouses). *Id.* In the third home market channel of distribution (channel 3), Sunflag reported a very small quantity of sales through a consignment agent. *Id.* In the single channel of distribution for U.S. sales, Sunflag reported direct sales to end users and traders on a packed, CFR basis.

Sunflag reported that its prices did not vary based on channel of distribution or customer category. *Id.* at A-16. Sunflag reported that the channels of distribution are only used for the sake of logistics convenience. According to Sunflag, if at all, domestic prices vary with respect to each other

based on the grade, type, market opportunities available, and competitor dynamics, not by channel of distribution or customer category. *Id.*

We examined the information reported by Sunflag regarding its sales processes for its home market and U.S. sales, including customer categories and the type and level of selling activities performed. Specifically, we considered the extent to which, for instance, sales process/marketing support, freight/delivery, inventory maintenance, and quality assurance/warranty service varied with respect to the different customer categories and channels of distribution across the markets. We concluded that the home market channels of distribution comprise one LOT. We also evaluated the U.S. channel of distribution and concluded that it also comprises one LOT. Next, we compared the U.S. LOT to the home market LOT. Sunflag reported that it sold to similar categories of customer (*e.g.*, primarily end users and traders) in both the home market and the U.S. market. In Sunflag's home market channels of distribution, Sunflag reported similar selling activities, with the exception of commission expenses for channel 3 (consignment agent) sales, which comprised a very small quantity of Sunflag's home market sales. In all markets and channels of distribution, Sunflag reported similar levels of sales/marketing support, freight/delivery, inventory maintenance. Sunflag provided no quality assurance/warranty services in any of its channels of distribution. Therefore, we preliminarily find that Sunflag's sales in the home market and the United States were made at the same LOT.

C. Cost of Production Analysis

As discussed above, the petitioners provided a reasonable basis to believe or suspect that sales by DHE and Sunflag in their home markets had been made at prices below the COP within the meaning of section 773(b) of the Act and we initiated sales-below-cost investigations on July 24, 2007, and July 25, 2007, respectively. See DHE Sales-Below-Cost Memorandum, *see also* Sunflag Sales-Below-Cost Memorandum.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the cost of materials and fabrication for the foreign-like product, plus amounts for general and administrative ("G&A") expenses, financial expenses, and comparison market packing costs, where appropriate. We note that Sunflag did

<sup>6</sup> Where NV is based on constructed value ("CV"), we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, G&A and profit for CV, where possible.



not report costs for grades 304L, 316, and 316L in its February 8, 2008, cost database. Thus, these sales (1.6 percent of Sunflag's home market sales database) are not being used in these preliminary results. While we do not think the lack of costs for these grades affects the model matching, we intend to issue a supplemental questionnaire following the preliminary results to obtain Sunflag's costs for these grades of SSB for use in the final results. We relied on the COP data submitted by DHE and Sunflag except where noted below:

## 2. Individual Company Adjustments

### (A) DHE

For DHE, we increased the direct material costs for each grade of merchandise sold by the difference between the raw material purchase prices incorporated in the reported COPs and the related raw material purchase prices for the final two months of the POR. See DHE Preliminary Results Calculation Memorandum.

### (B) Sunflag

Sunflag did not report its cost for bright bar Grade 416 in its cost database. However, based on record information from Sunflag, we were able to construct Sunflag's cost to convert black bar to bright bar. Therefore, we added these conversion costs to Sunflag's Grade 416 black bar costs to derive Sunflag's bright bar costs for Grade 416 (which is the CONNUM sold in the United States). See Sunflag Preliminary Results Calculation Memorandum.

## 3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we determined such sales of that model were made in substantial quantities within an extended period of time in accordance with section 773(b)(2)(B) and (C) of the Act. Because we compared prices to the POR-average COP, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. In such cases, for both DHE and Sunflag, we disregarded these below-cost sales of a given product and used the remaining sales as the basis for determining NV, in

accordance with section 773(b)(1) of the Act.

### D. Calculation of Normal Value Based on Home Market Prices

For DHE and Sunflag, we calculated NV based on ex-factory or delivered prices to unaffiliated customers in the home market. We made adjustments for differences in packing in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and we deducted movement expenses consistent with section 773(a)(6)(B)(ii) of the Act. In addition, where applicable, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act, as well as for differences in circumstances of sale ("COS") in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not in the other (the "commission offset"). Specifically, where commissions were granted in the U.S. market but not in the comparison market, we made a downward adjustment to NV for the lesser of (1) the amount of the commission paid in the U.S. market, or (2) the amount of indirect selling expenses incurred in the comparison market. If commissions were granted in the comparison market but not in the U.S. market, we made an upward adjustment to NV following the same methodology. We made adjustments to Sunflag's home market data, as discussed below.

We recalculated Sunflag's home market imputed credit expenses using the Department's standard formula. For certain home market sales, we increased the gross unit prices by the amount that the customer overpaid to Sunflag for Sunflag's reported inland freight expenses. We recalculated Sunflag's reported indirect selling expenses applying the Department's standard formula. See Sunflag Preliminary Results Calculation Memorandum.

### Currency Conversion

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

### Preliminary Results of the Review

For the firms listed below, we find that the following weighted-average percentage margins exist for the period

February 1, 2006, through January 31, 2007:

Exporter/Manufacturer	Margin
D.H. Exports Pvt. Ltd .....	10.21
Sunflag Iron & Steel Co. Ltd .....	6.08

### Public Comment

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held 42 days after the publication of this notice, or the first workday thereafter. Issues raised in the hearing will be limited to those raised in the case and rebuttal briefs. Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. See 19 CFR 351.309(d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: (1) A statement of the issue, and (2) a brief summary of the argument with an electronic version included.

### Assessment Rates

For DHE and Sunflag, if these preliminary results are adopted in the final results, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries. For these companies, the Department will issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of review.

For the company rescinded from this review, Chandan, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department will issue appropriate assessment instructions directly to CBP 15 days after publication of these preliminary results of review.

Pursuant to 19 CFR 351.212(b)(1), for all sales made by respondents for which they have reported the importer of record and the entered value of the U.S. sales, we have calculated importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales. Where the respondents did not report the entered value for U.S. sales, we have calculated importer-specific assessment rates for the merchandise in question by

aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales.

To determine whether the duty assessment rates were *de minimis* (i.e., less than 0.50 percent) in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific *ad valorem* rates based on the estimated entered value. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis*.

The Department clarified its "automatic assessment" regulation on May 6, 2003. See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by the respondent for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of SSB from India entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rate established in the final results of this administrative review (except no cash deposit will be required if its weighted-average margin is *de minimis*); (2) if the exporter is not a firm

covered in this review, but was covered in a previous review or the original less than fair value ("LTFV") investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; and (3) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, or the original LTFV investigation, 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 and/or exporters of this merchandise, shall be 12.45 percent, the all-others rate established in the LTFV investigation. See *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from India*, 59 FR 66915 (December 28, 1994).

**Notification to Importers**

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

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

Dated: September 28, 2008.

**Stephen J. Claeys**,  
Acting Assistant Secretary for Import Administration.

[FR Doc. E8-4245 Filed 3-6-08; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[A-570-890]

**Notice of Initiation of Administrative Review of the Antidumping Duty Order on Wooden Bedroom Furniture From the People's Republic of China**

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

**SUMMARY:** The Department of Commerce ("Department") received timely requests to conduct an administrative review of the antidumping duty order on wooden bedroom furniture from the People's Republic of China ("PRC"). The anniversary month of this order is January. In accordance with the Department's regulations, we are initiating this administrative review.

**DATES:** *Effective Date:* March 7, 2008.

**FOR FURTHER INFORMATION CONTACT:** Paul Stolz or Robert Bolling, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482-4474 or (202) 482-3434, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Department received timely requests, in accordance with 19 CFR 351.213(b), during the anniversary month of January, for an administrative review of the antidumping duty order on wooden bedroom furniture from the PRC covering multiple entities. The Department is now initiating an administrative review of the order covering those entities.

**Initiation of Review**

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating an administrative review of the antidumping duty order on wooden bedroom furniture from the PRC. We intend to issue the final results of this review on the companies listed below not later than January 31, 2009.

	Period to be reviewed
<p style="text-align: center;"><b>Antidumping Duty Proceeding</b></p> <p>The People's Republic of China: <sup>1</sup> Wooden Bedroom Furniture A-570-890 .....</p> <p>Ace Furniture &amp; Crafts Ltd., Deqing Ace Furniture &amp; Crafts Ltd.*</p> <p>Alexandre International Corp., Southern Art Development Ltd., Alexandre Furniture (Shenzhen) Co. Ltd., Southern Art Furniture Factory*</p> <p>Art Heritage International Ltd., Super Art Furniture Co. Ltd., Artwork Metal &amp; Plastic Co., Ltd., Jibson Industries Ltd., Airways Loyal International*</p> <p>Baigou Crafts Factory of Fengkai*</p> <p>Bao An Guan Lan Winmost Furniture Factory</p>	<p>1/01/07-12/31/07</p>

	Period to be reviewed
<p>Beijing MingYaFeng Furniture Co., Ltd.  Beijing New Building Materials Co., Ltd. (BNBM Co. Ltd.)  Best King International Ltd.*  Best King International Ltd., Bouvrie International Limited  Billy Wood Industrial (Dong Guan), Great Union Industrial (Dongguan) Co., Ltd., Time Faith Ltd.*  Brother Furniture Manufacture Co., Ltd.  C.F. Kent Co., Inc., C.F. Kent Hospitality, Inc., Shanghai Kent Furniture Co., Ltd., and Shanghai Hospitality Product Mfg., Co., Ltd.  Changshu HTC Import &amp; Export Co. Ltd.*  Chen Meng Furniture (PTE) Co., Ltd., Cheng Meng Decoration &amp; Furniture (Suzhou) Co., Ltd.*  Chuan Fa Furniture Factory*  Classic Furniture Global Co., Ltd.*  Clearwise Co., Ltd.*  COE, Ltd.*  Conghua J.L. George Timber &amp; Co., Ltd.  Contact Co., Ltd.  Dalian Guangming Furniture Co., Ltd.*  Dalian Huafeng Furniture Co., Ltd.*  Dalian Pretty Home Furniture Co., Ltd.*  Decca Furniture Limited*  Denny's Furniture Associates Corp.  Der Cheng Furniture Co., Ltd.  Der Cheng Wooden Works of Factory*  Dong Guan Golden Fortune Houseware Co., Ltd.  Dong Guan Hua Ban Furniture Co., Ltd.*  Dongguan Bon Ten Furniture Co., Ltd.  Dongguan Cambridge Furniture Co., Ltd., Glory Oceanic Co., Ltd.*  Dongguan Chunsan Wood Products Co., Ltd., Trendex Industries Limited*  Dongguan Creation Furniture Co., Ltd., Creation Industries Co., Ltd.*  Dongguan Dihao Furniture Co., Ltd.*  Dongguan Fortune Furniture Ltd.  Dongguan Grand Style Furniture Co., Ltd., Hong Kong DaZhi Furniture Company Ltd.*  Dongguan Great Reputation Furniture Co., Ltd.*  Dongguan Hero Way Woodwork Co., Ltd., Hero Way Enterprises, Ltd., Dongguan Da Zhong Woodwork Co., Ltd., Well Earth International Ltd.*  Dongguan Huada Furniture Co., Ltd.  Dongguan Hung Sheng Artware Products Co., Ltd., Coronal Enterprise Co., Ltd.*  Dongguan Kin Feng Furniture Co., Ltd.*  Dongguan Kingstone Furniture Co., Ltd., Kingstone Furniture Co., Ltd.*  Dongguan Landmark Furniture Products Ltd.*  Dongguan Liaobushangdun Huada Furniture Factory, Great Rich (HK) Enterprises Co., Ltd.*  Dongguan Lung Dong Furniture Co., Ltd., Dongguan Dong He Furniture Co., Ltd.*  Dongguan Mingsheng Furniture Co., Ltd.*  Dongguan Mu Si Furniture Co., Ltd.  Dongguan New Technology Import &amp; Export Co., Ltd.*  Dongguan Qingxi Xinyi Craft Furniture Factory (Joyce Art Factory)*  Dongguan Sea Eagle Furniture Co., Ltd.  Dongguan Singways Furniture Co., Ltd.*  Dongguan Sunpower Enterprise Co., Ltd.*  Dongguan Sunrise Furniture Co., Taicang Sunrise Wood Industry Co., Ltd, Shanghai Sunrise Furniture Co., Ltd., Fairmont Designs*  Dongguan Sunshine Furniture Co., Ltd.  Dongguan Wanhengtong Furniture Co. Ltd.  Dongguan Yihaiwei Furniture Limited*  Dongying Huanghekou Furniture Industry Co., Ltd.*  Dorbest Ltd., Rui Feng Woodwork Co., Ltd., Rui Feng Lumber Development Co., Ltd., aka, Dorbest Ltd., Rui Feng Woodwork (Dongguan) Co., Ltd., Rui Feng Lumber Development (Shenzhen) Co., Ltd.*  Dream Rooms Furniture (Shanghai) Co., Ltd.*  Engmost Investments Limited  Eurosa (Kunshan) Co., Ltd., Eurosa Furniture Co., (PTE) Ltd.*  Ever Spring Furniture Co., Ltd., S.Y.C. Family Enterprise Co., Ltd.*  Evershine Enterprise, Ltd.  Fine Furniture (Shanghai) Ltd.*  Fortune Furniture Ltd.  Foshan Guanqiu Furniture Co., Ltd.*  Four Seas Furniture Manufacturing Ltd.  Fujian Lianfu Forestry Co., Ltd., Fujian Wonder Pacific Inc., Fuzhou Huan Mei Furniture Co., Ltd., Jiangsu Dare Furniture Co., Ltd.*  Furnmart Ltd.*  Gainwell Industries Limited  Gaomi Yatai Wooden Ware Co., Ltd., Team Prospect International Ltd., Money Gain International Co.*  Garri Furniture (Dong Guan) Co., Ltd., Molabile International, Inc. Weei Geo Enterprise Co., Ltd.*  Golden Well International (HK), Ltd.</p>	

Period to be  
reviewed

Grand Style Furniture Co., Ltd.  
 Green River Wood (Dongguan) Ltd.\*  
 Guangdong Gainwell Industrial Furniture Co., Ltd.  
 Guangdong New Four Seas Furniture Manufacturing, Ltd.\*  
 Guangdong Yihua Timber Industry Co., Ltd.  
 Guangming Group Wumahe Furniture Co., Ltd.\*  
 Guangzhou Lucky Furniture Co., Ltd.\*  
 Guangzhou Maria Yee Furnishings, Ltd., Pyla HK Ltd., Maria Yee, Inc.\*  
 Hainan Jong Bao Lumber Co., Ltd., Jibbon Enterprise Co., Ltd.\*  
 Hainan Rulai Furniture Co., Ltd.  
 Hamilton & Spill Ltd.\*  
 Hang Hai Woodcrafts Art Factory Co., Ltd.\*  
 Hong Kong Boliya Industry Development Co., Ltd.  
 Hong Kong Jingbi Group  
 Hong Yu Furniture (Shenzhen) Co., Ltd.\*  
 Hualing Furniture (China) Co., Ltd., Tony House Manufacture (China) Co., Ltd., Buysell Investments Ltd., Tony House Industries Co., Ltd.\*  
 Huizhou Jadom Furniture Co., Ltd., Jadom Furniture Co., Ltd.  
 Hung Fai Wood Products Factory Ltd.\*  
 Hwang Ho International Holdings Limited\*  
 Hwangho New Century Furniture (Dongguan) Corp. Ltd., Trade Rich Furniture (Dongguan) Corp., Ltd.  
 Inni Furniture  
 Jardine Enterprise, Ltd.\*  
 Jiangmen Kinwai Furniture Decoration Co., Ltd.\*  
 Jiangmen Kinwai International Furniture Co., Ltd.\*  
 Jiangsu Weifu Group Company Fullhouse Furniture Manufacturing Corp\*  
 Jiangsu Xiangsheng Bedtime Furniture Co., Ltd., aka Xiangsheng Jiangsu Bedtime Furniture Co., Ltd.\*  
 Jiangsu Yuexing Furniture Group Co., Ltd.\*  
 Jiedong Lehouse Furniture Co., Ltd.\*  
 Kalanter (Hong Kong) Furniture Company Limited\*  
 King Kei Trading Co. Ltd., King Kei Furniture Factory, Jiu Ching Trading Co., Ltd.\*  
 King Wood Furniture Co., Ltd.\*  
 King's Way Furniture Industries Co., Ltd., Kingsyear, Ltd.\*  
 Kong Fong Furniture, Kong Fong Mao Iek Hong  
 Kuan Lin Furniture (Dong Guan) Co., Ltd., Kuan Lin Furniture Factory, Kuan Lin Furniture Co., Ltd.\*  
 Kunshan Junsen Furniture Co., Ltd.  
 Kunshan Lee Wood Product Co., Ltd.\*  
 Kunshan Summit Furniture Co. Ltd.\*  
 Kunwa Enterprise Company\*  
 Langfang TianCheng Furniture Co., Ltd.\*  
 Leefu Wood (Dongguan) Co., Ltd., King Rich International, Ltd.\*  
 Link Silver Ltd. (V.I.B.), Forward Win Enterprises Co. Ltd., Dongguan Haoshun Furniture Ltd.\*  
 Locke Furniture Factory, Kai Chan Furniture Co. Ltd., Kai Chan (Hong Kong) Enterprise Ltd., Taiwan Kai Chan Co. Ltd.\*  
 Longrange Furniture Co. Ltd.\*  
 Mei Jia Ju Furniture Industrial Shenzhen Co., Ltd.  
 Meikangchi (Nantong) Furniture Company Ltd.\*  
 Nanhai Baiyi Woodwork Co. Ltd.\*  
 Nanhai Jiantai Woodwork Co. Ltd., Fortune Glory Industrial, Ltd. (HK Ltd.)\*  
 Nanjing Jardine Enterprise Ltd.  
 Nanjing Nanmu Furniture Co., Ltd.  
 Nantong Dongfang Orient Furniture Co., Ltd.  
 Nantong Yangzi Furniture Co., Ltd.\*  
 Nantong Yushi Furniture Co., Ltd.\*  
 Nathan China Group  
 Nathan International Ltd., Nathan Rattan Factory\*  
 Ningbo Fubang Furniture Industries Limited  
 Ningbo Furniture Industries Limited, Techniwood Industries Ltd., Ningbo Hengrun Furniture Co., Ltd.\*  
 Ningbo Techniwood Furniture Industries Limited  
 Northeast Lumber Co., Ltd.  
 Orient International Holding Shanghai Foreign Trading Co., Ltd.\*  
 Passwell Corporation, Pleasant Wave Ltd.\*  
 Passwell Wood Corporation  
 Perfect Line Furniture Co., Ltd.\*  
 Po Ying Industrial Co.\*  
 Primewood International Co., Ltd., Prime Best International Co., Ltd., Prime Best Factory, Liang Huang (Jiaxing) Enterprise Co., Ltd.\*  
 Profit Force Limited\*  
 PuTian JingGong Furniture Co., Ltd.\*  
 Putian Ou Dian Furniture Co., Ltd.  
 Qingdao Beiyuan Industry Trading Co. Ltd.  
 Qingdao Beiyuan-Shengji Furniture Co., Ltd.\*  
 Qingdao Liangmu Co., Ltd.\*

	Period to be reviewed
<p>Qingdao Shengchang Wooden Co., Ltd.*  Red Apple Trading Co., Ltd.*  Restonic (Dongguan) Furniture Ltd., Restonic Far East (Samoa) Ltd.*  RiZhao SanMu Woodworking Co., Ltd.*  Season Furniture Manufacturing Co., Season Industrial Development Co.*  Sen Yeong International Co. Ltd., Sheh Hau International Trading Ltd.*  Shanghai Aosen Furniture Co., Ltd.*  Shanghai Jian Pu Export &amp; Import Co., Ltd.*  Shanghai Maoji Imp. &amp; Exp. Co. Ltd.*  Shanghai Season Industry &amp; Commerce Co., Ltd.  Sheng Jing Wood Products (Beijing) Co., Ltd., Telstar Enterprises Ltd.*  Shenyang Kunyu Wood Industry Co., Ltd.*  Shenyang Shining Dongxing Furniture Co., Ltd.*  Shenzhen Dafuhao Industrial Development Co., Ltd.*  Shenzhen Forest Furniture Co., Ltd.*  Shenzhen Jiafa High Grade Furniture Co., Ltd., Golden Lion International Trading Ltd.*  Shenzhen New Fudu Furniture Co., Ltd.*  Shenzhen Shen Long Hang Industry Co., Ltd.*  Shenzhen Tiancheng Furniture Co., Ltd., Winbuild Industrial Ltd., Red Apple Furniture Co., Ltd.  Shenzhen Wonderful Furniture Co., Ltd.*  Shenzhen Xiande Furniture Factory*  Shenzhen Xingli Furniture Co., Ltd.*  Shing Mark Enterprise Co., Ltd., Carven Industries Ltd. (BVI), Carven Industries Limited (HK), Dongguan Zhenxin Furniture Co., Ltd., Dongguan Yongpeng Furniture Co., Ltd.*  Shun Feng Furniture Co., Ltd.*  Sino Concord International Corporation*  Sino Concord (Zhangzhou) Furniture Co., Ltd.  Songgang Jasonwood Furniture Factory, Jasonwood Industrial Co., Ltd. S.A.*  Speedy International Ltd.  Starcorp Furniture Co., Ltd., Starcorp Furniture (Shanghai) Co., Ltd., Orin Furniture (Shanghai) Co., Ltd., Shanghai Star Furniture Co., Ltd., Shanghai XingDing Furniture Industrial Co., Ltd.  Starwood Furniture Manufacturing Co., Ltd.*  Starwood Industries Ltd.*  Strongson Furniture (Shenzhen) Co., Ltd., Strongson Furniture Co., Ltd., Strongson (HK) Co.*  Sunforce Furniture (Hui-Yang) Co., Ltd., SunFung Wooden Factory, Sun Fung Co., Shin Feng Furniture Co. Ltd., Stupendous International Co. Ltd.*  Superwood Co. Ltd., Lianjiang Zongyu Art Products Co., Ltd.*  T.J. Maxx International Co., Ltd.*  Tarzan Furniture Industries, Ltd., Samsco Industries Ltd.*  Teamway Furniture (Dong Guan) Co. Ltd., Brittomart Inc.*  Techniwood (Macao Commercial Offshore) Limited  Tianjin First Wood Co., Ltd.  Tianjin Fortune Furniture Co. Ltd.*  Tianjin Master Home Furniture*  Tianjin Phu Shing Woodwork Enterprise Co., Ltd.*  Tianjin Sande Fairwood Furniture Co., Ltd.*  Time Crown (U.K.) International Ltd., China United International Co.  Top Art Furniture Factory/Sanxiang Top Art Furniture/Ngai Kun Trading*  Top Goal Development Co.*  Top Goal Furniture Co., Ltd. (Shenzhen)  Tradewinds Furniture Ltd.*  Tradewinds International Enterprise Ltd.  Transworld (Zhangzhou) Furniture Co., Ltd.*  Trendex Industries Limited (BVI)*  Triple J Furniture Enterprises Co., Mandarin Furniture (Shenzhen) Co., Ltd.  Tube-Smith Enterprises (Zhangzhou) Co., Ltd., Tube-Smith Enterprise (Haimen) Co., Ltd., Billionworth Enterprise, Ltd.*  Union Friend International Trade Co., Ltd.*  U-Rich Furniture (Zhangzhou) Co., Ltd., U-Rich Furniture, Ltd.*  Wan Bao Cheng Group Hong Kong Co., Ltd.*  Wanhengtong Nueevder (Furniture) Manufacture Co., Ltd., Dongguan Wanhengtong Industry Co., Ltd.*  Winky Top Ltd.  Winmost Enterprises Limited*  Winnie Universal, Ltd., Zhongshan Winnie Furniture Ltd., Winnie Overseas, Ltd.  Woodworth Wooden Industries (Dong Guan) Co., Ltd.*  Xiamen Yongquan Sci-Tech Development Co., Ltd.*  Xilinmen Group Co., Ltd.*  Xingli Arts &amp; Crafts Factory of Yangchun*  Yangchun Hengli Co., Ltd.*  Yeh Brothers World Trade Inc*  Yichun Guangming Furniture Co., Ltd.*  Yida Co. Ltd., Yitai Worldwide Ltd., Yili Co., Ltd., Yetbuild Co., Ltd.*  Yihua Timber Industry Co., Ltd.*  Yongxin Industrial (Holdings) Limited*</p>	



	Period to be reviewed
Zhang Zhou Sanlong Wood Product Co., Ltd.* Zhangjiagang Daye Hotel Furniture Co., Ltd.* Zhangjiagang Zheng Yan Decoration Co. Ltd.* Zhangzhou Guohui Industrial & Trade Co. Ltd.* Zhanjiang Sunwin Arts & Crafts Co., Ltd.* Zhejiang Niannian Hong Industrial Co., Ltd. Zhong Cheng Furniture Co., Ltd. Zhong Shan Fullwin Furniture Co., Ltd.* Zhongshan Fengheng Furniture Co., Ltd. Zhongshan Fookyik Furniture Co., Ltd.* Zhongshan Gainwell Furniture Co., Ltd.* Zhongshan Golden King Furniture Industrial Co., Ltd.* Zhongshan Yiming Furniture Co., Ltd. Zhongshan Youcheng Wooden Arts & Crafts Co., Ltd. Zhoushan For-Strong Wood Co., Ltd.*	

<sup>1</sup> If one of the above named companies does not qualify for a separate rate, all other exporters of wooden bedroom furniture from the PRC that have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.

\* These companies received a separate rate in the most recent segment of this proceeding in which they participated.

### Notice of No Sales

The companies on which we are initiating this review, should notify the Department within 30 days of publication of this notice in the **Federal Register** if they had no shipments, entries or sales of the merchandise under consideration during the POR.

### Separate Rates

In proceedings involving non-market economy ("NME") countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). In accordance with the separate-rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto*

government control over export activities.

In order for exporters or producers to obtain separate-rate status in NME administrative reviews, the Department requires parties to submit a separate-rate status application or certification. See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries (April 5, 2005), available on the Department's Web site at <http://ia.ita.doc.gov/policy/bull05-1.pdf>.

Due to the large number of firms requesting an administrative review in this proceeding, the Department is requiring all firms listed above that wish to qualify for separate-rate status in this administrative review to complete, as appropriate, either a separate-rate status application or certification, as described below.

For this administrative review, in order to demonstrate separate-rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at <http://ia.ita.doc.gov/> on the date of publication of this **Federal Register**. In responding to the certification, please follow the "Instructions for Filing the Certification" in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than April 6, 2008. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned

firms, and foreign sellers who purchase and export subject merchandise to the United States.

For entities that have not previously been assigned a separate rate, to demonstrate eligibility for such, the Department requires a Separate Rate Status Application. The Separate Rate Status Application will be available on the Department's Web site at <http://ia.ita.doc.gov/> on the date of publication of this **Federal Register**. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than May 6, 2008. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

Section 777A(c)(1) of the Tariff Act of 1930, as amended ("the Act") directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Act permits the Department to examine either (1) a sample of exporters, producers or types of products that is statistically valid based on the information available at the time of selection; or (2) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that can be reasonably examined. Due to the large number of firms requested for an administrative review and the Department's experience regarding the resulting administrative burden to review each company for which a

request has been made, the Department is considering exercising its authority to limit the number of respondents selected for review using one of the two methods described above.

#### Selection of Respondents

For this administrative review, the Department intends to select respondents based on U.S. Customs and Border Protection ("CBP") data for U.S. imports during the period of review ("POR"). We intend to make our decisions regarding respondent selection within 20 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and the selection of respondents within seven days of publication of this **Federal Register** notice.

#### Notification

This notice constitutes public notification to all firms requested for review and seeking separate-rate status in this administrative review of the antidumping duty order on wooden bedroom furniture from the PRC that they must submit a separate-rate status application or certification, as appropriate, within the time limits established in this notice of initiation of administrative review in order to receive consideration for separate-rate status. In other words, the Department will not give consideration to any Separate Rate Certification or Separate Rate Status Application made by parties who fail to timely submit the requisite Separate Rate Certification or Application. All information submitted by respondents in this administrative review is subject to verification. To complete this segment within the statutory time frame, the Department will be limited in its ability to extend deadlines on the above submissions. As noted above, the Separate Rate Certification and the Separate Rate Status Application will be available on the Department's Web site at <http://ia.ita.doc.gov/> on the date of publication of this **Federal Register**.

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

This initiation and notice are in accordance with section 751(a) of the Act, and 19 CFR 351.221(c)(1)(i).

Dated: February 29, 2008.

**Blanche Ziv,**

*Acting Director, AD/CVD Operations, Office 8, for Import Administration.*

[FR Doc. E8-4548 Filed 3-6-08; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-890]

#### Wooden Bedroom Furniture From the People's Republic of China; Initiation of New Shipper Reviews

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

**EFFECTIVE DATE:** March 7, 2008.

**SUMMARY:** The Department of Commerce (the "Department") received timely requests to conduct new shipper reviews of the antidumping duty order on wooden bedroom furniture from the People's Republic of China ("PRC"). In accordance with 19 CFR 351.214(d)(1), we are initiating new shipper reviews for Golden Well International (HK), Ltd. ("Golden Well") and its supplier Zhangzhou XYM Furniture Product Co., Ltd. (Zhangzhou XYM), and for Dongguan Sunshine Furniture Co., Ltd. ("Sunshine").

**FOR FURTHER INFORMATION CONTACT:** Paul Stolz or Hua Lu, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4474 or (202) 482-6478, respectively.

**SUPPLEMENTARY INFORMATION:** The Department received timely requests from Sunshine and Golden Well on January 4 and 31, 2008 respectively, pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended ("the Act"), and in accordance with 19 CFR 351.214(c), for new shipper reviews of the antidumping duty order on wooden bedroom furniture from the PRC. See *Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture from the People's Republic of China*, 70 FR 329 (January 4, 2005).

Pursuant to the requirements set forth in 19 CFR 351.214(b)(2)(i), in their requests for new shipper reviews, Golden Well, as an exporter, and its supplier Zhangzhou XYM, and Sunshine, as a producing exporter, all certified that (1) they did not export wooden bedroom furniture to the

United States during the period of investigation ("POI"); (2) since the initiation of the investigation, they have never been affiliated with any company that exported subject merchandise to the United States during the POI; and (3) their export activities were not controlled by the central government of the PRC.

In accordance with 19 CFR 351.214(b)(2)(iv), Golden Well and Sunshine submitted documentation establishing the following: (1) the date on which they first shipped wooden bedroom furniture for export to the United States; (2) the volume of their first shipment; and (3) the date of their first sale to an unaffiliated customer in the United States.

#### Initiation of New Shipper Review

In accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), and based on information on the record, we find that Golden Well's and Sunshine's requests meet the initiation threshold requirements and we are initiating new shipper reviews for shipments of wooden bedroom furniture exported by Golden Well that were produced by Zhangzhou XYM, and shipments of wooden bedroom furniture produced and exported by Sunshine. See Memorandum to the File through Wendy J. Frankel, Director, New Shipper Initiation Checklist, dated February 29, 2008. The Department will conduct these new shipper reviews according to the deadlines set forth in section 751(a)(2)(B)(iv) of the Act.

Pursuant to 19 CFR 351.214(g)(1)(i)(A), the period of review ("POR") for a new shipper review initiated in the month immediately following the anniversary month will be the 12-month period immediately preceding the anniversary month. In this case, the relevant anniversary month of the order is January 2008. Therefore, the POR for the new shipper reviews of Golden Well and Sunshine will be January 1 through December 31, 2007.

It is the Department's usual practice, in cases involving non-market economies, to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue questionnaires to Golden Well and Sunshine, which will include a separate-rate section. The reviews will proceed if the responses provide sufficient indication that Golden Well and Sunshine are not subject to either *de jure* or *de facto* government control

with respect to their exports of wooden bedroom furniture.

On August 17, 2006, the Pension Protection Act of 2006 (H.R. 4) was signed into law. Section 1632 of H.R. 4 temporarily suspends the authority of the Department to instruct U.S. Customs and Border Protection to collect a bond or other security in lieu of a cash deposit in new shipper reviews. Therefore, the posting of a bond or other security under section 751(a)(2)(B)(iii) of the Act in lieu of a cash deposit is not available in this case. Importers of wooden bedroom furniture 1) produced by Zhangzhou XYM and exported by Golden Well, or 2) produced and exported by Sunshine must continue to post cash deposits of estimated antidumping duties on each entry of subject merchandise (*i.e.*, wooden bedroom furniture) at the PRC-wide entity rate of 216.01 percent.

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

This initiation and notice are issued in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: February 29, 2008.

Stephen J. Claeys,  
Deputy Assistant Secretary for Import Administration.

[FR Doc. E8-4546 Filed 3-6-08; 8:45 am]

BILLING CODE 3510-DS-5

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

#### Public Safety Voice Over Internet Protocol (VoIP) Roundtable for Organizations Interested in Utilization of VoIP for Communication Between Public Safety Personnel

**AGENCY:** National Institute of Standards and Technology, Department of Commerce.

**ACTION:** Notice of Public Workshop.

**SUMMARY:** The Office of Law Enforcement Standards (OLES), in cooperation with the Department of Homeland Security's Office of Interoperability and Compatibility (DHS/OIC) and representatives of the public safety community, will hold a public working group on April 7-11, 2008, at the Institute for Telecommunication Sciences (ITS) in Boulder, CO. The purpose of the first

three days of the meeting (April 7-10, 2008) is to bring manufacturers together to establish Voice over IP (VoIP) connectivity between radio communication system bridging devices. The purpose of the last two days of the working group is to discuss the development of an enhanced implementation profile for VoIP between radio system bridging solutions. The results of this and subsequent roundtable discussions will be used in the development of specific implementation profiles for VoIP usage in public-safety owned systems.

There is no charge for the roundtable; however, because of meeting room restrictions, advance registration is mandatory and limited to three representatives from any one organization. There will be no on-site, same-day registration. The registration deadline is April 1, 2008. Please note registration and admittance instructions and other additional information under the **SUPPLEMENTARY INFORMATION** section of this notice.

**DATES:** The workshop will be held on April 7-10, 2008, from 8:30 a.m. until 5 p.m. MT, and April 11, 2008 from 8:30 a.m. until Noon.

**ADDRESSES:** The roundtable will be held in the Radio Building (Building 1), Room 1103/1105/1107, 325 Broadway, Boulder, CO 80305.

**FOR FURTHER INFORMATION CONTACT:** Dereck Orr, (303) 497-5400, e-mail: [dereck.orr@nist.gov](mailto:dereck.orr@nist.gov). The mailing address is 325 Broadway, Mail Stop ITS.P, Boulder, CO 80305. Information regarding OLES can be viewed at <http://www.eel.nist.gov/oles/>. Information regarding DHS/OIC can be viewed at <http://www.safecomprogram.gov>. Information regarding ITS can be viewed at <http://www.its.bldrdoc.gov>.

**SUPPLEMENTARY INFORMATION:** In response to a request from the U.S. Department of Homeland Security (DHS), Science and Technology Directorate (S&T), Command, Control and Interoperability Division (CCI), Office of Interoperability and Compatibility (OIC), the NIST Office of Law Enforcement Standards (OLES) is developing protocol implementation profiles for VoIP communications between public safety personnel.

The request from OIC germinated from practitioner-raised issues related to VoIP-enabled solutions being marketed to the public safety community as an "interoperability solution," yet these solutions will not interoperate with VoIP-enabled solutions from other manufacturers making the same claim. The proper way to address this situation

is to develop a protocol implementation profile (or set of profiles) that contains the minimum standards, parameters and values necessary to ensure that solutions developed by independent organizations will interoperate with each other. This roundtable discussion is intended to lead to the development of a protocol implementation profile for VoIP-enabled radio system bridging solutions.

Anyone wishing to attend this meeting must register by close of business April 1, 2008, in order to attend. Please submit your name, time of arrival, e-mail address and phone number to Ms. Kathy Mayeda and she will provide you with logistics information for the meeting. Ms. Mayeda's e-mail address is [kmayeda@its.bldrdoc.gov](mailto:kmayeda@its.bldrdoc.gov) and her phone number is (303) 497-5890.

All attendees are required to submit their name, time of arrival, e-mail address and phone number to Ms. Mayeda. Non-U.S. citizens must also submit their country of citizenship, title, employer/sponsor and address.

Dated: February 29, 2008.

Richard F. Kayser,

Acting Deputy Director.

[FR Doc. E8-4563 Filed 3-6-08; 8:45 am]

BILLING CODE 3510-13-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-AV80

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Environmental Assessment for Amendment 30B

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

**ACTION:** Notice announcing the preparation of an environmental assessment (EA).

**SUMMARY:** NMFS, in cooperation with the Gulf of Mexico Fishery Management Council (Council), is preparing an EA in accordance with the National Environmental Policy Act (NEPA) for Amendment 30B to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico. This notice is intended to inform the public of the change from the preparation of a draft environmental impact statement (EIS) to an EA for Amendment 30B.

**FOR FURTHER INFORMATION CONTACT:**  
Peter Hood; phone: (727) 824-5305; fax:  
(727) 824-5308; email:  
[Peter.Hood@noaa.gov](mailto:Peter.Hood@noaa.gov).

**SUPPLEMENTARY INFORMATION:** On March 5, 2007 (72 FR 9734), NMFS and the Council published a Notice of Intent in the **Federal Register** to prepare a draft EIS and to announce scoping meetings regarding the actions proposed in Amendment 30. Amendment 30 was being developed to describe and analyze management alternatives to manage fishing mortality and to establish status criteria for greater amberjack, gray triggerfish, gag, and red grouper in accordance with the Magnuson-Stevens Fishery Conservation and Management Act. Recent stock assessments completed under the Southeast Data, Assessment, and Review program indicated that management changes were warranted for these stocks.

Based on comments received during the scoping process and further analyses needed for the gag and red grouper stock assessments, Amendment 30 was split into Amendments 30A and 30B. This allowed proposed actions to revise the greater amberjack rebuilding plan, end overfishing of gray triggerfish, and rebuild the gray triggerfish stock to proceed in Amendment 30A while the status of the gag and red grouper stocks were resolved. A draft supplemental EIS was prepared for Amendment 30A, in part, due to significant increases in the stock biomass of greater amberjack and gray triggerfish as the two species recover from their respective overfished states. A Notice of Availability for the draft supplemental EIS analyzing impacts on the human environment for Amendment 30A was published in the **Federal Register** on December 14, 2007 (72 FR 71137).

Actions to be described and analyzed in Amendment 30B include: setting gag thresholds and benchmarks; establishing gag and red grouper total allowable catch (TAC), interim allocations, and accountability measures; ending overfishing of gag; managing gag and red grouper commercial and recreational harvests consistent with TAC; reducing grouper discard mortality; establishing marine reserves; and requiring compliance with Federal fishery management regulations by federally permitted reef fish vessels when fishing in state waters. Based on further analysis of the environmental impacts of actions proposed in Amendment 30B, NMFS and the Council do not anticipate any significant impacts on the human environment. Although overfishing would end for gag based on the

proposed actions, the stock is not considered overfished and significant increases in stock biomass are not required. Consequently, NMFS and the Council are initially preparing an EA rather than proceeding with the development of a draft EIS. If the EA results in a Finding of No Significant Impact (FONSI), the EA and FONSI will be the final environmental documents required by NEPA. If the EA reveals that significant environmental impacts may be reasonably expected to result from the proposed actions, NMFS and the Council will develop a draft EIS to further evaluate those impacts.

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

Dated: March 3, 2008.

**Alan D. Risenhoover,**

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

[FR Doc. E8-4542 Filed 3-6-08; 8:45 am]

**BILLING CODE 3510-22-S**

#### **COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS**

##### **Limitations of Duty-Free Imports of Apparel Articles Assembled in Beneficiary ATPDEA Countries from Regional Country Fabric**

March 4, 2008.

**AGENCY:** Committee for the  
Implementation of Textile Agreements  
(CITA).

**ACTION:** Publishing the 12-Month Cap on  
Duty Free Benefits under the extension  
of the ATPA

**EFFECTIVE DATE:** March 1, 2008.

**FOR FURTHER INFORMATION CONTACT:**  
Richard Stetson, International Trade  
Specialist, Office of Textiles and  
Apparel, U.S. Department of Commerce,  
(202) 482-3400.

##### **SUPPLEMENTARY INFORMATION:**

**Authority:** Section 3103 of the Trade Act of 2002, P.L. 107-210; Title VII of the Tax Relief and Health Care Act of 2006 (TRHCA 2006), P.L. 109-432; H.R. 1830, 110th Cong. (2007) (H.R. 1830); H.R. 5264, 110th Cong. (2008) (H.R. 5264); Presidential Proclamation 7616 of October 31, 2002 (67 FR 67283).

Section 3103 of the Trade Act of 2002 amended the Andean Trade Preference Act (ATPA) to provide for duty and quota-free treatment for certain textile and apparel articles imported from designated Andean Trade Promotion and Drug Eradication Act (ATPDEA) beneficiary countries. Section 204(b)(3)(B)(iii) of the amended ATPA provides duty- and quota-free treatment for certain apparel articles assembled in ATPDEA beneficiary countries from

regional fabric and components. More specifically, this provision applies to apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries from fabrics or from fabric components formed or from components knit-to-shape, in one or more ATPDEA beneficiary countries, from yarns wholly formed in the United States or one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 and 5603 of the Harmonized Tariff Schedule (HTS) and are formed in one or more ATPDEA beneficiary countries). Such apparel articles may also contain certain other eligible fabrics, fabric components, or components knit-to-shape.

The TRHCA of 2006 extended the expiration of the ATPA to June 30, 2007. See section 7002(a) of the TRHCA 2006. H.R. 1830 further extended the expiration of the ATPA to February 29, 2008. See section 1 of H.R. 1830. H.R. 5264 further extended the expiration of the ATPA to December 31, 2008. See section 2 of H.R. 5264.

For the period beginning on October 1, 2007, and extending through September 30, 2008, preferential tariff treatment is limited under the regional fabric provision to imports of qualifying apparel articles in an amount not to exceed 5 percent of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available. For the purpose of this notice, the 12-month period for which data are available is the 12-month period that ended July 31, 2007. In Presidential Proclamation 7616, (published in the **Federal Register** on November 5, 2002, 67 FR 67283), the President directed CITA to publish in the **Federal Register** the aggregate quantity of imports allowed during each period.

For the period beginning on October 1, 2007, and extending through September 30, 2008, the aggregate quantity of imports eligible for preferential treatment under the regional fabric provision is 1,247,713,244 square meters equivalent. Apparel articles entered in excess of this quantity will be subject to otherwise applicable tariffs. For the period after September 30, 2008, CITA will publish a **Federal Register** Notice establishing a new 12-month cap on duty-free benefits.

This quantity is calculated using the aggregate square meter equivalents of all apparel articles imported into the United States, derived from the set of Harmonized System lines listed in the Annex to the World Trade Organization

Agreement on Textiles and Clothing (ATC), and the conversion factors for units of measure into square meter equivalents used by the United States in implementing the ATC.

**R. Matthew Priest,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 08-989 Filed 3-5-08; 1:02 pm]

BILLING CODE 3510-D-S

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS)

**AGENCY:** Department of Defense.

**ACTION:** Notice.

**SUMMARY:** Pursuant to Section 10(a), Public Law 92-463, as amended, notice is hereby given of a forthcoming meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS). The purpose of the Committee meeting is to receive briefings on subject pertaining to the 2008 topics and review protocols for upcoming installation visits. The meeting is open to the public, subject to the availability of space.

Interested persons may submit a written statement for consideration by the Defense Department Advisory Committee on Women in the Services. Individuals submitting a written statement must submit their statement to the Point of Contact listed below at the address detailed below NLT 5 p.m., Friday, March 21, 2008. If a written statement is not received by Friday, March 21, 2008 prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Department Advisory Committee on Women in the Services until its next open meeting. The Designated Federal Officer will review all timely submissions with the Defense Department Advisory Committee on Women in the Services Chairperson and ensure they are provided to the members of the Defense Department Advisory Committee on Women in the Services. If members of the public are interested in making an oral statement, a written statement must be submitted as above. After reviewing the written comments, the Chairperson and the Designated Federal Officer will determine who of the requesting persons will be able to make an oral presentation of their issue during an open portion of this meeting or at a future meeting. Determination of who

will be making an oral presentation will depend on time available and if the topics are relevant to the Committee's activities. Two minutes will be allotted to persons desiring to make an oral presentation. Oral presentations by members of the public will be permitted only on Tuesday, March from 4 p.m. to 5 p.m. before the full Committee. Number of oral presentations to be made will depend on the number of requests received from members of the public.

**Dates & Times:** March 25, 2008, 8:30 a.m.—5 p.m.

**Location:** Double Tree Hotel Crystal City National Airport, 300 Army Navy Drive, Arlington, VA 22202.

#### FOR FURTHER INFORMATION CONTACT:

MSgt Robert Bowling, USAF, DACOWITS, 4000 Defense Pentagon, Room 2C548A, Washington, DC 20301-4000. *Robert.bowling@osd.mil* Telephone (703) 697-2122. Fax (703) 614-6233.

**SUPPLEMENTARY INFORMATION:** Meeting agenda.

*Tuesday, March 25, 2008 8:30 a.m.—5 p.m.*

Welcome & Administrative Remarks  
Receive briefings:

- Recruiting, Retention, and Promotion Status of Active Duty and Reserve Women in the Armed Forces
- From the National Military Impacted Schools Association
- From the Educational Partnerships' Directorate, Office of the Assistant Secretary of Defense for Military Community and Family Policy
- From the Military Child Education Coalition

Review Protocols for upcoming installation visits  
Public Forum

**Note:** Exact order may vary.

Dated: March 3, 2008.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, DoD.*

[FR Doc. E8-4505 Filed 3-6-08; 8:45 am]

BILLING CODE 5001-06-P

## DEPARTMENT OF DEFENSE

### Office of the Secretary of Defense

#### Renewal of Department of Defense Federal Advisory Committees

**AGENCY:** DoD.

**ACTION:** Renewal of Federal Advisory Committee.

**SUMMARY:** Under the provisions of the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of

1976 (5 U.S.C. 552b, as amended), and 41 CFR 102-3.65, the Department of Defense gives notice that it is renewing the charter for the U.S. Army Science Board (hereafter referred to as the Board).

The Board is a discretionary federal advisory committee established by the Secretary of Defense to provide the Department of Defense, the Secretary of Army, the Assistant Secretary of the Army (Acquisition, Logistics and Technology), the Chief of Staff of the Army, and Army Commanders independent advice and recommendations on scientific, technical, manufacturing, acquisition and logistics processes. The Board, in accomplishing its mission: (a) Provides sound recommendations for Army leaders in support of Soldiers, warfighters, and national defense; (b) conducts science and technology initiatives; and (c) provides invaluable and unbiased technical advice on science and technology systems, products, and applications.

The Board shall be composed of not more than 100 members, who are distinguished members of the scientific, technical, and manufacturing fields. Board members appointed by the Secretary of Defense, who are not federal officers or employees, shall serve as Special Government Employees under the authority of 5 U.S.C. 3109. Board members shall be appointed on an annual basis by the Secretary of Defense, and shall serve a term not to exceed three years. The Secretary of the Army or designed representative, along with the Secretary of Defense may extend a member's term on the Board. The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall select the Chairperson and Vice Chairperson from the total Board membership. Board members shall with the exception of travel and per diem for official travel, serve without compensation.

The Board shall be authorized to establish subcommittees, as necessary and consistent with its mission, and these subcommittees or working groups shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976, and other appropriate federal regulations.

Such subcommittees or workgroups shall not work independently of the chartered Board, and shall report all their recommendations and advice to the Board for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered Board nor can they report directly to the



Department of Defense or any federal officers or employees who are not Board members.

**SUPPLEMENTARY INFORMATION:** The Board shall meet at the call of the Board's Designated Federal Officer, in consultation with the Board's chairperson. The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. The Designated Federal Officer or duly appointed Alternate Designated Federal Officer shall attend all committee meetings and subcommittee meetings.

Pursuant to 41 CFR 102-3.105(j) and 102-3.140, the public or interested organizations may submit written statements to the U.S. Army Science Board membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the U.S. Army Science Board.

All written statements shall be submitted to the Designated Federal Officer for the U.S. Army Science Board, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the U.S. Army Science Board's Designated Federal Officer can be obtained from the GSA's FACA Database—<https://www.fido.gov/facadatabase/public.asp>.

The Designated Federal Officer, pursuant to 41 CFR 102-3.150, will announce planned meetings of the U.S. Army Science Board. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

**FOR FURTHER INFORMATION CONTACT:** Contact Jim Freeman, Deputy Committee Management Officer for the Department of Defense, 703-601-2554, extension 128.

Dated: March 3, 2008.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. E8-4506 Filed 3-6-08; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF DEFENSE

### Department of the Army

#### Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Concerning NBC Marker Light

**AGENCY:** Department of the Army, DoD.  
**ACTION:** Notice.

**SUMMARY:** In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent No. U.S. 7,298,244 entitled "NBC Marker Light" issued November 20, 2007. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeffrey DiTullio at U.S. Army Soldier Systems Center, Kansas Street, Natick, MA 01760, Phone; (508) 233-4184 or E-mail: [Jeffrey.Ditullio@natick.army.mil](mailto:Jeffrey.Ditullio@natick.army.mil).

**SUPPLEMENTARY INFORMATION:** Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. E8-4567 Filed 3-6-08; 8:45 am]

**BILLING CODE 3710-08-P**

## DEPARTMENT OF DEFENSE

### Department of the Army

#### Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Concerning Enzymatic Polymerization

**AGENCY:** Department of the Army, DoD.  
**ACTION:** Notice.

**SUMMARY:** In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent No. U.S. 7,332,297 entitled "Enzymatic Polymerization" issued February 19, 2007. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeffrey DiTullio at U.S. Army Soldier Systems Center, Kansas Street, Natick, MA 01760, Phone; (508) 233-4184 or E-mail: [Jeffrey.Ditullio@natick.army.mil](mailto:Jeffrey.Ditullio@natick.army.mil).

**SUPPLEMENTARY INFORMATION:** Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. E8-4568 Filed 3-6-08; 8:45 am]

**BILLING CODE 3710-08-P**

## DEPARTMENT OF DEFENSE

### Department of the Army

#### Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Concerning Methods for the Purification and Aqueous Fiber Spinning of Spider Silks and Other Structural Proteins

**AGENCY:** Department of the Army, DoD.  
**ACTION:** Notice.

**SUMMARY:** In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent No. U.S. 7,335,739 entitled "Methods for the Purification and Aqueous Fiber Spinning of Spider Silks and other Structural Proteins" issued February 26, 2008. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeffrey DiTullio at U.S. Army Soldier Systems Center, Kansas Street, Natick, MA 01760, Phone; (508) 233-4184 or E-mail: [Jeffrey.Ditullio@natick.army.mil](mailto:Jeffrey.Ditullio@natick.army.mil).

**SUPPLEMENTARY INFORMATION:** Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. E8-4503 Filed 3-6-08; 8:45 am]

**BILLING CODE 3710-08-P**

## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

#### Notice of Availability for the Draft Program Environmental Impact Statement/ Environmental Impact Report for the San Diego Creek Watershed Special Area Management Plan (SAMP)/Watershed Streambed Alteration Agreement (WSAA) Process, Orange County, CA

**AGENCY:** Army Corps of Engineers, DoD.  
**ACTION:** Notice.

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 (as amended), the U.S. Army Corps of Engineers, Los Angeles District, Regulatory Division (Corps), in coordination with the California Department of Fish and Game, Habitat Conservation Planning, South Coast Region (Department), has completed a Draft Program Environmental Impact Statement/ Environmental Impact Report (EIS/EIR)

for the San Diego Creek Watershed Special Area Management Plan (SAMP)/Watershed Streambed Alteration Agreement (WSAA) Process. The San Diego Creek Watershed SAMP is a plan, which is comprised of the following elements: an Analytical Framework for Corps and Department decisionmaking; modified, watershed-specific permitting processes, including watershed- and resource-based permitting protocols and a mitigation framework for the Corps and the Department; a Strategic Mitigation Plan, which is based upon a riparian ecosystem restoration plan; a Mitigation Coordination Program to achieve implementation of the Strategic Mitigation Plan and foster a coordinated approach to aquatic resource management in the Watershed; and an implementation plan for the SAMP. The SAMP establishes alternative (aquatic resource-based and watershed-specific) permitting procedures for projects within the San Diego Creek Watershed that will alter the bed, bank or channel of rivers, streams, and lakes and associated riparian habitats under the Department's jurisdiction, and discharge dredged or fill material into waters of the United States subject to the Corps jurisdiction. The SAMP permitting procedures will improve the capacity of the Corps and the Department to evaluate such projects, as compared to the process each agency would normally follow in permitting such projects on a case-by-case basis.

**FOR FURTHER INFORMATION CONTACT:** Ms. Corice Farrar, Project Manager, Regulatory Division, U.S. Army Corps of Engineers, Los Angeles District at (213) 452-3296, by e-mail at [Corice.J.Farrar@usace.army.mil](mailto:Corice.J.Farrar@usace.army.mil).

**SUPPLEMENTARY INFORMATION:** Bound copies of the Draft Program EIS/EIR will be made available to the public for review at the following library reference desks: University of California at Irvine, Langson Library (Irvine, California); Newport Beach Central Library (Newport Beach, California); Heritage Park Regional Library (Irvine, California); and Santa Ana Public Library (Santa Ana, California). In addition, in-house review copies will be made available at the Department's San Diego Office by calling (858) 462-4201 and Regional Office in Los Alamitos by calling (562) 342-7115. A public meeting will be held at the Peter and Mary Muth Interpretive Center located at 2301 University Drive, Newport Beach, California 92660 on April 1, 2008, from 7 p.m. to 8:30 p.m. If you would like additional information or an electronic copy of the Draft Program EIS/EIR, please contact Ms. Corice

Farrar by phoning (213) 452-3296, by sending an e-mail to the address shown above, or by accessing the U.S. Army Corps of Engineers, Los Angeles District's Web site at: <http://www.spl.usace.army.mil/samp/sandiegocreeksamp.htm>. Comments on the Draft Program EIS/EIR may be submitted in writing to Corice Farrar, either mailed to P.O. Box 532711, Los Angeles, CA 90053-2325, or delivered to 915 Wilshire Boulevard, Suite 980, Los Angeles, CA 90017-3401, from March 7, 2008, to April 21, 2008, by 5 p.m. for consideration by the lead agencies in their decision-making process leading to certification of the Final Program EIS/EIR and a Record of Decision.

Dated: February 27, 2008.

**David J. Castanon,**

*Chief, Regulatory Division, U.S. Army Corps of Engineers, Los Angeles District.*

[FR Doc. E8-4574 Filed 3-6-08; 8:45 am]

**BILLING CODE 3710-KF-P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

#### Notice of Intent To Grant Exclusive Patent License: Newport Engineering & Science Company

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Special notice.

**SUMMARY:** The Department of the Navy hereby gives notice of its intent to grant to Newport Engineering and Science Company, a revocable, nonassignable, partially exclusive license to practice throughout the United States the Government-owned inventions described in U.S. Pat. App. Ser. No. 11/296,722 COATING TO REDUCE FRICTION ON SKIS AND SNOWBOARDS filed on December 8, 2005.

**DATES:** Anyone wishing to object to the grant of this license has fifteen (15) days from the date of this notice to file written objections along with supporting evidence, if any.

**ADDRESSES:** Written objections are to be filed with the Naval Undersea Warfare Center Division; Newport, 1176 Howell St., Bldg 990, Code 07TP, Newport, RI 02841.

**FOR FURTHER INFORMATION CONTACT:** Dr. Theresa A. Baus, Head, Technology Partnership Enterprise Office, Naval Undersea Warfare Center Division, Newport, 1176 Howell St., Bldg 990, Code 07TP, Newport, RI 02841, telephone 401-832-8728, or E-Mail: [bausta@npt.nuwc.navy.mil](mailto:bausta@npt.nuwc.navy.mil).

**Authority:** 35 U.S.C. 207, 37 CFR part 404.

Dated: February 29, 2008.

**T.M. Cruz,**

*Lieutenant, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. E8-4502 Filed 3-6-08; 8:45 am]

**BILLING CODE 3810-FF-P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

#### Notice of Public Hearings for the Draft Environmental Impact Statement (DEIS) for Introduction of the P-8A Multi-Mission Maritime Aircraft (MMA) Into the United States Fleet

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice.

**SUMMARY:** Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality Regulations (40 CFR Parts 1500-1508), the Department of the Navy (Navy) has prepared and filed with the U.S. Environmental Protection Agency (EPA) a Draft Environmental Impact Statement (DEIS) to evaluate the potential environmental consequences associated with providing facilities and functions to support the homebased of P-8A MMA at established maritime patrol installations. Public hearings will be held to provide information and receive oral and written comments on the DEIS. Federal, state, and local agencies, and interested individuals are invited to be present or represented at the hearings.

**DATES AND ADDRESSES:** Four public hearings will be held. Each scheduled public hearing will be preceded by an open information session to allow interested individuals to review information presented in the DEIS. Navy representatives will be available during the information session to provide clarification as necessary related to the DEIS. Each information session will occur from 4:30 p.m. to 6:30 p.m., followed by the formal public hearing from 7 p.m. to 9 p.m. Public hearings are scheduled at the following dates and locations:

1. Whidbey Island, Washington: Wednesday, March 26, 2008, Oak Harbor School District Office, ASC Boardroom, 350 S. Oak Harbor Street, Oak Harbor, WA 98277.

2. Honolulu, Hawaii: Tuesday, April 1, 2008, J.B. Castle High School, 45-386 Kaneohe Bay Drive, Kaneohe, HI 96744.

3. Coronado, California: Thursday, April 3, 2008, Early Childhood

Development Center, Crown Hall, 199 Sixth Street, Coronado, CA 92118.

4. Jacksonville, Florida: Wednesday, April 9, 2008, Howard Johnson Inn, Clay Duval Room, 150 Park Avenue, Orange Park, FL 32073.

**FOR FURTHER INFORMATION CONTACT:** Commander, Naval Facilities Engineering Command Atlantic Division, 6506 Hampton Blvd, Norfolk, VA 23508-1278, Attn: MMA PM, fax 757-322-4805.

**SUPPLEMENTARY INFORMATION:** Navy has prepared and filed with the EPA the DEIS for the introduction of P-8A MMA into the U.S. Fleet in accordance with requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. Sections 4321-4345) and its implementing regulations (40 CFR Parts 1500-1508). A Notice of Intent for this DEIS was published in the *Federal Register* on December 27, 2006 (FR27DE06-48). Navy is lead agency for the proposed action. The purpose of the proposed action is to provide facilities and functions to support the homebasing of P-8A MMA at established maritime patrol homebases. This would allow the Navy to efficiently and economically retire P-3C aircraft and transition P-8A MMA into the Fleet while maintaining a maritime patrol capability that sustains national defense objectives and policies.

The Navy proposes to replace maritime patrol P-3C aircraft with P-8A MMA at established P-3C maritime patrol installations beginning no later than 2012. Established maritime patrol installations are Naval Air Station (NAS) Jacksonville, Florida; NAS Whidbey Island, Washington; NAS Brunswick, Maine; NAS North Island, California; and Marine Corps Base Hawaii (MCBH) Kaneohe Bay. However, for the purposes of the proposed action, NAS Brunswick has been eliminated from consideration as a potential homebase because its aircraft and supporting functions are being transferred in their entirety to NAS Jacksonville by 2011 in accordance with the recommendations of the 2005 Base Closure and Realignment Commission (BRAC).

Introduction of the P-8A MMA would begin no later than 2012 and is scheduled to be complete by 2019, when full P-3C retirement from the Fleet is to occur.

The following installations have been identified as receiving sites for the P-8A MMA: NAS Whidbey Island, Washington; NAS Jacksonville, Florida; MCBH Kaneohe Bay, Hawaii; and a training detachment site at NAS North Island, California. The Navy evaluated a

range of alternatives in the DEIS based on the number of squadrons homebased at each site, placement of the Fleet Replacement Squadron (FRS), and the number of main operating bases.

The EIS addresses environmental impacts of the proposed action pertaining to the basing and operation of P-8A MMA and the associated construction and/or renovation of buildings and other support facilities. In addition, the EIS assesses impacts on each local community and economy associated with relocation of military and contract personnel to or from the area to support the operation and maintenance of P-8A MMA squadrons.

The EIS addresses any potential environmental impacts associated with: Water resources; air quality; biological resources; threatened and endangered species; land use; noise exposure levels; socioeconomic resources; infrastructure; and cultural resources. The analyses include direct and indirect impacts, and account for cumulative impacts from other foreseen federal activities at the homebase and detachment sites.

The Navy conducted the scoping process to identify community concerns and local issues that should be addressed in the EIS. Federal, state, and local agencies and interested parties provided written comments to the Navy and identified specific issues or topics of environmental concern that should be addressed in the EIS. The Navy considered these comments in determining the scope of the EIS.

The DEIS has been distributed to various Federal, state, and local agencies, as well as other interested individuals and organizations. In addition, copies of the DEIS have been distributed to the following libraries and publicly accessible facilities for public review:

1. Oak Harbor City Library, 1000 SE Regatta Drive, Oak Harbor, WA.
2. Coronado Public Library, 640 Orange Avenue, Coronado, CA.
3. Charles Webb Wesconnett Regional Branch, Jacksonville Public Library, 6887 103rd Street, Jacksonville, FL.
4. Kaneohe Public Library, 45-829 Kamehameha Highway, Honolulu, HI.

An electronic copy of the DEIS is available for public viewing at <http://www.MMAEIS.com>. Requests for single copies of the DEIS (on CD-ROM) or its Executive Summary may be made online at <http://www.MMAEIS.com>. Federal, state, and local agencies, as well as interested parties, are invited and encouraged to be present or represented at the hearings. To ensure the accuracy of the record, all statements presented orally at the public hearings should be submitted in writing.

All comments will become part of the public record and will be responded to in the Final Environmental Impact Statement (FEIS). Equal weight will be given to oral and written statements. In the interest of available time, and to ensure all who wish to give an oral statement at the public hearings have the opportunity to do so, each speaker's comments will be limited to three minutes. If a longer statement is to be presented, it should be summarized at the public hearing and the full text submitted in writing either at the hearing or mailed or faxed to:

Commander, Naval Facilities Engineering Command Atlantic, Attn: MMA PM, 6506 Hampton Blvd., Norfolk, VA 23508-1278, Fax 757-322-4805.

Residents from the county where the public hearing is being held will be given first priority to speak publicly, to ensure that county's residents have an opportunity to make verbal comments. Residents will be required to sign in to speak. Comments can be made in the following ways: (1) Oral statements/written comments at the public hearings or (2) written comments mailed or faxed to address/fax number in this notice or (3) comments submitted via the Web site at <http://www.MMAEIS.com>. All written comments postmarked by April 18, 2008, will become a part of the official public record and will be responded to in the FEIS.

Dated: February 29, 2008.

T.M. Cruz,

Lieutenant, Office of the Judge Advocate General, U.S. Navy Federal Register Liaison Officer.

[FR Doc. E8-4468 Filed 3-6-08; 8:45 am]

BILLING CODE 3810-FF-P

## DEPARTMENT OF EDUCATION

### Early Reading First Program; Notice Reopening the Deadline Date for Transmittal of Pre-Applications and Extending the Deadline Date for Transmittal of Full Applications for Fiscal Year (FY) 2008

*Catalog of Federal Domestic Assistance (CFDA) Number:* 84.359A/B.  
**SUMMARY:** On December 28, 2007, we published in the *Federal Register* (72 FR 73790) a notice inviting applications (Application Notice) for the Early Reading First (ERF) FY 2008 grant competition. The deadline date for eligible applicants to transmit their pre-applications for funding under this competition was February 1, 2008, and the deadline date for full applications was April 18, 2008. We are reopening the pre-application phase of the ERF FY

2008 competition for all eligible applicants, including both local educational agencies (LEAs) and eligible non-LEAs, because the originally posted State lists of eligible LEAs did not include all LEAs that were eligible as of December 28, 2007, and included some LEAs that were ineligible as of that date. We are reopening the pre-application phase of the ERF FY 2008 competition for all eligible LEAs and for eligible entities located in communities served by those LEAs, and extending the full application phase for applicants invited to submit full applications. As a result of the changes in the pre-application and full application deadline dates for the FY 2008 ERF competition, we also are extending the intergovernmental review period required under Executive Order 12372. Applicants must refer to the Application Notice for all other requirements concerning this reopened competition.

**Pre-Applications:** The new deadline date for eligible applicants to submit pre-applications is:

**Deadline for Transmittal of Pre-Applications:** April 7, 2008.

Pre-applications for grants under this competition must be submitted electronically using the *Grants.gov* Apply site (*Grants.gov*). For information about how to submit your pre-application electronically, or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to the Application Notice. The notice is available at the following Web site: [www.Grants.gov](http://www.Grants.gov).

We do not consider a pre-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**.

**Note:** Applicants that successfully submitted their complete pre-applications on or before the original deadline date of February 1, 2008 are not required to resubmit their applications. In addition, applicants that were not timely because they submitted their pre-applications between 4:30 p.m. and midnight on February 1, 2008 are not required to resubmit their applications. All other applicants must download, complete, and submit an entirely new application package through *Grants.gov* as specified in the Application Notice.

**Full Applications:** The new deadline date for the transmittal of full applications is:

**Deadline for Transmittal of Full Application:** June 10, 2008.

**Intergovernmental Review:** The new deadline date for Intergovernmental Review under Executive Order 12372 is: **Deadline for Intergovernmental Review:** August 11, 2008.

**SUPPLEMENTARY INFORMATION:** We are reopening the pre-application phase of the ERF FY 2008 competition for all eligible applicants, including non-LEAs, because the originally posted State generated lists of eligible LEAs did not include all LEAs that were eligible as of December 28, 2007, and included some LEAs that were ineligible as of that date. We are extending the full application phase of the FY 2008 competition for a commensurate period for applicants we have invited, following the pre-application phase, to submit full applications. Eligibility determinations are made as of December 28, 2007.

**Eligible LEAs.** Eligible LEAs include all LEAs that were current recipients of a Reading First subgrant as of December 28, 2007, as well as all LEAs that were eligible for such a subgrant as of that date, but were not funded.

**Ineligible LEAs.** The originally posted eligible LEA lists included some LEAs that are not eligible. Any LEA that was not eligible for a Reading First subgrant in its State or through the Bureau of Indian Education (BIE) as of December 28, 2007 is not eligible to receive an ERF subgrant in this FY 2008 competition. Furthermore, any entity that is not located in a community served by an eligible LEA is not eligible to receive an ERF subgrant in this competition.

For the convenience of applicants, we have posted corrected lists of eligible LEAs by State on the ERF Web site at <http://www.ed.gov/programs/earlyreading/eligibility.html>.

Please note, however, that it is each applicant's own responsibility to verify with the Reading First office in its State or with the Bureau of Indian Education (BIE) the eligibility (as of December 28, 2007) of a particular LEA for a Reading First subgrant. A list of State and BIE contacts for this purpose is posted also at the ERF Web site at <http://www.ed.gov/programs/earlyreading/eligibility.html>.

**Application Submission Information.** Information concerning submission of pre-applications for grants under the ERF program (CFDA Number 84.359A) is described in section IV (Application and Submission Information) of the Application Notice, which is available at the following Web site: <http://www.ed.gov/news/fedregister/announce/index.html>.

**Note:** For all applicants submitting a new pre-application in accordance with this notice, please note that you must use the

current pre-application package posted on *Grants.gov*. That is, *Grants.gov* will reject any submission from the earlier application package, which was available on *Grants.gov* through the original pre-application deadline of February 1, 2008.

**Note:** If you wish to exercise the Exception to Electronic Submission Requirements, you must submit no later than March 24, 2008 a statement to the Department requesting an exception to these requirements and explaining the grounds that prevent you from using the Internet to submit your pre-application.

**FOR FURTHER INFORMATION CONTACT:** Pilla Parker, U.S. Department of Education, 400 Maryland Avenue, SW., room 3C136, Washington, DC 20202-6132. Telephone: (202) 260-3710 or by e-mail: [Pilla.Parker@ed.gov](mailto:Pilla.Parker@ed.gov); or Rebecca Marek, U.S. Department of Education, 400 Maryland Avenue, SW., room 3C138, Washington, DC 20202-6132. Telephone: (202) 260-0968 or by e-mail: [Rebecca.Marek@ed.gov](mailto:Rebecca.Marek@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 may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

**Electronic Access to This Document:** You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

Dated: March 4, 2008.

**Kerri L. Briggs,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. E8-4545 Filed 3-6-08; 8:45 am]

BILLING CODE 4000-01-P

**ELECTION ASSISTANCE COMMISSION****Sunshine Act Notice**

**AGENCY:** United States Election Assistance Commission (EAC).

**ACTION:** Notice of Public Meeting Roundtable Discussion.

**DATE & TIME:** Wednesday, March 19, 2008, 9 p.m.–2 p.m. (MST).

**PLACE:** Hyatt Regency Denver, 650 15th Street, Denver, CO 80202, (303) 436–1234.

**AGENDA:** The Commission will host a voting systems testing laboratory roundtable discussion regarding the Technical Guidelines Development Committee's (TGDC) recommended voluntary voting system guidelines (VVSG). The discussion will be focused upon the following topics: (1) Whether the recommended TGDC standards create appropriate functional standards that promote innovation; (2) How to evaluate innovative systems, for which there are no standards for purposes of certification; (3) The value and risks associated with Open Ended Vulnerability Testing; (4) The processes associated with testing to the VVSG and possible modifications; (5) The implications of the recommended usability benchmarks on the testing laboratories; (6) The cost implications of the proposed VVSG.

This Meeting Will Be Open To The Public.

**PERSON TO CONTACT FOR INFORMATION:** Matthew Masterson, Telephone: (202) 566–3100.

**Thomas R. Wilkey,**  
*Executive Director, U.S. Election Assistance Commission.*

[FR Doc. 08–985 Filed 3–4–08; 4:20 pm]

**BILLING CODE 6820-KF-M**

**ELECTION ASSISTANCE COMMISSION****Sunshine Act Notice**

**AGENCY:** United States Election Assistance Commission (EAC).

**ACTION:** Notice of Public Meeting Roundtable Discussion.

**DATE & TIME:** Thursday, March 27, 2008, 9 a.m.–2 p.m. (EST).

**PLACE:** Kellogg Conference Center, Gallaudet University, 800 Florida Ave., NE., Washington, DC 20002, (202) 651–6000.

**AGENDA:** The Commission will host a voting systems testing laboratory roundtable discussion regarding the Technical Guidelines Development Committee's (TGDC) recommended

voluntary voting system guidelines (VVSG). The discussion will be focused upon the following topics: (1) New research, technology, or methods in the areas of accessibility and usability that can serve as a basis of the discussion; (2) Overarching usability and/or disability concerns with voting systems; (3) Does the current recommended guidelines allow for independent participation by individuals with disabilities; (4) How to best qualify people to conduct usability and accessibility testing; (5) The possible benefits and drawbacks of component testing and certification; (6) Addressing cognitive disabilities in the standards; (7) Possible ways to improve communication between voting system manufacturers/developers and usability and accessibility experts; (8) The strengths and weaknesses of the proposed usability benchmarks in the proposed standards.

This meeting will be open to the public.

**PERSON TO CONTACT FOR INFORMATION:** Matthew Masterson, Telephone: (202) 566–3100.

**Thomas R. Wilkey,**  
*Executive Director, U.S. Election Assistance Commission.*

[FR Doc. 08–986 Filed 3–4–08; 4:20 pm]

**BILLING CODE 6820-KF-M**

**DEPARTMENT OF ENERGY****Environmental Management Site-Specific Advisory Board, Savannah River Site**

**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), Savannah River Site. 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**.

Monday, March 24, 2008: 1 p.m.–5 p.m.

Tuesday, March 25, 2008: 8:30 a.m.–4 p.m.

**ADDRESSES:** Radisson Hotel Columbia, 2100 Bush River Road, Columbia, SC 29210.

**FOR FURTHER INFORMATION CONTACT:** Gerri Flemming, Office of External Affairs, Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 952–7886.

**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:**

Monday, March 24, 2008

1 p.m.: Combined Committee Session.  
5 p.m.: Adjourn.

Tuesday, March 25, 2008

8:30 a.m.: Approval of Minutes, Agency Updates.

9:30 a.m.: Public Comment Session.

9:45 a.m.: Chair and Facilitator Updates.

10:15 a.m.: Nuclear Materials Committee Report.

11 a.m.: Strategic and Legacy Management Committee Report.

11:45 a.m.: Public Comment Session.

12 p.m.: Lunch Break.

1 p.m.: Waste Management Committee Report.

2:15 p.m.: Facility Disposition and Site Remediation Committee Report.

2:45 p.m.: Administrative Committee Report.

3:45 p.m.: Public Comment Session.

4 p.m.: Adjourn.

If needed, time will be allotted after public comments for items added to the agenda and administrative details. A final agenda will be available at the meeting Monday, March 24, 2008.

**Public Participation:** The meeting is open to the public. 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 Gerri Flemming's office at the address or telephone 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 Gerri Flemming at the address or phone number listed above. Minutes will also be available at the following Web site: <http://www.srs.gov/general/outreach/srs-cab/srs-cab.html>.

Issued at Washington, DC, on March 4, 2008.

**Rachel Samuel,**

*Deputy Committee Management Officer.*

[FR Doc. E8–4552 Filed 3–6–08; 8:45 am]

**BILLING CODE 6450–01–P**



**DEPARTMENT OF ENERGY****Office of Fossil Energy****Ultra-Deepwater Advisory Committee; Correction****AGENCY:** Department of Energy.**ACTION:** Notice of Open Meeting Correction.

The Department of Energy published a notice of open meeting announcing a meeting of the Ultra-Deepwater Advisory Committee, 73 FR 8863. In FR Doc. E8-2891, published on Friday, February 15, 2008, page 8863, under **SUPPLEMENTARY INFORMATION**, first column, forty-sixth line, remove "onshore unconventional" and add in its place "ultra-deepwater".

Issued in Washington, DC on March 3, 2008.

**Rachel Samuel,***Deputy Committee Management Officer.*

[FR Doc. E8-4536 Filed 3-6-08; 8:45 am]

BILLING CODE 6450-01-P

**DEPARTMENT OF ENERGY****Amendment to the Record of Decision for the Department of Energy's Waste Management Program: Treatment and Storage of Transuranic Waste****AGENCY:** Department of Energy.**ACTION:** Amendment to Record of Decision.

**SUMMARY:** The Department of Energy (DOE), pursuant to DOE National Environmental Policy Act (NEPA) Regulations (10 CFR 1021.315), is amending the Record of Decision for the *Waste Management Program: Treatment and Storage of Transuranic Waste* issued on January 20, 1998 (63 FR 3629), and amended previously including on December 29, 2000 (65 FR 82985), and June 30, 2004 (69 FR 39446).

Under this amendment to its Record of Decision (ROD), DOE intends to send both contact-handled (CH) and remote-handled (RH) transuranic (TRU) waste from certain generator sites as needed to the Idaho National Laboratory (INL) to be treated and characterized prior to the shipment to the Waste Isolation Pilot Plant (WIPP) for disposal. These sites are: the Argonne National Laboratory (ANL) (Argonne, IL); Bettis Atomic Power Laboratory (BAPL) (West Mifflin, PA); General Electric Vallecitos Nuclear Center (GE) (Sunol, CA); the Hanford Site, (Hanford) (Richland, WA); Knolls Atomic Power Laboratory (Nuclear Fuel Services) (KAPL-NFS) (Erwin, TN); Knolls Atomic Power Laboratory

(KAPL) (Schenectady, NY); Lawrence Berkeley National Laboratory (LBL) (Berkeley, CA); Lawrence Livermore National Laboratory (LLNL) (Livermore, CA); the Nevada Test Site (NTS); Separations Process Research Unit (SPRU) (Schenectady, NY); Paducah Gaseous Diffusion Plant (PGDP) (Paducah, KY); and Sandia National Laboratories (SNL) (Albuquerque, NM).

DOE expects that most of the waste from these generator sites will be sent to INL for treatment and characterization. However, DOE may, when feasible, characterize some waste at these generator sites under the provisions of the modified WIPP Hazardous Waste Facility Permit that allow characterization based solely on process knowledge and ship that waste directly to WIPP or, in the case of SNL, send TRU waste to Los Alamos National Laboratory to be characterized, in accordance with the original (1998) ROD. In addition, TRU waste from Babcock and Wilcox (BW) (Lynchburg, VA), and NRD L,L,C, (NRD) (Grand Island, NY), will also be moved to INL to be treated and characterized prior to shipment to WIPP for disposal, only if that waste meets waste acceptance criteria for treatment at INL and is determined to be defense waste as required by the WIPP Land Withdrawal Act for waste to be eligible for disposal at WIPP.

TRU waste would be accepted for treatment and characterization at INL only in accordance with the provisions of the settlement agreement in *Public Service Company of Colorado v. Batt* entered into between DOE and the State of Idaho in 1995 (the Idaho Settlement Agreement) and the Site Treatment Plan. The Idaho Settlement Agreement allows TRU waste from other DOE sites to be treated at INL if it is treated within 6 months of receipt and shipped out of Idaho within 6 months of treatment. DOE would also continue to remove TRU waste currently stored at INL in accordance with the terms of the Idaho Settlement Agreement.

In accordance with DOE NEPA regulations (10 CFR 1021.314), DOE prepared a supplement analysis (SA), *Supplement Analysis for the Treatment of Transuranic Waste at the Idaho National Laboratory (DOE/EIS-0200-SA-03)*, to determine whether the proposed treatment and characterization of waste at INL prior to disposal at WIPP is a substantial change to the proposed action analyzed in DOE's *Waste Management Programmatic Environmental Impact Statement (DOE/EIS-0200) (WM-PEIS)* or whether there are significant new circumstances or information relevant to environmental

concerns such that a supplement to the WM-PEIS or a new EIS is needed. Based on the SA, DOE has determined that a supplement to the WM-PEIS or a new EIS is not needed.

**FOR FURTHER INFORMATION CONTACT:**

Copies of the documents referenced herein are available from the: Center for Environmental Management Information, P.O. Box 23769, Washington, DC 20026-3769, Telephone: 1-800-736-3282 (in Washington, DC: 202-863-5084).

For further information on the treatment, characterization of TRU waste and disposal of TRU waste at WIPP, contact: Casey Gadbury (CBFO), U.S. Department of Energy, Carlsbad Field Office, P.O. Box 3093, Carlsbad, NM 88221. Telephone: 575-234-7372.

For further information on the DOE program for the management of TRU waste or this amendment to the ROD, contact: Ms. Christine Gelles (EM-12), Office of Environmental Management, U.S. Department of Energy, 19001 Germantown Road, Germantown, MD 20874. Telephone: 301-903-1669.

For information on DOE's NEPA process, contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Compliance (GC-20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: 202-586-4600, or leave a message at 1-800-472-2756.

**SUPPLEMENTARY INFORMATION:****I. Background**

TRU waste is waste that contains alpha particle-emitting radionuclides with atomic numbers greater than that of uranium (92) and half-lives greater than 20 years in concentrations greater than 100 nanocuries per gram. TRU waste is classified according to the radiation dose at a package surface. CH-TRU waste has a radiation dose rate at a package surface of 200 millirem per hour or less; this waste can safely be handled directly by personnel. RH-TRU waste has a radiation dose rate at a package surface greater than 200 millirem per hour and must be handled remotely (e.g., with machinery designed to shield workers from radiation). Mixed TRU waste contains both radioactive and hazardous components.

**Prior NEPA Review**

In the WM-PEIS TRU Waste ROD (63 FR 3629, January 20, 1998), DOE selected the Decentralized Alternative, stating that "each of the Department's sites that currently has or will generate TRU waste will prepare and store its waste on site" prior to shipment to

WIPP.<sup>1</sup> The WM-PEIS TRU Waste ROD also noted that "in the future, the Department may decide to ship transuranic wastes from sites where it may be impractical to prepare them for disposal to sites where DOE has or will have the necessary capability." The WM-PEIS TRU Waste ROD stated that the sites that could receive TRU waste shipments from other sites were the Idaho National Engineering and Environmental Laboratory (now referred to as the Idaho National Laboratory or INL), the Oak Ridge Reservation, the Savannah River Site, and the Hanford Site, and that such decisions would be subject to appropriate review under NEPA. In DOE/EIS-0290, *Advanced Mixed Waste Treatment Project Final Environmental Impact Statement* (1999), DOE examined the impacts of treating up to 120,000 cubic meters of TRU from INL and other DOE sites at the Advanced Mixed Waste Treatment Facility (AMWTF).

## II. Change in the Proposed Action

DOE has identified up to 8,764 cubic meters of CH-TRU waste and up to 255 cubic meters of RH-TRU waste, that could be moved from various TRU waste generator sites to INL for treatment and characterization prior to shipment to WIPP. At INL, the CH-TRU waste would be treated at the AMWTF to reduce the volume of the waste and characterized for shipment to WIPP. The RH-TRU waste would be treated during repackaging to remove prohibited items and characterized for shipment to WIPP at the Idaho Nuclear Technology and Engineering Center (INTEC), which is located on the INL site. Four sites (Hanford Site, INL, Oak Ridge Reservation, and the Savannah River Site) were identified in the 1998 ROD to potentially receive waste from other sites. INL has the capabilities to process this TRU waste.

Approximately 2,067 shipments of CH-TRU waste and 188 shipments of RH-TRU waste could move to INL for treatment and characterization. Shipment of TRU wastes to INL for treatment and characterization would increase the efficiency of TRU waste treatment and characterization operations.

Once treated and characterized, the off-site TRU wastes would be shipped from INL to WIPP for disposal. Approximately 795 shipments would be required to transport the treated CH-TRU waste to WIPP and approximately

621<sup>2</sup> shipments would be required to transport the treated RH-TRU waste to WIPP.

## III. Supplement Analysis

To determine whether the proposed action would warrant a supplement to the WM-PEIS, DOE prepared the SA referred to above. The SA compared the impacts of the proposed action to impacts of alternatives involving shipment of waste to INL for treatment that were examined in the WM-PEIS or in the *Waste Isolation Pilot Plant Disposal Phase Supplemental Environmental Impact Statement* (DOE/EIS-0026-S-2) (SEIS-II).<sup>3</sup>

The SA examined the impacts of transporting TRU waste to INL for treatment and characterization and the impacts of transporting waste from INL to WIPP for disposal. It also examined potential transportation accident impacts for waste proposed to be moved in the TRUPACT-III container, which is currently undergoing certification by the Nuclear Regulatory Commission, because some waste would be moved from Hanford to INL in the TRUPACT-III once it is certified. The transportation impacts of the proposed shipments of waste to INL and subsequent shipments of treated waste to WIPP, including accident impacts, were smaller than the impacts predicted in the SEIS-II for similar movements of waste to and from INL except for the latent cancer fatalities among workers.

Site impacts from packaging and loading waste at the generator sites, unloading waste at INL, and treating waste at INL, including the impacts of waste treatment accidents, were smaller than the impacts predicted in the WM-PEIS (Alternative 3) for similar activities.

WIPP site impacts, including the impact of potential accidents involving the standard large waste box (that would be transported in the TRUPACT-III once

<sup>2</sup> The number of outbound RH-TRU shipments to WIPP would be larger than the number of inbound RH-TRU shipments to INL because waste is assumed to move to WIPP in RH 72-B casks, which hold a smaller volume of waste than the 10-160B transportation containers that would be used primarily for transportation to INL. The WIPP RH waste handling process is designed to handle waste packaged in an RH 72-B without using the hot cell. Limitations on the amount of waste that can be handled in the hot cell in the WIPP hazardous waste facility RH waste permit will limit the use of the 10-160B for shipments to WIPP, since waste shipped in the 10-160B must be repackaged into a facility canister in the hot cell prior to disposal.

<sup>3</sup> The SEIS-II was used as a basis for comparison of transportation impacts because the WM-PEIS did not examine the impacts of shipping waste to WIPP for disposal. The SEIS-II was also used as a basis for comparison of WIPP site accident impacts because the WM-PEIS did not examine those impacts.

approved), would be equal to or smaller than the impacts predicted in the SEIS-II (Alternative 2B) for similar activities at WIPP.

The SA also considered the potential impacts of intentional destructive acts (i.e., acts of sabotage or terrorism) and estimated the impacts would be no greater than the impacts of an accident analyzed in the SA.

All of the impacts of the proposed action are within the boundaries of the impacts previously predicted in the Regionalized Alternative 3 of the WM-PEIS and the Action Alternative 2B of the SEIS-II, except for the worker transportation impacts. The increase in worker transportation impacts is small and is not expected to increase worker mortality if the proposed action were implemented. Based on the impact analysis in the SA, DOE has determined that the proposed action would not present a substantial change relevant to environmental concerns nor are there significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. Therefore, DOE has determined that a supplement to the WM-PEIS or a new EIS is not required under 40 CFR 1502.9(c) or 10 CFR 1021.314 for this proposal. Both the WM-PEIS and the WIPP SEIS-II analyzed the impacts associated with shipment, treatment, and characterization of CH-TRU and RH-TRU wastes at INL. The WIPP SEIS-II examined the impacts of shipping these wastes from INL to the WIPP for disposal. In addition, the impacts of treatment of CH-TRU at the AMTWF and RH-waste at the INTEC were evaluated using the same approach as used for the AMTWF EIS.

## IV. Decision

DOE has decided to ship up to 8,764 cubic meters of CH-TRU waste and up to 255 cubic meters of RH-TRU waste as needed from ANL, BAPL, BW, GE, Hanford, KAPL-NFS, KAPL, LBL, LLNL, NRD, PGDP, NTS, SPRU and SNL, to INL for treatment and characterization prior to shipment to WIPP for disposal. After treatment and characterization at INL, all of the waste will be shipped to WIPP for disposal. The BW and NRD waste will be shipped to INL only if that waste is determined to meet waste acceptance criteria for treatment at INL and be defense waste eligible for disposal at WIPP, as required by the WIPP Land Withdrawal Act.

DOE may, where feasible, characterize some of this waste at the generator sites under the provisions of the WIPP permit allowing characterization based on process knowledge and ship that waste

<sup>1</sup> The only exception to this decision was the Sandia National Laboratories in New Mexico, which would have shipped its TRU waste to Los Alamos for storage and processing before disposal at WIPP.

directly to WIPP or, in the case of SNL, ship the waste to Los Alamos National Laboratory for characterization, in accordance with the 1998 TRU Record of Decision.

Waste will be accepted for treatment and characterization at INL only if this can be done in accordance with the provisions of the Idaho Settlement Agreement and the Site Treatment Plan. The Idaho Settlement Agreement allows TRU waste from other DOE sites to be treated at INL if it is treated within 6 months of receipt and shipped out of Idaho within 6 months of treatment. DOE will also continue to remove TRU waste currently stored at INL in accordance with the terms of the Idaho Settlement Agreement.

#### V. Basis for the Decision

Using the existing INL CH- and RH-TRU waste program and facilities at INL will avoid the time and expense of establishing capability at sites that do not currently have an existing program or facilities. Also, the Advanced Mixed Waste Treatment Facility at INL will reduce the volume of some CH-TRU waste (e.g., waste which consists primarily of waste containers overpacked in larger containers that hold a relatively small volume of waste when compared with the container volume), thus reducing the volume of this waste that would be disposed of at WIPP.

Issued in Washington, DC this 27th day of February 2008.

**Inés R. Triay,**

(Acting) Assistant Secretary for Environmental Management.

[FR Doc. E8-4541 Filed 3-6-08; 8:45 am]

BILLING CODE 6450-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. AD08-4-000]

#### Capacity Markets in Regions With Organized Electric Markets; Notice of Technical Conference

February 29, 2008.

Take notice that on May 7, 2008, Commission staff will convene a technical conference to discuss the operation of forward capacity markets in New England and the PJM region, including the proposals for modifying the design of those markets raised by American Forest and Paper Association and Portland Cement Association, *et al.* in the Notice of Proposed Rulemaking issued in Docket No. RM07-19-000, *et al.* Wholesale Competition in Regions

with Organized Electric Markets, 122 FERC ¶ 61,167 (2007). The technical conference will be held from 9 a.m. to 4 p.m. (EDT), in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All interested persons are invited to attend. Further notices with detailed information will be issued in advance of the conference.

A free webcast of this event is available through [www.ferc.gov](http://www.ferc.gov). Anyone with Internet access who desires to view this event can do so by navigating to [ferc.gov](http://ferc.gov)'s Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the Washington, DC, area and via phone-bridge for a fee. If you have any questions, visit [www.CapitolConnection.org](http://www.CapitolConnection.org) or contact Danelle Perkowski or David Reininger at 703-993-3100.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an e-mail to [accessibility@ferc.gov](mailto:accessibility@ferc.gov) or call toll free 1-866-208-3372 (voice) or 202-208-1659 (TTY), or send a FAX to 202-208-2106 with the required accommodations.

For more information about this conference, please contact:

David Mead, Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8028, [David.Mead@ferc.gov](mailto:David.Mead@ferc.gov).  
Tina Ham, Office of the General Counsel—Energy Markets, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-6224, [Tina.Ham@ferc.gov](mailto:Tina.Ham@ferc.gov).

**Kimberly D. Bose,**  
Secretary.

[FR Doc. E8-4498 Filed 3-6-08; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings # 1

February 29, 2008.

Take notice that the Commission received the following exempt wholesale generator filings:

**Docket Numbers:** EG08-44-000  
**Applicants:** Starwood Power-Midway, LLC.

**Description:** Starwood Power-Midway, LLC Notice of Self-Certification of Exempt Wholesale Generator Status.

**Filed Date:** 02/27/2008.

**Accession Number:** 20080227-5035.

**Comment Date:** 5 p.m. Eastern Time on Wednesday, March 19, 2008.

Take notice that the Commission received the following electric rate filings:

**Docket Numbers:** ER00-2268-025; -ER07-428-004; ER99-4122-026; ER99-4124-022; EL07-82-001.

**Applicants:** Pinnacle West Capital Corporation; Pinnacle West Marketing & Trading Co, LLC; APS Energy Services Co Inc.; Arizona Public Service Company.

**Description:** Electric Compliance Refund Report of the Pinnacle West Companies.

**Filed Date:** 02/28/2008.

**Accession Number:** 20080228-5074.

**Comment Date:** 5 p.m. Eastern Time on Thursday, March 20, 2008.

**Docket Numbers:** ER02-1437-006.

**Applicants:** Triton Power Michigan LLC.

**Description:** Notice of Non-Material Change in Status of Triton Power Michigan LLC.

**Filed Date:** 02/28/2008.

**Accession Number:** 20080228-5037.

**Comment Date:** 5 p.m. Eastern Time on Thursday, March 20, 2008.

**Docket Numbers:** ER07-1199-002.

**Applicants:** Airtricity Munnsville Wind Farm, LLC.

**Description:** Airtricity Munnsville Wind Farm, LLC submits Substitute Original Sheet 4 and 5 to reflect their deletion under ER07-1199.

**Filed Date:** 02/25/2008.

**Accession Number:** 20080228-0164.

**Comment Date:** 5 p.m. Eastern Time on Monday, March 17, 2008.

**Docket Numbers:** ER08-413-001; EC08-33-001.

**Applicants:** Startrans IO, LLC.

**Description:** Startrans IO, LLC submits their response to FERC's 2/22/08 deficiency letter.

**Filed Date:** 02/27/2008.

**Accession Number:** 20080228-0297.

**Comment Date:** 5 p.m. Eastern Time on Monday, March 10, 2008.

**Docket Numbers:** ER08-441-001.

**Applicants:** Velocity American Energy Master I, L.P.

**Description:** Velocity American Energy Master I, LP submits an Amendment to the application for Order Accepting Market Based Rate Tariff etc.

**Filed Date:** 02/27/2008.

**Accession Number:** 20080229-0071.

**Comment Date:** 5 p.m. Eastern Time on Wednesday, March 19, 2008.

*Docket Numbers:* ER08-444-001.

*Applicants:* NSTAR Electric Company.

*Description:* NSTAR Electric Co et al submits their three-year market-based rate update and request for exemption of the Category 2 Seller's filing.

*Filed Date:* 02/25/2008.

*Accession Number:* 20080228-0166.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 17, 2008.

*Docket Numbers:* ER08-460-001.

*Applicants:* Entergy Gulf States Louisiana, L.L.C. an

*Description:* Entergy Gulf States Louisiana, LLC and Entergy Texas, Inc submits an errata to the 1/22/08 Notices of Succession.

*Filed Date:* 02/27/2008.

*Accession Number:* 20080228-0298.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 19, 2008.

*Docket Numbers:* ER08-536-001.

*Applicants:* Polytop Corporation.

*Description:* Polytop Corp submits a Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority.

*Filed Date:* 02/27/2008.

*Accession Number:* 20080229-0072.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 19, 2008.

*Docket Numbers:* ER08-581-000.

*Applicants:* Altorfer Inc.

*Description:* Altorfer Inc submits a notice of cancellation of FERC Electric Tariff, Original Volume 1, to become effective 1/1/08.

*Filed Date:* 02/11/2008.

*Accession Number:* 20080222-0112.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 10, 2008.

*Docket Numbers:* ER08-599-000.

*Applicants:* American Electric Power Service Corporation.

*Description:* American Electric Power Service Corp agent for AEP Operating Companies submits a sixth revision to the Interconnection and Local Delivery Agreement with Blue Ridge Power Authority.

*Filed Date:* 02/27/2008.

*Accession Number:* 20080228-0303.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 19, 2008.

*Docket Numbers:* ER08-600-000.

*Applicants:* Kansas City Power & Light Company

*Description:* Kansas City Power & Light Company submits Amendatory Agreement 9 to FERC Rate Schedule 101.

*Filed Date:* 02/27/2008.

*Accession Number:* 20080228-0302.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 19, 2008.

*Docket Numbers:* ER08-601-000.

*Applicants:* Kansas City Power & Light Company.

*Description:* Kansas City Power and Light Co submits cancellation of Rate Schedule FPC 42.

*Filed Date:* 02/27/2008.

*Accession Number:* 20080228-0301.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 19, 2008.

*Docket Numbers:* ER08-602-000.

*Applicants:* Puget Sound Energy, Inc.

*Description:* Puget Sound Energy, Inc submits an Amendment 1 to Facilities and Interconnection Agreement dated as of 1/31/08 with Public Utility District 2 of Grant County, WA.

*Filed Date:* 02/27/2008.

*Accession Number:* 20080228-0300.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 19, 2008.

*Docket Numbers:* ER08-603-000.

*Applicants:* Conectiv Delmarva Generation LLC.

*Description:* Conectiv Delmarva Generation, LLC notified FERC that as a result of conversion of Conectiv Delmarva Generation, Inc from Delaware Corp to a Delaware limited Liability Co, CDG, LLC has succeeded and adopts their Rate Schedule 1.

*Filed Date:* 02/27/2008.

*Accession Number:* 20080228-0299.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 19, 2008.

*Docket Numbers:* ER08-604-000.

*Applicants:* Westar Energy, Inc.

*Description:* Westar Energy, Inc submits a Notice of Cancellation of an Electric Power Supply Agreement with the City of Centralia, Kansas.

*Filed Date:* 02/28/2008.

*Accession Number:* 20080229-0061.

*Comment Date:* 5 p.m. Eastern Time on Thursday, March 20, 2008.

*Docket Numbers:* ER08-605-000.

*Applicants:* NSTAR Electric Company.

*Description:* NSTAR Electric Co files a notice of succession in order to change the name on Boston Edison Co's Phase I/II HVDC-TF Service Schedule etc.

*Filed Date:* 02/28/2008.

*Accession Number:* 20080229-0060.

*Comment Date:* 5 p.m. Eastern Time on Thursday, March 20, 2008.

*Docket Numbers:* ER08-606-000.

*Applicants:* Cambridge Electric Light Company and Com.

*Description:* NSTAR Electric & Gas Corp et al files notices of cancellation of Phase I/II HVDC-TC Service Schedules to Schedule 20A of ISO New England Inc's Open Access Transmission Tariff, to be effective 1/1/07.

*Filed Date:* 02/28/2008.

*Accession Number:* 20080229-0059.

*Comment Date:* 5 p.m. Eastern Time on Thursday, March 20, 2008.

*Docket Numbers:* ER08-607-000.

*Applicants:* Florida Power & Light Company.

*Description:* Florida Power & Light Co submits the new Rate Schedule 315, Agreement for Specified Services with Brevard Energy LLC.

*Filed Date:* 02/28/2008.

*Accession Number:* 20080229-0058.

*Comment Date:* 5 p.m. Eastern Time on Thursday, March 20, 2008.

*Docket Numbers:* ER08-608-000.

*Applicants:* Florida Power & Light Company.

*Description:* Florida Power & Light Co submits the Brevard Energy LLC Parallel Operation Agreement with the Seminole Electric Cooperative, Inc.

*Filed Date:* 02/28/2008.

*Accession Number:* 20080229-0057.

*Comment Date:* 5 p.m. Eastern Time on Thursday, March 20, 2008.

*Docket Numbers:* ER08-609-000.

*Applicants:* Endure Energy, LLC

*Description:* Endure Energy, LLC submits a Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority.

*Filed Date:* 02/28/2008.

*Accession Number:* 20080229-0056.

*Comment Date:* 5 p.m. Eastern Time on Thursday, March 20, 2008.

*Docket Numbers:* ER08-610-000.

*Applicants:* Northeast Utilities Service Company.

*Description:* Northeast Utilities Service Co et al submits an executed Amended and Restated Agreement.

*Filed Date:* 02/28/2008.

*Accession Number:* 20080229-0062.

*Comment Date:* 5 p.m. Eastern Time on Thursday, March 20, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://>

[www.ferc.gov](http://www.ferc.gov). To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC.

There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

[FR Doc. E8-4477 Filed 3-6-08; 8:45 am]  
BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 2309-017]

#### **Jersey Central Power and Light and PSEG Fossil LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, Commencement of Licensing Proceeding, Scoping Meetings, Solicitation of Comments on the Pad and Scoping Document, and Identification Issues and Associated Study Requests**

February 29, 2008.

a. *Type of Filing:* Notice of Intent to File License Application for a New License and Commencing Licensing Proceeding.

b. *Project No.:* 2309-017.

c. *Dated Filed:* January 11, 2008.

d. *Submitted By:* Jersey Central Power and Light and PSEG Fossil LLC.

e. *Name of Project:* Yards Creek Pumped Storage Project.

f. *Location:* On Yards Creek, in the townships of Hardwick and Blairstown, Warren County, New Jersey. No federal lands are involved.

g. *Filed Pursuant to:* 18 CFR Part 5 of the Commission's Regulations.

h. *Potential Applicant Contact:* Anthony Skicki, First Energy Service Company, Environmental Department, 2800 Pottsville Pike, P.O. Box 16001 Reading, PA 19612, (610) 921-6908.

i. *FERC Contact:* Steve Kartalia, [Stephen.kartalia@ferc.gov](mailto:Stephen.kartalia@ferc.gov), (202) 502-6131.

j. We are asking federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in paragraph o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. See, 94 FERC ¶ 61,076 (2001).

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR Part 402; and (b) the State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Jersey Central Power and Light and PSEG Fossil LLC as the Commission's non-federal representatives for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act.

m. Jersey Central Power and Light and PSEG Fossil LLC filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations. The Commission issued Scoping Document on February 28, 2008.

n. A copy of the PAD and the scoping document are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (<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 Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll free at 1-866-208-3676, or for TTY, (202) 502-8659. A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at <http://www.ferc.gov/esubscribenow.htm> to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the PAD and the scoping document, as well as study requests. All comments on the PAD and the scoping document, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and the scoping document, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application (original and eight copies) must be filed with the Commission at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All filings with the Commission must include on the first page, Yards Creek Pumped Storage Project) and number (P-2309-017), and bear the heading "Comments on Pre-Application Document," "Study Requests," "Comments on Scoping Document 1," "Request for Cooperating Agency Status," or "Communications to and from Commission Staff." Any individual or entity interested in submitting study requests, commenting on the PAD or the scoping document, and any agency requesting cooperating status must do so by May 12, 2008.

Comments on the PAD and the scoping document, study requests, requests for cooperating agency status, and other permissible forms of communications with the Commission may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 85.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) under the "e-filing" link.

p. Although our current intent is to prepare an environmental assessment (EA), there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

#### **Scoping Meetings**

Commission staff will hold two scoping meetings in the vicinity of the project at the time and place noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested



individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

*Daytime Scoping Meeting*

*Date:* Wednesday April 2, 2008.  
*Time:* 2 p.m.  
*Location:* Blairstown Municipal Building, 106 Route 94, Blairstown, NJ 07825, (908) 362-6663.

*Evening Scoping Meeting*

*Date:* Wednesday April 2, 2008.  
*Time:* 7 p.m.  
*Location:* Blairstown Municipal Building, 106 Route 94, Blairstown, NJ 07825, (908) 362-6663.

The scoping document, which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list. Copies of the scoping document will be available at the scoping meetings, or may be viewed on the web at <http://www.ferc.gov>, using the "eLibrary" link. Follow the directions for accessing information in paragraph n. Depending on the extent of comments received, Scoping Document 2 may or may not be issued.

**Site Visit**

JCPL and PSEG will conduct a site visit of the project at 9 a.m. on Wednesday, April 2, 2008. All participants should meet at the plant entrance on Mount Vernon Rd., Blairstown, NJ. All participants are responsible for their own transportation. Anyone with questions about the site visit should contact Timothy Oakes at (717) 687-7211.

**Scoping Meeting Objectives**

At the scoping meetings, staff will: (1) initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and the scoping document are included in item n of this document.

**Meeting Procedures**

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8-4499 Filed 3-6-08; 8:45 am]

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**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Docket No. AD06-6-000]

**Joint Meeting of the Nuclear Regulatory Commission and the Federal Energy Regulatory Commission; Notice of Joint Meeting of the Nuclear Regulatory Commission and the Federal Energy Regulatory Commission**

February 29, 2008.

The Federal Energy Regulatory Commission (FERC) and the Nuclear Regulatory Commission (NRC) will hold a joint meeting on April 8, 2008 at the headquarters of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The meeting is expected to begin at 10 a.m. and conclude at 12 noon (EST).

**Purpose of the Meeting**

The NRC and FERC signed a Memorandum of Agreement on September 1, 2004, to facilitate interactions between the two agencies on matters of mutual interest pertaining to the nation's bulk power system reliability. Since signing this agreement, the two agencies have met on April 24, 2006, and January 23, 2007, to engage in dialogue to further the goals of this Memorandum of Agreement. These goals included grid reliability issues and the roles of the respective agencies in addressing these issues.

**Format for Joint Meeting of Commissions**

The format for the joint meeting will be discussions between the two sets of Commissioners following presentations by their respective staffs. In addition, representatives of the North American Electric Reliability Council (NERC) and

the U.S. Department of Energy (DOE) may attend and participate in this meeting.

A free webcast of this event is available through <http://www.ferc.gov>. Anyone with Internet access who desires to view this event can do so by navigating to <http://www.ferc.gov>'s Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. Visit <http://www.CapitolConnection.org> or contact Danelle Perkowski or David Reininger the Capitol Connection at 703-993-3100 for information about this service.

Transcripts of the conference will be immediately available from Ace Reporting Company (202-347-3700 or 1-800-336-6646) for a fee. They will be available for the public on the Commission's eLibrary system seven calendar days after FERC receives the transcript.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to [accessibility@ferc.gov](mailto:accessibility@ferc.gov) or call toll free 1-866-208-3372 (voice) or 202-502-8659 (TTY), or send a FAX to 202-208-2106 with the required accommodations.

All interested persons are invited. Pre-registration is not required and there is no fee to attend this joint meeting. Questions about the meeting should be directed to Sarah McKinley at [Sarah.McKinley@ferc.gov](mailto:Sarah.McKinley@ferc.gov) or by phone at 202-502-8004.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8-4500 Filed 3-6-08; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**Combined Notice of Filings #2**

March 3, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

*Docket Numbers:* RP08-223-000.

*Applicants:* Equitrans, L.P.

*Description:* Equitrans LP submits Twentieth Revised Sheet 5, Thirtieth Revised Sheet 6 and Seventeenth Revised Sheet 10 to its FERC Gas Tariff, Original Volume, to be effective April 1, 2008.

*Filed Date:* 02/29/2008.  
*Accession Number:* 20080303-0115.  
*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 12, 2008.  
*Docket Numbers:* RP08-224-000.  
*Applicants:* Florida Gas Transmission Company, LLC.  
*Description:* Florida Gas Transmission Company, LLC submits First Revised Sheet 1, Eight Revised Sheet 7, Seventh Revised Sheet 8 and First Revised Sheet 15 to its FERC Gas Tariff, Fourth Revised Volume 1, to be effective April 1, 2008.  
*Filed Date:* 02/29/2008.  
*Accession Number:* 20080303-0114.  
*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 12, 2008.  
*Docket Numbers:* RP08-225-000.  
*Applicants:* Dominion Cove Point LNG, LP.  
*Description:* Dominion Cove Point LNG, LP submits Ninth Revised Sheet 11 and Eight Revised Sheet 12 of its FERC Gas Tariff, Original Volume 1, to be effective April 1, 2008.  
*Filed Date:* 02/29/2008.  
*Accession Number:* 20080303-0113.  
*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 12, 2008.  
*Docket Numbers:* RP08-226-000.  
*Applicants:* High Island Offshore System, L.L.C.  
*Description:* High Island Offshore System, LLC submits Seventh Revised Sheet 11 to FERC Gas Tariff, Third Revised Volume 1, proposed to be effective April 1, 2008.  
*Filed Date:* 02/29/2008.  
*Accession Number:* 20080303-0112.  
*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 12, 2008.  
*Docket Numbers:* RP08-227-000.  
*Applicants:* Guardian Pipeline, L.L.C.  
*Description:* Guardian Pipeline, LLC submits Fourth Revised Sheet 1 et al to its FERC Gas Tariff, Original Volume 1, to be effective April 1, 2008.  
*Filed Date:* 02/29/2008.  
*Accession Number:* 20080303-0111.  
*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 12, 2008.  
*Docket Numbers:* RP08-228-000.  
*Applicants:* Williston Basin Interstate Pipeline Co.  
*Description:* Williston Basin Interstate Pipeline Co submits Sixty-Eighth Revised Sheet 15 et al to FERC Gas Tariff, Second Revised Volume 1 to its Annual Fuel and Electric Power Reimbursement Adjustment, effective April 1, 2008.  
*Filed Date:* 02/29/2008.  
*Accession Number:* 20080303-0110.  
*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 12, 2008.  
*Docket Numbers:* RP08-229-000.  
*Applicants:* Dominion Cove Point LNG, LP.

*Description:* Dominion Cove Point LNG, LP submits Tenth Revised Sheet 10 and Seventh Revised Sheet 12 to its FERC Gas Tariff, Original Volume 1, to be effective April 1, 2008.  
*Filed Date:* 02/29/2008.  
*Accession Number:* 20080303-0109.  
*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 12, 2008.  
*Docket Numbers:* RP08-230-000.  
*Applicants:* Florida Gas Transmission Company, LLC.  
*Description:* Florida Gas Transmission Co, LLC submits Ninth Revised Sheet 7 et al to its FERC Gas Tariff, Fourth Revised Volume 1, to be effective April 1, 2008.  
*Filed Date:* 02/29/2008.  
*Accession Number:* 20080303-0108.  
*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 12, 2008.  
*Docket Numbers:* RP08-231-000.  
*Applicants:* Florida Gas Transmission Company, LLC.  
*Description:* Florida Gas Transmission Co, LLC submits Tenth Revised Sheet 7 to its FERC Gas Tariff, Fourth Revised Volume 1, to be effective April 1, 2008.  
*Filed Date:* 02/29/2008.  
*Accession Number:* 20080303-0107.  
*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 12, 2008.  
*Docket Numbers:* RP08-232-000.  
*Applicants:* Transwestern Pipeline Company, LLC.  
*Description:* Transwestern Pipeline Co, LLC submits Second Revised Sheet 0 et al to its FERC Gas Tariff, Third Revised Volume 1, to be effective April 1, 2008.  
*Filed Date:* 02/29/2008.  
*Accession Number:* 20080303-0106.  
*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 12, 2008.  
*Docket Numbers:* RP08-233-000.  
*Applicants:* Colorado Interstate Gas Company.  
*Description:* Colorado Interstate Gas Company submits reimbursement percentage for Lost, Unaccounted-For and Others Fuel Gas.  
*Filed Date:* 02/29/2008.  
*Accession Number:* 20080303-0116.  
*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 12, 2008.  
*Docket Numbers:* RP08-234-000.  
*Applicants:* Tennessee Gas Pipeline Company.  
*Description:* Tennessee Gas Pipeline Company submits Twenty-Third Revised Sheet 25 et al. to its FERC Gas Tariff, Fifth Revised Volume 1, to be effective April 1, 2008.  
*Filed Date:* 02/29/2008.  
*Accession Number:* 20080303-0117.  
*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 12, 2008.  
*Docket Numbers:* RP08-235-000.

*Applicants:* Cheyenne Plains Gas Pipeline Company LLC.  
*Description:* Cheyenne Plains Gas Pipeline Company, LLC submit the tariff sheet updates CPG's contract extension language to provide the negotiation and continuation of an existing transportation service agreement, tariff sheet become effective April 1, 2008.  
*Filed Date:* 02/29/2008.  
*Accession Number:* 20080303-0118.  
*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 12, 2008.  
*Docket Numbers:* RP08-236-000.  
*Applicants:* Panhandle Eastern Pipe Line Company, LP.  
*Description:* Panhandle Eastern Pipe Line Company, LP submits the revised tariff sheets listed on Appendix A to its FERC Gas Tariff, Third Revised Volume 1 proposed to be effective April 1, 2008.  
*Filed Date:* 02/29/2008.  
*Accession Number:* 20080303-0119.  
*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 12, 2008.  
 Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and § 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.  
 The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.  
 Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.  
 The filings in the above proceedings are accessible in the Commission's

eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. E8-4482 Filed 3-6-08; 8:45 am]

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

March 3, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

*Docket Number:* RP06-614-005.

*Applicants:* Transwestern Pipeline Company, LLC.

*Description:* Transwestern Pipeline Company, LLC Withdrawal of Wobbe and Btu Proposals.

*Filed Date:* 02/29/2008.

*Accession Number:* 20080229-5040.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 12, 2008.

*Docket Number:* RP08-209-001.

*Applicants:* Kern River Gas Transmission Company.

*Description:* Kern River Gas Transmission's Submission of Revised Request for Waiver of Posting and Bidding Requirements for Permanent Release of Discounted Capacity.

*Filed Date:* 02/29/2008.

*Accession Number:* 20080229-5047.

*Comment Date:* 5 p.m. Eastern Time on Friday, March 7, 2008.

*Docket Number:* RP08-217-000.

*Applicants:* Questar Overthrust Pipeline Company.

*Description:* Questar Overthrust Pipeline Company submits Third Revised Sheet 6 to Second Revised Volume 1 and Non-Conforming Transportation Service Agreements & certificate of service to comply with 18 CFR Section 154.7(b).

*Filed Date:* 02/27/2008.

*Accession Number:* 20080229-0048.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 10, 2008.

*Docket Number:* RP08-219-000.

*Applicants:* Questar Overthrust Pipeline Company.

*Description:* Questar Overthrust Pipeline Co submits Fourth Revised Sheet 6 to FERC Gas Tariff, Second Revised Volume 1-A, etc to be effective 1/1/08.

*Filed Date:* 02/28/2008.

*Accession Number:* 20080229-0083.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, March 11, 2008.

*Docket Number:* RP08-220-000.

*Applicants:* Kern River Gas Transmission Company.

*Description:* Kern River Gas Transmission Co submits their Fifth Revised Eighteenth Revised Sheet 5 et al. to its FERC Gas Tariff, Second Revised Volume 1, to be effective 4/1/08.

*Filed Date:* 02/28/2008.

*Accession Number:* 20080229-0082.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, March 11, 2008.

*Docket Number:* RP08-221-000.

*Applicants:* Crossroads Pipeline Company.

*Description:* Crossroads Pipeline Co submits their Eighth Revised Sheet 6 to its FERC Gas Tariff, First Revised Volume 1.

*Filed Date:* 02/28/2008.

*Accession Number:* 20080229-0081.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, March 11, 2008.

*Docket Number:* RP08-222-000.

*Applicants:* Columbia Gas Transmission Corporation.

*Description:* Columbia Gas Transmission Corp submits the Twenty-First Revised Sheet 500B to its FERC Gas Tariff, Second Revised Volume 1, to be effective 3/5/08.

*Filed Date:* 02/28/2008.

*Accession Number:* 20080229-0080.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, March 11, 2008.

*Docket Number:* CP08-79-000.

*Applicants:* Mardi Gras Midstream, L.L.C.

*Description:* Mardi Gras Midstream, L.L.C. filed an application for an order granting a limited jurisdictional certificate in order to allow them to succeed in providing service to Temple-Inland Corporation its sole interstate transportation customer.

*Filed Date:* 02/27/2008.

*Accession Number:* 20080229-0050.

*Comment Date:* 5 p.m. Eastern Time on Friday, March 14, 2008.

*Docket Number:* CP08-80-000.

*Applicants:* Mardi Gras Pipeline, L.L.C.

*Description:* Mardi Gras Pipeline, L.L.C. filed a petition for permission and approval to abandon natural gas transportation service to Temple-Inland Corporation.

*Filed Date:* 02/27/2008.

*Accession Number:* 20080229-0042.

*Comment Date:* 5 p.m. Eastern Time on Friday, March 14, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. E8-4479 Filed 3-6-08; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. RP08-218-000]

**Gulfstream Natural Gas System, LLC; Notice of Petition for Temporary Waiver of Tariff Provisions and Request for Expedited Action**

February 29, 2008.

Take notice that on February 28, 2008, Gulfstream Natural Gas System, LLC (Gulfstream) filed a Petition for Temporary Waiver of Tariff Provisions. Gulfstream states that the purpose of this filing is to seek waiver of section 3.3 of Rate Schedule PALS and section 6 of Gulfstream's General Terms and Conditions, so that Gulfstream can offer parking and lending services to its firm shippers at below the minimum rate for such services and for the terms described in the Petition.

Gulfstream states that it proposes to offer such parking service for the period commencing 10 gas days immediately preceding an April 2008 construction-related outage on its system through and including the last gas day of a second construction-related outage in April 2008. Gulfstream states that it proposes to offer such lending service for the period commencing on the first gas day of the first outage through and including the seventh gas day following the second outage, with the ability to receive loans of line pack gas at the proposed rate only during the outages.

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 comment due date. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the

Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. eastern time March 6, 2008.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8-4497 Filed 3-6-08; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****National Nuclear Security Administration****Additional Public Hearing on the Draft Complex Transformation Supplemental Programmatic Environmental Impact Statement**

**AGENCY:** National Nuclear Security Administration, Department of Energy.

**ACTION:** Notice of Additional Public Hearing.

**SUMMARY:** On January 11, 2008, NNSA published a Notice of Availability and Public Hearings for the Draft Complex Transformation Supplemental Programmatic Environmental Impact Statement (Draft Complex Transformation SPEIS, DOE/EIS-0236-S4; 73 FR 2023). That notice provided the schedule for 19 public hearings to receive comments on the Draft Complex Transformation SPEIS. Today, NNSA announces an additional public hearing to be held in Española, New Mexico.

*Date and Location:* NNSA will hold the additional public hearing on March 27, 2008 from 6 p.m. to 10 p.m. at: San Gabriel Mision y Convento, Plaza de Española, 1 Calle de las Españolas, Española, New Mexico (NW corner of the intersection of NM Rt 30 and Paseo de Onate in the City of Española).

**FOR FURTHER INFORMATION CONTACT:**

Please direct questions regarding this additional public hearing, requests for additional information, or requests for copies of the Draft Complex Transformation SPEIS, to Mr. Theodore A. Wyka, Complex Transformation Supplemental PEIS Document Manager,

Office of Transformation (NA-10.1), National Nuclear Security Administration, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Questions also may be telephoned, toll free, to 1-800-832-0885 (ext. 63519) or e-mailed to [complextransformation@nnsa.doe.gov](mailto:complextransformation@nnsa.doe.gov).

**SUPPLEMENTARY INFORMATION:** On January 11, 2008, NNSA published a Notice of Availability and Public Hearings for the Draft Complex Transformation Supplemental Programmatic Environmental Impact Statement (Draft Complex Transformation SPEIS, DOE/EIS-0236-S4; 73 FR 2023). That notice provided the schedule for 19 public hearings to receive comments on the Draft Complex Transformation SPEIS. Today, NNSA announces an additional public hearing to be held in Española, New Mexico.

Individuals who would like to present comments orally at this hearing must register upon arrival at the hearing. NNSA will allot persons wishing to speak three to five minutes, depending upon the number of speakers. This will ensure that as many individuals as possible have the opportunity to speak. More time may be allotted by the hearing moderator as circumstances allow. NNSA officials will be available to discuss the Draft Complex Transformation SPEIS and answer questions during the first hour. NNSA will then hold a plenary session at the public hearing in which officials will explain the Draft Complex Transformation SPEIS and the analyses in it. Following the plenary session, the public will have an opportunity to provide oral and written comments. Oral comments from the hearing and written comments submitted during the comment period will be considered by NNSA in preparing the Final Complex Transformation SPEIS.

NNSA invites comments on the Draft Complex Transformation SPEIS during the 90-day public comment period, which ends on April 10, 2008. NNSA will consider comments received after this date to the extent practicable as it prepares the Final Complex Transformation SPEIS.

The Draft Complex Transformation SPEIS and additional information regarding complex transformation are available on the Internet at: <http://www.ComplexTransformationSPEIS.com> and <http://www.nnsa.doe.gov>.

Issued in Washington, DC, on February 29, 2008.

**Robert L. Smolen,**

*Deputy Administrator for Defense Programs, National Nuclear Security Administration.*

[FR Doc. E8-4544 Filed 3-6-08; 8:45 am]

BILLING CODE 6450-01-P

**ENVIRONMENTAL PROTECTION AGENCY**

[EPA-HQ-TRI-2006-0319; FRL-8539-7]

RIN 2025-AA19

**Acetonitrile Petition; Community Right-to-Know Toxic Chemical Release Reporting; Notice of Data Availability**

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

**ACTION:** Notice of data availability.

**SUMMARY:** The purpose of this action is to solicit public comment on two documents developed in response to a petition to remove acetonitrile from the list of chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986, commonly referred to as the Toxics Release Inventory (TRI). The two documents EPA is making available for public comment are: The TRI Technical Review of Acetonitrile and the Acetonitrile External Peer Review charge. EPA is also providing the public with access to related reference documents.

**DATES:** Comments must be received on or before *April 7, 2008*.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-TRI-2006-0319 by one of the following methods:

- *www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail*: [oei.docket@epa.gov](mailto:oei.docket@epa.gov).
- *Fax*: 202-566-9744.

- *Mail*: OEI Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

- *Hand Delivery*: EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. 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-TRI-2006-0319. 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*. 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 additional instructions on submitting comments, go to Unit III. Public Comments of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at OEI Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744 and the telephone number for the OEI Docket is 202-566-1752.

**FOR FURTHER INFORMATION CONTACT:** Mavis Sanders, Environmental Analysis Division (EAD), Office of Information Analysis and Access (OIAA) (MC2842T), 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number 202-566-0646; fax number: 202-566-0677; or e-mail [sanders.mavis@epa.gov](mailto:sanders.mavis@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does This Action Apply to Me?*

This document does not make any changes to existing regulations. However, you may be interested in this document if you manufacture, process, or otherwise use acetonitrile. Potentially interested categories and entities may include, but are not limited to the following:

Category	Examples of potentially affected entities
Industry .....	Facilities included in the following NAICS manufacturing codes (corresponding to SIC codes 20 through 39): 311*, 312*, 313*, 314*, 315*, 316, 321, 322, 323*, 324, 325*, 326*, 327, 331, 332, 333, 334*, 335*, 336, 337*, 339*, 111998*, 211112*, 212234*, 212235*, 212393*, 212399*, 488390*, 511110, 511120, 511130, 511140*, 511191, 511199, 511220, 512230*, 516110*, 541710*, or 811490*. *Exceptions and/or limitations exist for these NAICS codes.



Category	Examples of potentially affected entities
Federal Government .....	<p>Facilities included in the following NAICS codes (corresponding to SIC codes other than SIC codes 20 through 39): 212111, 212112, 212113 [correspond to SIC 12, Coal Mining (except 1241)]; or 212221, 212222, 212231, 212234, 212299 [correspond to SIC 10, Metal Mining (except 1011, 1081, and 1094)]; or 221111, 221112, 221113, 221119, 221121, 221122 (Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce) (correspond to SIC 4911, 4931, and 4939, Electric Utilities); or 424690, 425110, 425120 (Limited to facilities previously classified in SIC 5169, Chemicals and Allied Products, Not Elsewhere Classified.); or 424710 (corresponds to SIC 5171, Petroleum Bulk Terminals and Plants); or 562112 [Limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC 7389, Business Services, NEC).]; or 562211, 562212, 562213, 562219, 562920 (Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 et seq.) (correspond to SIC 4953).</p> <p>Federal facilities.</p>

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be interested in this document. Some of the entities listed in the table have exemptions and/or limitations regarding coverage, other types of entities not listed in this table may also be interested in this document are those covered in 40 Code of Federal Regulations (CFR) part 372, subpart B. If you have any questions regarding whether a particular entity is covered by this section of the CFR, consult the technical person listed in the **FOR FURTHER INFORMATION CONTACT** section.

#### *B. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI through [www.regulations.gov](http://www.regulations.gov) or e-mail. Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address only, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: OEI Document Control Officer, Mail Code: 2822T, U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). The EPA will disclose information claimed as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public

docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

#### **II. What Is the Purpose of This Document?**

On June 28, 2002, Innovene (formerly BP Chemicals Inc.) petitioned the Agency to remove acetonitrile (methyl cyanide) from the list of chemicals subject to the reporting requirements of EPCRA section 313. In response to the petition to delist acetonitrile, EPA has prepared a hazard assessment for acetonitrile entitled "TRI Technical Review of Acetonitrile," which will shortly be submitted for external peer review. This notice provides the public access to EPA's "TRI Technical Review of Acetonitrile", the acetonitrile petition, related materials, peer review charge, and all associated references.

#### **III. Public Comments**

EPA is accepting comments only on the two documents made available through this action. These documents are: (1) The TRI Technical Review of Acetonitrile and (2) the Acetonitrile External Peer Review charge. Comments submitted in response to this notification should be limited to the scientific findings in these documents. Comments responding to these documents will be made available to the peer reviewers for consideration during the external peer review process.

EPA does not intend to respond to comments unrelated to the two documents identified as open for public comment and will not provide them to peer reviewers for consideration.

#### **List of Subjects in 40 CFR Part 372**

Environmental protection, Chemicals, Reporting and recordkeeping requirements and Community right-to-know.

Dated: February 27, 2008.

**Michael P. Flynn,**

*Director, Office of Information Access and Analysis, Office of Environmental Information.*

[FR Doc. E8-4572 Filed 3-6-08; 8:45 am]

BILLING CODE 6560-50-P

#### **ENVIRONMENTAL PROTECTION AGENCY**

[ER-FRL-6696-7]

#### **Environmental Impact Statements and Regulations; Availability of EPA Comments**

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202-564-7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 6, 2007 (72 FR 17156).

#### **Draft EISs**

EIS No. 20070471, ERP No. D-DOE-F09804-MN, Mesaba Energy Project, Proposes to Design, Construct and Operate a Coal-Based Integrated Gasification Cycle (IGCC) Electric Power Generating Facility, located in the Taconite Tax Relief Area (TTRA), Itasca and St. Louis Counties, MN.

*Summary:* EPA expressed environmental objections because of significant wetland impacts, and requested additional alternative analysis that might avoid/reduce wetland impacts and mitigation for unavoidable wetland impacts. Rating EO2.

EIS No. 20070504, ERP No. D-FRC-F03011-00, Rockies Express Pipeline Project, (REX-East), Construction and Operation of Natural Gas Pipeline Facilities, WY, NE, MO, IL, IN and OH.

*Summary:* EPA expressed environmental concerns about potential impacts to surface and ground water quality (including sole source aquifers), wetlands, air quality, and upland forest habitat. EPA requested additional information regarding impacts and mitigation measures be included in the FEIS. Rating EC2.

EIS No. 20070510, ERP No. D-FHW-C40173-NJ, I-295/I76/Route 42 Direct Connection Project, To Improve Traffic Safety and Reduce Traffic Congestion, Funding and U.S. Army COE Section 10 and 404 Permits, Borough of Bellmawr, Borough of Mount Ephraim and Gloucester City, Camden County, NJ.

*Summary:* EPA expressed environmental concern about wetlands impacts, stormwater impacts, air quality/mobile source air toxics impacts, and impacts from hazardous materials. Rating EC2.

EIS No. 20070533, ERP No. DA-AFS-K65286-CA, Watdog Project, Additional Clarification of Changes Between the Final EIS (2005) and Final Supplement EIS (2007), Feather River Ranger District, Plumas National Forest, Butte and Plumas Counties, CA.

*Summary:* EPA continues to have environmental concerns about cumulative impacts to watersheds and short-term impacts to the old-forest species present and recommends further consideration a less harvest intensive alternative, such as Alternative D. Rating EC1.

#### Final EISs

EIS No. 20070520, ERP No. F-FHW-C40164-NY, NY-17-Elmira to Chemung Project, Proposed Highway Reconstruction, New Highway Construction, Bridge Rehabilitation/Replacement, Funding and U.S. Army COE Section 404 Permit, Town and City of Elmira, Town of Ashland and Chemung, Chemung County, NY.

*Summary:* EPA's previous issues have been resolved; therefore, EPA does not object to the proposed action.

EIS No. 20070552, ERP No. F-FHW-F40437-MN, Scott County State Aid Highway (CSAH) 21 Project, Extension from CSAH 42 in Prior Lake to CSAH 18 at Southbridge Parkway in Shakopee, U.S. Army COE Section 404 Permit, Scott County, MN.

*Summary:* EPA's previous issues have been resolved; therefore, EPA does not object to the proposed action.

EIS No. 20080001, ERP No. F-COE-G32060-TX, Brazos Harbor Navigation District Project, Proposed Port Freeport Channel Widening to the Entrance and Jetty Reach of the Freeport Harbor Jetty Channel and Entrance, Brazoria County, TX.

*Summary:* No formal comment letter was sent to the preparing agency.

EIS No. 20080005, ERP No. F-NRS-H34031-00, West Tarkio Creek Watershed Plan, Construction of a Multiple-Purpose Structure for Rural Water Supply, Recreational Opportunities and Agricultural Pollution Control, Page, Montgomery and Fremont Counties, IA and Atchison County, MO.

*Summary:* EPA recommended that the Record of Decision contain additional discussion on the project need, alternatives analysis and cumulative impacts.

EIS No. 20080011, ERP No. F-FHW-L59002-AK, Knik Arm Crossing Project, To Provide Improved Access between the Municipality of Anchorage and Matanuska-Susitna Borough, AK.

*Summary:* EPA expressed environmental objections because avoidable adverse impacts to wetlands and aquatic resources. EPA also expressed concern about water quality impacts, sedimentation impacts, and air quality/air toxics impacts.

EIS No. 20080020, ERP No. F-FRC-C03016-NY, Broadwater Liquefied Natural Gas (LNG) Project, Construction and Operation a Natural Gas Pipeline Facilities, (Docket Nos. CP06-54, *et al.*), Long Island Sound, NY.

*Summary:* EPA noted that the FEIS responded to the majority of EPA's comments on the DEIS. However, EPA continues to have concerns about air quality/permitting issues.

EIS No. 20080022, ERP No. F-NOA-L91029-AK, Alaska Eskimo Whaling Commission for a Subsistence Hunt on Bowhead Whale for the Years 2008 through 2012 for Issuing Annual Quotas, Proposes to Authorize Subsistence Harvests of the Western Arctic Stock of Bowhead Whales, Bering, Chukchi and Beaufort Seas, AK.

*Summary:* No formal comment letter was sent to the preparing agency.

EIS No. 20080029, ERP No. F-IBR-K39048-CA, Truckee River Operating Agreement (TROA) Modify Operations of Five Federal Two Non-Federal Reservoirs to Facilitate

Distribution of Water, Truckee River Basin, Alpine, El Dorado, Nevada, Placer, Sierra Counties, CA and Carson City, Churchill Douglas, Lyon, Pershing, Storey, and Washoe Counties, NV.

*Summary:* No formal letter sent to the preparing agency.

EIS No. 20080033, ERP No. F-BLM-K09809-CA, Truckhaven Geothermal Leasing Area, Addresses Leasing of Geothermal Resources, El Centro Field Office, Imperial County, CA.

*Summary:* EPA continues to have environmental concerns about potential impacts on air quality, recreational use in the OWSVRA, underestimation of geothermal capacity, and water resources.

EIS No. 20080069, ERP No. F-NPS-K61167-AZ, Saguaro National Park General Management Plan, Implementation, Rincon Mountain District and Tucson Mountain District, Pima County, AZ.

*Summary:* No formal letter was sent to the preparing agency.

EIS No. 20070560, ERP No. FA-NOA-K91012-00, Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region, Amendment 14 to the Fishery Management Plan, Additional Information to Analyze a Range of Management Alternatives to End Bottomfish Overfishing in the Hawaiian Archipelago, HI, GU and AS.

*Summary:* No formal comment letter was sent to the preparing agency.

Dated: March 4, 2008.

**Robert W. Hargrove,**  
Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E8-4598 Filed 3-6-08; 8:45 am]

BILLING CODE 6550-50-P

#### ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6696-6]

#### Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564-7167 or <http://www.epa.gov/compliance/nepa/>.

Weekly receipt of Environmental Impact Statements

Filed 02/25/2008 through 02/29/2008 Pursuant to 40 CFR 1506.9.

EIS No. 20080074, Draft EIS, IBR, CA, American Basin Fish Screen and Habitat Improvement Project, Construction and Operation of one or two Positive-Barrier Fish Screen

Diversions Facilities, Funding and U.S. Army COE Section 10 and 404 Permits, Natomas Mutual, Sacramento and Sutter Counties, CA, *Comment Period Ends: 04/28/2008*, *Contact: Bradley Hubbard 916-978-5204*.

*EIS No. 20080075, Final EIS, AFS, WI*, Fishel Vegetation and Transportation Management Project, To Implement Land Management Activities, Eagle River-Florence Ranger District, Chequamegon-Nicolet National Forest, Forest and Vilas Counties, WI, *Wait Period Ends: 04/07/2008*, *Contact: Christine Brunner 715-479-2827*.

*EIS No. 20080076, Draft EIS, AFS, ID*, Bussel 484 Project Area, Manage the Project Area to Achieve Desired Future Conditions for Vegetation, Fire, Fuels, Recreation, Access, Wildlife, Fisheries, Soil and Water, Idaho Panhandle National Forest, St. Joe Ranger District, Shoshone County, ID, *Comment Period Ends: 04/21/2008*, *Contact: Cornie Hudson 208-245-2531*.

*EIS No. 20080077, Draft EIS, COE, CA*, San Diego Creek Watershed Special Area Management Plan/Watershed Streambed Alteration Agreement Process (SAMP/WSAA Process), Protecting and Enhancing Aquatic Resource and Permitting Reasonable Economic Development, Orange County, CA, *Comment Period Ends: 04/21/2008*, *Contact: Corice Farrar 213-452-3296*.

*EIS No. 20080078, Draft EIS, AFS, MT*, Butte Lookout Project, Proposed Timber Harvest, Prescribed Burning, Road Work and Management Activities, Missoula Ranger District, Lola National Forest, Missoula County, MT, *Comment Period Ends: 04/21/2008*, *Contact: Tami Paulsen 406-329-3731*.

*EIS No. 20080079, Draft EIS, USN, 00*, Introduction of the P-8A MMA into the U.S. Navy Fleet, To Provide Facilities and Functions that Support the Homebasing of 12 P-8A Multi-Mission Maritime Aircraft (MMA) Fleet Squadrons (72 Aircraft) and one Fleet Replacement Squadron (FRS), which include the Following Installations: Naval Air Station Jacksonville, FL; Naval Air Station Whidbey Island, WA; Naval Air Station North Island, CA; Marine Corps Base HI and Kaneohe Bay, HI, *Comment Period Ends: 04/25/2008*, *Contact: Lisa Padgett 757-836-8446*.

#### Amended Notices

*EIS No. 20070545, Draft EIS, IBR, ND*, Northwest Area Water Supply Project, To Construct a Biota Water Treatment Plant, Lake Sakakawea, Missouri

River Basin to Hudson Bay Basin, ND, *Comment Period Ends: 03/26/2008*, *Contact: Alice Waters 701-221-1206*.

Revision of FR Notice Published 12/28/2007: Extending Comment Period from 02/26/2008 to 03/26/2008.

*EIS No. 20080061, Unknown, AFS, OR*, Thorn Fire Salvage Recovery Project, Salvaging Dead and Dying Timber, Shake Table Fire Complex, Malheur National Forest, Grant County, OR, *Wait Period Ends: 03/24/2008*, *Contact: Carole Holly 541-575-3000*. Revision to FR Notice Published 02/22/2008: Correction to Contact Telephone Number.

Dated: March 4, 2008.

**Robert W. Hargrove**,  
Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E8-4595 Filed 3-6-08; 8:45 am]

BILLING CODE 6560-50-P

#### ENVIRONMENTAL PROTECTION AGENCY

[FRL-8540-1]

#### Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2006

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

**ACTION:** Notice of document availability and request for comments.

**SUMMARY:** The Draft Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2006 is available for public review. Annual U.S. emissions for the period of time from 1990 through 2006 are summarized and presented by source category and sector. The inventory contains estimates of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), hydrofluorocarbons (HFC), perfluorocarbons (PFC), and sulfur hexafluoride (SF<sub>6</sub>) emissions. The inventory also includes estimates of carbon fluxes in U.S. agricultural and forest lands. The technical approach used in this report to estimate emissions and sinks for greenhouse gases is consistent with the methodologies recommended by the Intergovernmental Panel on Climate Change (IPCC), and reported in a format consistent with the United Nations Framework Convention on Climate Change (UNFCCC) reporting guidelines. The Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2006 is the latest in a series of annual U.S. submissions to the Secretariat of the UNFCCC.

**DATES:** To ensure your comments are considered for the final version of the document, please submit your comments within 30 days of the

appearance of this notice. However, comments received after that date will still be welcomed and be considered for the next edition of this report.

**ADDRESSES:** Comments should be submitted to Mr. Leif Hockstad at: Environmental Protection Agency, Climate Change Division (6207J), 1200 Pennsylvania Ave., NW., Washington, DC 20460, Fax: (202) 343-2359. You are welcome and encouraged to send an e-mail with your comments to [hockstad.leif@epa.gov](mailto:hockstad.leif@epa.gov).

**FOR FURTHER INFORMATION CONTACT:** Mr. Leif Hockstad, Environmental Protection Agency, Office of Air and Radiation, Office of Atmospheric Programs, Climate Change Division, (202) 343-9432, [hockstad.leif@epa.gov](mailto:hockstad.leif@epa.gov).

**SUPPLEMENTARY INFORMATION:** The draft report can be obtained by visiting the U.S. EPA's Climate Change Site at: <http://www.epa.gov/climatechange/emissions/usinventoryreport.html>.

Dated: February 29, 2008.

**Robert J. Meyers**,

Principal Deputy Assistant Administrator,  
Office of Air and Radiation.

[FR Doc. E8-4510 Filed 3-6-08; 8:45 am]

BILLING CODE 6560-50-P

#### ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-ORD-2008-0033; FRL-8539-8]

#### Human Studies Review Board; Notice of Public Meeting

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

**ACTION:** Notice.

**SUMMARY:** The U.S. Environmental Protection Agency's (EPA or Agency) Office of the Science Advisor (OSA) announces a public meeting of the Human Studies Review Board (HSRB) to advise the Agency on EPA's scientific and ethical review of human subjects research.

**DATES:** The public meeting will be held from April 9-April 10, 2008 from 8:30 a.m. to approximately 5:30 p.m., Eastern Time.

**Location:** Environmental Protection Agency, Conference Center-Lobby Level, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive, Arlington, VA 22202.

**Meeting Access:** Seating at the meeting will be on a first-come basis. To request accommodation of a disability please contact the person listed under **FOR FURTHER INFORMATION CONTACT** at least 10 business days prior to the meeting, to allow EPA as much time as possible to process your request.

**Procedures for Providing Public Input:** Interested members of the public may submit relevant written or oral comments for the HSRB to consider during the advisory process. Additional information concerning submission of relevant written or oral comments is provided in Unit I.D. of this notice.

**ADDRESSES:** Submit your written comments, identified by Docket ID No. EPA-HQ-ORD-2008-0033, by any of the following methods:

**Internet:** <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

**E-mail:** [ORD.Docket@epa.gov](mailto:ORD.Docket@epa.gov).

**USPS Mail:** Environmental Protection Agency, EPA Docket Center (EPA/DC), ORD Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

**Hand or Courier Delivery:** The EPA/DC Public Reading Room is located in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW., Washington DC. The hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday, excluding Federal holidays. Please call (202) 566-1744 or email the ORD Docket at [ord.docket@epa.gov](mailto:ord.docket@epa.gov) for instructions. Updates to Public Reading Room access are available on the Web site (<http://www.epa.gov/epahome/dockets.htm>).

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-ORD-2008-0033. EPA's policy is that all comments received 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 information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information through <http://www.regulations.gov> or e-mail that you consider to be CBI or otherwise protected from disclosure. The <http://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 <http://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 FURTHER INFORMATION CONTACT:** Any member of the public who wishes further information should contact Lu-Ann Kleibacker, EPA, Office of the Science Advisor, (8105R), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564-7189; fax: (202) 564 2070; e-mail addresses: [kleibacker.lu-ann@epa.gov](mailto:kleibacker.lu-ann@epa.gov). General information concerning the EPA HSRB can be found on the EPA Web site at <http://www.epa.gov/osa/hsrb/>.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Public Meeting**

###### *A. Does This Action Apply to Me?*

This action is directed to the public in general. This action may, however, be of particular interest to persons who conduct or assess human studies, especially studies on substances regulated by EPA and to persons who may sponsor or conduct research with human subjects with the intention to submit it to EPA for consideration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) or section 408 under the Federal Food, Drug, and Cosmetic Act (FFDCA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

###### *B. How Can I Access Electronic Copies of This Document and Other Related Information?*

You may access this Federal Register document electronically either through <http://www.regulations.gov> or through the EPA Web site under the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index under the docket number. Even though it will be listed by title in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Copyright material will be publicly available only in hard copy. Publicly available docket materials are available

either electronically in <http://www.regulations.gov> or in hard copy at the ORD Docket, EPA/DC, Public Reading Room. The EPA/DC Public Reading Room is located in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW., Washington DC. The hours of operation are 8:30 a.m. to 4:30 p.m. EST, Monday through Friday, excluding Federal holidays. Please call (202) 566-1744 or e-mail the ORD Docket at [ord.docket@epa.gov](mailto:ord.docket@epa.gov) for instructions. Updates to Public Reading Room access are available on the Web site (<http://www.epa.gov/epahome/dockets.htm>). EPA's position paper(s), charge/questions to the HSRB, and the meeting agenda will be available by mid March 2008. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the regulations.gov Web site and the HSRB Web site at <http://www.epa.gov/osa/hsrb/>. For questions on document availability or if you do not have access to the Internet, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

###### *C. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide copies of any technical information and/or data you used that support your views.
- Provide specific examples to illustrate your concerns and suggest alternatives.
- 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.

###### *D. How May I Participate in this Meeting?*

You may participate in this meeting by following the instructions in this section. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA-HQ-ORD-2008-0033 in the subject line on the first page of your request.

- Oral comments.** Requests to present oral comments will be accepted up to April 1, 2008. To the extent that time

permits, interested persons who have not pre-registered may be permitted by the Chair of the HSRB to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to the HSRB is strongly advised to submit their request (preferably via email) to the person listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, Eastern time, April 1, 2008 in order to be included on the meeting agenda and to provide sufficient time for the HSRB Chair and HSRB Designated Federal Officer (DFO) to review the agenda to provide an appropriate public comment period. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, LCD projector, chalkboard). Oral comments before the HSRB are limited to five minutes per individual or organization. Please note that this limit applies to the cumulative time used by all individuals appearing either as part of, or on behalf of an organization. While it is our intent to hear a full range of oral comments on the science and ethics issues under discussion, it is not our intent to permit organizations to expand these time limitations by having multiple individuals sign up separately to speak on their behalf. Each speaker should bring 25 copies of his or her comments and presentation slides for distribution to the HSRB at the meeting. At the discretion of the Board Chair and DFO, public commenters, if present during the Board's discussion, may be asked to provide clarification of their comments to assist the Board in their discussion.

b. *Written comments.* Although you may submit written comments at any time, for the HSRB to have the best opportunity to review and consider your comments as it deliberates on its report, you should submit your comments at least five business days prior to the beginning of the meeting. If you submit comments after this date, those comments will be provided to the Board members, but you should recognize that the Board members may not have adequate time to consider those comments prior to making a decision. Thus, if you plan to submit written comments, the Agency strongly encourages you to submit such comments no later than noon, Eastern Time, April 1, 2008. You should submit your comments using the instructions in Unit I.C. of this notice. In addition, the Agency also requests that person(s) submitting comments directly to the docket also provide a copy of their

comments to the person listed under **FOR FURTHER INFORMATION CONTACT**. There is no limit on the length of written comments for consideration by the HSRB.

#### E. Background

##### A. Human Studies Review Board

The HSRB is a Federal advisory committee operating in accordance with the Federal Advisory Committee Act (FACA) 5 U.S.C. App.2 section 9. The HSRB provides advice, information, and recommendations to EPA on issues related to scientific and ethical aspects of human subjects research. The major objectives of the HSRB are to provide advice and recommendations on: a. Research proposals and protocols; b. reports of completed research with human subjects; and c. how to strengthen EPA's programs for protection of human subjects of research. The HSRB reports to the EPA Administrator through EPA's Science Advisor.

##### B. Topics for Discussion

The EPA will present for HSRB review scientific and ethical issues surrounding:

- An update on revisions to the EPA document, "Scientific and Ethical Approaches for Observational Exposure Studies," which the HSRB previously reviewed and commented on at the October 24–26, 2007 HSRB meeting.
- Two closely related product-specific reports from a single completed field study by Carroll-Loye Biological Research of the mosquito repellent efficacy of two registered pesticide products containing Deet.
- A research proposal from Insect Control & Research, Inc. to evaluate the laboratory efficacy in repelling stable flies of a registered pesticide product containing picaridin.
- Two research proposals from the Antimicrobial Exposure Assessment Task Force II (AEATF) for the execution of subjects who apply an antimicrobial pesticide by wiping and by mopping. The AEATF proposals will consist of multiple documents including a "Governing Document" describing the larger research initiative of which these two studies are a part, a set of "Standard Operating Procedures" for the execution of the studies, a "Scenario Justification" describing the AEATF's rationale for key elements of each study design, and protocols for the mop study and for the wipe study.

In addition, the Agency will report to the Board on how it has resolved issues relating to the design of sampling strategies for handler research programs

proposed by the Agricultural Handlers Exposure Task Force and the Antimicrobials Exposure Assessment Task Force II. Finally, the HSRB may also discuss planning for future HSRB meetings.

##### C. Meeting Minutes and Reports

Minutes of the meeting, summarizing the matters discussed and recommendations, if any, made by the advisory committee regarding such matters will be released within 90 calendar days of the meeting. Such minutes will be available at <http://www.epa.gov/osa/hsrb/> and <http://www.regulations.gov> In addition, information concerning a Board meeting report, if applicable, can be found at <http://www.epa.gov/osa/hsrb/> or from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: February 14, 2008.

George Gray,

Science Advisor.

[FR Doc. E8-4583 Filed 3-6-08; 8:45 am]

BILLING CODE 6560-50-P

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## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Requirement Submitted to OMB for Emergency Review and Approval

March 4, 2008.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated



collection techniques or other forms of information technology.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before March 12, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via e-mail to [nfraser@omb.eop.gov](mailto:nfraser@omb.eop.gov) or via fax at 202-395-5167, and to the Federal Communications Commission via e-mail to [PRA@fcc.gov](mailto:PRA@fcc.gov) or by U.S. mail to Jerry Cowden, Federal Communications Commission, Room 1-B135, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** For additional information contact Jerry Cowden via e-mail at [PRA@fcc.gov](mailto:PRA@fcc.gov) or at 202-418-0447. To view or obtain a copy of this information collection request (ICR) submitted to OMB: (1) Go to this OMB/GSA Web page: <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the list of FCC ICRs currently under review appears, look for the title "Information Needed in Requests for Waiver of June 26, 2008 Deadline for Rebanding Completion" and then click on the ICR Reference Number above it. A copy of the FCC submission to OMB will be displayed.

**SUPPLEMENTARY INFORMATION:** The Commission is requesting emergency OMB processing of this information collection and has requested OMB approval by March 14, 2008.

**OMB Control Number:** None.

**Title:** Information Needed in Requests for Waiver of June 26, 2008 Deadline for Rebanding Completion.

**Form No.:** Not applicable.

**Type of Review:** New collection.

**Respondents:** State, local or tribal governments; private sector.

**Number of Respondents:** 780 respondents; 1080 responses.

**Estimated Time Per Response:** 0.861 hour.

**Frequency of Response:** One to two-time reporting.

**Obligation to Respond:** Required to obtain or retain benefits.

**Total Annual Burden:** 930 hours.

**Total Annual Cost:** \$62,400.

**Nature and Extent of Confidentiality:**

The Commission will work with respondents to ensure that their concerns regarding the confidentiality of any proprietary or public safety-sensitive information are resolved in a manner consistent with the Commission's rules. See 47 CFR 0.459.

**Privacy Act Impact Assessment:** This information collection does not affect individuals or households, and therefore a privacy impact assessment is not required.

**Needs and Uses:** The information collection sought will enable the Commission to implement its rebanding program. Under that program, certain licensees are being relocated to new frequencies in the 800 MHz band, with all rebanding costs to be paid by Sprint Nextel Corporation (Sprint). The Commission's overarching objective in this proceeding is to eliminate interference to public safety communications. The Commission's orders provided for the 800 MHz licensees in non-border areas to complete rebanding by June 26, 2008. Those Orders also adopted various information collection requirements necessary to implement 800 MHz incumbent relocation, which have been approved by OMB (See OMB Control Number 3060-1080). Incumbent licensees may request a waiver of the relocation schedule. The Public Notice at issue here provides licensees guidance on what information they should submit as part of those waiver requests.

On January 17, 2008, the Commission released a Public Notice that established that any 800 MHz non-border licensee that will require additional time past June 26, 2008 to complete rebanding must request a waiver. The Commission stated that the "guidance contained in this Public Notice is intended to expedite both the preparation and submission of waiver requests by licensees as well as the review of such requests by the Bureau, consistent with the Commission's overarching goal of ensuring that rebanding is accomplished in a reasonable, prudent, and timely manner." The deadlines for filing waiver requests are March 17, 2008, for licensees in Waves 1 and 2 and April 15, 2008, for licensees in Wave 3. Licensees may also file interim waiver requests until they file a waiver request that will include a proposed rebanding timetable.

The Commission will make use of electronic collection techniques. It is expected that all respondents will employ electronic correspondence to

submit their responses. To further ease the burden imposed by this information collection, respondents are encouraged to make use of template forms created for the purpose of this collection. Those forms are publicly available.

Information will be sought concerning public safety systems that are being relocated to new frequencies under the Commission's 800 MHz rebanding program. We encourage licensees that are part of a regional coordination plan or that are otherwise coordinating their rebanding efforts to file coordinated requests as well as individual requests for each member of the regional coordination plan. We recommend that licensees address the following factors in their request: (1) System size and complexity; (2) interoperability with other systems, and how such interoperability will affect the ultimate rebanding schedule; and (3) steps already taken to complete physical reconfiguration, including participation in the Subscriber Equipment Deployment (SED) program and participation in a TA-sponsored regional planning session in its Public Safety Region (or commitment to participate in such a session). Licensees should provide a proposed timetable that includes the following elements: (1) What steps in the rebanding process have been or will be taken prior to the June 26, 2008 deadline; (2) anticipated dates of commencement and completion of (a) replacement or retuning of mobiles/portables, and (b) infrastructure retuning; (3) the anticipated date(s) that the licensee will commence operations on its post-rebanding channels and stop operations on its pre-rebanding channels; (4) additional rebanding steps that the licensee must take after commencement of operations on rebanded channels (e.g., removing old channels from radios) and the anticipated date for completion of these steps. The 800 MHz Transition Administrator has developed a template form for licensee use to provide the above information in their waiver requests. To expedite licensee preparation of requests and Bureau review, we recommend that licensees use this template in preparing their requests. Licensees that are unable to propose a specific timetable because they have not executed a Frequency Reconfiguration Agreement (FRA) with Sprint by the applicable deadline for filing a waiver request should file an interim extension request. The interim extension request should (1) state when the licensee anticipates having an FRA and (2) when the licensee anticipates filing a final waiver request that will

include a proposed timetable as described above.

Federal Communications Commission.

Marlene H. Dortch,  
Secretary.

[FR Doc. E8-4597 Filed 3-6-08; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL HOUSING FINANCE BOARD

### Sunshine Act Meeting Notice; Announcing a Partially Open Meeting of the Board of Directors

**TIME AND DATE:** The open meeting of the Board of Directors is scheduled to begin at 10 a.m. on Wednesday, March 12, 2008. The closed portion of the meeting will follow immediately the open portion of the meeting.

**PLACE:** Board Room, First Floor, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006.

**STATUS:** The first portion of the meeting will be open to the public. The final portion of the meeting will be closed to the public.

**MATTER TO BE CONSIDERED AT THE OPEN PORTION:** *Appointment to the Office of Finance Board of Directors.*

**MATTER TO BE CONSIDERED AT THE CLOSED PORTION:** *Periodic Update of Examination Program Development and Supervisory Findings.*

**FOR FURTHER INFORMATION CONTACT:** Shelia Willis, Paralegal Specialist, Office of General Counsel, at 202-408-2876 or [williss@fhfb.gov](mailto:williss@fhfb.gov).

Dated: March 4, 2008.

By the Federal Housing Finance Board.

Neil R. Crowley,  
Acting General Counsel.

[FR Doc. 08-992 Filed 3-5-08; 2:29 pm]

BILLING CODE 6725-01-P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The 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/](http://www.ffiec.gov/nic/).

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 3, 2008.

**A. Federal Reserve Bank of Kansas City** (Todd Offenbacher, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *Grant County Bank Employee Stock Ownership Plan*, to acquire an additional 2.13 percent of the voting shares of Resource One, Inc., and thereby indirectly acquire voting shares of Grant County Bank, all of Ulysses, Kansas.

Board of Governors of the Federal Reserve System, March 4, 2008.

Margaret McCloskey Shanks,  
Associate Secretary of the Board.

[FR Doc. E8-4487 Filed 3-6-08; 8:45 am]

BILLING CODE 6210-01-S

## FEDERAL RESERVE SYSTEM

[Docket No. OP-1309]

### Policy on Payments System Risk

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Policy statement; request for comment.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) requests comment on proposed changes to its Payments System Risk (PSR) policy that would adopt a new strategy for providing intraday balances and credit to depository institutions and encourage such institutions to collateralize their daylight overdrafts. The Board believes changes to the Federal Reserve's current strategy for providing intraday balances and credit to the banking industry

would help loosen liquidity constraints and reduce operational risk. Specifically, the Board proposes to adopt a policy of supplying intraday balances to healthy depository institutions predominantly through *explicitly* collateralized daylight overdrafts provided at a zero fee. The Board would allow depository institutions to pledge collateral *voluntarily* to secure daylight overdrafts but would encourage the voluntary pledging of collateral to cover daylight overdrafts by raising the fee for uncollateralized daylight overdrafts to 50 basis points (annual rate) from the current 36 basis points. The Board also proposes to increase the biweekly daylight overdraft fee waiver to \$150 from \$25 to minimize the effect of the proposed policy changes on institutions that use small amounts of daylight overdrafts (small users). In addition, the proposed policy would involve changes to other elements of the PSR policy dealing with daylight overdrafts, including adjusting net debit caps, streamlining maximum daylight overdraft capacity (max cap) procedures for certain foreign banking organizations (FBOs), eliminating the current deductible for daylight overdraft fees, and increasing the penalty daylight overdraft fee for ineligible institutions to 150 basis points (annual rate) from the current 136 basis points.

**DATES:** Comments must be received on or before June 4, 2008.

**ADDRESSES:** You may submit comments, identified by Docket No. OP-1309, by any of the following methods:

- **Agency Web Site:** <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.
- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **E-mail:** [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include the docket number in the subject line of the message.
- **Fax:** (202) 452-3819 or (202) 452-3102.

• **Mail:** Address to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed

electronically or in paper in Room MP-500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Marquardt, Deputy Director (202-452-2360) or Susan Foley, Assistant Director (202-452-3596), Division of Reserve Bank Operations and Payment Systems, Board of Governors of the Federal Reserve System; for users of Telecommunications Device for the Deaf ("TDD") only, contact (202) 263-4869.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Federal Reserve's Payments System Risk (PSR) policy sets out the general public policy objectives of *safety and efficiency* for payments and settlement systems. Over the past few years, the Federal Reserve has been reviewing the long-term effects of market, operational, and policy changes by the financial industry and the Federal Reserve on intraday liquidity, operational, and associated credit risks in financial markets and the payments system, including account overdrafts (daylight overdrafts) at the Federal Reserve Banks (Reserve Banks). On June 21, 2006, the Board published for public comment the *Consultation Paper on Intraday Liquidity Management and the Payments System Risk Policy* (consultation paper) that sought information from financial institutions and other interested parties on their experience in managing liquidity, operational, and credit risks related to Fedwire funds transfers, especially late-day transfers.<sup>1</sup> The paper included a list of detailed objectives relating to safety and efficiency that the Board has previously used to conduct payments system risk analysis. An important goal of the consultation process was to identify opportunities to improve the safety/efficiency trade-offs in the payments system over the long run.

Significant changes to U.S. payments and settlement systems over the past twenty-five years have helped reduce systemic risk. In accord with U.S. and international risk policies and standards, several of these changes have relied increasingly on the use of central bank money—in this context, balances that financial institutions and private clearing and settlement organizations hold in accounts at Reserve Banks—to strengthen the management of credit and liquidity risk in private-sector clearing and settlement arrangements. Such changes have had the effect of

increasing significantly the intraday demand for central bank money and hence the demand for daylight overdrafts at the Reserve Banks, which are a major source of these funds.

In addition, the combined effect of depository institutions' intraday liquidity management strategies, changes at clearing and settlement organizations, and late-day market activity has been to shift the sending of larger Fedwire funds transfers to later in the day. From an operational risk perspective, delaying the sending of large payments until late in the day increases the potential magnitude of liquidity dislocation and risk in the financial industry if late-in-the-day operational disruptions should occur. An increase in such risk is particularly troublesome in an era of heightened concern about operational disruptions generally.

Given the growing demand for intraday central bank money and accompanying daylight overdrafts, as well as the shift of larger Fedwire payments to later in the day, the Board believes that significant further steps are appropriate to mitigate the growing credit exposures of the Reserve Banks, while also improving intraday liquidity management for the banking system and augmenting liquidity provided. The consultation paper requested views on potential changes in market practices, operations, and the Federal Reserve's PSR policy that could reduce liquidity, operational, and credit risks. These proposed changes would not affect the provisions of part I of the PSR policy, which deal with risk management in private-sector systems.

**II. Comments and Analysis**

The Board received twenty-three public comment letters in response to its consultation paper.<sup>2</sup> The majority of these letters were from commercial banking organizations and from several private-sector clearing and settlement systems, industry groups, and trade organizations. In addition, the Board received comments from one Reserve Bank and one individual. Almost all commenters explicitly expressed concern about the operational risk associated with the increasing concentration of late-day payments. Most commenters identified payment queuing at depository institutions, particularly the queuing of payments to settle large money market transactions, as a liquidity conservation strategy that

contributes to institutions sending payments late in the day.<sup>3</sup> A majority of commenters also agreed that some private-sector clearing and settlement systems absorb a considerable amount of intraday liquidity in connection with their risk-management processes. Further, some commenters identified market constraints, such as the late-day settlements of tri-party repo transactions, and the processes and settlement procedures of The Depository Trust Company (DTC) and The Clearing House Interbank Payment System (CHIPS) as important contributors to the concentration of late-day payments.<sup>4</sup>

The comments also addressed the specific market, operational, and PSR policy options set forth in the consultation paper. The majority of commenters strongly supported greater use of collateral and two-tiered pricing of daylight overdrafts by the Federal Reserve under the PSR policy.<sup>5</sup> Several institutions expressed strong support for a zero fee for collateralized daylight overdrafts, similar to policies followed by other central banks. Most commenters also stressed that they should have the ability to use unencumbered collateral already pledged to the discount window to support their daylight overdrafts.

Several commenters also strongly supported continued work on potential opportunities to conserve liquidity within DTC and CHIPS. These comments endorsed the work performed by the Federal Reserve Bank of New

<sup>3</sup> Payment queuing is a tool used by some depository institutions to hold a payment internally until sufficient funds—available balances or credit line—become available to send the payment to the Fedwire funds transfer system or another system. Some payments are held in queues because a customer has insufficient balances or credit to fund the payments. Other payments may be held to manage the level of account daylight overdrafts at the Reserve Bank or the associated fees.

<sup>4</sup> CHIPS is a real-time final payments system operated by The Clearing House Payments Company. In January 2001, The Clearing House implemented operational and rule changes to allow all transactions settled in CHIPS to be final upon release from a central queuing system. DTC is a subsidiary of the Depository Trust and Clearing Corporation, which operates six subsidiaries that provide clearance, settlement, and information services for many financial instruments, including equities, corporate and municipal bonds, government and mortgage-backed securities, money market instruments, and over-the-counter derivatives. DTC provides custody and settlement services for corporate and municipal securities and money market instruments. DTC is a member of the Federal Reserve System and a clearing agency registered with the Securities and Exchange Commission.

<sup>5</sup> In 2001, the Board requested comment on two-tier pricing as a long-term PSR policy direction and, based on comments, agreed to continue evaluating the benefits and drawbacks of implementing such a regime. See 66 FR 30208, June 5, 2001 and 67 FR 54424, August 22, 2002.

<sup>2</sup> Copies of all public comments on the consultation paper can be found on the Board's website at [http://www.federalreserve.gov/generalinfo/foia/index.cfm?doc\\_id=OP%2D1257&doc\\_ver=1](http://www.federalreserve.gov/generalinfo/foia/index.cfm?doc_id=OP%2D1257&doc_ver=1).

<sup>1</sup> See 71 FR 35679, June 21, 2006.

York's Payment Risk Committee (PRC) and Wholesale Customer Advisory Group (WCAG) during the consultation period. The PRC and WCAG conducted a liquidity survey to understand better the determinants of late-day payments.<sup>6</sup> The results of the survey prompted the formation of four workgroups to evaluate liquidity improvement opportunities for CHIPS, DTC, tri-party repo payments, and broker-dealer payments.

The workgroup focused on CHIPS processing found that the CHIPS algorithm can leave a number of large-value payments unresolved in the system for significant periods of time, resulting in some institutions redirecting payments to the Fedwire funds transfer system at the end of the day; these payments are in addition to the daily Fedwire funds transfers that are part of the CHIPS' end-of-day funding procedures around 5:15 p.m. The workgroup and CHIPS identified possible opportunities to release unresolved payments for settlement earlier, including changing some of the system controls. The workgroup that focused on DTC largely examined the money market instrument clearing and settlement processes and the reasons a substantial amount of liquidity is transferred to and remains at DTC, especially between 1 and 3 p.m. This liquidity is then released as part of settlement around 4:30 p.m. The workgroup and DTC tried to identify ways to reduce the length of time of the settlement process, to encourage institutions to manage better liquidity at DTC, and to enhance operations and certain controls. The other two workgroups on broker-dealer payments and on tri-party payments largely focused on documenting processes and procedures to educate the PRC and WCAG members so they could better understand why these payments are key determinants of late-in-the-day payments. The results from each of the workgroups were shared as part of the

<sup>6</sup> The Payment Risk Committee (PRC) is sponsored by the Federal Reserve Bank of New York and works to identify and analyze issues of mutual interest related to risk in payments and settlement. The institutions represented on the PRC include Bank of America, Bank of New York, Bank of Tokyo-Mitsubishi UFJ, Citibank, Deutsche Bank, HSBC, JPMorgan Chase, State Street, UBS, Wachovia, and Wells Fargo. The Wholesale Customer Advisory Group (WCAG) advises the Wholesale Product Office on business issues and is composed of depository institutions that are major users of Fedwire. Institutions represented on this group include ABN AMRO, Bank of America, Bank of New York, Citibank, Deutsche Bank, HSBC, JPMorgan Chase, Key Bank, Mellon Financial, State Street, SunTrust, UBS, U.S. Bank, U.S. Central Credit Union, Wachovia, and Wells Fargo.

comment process and were cited for continued work by commenters.

Commenters were split in terms of support for developing a liquidity-saving mechanism for the Fedwire funds transfer system.<sup>7</sup> Eight of the thirteen respondents that commented on the possible introduction of a liquidity-saving mechanism encouraged further exploration of this idea, while the remaining five expressed some concerns. Those respondents that were supportive noted that a liquidity-saving mechanism could help reduce the length of time that large-value payments sit in internal queues at depository institutions. One commenter specifically suggested that the Federal Reserve focus on a liquidity-saving system for the exchange of broker-dealer and tri-party repo payments, which are typically large-value payments. Other supporters strongly favored a centralized queuing system for all Fedwire funds transfer payments and mentioned systems used or under development in other countries.<sup>8</sup> Concerns about developing a liquidity-saving mechanism included the possibility that it could undermine the real-time gross settlement attribute of the Fedwire funds transfer system, create a competitive disadvantage for a private-sector payments system, or significantly increase the cost of making Fedwire funds transfer payments.

Commenters had different views on the idea of time-of-day pricing, which would vary the fee charged for daylight overdrafts through the day so that overdrafts incurred earlier in the day would incur a lower fee than overdrafts incurred late in the day. While some commenters supported time-of-day pricing as an incentive to send funds transfers earlier in the day, others requested additional information about the idea. Still other commenters pointed

<sup>7</sup> The creation of a liquidity-saving mechanism could involve adding new features to the Fedwire funds transfer system that depository institutions could use to coordinate better the timing and settlement of their payments as well as to economize on the use of intraday central bank money, daylight overdrafts, and collateral. The existing real-time gross settlement functionality of Fedwire would be retained. In particular, a depository institution could still designate that a Fedwire funds transfer settle immediately as it does today. The new features, for example, could allow depository institutions to designate certain types of payments, possibly including payments generated by certain types of transactions, to be placed into a central queuing system and settled using algorithms that allow the liquidity provided by incoming payments to a depository institution to be used as far as possible to settle that institution's outgoing payments.

<sup>8</sup> Versions of liquidity-saving mechanisms are used by CHIPS and Target 2 in the European Union. Such features will also be included in the new wire transfer systems in Japan and other countries.

out that the effectiveness of time-of-day pricing would be constrained by the reality of late afternoon trade settlements, such as tri-party repo payments and Fed funds loans.

Commenters expressed limited or no support for the creation of an intraday market to exchange liquidity, an expansion of the market for early return of Fed funds loans, or throughput requirements for the Fedwire funds transfer system. Most respondents thought that an intraday market would not be helpful in addressing the late-day concentration of payments and would be costly and complex to establish. In terms of expanding the market for early return of Fed funds loans, several commenters were uncertain about the effects of such a change on late-day payments. In addition, a majority of respondents did not support the introduction of throughput requirements for the Fedwire funds transfer system, primarily because of the potential difficulty of administering and enforcing such requirements. Throughput requirements are used by some systems around the world to encourage certain percentages of payments volume to be submitted by predetermined times. Three commenters, however, were somewhat supportive provided the throughput requirements were voluntary, implemented jointly with a central queue, or in conjunction with brief, intermittent periods when institutions could coordinate sending Fedwire funds transfers.

The Board received several comment letters raising concerns about the policy's treatment of the daylight overdrafts of foreign banking organizations (FBOs). The commenters stated that the U.S. capital equivalency measure used to determine FBO net debit caps and deductibles in the calculation of daylight overdraft limits and fees is discriminatory and results in a competitive disadvantage for these organizations and in their delaying payments. This assertion is based on the fact that U.S.-chartered depository institutions receive a net debit cap and deductible based on their worldwide capital, while FBOs receive a net debit cap based on no more than 35 percent of their worldwide capital (referred to as the U.S. capital equivalency) and a deductible based on their U.S. capital equivalency.<sup>9</sup> As a result, FBOs are

<sup>9</sup> In 2001, the Board modified the criteria to determine eligible capital and raised the percent of capital used in calculating net debit caps and the deductible. The percent of capital used increased from as much as 10 percent to up to 35 percent. See also 66 FR 30205, June 5, 2001.



eligible for considerably lower daylight overdraft capacity and free intraday credit than are U.S.-chartered depository institutions with equivalent worldwide capital. The commenters asked the Board to calculate FBO deductibles using 100 percent of their worldwide capital, as is done for U.S.-chartered institutions. The commenters also asserted that the existing formula used to determine the net debit cap cannot be justified, particularly in the case of FBOs which are considered to be both "well capitalized" and "well managed" for U.S. regulatory (FHC) purposes or which have received the highest rated "strength-of-support assessment" (SOSA 1).<sup>10</sup>

Finally, the Board received a few other comments. One responder suggested changing the posting rules for automated clearinghouse (ACH) debit transfers so that settlements from credit and debit transfers are posted simultaneously with only the net amount of funds increasing or decreasing the balances of depository institutions held at Reserve Banks.<sup>11</sup> The Board has issued a separate **Federal Register** notice requesting comment on shifting from 11 a.m. to 8:30 a.m., eastern time, the posting time for commercial and government ACH debit transfers that are processed by the Reserve Banks' FedACH service.<sup>12</sup> The earlier posting time would make the postings of commercial and government ACH debit and credit transfers simultaneous.

Some commenters raised ideas for changes other than those suggested in the consultation paper, including lowering fees for securities-related daylight overdrafts, allowing individual banks to coordinate informally the sending of Fedwire funds transfers, and reducing the maximum payment size allowed through the Fedwire funds transfer system. Finally, several commenters addressed a question in the consultation paper about the payment of interest on reserves and the possible effect on depository institutions' intraday liquidity management. Most responders believed that the Federal

Reserve's payment of interest on reserve balances would not affect intraday liquidity management or stated that its effect on liquidity was unknown without further information.

Overall, the public comment letters and the extensive PRC and WCAG investigations into intraday liquidity and late-day payments issues validate a number of concerns raised in the consultation paper. It has also become clear that no single policy or operational change would address all of the intraday liquidity, risk, and payments issues that the Board and the industry have identified. However, a series of steps by both the private sector and the Federal Reserve could help.

To address the combination of intraday liquidity, operational, and credit risks in the wholesale payments system, the Board believes that the Federal Reserve and industry should pursue a four-pronged strategy. The Board should review its PSR policy and consider adjusting the terms and pricing of daylight overdrafts. The Reserve Banks should work with the industry and investigate options for developing a liquidity-saving mechanism for the Fedwire funds transfer system. Additionally, working with the PRC, CHIPS and The Depository Trust and Clearing Corporation should explore opportunities for improving payments processing and liquidity use in their systems and processes relating to large-value funds and securities settlement, respectively. This request for comment focuses on the Board's PSR policy and recommends changes in strategy, terms, and pricing for the provision of intraday credit by the Reserve Banks.

### III. New Strategy for PSR Policy

The current policy of providing uncollateralized daylight overdrafts at an administered fee grew out of a Board study in the late 1980s that reviewed options for reducing the volume of intraday credit provided by the Reserve Banks. A fundamental premise of this work was that intraday credit is a necessary but undesirable aspect of the payments system and should be reduced whenever possible. This premise is expressed in the introduction to the current PSR policy as follows:

[T]he Board expects depository institutions to manage their Federal Reserve accounts effectively and minimize their use of Federal Reserve daylight credit. Although some intraday credit may be necessary, the Board expects that, as a result of this policy, relatively few institutions will consistently

rely on intraday credit supplied by the Federal Reserve to conduct their business.<sup>13</sup>

In reviewing the current PSR policy, the Board identified five major concerns related to risk and efficiency that together suggest that a change in the Federal Reserve's approach to the provision of daylight overdrafts is warranted at this time.<sup>14</sup> First, the data indicate a long-term trend of declining end-of-day balances held in Federal Reserve accounts which, in turn, implies an increasing need by institutions for daylight credit from the Reserve Banks to fund payments-system transactions. Second, the Board notes that some financial utilities can absorb large amounts of intraday funding from participants to meet their risk management requirements. These funding requirements result in large transfers of balances from participants' Federal Reserve accounts that often are not reversed until the late afternoon. Third, data, as well as comments on the consultation paper, make clear that many large depository institutions hold a significant number of large-value payments in "liquidity queues" primarily to avoid daylight overdraft fees; such queuing can delay payments across the financial markets. Fourth, data show that Reserve Banks' credit exposure has increased over time in real terms despite Reserve Banks charging fees. On certain days, the peak overdraft of the banking system can exceed \$210 billion. In 2007, the average daily overdraft of the banking system as a whole was approximately \$60 billion and the average daily peak overdraft was approximately \$160 billion. Finally, daylight overdraft fees paid by the banking system have continued to rise, increasing the cost burden of the PSR policy on the industry. Daylight overdraft fees for 2007 totaled approximately \$65 million, compared with \$32.2 million in 2003. Because there are systemic reasons for the increased demand for intraday balances and credit as well as evidence that the current pricing approach is creating liquidity queues and increasing late-day operational risk, the Board concluded that its current strategy of seeking to minimize daylight overdrafts should be reassessed.

The Board also notes that thinking about the role of central banks in providing intraday balances to the payments system has evolved significantly over the past twenty years.

<sup>13</sup> See the Policy on Payment System Risk <http://www.federalreserve.gov/paymentsystems/psr/policy07.pdf>, pg. 2.

<sup>14</sup> Please see appendix I for a full discussion of these issues.

<sup>10</sup> For an FBO, the policy incorporates the SOSA rankings and FHC status in determining U.S. capital equivalency. The SOSA ranking is composed of four factors, including the FBO's financial condition and prospects, the system of supervision in the FBO's home country, the record of the home country's government in support of the banking system or other sources of support for the FBO, and transfer risk concerns. The SOSA ranking is based on a scale of 1 through 3, with 1 representing the lowest level of supervisory concern.

<sup>11</sup> Currently FedACH credit transfer and debit transfer transactions post at 8:30 a.m. and 11 a.m. eastern time, respectively.

<sup>12</sup> All times referenced are eastern time.



A 2003 study by the G-10 Committee on Payments and Settlements Systems summarized this change in perspective and explicitly recognized that central banks have an important role in providing intraday (central bank money) balances to foster the smooth operation and settlement of payments systems.<sup>15</sup> In essence, this view is an extension to the intraday market of the traditional role of central banks in supplying overnight balances to the banking industry to meet financial market demand for liquidity and operating balances. While some of the demand of the banking industry for intraday balances can be met by overnight balances, when the level of those balances is inadequate, a central bank will need to supply additional funds through the temporary provision of intraday funds, which could include using mechanisms such as daylight overdraft facilities.

The Board believes that a new strategy would enhance intraday liquidity management while controlling risk to the Reserve Banks and would build on the Board's 2001 proposal to consider two-tiered pricing for daylight overdrafts.<sup>16</sup> This strategy would

(1) Explicitly recognize that the Federal Reserve has an important role in providing intraday balances to foster the smooth operation of the payments system.

(2) Provide temporary, intraday balances to healthy depository institutions predominantly through collateralized intraday overdrafts.

<sup>15</sup> "Because the settlement of each payment involves a direct transfer of the settlement asset, [real time gross settlement] systems require substantially more of the asset to ensure smooth payment flows. To enable this, most central banks provide intraday credit to banks participating in these systems in quantities which in some cases dwarf the banks' overnight balances or their overnight borrowing from the central bank." See "The Role of Central Bank Money in the Payment System," Committee on Payment and Settlement Systems, August 2003 at <http://www.bis.org/publ/cpss55.pdf>.

<sup>16</sup> The strategy is consistent with the public policy objectives in the current PSR policy to foster the safety and efficiency of payments and settlement systems as well as the version of these objectives used in developing the Board's original pricing proposals in 1988. At that time, the safety objectives were stated as low direct credit risk to the Federal Reserve, low direct credit risk to the private sector, low systemic risk, and rapid final payments. The efficiency objectives were stated as a low operating expense of making payments, equitable treatment of all service providers and users in the payments system, effective tools for implementing monetary policy, and low transaction costs in the Treasury market. See "Controlling Risk in the Payment System," Report of the Task Force on Controlling Payments System Risk to the Payments System Policy Committee of the Federal Reserve System, Board of Governors of the Federal Reserve System, August 1988.

(3) Reduce over time the reliance of the banking industry on uncollateralized daylight credit if this can be done without significantly disrupting the operation of the payments system or causing other unintended adverse consequences.

In brief, the rationale for the new strategy is that modern payments and settlement systems, including Fedwire, CHIPS, CLS, and DTC, require significant amounts of intraday balances or liquidity for smooth operations and that the role of a central bank is to meet reasonable market needs of participants in these systems for this liquidity.<sup>17</sup> In addition, under current policies, overnight balances are not sufficient to address these needs and, as a result, temporary, intraday balances through intraday credit must be provided by daylight overdrafts.<sup>18</sup> Intraday credit is now widely and explicitly provided by central banks to support the operation of payments and settlement systems, including by the Eurosystem, Bank of Japan, and Bank of England. Typically this daylight credit is collateralized, but no fee is charged.

The proposed new strategy would explicitly use collateral augmented by the framework of net debit caps to control credit risk to the Reserve Banks in providing daylight overdrafts and would link the fees charged for daylight overdrafts to the amount of collateral provided. The same collateral eligibility criteria and haircuts would be used for both overnight and intraday credit. Unencumbered collateral pledged for discount window or PSR purposes could be used to support intraday credit provided at the reduced daylight overdraft fee. The benefits of encouraging the pledge of collateral would extend beyond the reduced intraday credit exposure of the Reserve Banks and would include enhanced emergency preparedness. Under the proposed policy, eligible institutions would have an additional incentive to sign borrowing documents with the Reserve Banks and pledge collateral, which would enable such institutions to borrow from the discount window, if needed.

Controlling credit risk by taking collateral is a time-honored risk-management technique. It is used

<sup>17</sup> See The Role of Central Bank Money in the Payment System, Committee on Payment and Settlement Systems, August 2003. (<http://www.bis.org/publ/cpss55.pdf>).

<sup>18</sup> Policy decisions that will be made to exercise the Federal Reserve's new statutory authority to pay interest on reserves beginning in October 2011 could increase the level of overnight balances held at the Reserve Banks and consequently reduce the demand for daylight overdrafts to provide intraday balances.

explicitly in some cases today by the Reserve Banks in the daylight overdraft program.<sup>19</sup> Moreover, under Operating Circular 10, depository institutions grant Reserve Banks a lien on collateral pledged to the Reserve Bank as well as any other property in the possession or control of, or maintained with, any Reserve Bank, to secure discount window loans and any other obligations, such as daylight overdrafts, owing to any Reserve Bank.<sup>20</sup>

The new strategy would retain a net debit cap regime for all depository institutions.<sup>21</sup> The net debit cap would focus on addressing low-probability risks and not unduly constraining normal demands for balances and credit. Industry best practices and supervisory guidance support the use of borrowing limits, or caps, even for collateralized risk exposures as a prudent credit risk management tool. Caps also serve as a useful mechanism for both Reserve Banks and institutions in terms of setting benchmarks for the maximum expected usage of daylight credit and supporting collateral.

The new strategy also reflects the Board's sensitivity to avoiding sudden and disruptive changes in policy that would not be in the public interest and would not advance efforts to improve payments system efficiency and safety. Hence, an element of the new strategy is to move toward a greater use of collateral in a way that minimizes the cost and administrative burden of the policy on most users of daylight overdrafts. As a general matter, the Board believes that requiring depository institutions to pledge collateral to support daylight overdrafts would be consistent with reducing Reserve Bank credit risk, with existing discount window practices, and with the policies

<sup>19</sup> Pledging collateral is generally limited to securing maximum capacity (overdraft capacity above the net debit cap) or protecting Reserve Banks against risk from problem depository institutions.

<sup>20</sup> Under Operating Circular 1, depository institutions also grant Reserve Banks a lien on certain assets to secure any obligation owing to any Reserve Bank: "To secure any overdraft in the master account, as well as any other obligation, now existing or arising in the future, of the account holder to any Reserve Bank, the account holder grants to the Reserve Bank all the account holder's right, title, and interest in property, whether now owned or hereafter acquired, in the possession or control of, or maintained with, any Reserve Bank."

<sup>21</sup> The current cap is a function of qualifying capital, which varies based on the entity type. The qualifying capital is multiplied by the cap multiplier for cap categories to determine each institution's limit. One limit applies for single-day use and another for two-week average use, but these limits generally are not binding. If an institution exceeds its cap, the Reserve Bank will counsel the institution ex post. For additional information, see the Guide to the Federal Reserve's Payments System Risk Policy at <http://www.federalreserve.gov/paymentsystems/psr/guide.pdf>.

of other central banks. The Board is concerned, however, about the potential implications of moving to a mandatory collateral regime at this time, because of the uncertain effects such a move might have on intraday liquidity and operational risk, as well as the burden on the banking industry.<sup>22</sup> The Board will continue to monitor developments over time and to evaluate the costs and benefits of moving further toward a collateralized structure.

#### IV. Discussion of Proposed PSR Policy Changes

To implement this new strategy, the Federal Reserve System will need to adjust its current terms and fees for providing daylight overdrafts. The Board believes that the following points summarize in broad terms the elements of a new PSR policy that would be consistent with such a change in strategy:

- Explicitly encourage the pledging of collateral to support intraday credit and apply unencumbered discount window collateral to intraday credit.

- Eliminate the fee for collateralized intraday credit.
- Increase the fee for uncollateralized intraday credit.
- Retain a modified version of the single-day daylight overdraft cap to limit the ultimate size of Reserve Bank risk exposures.
- Adopt measures to limit the impact of policy changes on depository institutions that are relatively small users of intraday credit.

Table 1 summarizes the specific elements of the current and proposed PSR policy.

TABLE 1.—SUMMARY OF KEY ELEMENTS OF THE CURRENT AND PROPOSED PSR POLICY<sup>23</sup>

	Current policy	Proposed policy
Collateral .....	Required for problem institutions <sup>24</sup> and institutions with max caps. Collateral eligibility and margins same as discount window.	Additional provision that explicitly applies collateral pledged by healthy institutions to daylight overdrafts in their Reserve Bank accounts.
Fee for collateralized daylight overdrafts.	36 basis points .....	Zero fee.
Fee for uncollateralized daylight overdrafts.	36 basis points .....	Increase to 50 basis points.
Deductible .....	10 percent of an institution's capital measure .....	Replaced by zero fee for collateralized daylight overdrafts and increased fee waiver.
Fee waiver .....	Up to \$25 biweekly .....	\$150 biweekly. <sup>25</sup>
Net debit cap .....	Two-week average limit and higher single-day limit .....	Two-week average limit is eliminated; adjusted policy for single-day limit.
Max cap .....	Additional collateralized capacity above net debit cap for self-assessed institutions.	Streamlined process for certain FBOs up to a limit; minor changes for all institutions.
Penalty fee for ineligible institutions.	136 bps .....	Increase to 150 bps.

To assist institutions in understanding the effect of the proposed policy on their daylight overdraft fees, the Board has developed a simplified fee calculator. The calculator enables institutions to provide daylight overdraft and collateral data to estimate their daylight overdraft fees under the proposed policy. The calculator is located on the Board's Web site at <https://www.federalreserve.gov/apps/RPFCalc/>.

**A. Collateral.** To help meet institutions' demand for intraday balances while mitigating Reserve Bank credit risk, the Board would adopt a policy of supplying intraday balances predominately through explicitly collateralized daylight overdrafts provided by Reserve Banks to healthy depository institutions at a zero fee. To avoid disrupting the operation of the

payments system and increasing the cost burden on a large number of smaller users of daylight overdrafts, the Board would allow the use of collateral to be *voluntary*, but a system of two-tiered fees would be adopted to encourage the industry to make greater use of collateral. Unencumbered discount window collateral would explicitly collateralize daylight overdrafts, and collateralized overdrafts would be charged a zero fee. Collateral eligibility and margins would remain the same for PSR policy purposes as for the discount window.<sup>26</sup> In addition, the pledging of in-transit securities would remain an eligible collateral option for PSR purposes at Reserve Banks' discretion.<sup>27</sup>

Of the twenty-three responses to the consultation paper, fourteen commenters addressed the question

regarding greater use of collateral to cover daylight overdrafts. All fourteen commenters supported greater use of collateral (particularly to obtain a lower daylight overdraft fee). A number of the respondents specifically argued for voluntary or partial collateralization of intraday credit. Several respondents also commented that collateralized overdrafts should be free of charge or subject to an adjusted daylight overdraft fee. Most commenters stated that their support for greater use of collateral was contingent upon being able to use unencumbered discount window collateral to support intraday credit.

The Board considered whether it should *require* collateralization of all daylight overdrafts at this time. The Board generally believes that requiring depository institutions to pledge collateral to support daylight overdrafts

<sup>22</sup> Historically, the Board has sought to minimize the cost and administrative burden of the PSR policy on institutions that do not rely significantly on the use of daylight overdrafts to make payments.

<sup>23</sup> Access to daylight credit would continue to be available only to institutions with regular access to the discount window as is the case today.

<sup>24</sup> Problem institutions are institutions that are in weak financial condition and should refrain from incurring daylight overdrafts and institutions that

chronically incur daylight overdrafts in excess of their net debit caps in violation of the PSR policy.

<sup>25</sup> The proposed \$150 waiver would be subtracted from the gross fees (in a two-week reserve-maintenance period) assessed on any depository institution eligible to incur daylight overdrafts. This procedure differs from the current policy in which the waiver only eliminates gross fees of institutions that have charges less than or equal to \$25 in a two-week period.

<sup>26</sup> See <http://www.frbdiscountwindow.org/> for information on the discount window and PSR collateral acceptance policy and collateral margins.

<sup>27</sup> In-transit securities are book-entry securities transferred over the Fedwire securities system that have been purchased by a depository institution but not yet paid for or owned by the institution's customers.

would be consistent with reducing Reserve Bank credit risk, existing discount window practices, and the policies of other central banks. However, the potential effect on intraday liquidity and operational risk, along with the burden on the banking industry of a move to mandatory collateral, suggests caution. For example, requiring collateral could result in institutions being subject to rejected payments or high "penalty" fees if they exceed the amount of pledged collateral, could increase payment queuing by institutions without sufficient collateral to pledge, and could add significant compliance costs to the banking industry. Indeed, one respondent specifically stated in its comment letter that it was not supportive of moving to a mandatory collateral regime for daylight overdrafts even at a zero fee. For all these reasons, at this time, the Board is proposing a voluntary collateral regime for daylight overdrafts.

The Board has long recognized that accepting collateral from institutions

would help control intraday credit risk to Reserve Banks. Moving towards greater collateralization of daylight overdrafts was hampered in the past by concerns about administration costs to depository institutions, incentive effects, and other unintended consequences. Most of these concerns have been addressed over time.

In the early 1980s, the aggregate amount of collateral pledged to the discount window was quite low relative to intraday credit extended, and many depository institutions had not signed the necessary legal agreements with their Reserve Banks. During early PSR policy consultations, there was also concern about the administrative costs of pledging and monitoring additional collateral and about the possibility that Fedwire or other payments could be disrupted if a depository institution did not have sufficient collateral at a particular point during the day. Since the 1980s, however, the quantity of collateral pledged to the discount window has increased dramatically. In particular, pledges to the discount

window began to increase as a result of industry and Federal Reserve actions to address contingencies prior to the century date change and following September 11th.<sup>28</sup> As of year-end 2007, more than \$980 billion in assets were pledged for discount window and PSR purposes, most of which was unencumbered by outstanding discount window loans.<sup>29</sup>

Most of the largest users of daylight overdrafts have sufficient unencumbered collateral pledged to the Reserve Banks to cover their average level of daylight overdrafts. In addition, as table 1 indicates, during the fourth quarter of 2007, fifteen of the twenty largest users of intraday credit would have been able to cover the average peak amount of daylight overdrafts using existing pledged collateral. In particular, the maximum peak overdrafts of eight of these institutions would have been covered by their current collateral pledges. It is highly likely that additional collateral would be pledged to cover intraday credit if appropriate incentives existed.

TABLE 2.—THE NUMBER OF TOP DAYLIGHT OVERDRAFTERS ABLE TO COLLATERALIZE BORROWINGS WITH EXISTING COLLATERAL PLEDGES  
[Q4 2007]

	Cumulative percent of average daylight overdrafts	Number of institutions that have existing collateral to cover:		
		Average daylight overdrafts *	Average peak of daylight overdrafts *	Maximum daily peak of daylight overdrafts
Top 10 .....	75	8	7	3
Top 20 .....	84	18	15	8
Top 50 .....	94	46	40	28
Top 100 .....	97	91	68	47
Top 200 .....	98	174	119	80

\* The data are quarterly averages of daily data.

One issue that has not changed since the 1980s is that a substantial number of depository institutions, mainly smaller institutions, use intraday credit but have not signed borrowing agreements with their Reserve Banks (about 1,500 of 4,400 institutions that make some use of intraday credit). In addition, another 1,700 institutions that use intraday credit have borrowing agreements, but have not pledged any collateral to the Reserve Banks. Thus, the Board recognizes that the policy needs to avoid imposing an undue burden on small users of daylight credit

or on the Reserve Banks. The new fee waiver is intended to minimize the burden on small users of the proposed policy changes.

Another historical administrative concern has been the cost and practicality of Reserve Banks' perfecting their security interests in collateral and monitoring that collateral to manage their credit risk. Today, it is a routine matter for a Reserve Bank to file a Uniform Commercial Code financing statement with state authorities to perfect its security interest in any and all bank assets that are pledged. The

Reserve Banks have implemented automated systems to track collateral held at the Reserve Banks, by third-party custodians, and by the borrowers themselves. In addition, the Reserve Banks monitor borrower eligibility to participate in a borrower-in-custody program. On balance, although improvements can always be made in procedures and systems, significant improvements have been made over time that address the earlier administrative concerns about explicitly collateralizing the daylight overdrafts of

<sup>28</sup> In the early 1990s, the Reserve Banks began standardizing policies regarding eligible asset types, acceptance criteria, and valuation. By the mid 1990s, the Reserve Banks allowed multiparty pledges through DTC. In the late 1990s, the Reserve Banks began using market pricing for securities valuation, started allowing for nonbank custodian

and foreign custodian (Clearstream and Euroclear) arrangements, and began accepting a broader array of asset types of collateral. New types of eligible assets since that time have included non-AAA ABS, AAA collateralized debt obligations, commercial mortgage-backed securities, trust preferred securities, credit union mutual funds, GSE stock,

STRIPS, German jumbo Pfandbriefe, and certain other foreign currency-denominated assets.

<sup>29</sup> This collateral value reflects lendable value based on the Reserve Banks' margins and does not include pledges of in-transit securities.

depository institutions that routinely use large amounts of intraday credit.

In the past, the Board also had concerns that accepting collateral to address Reserve Bank credit risk for daylight overdrafts would not provide strong incentives to reduce the level of intraday credit. In particular, there was concern that because of the wide range of collateral accepted by the Reserve Banks, depository institutions would have weak incentives to reduce their use of intraday credit. Under the new strategy, the purpose of Reserve Banks accepting collateral is not to control the level of overdrafts per se, but to mitigate credit risk to the Reserve Banks when they provide intraday balances and credit needed for the smooth operation of the payments system.

Additionally, there was concern that reliance on collateral alone might result in Reserve Banks providing excessive amounts of credit to particular depository institutions and present the Reserve Banks with reputational and residual credit risks. Although the Board proposes to relax some aspects of the net debit cap program, caps on total intraday credit extensions would remain in place to help address these risks. Eliminating the two-week average net debit cap and retaining the higher single-day cap for healthy depository institutions has the effect of raising caps approximately 50 percent from the current policy. This increase coupled with the incentive to collateralize daylight overdrafts is consistent with the strategy of providing additional balances and credit for the payments system. Other central banks that provide collateralized intraday credit at a zero price have not reported problems with excessive growth in the level of intraday credit.

The Board's main concern about unintended consequences has been that by taking collateral, the Reserve Banks could be inadvertently shifting credit risk to unsecured and uninsured creditors of an institution or to the Federal Deposit Insurance Corporation's (FDIC) deposit insurance fund. With regard to unsecured creditors of a depository institution, the concern is whether these creditors would know about the institution's pledge to a Reserve Bank and have an opportunity to reduce their exposure to the depository institution, increase compensation for increased risk, or take other appropriate action. The public filing of financing statements by Reserve Banks and the existence of automated services for searching for liens mitigates this concern.

The Board's concerns about the implications for the FDIC's insurance

fund predate changes in Reserve Bank collateral administration practices and the FDIC's adoption of "least cost" resolution policies pursuant to the FDIC Improvement Act of 1991. The Board believes that the evolution of the PSR policy and related procedures have helped to address its concerns. Under the current PSR policy, an "institution must be financially healthy and have regular access to the discount window" in order to qualify to receive daylight credit from its Reserve Bank.<sup>30</sup> Under the implementation scheme for net debit caps, a financially healthy institution is essentially defined as at least an adequately capitalized depository institution that has a supervisory rating of CAMELS-3 or higher.<sup>31</sup> Moreover, a Reserve Bank may "limit or prohibit an institution's use of Federal Reserve intraday credit if \* \* \* the institution's use of daylight credit is deemed by the institution's supervisor to be unsafe or unsound."<sup>32</sup> Thus, if supervisory issues arise with an institution, supervisors, including the OCC and FDIC, would be and have been consulted about the financial condition of an institution that is using or seeking to use intraday credit. In some circumstances, Reserve Banks impose real-time controls to reject outgoing Fedwire funds transfers that would cause a depository institution's account to exceed a limit, including a limit of zero.<sup>33</sup> While residual risks may exist, PSR policies and procedures as well as FDIC legislation have been significantly enhanced in ways that help control both risk to the Reserve Banks and to the FDIC insurance fund.

On balance, the Board believes that explicitly accepting collateral for daylight overdrafts on a voluntary basis offers important improvements in

<sup>30</sup> See the Payment System Risk Policy at <http://www.federalreserve.gov/paymentsystems/psr/policy07.pdf>, p. 22.

<sup>31</sup> The CAMELS ratings apply to commercial banks, savings and loan associations, natural person credit unions, and bankers' banks. Other supervisory rating structures apply for FBOs and corporate credit unions. The Reserve Banks use these supervisory ratings and other factors to determine credit risk and whether they will extend daylight overdraft capacity.

<sup>32</sup> See the Policy on Payment System Risk at <http://www.federalreserve.gov/paymentsystems/psr/policy07.pdf>, p. 23.

<sup>33</sup> The Reserve Banks use real-time monitoring to prevent selected institutions from effecting certain transactions—outgoing Fedwire funds transfers, National Settlement Services transactions, or automated clearing house (ACH) credit originations—if their accounts lack sufficient funds to cover the payments. Generally, a Reserve Bank will apply real-time monitoring to an institution's position when the Reserve Bank believes that it faces a greater level of risk exposure, for example from problem institutions or institutions with chronic overdrafts in excess of what the Reserve Bank determines is prudent.

policy. In particular, collateralized daylight overdrafts will support liquidity and operational risk reduction for the payments system, long-term credit risk reduction for the Reserve Banks, and a more-reasonable cost burden on the industry.

*B. Fees for collateralized daylight overdrafts.* The Board proposes lowering the fee to zero for collateralized daylight overdrafts to encourage institutions to pledge collateral and to reduce payments held in liquidity-management queues. The value of unencumbered collateral pledged at the Reserve Banks for PSR or discount window purposes would be applied in the determination of daylight overdraft fees assessed to institutions.

Of the twelve commenters that addressed two-tier pricing with a lower fee for collateralized overdrafts, most were highly supportive, particularly if the fee on collateralized daylight credit were zero. The other commenters raised questions or issues for the Board's consideration. For instance, one commenter that supported two-tier pricing expressed some concern about the potential cost and complexity of implementing a two-tier pricing system. Another mentioned the likelihood that two-tier pricing would increase the level of daylight overdrafts. In addition, several institutions specifically requested that all unencumbered collateral pledged to the Reserve Bank for discount window or PSR purposes be considered in calculating an institution's fees.

The Board has previously raised the possibility of a two-tier pricing system for collateralized and uncollateralized daylight overdrafts. In 2001, the Board requested comment on two-tier pricing as a long-term PSR policy direction.<sup>34</sup> Then, as now, most commenters were supportive of such a regime. In August 2002, the Board stated that it would continue to study two-tier pricing for collateralized and uncollateralized overdrafts.<sup>35</sup> The Board also specified that the Reserve Banks would charge the collateralized rate on daylight overdrafts up to the value of collateral pledged and then apply the uncollateralized rate to the remaining daylight overdrafts.

To determine a collateralized fee, the Board has reviewed historical papers and discussions of overdraft pricing, industry comments and discussions surrounding the consultation paper, and the practices of other major central banks. There is no definitive economic literature on whether there is a nonzero intraday rate of interest that should be

<sup>34</sup> 66 FR 30208, June 5, 2001.

<sup>35</sup> 67 FR 54424, August 22, 2002.

used in calculating fees for collateralized intraday central bank credit. There are different views. One view argues that it would be anomalous if the general term structure of interest rates contained a major discontinuity between the overnight rate and the intraday rate but without showing how to determine the existence and level of an intraday rate. Another view essentially holds that intraday balances provided by central banks should be priced at the marginal social cost of production, which is approximately zero for central banks. This view is reinforced by recent academic work suggesting that the role of central bank intraday balances and credit is to help coordinate the settlement of payments and not ultimately to finance underlying real economic activity.

From the economic literature, a reasonable perspective is that central banks should target a rate for providing collateralized daylight balances and credit that advances the policy objectives of the central bank. Further, because there is no evidence from other countries that intraday rates affect central bank macroeconomic goals, such as inflation or unemployment, a central bank has the flexibility to set an intraday rate to advance its payments system objectives of safety and efficiency. This is the intraday credit pricing strategy generally followed by other major central banks, and there have not been any reported effects on the central banks' ability to achieve their monetary policy objectives.

The Board's view is that setting the collateralized daylight overdraft fee at zero would improve tradeoffs among liquidity, operational, and credit risks in the payments system. Although the amount of intraday credit provided could well increase, credit risk to the Reserve Banks would be controlled by traditional banking tools used in providing credit (eligibility requirements, collateral, caps, and monitoring). The Board also believes that credit risk to depository institutions could decrease somewhat because greater liquidity would imply faster payments and settlements and a correspondingly shorter duration of intraday risk on customer accounts and counterparty settlements. Similarly, liquidity would likely circulate more quickly with the faster flow of payments as the incentive for depository institutions to queue payments for liquidity purposes declines. Operational risk from late-day payments would also likely decline somewhat if depository institutions release payments generated earlier in the day from their internal afternoon liquidity queues.

In addition, some theoretical literature and discussions with bankers suggest that setting the collateralized fee at even a low rate above zero might continue to provide incentives to queue and delay payments. For example, small incentives can lead to strategic behavior by depository institutions in which each waits for the other to send payments that essentially provide the liquidity to avoid (priced) daylight overdrafts, which in turn leads to a generalized delay of payments until late in the day. Discussions with depository institutions tend to confirm that, if a payment is not time-sensitive, they may very well hold that payment to reduce overdraft charges that affect their budgets. Thus, the Board believes that the industry may continue to hold back payments at any positive fee for collateralized intraday credit.

The Board recognizes that a zero fee for collateralized intraday credit is unlikely to reduce the share of late-day payments back to pre-2000 levels. As validated by the PRC and WCAG survey, a number of late-day payments are not originated until late in the day, and many of these are unlikely to be affected by changes to daylight overdraft fees. For example, late-day money market investments will of necessity generate late-day payments.

In weighing the reasons for charging a zero fee for collateralized daylight overdrafts, the Board identified at least two potential unintended consequences. First, the Board is concerned that a zero fee for collateralized overdrafts could eliminate incentives for depository institutions and their customers to return securities used in repurchase agreements early in the morning. The practice of early return grew out of a coordinated effort by the clearing banks and the market to respond to the implementation of overdraft fees in 1994 by delivering government and agency securities held under certain types of repurchase agreements back to borrowers of funds and their banks early in the morning.<sup>36</sup> The concern is that removing the overdraft fee could remove

<sup>36</sup> These deliveries take place over the Fedwire securities (delivery-versus-payment) system, with the account of the depository institution delivering securities credited with the accompanying funds and the depository institution receiving the security debited for those funds. The depository institutions and their large customers delivering securities control the delivery process. Fees provide a significant incentive for institutions to return (deliver) securities early in the day and obtain the corresponding funds credits in order to limit daylight overdrafts at a Reserve Bank. These early deliveries have the corresponding effect of generating priced daylight overdrafts in the accounts of institutions receiving securities, which, in turn, provides incentives to settle new trades or initiate new deliveries quickly.

the incentive for the early returns of securities, which has been viewed as an important operational success in the securities industry. Initial discussions with some depository institutions suggest that the early return of securities has become an entrenched practice in the market and it would not be reversed if there were a zero fee for collateralized daylight overdrafts.

Second, the Board is concerned that a collateralized overdraft fee of zero would reduce the incentives of depository institutions to invest in a new liquidity-saving mechanism for the Fedwire funds transfer system or to improve practices in using CHIPS or DTC.<sup>37</sup> This is a clear risk to the overall four-prong strategy for addressing liquidity, operational, and credit risk. Other countries, such as Germany, have seen a demand for liquidity-saving mechanisms even with zero overdraft fees, but those demands may have been motivated by depository institutions' desire to save collateral capacity in a regime of mandatory collateralization of intraday credit.

While the Board is concerned about these possible unintended consequences, it must balance these concerns with its goal of reducing liquidity, operational, and credit risks. On balance, the Board believes that charging a zero fee for collateralized overdrafts will contribute to overall risk reduction.

*C. Fees for uncollateralized daylight overdrafts.* In a regime in which the Board expects the pledging of collateral to become the norm, but remain voluntary to avoid the disruptions of rejecting payments that could occur under mandatory collateralization, the fee for uncollateralized overdrafts takes on a new role of providing a significant incentive to collateralize overdrafts. In the past, the Board has suggested assessing a "risk premium" for uncollateralized overdrafts by estimating the spread between the overnight Federal funds rate and the Treasury general collateral repo rate.<sup>38</sup> In 2001, the Board cited a risk premium of 12 to 15 basis points.<sup>39</sup> Although the

<sup>37</sup> Work with the industry on models for a liquidity-saving mechanism for the Fedwire funds transfer system began in August 2007.

<sup>38</sup> The spread between the overnight Federal funds rate and the Treasury general collateral repo rate can be used as a proxy or measure of credit risk. The spread can be volatile over short periods, reflecting changes in the availability of Treasury collateral. The average spread since 1991 is 7 basis points, with a standard deviation of 17 basis points. From 2000 to 2007, the average spread was between 6 and 10 basis points, while from mid-1980 to 2000, the spread was closer to 12 to 15 basis points.

<sup>39</sup> See 66 FR 30208, June, 5, 2001.



current fee of 36 basis points is higher than this risk premium if a zero fee is charged for collateralized daylight overdrafts, the fee arguably reflects allowances for variation in the risk premium across time and across borrowers.<sup>40</sup> Under the proposed strategy to encourage the voluntary pledging of collateral, the Board proposes a more-significant spread between collateralized and uncollateralized daylight overdrafts that exceeds previous estimates of the risk premium. Specifically, the Board proposes raising the fee to 50 from 36 basis points (annual rate) for uncollateralized daylight overdrafts to encourage the collateralization of daylight overdrafts.<sup>41</sup> The Board notes that the proposed 50 basis point fee for uncollateralized credit would be less than the final fee of 60 basis points for daylight credit originally announced by the Board in 1994 but never implemented.<sup>42</sup>

The 50 basis point fee for uncollateralized overdrafts would provide a strong incentive for a depository institution to pledge collateral to its Reserve Bank in an amount sufficient to reduce or eliminate the depository institution's charges for its use of daylight credit. In addition, the fee for uncollateralized credit would discourage the use of uncollateralized daylight credit by those depository institutions that have not pledged sufficient collateral to support their payments activity. If uncollateralized credit increases, however, the fee for uncollateralized credit could be raised at a future date to limit further the use of such credit. At this time, the 50 basis point spread between collateralized and uncollateralized daylight overdrafts

<sup>40</sup> Another possible proxy of credit risk is the rate associated with credit default swaps for major depository institutions. Between January 2001 and December 2007, the median spread for an index of one-year credit default swaps on major depository institutions was 10 basis points (standard deviation of 10 basis points). The minimum and maximum for the index were 1 and 63 basis points, respectively.

<sup>41</sup> In calculating an institution's fees, the value of collateral pledged to the Reserve Banks will be subtracted from negative account balances at the end of each minute. All minutes where the negative account balance exceeds the value of collateral pledged will be summed and divided by the number of minutes in the Fedwire operating day to arrive at a daily uncollateralized daylight overdraft, which would be assessed the 50 basis point (annual) fee. The value of collateral pledged is the same for PSR and discount window purposes.

<sup>42</sup> As a result of the sizeable reductions in daylight overdrafts achieved by the introduction of fees, as well as concerns about the possible effects of further rapid fee increases, the Board announced in March 1995 that it would increase the fee to 36 basis points rather than the planned 48 basis points. Originally, the Board planned to phase in over three years a fee of 60 basis points in steps of 24, 48, and 60 basis points.

sufficiently underscores the Board's new strategy about the importance of pledging collateral to obtain intraday balances and to reduce the Reserve Banks' credit risk.

*D. Deductible.* The Board has long sought to minimize the burden of the PSR policy on institutions that use small amounts of daylight overdrafts by adopting a series of special provisions in the administration of daylight overdraft pricing and net debit caps. These provisions reflect the highly concentrated incidence of overdrafts at twenty depository institutions, which incur about 80 percent of daylight overdrafts. Two important components of the current PSR policy are the deductible from daylight overdraft fees based on an institution's capital and a \$25 biweekly fee waiver.<sup>43</sup> In essence, an amount of free uncollateralized intraday credit is provided through these provisions. The Board proposes to eliminate the deductible but also proposes to increase the fee waiver (discussed in the next section) to minimize the burden of the policy changes on small users of daylight overdrafts.

Continuing to provide significant amounts of free uncollateralized credit to large institutions through the deductible would be inconsistent with the strategy of emphasizing the provision of intraday credit through collateralized overdrafts at a zero fee. Retaining the deductible would weaken the incentives for depository institutions to pledge collateral to cover overdrafts and would not decrease risk to the Reserve Banks. In particular, the largest users of daylight credit would be able to use collateral to cover a significant portion of their overdrafts and then use their deductible to avoid fees on a significant amount of uncollateralized credit, undermining the incentive effects of fees on uncollateralized daylight overdrafts. Further, to the extent the deductible historically provided a source of free liquidity to depository institutions, it would no longer be needed because collateralized credit would provide an alternative source of free intraday

<sup>43</sup> Daylight overdraft charges are reduced by a deductible, which is calculated using 10 percent of eligible capital. The deductible was created with the introduction of pricing to provide some amount of free liquidity to the payments system, to compensate depository institutions for periodic outages of Reserve Bank computer systems, and to enhance operational simplicity by exempting small users of intraday credit. The Reserve Banks also waive fees of up to \$25 or less in any two-week reserve-maintenance period. The waiver reduces administrative burden on Reserve Banks and a large number of depository institutions that incur small fees.

liquidity. In addition, eliminating the deductible and increasing the fee waiver would provide a simpler and more-uniform way to provide a *de minimis* amount of free uncollateralized credit and would help limit the cost burden of the policy on small users of daylight overdrafts.

Further, the Board believes that by eliminating the deductible for *all* depository institutions and providing free collateralized intraday credit to eligible depository institutions, including FBOs, the proposed policy changes would address the negative incentive effects of the deductible calculations on FBOs that the commenters identified. FBOs would be assessed the same fees as U.S.-chartered depository institutions, which, under the proposal, would be zero for collateralized daylight overdrafts and 50 basis points for uncollateralized overdrafts.

*E. Fee waiver and treatment of small users of daylight overdrafts.* The Board continues to believe that it is important to reduce the burden of the PSR policy on institutions that use small amounts of daylight overdrafts. In setting the fee waiver amount, the Board sought to balance the risk faced by Reserve Banks from uncollateralized overdraft exposures against the administration costs to Reserve Banks and depository institutions from fee assessments and collateral arrangements. The Board proposes to limit the burden for institutions that use small amounts of daylight overdrafts by increasing the fee waiver to \$150 from \$25. The waiver would be subtracted from the gross fees (in a two-week reserve-maintenance period) assessed on any user of daylight overdrafts.<sup>44</sup> This procedure differs from the current policy in which the waiver only eliminates gross fees of institutions that have charges less than or equal to \$25 in a two-week period. This approach would avoid a discontinuity in applying the waiver, which may create incentives for delaying payments to prevent a large marginal increase in fees.

An institution is defined as a small user of daylight credit if the institution has an exempt cap, which is the smallest positive cap under the policy, or if the institution averages less than \$1 million a day in daylight overdrafts. The Board has historically considered exempt-cap institutions to be small users of daylight overdrafts.<sup>45</sup> In

<sup>44</sup> The proposed waiver would not result in refunds or credits to an institution. The waiver would not apply to institutions subject to the penalty fee.

<sup>45</sup> See 51 FR 45054, December 16, 1986, and 52 FR 29255, August 6, 1987.

addition, a number of institutions with higher cap levels regularly incur similar small amounts of daylight overdrafts. The level of \$1 million, in 2007 dollars, is based on levels historically considered small.<sup>46</sup> Through the waiver, the Board intends to limit the burden for virtually all exempt-cap institutions and to cover the routine overdraft activity of institutions that average less than \$1 million a day in daylight overdrafts.

The Board considered a range of waiver amounts from \$100 to \$250. At the \$150 waiver, the amount of free credit provided limits the burden for virtually all exempt-cap institutions and covers the routine overdraft activity of small users. Beyond a \$150 waiver, the number of small users that would be paying higher fees diminishes only marginally, and mid-to-large users of

daylight overdrafts benefit increasingly. On balance, the Board determined that the associated increase in uncollateralized Reserve Bank exposure per day of increasing the waiver amount outweighed the marginal decrease in the number of small users paying higher fees. In addition, a higher waiver amount would decrease the incentive to pledge collateral for those mid-to-large users of daylight overdrafts benefiting from the waiver increase.

Based on fourth-quarter 2007 daylight overdraft and collateral values, table 3 shows that the proposed \$150 waiver would eliminate or reduce fees for 99.2 percent of small users of daylight overdrafts. The vast majority of these institutions do not pay fees under the current policy. The waiver, however, would not eliminate or reduce fees paid

for all small users because some of these institutions incur relatively high daylight overdrafts on peak days, which could result in fees. In particular, the \$150 waiver generally covers routine daylight overdraft activity for small users but may not cover the highest one or two business days in the quarter. Because of this peak overdraft activity, an estimated thirty-five small users could pay higher fees based on fourth-quarter data if they did not pledge (additional) collateral. The actual number of depository institutions that could incur higher fees will vary over time based on daylight overdrafts incurred and collateral pledged. In practice, there are few institutions, especially small users, that would pay fees across all two-week periods in which fees are assessed in a given year.

Table 3

Depository institutions (DIs) paying higher or lower fees after applying the \$150 waiver

(Q4 2007)

	Number of DIs	Percent of DIs	Percent with collateral pledged	Percent with borrowing documents submitted	Average annual increase in fees <sup>47</sup>
<b>Small users</b>					
Paying lower or no fees	4,100	99.2%			
Paying higher fees	35	0.8%	14.3%	65.7%	\$180
Total	4,135	100%			
<b>Mid-to-large users</b>					
Paying lower or no fees	135	51.9%			
Paying higher fees	125	48.1%	57.6%	92.8%	\$18,350
Total	260	100%			
<b>All users</b>					
Paying lower or no fees	4,235	96.4%			
Paying higher fees	160	3.6%	48.1%	86.9%	\$14,300
Total	4,395	100%			

The average annual increase in fees for each of the thirty-five institutions is approximately \$180. Of the thirty-five institutions, a small number could incur an increase in average fees between \$500 and \$1,000 in a year, while the other institutions could incur increases of less than \$500 in a year (or less than

\$20 in a two-week period). The higher fees are associated with peak levels of daylight overdraft activity relative to the amounts of collateral pledged. Each small user could eliminate increases in fees by pledging \$8 million, on average, in (additional) collateral. As of the fourth-quarter 2007, only about 14

percent of these small users had collateral pledged, although two-thirds had signed borrowing documents with their administrative Reserve Banks.

Table 3 also shows that over half (52 percent) of institutions that incur mid-to-high levels of daylight overdrafts (mid-to-large users) would have

<sup>46</sup> See 51 FR 45054, December 16, 1986.

<sup>47</sup> The fee data for mid-to-large users and all users exclude one institution that is an outlier in comparison to the other institutions that could be

paying higher fees. The annual average increase in fees more than doubles for mid-to-large institutions and all users with the inclusion of this institution. This institution would incur a fee increase of

almost \$3 million per year. The next highest increases in fees are \$475,000 and \$260,000 per year.

sufficient collateral to eliminate or reduce their fees paid, while slightly less than half (48 percent) of mid-to-large users could face higher fees or would need to pledge collateral. Much of their overdraft activity was excluded from fees under the deductible of the current policy.

The average annual increase in fees across the 125 mid-to-large users paying higher fees is approximately \$18,350 (or \$690 per two-week period). The large majority of these institutions (about 75 percent) would incur an increase in average fees of less than \$10,000 per year (less than \$375 in a two-week period). Many of the mid-to-large users have pledged collateral and have signed borrowing documents. Pledging (additional) collateral of \$90 million on average per institution would avoid any increase in fees.

The Board recognizes that institutions will be interested in the effect of the proposed changes on their daylight overdraft fees. To assist institutions, the Board has developed a simple fee calculator. The calculator enables institutions to provide daylight overdraft and collateral data to estimate their daylight overdraft fees under the proposed policy. The calculator is located on the Board's Web site at <https://www.federalreserve.gov/apps/RPFCalc/>.

**F. Net debit caps.** Based, in part, on the expectation of some additional collateralization of daylight overdrafts and the potential need to provide more credit to the industry, the Board proposes to eliminate the current two-week average cap on daylight overdrafts for healthy depository institutions and retain the higher single-day cap. The effect is to increase the routine daylight overdraft capacity of healthy institutions with self-assessed caps approximately 50 percent from the current policy. The single-day cap will apply to the total of collateralized and uncollateralized daylight overdrafts.

The Board also proposes to provide additional flexibility in the administration of net debit caps for fully collateralized daylight overdrafts. If an institution incurs an overdraft above its single-day cap, the Board proposes the following new ex post monitoring and counseling procedures.

(1) If any part of the overdraft is *uncollateralized*, the current ex post counseling regime would be used.<sup>48</sup>

<sup>48</sup> The ex post counseling regime includes a series of actions by the Reserve Bank that are aimed at deterring an institution from violating the PSR policy by exceeding its net debit cap. These actions depend on the institution's history of daylight overdrafts and financial condition. Initial actions taken by the Reserve Bank may include an

Counseling may include a discussion of ways the institution could manage more effectively its account as well as other possible Reserve Bank actions, such as reducing the net debit cap and rejecting certain payment transactions, that would enable the Reserve Bank to protect its risk exposure from the institution.

(2) If the overdraft is *fully collateralized*, the Reserve Bank would generally consider the condition an "overlimit" situation and would be able to "waive counseling" for two incidents of overlimit, fully collateralized overdrafts per two consecutive reserve-maintenance periods (four weeks). Incidents of overlimit, fully collateralized overdrafts beyond the two waivable incidents would be subject to ex post counseling.

The overlimit flexibility would apply to institutions that have *de minimis* or self-assessed net debit caps or max caps.<sup>49</sup> Exempt-cap institutions are already allowed under the policy to incur up to two cap breaches in two consecutive reserve-maintenance periods. Zero cap institutions would not be eligible. The overlimit flexibility would also be in addition to other permissible waivers, such as waivers due to Reserve Banks' errors.

The overlimit flexibility allows a depository institution to obtain additional fully collateralized credit beyond the established single-day cap on an infrequent basis if the depository institution has *fully collateralized all of its daylight overdrafts—both those above and those below its cap—when the event occurs*. The proposed waiver of counseling for overlimit overdrafts, if they are fully collateralized, reflects their lower risk to a Reserve Bank relative to an overlimit condition for

assessment of the causes of the overdrafts, a counseling letter to the institution, and a review of the institution's account-management practices. If policy violations continue to occur, the Reserve Bank may take additional actions, which may include encouraging the institution to file a cap resolution or perform a self-assessment to obtain a higher net debit cap or to apply for maximum daylight overdraft capacity. In situations in which an institution continues to violate the PSR policy, and counseling and other Reserve Bank actions have been ineffective, the Reserve Bank may assign the institution a zero cap. The Reserve Bank may also impose other account controls that it deems prudent, such as requiring the institution to pledge collateral, imposing clearing balance requirements; rejecting Fedwire funds transfers, ACH credit originations, or National Settlement Service transactions that would cause or increase an institution's daylight overdraft; or requiring the institution to prefund certain transactions.

<sup>49</sup> FBOs will continue to be monitored at their cap level in real time. If an institution's account is monitored in real time, any outgoing Fedwire funds transfer, National Settlement Service transaction, or ACH credit origination that exceeds available funds is rejected.

uncollateralized credit. The Board recognizes that the Reserve Banks may need to be flexible in granting fully collateralized credit to carry out the intent of the new policy. The additional flexibility also reinforces the new explicit policy emphasis on collateralized intraday credit. The limited number of waivers, however, reflects the fact that collateral may not fully protect a Reserve Bank and that frequent breaches of agreed caps may reflect other concerns about a depository institution, including an inability to manage its account at a Reserve Bank or to manage its customers' activity. In addition, max caps would continue to be available at a Reserve Bank's discretion to deal with cases in which routine additional capacity is needed by healthy institutions.

The overlimit flexibility also recognizes that from a supervisory perspective counterparty credit risk management systems allow for bank management to approve exceptions to those limits under appropriate conditions, assuming the proper degree of management attention is focused on such decisions. A waiver of what is currently called a "breach" of a daylight overdraft cap can be likened to an "approval" of an overlimit condition vis-à-vis a counterparty credit risk exposure limit.

The Board examined the need to retain the net debit cap structure for institutions that fully collateralize overdrafts and concluded that it is still appropriate and prudent to have limits on intraday credit even when the credit is fully collateralized. First, prudent banking practice and current supervisory guidance support placing limits on counterparty credit exposures even when other tools such as collateral (with haircuts) are used to control risk. The basis for this guidance is that collateral alone should not be regarded as sufficient protection against counterparty credit risk but that a range of tools should be used to manage risk, including credit limits. Haircuts on collateral help mitigate the risk that counterparty credit exposure that is intended to be collateralized will remain collateralized when the value of the collateral declines. Haircuts themselves, however, may change more slowly than the value of collateral for a variety of operational, market, and policy reasons. Limits or caps complement the use of collateral in risk mitigation. Among other things, they aim to constrain the size of exposures in the first place rather than to mitigate the risk of loss on exposures of a given size. Moreover, limits may be used to limit

exposure to extreme risks and take some pressure off the use of haircuts to address such risks.

Second, daylight overdrafts operate more like drawings on lines of credit than discrete loans. Limits help the Reserve Banks set expectations about the quantity of their potential exposures and help depository institutions to keep their use of credit within prudent and agreed-upon bounds. Further, credit limits serve as standardized benchmarks for analyzing and comparing credit usage across depository institutions and over time.

Third, the net debit caps, in particular, are based on customer account and operational management policies at a depository institution in addition to factors such as credit risk. Specifically, depository institutions are required under the PSR policy to take four factors into account when determining self-assessed caps, including their creditworthiness; intraday funds management and related controls; customer credit policies and related controls; and operating controls and contingency procedures. These factors figure prominently in supervisory guidance on managing risk in wholesale payments systems and are also based on recommendations provided to the Board by the banking industry in the 1980s.<sup>50</sup> The issue of reputational risk is also a factor in current supervisory guidance. The process of establishing and renewing caps compels a depository institution and its management to focus on a range of interrelated aspects of risk in controlling credit and operational exposures both to a depository institution and to Reserve Banks.

Overall, there is a reasonable and prudent basis for placing caps on collateralized overdrafts. Hence there is also a reasonable and prudent basis for placing caps on overdrafts that are collateralized voluntarily or not collateralized at all.<sup>51</sup> The Board

<sup>50</sup> See Association of Reserve City Bankers, *The Final Report of the Risk Control Task Force*, prepared with the assistance of the Bank Administration Institute and Robert Morris Associates (October 1984).

<sup>51</sup> Limits on daylight overdrafts also address the possibility of "adverse selection" in a system of voluntary collateralization. In essence, depository institutions in weaker operational or financial condition might be quicker to pledge collateral to obtain larger amounts of intraday credit than stronger banks, for example, to ensure that critical payments are made on time. In the theoretical literature, caps or limits are frequently characterized as helping to deal with adverse selection issues in credit markets. Although Reserve Banks typically have access to supervisory information about their borrowers, including their history and management, the Reserve Banks may have imperfect information, which may be another

recognizes that other central banks have not employed net debit caps in addition to collateral in managing risk from intraday credit. Most central banks seem to have viewed the provision of intraday credit as a simple extension of practices with respect to overnight credit policy. These central banks, however, have adopted *mandatory* collateral policies and typically accept a much smaller range of collateral than the Reserve Banks. Further, some major central banks have not had the technical capability to conduct the comprehensive centralized tracking of intraday credit extensions that has been developed by the Federal Reserve over the past twenty years.

Lastly, the Board considered the FBOs' request to increase the fractions used to calculate the U.S. capital equivalency in determining net debit caps. Under the current policy, the most-highly rated FBOs receive 35 percent (instead of 100 percent) of their worldwide capital for the U.S. capital equivalency. FBOs with weaker ratings receive lower measures of U.S. capital equivalency. In 2007, FBOs as a group incurred average peak overdrafts that were less than 50 percent of their single-day capacity. A few FBOs may approach their cap limits on certain liquidity-intensive payment days, but it does not appear that FBOs are generally constrained by current cap levels. The Board recognizes, however, that the behavioral changes of individual FBOs and other depository institutions following a change in daylight overdraft policy are somewhat uncertain. For example, some institutions may prefer to release payments more quickly, incurring periods of increased daylight overdrafts, if they have the capacity to do so. To facilitate the earlier release of payments, the Board is proposing to streamline the process for the maximum daylight overdraft capacity (max cap) program, which provides additional capacity on a fully collateralized basis, for certain FBOs (discussed in the next section).

**G. Maximum daylight overdraft capacity.** Currently, depository institutions with self-assessed net debit caps are eligible to pledge additional collateral to their Reserve Banks to secure intraday credit in excess of their net debit cap under the max cap program.<sup>52</sup> As part of the consultation

argument for caps as a useful tool in limiting residual risk from such problems.

<sup>52</sup> Current procedures associated with max caps can be found in the *Guide to the Federal Reserve's Payments System Risk*, which is available at <http://www.federalreserve.gov/paymentsystems/psr/mainguide.pdf>.

process, the Board received two comments on the max cap program. The commenters indicated preferences for greater flexibility and consistency across Reserve Banks in the implementation of the program.

Under the new strategy, the max cap would continue to act as a tool to provide healthy institutions with flexibility in addressing their intraday liquidity needs. In particular, the Board proposes to take a more-favorable view of extending collateralized credit to financially sound institutions demonstrating a business need for additional daylight overdraft capacity. The current policy states:

An institution with a self-assessed net debit cap that wishes to expand its daylight overdraft capacity by pledging collateral should consult with its administrative Reserve Bank. Institutions that request daylight overdraft capacity beyond the net debit cap must have already explored other alternatives to address their increased liquidity needs. The Reserve Banks will work with an institution that requests additional daylight overdraft capacity to determine the appropriate maximum daylight overdraft capacity level. In considering the institution's request, the Reserve Bank will evaluate the institution's rationale for requesting additional daylight overdraft capacity as well as its financial and supervisory information.

The Board proposes to remove the requirement that institutions must have already explored other alternatives to address their increased liquidity needs. This statement is inconsistent with the proposed strategic direction of the new policy. A depository institution interested in obtaining a max cap would still need to contact its administrative Reserve Bank, which would work with the institution to determine an appropriate capacity level and would assess relevant financial and supervisory information in making such a credit decision.

In addition, the Board proposes allowing an FBO that is a financial holding company or SOSA 1-rated institution to request from its administrative Reserve Bank a max cap without documenting a specific business need for additional capacity or providing a max cap board of directors resolution.<sup>53</sup> The streamlined max cap would enable these FBOs to acquire additional capacity that in total would provide up to 100 percent of worldwide capital times the self-assessed cap multiple. A financial holding company is currently eligible for uncollateralized capacity of 35 percent of worldwide

<sup>53</sup> The FBO would still be required to complete a self-assessment and provide a board of directors resolution for the self-assessed cap.

capital times the cap multiple. The streamlined max cap would provide additional *collateralized* capacity of 65 percent of worldwide capital times the cap multiple.<sup>54</sup> While streamlined, the Reserve Bank would retain the right to assess the ability of eligible FBOs to manage the intraday capacity permitted by the max cap as part of reviewing financial and supervisory information. Specifically, the Reserve Bank, in consultation with the home country supervisor, would engage in initial as well as periodic dialogue with the institution that is analogous to the periodic review of liquidity plans performed with U.S. institutions to ensure the institution's intraday liquidity risk is managed appropriately.

The Board believes the streamlined max cap is appropriate for the group of FBOs with which the Reserve Banks have lower supervisory concerns. If an FBO requests capacity in excess of 100 percent of worldwide capital times the self-assessed cap multiple, however, it would be subject to the full max cap process applicable to all institutions.

*H. Foreign Banking Organizations.* The fractional allowance for worldwide capital of FBOs used in calculating net debit caps and deductibles historically has been based on risk differences between FBOs and U.S.-chartered depository institutions. The Federal Reserve's access to supervisory information on FBOs is generally not as timely or complete as the information about U.S.-chartered institutions. In addition, the Federal Reserve incurs legal risk with respect to the application of foreign insolvency laws to FBOs. The existing cap limit and daylight overdraft fee have helped to control credit risk from FBOs to the Reserve Banks.

The Board, however, is proposing several changes to the treatment of FBOs under the PSR policy that would address the concerns of the FBOs while managing the risk to the Reserve Banks. The Board believes that by eliminating the deductible for *all* depository institutions and providing free *collateralized* intraday credit to eligible depository institutions, including FBOs, the proposed policy changes would address the negative incentive effects of the deductible calculations that the commenters have identified. In addition, as discussed in the previous section, the Board proposes to streamline the max cap process for certain FBOs. Today, if an FBO is

constrained by the cap limit on a frequent basis or on specific days, it may apply to its Reserve Bank for a max cap. While the Board believes this program has provided sufficient flexibility for FBOs to obtain additional capacity, the Board recognizes that the business case and board of directors resolution required to obtain a max cap could be slow or cumbersome. This procedure may not be warranted for financial holding companies and SOSA-1-rated FBOs to acquire additional capacity that in total provides up to 100 percent of worldwide capital times the self-assessed cap multiple.

*I. Penalty fees.* Institutions that do not have regular access to the discount window are not eligible under the PSR policy to incur daylight overdrafts. In 1994, the Board announced that it would apply a penalty fee to these institutions if they did incur daylight overdrafts.<sup>55</sup> The Board believed that the penalty rate would provide incentives to these institutions to avoid situations that could cause a daylight overdraft. The penalty rate adopted by the Board was equal to the regular daylight overdraft fee plus 100 basis points. Thus, given the proposed increase in the fee for uncollateralized daylight overdrafts, the Board proposes to increase the penalty fee correspondingly from 136 to 150 basis points.

*J. Timing considerations and issues for Reserve Bank and depository institution implementation.* The Reserve Banks will need a significant lead time to adjust internal processes and systems to the proposed PSR policy changes. These changes will affect the Reserve Banks' credit risk management and accounting software applications. The Board anticipates that institutions' systems could also require some adjustments. The Board expects that a revised PSR policy could be implemented in approximately two years from the announcement of a final rule. The Board, however, could implement the proposed changes to the max cap program for FBOs on an earlier date.

## V. Questions

The Board requests comments on all aspects of the proposed PSR policy changes, including the new strategy, collateral, fees for collateralized daylight overdrafts, fees for uncollateralized daylight overdrafts, net debit caps, max caps, deductibles, fee waivers, penalty fees, and implementation timeline.

In addition to comments on all aspects of the proposed PSR policy changes, the Board would appreciate responses to the following questions.

### General

(1) Does your institution believe that the introduction of a zero fee for collateralized daylight overdrafts will contribute to an overall reduction in liquidity, operational, and credit risks in the payments system? Would it reduce these risks for depository institutions, their customers, or financial utilities?

(2) What procedural or systems changes do you expect to make as a result of this proposed policy change?

### Collateral

(3) Does your institution regularly use Federal Reserve daylight credit, and does your institution currently have sufficient unencumbered eligible collateral to pledge to the Reserve Banks to take advantage of a zero fee for collateralized overdrafts? By your estimate, what proportion of your expected average and peak overdraft would you intend to collateralize?

(4) Would your institution's intraday credit use increase or decrease from current levels? Do you expect the intraday credit usage of depository institutions as a group to increase or decrease from current levels?

(5) While the proposal envisages no fee for collateralized overdrafts, institutions will face an opportunity cost to pledge collateral. How difficult or costly would it be to collateralize daylight overdrafts? What opportunity costs would your institution face in pledging (additional) eligible assets to the Reserve Bank to collateralize daylight overdrafts? What are the costs of entering into the Reserve Banks' borrowing documents?

(6) How would the adoption of this new PSR strategy, which explicitly links collateral to daylight overdrafts and pricing of daylight overdrafts, affect the availability of collateral for other financial market activity? How might it affect other creditors and other payments system participants?

(7) What (additional) collateral management capabilities would your institution expect of its Reserve Bank (such as changes to the frequency or means of obtaining collateral reports, the ability to move directly and quickly collateral in and out of pledge accounts, and so on)?

(8) If you do not currently have a borrowing agreement or pledge any collateral, would you expect to do so? If so, would the rationale rest on the use of daylight overdrafts or overnight extensions of credit?

<sup>54</sup> A SOSA-1 rated institution is eligible for uncollateralized capacity of 25 percent of worldwide capital times the cap multiple. The streamlined max cap would provide additional *collateralized* capacity of 75 percent of worldwide capital times the cap multiple.

<sup>55</sup> See 59 CFR 8979, February 24, 1994.



### Pricing

(9) To what extent would your institution make payments earlier in the day as a result of the proposed pricing changes? If your institution holds payments in a liquidity queue, would your institution continue to hold payments, particularly large-value payments, in a liquidity queue under the proposed policy changes? If so, under what circumstances would your institution continue to queue payments? What further steps would encourage queue reductions?

(10) Does your institution believe that the introduction of a zero fee for collateralized daylight overdrafts could lead to changes in practices for returning early securities used in repurchase agreements? What changes might institutions expect?

(11) Does your institution believe that the introduction of a zero fee for collateralized daylight overdrafts and the higher (50 basis point) fee for uncollateralized daylight overdrafts could lead to changes in practices for the early return of fed funds loans? What changes might institutions expect?

(12) If your institution would face potentially higher fees on its daylight overdrafts, how will your institution adjust its collateral position or payments activities in response to the Board's proposed fees?

### VI. Competitive Impact Analysis

The Board has established procedures for assessing the competitive impact of a rule or policy change that has a substantial effect on payments systems participants.<sup>56</sup> Under these procedures, the Board assesses whether a change would have had a direct and material

<sup>56</sup> These procedures are described in the Board's policy statement "The Federal Reserve in the Payments System," as revised in March 1990. (55 FR 11648, March 29, 1990).

adverse effect on the ability of other service providers to compete with the Federal Reserve in providing similar services due to differing legal powers or constraints or due to a dominant market position of the Federal Reserve deriving from such differences. If no reasonable modification would mitigate the adverse competitive effects, the Board will determine whether the expected benefits are significant enough to proceed with the change despite the adverse effects.

Intraday balances of central bank money help ensure the smooth flow of payments systems whether operated by the Reserve Banks or private-sector clearing and settlement systems. The demand for intraday balances at the Reserve Banks for processing payments for private-sector clearing and settlement systems can substantially exceed the supply of overnight balances in Federal Reserve accounts, making intraday credit from the Reserve Banks the key marginal source of intraday funding for the market and for making payments, particularly over the Reserve Banks' payments systems. For some large users of intraday credit, the proposed PSR policy changes may result in a reduction in daylight overdraft fees and thus lower explicit costs of using central bank money to fund payments activity. The lower explicit cost of using intraday balances of central bank money will lower the implicit cost of using the Reserve Banks' payments services. The Board, however, does not believe this lower cost will have an adverse material effect on the ability of other service providers to compete with the Reserve Banks because private-sector clearing and settlement systems will gain from the lower explicit cost of funding net debit caps and other risk and operational controls employed by those systems. Generally, the Board expects

that both the Reserve Banks and private-sector clearing and settlement systems will benefit to some extent from the reduced costs for daylight overdrafts.

### VII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed PSR policy under the authority delegated to the Board by the Office of Management and Budget. No collection of information pursuant to the Paperwork Reduction Act is contained in the policy statement.

### VIII. Appendix I

The Board has identified five major concerns related to risk or efficiency that together suggest a change in the Federal Reserve's approach to the provision of intraday credit and the PSR policy is warranted at this time. These concerns include the declining level of overnight balances, the intraday funding needs of financial utilities, payments delays, continued growth in Reserve Bank credit exposure, and cost burden on the payments system.

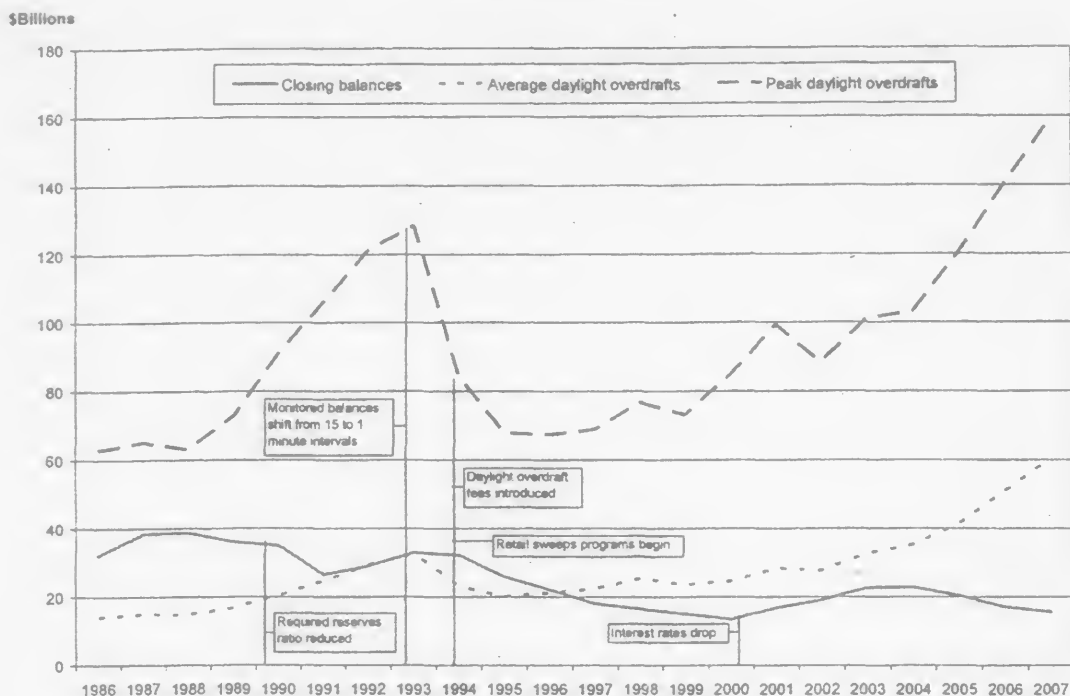
*A. Level of overnight balances.* First, the current level of overnight reserve and clearing balances is not sufficient to meet the *intraday* liquidity needs of the banking industry and the payments system. In 1988, overnight balances held at the Reserve Banks were approximately \$39 billion. Since that time, changes in market practices (especially the introduction of retail sweep programs) and reserve requirements have reduced overnight balances to an average of approximately \$16 billion in 2007; average daylight overdraft and (average) peak daylight overdrafts in 2007 were four and ten times overnight (closing) balances, respectively.

Chart 1

## Trends in closing balances and daylight overdrafts

1986-2007

(unadjusted for inflation)



*B. Intraday funding of financial utilities.* Second, with the encouragement of the Federal Reserve and the industry, virtually all commercial paper is now held at DTC in book-entry form and issued and paid through that organization. In addition, trades of most publicly listed stocks and corporate bonds are also settled through DTC. As a result, DTC's members transfer substantial sums over the Fedwire funds transfer system to DTC's clearing account at the Federal Reserve Bank of New York beginning in the early afternoon to help meet DTC's risk-management requirements.<sup>57</sup> Most of

<sup>57</sup> The use of intraday balances of central bank money to manage risk is explicitly endorsed by international risk standards applicable to securities settlement systems such as DTC and incorporated in the Board's PSR policy. See also "Recommendations for securities settlement systems," Committee on Payment and Settlement Systems and Technical Committee of the International Organization of Securities Commissions, Bank for International Settlements, November 2001.

these funds are not released by DTC back to the market until final DTC settlement occurs around 4:30 p.m.<sup>58</sup> As a result, for most of the afternoon, the demand for intraday balances at the Reserve Banks for processing other payments far exceeds the supply of overnight balances in Federal Reserve accounts, making intraday credit from the Reserve Banks the key marginal source of intraday funding for the market and for making payments, particularly over the Federal Reserve's payments systems. Under these circumstances, the provision of substantial amounts of daylight balances and credit by the Reserve Banks is necessary for the smooth functioning of Fedwire and the payments system more broadly. Private-sector payments systems have created a structural demand for daylight central bank credit averaging about \$50 billion per day to

<sup>58</sup> DTC is not permitted to incur daylight overdrafts. It ends each day with a positive balance close to zero in its clearing account.

support their settlement and risk management activities. On peak days, this demand can exceed \$150 billion. The large magnitude of these amounts is inconsistent with the premise of the current PSR policy that relatively few institutions should rely on daylight credit from the Federal Reserve and use should be minimal.

*C. Payments delays.* Third, the policy of pricing daylight overdrafts and the implied quantity of intraday credit supplied to the market has encouraged depository institutions to delay sending Fedwire payments until later in the operating day, creating added operational risk for the markets. The concern that pricing would cause payments delays has been a long-standing concern associated with the PSR policy. Although delays were not observed in the early years of the policy, in recent years depository institutions have sent an increasing share of the value of payments made over the Fedwire funds transfer system later in

the day. In the period 1985 to 1990, data indicate that about 14 percent of the value of daily Fedwire payments were sent after 5 p.m.<sup>59</sup> The data in chart 2, however, indicate that the share of the

value of Fedwire payments sent after 5 p.m. has grown steadily, averaging about 22 percent by 1998 and increasing to about 32 percent by 2007. The chart illustrates that this growth is driven

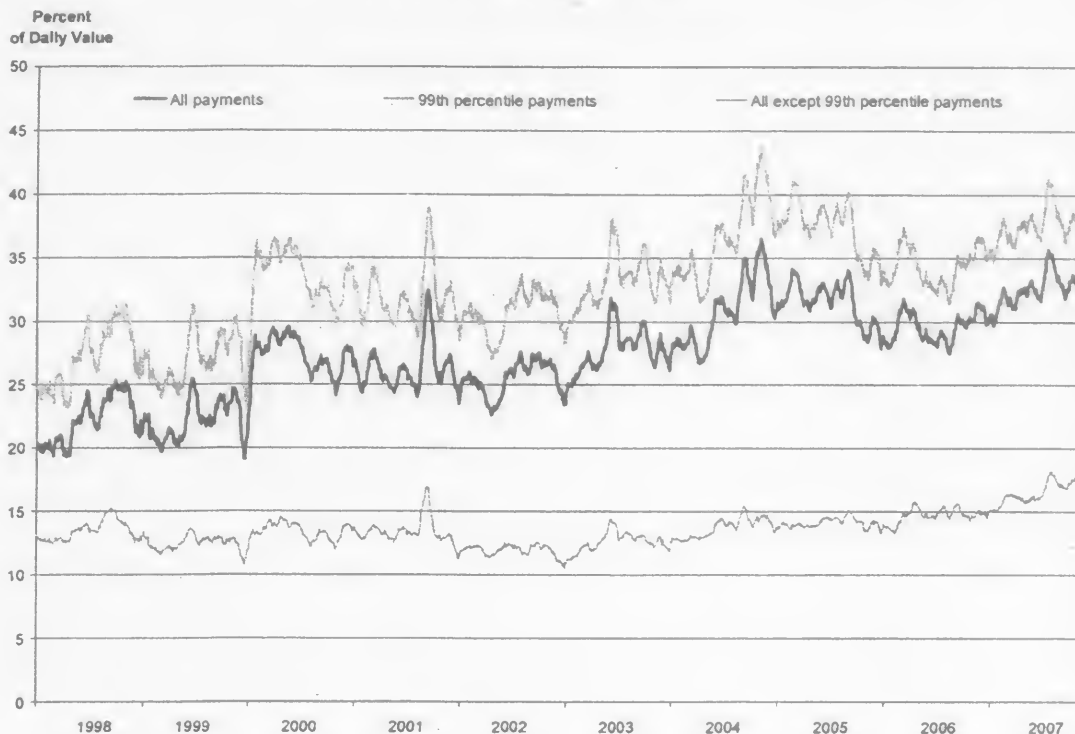
largely by the largest-valued payments (the 99th percentile), which averaged almost \$1 billion in 2007.

Chart 2

Timing of Fedwire funds transfer payments<sup>60</sup>

Percentage of value sent after 5:00 p.m.

(21-day moving averages, 1998-2007)



The PRC and WCAG study make clear that key depository institutions hold back (large-value) Fedwire funds transfers in so-called "liquidity queues" during the afternoon in order to manage their daylight overdraft levels and avoid fees.<sup>61</sup> Additional funds transfers, which may be designated for CHIPS, Fedwire funds, or book transfers, are

held in customer credit queues generally awaiting sufficient funds to be transferred to an account to release the payments. Modifications to the policy for providing intraday liquidity, coupled with more-efficient use of liquidity, could ease some of these problems. Daylight overdraft fees *alors*, however, are not responsible for the

late-day concentration of payments. PRC/WCAG members report that an increasing number of large-value payments are now originated later in the day because of later investment activities in the financial market and late closing times for major settlement systems.

<sup>59</sup> In 1995, the value of Fedwire funds transfers after 5 p.m. was approximately 16 percent. See Richards, Heidi Willmann, Daylight overdraft fees and the Federal Reserve's Payment System Risk Policy, Federal Reserve Bulletin, December 1995.

The Fedwire funds transfer system closes at 6:30 p.m.

<sup>60</sup> Data are for funds transfers only and exclude transactions sent or received by CHIPS, DTC, or CLS Bank International (CLS). CLS, which is an

Edge Corporation supervised by the Federal Reserve, offers payment-versus-payment settlement of foreign exchange trades.

<sup>61</sup> Payments may be held in several types of queues once the depository institution receives an instruction from a customer to make a Fedwire funds transfer. If a customer instructs the depository institution to make a payment and the customer does not have sufficient balances or intraday credit with the institution, it may hold the payment in a "credit queue" until funds become

available. Once the payment is cleared from the credit queue, the depository institution may send the payment or may move the payment to another queue in its process, such as the liquidity queue. A depository institution may use the liquidity queue to manage its daylight overdraft position with the Reserve Bank. The liquidity queue can help the institution manage daylight overdraft fees, avoid cap breaches, manage bilateral exposures, and so on.

In addition, in its public comment letter the Federal Reserve Bank of Chicago identified the delay of *time-critical* funds transfers used to complete the daily cycle of collecting and disbursing margin payments in the derivatives markets as a further concern related to the general delay of large-value payments. In particular, the Federal Reserve Bank of Chicago conducted a confidential study to determine the time elapsed between the delivery of payment instructions by clearing organizations to money settlement banks and the execution of those instructions in relation to the contractual commitments of these banks to make timely payments (within one hour). The study provides evidence of

substantial delays in interbank balancing payments for the exchange-traded derivatives markets during a period when there were no major financial market disruptions. The comment letter states that "a nontrivial percentage was made exceptionally late (3 to 9½ hours). Furthermore, we find that the payments associated with the biggest delays tend to have the largest dollar value." Overall, the delay of key time-critical payments could be a source of added systemic risk during periods of financial turbulence, and concerns could extend to other organizations. These types of concerns clearly did arise in the 1987 stock market break.<sup>62</sup>

*D. Long-term Reserve Bank intraday credit exposure.* Fourth, the long-term

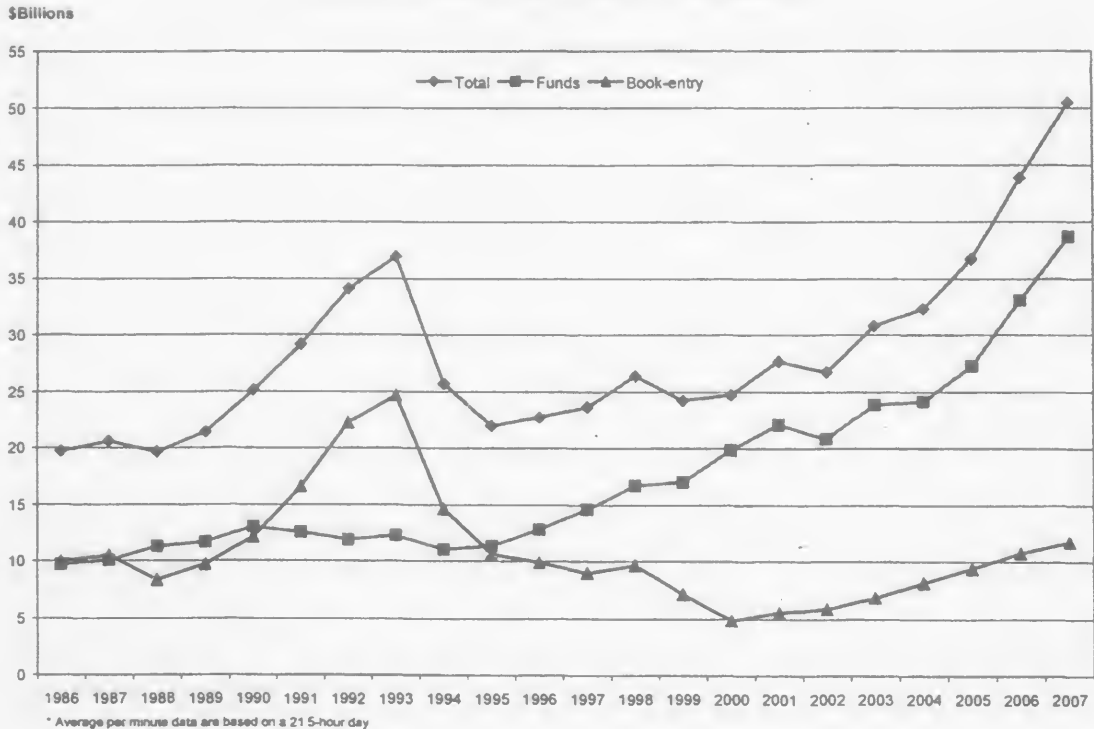
trend in daylight overdrafts indicates that they have continued to grow in both nominal and real terms despite the Reserve Banks' charging fees. Chart 3 provides inflation-adjusted annual averages of average daylight overdraft values from 1986 to 2007. The annualized growth rate of these average daylight overdrafts for about the past ten years has been about same as the annualized growth rate of the combined value of Fedwire funds and securities transfers. Given the demand for intraday liquidity to make payments, it is not clear that a policy of continuing to rely heavily on charging fees for daylight overdrafts will be successful in limiting growth of the credit risk exposure of the Reserve Banks.

Chart 3

Average daylight overdrafts

1986-2007

(Annual average of daily data in 2000 dollars)



<sup>62</sup> See the Report of The Presidential Task Force on Market Mechanisms, January 1988, for a study of the 1987 stock market break.

E. Cost burden on the payments system. Fifth, the policy of charging fees has become a significant cost burden on the banking industry and the payments system. The Federal Reserve has collected over \$450 million in daylight overdraft fees from the beginning of the pricing program in 1994 through the

end of 2007. The fees collected from depository institutions, however, have increased almost 20 percent per year on a compound annualized basis since 2003, with approximately \$65 million collected in 2007. Chart 4 illustrates this substantial growth in fees, especially over the past several years.<sup>63</sup> To date, no

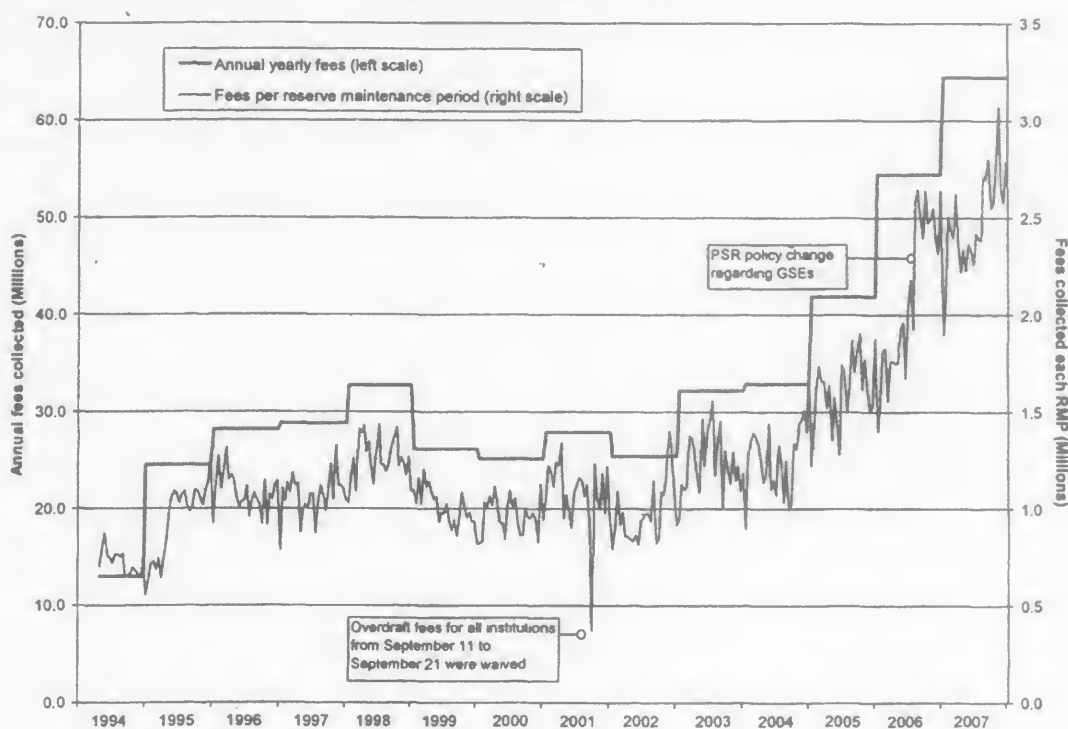
losses have been associated with the provision of daylight overdraft credit. The growing cost of the daylight overdraft fees to the industry raises the question of whether there is a less-expensive and more-effective way to manage risk.

Chart 4

Daylight overdraft fees charged to depository institutions

1994 to 2007

(unadjusted for inflation)



Overall, the challenges with the existing PSR policy suggest that significant changes are justified in order to advance its overarching risk and efficiency objectives.

**IX. Federal Reserve Policy on Payments System Risk**

If the Board adopted these proposed changes, it would amend the "Federal

Reserve Policy on Payments System Risk" Section II as follows.

Introduction [Revised]  
Risks in Payments and Settlement Systems [Revised]

- I. Risk Management in Payments and Settlement Systems [No Change]
- A. Scope
  - B. General policy expectations
  - C. Systemically important systems
    1. Principles for systemically important payments systems

2. Minimum standards for systemically important securities settlement systems and central counterparties
  3. Self-assessments by systemically important systems
- II. Federal Reserve Intraday Credit Policies [II and II B through II G Revised]
- A. Daylight overdraft definition and measurement [No Change]
  - B. Collateral
  - C. Pricing
  - D. Net debit caps

<sup>63</sup> While the fees have increased substantially over the past few years, the largest increase was 35 percent on an annualized basis following the implementation of the new policy limiting overdrafts of government-sponsored enterprises in

July 2006. The fee increase is not surprising because the policy shifted the provision of intraday credit from the Reserve Banks to depository institutions. The PSR policy change for government-sponsored enterprises and certain international organizations

is available at <http://www.federalreserve.gov/boarddocs/press/other/2004/20040205/default.htm>. (See also 69 FR 57917, September 28, 2004.)



1. Definition
2. Cap categories
  - a. Self-assessed
  - b. De minimis
  - c. Exempt-from-filing
  - d. Zero
3. Capital measure
  - a. U.S.-chartered institutions
  - b. U.S. branches and agencies of foreign banks
- E. Maximum daylight overdraft capacity
  1. General procedure
  2. Streamlined procedure for certain FBOs
- F. Special situations
  1. Edge and agreement corporations
  2. Bankers' banks
  3. Limited-purpose trust companies
  4. Government-sponsored enterprises and international organizations
  5. Problem institutions
- G. Monitoring
  1. Ex post
  2. Real time
  3. Multi-district institutions
- H. Transfer-size limit on book-entry securities [No Change]

### Introduction

Payments and settlement systems are critical components of the nation's financial system. The smooth functioning of these systems is vital to the financial stability of the U.S. economy. Given the importance of these systems, the Board has developed this policy to address the risks that payments and settlement activity present to the financial system and to the Federal Reserve Banks (Reserve Banks).

In adopting this policy, the Board's objectives are to foster the safety and efficiency of payments and settlement systems. These policy objectives are consistent with (1) the Board's long-standing objectives to promote the integrity, efficiency, and accessibility of the payments mechanism; (2) industry and supervisory methods for risk management; and (3) internationally accepted risk management principles and minimum standards for systemically important payments and settlement systems.<sup>64</sup>

Part I of this policy sets out the Board's views, and related principles and minimum standards, regarding the management of risks in payments and settlement systems, including those operated by the Reserve Banks. In setting out its views, the Board seeks to encourage payments and settlement systems, and their primary regulators, to take the principles and minimum standards in this policy into consideration in the design, operation,

<sup>64</sup> For the Board's long-standing objectives in the payments system, see "The Federal Reserve in the Payments System," September 2001, FRRS 9-1550, available at <http://www.federalreserve.gov/paymentsystems/pricing/frpaysys.htm>.

monitoring, and assessing of these systems. The Board also will be guided by this part, in conjunction with relevant laws and other Federal Reserve policies, when exercising its authority over certain systems or their participants, when providing payments and settlement services to systems, or when providing intraday credit to Federal Reserve account holders.

Part II of this policy governs the provision of intraday credit or "daylight overdrafts" in accounts at the Reserve Banks and sets out the general methods used by the Reserve Banks to control their intraday credit exposures.<sup>65</sup> Under this part, the Board explicitly recognizes that the Federal Reserve has an important role in providing intraday balances and credit to foster the smooth operation of the payments system. The Reserve Banks provide intraday balances by way of supplying temporary, intraday credit to healthy depository institutions, predominantly through collateralized intraday overdrafts at zero price.<sup>66, 67</sup> The Board believes that such a strategy enhances intraday liquidity, while controlling risk to the Reserve Banks. Over time, the Board aims to reduce the reliance of the banking industry on uncollateralized intraday credit by providing incentives to collateralize daylight overdrafts. The Board also aims to limit the burden of the policy on healthy depository

<sup>65</sup> To assist depository institutions in implementing this part of the Board's payments system risk policy, the Federal Reserve has prepared two documents, the "Overview of the Federal Reserve's Payments System Risk Policy" and the "Guide to the Federal Reserve's Payments System Risk Policy," which are available on line at <http://www.federalreserve.gov/paymentsystems/PSR/relpol.htm>. The "Overview of the Federal Reserve's Payments System Risk Policy" summarizes the Board's policy on the provision of intraday credit, including net debit caps and daylight overdraft fees. The overview is intended for use by institutions that incur only small amounts of daylight overdrafts. The "Guide to the Federal Reserve's Payments System Risk Policy" explains in detail how these policies apply to different institutions and includes procedures for completing a self-assessment and filing a cap resolution, as well as information on other aspects of the policy.

<sup>66</sup> The term "depository institution," as used in this policy, refers not only to institutions defined as "depository institutions" in 12 U.S.C. 461(b)(1)(A), but also to U.S. branches and agencies of foreign banking organizations, Edge and agreement corporations, trust companies, and bankers' banks, unless the context indicates a different reading.

<sup>67</sup> The Board's earlier strategy expected depository institutions to manage their accounts effectively while minimizing the use of Federal Reserve's intraday credit. The rationale for the current strategy is that modern payments and settlement systems require significant amounts of intraday balances or liquidity for smooth operation. The role of the central bank is to meet reasonable market needs of participants in these systems for this liquidity.

institutions that use small amounts of intraday credit.

Through this policy, the Board expects financial system participants, including the Reserve Banks, to reduce and control settlement and systemic risks arising in payments and settlement systems, consistent with the smooth operation of the financial system. This policy is designed to provide intraday balances and credit while controlling the Reserve Bank risk by (1) making financial system participants and system operators aware of the types of basic risks that arise in the settlement process and the Board's expectations with regard to risk management, (2) setting explicit risk management expectations for systemically important systems, and (3) establishing the policy conditions governing the provision of Federal Reserve intraday credit to account holders. The Board's adoption of this policy in no way diminishes the primary responsibilities of financial system participants generally and settlement system operators, participants, and Federal Reserve account holders more specifically, to address the risks that may arise through their operation of, or participation in, payments and settlement systems.

### Risks in Payments and Settlement Systems

The basic risks in payments and settlement systems are credit risk, liquidity risk, operational risk, and legal risk. In the context of this policy, these risks are defined as follows.<sup>68</sup>

**Credit Risk.** The risk that a counterparty will not settle an obligation for full value either when due or anytime thereafter.

**Liquidity Risk.** The risk that a counterparty will not settle an obligation for full value when due.

**Operational Risk.** The risk of loss resulting from inadequate or failed internal processes, people, and systems, or from external events. This type of risk includes various physical and information security risks.

**Legal Risk.** The risk of loss because of the unexpected application of a law or regulation or because a contract cannot be enforced.

<sup>68</sup> These definitions of credit risk, liquidity risk, and legal risk are based upon those presented in the Core Principles for Systemically Important Payment Systems (Core Principles) and the Recommendations for Securities Settlement Systems (Recommendations for SSS). The definition of operational risk is based on the Basel Committee on Banking Supervision's "Sound Practices for the Management and Supervision of Operational Risk," available at <http://www.bis.org/publ/bcb96.htm>. Each of these definitions is largely consistent with those included in the Recommendations for Central Counterparties (Recommendations for CCP).

These risks arise between financial institutions as they settle payments and other financial transactions and must be managed by institutions, both individually and collectively.<sup>69, 70</sup> Multilateral payments and settlement systems, in particular, may increase, shift, concentrate, or otherwise transform risks in unanticipated ways. These systems also may pose systemic risk to the financial system where the inability of a system participant to meet its obligations when due may cause other participants to be unable to meet their obligations when due. The failure of one or more participants to settle their payments or other financial transactions, in turn, could create credit or liquidity problems for other participants, the system operator, or depository institutions. Systemic risk might lead ultimately to a disruption in the financial system more broadly or undermine public confidence in the nation's financial infrastructure.

These risks stem, in part, from the multilateral and time-sensitive credit and liquidity interdependencies among financial institutions. These interdependencies often create complex transaction flows that, in combination with a system's design, can lead to significant demands for intraday credit, either on a regular or extraordinary basis. The Board explicitly recognizes that the Federal Reserve has an important role in providing intraday balances and credit to foster the smooth operation of the payments system. To the extent that financial institutions or the Reserve Banks are the direct or indirect source of intraday credit, they may face a direct risk of loss if daylight overdrafts are not extinguished as planned. In addition, measures taken by Reserve Banks to limit their intraday credit exposures may shift some or all of the associated risks to private-sector systems.

The smooth functioning of payments and settlement systems is also critical to certain public policy objectives in the areas of monetary policy and banking supervision. The effective implementation of monetary policy, for

example, depends on both the orderly settlement of open market operations and the efficient distribution of reserve balances throughout the banking system via the money market and payments system. Likewise, supervisory objectives regarding the safety and soundness of depository institutions must take into account the risks payments and settlement systems pose to depository institutions that participate directly or indirectly in, or provide settlement, custody, or credit services to, such systems.

#### *I. Risk Management in Payments and Settlement Systems [No Change]*

#### *II. Federal Reserve Intraday Credit Policies [II and II B through II H Revised]*

This part outlines the methods used to provide intraday credit to ensure the smooth functioning of payments and settlement systems, while controlling credit risk to the Reserve Banks associated with such intraday credit. These methods include voluntary collateralization of intraday credit, a limit on total daylight overdrafts in institutions' Federal Reserve accounts, and a fee for uncollateralized daylight overdrafts. This part also provides a fee waiver to limit the impact of collateralization on depository institutions that use relatively small amounts of intraday credit.

To assist institutions in implementing this part of the policy, the Federal Reserve has prepared two documents: the *Overview of the Federal Reserve's Payments System Risk Policy on Intraday Credit* (Overview) and the *Guide to the Federal Reserve's Payments System Risk Policy on Intraday Credit* (Guide).<sup>71</sup> The Overview summarizes the Board's policy on the provision of intraday credit, including net debit caps, daylight overdraft fees for collateralized and uncollateralized overdrafts, and the fee waiver. It is intended for use by institutions that incur only small amounts of daylight overdrafts. The Guide explains in detail how these policies apply to different institutions and includes procedures for completing a self-assessment and filing a cap resolution, as well as information on other aspects of the policy.

#### **A. Daylight Overdraft Definition and Measurement [No change]**

#### **B. Collateral**

To help meet institutions' demand for intraday balances while mitigating Reserve Bank credit risk, the Board

supplies intraday balances predominantly through explicitly collateralized daylight overdrafts provided by Reserve Banks to healthy depository institutions at a zero fee.<sup>72</sup> The Board offers pricing incentives to encourage greater collateralization (see section II.C.). To avoid disrupting the operation of the payments system and increasing the cost burden on a large number of institutions using small amounts of daylight overdrafts, the Board allows the use of collateral to be voluntary.

Collateral eligibility and margins remain the same for PSR policy purposes as for the discount window.<sup>73</sup> Unencumbered discount window collateral can be used to collateralize daylight overdrafts. The pledge of in-transit securities remains an eligible collateral option for PSR purposes at Reserve Banks' discretion.<sup>74</sup>

#### **C. Pricing**

Under the voluntary collateralization regime, the fee for collateralized overdrafts is set at zero, while the fee for uncollateralized overdrafts is 50 basis points. The two-tiered fee for collateralized and uncollateralized overdrafts is intended to provide a strong incentive for a depository institution to pledge collateral to its Reserve Bank to reduce or eliminate the institution's uncollateralized daylight overdrafts and associated charges for its use of intraday credit.

Reserve Banks charge institutions for daylight overdrafts incurred in their Federal Reserve accounts. For each two-week reserve-maintenance period, the Reserve Banks calculate and assess daylight overdraft fees, which are equal to the sum of any daily uncollateralized daylight overdraft charges during the period.

Daylight overdraft fees for uncollateralized overdrafts (or the uncollateralized portion of a partially collateralized overdraft) are calculated using an annual rate of 50 basis points, quoted on the basis of a 24-hour day and a 360-day year. To obtain the effective annual rate for the standard Fedwire

<sup>72</sup> Collateral is also used to manage risk posed by daylight overdrafts of problem institutions (institutions in a weak or deteriorating financial condition), entities not eligible for Federal Reserve intraday credit (see Section II.F.) and institutions that have obtained maximum daylight overdraft capacity (see Section II.E.).

<sup>73</sup> See <http://www.frbdiscountwindow.org/> for information on the discount window and PSR collateral acceptance policy and collateral margins.

<sup>74</sup> In-transit securities are book-entry securities transferred over the Fedwire Securities Service that have been purchased by a depository institution but not yet paid for or owned by the institution's customers.

<sup>69</sup> The term "financial institution," as used in this policy, includes a broad array of types of organizations that engage in financial activity, including depository institutions and securities dealers.

<sup>70</sup> Several existing regulatory and bank supervision guidelines and policies also are directed at institutions' management of the risks posed by interbank payments and settlement activity. For example, Federal Reserve Regulation F (12 CFR 206) directs insured depository institutions to establish policies and procedures to avoid excessive exposures to any other depository institutions, including exposures that may be generated through the clearing and settlement of payments.

<sup>71</sup> Available at <http://www.federalreserve.gov/paymentsystems/PSR/relpol.htm>.

operating day, the 50-basis-point annual rate is multiplied by the fraction of a 24-hour day during which Fedwire is scheduled to operate. For example, under a 21.5-hour scheduled Fedwire operating day, the effective annual rate used to calculate daylight overdraft fees equals 44.79 basis points (50 basis points multiplied by 21.5/24).<sup>75</sup> The effective daily rate is calculated by dividing the effective annual rate by 360.<sup>76</sup> An institution's daily daylight overdraft charge is equal to the effective daily rate multiplied by the institution's average daily uncollateralized daylight overdraft.

An institution's average daily uncollateralized daylight overdraft is calculated by dividing the sum of its negative uncollateralized Federal Reserve account balances at the end of each minute of the scheduled Fedwire operating day by the total number of minutes in the scheduled Fedwire operating day. In this calculation, each positive end-of-minute balance in an institution's Federal Reserve account is set to equal zero. Fully collateralized end-of-minute negative balances are similarly set to zero.

The daily daylight overdraft charge is reduced by a fee waiver of \$150, which is primarily intended to minimize the burden of the PSR policy on institutions that use small amounts of intraday credit. The waiver is subtracted from gross fees in a two-week reserve-maintenance period.<sup>77</sup>

Certain institutions are subject to a penalty fee and modified daylight overdraft fee calculation as described in section II.F. The fee waiver is not available to these institutions.<sup>78</sup>

#### D. Net Debit Caps

##### 1. Definition

In accord with sound risk management practices, to limit the amount of intraday credit that a Reserve Bank extends to an individual

<sup>75</sup> A change in the length of the scheduled Fedwire operating day should not significantly change the amount of fees charged because the effective daily rate is applied to average daylight overdrafts, whose calculation would also reflect the change in the operating day.

<sup>76</sup> Under the current 21.5-hour Fedwire operating day, the effective daily daylight-overdraft rate is truncated to 0.0000124.

<sup>77</sup> The waiver shall not result in refunds or credits to an institution.

<sup>78</sup> The fee waiver is not available to Edge and agreement corporations, bankers' banks that have not waived their exemption from reserve requirements, limited-purpose trust companies, and government-sponsored enterprises and international organizations. These types of institutions do not have regular access to the discount window and, therefore, are expected not to incur daylight overdrafts in their Federal Reserve accounts.

institution and the associated risk, each institution incurring daylight overdrafts in its Federal Reserve account must adopt a net debit cap, that is, a ceiling on the total daylight overdraft position that it can incur during any given day. If an institution's daylight overdrafts generally do not exceed the lesser of \$10 million or 20 percent of its capital measure, the institution may qualify for the exempt-from-filing cap. An institution must be financially healthy and have regular access to the discount window in order to adopt a net debit cap greater than zero or qualify for the filing exemption.

An institution's cap category and capital measure determine the size of its net debit cap. More specifically, the net debit cap is calculated as an institution's cap multiple times its capital measure:

$$\text{net debit cap} = \text{cap multiple} \times \text{capital measure}$$

Cap categories (see section II.D.2.) and their associated cap levels, set as multiples of capital measure, are listed below:

NET DEBIT CAP MULTIPLES

Cap category	Cap multiple
High .....	2.25
Above average .....	1.875
Average .....	1.125
De minimis .....	0.4
Exempt-from-filing <sup>79</sup> .....	\$10 million or 0.20
Zero .....	0

The cap is applied to the total of collateralized and uncollateralized daylight overdrafts. For the treatment of overdrafts that exceed the cap, see Section II.G.

The Board's policy on net debit caps is based on a specific set of guidelines and some degree of examiner oversight. Under the Board's policy, a Reserve Bank may further limit or prohibit an institution's use of Federal Reserve intraday credit if (1) the institution's supervisor determines that the institution is unsafe or unsound; (2) the institution does not qualify for a positive net debit cap (see section II.D.2.); or (3) the Reserve Bank determines that the institution poses excessive risk.

While capital measures differ, the net debit cap provisions of this policy apply similarly to foreign banking organizations (FBOs) as to U.S. institutions. The Reserve Banks will advise home-country supervisors of the

<sup>79</sup> The net debit cap for the exempt-from-filing category is equal to the lesser of \$10 million or 0.20 multiplied by the capital measure.

daylight overdraft capacity of U.S. branches and agencies of FBOs under their jurisdiction, as well as of other pertinent information related to the FBOs' caps. The Reserve Banks will also provide information on the daylight overdrafts in the Federal Reserve accounts of FBOs' U.S. branches and agencies in response to requests from home-country supervisors.

#### 2. Cap Categories

The policy defines the following six cap categories, described in more detail below: high, above average, average, de minimis, exempt-from-filing, and zero. The high, above average, and average cap categories are referred to as "self-assessed" caps.

*a. Self-assessed.* In order to establish a net debit cap category of high, above average, or average, an institution must perform a self-assessment of its own creditworthiness, intraday funds management and control, customer credit policies and controls, and operating controls and contingency procedures.<sup>80</sup> The assessment of creditworthiness is based on the institution's supervisory rating and Prompt Corrective Action (PCA) designation.<sup>81</sup> An institution may perform a full assessment of its creditworthiness in certain limited circumstances, for example, if its condition has changed significantly since its last examination or if it possesses additional substantive information regarding its financial condition. An institution performing a self-assessment must also evaluate its intraday funds-management procedures and its procedures for evaluating the financial condition of and establishing

<sup>80</sup> This assessment should be done on an individual-institution basis, treating as separate entities each commercial bank, each Edge corporation (and its branches), each thrift institution, and so on. An exception is made in the case of U.S. branches and agencies of FBOs. Because these entities have no existence separate from the FBO, all the U.S. offices of FBOs (excluding U.S.-chartered bank subsidiaries and U.S.-chartered Edge subsidiaries) should be treated as a consolidated family relying on the FBO's capital.

<sup>81</sup> An insured depository institution is (1) "well capitalized" if it significantly exceeds the required minimum level for each relevant capital measure, (2) "adequately capitalized" if it meets the required minimum level for each relevant capital measure, (3) "undercapitalized" if it fails to meet the required minimum level for any relevant capital measure, (4) "significantly undercapitalized" if it is significantly below the required minimum level for any relevant capital measure, or (5) "critically undercapitalized" if it fails to meet any leverage limit (the ratio of tangible equity to total assets) specified by the appropriate federal banking agency, in consultation with the FDIC, or any other relevant capital measure established by the agency to determine when an institution is critically undercapitalized (12 U.S.C. 1831o).

intraday credit limits for its customers. Finally, the institution must evaluate its operating controls and contingency procedures to determine if they are sufficient to prevent losses due to fraud or system failures. The Guide includes a detailed explanation of the self-assessment process.

Each institution's board of directors must review that institution's self-assessment and recommended cap category. The process of self-assessment, with board-of-directors review, should be conducted at least once in each twelve-month period. A cap determination may be reviewed and approved by the board of directors of a holding company parent of an institution, provided that (1) the self-assessment is performed by each entity incurring daylight overdrafts, (2) the entity's cap is based on the measure of the entity's own capital, and (3) each entity maintains for its primary supervisor's review its own file with supporting documents for its self-assessment and a record of the parent's board-of-directors review.<sup>82</sup>

In applying these guidelines, each institution should maintain a file for examiner review that includes (1) worksheets and supporting analysis used in its self-assessment of its own cap category, (2) copies of senior-management reports to the board of directors of the institution or its parent (as appropriate) regarding that self-assessment, and (3) copies of the minutes of the discussion at the appropriate board-of-directors meeting concerning the institution's adoption of a cap category.<sup>83</sup>

As part of its normal examination, the institution's examiners may review the contents of the self-assessment file.<sup>84</sup>

<sup>82</sup> An FBO should undergo the same self-assessment process as a domestic bank in determining a net debit cap for its U.S. branches and agencies. Many FBOs, however, do not have the same management structure as U.S. institutions, and adjustments should be made as appropriate. If an FBO's board of directors has a more limited role to play in the bank's management than a U.S. board has, the self-assessment and cap category should be reviewed by senior management at the FBO's head office that exercises authority over the FBO equivalent to the authority exercised by a board of directors over a U.S. institution. In cases in which the board of directors exercises authority equivalent to that of a U.S. board, cap determination should be made by the board of directors.

<sup>83</sup> In addition, for FBOs, the file that is made available for examiner review by the U.S. offices of an FBO should contain the report on the self-assessment that the management of U.S. operations made to the FBO's senior management and a record of the appropriate senior management's response or the minutes of the meeting of the FBO's board of directors or other appropriate management group, at which the self-assessment was discussed.

<sup>84</sup> Between examinations, examiners or Reserve Bank staff may contact an institution about its cap if there is other relevant information, such as

The objective of this review is to ensure that the institution has applied the guidelines appropriately and diligently, that the underlying analysis and method were reasonable, and that the resultant self-assessment was generally consistent with the examination findings. Examiner comments, if any, should be forwarded to the board of directors of the institution. The examiner, however, generally would not require a modification of the self-assessed cap category, but rather would inform the appropriate Reserve Bank of any concerns. The Reserve Bank would then decide whether to modify the cap category. For example, if the institution's level of daylight overdrafts constitutes an unsafe or unsound banking practice, the Reserve Bank would likely assign the institution a zero net debit cap and impose additional risk controls.

The contents of the self-assessment file will be considered confidential by the institution's examiner. Similarly, the Federal Reserve and the institution's examiner will hold the actual cap level selected by the institution confidential. Net debit cap information should not be shared with outside parties or mentioned in any public documents; however, net debit cap information will be shared with the home-country supervisor of U.S. branches and agencies of foreign banks.

The Reserve Banks will review the status of any institution with a self-assessed net debit cap that exceeds its net debit cap during a two-week reserve-maintenance period and will decide if additional action should be taken (see section II.G.).

*b. De minimis.* Many institutions incur relatively small overdrafts and thus pose little risk to the Federal Reserve. To ease the burden on these small overdrafters of engaging in the self-assessment process and to ease the burden on the Federal Reserve of administering caps, the Board allows institutions that meet reasonable safety and soundness standards to incur de minimis amounts of daylight overdrafts without performing a self-assessment. An institution may incur daylight overdrafts of up to 40 percent of its capital measure if the institution submits a board-of-directors resolution.

An institution with a de minimis cap must submit to its Reserve Bank at least once in each 12-month period a copy of its board-of-directors resolution (or a resolution by its holding company's board) approving the institution's use of

statistical or supervisory reports, that suggests there may have been a change in the institution's financial condition.

intraday credit up to the de minimis level. The Reserve Banks will review the status of any institution with a de minimis net debit cap that exceeds its net debit cap during a two-week reserve-maintenance period and will decide if additional action should be taken (see section II.G.).

*c. Exempt-from-filing.* Institutions that only rarely incur daylight overdrafts in their Federal Reserve accounts that exceed the lesser of \$10 million or 20 percent of their capital measure are excused from performing self-assessments and filing board-of-directors resolutions with their Reserve Banks. This dual test of dollar amount and percent of capital measure is designed to limit the filing exemption to institutions that create only low-dollar risks to the Reserve Banks and that incur small overdrafts relative to their capital measure.

The Reserve Banks will review the status of an exempt institution that incurs overdrafts in its Federal Reserve account in excess of \$10 million or 20 percent of its capital measure on more than two days in any two consecutive two-week reserve-maintenance periods. The Reserve Bank will decide whether the exemption should be maintained, the institution should be required to file for a cap, or counseling should be performed (see section II.G.). Granting of the exempt-from-filing net debit cap is at the discretion of the Reserve Bank.

*d. Zero.* Some financially healthy institutions that could obtain positive net debit caps choose to have zero caps. Often these institutions have very conservative internal policies regarding the use of Federal Reserve intraday credit or simply do not want to incur daylight overdrafts and any associated daylight overdraft fees. If an institution that has adopted a zero cap incurs a daylight overdraft, the Reserve Bank counsels the institution and may monitor the institution's activity in real time and reject or delay certain transactions that would cause an overdraft. If the institution qualifies for a positive cap, the Reserve Bank may suggest that the institution adopt an exempt-from-filing cap or file for a higher cap if the institution believes that it will continue to incur daylight overdrafts.

In addition, a Reserve Bank may assign an institution a zero net debit cap. Institutions that may pose special risks to the Reserve Banks, such as those without regular access to the discount window, those incurring daylight overdrafts in violation of this policy, or those in weak financial condition, are generally assigned a zero cap (see section II.F.). Recently chartered



institutions may also be assigned a zero net debit cap.

### 3. Capital Measure

As described above, an institution's cap category and capital measure determine the size of its net debit cap. The capital measure used in calculating an institution's net debit cap depends upon its chartering authority and home-country supervisor.

*a. U.S.-chartered institutions.* For institutions chartered in the United States, net debit caps are multiples of "qualifying" or similar capital measures that consist of those capital instruments that can be used to satisfy risk-based capital standards, as set forth in the capital adequacy guidelines of the federal financial regulatory agencies. All of the federal financial regulatory agencies collect, as part of their required reports, data on the amount of capital that can be used for risk-based purposes—"risk-based" capital for commercial banks, savings banks, and savings associations and total regulatory reserves for credit unions. Other U.S.-chartered entities that incur daylight overdrafts in their Federal Reserve accounts should provide similar data to their Reserve Banks.

*b. U.S. branches and agencies of foreign banks.* For U.S. branches and agencies of foreign banks, net debit caps on daylight overdrafts in Federal Reserve accounts are calculated by applying the cap multiples for each cap category to the FBO's U.S. capital equivalency measure.<sup>85</sup> U.S. capital equivalency is equal to the following

- 35 percent of capital for FBOs that are financial holding companies (FHCs)<sup>86</sup>
- 25 percent of capital for FBOs that are not FHCs and have a strength of support assessment ranking (SOSA) of 1<sup>87</sup>

<sup>85</sup> The term "U.S. capital equivalency" is used in this context to refer to the particular capital measure used to calculate net debit caps and does not necessarily represent an appropriate capital measure for supervisory or other purposes.

<sup>86</sup> The Gramm-Leach-Bliley Act defines a financial holding company as a bank holding company that meets certain eligibility requirements. In order for a bank holding company to become a financial holding company and be eligible to engage in the new activities authorized under the Gramm-Leach-Bliley Act, the Act requires that all depository institutions controlled by the bank holding company be well capitalized and well managed (12 U.S.C. 1841(p)). With regard to a foreign bank that operates a branch or agency or owns or controls a commercial lending company in the United States, the Act requires the Board to apply comparable capital and management standards that give due regard to the principle of national treatment and equality of competitive opportunity (12 U.S.C. 1843(l)).

<sup>87</sup> The SOSA ranking is composed of four factors, including the FBO's financial condition and

- 10 percent of capital for FBOs that are not FHCs and are ranked a SOSA 2
  - 5 percent of "net due to related depository institutions" for FBOs that are not FHCs and are ranked a SOSA 3
- An FBO that is a FHC or has a SOSA rating of 1 may be eligible for a streamlined procedure (see Section II.E.) for obtaining additional collateralized intraday credit under the maximum daylight overdraft capacity provision.

Granting a net debit cap, or any extension of intraday credit, to an institution is at the discretion of the Reserve Bank. In the event a Reserve Bank grants a net debit cap or extends intraday credit to a financially healthy SOSA 3-ranked FBO, the Reserve Bank may require such credit to be fully collateralized, given the heightened supervisory concerns with SOSA 3-ranked FBOs.

### E. Maximum Daylight Overdraft Capacity

The Board recognizes that while net debit caps provide sufficient liquidity to most institutions, some institutions may still experience liquidity pressures. The Board believes it is important to provide an environment in which payments systems may function effectively and efficiently and to remove barriers, as appropriate, to foster risk-reducing payments system initiatives. Consequently, certain institutions with self-assessed net debit caps may pledge collateral to their administrative Reserve Banks to secure daylight overdraft capacity in excess of their net debit caps, subject to Reserve Bank approval.<sup>88-89</sup> This policy is intended to provide extra liquidity through the pledge of collateral to the few institutions that might otherwise be constrained from participating in risk-

prospects, the system of supervision in the FBO's home country, the record of the home country's government in support of the banking system or other sources of support for the FBO; and transfer risk concerns. Transfer risk relates to the FBO's ability to access and transmit U.S. dollars, which is an essential factor in determining whether an FBO can support its U.S. operations. The SOSA ranking is based on a scale of 1 through 3, with 1 representing the lowest level of supervisory concern.

<sup>88</sup> The administrative Reserve Bank is responsible for the administration of Federal Reserve credit, reserves, and risk management policies for a given institution or other legal entity.

<sup>89</sup> Institutions have some flexibility as to the specific types of collateral they may pledge to the Reserve Banks; however, all collateral must be acceptable to the Reserve Banks. The Reserve Banks may accept securities in transit on the Fedwire book-entry securities system as collateral to support the maximum daylight overdraft capacity level. Securities in transit refer to book-entry securities transferred over the Fedwire Securities Service that have been purchased by an institution but not yet paid for and owned by the institution's customers.

reducing payments system initiatives.<sup>90</sup> The Board believes that providing extra liquidity to these few institutions should help prevent liquidity-related market disruptions.

### 1. General Procedure

An institution with a self-assessed net debit cap that wishes to expand its daylight overdraft capacity by pledging collateral should consult with its administrative Reserve Bank. The Reserve Banks will work with an institution that requests additional daylight overdraft capacity to determine the appropriate maximum daylight overdraft capacity level. In considering the institution's request, the Reserve Bank will evaluate the institution's rationale for requesting additional daylight overdraft capacity as well as its financial and supervisory information. The financial and supervisory information considered may include, but is not limited to, capital and liquidity ratios, the composition of balance sheet assets, CAMELS or other supervisory ratings and assessments, and SOSA rankings (for U.S. branches and agencies of foreign banks). An institution approved for a maximum daylight overdraft capacity level must submit at least once in each twelve-month period a board-of-directors resolution indicating its board's approval of that level.

If the Reserve Bank approves an institution's request, the Reserve Bank approves a maximum daylight overdraft capacity level. The maximum daylight overdraft capacity is defined as follows: maximum daylight overdraft capacity = net debit cap + collateralized capacity<sup>91</sup>

The Reserve Banks will review the status of any institution that exceeds its maximum daylight overdraft capacity limit during a two-week reserve-maintenance period and will decide if the maximum daylight overdraft capacity should be maintained or if additional action should be taken (see section II.G.).

Institutions with exempt-from-filing and de minimis net debit caps may not obtain additional daylight overdraft

<sup>90</sup> Institutions may consider applying for a maximum daylight overdraft capacity level for daylight overdrafts resulting from Fedwire funds transfers, Fedwire book-entry securities transfers, National Settlement Service entries, and ACH credit originations. Institutions incurring daylight overdrafts as a result of other payment activity may be eligible for administrative counseling flexibility (59 FR 54915-18, Nov. 2, 1994).

<sup>91</sup> Collateralized capacity, on any given day, equals the amount of collateral pledged to the Reserve Bank, not to exceed the difference between the institution's maximum daylight overdraft capacity level and its net debit cap.



capacity by pledging additional collateral without first obtaining a self-assessed net debit cap. Likewise, institutions that have voluntarily adopted zero net debit caps may not obtain additional daylight overdraft capacity without first obtaining a self-assessed net debit cap. Institutions that have been assigned a zero net debit cap by their administrative Reserve Bank are not eligible to apply for any daylight overdraft capacity.

## 2. Streamlined Procedure for Certain FBOs

An FBO that is a FHC or has a SOSA rating of 1 and has a self-assessed net debit cap may request from its Reserve Bank a streamlined procedure under the maximum daylight overdraft capacity provision. These FBOs are not required to provide documentation of the business need or obtain the board of directors' resolution for collateralized capacity in an amount that exceeds its current net debit cap (which is based on up to 35 percent worldwide capital times its cap multiple), as long as the requested additional capacity is 100 percent or less of worldwide capital times a self-assessed cap multiple.<sup>92</sup> In order to ensure that intraday liquidity risk is managed appropriately and that the FBO will be able to repay daylight overdrafts, eligible FBOs under the streamlined procedure will be subject to initial and periodic reviews of liquidity plans that are analogous to the liquidity reviews undergone by U.S. institutions.<sup>93</sup> If an eligible FBO requests capacity in excess of 100 percent of worldwide capital times the self-assessed cap multiple, it would be subject to the general procedure.

## F. Special Situations

Under the Board's policy, certain institutions warrant special treatment primarily because of their charter types. As mentioned previously, an institution must have regular access to the discount window and be in sound financial condition in order to adopt a net debit cap greater than zero. Institutions that do not have regular access to the discount window include Edge and agreement corporations, bankers' banks that are not subject to reserve requirements, limited-purpose trust companies, government-sponsored

enterprises (GSEs), and certain international organizations.<sup>94</sup> Institutions that have been assigned a zero cap by their Reserve Banks are also subject to special considerations under this policy based on the risks they pose. In developing its policy for these institutions, the Board has sought to balance the goal of reducing and managing risk in the payments system, including risk to the Federal Reserve, with that of minimizing the adverse effects on the payments operations of these institutions.

Regular access to the Federal Reserve discount window generally is available to institutions that are subject to reserve requirements. If an institution that is not subject to reserve requirements and thus does not have regular discount-window access were to incur a daylight overdraft, the Federal Reserve might end up extending overnight credit to that institution if the daylight overdraft were not covered by the end of the business day. Such a credit extension would be contrary to the *quid pro quo* of reserves for regular discount-window access as reflected in the Federal Reserve Act and in Board regulations. Thus, institutions that do not have regular access to the discount window should not incur daylight overdrafts in their Federal Reserve accounts.

Certain institutions are subject to a daylight-overdraft penalty fee levied against the average daily daylight overdraft incurred by the institution. These include Edge and agreement corporations, bankers' banks that are not subject to reserve requirements, and limited-purpose trust companies. The annual rate used to determine the daylight-overdraft penalty fee is equal to the annual rate applicable to the daylight overdrafts of other institutions (50 basis points) plus 100 basis points multiplied by the fraction of a 24-hour

<sup>94</sup> The Reserve Banks act as fiscal agents for certain entities, such as government-sponsored enterprises (GSEs) and international organizations, whose securities are Fedwire-eligible but are not obligations of, or fully guaranteed as to principal and interest by, the United States. The GSEs include Fannie Mae, the Federal Home Loan Mortgage Corporation (Freddie Mac), entities of the Federal Home Loan Bank System (FHLBS), the Farm Credit System, the Federal Agricultural Mortgage Corporation (Farmer Mac), the Student Loan Marketing Association (Sallie Mae), the Financing Corporation, and the Resolution Funding Corporation. The international organizations include the World Bank, the Inter-American Development Bank, the Asian Development Bank, and the African Development Bank. The Student Loan Marketing Association Reorganization Act of 1996 requires Sallie Mae to be completely privatized by 2008; however, Sallie Mae completed privatization at the end of 2004. The Reserve Banks no longer act as fiscal agents for new issues of Sallie Mae securities, and Sallie Mae is not considered a GSE.

day during which Fedwire is scheduled to operate (currently 21.5/24). The daily daylight-overdraft penalty rate is calculated by dividing the annual penalty rate by 360.<sup>95</sup> The daylight-overdraft penalty rate applies to the institution's average daily daylight overdraft in its Federal Reserve account. The daylight-overdraft penalty rate is charged in lieu of, not in addition to, the rate used to calculate daylight overdraft fees for institutions described in section II.F.

Institutions that are subject to the daylight-overdraft penalty fee are not eligible for the \$150 fee waiver and are subject to a minimum fee of \$25 on any daylight overdrafts incurred in their Federal Reserve accounts.<sup>96</sup> While such institutions may be required to post collateral (see sections II.F.), they are not eligible for the lower fee associated with collateralized daylight overdrafts.

## 1. Edge and Agreement Corporations<sup>97</sup>

Edge and agreement corporations should refrain from incurring daylight overdrafts in their Federal Reserve accounts. In the event that any daylight overdrafts occur, the Edge or agreement corporation must post collateral to cover the overdrafts. In addition to posting collateral, the Edge or agreement corporation would be subject to the daylight-overdraft penalty rate levied against the average daily daylight overdrafts incurred by the institution, as described above.

This policy reflects the Board's concerns that these institutions lack regular access to the discount window and that the parent company may be unable or unwilling to cover its subsidiary's overdraft on a timely basis. The Board notes that the parent of an Edge or agreement corporation could fund its subsidiary during the day over Fedwire or the parent could substitute itself for its subsidiary on private systems. Such an approach by the parent could both reduce systemic risk exposure and permit the Edge or agreement corporation to continue to

<sup>95</sup> Under the current 21.5-hour Fedwire operating day, the effective daily daylight-overdraft penalty rate is truncated to 0.0000373.

<sup>96</sup> While daylight overdraft fees are calculated differently for these institutions than for institutions that have regular access to the discount window, overnight overdrafts at Edge and agreement corporations, bankers' banks that are not subject to reserve requirements, limited-purpose trust companies, GSEs, and international organizations are priced the same as overnight overdrafts at institutions that have regular access to the discount window.

<sup>97</sup> These institutions are organized under section 25A of the Federal Reserve Act (12 U.S.C. 611-631) or have an agreement or undertaking with the Board under section 25 of the Federal Reserve Act (12 U.S.C. 601-604(a)).

<sup>92</sup> For example, a financial holding company is eligible for uncollateralized capacity of 35 percent of worldwide capital times the cap multiple. The streamlined max cap procedure would provide such an institution with additional collateralized capacity of 65 percent of worldwide capital times the cap multiple.

<sup>93</sup> The liquidity reviews will be conducted by the administrative Reserve Bank, in consultation with each FBO's home country supervisor.

service its customers. Edge and agreement corporation subsidiaries of foreign banking organizations are treated in the same manner as their domestically owned counterparts.

#### 2. Bankers' Banks<sup>98</sup>

Bankers' banks are exempt from reserve requirements and do not have regular access to the discount window. They do, however, have access to Federal Reserve payments services. Bankers' banks should refrain from incurring daylight overdrafts and must post collateral to cover any overdrafts they do incur. In addition to posting collateral, a bankers' bank would be subject to the daylight-overdraft penalty fee levied against the average daily daylight overdrafts incurred by the institution, as described above.

The Board's policy for bankers' banks reflects the Reserve Banks' need to protect themselves from potential losses resulting from daylight overdrafts incurred by bankers' banks. The policy also considers the fact that some bankers' banks do not incur the costs of maintaining reserves as do some other institutions and do not have regular access to the discount window.

Bankers' banks may voluntarily waive their exemption from reserve requirements, thus gaining access to the discount window. Such bankers' banks are free to establish net debit caps and would be subject to the same policy as other institutions. The policy set out in this section applies only to those bankers' banks that have not waived their exemption from reserve requirements.

#### 3. Limited-Purpose Trust Companies<sup>99</sup>

The Federal Reserve Act permits the Board to grant Federal Reserve membership to limited-purpose trust companies subject to conditions the Board may prescribe pursuant to the Act. As a general matter, member limited-purpose trust companies do not accept reservable deposits and do not have regular discount-window access. Limited-purpose trust companies

<sup>98</sup> For the purposes of this policy, a bankers' bank is a depository institution that is not required to maintain reserves under the Board's Regulation D (12 CFR 204) because it is organized solely to do business with other financial institutions, is owned primarily by the financial institutions with which it does business, and does not do business with the general public. Such bankers' banks also generally are not eligible for Federal Reserve Bank credit under the Board's Regulation A (12 CFR 201.2(c)(2)).

<sup>99</sup> For the purposes of this policy, a limited-purpose trust company is a trust company that is a member of the Federal Reserve System but that does not meet the definition of "depository institution" in section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)).

should refrain from incurring daylight overdrafts and must post collateral to cover any overdrafts they do incur. In addition to posting collateral, limited-purpose trust companies would be subject to the same daylight-overdraft penalty rate as other institutions that do not have regular access to the discount window.

#### 4. Government-Sponsored Enterprises and International Organizations

The Reserve Banks act as fiscal agents for certain GSEs and international organizations in accordance with federal statutes. These institutions generally have Federal Reserve accounts and issue securities over the Fedwire Securities Service. The securities of these institutions are not obligations of, or fully guaranteed as to principal and interest by, the United States.

Furthermore, these institutions are not subject to reserve requirements and do not have regular access to the discount window. GSEs and international organizations should refrain from incurring daylight overdrafts and must post collateral to cover any daylight overdrafts they do incur. In addition to posting collateral, these institutions would be subject to the same daylight-overdraft penalty rate as other institutions that do not have regular access to the discount window.

#### 5. Problem Institutions

For institutions that are in weak financial condition, the Reserve Banks will impose a zero cap. The Reserve Bank will also monitor the institution's activity in real time and reject or delay certain transactions that would create an overdraft. Problem institutions should refrain from incurring daylight overdrafts and must post collateral to cover any daylight overdrafts they do incur.

#### G. Monitoring

##### 1. Ex Post

Under the Federal Reserve's ex post monitoring procedures, an institution with a daylight overdraft in excess of its maximum daylight overdraft capacity or net debit cap may be contacted by its Reserve Bank. Overdrafts above the cap for institutions with de minimis, self-assessed and max caps may be treated differently, depending on whether the overdraft is collateralized.<sup>100</sup> If the overdraft is fully collateralized, the Reserve Bank may consider the

<sup>100</sup> There are no changes in monitoring of exempt institutions: overdrafts above the exempt cap limit, regardless of whether such overdrafts are collateralized or uncollateralized, should no more than twice in two consecutive two-week reserve-maintenance periods (the total of four weeks).

condition an overlimit situation and may waive counseling for two incidents of overlimit, fully collateralized overdrafts per two consecutive two-week reserve-maintenance periods (the total of four weeks). If instances of overlimit, fully collateralized overdrafts are beyond the approved number of overlimit incidents or if any part of the overdraft is *uncollateralized*, the Reserve Bank will apply normal counseling procedures.

Each Reserve Bank retains the right to protect its risk exposure from individual institutions by unilaterally reducing net debit caps, imposing (additional) collateralization or clearing-balance requirements, rejecting or delaying certain transactions as described below, or, in extreme cases, taking the institution off line or prohibiting it from using Fedwire.

##### 2. Real Time

A Reserve Bank will, through the Account Balance Monitoring System, apply real-time monitoring to an individual institution's position when the Reserve Bank believes that it faces excessive risk exposure, for example, from problem banks or institutions with chronic overdrafts in excess of what the Reserve Bank determines is prudent. In such a case, the Reserve Bank will control its risk exposure by monitoring the institution's position in real time, rejecting or delaying certain transactions that would exceed the institution's maximum daylight overdraft capacity or net debit cap, and taking other prudential actions, including requiring (additional) collateral.<sup>101</sup>

##### 3. Multi-district Institutions

Institutions, such as those maintaining merger-transition accounts and U.S. branches and agencies of a foreign bank, that access Fedwire through accounts in more than one Federal Reserve District are expected to manage their accounts so that the total daylight overdraft position across all accounts does not exceed their net debit caps. One Reserve Bank will act as the administrative Reserve Bank and will have overall risk-management responsibilities for institutions maintaining accounts in more than one Federal Reserve District. For domestic institutions that have branches in multiple Federal Reserve Districts, the administrative Reserve Bank generally

<sup>101</sup> Institutions that are monitored in real time must fund the total amount of their ACH credit originations in order for the transactions to be processed by the Federal Reserve, even if those transactions are processed one or two days before settlement.

will be the Reserve Bank where the head office of the bank is located.

In the case of families of U.S. branches and agencies of the same foreign banking organization, the administrative Reserve Bank generally is the Reserve Bank that exercises the Federal Reserve's oversight responsibilities under the International Banking Act.<sup>102</sup> The administrative Reserve Bank, in consultation with the management of the foreign bank's U.S. operations and with Reserve Banks in whose territory other U.S. agencies or branches of the same foreign bank are located, may determine that these agencies and branches will not be permitted to incur overdrafts in Federal Reserve accounts. Alternatively, the administrative Reserve Bank, after similar consultation, may allocate all or part of the foreign family's net debit cap to the Federal Reserve accounts of agencies or branches that are located outside of the administrative Reserve Bank's District; in this case, the Reserve Bank in whose Districts those agencies or branches are located will be responsible for administering all or part of the collateral requirement.<sup>103</sup>

H. Transfer-Size Limit on Book-Entry Securities [No change]

By order of the Board of Governors of the Federal Reserve System, February 28, 2008.

**Jennifer J. Johnson,**  
Secretary of the Board.

[FR Doc. 08-971 Filed 3-6-08; 8:45 am]

BILLING CODE 6210-01-P

## FEDERAL RESERVE SYSTEM

[Docket No. OP-1310]

### Policy on Payments System Risk; Daylight Overdraft Posting Rules

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Policy statement; Request for comments.

**SUMMARY:** Commercial and government automated clearinghouse (ACH) credit

<sup>102</sup> 12 U.S.C. 3101-3108.

<sup>103</sup> As in the case of Edge and agreement corporations and their branches, with the approval of the designated administrative Reserve Bank, a second Reserve Bank may assume the responsibility of managing and monitoring the net debit cap of particular foreign branch and agency families. This would often be the case when the payments activity and national administrative office of the foreign branch and agency family is located in one District, while the oversight responsibility under the International Banking Act is in another District. If a second Reserve Bank assumes management responsibility, monitoring data will be forwarded to the designated administrator for use in the supervisory process.

transfers processed by the Federal Reserve Banks' (Reserve Banks) FedACH service are currently posted at 8:30 a.m., while commercial and government ACH debit transfers are posted at 11 a.m.<sup>1</sup> The Board proposes to change the posting time for commercial and government ACH debit transfers that are processed by the Reserve Banks' FedACH service to 8:30 a.m. to coincide with the posting time for commercial and government ACH credit transfers. In line with this change, the Board also intends, in consultation with the U.S. Treasury, to move the posting time for Treasury Tax and Loan (TT&L) investments associated with Electronic Federal Tax Payment System (EFTPS) ACH debit transfers to 8:30 a.m. to maintain the simultaneous posting of ACH transactions and related Treasury transactions.

**DATES:** Comments must be received on or before June 4, 2008.

**ADDRESSES:** You may submit comments, identified by Docket No. OP-1310 by any of the following methods:

- *Agency Web site:* <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-mail:* [http://regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include the docket number in the subject line of the message.
- *Fax:* (202) 452-3819 or (202) 452-3102.

• *Mail:* Address to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Marquardt, Deputy Director (202-452-2360) or Susan Foley, Assistant Director (202-452-3596),

<sup>1</sup> The credit and debit accounting entries associated with ACH credit transfers and ACH debit transfers are posted simultaneously at the appointed posting time.

All times are eastern time.

Division of Reserve Bank Operations and Payment Systems, Board of Governors of the Federal Reserve System; for users of Telecommunications Device for the Deaf ("TDD") only, contact (202) 263-4869.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Board has been reviewing for several years long-term developments in intraday liquidity and risk management in financial markets and the payments system, including increased use of daylight overdrafts at the Reserve Banks and increased Fedwire funds transfers late in the day. On June 21, 2006, the Board published for public comment the Consultation Paper on Intraday Liquidity Management and the Payments System Risk Policy (consultation paper) that sought information from financial institutions and other interested parties on their experience in managing liquidity, credit, and operational risks related to Fedwire funds transfers, especially late-day transfers.<sup>2</sup> The Board sought comment on possible changes in market practices, operations, and the Federal Reserve's PSR policy that could reduce one or more of these risks.

One commenter on the consultation paper suggested a change in the posting rules for ACH debit transfers to reduce depository institutions' need for intraday liquidity from Reserve Banks.<sup>3</sup> This institution proposed that ACH credit and debit transfers post simultaneously to institutions' Federal Reserve accounts so that only the net amount of funds from daily ACH settlements would increase or decrease balances held in these accounts. The Reserve Banks' Retail Payments Office, which has primary responsibility for the Reserve Banks' FedACH service, has also indicated a preference for the simultaneous posting of ACH credit and debit transfers at 8:30 a.m., the same time as EPN, the other ACH operator. This change would remove competitive disparities between these systems or their participants arising from different settlement times for ACH debit transfers.

In addition to proposing the change to the posting rules for ACH debit transfers, the Board also intends, in consultation with the U.S. Treasury, to move the posting of TT&L investments

<sup>2</sup> See 71 FR 35679, June 21, 2006.

<sup>3</sup> The term "depository institution," as used in this notice, refers not only to institutions defined as depository institutions in 12 U.S.C. 461(b)(1)(A), but also to U.S. branches and agencies of foreign banking organizations, Edge and agreement corporations, trust companies, and bankers' banks, unless the context indicates a different reading.

associated with EFTPS ACH debit transfers to 8:30 a.m. The U.S. Treasury uses TT&L to collect taxes and invest excess Treasury balances with depository institutions, including EFTPS tax payments collected through both ACH credit and debit transfers. For example, the Internal Revenue Service initiates daily, through its agent, ACH debit transfers to collect tax payments due from taxpayers. The tax payments collected in this manner and through ACH credit transfers are credited to the U.S. Treasury's general account at the Reserve Banks. Under the Treasury Investment Program, these tax payments are then invested with predetermined depository institutions through TT&L. The depository institutions that obtain these investments receive a credit to their Federal Reserve accounts for the amount of EFTPS tax payments settled via ACH on a given day if investment capacity exists at the depository institution. The TT&L transactions are currently posted at the same time as their respective ACH credit and debit transfers, at 8:30 a.m. and 11 a.m. The simultaneous posting for the collection and investment of these tax payments is intended to minimize the effect of the daily tax collection on aggregate reserve balances of the banking system. The Board would shift the posting of TT&L investments associated with EFTPS ACH debit transfers to the same time as ACH debit transfers to continue to minimize the effect of fluctuations in government receipts on the intraday reserve balances of the banking industry.

The Board has issued a separate request for comment to address the broader policy changes raised in the consultation paper.<sup>4</sup> The broader policy changes include adopting a policy of supplying intraday balances predominately through *explicitly* collateralized daylight overdrafts to healthy depository institutions at a zero fee. The Board would allow depository institutions to pledge collateral voluntarily to secure daylight overdrafts and would encourage the *voluntary* pledging of collateral to cover daylight overdrafts by raising the fee for uncollateralized daylight overdrafts to 50 basis points (annual rate) from the current 36 basis points. In addition, the Board proposes to change other related policy provisions, including adjusting net debit caps, streamlining maximum daylight overdraft capacity procedures for certain foreign banking organizations, eliminating the current deductible, increasing substantially the

fee waiver to \$150, and increasing the penalty fee for ineligible institutions to 150 basis points (annual rate) from the current 136 basis points.

The Board believes that the broader proposed PSR policy changes could be implemented approximately two years from the announcement of a final rule. The Board believes, however, that the posting-rule change could be implemented in less than two years and thus has analyzed the change under both the current and proposed PSR policy regimes.

## II. Discussion of Possible Changes

The Board proposes to change the posting time for commercial and government ACH debit transfers that are processed by the Reserve Banks' FedACH service from 11 a.m. to 8:30 a.m. to coincide with the posting of commercial and government ACH credit transfers. In line with such a change, the Board also intends, in consultation with the U.S. Treasury, to move the posting of TT&L investments associated with EFTPS ACH debit transfers to 8:30 a.m. to maintain the simultaneous posting of these related transactions.

Posting ACH debit transfers at 8:30 a.m. would

- Increase significantly the liquidity of institutions that originate a large value of ACH debit transfers over the FedACH network<sup>5</sup>
- Increase liquidity for institutions that originate ACH debit transfers over the EPN network but have transfers delivered to receiving depository institutions over the FedACH network (inter-operator transactions);
- Align the Reserve Banks' FedACH settlement times with those of its private-sector competitor; and
- Conform more closely to the Board's guidelines for measuring daylight overdrafts.

For institutions that originate a large value of ACH debit transfers, the liquidity needed to fund the settlement of ACH credit originations at 8:30 a.m. could be largely or entirely offset by the receipt of funds from the settlement of ACH debit transfers also at 8:30 a.m. In particular, the current posting rules require that these institutions obtain funding by 8:30 a.m. for ACH credit transfers that would not be needed if the ACH credit and debit transfers posted simultaneously. In addition, these originating institutions may be able to offer earlier funds availability to their customers from ACH debit transfers,

<sup>5</sup> Liquidity refers to balances available in Federal Reserve accounts to make payments. An increase in liquidity involves higher account balances, which could result in fewer daylight overdrafts.

reducing competitive differences among depository institutions because of the later settlement of ACH debit transfers processed by the Reserve Banks' FedACH service. Five percent, or approximately 160, of FedACH participants would benefit from earlier posting of ACH debit transfers as net receivers of funds from ACH debit transfers.<sup>6</sup> For these institutions as a group, the effect of the later posting of ACH debit transfers is significant because the value of institutions' transactions represents approximately 70 percent of the ACH debit transfer value originated over FedACH. In addition, the Reserve Banks' competitor's practice of earlier settlement of ACH debit transfers may provide a more attractive service relative to FedACH's current 11 a.m. settlement of ACH debit transfers.

Beyond benefits to depository institutions that originate a large value of debit transfers over the FedACH network, an earlier posting time for ACH debit transfers would also benefit certain originators of ACH debit transfers over the EPN network. Approximately 45 percent of the volume of debit transfers originated over the EPN network are delivered to receiving depository institutions over FedACH via inter-operator transactions. These inter-operator transactions are posted to the Federal Reserve accounts of the originating and receiving institutions according to the Board's posting rules for the underlying ACH transfers. The posting-rule change would shift the settlement time for inter-operator ACH debit transfers originated through EPN such that all ACH debit transfers would settle at 8:30 a.m. regardless of the operator where the transfer is originated.

The Reserve Banks' Retail Payments Office has indicated a preference for the simultaneous posting of ACH credit and debit transfers at 8:30 a.m. in order to align the settlement time for FedACH with the settlement time for EPN. EPN settles both ACH credit and debit transfers at 8:30 a.m. through the Reserve Banks' National Settlement Service.<sup>7</sup> The Retail Payments Office is

<sup>6</sup> All data presented in the notice are from the fourth-quarter 2007 and reflect activity at the master account level. In addition, the data represent the cumulative effect of posting ACH debit transactions and TT&L investments associated with EFTPS ACH debit transactions at 8:30 a.m.

<sup>7</sup> The Reserve Banks' National Settlement Service is a multilateral settlement service offered to depository institutions that settle for participants in clearinghouses, financial exchanges, and other clearing and settlement groups. Settlement agents acting on behalf of those depository institutions electronically submit settlement files to the Reserve Bank. Based on the settlement file, entries are

<sup>4</sup> See notice elsewhere in today's *Federal Register*.



increasingly concerned that the later posting of ACH debit transfers is or could become a consideration when originating institutions choose an ACH operator. The choice of operators could have significant revenue implications for Reserve Banks considering the recent growth in ACH debit transfers.

Available data indicate aggregate ACH debit transfer volume has grown at a 28 percent annualized rate between 2003 and 2006.<sup>8</sup> The Retail Payments Office has already received some feedback that settlement times have affected some customers' decisions in choosing an operator for origination.

Finally, the Board evaluated the requested posting-time change against its principles for measuring daylight overdrafts. In the early 1990s, the Board formulated a set of principles that guided the development of the posting rules to measure daylight overdrafts.

These principles are still relevant:

- The measurement procedures should not provide intraday float to participants.
- The measurement procedures should reflect the time at which payor institutions are obligated to pay for transactions.
- The users of payments services should be able to control their use of intraday credit.
- The Reserve Banks should not obtain any competitive advantage from the measurement procedures.

The posting rules do not currently provide intraday float because the credit and debit accounting entries for ACH credit and debit transfers are posted simultaneously at 8:30 a.m. and 11 a.m., respectively. This principle would be maintained if the posting of ACH debit transfers were made at 8:30 a.m.

The earlier posting at 8:30 a.m. of ACH debit transfers, however, would conform more closely to the second principle, which indicates that posting times should reflect the time at which the payor institution is obligated to pay for the transaction. This principle's purpose is to have the intraday measurement of account balances, and hence, posting times reflect as closely as possible the delivery of payments to the receiving institution. FedACH payments are processed in the early morning hours, usually between 2 and 4 a.m., and payment advices are sent to depository institutions generally by 6 a.m. Posting ACH debit transfers at 8:30 a.m. would shift the settlement time

closer to the payment delivery time. The Board did contemplate the benefits and drawbacks of posting ACH credit and debit transfers closer to 6 a.m. but decided a posting earlier than 8:30 a.m. would create additional operating costs and funding burdens for many institutions, especially smaller institutions, and would not be consistent with the practices of the other ACH operator.

The third principle specifies that users of intraday credit should have control over their daylight overdrafts. This principle's intent is to ensure that institutions can actively manage their Federal Reserve accounts to comply with limits and other restrictions related to daylight overdrafts. It is this principle that underpins the current posting time of 11 a.m.

In preparation for charging fees for daylight overdrafts in 1994, the Board requested comment on measuring daylight overdrafts.<sup>9</sup> The Board proposed posting ACH credits at the opening of Fedwire, which at that time was 8:30 a.m. for the Fedwire funds transfer system, and posting ACH debits at 11 a.m. In response to that proposal, 80 percent of commenters opposed the posting time of 11 a.m. for ACH debits and requested a posting at the opening of the Fedwire day for account management and funding purposes. Specifically, commenters complained that an 11 a.m. posting time would delay funds availability to originators of ACH debit transfers. These commenters, however, recognized that while some institutions would benefit from having additional funds from the ACH debit transfers available earlier in the day, other institutions would have fewer funds available.

The effect of the earlier posting time on those that would have fewer funds available influenced the Board in its decision to keep a later posting time for ACH debit transfers. The Board noted that the "receiver of ACH debit transactions cannot predict with certainty the value of transactions that they will receive on certain days. In order to avoid incurring overdrafts, receiving institutions need some time after the opening of Fedwire to obtain funding for payments before their accounts are debited." Since then, the operating day for the Fedwire funds transfer system has been extended to open at 9 p.m. the previous evening. Institutions currently have the operational ability to transfer funds into

their accounts as soon as FedACH makes available the settlement amounts associated with the ACH transfers, typically before 6 a.m. As a practical matter, however, few institutions currently use Fedwire services before 8:30 a.m. Thus, the Board recognizes that this proposed change to the posting rules could prompt some depository institutions to maintain higher account balances overnight, incur (greater) daylight overdrafts, or bring staff in earlier to manage their Reserve Bank account balances. As discussed later, up to approximately 170 institutions that are eligible to incur daylight overdrafts could incur higher daylight overdraft fees if funding patterns remained the same, while about 35 institutions that are not eligible to incur daylight overdrafts would need to make arrangements to hold higher account balances overnight or to obtain funding earlier. While the Board has estimated the possible increase in daylight overdraft fees, it is not clear how difficult or costly changing funding patterns would be for these institutions to avoid incurring (additional) daylight overdrafts.

Finally, the Board's fourth principle—that the posting rules should not provide Reserve Banks with a competitive advantage—would be upheld. Shifting the posting of ACH debit transfers to 8:30 a.m. would serve to bring the settlement of ACH debit transfers processed by the Reserve Banks' FedACH service in line with its private-sector competitor and reduce a possible competitive disadvantage to the Reserve Banks.

While the posting-rule change is advantageous for originators of a large value of ACH debit transfers over FedACH, the Board recognizes that the simultaneous posting of ACH debit and credit transfers would reduce, on average, the available balances for the majority of FedACH participants between 8:30 and 10:59 a.m., even considering that some institutions would receive credits to their Federal Reserve accounts from TT&L investments associated with EFTPS ACH debit transfers. As indicated in table 1, approximately 3,100 of the 3,200 FedACH participants currently gain balances from the posting of ACH credit transfers (net receivers of funds).<sup>10</sup> If ACH debit transfers are posted at 8:30 a.m., the number of institutions that gain balances could decrease to approximately 1,500

automatically posted to the depository institutions' Reserve Bank accounts. These entries are final and irrevocable when posted.

<sup>8</sup> See the 2007 Federal Reserve Payments Study at [http://www.frb-services.org/files/communications/pdf/research/2007\\_payments\\_study.pdf](http://www.frb-services.org/files/communications/pdf/research/2007_payments_study.pdf), p. 17.

<sup>9</sup> The two requests for comment on measuring daylight overdrafts are 54 FR 26094, June 21, 1989, and 56 FR 3098, January 28, 1991. The final rulemaking is 57 FR 47093, October 14, 1992.

<sup>10</sup> Net receivers of funds refers to institutions that have a net increase in balances because the credit accounting entries exceed the debit accounting entries associated with the ACH credit or debit transfers received and originated.



institutions. While still receiving more funds than they pay out, about 90 percent of these 1,500 institutions could have lower balances in their Federal Reserve accounts between 8:30 a.m. and

10:59 a.m. than under the current posting rules because of funding their ACH debit transfers. In addition, if ACH debit transfers post at 8:30 a.m., approximately 1,700 institutions could

need to pay out more than they receive from the ACH credit and debit transfers (net payors of funds).<sup>11</sup>

TABLE 1.—NUMBER OF RECEIVERS AND PAYORS OF FUNDS FOR ACH TRANSFERS (Q4 2007)

	Number of institutions			
	Net receivers of funds	Net payors of funds	Other *	Total
Current posting rules:				
ACH credit transfers at 8:30 a.m. ....	3,100	90	10	3,200
ACH debit transfers at 11 a.m. ....	100	3,000	100	3,200
Proposed change to posting rules:				
Net effect of ACH debit and credit transfers at 8:30 a.m. ....	1,500	1,700	0	3,200

\*The "other" category includes institutions that do not send or receive ACH debit or credit transfers or that originations and receipts, on average, net to zero.

Of the 1,700 payors of funds, the Board estimates that approximately 1,500 could have insufficient Reserve Bank account balances and so could need additional funding or could incur (greater) daylight overdrafts at 8:30 a.m. if ACH debit transfers and TT&L investments associated with EFTPS debit originations posted at 8:30 a.m. The vast majority of these institutions are eligible to incur daylight overdrafts but at least 35 institutions would not be eligible.

For most institutions eligible for daylight overdrafts, the deductible, or the "free credit" provided under the current PSR policy, appears adequate to cover the daylight overdrafts associated with the proposed posting-rule change. A small percentage of institutions, however, could incur increased overdraft fees if they funded the earlier posting of ACH debit transfers through daylight overdrafts from the Reserve Banks. Table 2 provides a breakdown of the number of institutions that could

pay higher daylight overdraft fees if ACH debit transfers and TT&L investments associated with EFTPS ACH debit transactions posted at 8:30 a.m. under the current PSR policy. The data suggest that about 115 institutions could incur higher fees, although 70 could have increased fees of under \$500 a year (less than \$20 in a two-week period on average). The majority of institutions that could pay additional fees in excess of \$500 a year are largely mid-to-large users of daylight credit.

TABLE 2.—NUMBER OF INSTITUTIONS ELIGIBLE FOR DAYLIGHT CREDIT THAT COULD INCUR INCREASED FEES UNDER THE CURRENT PSR POLICY (Q4 2007)

Average increase in fees (annual)	Small users of intraday credit <sup>12</sup>	Mid-to-large users of intraday credit	Total number of institutions
\$0-\$500 .....	20	50	70
\$500-\$1,500 .....	2	15	17
\$1,500-\$3,000 .....	1	5	6
\$3,000-\$30,000 .....	2	15	17
\$30,000-\$150,000 .....	0	5	5
Total .....	25	90	115

The Board estimates that thirty-five institutions that are ineligible for intraday credit under the PSR policy would need to procure additional funding to avoid incurring daylight overdrafts if ACH debit transfers and TT&L investments associated with EFTPS ACH debit transactions posted at 8:30 a.m. These institutions include bankers' banks and corporate credit unions that retain their Regulation D exemption. On average each of these

institutions would need to increase funding in their Reserve Bank accounts before 8:30 a.m. by about \$30 million.

Under the proposed changes to the PSR policy, the institutions affected could change based on the amount of collateral pledged by these institutions, the elimination of the deductible, and the increase in the fee waiver to \$150. As can be seen in table 3, the Board estimates that if the posting time for ACH debit transfers and TT&L

investments associated with EFTPS ACH debit transfers moved to 8:30 a.m. and the proposed PSR policy changes were adopted, approximately 170 institutions that are eligible for daylight overdrafts could pay higher fees for intraday credit unless they chose to pledge (additional) collateral to the Reserve Banks.<sup>13</sup> Of these 170 institutions, only 25 are small users of daylight credit.

<sup>11</sup> Net payors of funds refers to institutions that have a net decrease in balances because the debit accounting entries exceed the credit accounting entries associated with the ACH credit or debit transfers received and originated.

<sup>12</sup> "Small users" are exempt-cap institutions or institutions with an average daily overdraft of \$1 million or less.

<sup>13</sup> The Board has developed a fee calculator to help institutions estimate fees under the proposed

PSR policy changes. Institutions could use this calculator to estimate the joint effect of the proposed posting-rules and PSR policy changes. The calculator is located on the Board's website at <https://www.federalreserve.gov/apps/RPF/Calc/>.

TABLE 3.—NUMBER OF INSTITUTIONS ELIGIBLE FOR DAYLIGHT CREDIT THAT COULD INCUR INCREASED FEES UNDER THE PROPOSED PSR POLICY (Q4 2007)

Average increase in fees (annual)	Small users of intraday credit	Mid-to-large users of intraday credit	Total number of institutions
\$0–\$500 .....	20	30	50
\$500–\$1,500 .....	5	20	25
\$1,500–\$3,000 .....	0	25	25
\$3,000–\$30,000 .....	0	50	50
\$30,000–\$150,000 .....	0	15	15
Greater than \$150,000 .....	0	5	5
Total .....	25	145	170

The Board estimates that the proposed PSR policy changes could result in about 160 institutions eligible for daylight overdrafts paying higher fees if they did not pledge (additional) collateral.<sup>14</sup> Thus, the number of institutions paying higher fees would increase by approximately ten with the addition of the proposed posting-rule change. While for affected institutions the amount of fees paid could be greater if both policy changes were adopted, institutions could fully offset these daylight overdraft fees through pledging (additional) collateral or increasing funding for their Federal Reserve accounts. For the 35 institutions that are ineligible for intraday credit, the effect of changing the posting rules for ACH debit transfers would remain the same under the current and proposed PSR policy regimes.

Overall, the Board believes the benefit of increased liquidity for institutions that originate large value of ACH debit transfers over FedACH or delivered from EPN to FedACH, the advantage for FedACH in eliminating a competitive disparity, and the improvement in measuring daylight overdrafts in total outweigh the increase in funding costs or daylight overdraft fees incurred by about 205 institutions. The Board also believes that many of these institutions will be able to avoid increased fees by pledging (additional) collateral under the proposed changes to the PSR policy. Each of these institutions could pledge (additional) collateral of approximately \$65 million, on average, to avoid incurring higher fees from the posting-rule and broader PSR policy changes.<sup>15</sup>

<sup>14</sup>The Federal Register notice on the proposed changes to the PSR policy contains an analysis of the 160 institutions that could be paying higher fees under that proposal without the posting-rules change.

<sup>15</sup>The calculation of the collateral value excludes data for one institution that is an outlier in comparison to the other institutions that could be paying higher fees. The inclusion of this institution would significantly increase the estimated amount of collateral that an average institution would need to pledge to avoid paying higher fees.

Adoption of an earlier posting time for ACH debit transfers and TT&L investments associated with EFTPS ACH debit transfers could be implemented in a relatively short time, but the Board would consider the advantages and disadvantages of implementing the posting-rule change in tandem with the broader PSR policy changes to mitigate the effects. At a minimum, the Board would announce an effective date at least six months from the final rule to give institutions sufficient time to make plans to secure additional funding, as needed.

### III. Questions

The Board proposes to change the posting time for commercial and government ACH debit transfers that are processed by the Reserve Banks' FedACH service to 8:30 a.m. to coincide with the posting of commercial and government ACH credit transfers. In conjunction with such a change, the Board also intends, in consultation with the U.S. Treasury, to move the posting of TT&L investments associated with EFTPS ACH debit transfers to 8:30 a.m. to maintain the simultaneous posting of these related transactions. The Board requests comment on the benefits and drawbacks of these proposed posting-rule change. In particular,

(1) To what extent do institutions that originate debit transfers through FedACH incur competitive disparities because of the difference in settlement times between operators? To what extent would adopting the proposal alter this situation?

(2) To what extent are there competitive disparities between ACH operators because of the difference in settlement times? To what extent would adopting the proposal alter this situation?

(3) Would the proposed change have an effect on the availability of funds to customers of depository institutions?

(4) To what extent would the proposed broader PSR policy changes, including a zero fee for collateralized daylight overdrafts, mitigate the

liquidity concerns of *originating* institutions if the Board did *not* adopt the proposed change to the posting rules for of ACH debit transfers?

(5) To what extent would the proposed broader PSR policy changes, including a zero fee for collateralized daylight overdrafts, mitigate the liquidity concerns of *receiving* institutions of the proposed change to the posting rules for ACH debit transfers?

(6) Under the current and the proposed PSR policy, what costs would institutions expect to incur to fund their Federal Reserve accounts by 8:30 a.m. for ACH debit transfers, particularly if the institutions did not want or were ineligible to incur daylight overdrafts?

(7) If the Board changed the posting times for ACH debit transfers and EFTPS ACH debit transfers to 8:30 a.m., is six months a sufficient lead time for implementation to enable institutions to make plans to secure additional funding, as needed? Alternatively, should the Board implement the change to the posting rules at the same time as the proposed broader PSR policy changes to provide institutions an opportunity to pledge (additional) collateral to manage a possible increase in fees?

### IV. Competitive Impact Analysis

The Board conducts a competitive impact analysis when it considers a change, such as that being proposed for the posting time of ACH debit transfers and the accompanying change to TT&L investments associated with EFTPS ACH debit transfers. Specifically, the Board determines whether there would be a direct and material adverse effect on the ability of other service providers to compete with the Federal Reserve due to differing legal powers or due to the Federal Reserve's dominant market position deriving from such legal differences.<sup>16</sup> The Board believes that there are no adverse effects resulting

<sup>16</sup>Federal Reserve Regulatory Service, 7–145.2.

from the proposed change due to legal differences.

Shifting the posting of ACH debit transfers to 8:30 a.m. would serve to bring the settlement of ACH debit transfers processed by the Reserve Banks' FedACH service in line with its private-sector competitor and reduce a competitive disadvantage to the Reserve Banks. The proposed posting-rule change would benefit not only FedACH participants that originate debit transfers but also EPN customers that originate debit transfers sent to FedACH, which settle according to the Board's posting rules.

#### V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the PSR policy change it is considering under the authority delegated to the Board by the Office of Management and Budget. No collection of information pursuant to the Paperwork Reduction Act are contained in the policy statement.

#### VI. Federal Reserve Policy on Payments System Risk

If the Board adopts an earlier posting time for ACH debit transfers and EFTPS investments associated with ACH debit transfers, it would amend the "Federal Reserve Policy on Payments System Risk" Section II.A. under the subheading "Procedures for Measuring Daylight Overdrafts" as follows in *italic*.

##### *Procedures for Measuring Daylight Overdrafts*<sup>17</sup>

##### *Opening Balance (Previous Day's Closing Balance)*

Post at 8:30 a.m. Eastern Time:  
+/-Government and commercial ACH transactions<sup>18</sup>

<sup>17</sup>This schedule of posting rules does not affect the overdraft restrictions and overdraft-measurement provisions for nonbank banks established by the Competitive Equality Banking Act of 1987 and the Board's Regulation Y (12 CFR 225.52).

<sup>18</sup>Institutions that are monitored in real time must fund the total amount of their commercial ACH credit originations in order for the transactions to be processed. If the Federal Reserve receives commercial ACH credit transactions from institutions monitored in real time after the scheduled close of the Fedwire Funds Service, these transactions will be processed at 12:30 a.m. the next business day, or by the ACH deposit deadline, whichever is earlier. The Account Balance Monitoring System provides intraday account information to the Reserve Banks and institutions and is used primarily to give authorized Reserve Bank personnel a mechanism to control and monitor account activity for selected institutions. For more information on ACH transaction processing, refer to the ACH Settlement Day Finality Guide available through the Federal Reserve Financial Services Web site at <http://www.frbservices.org>

- + Treasury Electronic Federal Tax Payment System (EFTPS) investments from ACH transactions
- + Advance-notice Treasury investments
- + Treasury checks, postal money orders, local Federal Reserve Bank checks, and EZ-Clear savings bond redemptions in separately sorted deposits; these items must be deposited by 12:01 a.m. local time or the local deposit deadline, whichever is later
- Penalty assessments for tax payments from the Treasury Investment Program (TIP).<sup>19</sup>

\* \* \* \* \*

By order of the Board of Governors of the Federal Reserve System, February 28, 2008.

Jennifer J. Johnson,  
Secretary of the Board.

[FR Doc. E8-4183 Filed 3-4-08; 8:45 am]

BILLING CODE 6210-01-P

#### GENERAL SERVICES ADMINISTRATION

##### Federal Travel Regulation (FTR); Maximum Per Diem Rates for the States of Alabama, California, Illinois, Missouri, New York, and Texas

**AGENCY:** Office of Governmentwide Policy, General Services Administration (GSA).

**ACTION:** Notice of Per Diem Bulletin 08-03, revised continental United States (CONUS) per diem rates.

**SUMMARY:** The General Services Administration (GSA) has reviewed the per diem rates for certain locations in the States of Alabama, California, Illinois, Missouri, and Texas, using more current lodging industry data, as well as data on where Federal travelers actually stay when visiting these locations. The county information for St. Louis, Missouri has expanded to include the counties of Crawford, Franklin, Jefferson, Lincoln, Warren, and Washington. Queens, New York will have the same per diem rates as Manhattan beginning March 17, 2008.

Finally, an analysis of the meals and incidental expenses (M&IE) data reveals that the maximum M&IE rates for the State of Alabama, the city of Mobile, including the county of Mobile; the State of California, the cities of Eureka, Arcata, and McKinleyville, including the county of Humboldt; and the State

<sup>19</sup>The Reserve Banks will identify and notify institutions with Treasury-authorized penalties on Thursdays. In the event that Thursday is a holiday, the Reserve Banks will identify and notify institutions with Treasury-authorized penalties on the following business day. Penalties will then be posted on the business day following notification.

of Texas, the city of Beaumont, including the county of Jefferson, should be increased and adjusted to provide for the reimbursement of Federal employees' M&IE expenses.

The per diem rates prescribed in Bulletin 08-03 may be found at <http://www.gsa.gov/perdiem>.

**DATES:** This notice is effective March 17, 2008 and applies to travel performed on or after March 17, 2008.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr. Cy Greenidge, Office of Governmentwide Policy, Travel Management Policy, at (202) 219-2349. Please cite FTR Per Diem Bulletin 08-03.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

After an analysis of the per diem rates established for FY 2008 (see the **Federal Register** notice at 72 FR 43642, August 6, 2007), the per diem rate is being changed in the following locations:

##### State of Alabama

- Mobile County

##### State of California

- Humboldt County
- Monterey County

##### State of Illinois

- Bond County
- Calhoun County
- Clinton County
- Jersey County
- Macoupin County
- Madison County
- Monroe County
- St. Clair County

##### State of Missouri

- St. Louis City
- St. Louis County
- St. Charles County
- Crawford County
- Franklin County
- Jefferson County
- Lincoln County
- Warren County
- Washington County

##### State of New York

- The borough of Queens

##### State of Texas

- Jefferson County

Per diem rates are published on the Internet at <http://www.gsa.gov/perdiem> as an FTR Per Diem Bulletin and published in the **Federal Register** on a periodic basis. This process ensures timely increases or decreases in per diem rates established by GSA for Federal employees on official travel within CONUS. Notices published periodically in the **Federal Register**,

such as this one, now constitute the only notification of revisions in CONUS per diem rates to agencies.

Dated: March 3, 2008.

**Russell H. Pentz,**

*Assistant Deputy Associate Administrator,  
Office of Travel, Transportation and Asset  
Management.*

[FR Doc. E8-4593 Filed 3-6-08; 8:45 am]

BILLING CODE 6820-14-P

## GENERAL SERVICES ADMINISTRATION

### Notice of Intent To Prepare a Supplemental Environmental Impact Statement for the Proposed Update to the Master Plan for the Consolidation of the Food and Drug Administration Headquarters at the Federal Research Center at White Oak in Silver Spring, MD

**AGENCY:** General Service Administration (GSA); National Capital Region.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality Regulations (40 CFR parts 1500-1508), GSA Order PBS P1095.1F (Environmental considerations in decisionmaking, date October 19, 1999), and the GSA Public Buildings Service NEPA Desk Guide, GSA plans to prepare a Supplemental Environmental Impact Statement (SEIS) for the proposed update to the Master Plan to support the consolidation of the Food and Drug Administration (FDA) Headquarters at the Federal Research Center at White Oak in Silver Spring, Maryland.

**FOR FURTHER INFORMATION CONTACT:**

Suzanne Hill, NEPA Lead, General Services Administration, National Capital Region, at (202) 205-5821. Please also call this number if special assistance is needed to attend and participate in the scoping meeting.

**SUPPLEMENTARY INFORMATION:** The notice of intent is as follows:

### Notice of Intent To Prepare a Supplement Environmental Impact Statement

The General Services Administration intends to prepare a Supplemental Environmental Impact Statement (SEIS) to analyze the potential impacts resulting from the proposed Master Plan update to support the FDA Headquarters consolidation at the Federal Research Center (FRC) at White Oak in Silver Spring, Maryland.

This SEIS is a supplement to the analyses presented in the *U.S. Food and*

*Drug Administration Consolidation, Montgomery County, Final Environmental Impact Statement, April 1997 and the U.S. Food and Drug Administration Headquarters Consolidation, Final Supplemental Environmental Impact Statement, March 2005.*

### Background

In 1997, GSA completed an environmental impact statement that analyzed the impacts from the consolidation of 5,974 FDA employees at the FRC. In 2005, GSA also completed a supplemental environmental impact statement that analyzed the impacts of increasing the number of employees from 5,947 to 7,720 and the impacts of creating a new eastern access point into the FRC. In September 2007, new legislation was enacted that expanded FDA's mandate to support the Prescription Drug User Fee Act (PDUFA) and the Medical Device User Fee and Modernization Act (MDUFMA). In order for FDA to fulfill the legislated mandates, additional employees may be needed, and the new legislation will likely result in an increase of employees at the FRC from 7,720 to 8,889. The increase in the campus population is needed to conduct the complex and comprehensive reviews necessary for new drugs and medical devices.

The purpose of the proposed action is to update the Master Plan for the FDA Campus at FRC to accommodate employee growth from 7,720 to 8,889 within the 130 acres appropriated by Congress for the FDA Campus. Need for the proposed action is to continue to support FDA Headquarters consolidation at FRC and provide the necessary office and laboratory space to support the expanded PDUFA and MDUFMA programs.

### Alternatives Under Consideration

GSA will analyze a range of alternatives including the no action alternative for the proposed Master Plan update of the FDA headquarters to support PDUFA and MDUFMA programs. As part of the SEIS, GSA will study the impacts of each alternative on the human environment.

### Scoping Process

In accordance with NEPA, a scoping process will be conducted to aid in determining the alternatives to be considered and the scope of issues to be addressed, as well as for identifying the significant issues related to the proposed update of the Master Plan to accommodate the additional increase in employees at the FDA Headquarters at White Oak, Maryland. Scoping will be

accomplished through a public scoping meeting, direct mail correspondence to potentially interested persons, agencies, and organizations, and meetings with agencies having an interest in the FRC. It is important that Federal, regional, State, and local agencies, and interested individuals and groups take this opportunity to identify environmental concerns that should be addressed during the preparation of the Draft SEIS.

### Public Scoping Meeting

The public scoping meeting will be held on Thursday, March 27, 2008, from 6:30 until 8:30 p.m. at the CHI Center (Multipurpose Room) located at 10501 New Hampshire Avenue, Silver Spring, Maryland. The meeting will be an informal open house along with a brief presentation, where visitors may come, receive information, and give comments. GSA will publish notices in the Washington Post and local newspapers announcing this meeting approximately two weeks prior to the meeting. GSA will prepare a scoping report, available to the public, that will summarize the comments received and facilitate their incorporation into the SEIS process.

*Written Comments:* Agencies and the public are encouraged to provide written comments on the scoping issues in addition to or in lieu of giving their comments at the public scoping meeting. Written comments regarding the environmental analysis for the proposed Master Plan update must be postmarked no later than April 7, 2008, and sent to the following address: General Services Administration, Attention: Suzanne Hill, NEPA Lead, 301 7th Street, SW., Room 7600, Washington, DC 20407, (202) 205-5821. E-mail: [Suzanne.Hill@gsa.gov](mailto:Suzanne.Hill@gsa.gov).

Dated: March 3, 2008.

**Patricia T. Ralston,**

*Director, Portfolio Management.*

[FR Doc. E8-4579 Filed 3-6-08; 8:45 am]

BILLING CODE 6820-14-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[60 Day-08-08AR]

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on

proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404-639-5960 or send comments to Maryam Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an e-mail to [omb@cdc.gov](mailto:omb@cdc.gov).

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; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

#### Proposed Project

CDC Cervical Cancer Study—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

#### Background and Brief Description

The National Breast and Cervical Cancer Early Detection Program (NBCCEDP) is the only organized national screening program in the United States that offers breast and cervical cancer screening to

underserved women. Given resource limitations, the screening policies for cervical cancer in the program include an annual Pap test until a woman has had three consecutive normal Pap tests, at which time the Pap test frequency is reduced to every three years. Human papillomavirus (HPV) DNA testing has been approved in the U.S. as a secondary screening tool for Atypical Squamous Cells of Undetermined Significance (ASCUS), and as a primary screening tool for women 30 years of age and older, but it is not currently a reimbursable expense under NBCCEDP guidelines. Adopting HPV DNA testing along with Pap testing in women over 30 could help the program better utilize resources by extending the screening interval of women who are cytology negative and HPV test negative, which is estimated to be 80–90% of women.

In 2005, the NBCCEDP convened an expert panel to evaluate policies on reimbursement of the HPV DNA test as an adjunct to the Pap test for primary screening. The panel recommended that the program not reimburse for the HPV DNA test but instead requested that pilot studies be performed to measure the feasibility, acceptability and barriers to use of the test.

In response to the expert panel's recommendations, CDC proposes to conduct a pilot study at 18 clinics in the state of Illinois. The proposed study will examine whether or not there is an increase in the cervical cancer screening interval to three years for women in the target age range with a normal Pap test and a negative HPV DNA test. Primary goals of the study are to: (1) Assess whether provider and patient education will lead to extended screening intervals for women who have negative screening results; (2) identify facilitators and

barriers to acceptance and appropriate use of the HPV test and longer screening intervals; (3) track costs associated with HPV testing and educational interventions; and (4) identify the HPV genotypes among this sample of low income women. Secondary goals of the study are to: (1) Assess follow-up of women with positive test results and (2) determine provider knowledge and acceptability of the HPV vaccine.

Approximately 8,000 women between the ages of 35 and 60 who are visiting one of 18 participating clinics for routine cervical cancer screening will be recruited for the study. Approximately 10,000 women must be screened in order to identify 8,000 who are both eligible and willing to be enrolled in the study. The study design calls for data collection over a five-year period. Information will be collected primarily from a total of 70 clinical care providers, 18 clinic coordinators, and a sample of 2,600 patients.

CDC plans to request OMB approval for data collection activities to be conducted during the first three years. (Phase I) of the five-year project. The results of this study will provide information about knowledge, attitudes, beliefs, and cervical cancer screening practices involving low-income, underserved women, who represent the demographic most needy of highly sensitive screening methodologies that can increase the likelihood of detecting cervical dysplasia at less frequent screening intervals. The findings from this study will help inform policy regarding the HPV DNA test on a national level for cervical cancer screening in the NBCCEDP.

There are no costs to respondents other than their time.

#### ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hr)	Total burden (in hr)
Health Care Providers .....	Baseline Survey for Providers.	23	1	30/60	12
	Follow-up Survey for Providers.	23	2	30/60	23
Patients .....	Screening Script for Patients	3,333	1	5/60	278
	Enrollment Form .....	2,667	1	5/60	222
	Baseline Survey for Patients	867	1	15/60	217
	Follow-up Survey for Patients.	624	1	10/60	104
Clinic Coordinators .....	Baseline Survey for Clinic Coordinators.	6	1	2	12
	Follow-up Survey for Clinic Coordinators.	6	11	1	66
Total .....					934



Dated: February 28, 2008.

**Maryam I. Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E8-4492 Filed 3-6-08; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### Statement of Organization, Functions, and Delegations of Authority

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS), (**Federal Register**, Vol. 72, No. 248, pp. 73847-73850, dated Friday, December 28, 2007) is amended to reflect updates to the functions for the Center for Beneficiary Choices and the Office of E-Health Standards and Services.

Part F. is described below:

• Section F. 20. (Functions) reads as follows:

#### Center for Beneficiary Choices (FAE)

• Serves as Medicare Beneficiary Ombudsman, as well as the focal point for all Agency interactions with beneficiaries, their families, care givers, health care providers, and others operating on their behalf concerning improving beneficiary's ability to make informed decisions about their health and about program benefits administered by the Agency. These activities include strategic and implementation planning, execution, assessment and communications.

• Assesses beneficiary and other consumer needs, develops and oversees activities targeted to meet these needs, and documents and disseminates results of these activities. These activities focus on Agency beneficiary service goals and objectives and include: Development of baseline and ongoing monitoring information concerning populations affected by Agency programs; development of performance measures and assessment programs; design and implementation of beneficiary services initiatives; development of communications channels and feedback mechanisms within the Agency and between the Agency and its beneficiaries and their representatives; and close collaboration with other Federal and State agencies and other stakeholders with a shared interest in better serving our beneficiaries.

• Develops national policy for all Medicare Parts A, B, C and D beneficiary eligibility, enrollment, entitlement; premium billing and collection; coordination of benefits; rights and protections; dispute resolution process; as well as policy for managed care enrollment and disenrollment to assure the effective administration of the Medicare program, including the development of related legislative proposals.

• Coordinates beneficiary-centered information, education, and service initiatives.

• Develops and tests new and innovative methods to improve beneficiary aspects of health care delivery systems through Title XVIII, XIX, and XXI demonstrations and other creative approaches to meeting the needs of Agency beneficiaries.

• Assures, in coordination with other Centers and Offices, the activities of Medicare contractors, including managed care plans, agents, and State Agencies meet the Agency's requirements on matters concerning beneficiaries and other consumers.

• Plans and administers the contracts and grants related to beneficiary and customer service, including the State Health Insurance Assistance Program grants.

• Formulates strategies to advance overall beneficiary communications goals and coordinates the design and publication process for all beneficiary-centered information, education, and service initiatives.

• Builds a range of partnerships with other national organizations for effective consumer outreach, awareness, and education efforts in support of Agency programs.

• Serves as the focal point for all Agency interactions with managed health care organizations for issues relating to Agency programs, policy and operations.

• Develops national policies and procedures related to the development, qualification and compliance of health maintenance organizations, competitive medical plans and other health care delivery systems and purchasing arrangements (such as prospective pay, case management, differential payment, selective contracting, etc.) necessary to assure the effective administration of the Agency's programs, including the development of statutory proposals.

• Handles all phases of contracts with managed health care organizations eligible to provide care to Medicare beneficiaries.

• Coordinates the administration of individual benefits to assure appropriate focus on long term care, where

applicable, and assumes responsibility for the operational efforts related to the payment aspects of long term care and post-acute care services.

• Serves as the focal point for all Agency interactions with employers, employees, retirees and others operating on their behalf pertaining to issues related to Agency policies and operations concerning employer sponsored prescription drug coverage for their retirees.

• Develops national policies and procedures to support and assure appropriate State implementation of the rules and processes governing group and individual health insurance markets and the sale of health insurance policies that supplement Medicare coverage.

• Primarily responsible for all operations related to Medicare Prescription Drug Plans and Medicare Advantage Prescription Drug (Part D) plans.

• Performs activities related to the Medicare Parts A & B processes (42 CFR part 405, subparts G and H), part C (42 CFR part 422, subpart M), part D (42 CFR part 423, subpart M) and the PACE program for claims-related hearings, appeals, grievances and other dispute resolution processes that are beneficiary-centered.

• Develops, evaluates, and reviews regulations, guidelines, and instructions required for the dissemination of appeals policies to Medicare beneficiaries, Medicare contractors, Medicare Advantage (MA) plans, Prescription Drug Plans (PDPs), CMS regional offices, beneficiary advocacy groups and other interested parties.

#### Office of E-Health Standards and Services (FHA)

• Develops and coordinates implementation of a comprehensive e-health strategy for CMS. Coordinates and supports internal and external technical activities related to e-health services and ensures that individual initiatives tie to the overall agency and Federal e-health goals strategies.

• Promotes and leverages innovative component initiatives. Facilitates cross-component awareness of various e-health projects.

• Develops regulations and guidance materials, and provides technical assistance on the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), including transactions, code sets, identifiers, and security.

• Develops and implements the enforcement program for HIPAA

#### Administrative Simplification provisions.

- Develops and implements an outreach program for HIPAA Administrative Simplification provisions. Formulates and coordinates a public relations campaign, prepares and delivers presentations and speeches, responds to inquiries on HIPAA issues, and maintains liaison with industry representatives.
- Adopts and maintains messaging and vocabulary standards supporting electronic prescribing under Medicare Part D.
- Serves as agency point of reference on Federal and private sector e-health initiatives. Works with Federal departments and agencies to identify and adopt universal messaging and clinical health data standards, and represents CMS and HHS in national projects supporting the national health enterprise architecture and the national health information infrastructure.
- Coordinates and provides guidance on legislative and regulatory issues related to e-health standards and services.
- Collaborates with HHS on policy issues related to e-health standards, and serves as the central point of contact for the Office of the National Coordinator for Health Information Technology.
- Oversees the development of privacy and confidentiality policies pertaining to the collection, use, and release of individually identifiable data.

Dated: October 19, 2007.

**Karen Pelham O'Steen,**

*Director, Office of Operations Management, Centers for Medicare & Medicaid Services.*

**Editorial Note:** This document was received at the Office of the Federal Register on Tuesday, March 4, 2008.

[FR Doc. E8-4585 Filed 3-6-08; 8:45 am]

BILLING CODE 4120-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2008-N-0146]

#### Agency Information Collection Activities; Proposed Collection; Comment Request; Requirements for Collection of Data Relating to the Prevention of Medical Gas Mix-ups at Health Care Facilities-Survey

**AGENCY:** Food and Drug Administration, HHS.

#### **ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on measures, taken by certain health care medical facilities that use medical oxygen, to present mix-ups with other gases.

**DATES:** Submit written or electronic comments on the collection of information by May 6, 2008.

**ADDRESSES:** Submit electronic comments on the collection of information to <http://www.regulations.gov>. Submit written comments on the collection of information to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Berbakos, Office of the Chief Information Officer (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1482.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice

of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

#### Requirements for Collection of Data Relating to the Prevention of Medical Gas Mix-ups at Health Care Facilities-Survey—(OMB Control Number 0910-0548)—Extension

FDA has received four reports of medical gas mix-ups occurring during the past 9 years. These reports were received from hospitals and nursing homes and involved 7 deaths and 15 injuries to patients who were thought to be receiving medical grade oxygen, but who were actually receiving a different gas (e.g., nitrogen, argon) that had been mistakenly connected to the facility's oxygen supply system. In 2001, FDA published guidance making recommendations to help hospitals, nursing homes, and other health care facilities avoid the tragedies that result from medical gas mix-ups and alerting these facilities to the hazards. This survey is intended to assess the degree of facilities' compliance with safety measures to prevent mix-ups, to determine if further steps are warranted to ensure the safety of patients.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN<sup>1</sup>

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
210 and 211	285	1	285	.25	71.25
Total	285	1	285	.25	71.25

<sup>1</sup>There are no capital costs or operating and maintenance costs associated with this collection of information.

Please note that on January 15, 2008, the FDA Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic submissions will be accepted by FDA through FDMS only.

Dated: February 29, 2008.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E8-4474 Filed 3-6-08; 8:45 am]

BILLING CODE 4160-01-S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2008-N-0130]

#### Determination That RELAFEN (Nabumetone) Tablets and Three Other Drug Products Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined that the four drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to

withdraw approval of abbreviated new drug applications (ANDAs) that refer to the drug products, and it will allow FDA to continue to approve ANDAs that refer to the products as long as they meet relevant legal and regulatory requirements.

#### FOR FURTHER INFORMATION CONTACT:

Olivia A. Pritzlaff, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6308, Silver Spring, MD 20993-0002, 301-796-3601.

**SUPPLEMENTARY INFORMATION:** In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98-417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved. Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products With Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a) (21 CFR 314.161(a)), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness: (1) Before an ANDA that refers to that listed drug may be approved or (2) whenever a listed drug is voluntarily withdrawn from sale, and ANDAs that refer to the listed drug have been approved. Section 314.161(d) provides that if FDA determines that a listed drug was removed from sale for safety or effectiveness reasons, the agency will initiate proceedings that could result in the withdrawal of approval of the ANDAs that refer to the listed drug.

FDA has become aware that the drug products listed in the table in this document are no longer being marketed.

NDA No.	Drug	Applicant
19-583	RELAFEN (nabumetone) Tablets, 500 milligrams (mg) and 750 mg	GlaxoSmithKline (formerly SmithKlineBeecham), 2301 Renaissance Blvd., P.O. Box 161540, King of Prussia, PA 19406-2772
19-643	MEVACOR (lovastatin) Tablets, 10 mg	Merck & Co., One Merck Dr., P.O. Box 100, Whitehouse Station, NJ 08889-0100
50-416	CORTISPORIN Ophthalmic Ointment (bacitracin zinc; hydrocortisone; neomycin sulfate; polymyxin B sulfate) 400 units/gram (g); 1 percent; equivalent to 3.5 mg base/g; 10,000 units/g	Monarch Pharmaceuticals, Inc., 501 Fifth Street, Bristol, TN 37620
50-461	ANCEF (cefazolin sodium) Injection, 250 mg base/vial, 500 mg base/vial, 5 g base/vial	GlaxoSmithKline

FDA has reviewed its records and, under § 314.161, has determined that

the drug products listed in this document were not withdrawn from

sale for reasons of safety or effectiveness. Accordingly, the agency

will continue to list the drug products listed in this document in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" identifies, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness.

Approved ANDAs that refer to the NDAs listed in this document are unaffected by the discontinued marketing of the products subject to those NDAs. Additional ANDAs for the products may also be approved by the agency if they comply with relevant legal and regulatory requirements. If FDA determines that labeling for these drug products should be revised to meet current standards, the agency will advise ANDA applicants to submit such labeling.

Dated: February 29, 2008.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E8-4469 Filed 3-6-08; 8:45 am]

BILLING CODE 4160-01-S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2008-D-0142]

#### Draft Guidance for Industry and Review Staff on Nonclinical Safety Evaluation of Reformulated Drug Products and Products Intended for Administration by an Alternate Route; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry and review staff entitled "Nonclinical Safety Evaluation of Reformulated Drug Products and Products Intended for Administration by an Alternate Route." The draft guidance provides recommendations concerning development of safety profiles to support approval of reformulated drug products and products proposed for use by a route of administration for which the product was not previously approved.

**DATES:** Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit

written or electronic comments on the draft guidance by May 6, 2008.

**ADDRESSES:** Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD-240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.regulations.gov>. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

**FOR FURTHER INFORMATION CONTACT:** Paul Brown, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 5172, Silver Spring, MD 20993-0002, 301-796-0856.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

FDA is announcing the availability of a draft guidance for industry and review staff entitled "Nonclinical Safety Evaluation of Reformulated Drug Products and Products Intended for Administration by an Alternate Route." This draft guidance is intended for individuals or organizations and review staff in the Center for Drug Evaluation and Research involved in the development and review of new formulations of products containing previously approved drug substances and proposals for existing formulations to be used in a new route of administration. This draft guidance assumes that the drug substance has already been used in an approved drug product. It outlines the nonclinical information generally recommended to support the development of a new formulation containing a previously approved drug substance.

This draft guidance also provides nonclinical evaluation information for formulations intended for use by new routes of administration even if there is no change in the composition of the formulation. Although this situation does not represent a reformulation, it is appropriate in this case to reevaluate the toxicity information using considerations outlined in the draft guidance.

This draft guidance does not absolve the sponsor from providing complete nonclinical information for a drug product, either directly or through a

right of reference to such information or by relying on the finding of safety and effectiveness for a listed drug and establishing a clinical bridge to that listed drug. This draft guidance pertains to new formulations containing previously approved drug substances only and does not address the safety evaluation of excipients.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on the safety evaluation of reformulated drug products, including products intended for administration by an alternate route. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

##### II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic submissions will be accepted by FDA through FDMS only.

##### III. Electronic Access

Persons with access to the Internet may obtain the document at either <http://www.fda.gov/cder/guidance/index.htm> or <http://www.fda.gov/ohrms/dockets/default.htm>.

Dated: February 29, 2008.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E8-4481 Filed 3-6-08; 8:45 am]

BILLING CODE 4160-01-S

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**
**Food and Drug Administration**

[Docket No. FDA-2008-N-0138] (formerly Docket No. 2007N-0313)

**Outcome of Meeting of the International Cooperation on Cosmetic Regulation, September 26-28, 2007; Availability**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of the International Cooperation on Cosmetic Regulation (ICCR) Outcome of Meeting, September 26-28, 2007. This notice is in keeping with an FDA/ICCR commitment to transparency as well as providing opportunity for public comment.

**DATES:** To ensure that the agency considers your comment on this ICCR outcome of meeting, please submit written or electronic comments on the outcome of meeting by July 2, 2008.

**ADDRESSES:** Submit written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Michelle Limoli, Office of the Commissioner, Office of International Programs (HFG-1), Food and Drug Administration, 5600 Fishers Lane, rm. 15A-55, Rockville, MD 20857.

**SUPPLEMENTARY INFORMATION:**
**I. Background**

ICCR is a voluntary international group of cosmetics regulatory authorities from the United States, Japan, the European Union, and Canada. It should be noted that the definition and regulatory classification of "cosmetics" in the different countries/regions is not identical. For this reason, ICCR will consider some U.S. over-the-counter drugs that are regulated as "cosmetics" outside the United States. ICCR members are: FDA; the Ministry of Health, Labor, and Welfare of Japan; the European Commission Directorate General Enterprise; and Health Canada. This multilateral framework was created to identify ways to remove regulatory obstacles among the regions, while maintaining the highest level of global consumer protection. The first group meeting occurred in Brussels, Belgium, September 26-28, 2007.

ICCR will operate on a consensus basis whereby all decisions of the representatives of the regulatory members and subsequent actions must be taken by consensus. Members agree to take steps as appropriate to implement the items that have reached consensus within the boundaries of their legal and institutional constraints. In this respect, they agree to promote the documents reflecting the consensus within their own jurisdictions and to seek convergence of regulatory policies and practices.

The members' responsibilities will include providing overall strategic guidance and direction to activities of ICCR; defining subject areas for ICCR activities and deciding on future topics for activity; exchanging information on regulatory, trade, and market developments of interest; determining policies related to the ICCR process, administration, and external communications; appointing ad-hoc working groups to carry out technical work as needed; adopting guidelines and policy statements, including those developed by the ad-hoc working groups; and taking on any other initiatives that contribute to achieving ICCR objectives.

It is recognized that successful implementation requires the input of a constructive dialogue with the cosmetics' industry trade associations and other relevant stakeholders, hence the scheduling of this public meeting.

The industry trade associations of each region will gather input in order to represent all affected industry sectors on specific issues at ICCR meetings. Well in advance of ICCR meetings (to allow adequate time for preparation), industry will suggest items for priority actions to be considered by ICCR members. During the ICCR meeting, industry trade associations will enter in a constructive dialogue with the members and give their opinion and directions for future work.

According to specific needs, on an ad-hoc and temporary basis members may establish ICCR working groups with a precise mandate. Working groups are created primarily for the purpose of developing proposed guidelines and policy statements for adoption by the members. The working group participants are appointed by consensus of the members. Outside technical experts may be invited on an as-needed basis.

ICCR will meet at least once per year, but may alter the frequency of meetings if considered necessary to ensure progress. The venue of meetings rotates among the territory of the four members.

**II. Comments**

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic submissions will be accepted by FDA through FDMS only.

**III. Electronic Access**

Persons with access to the Internet may obtain the outcome of meeting document at <http://www.fda.gov/ohrms/dockets/default.htm>.

Dated: February 29, 2008.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E8-4476 Filed 3-6-08; 8:45 am]

BILLING CODE 4160-01-S

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**
**Office of Inspector General**
**Office of the Secretary; Statement of Organization, Functions, and Delegations of Authority**

This notice amends Part A (Office of the Secretary), chapter AF of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (HHS) to reflect a title change and adjusted responsibilities within the Office of Inspector General's (OIG) Office of Evaluation and Inspections (OEI) to better reflect the current work environment and responsibilities with regard to (1) oversight activities of the State Medicaid Fraud Control Units, and (2) coordinative efforts within the Technical Support unit with the Chief Information Officer for technology support and compliance on information security requirements. Chapter AF was last amended on December 21, 2006 (71 FR 76676).

As amended, sections AFE.10 and AFE.20 of Chapter AF now read as follows:

\* \* \* \* \*



**Section AFE.10, Office of Evaluation and Inspections—Organization**

This office is comprised of the following components:

- A. Immediate Office.
- B. Budget and Administrative Resources Division.
- C. Evaluation Planning and Support Division.
- D. Regional Operations.
- E. Technical Support Staff.
- F. Medicaid Fraud Policy and Oversight Staff.

**Section AFE.20, Office of Evaluation and Inspections—Function**

\* \* \* \* \*

**B. Budget and Administrative Resources**

This office develops OEI's evaluation and inspection policies, procedures, and standards. It manages OEI's human and financial resources; monitors OEI's management information systems; and conducts management reviews within HHS/OIG and for other OIGs upon request. The office carries out and maintains an internal quality assurance system that includes quality assessment studies and quality control reviews of OEI processes and products to ensure that policies and procedures are effective, followed, and function as intended.

\* \* \* \* \*

**E. Technical Support**

This office provides statistical and database advice and services for inspections conducted by the regional offices. It carries out analyses of large databases to identify potential areas of fraud and abuse. The office also coordinates with the Office of Management and Policy and Chief Information Officer for technology support and compliance with information security requirements and government mandates, regulations, and guidelines.

**F. Medicaid Fraud Policy and Oversight Staff**

The Medicaid Fraud Policy and Oversight Staff is responsible for overseeing the activities of the 50 State Medicaid Fraud Control Units (MFCUs) (49 States and the District of Columbia). The staff provides advice and policy determinations to the Deputy Inspector General, OEI, in matters involving the planning, discussion, and coordination of policy and oversight activities affecting State MFCUs. The division ensures the MFCUs' compliance with Federal grant regulations, administrative rules, and performance standards. It is also responsible for certifying and recertifying the MFCUs on an annual basis.

\* \* \* \* \*

Dated: March 3, 2008.

**Daniel R. Levinson,**  
Inspector General.

[FR Doc. E8-4453 Filed 3-6-08; 8:45 am]

BILLING CODE 4152-01-P

**DEPARTMENT OF HOMELAND SECURITY**

[Docket No. DHS-2008-2027]

**Homeland Security Science and Technology Advisory Committee**

**AGENCY:** Science and Technology Directorate, DHS.

**ACTION:** Committee Management; Notice of Closed Federal Advisory Committee Meeting.

**SUMMARY:** The Homeland Security Science and Technology Advisory Committee will meet March 20-21, 2008 at Booz Allen Hamilton, 3811 North Fairfax Drive, Arlington, VA 22203. The meeting will be closed to the public.

**DATES:** The Homeland Security Science and Technology Advisory Committee will meet March 20, 2008 from 9 a.m. to 5 p.m.; and on March 21, 2008, from 8:30 a.m. to 4:30 p.m.

**ADDRESSES:** The meeting will be held at Booz Allen Hamilton, 3811 North Fairfax Drive, Arlington, VA 22203. Requests to have written material distributed to each member of the committee prior to the meeting should reach the contact person at the address below by March 12, 2008. Send written material to Ms. Deborah Russell, Science and Technology Directorate, Department of Homeland Security, 245 Murray Drive, Bldg. 410, Washington, DC 20528. Comments must be identified by docket number DHS-2008-2027 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* [HSSTAC@dhs.gov](mailto:HSSTAC@dhs.gov). Include the docket number in the subject line of the message.

- *Fax:* 202-254-6177.

- *Mail:* Ms. Deborah Russell, Science and Technology Directorate, Department of Homeland Security, 245 Murray Drive, Bldg. 410, Washington, DC 20528.

**Instructions:** All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at [www.regulations.gov](http://www.regulations.gov), including any personal information provided.

**Docket:** For access to the docket to read background documents or comments received by the Homeland Security Science and Technology Advisory Committee, go to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah Russell, Science and

Technology Directorate, Department of Homeland Security, 245 Murray Drive, Bldg. 410, Washington, DC 20528, 202-254-5739.

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92-463).

The committee will meet for the purpose of receiving sensitive Homeland Security and classified briefings on Cyber Security, Chemical-Biological Defense and S&T Program Assessments.

**Basis for Closure:** In accordance with Section 10(d) of the Federal Advisory Committee Act, this HSSTAC meeting will concern classified and sensitive matters within the meaning of 5 U.S.C. 552b(c)(1) and (c)(9)(B), which, if prematurely disclosed, would significantly jeopardize national security and frustrate implementation of proposed agency actions, and that accordingly, the meeting will be closed to the public.

Dated: February 29, 2008.

Jay M. Cohen,

*Under Secretary for Science and Technology.*

[FR Doc. E8-4607 Filed 3-6-08; 8:45 am]

BILLING CODE 4410-10-P

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard**

[USCG-2008-0052]

**Information Collection Request to Office of Management and Budget; OMB; Control Number: 1625-NEW**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Sixty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) and Analysis to the Office of Management and Budget (OMB) requesting an approval for the following collection of information: 1625-NEW, Proceedings of the Marine Safety and Security Council, the Coast Guard Journal of Safety and Security at Sea; online subscription request form. Before submitting this ICR to OMB, the Coast Guard is inviting comments as described below.

**DATES:** Comments must reach the Coast Guard on or before May 6, 2008.

**ADDRESSES:** To prevent duplicate submissions to the docket [USCG-2008-0052], please submit them by only one of the following means:

(1) *Online:* <http://www.regulations.gov>.

(2) *Mail:* Docket Management Facility (DMF) (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(3) Hand deliver between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

(4) *Fax:* 202-493-2251.

The DMF maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room W12-140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://www.regulations.gov>.

A copy of the complete ICR is available through this docket on the Internet at <http://www.regulations.gov>. Additionally, copies are available from Commandant (CG-611), U.S. Coast Guard Headquarters, (Attn: Mr. Arthur Requina), 2100 2nd Street, SW., Washington, DC 20593-0001. The telephone number is 202-475-3523.

**FOR FURTHER INFORMATION CONTACT:** Mr. Arthur Requina, Office of Information Management, telephone 202-475-3523, or fax 202-475-3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202-366-9826, for questions on the docket.

#### SUPPLEMENTARY INFORMATION:

#### Public Participation and Request for Comments

We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to <http://www.regulations.gov>. They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the paragraph on DOT's "Privacy Act Policy" below.

*Submitting comments:* If you submit a comment, please include the docket number [USCG-2008-0052], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact

you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

*Viewing comments and documents:* Go to <http://www.regulations.gov> to view documents mentioned in this notice as being available in the docket. Enter the docket number [USCG-2008-0052] in the Search box, and click, "Go>>". You may also visit the DMF in room W12-140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy Act:* Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or by visiting <http://DocketsInfo.dot.gov>.

#### Information Collection Request

*Title:* Proceedings of the Marine Safety and Security Council, the Coast Guard Journal of Safety and Security at Sea.

*OMB Control Number:* 1625-NEW.

*Summary:* As a service to its potential subscribers, *Proceedings* seeks to add an online subscription request form to its Web site. Under Title 33 CFR 1.05-5, the Marine Safety and Security Council is composed of senior Coast Guard officials and acts as policy advisor to the Commandant and is the focal point of the Coast Guard regulatory system. The principal objective of *Proceedings of the Marine Safety and Security Council, the Coast Guard Journal of Safety and Security at Sea* is to inform the maritime industry it serves about the Coast Guard's operations and marine safety, security, environmental protection policies, regulations, and program goals.

*Need:* Having access to an online subscription request form would reduce

the burden of subscribing to *Proceedings*.

*Respondents:* Any person who requests *Proceedings of the Marine Safety & Security Council, the Coast Guard Journal of Safety & Security at Sea* online.

*Frequency:* On demand.

*Burden Estimate:* The estimated burden is 415 hours annually.

Dated: February 27, 2008.

**D.T. Glenn,**

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E8-4448 Filed 3-6-08; 8:45 am]

BILLING CODE 4910-15-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

[USCG-2008-0099]

#### Information Collection Request to Office of Management and Budget; OMB; Control Number: 1625-0109

**AGENCY:** Coast Guard, DHS.

**ACTION:** Sixty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) and Analysis to the Office of Management and Budget (OMB) requesting an extension of its approval for the following collection of information: 1625-0109, Drawbridge Operation Regulations. Before submitting this ICR to OMB, the Coast Guard is inviting comments as described below.

**DATES:** Comments must reach the Coast Guard on or before May 6, 2008.

**ADDRESSES:** To prevent duplicate submissions to the docket [USCG-2008-0099], please submit them by only one of the following means:

(1) *Online:* <http://www.regulations.gov>.

(2) *Mail:* Docket Management Facility (DMF) (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(3) Hand deliver between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

(4) *Fax:* 202-493-2251.

The DMF maintains the public docket for this notice. Comments and material

received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room W12-140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://www.regulations.gov>.

A copy of the complete ICR is available through this docket on the Internet at <http://www.regulations.gov>. Additionally, copies are available from Commandant (CG-611), U.S. Coast Guard Headquarters, (Attn: Mr. Arthur Requina), 2100 2nd Street, SW., Washington, DC 20593-0001. The telephone number is 202-475-3523.

**FOR FURTHER INFORMATION CONTACT:** Mr. Arthur Requina, Office of Information Management, telephone 202-475-3523, or fax 202-475-3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202-366-9826, for questions on the docket.

**SUPPLEMENTARY INFORMATION:**

**Public Participation and Request for Comments**

We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to <http://www.regulations.gov>. They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the paragraph on DOT's "Privacy Act Policy" below.

**Submitting comments:** If you submit a comment, please include the docket number [USCG-2008-0099], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received

during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

**Viewing comments and documents:** Go to <http://www.regulations.gov> to view documents mentioned in this notice as being available in the docket. Enter the docket number for this notice [USCG-2008-0099] in the Search box, and click "Go >>." You may also visit the DMF in room W12-140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Privacy Act:** Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or by visiting <http://DocketsInfo.dot.gov>.

**Information Collection Request**

**Title:** Drawbridge Operation Regulations.

**OMB Control Number:** 1625-0109.

**SUMMARY:** The Bridge Administration receives approximately 150 requests from bridge owners or the general public per year to change operating schedules of various drawbridges across the navigable waters of the United States (U.S.). The information needed for the change to an operating schedule can only be obtained from the bridge owner and is generally provided to the Coast Guard in writing.

**Need:** Section 499 of 33 U.S.C. authorizes the Coast Guard to change operating schedules for drawbridges that cross over navigable waters of the U.S.

**Respondents:** The public and private owners of bridges over navigable waters of the United States.

**Frequency:** On occasion.

**Burden Estimate:** The estimated burden remains 150 hours a year.

**Dated:** February 27, 2008.

**D.T. Glenn,**

*Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.*

[FR Doc. E8-4472 Filed 3-6-08; 8:45 am]

**BILLING CODE 4910-15-P**

**DEPARTMENT OF HOMELAND SECURITY**

**U.S. Citizenship and Immigration Services**

**Agency Information Collection Activities: Reinstatement and Revision of a Previously Approved Form**

**ACTION:** 30-Day Notice of Information Collection Under Review; Form I-485: Supplement C, HRIFA Supplement to Form I-485; OMB Control No. 1615-New.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on September 26, 2007, at 72 FR 54671, allowing for a 60-day public comment period. USCIS did not receive any comments on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 7, 2008. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd floor Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202-272-8352 or via e-mail at [rfs.regs@dhs.gov](mailto:rfs.regs@dhs.gov), and to the OMB USCIS Desk Officer via facsimile at 202-395-6974 or via e-mail at [kastrich@omb.eop.gov](mailto:kastrich@omb.eop.gov).

When submitting comments by e-mail, please make sure to type OMB Control Number 1615-New in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement and revision of a previously approved form.

(2) *Title of the Form/Collection:* HRIFA Supplement to Form I-485.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I-485 Supplement C; U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information provided on the Form I-485 Supplement C, in combination with the information collected on Form I-485 (Application to Register Permanent Resident or Adjust Status), is necessary in order for the U.S. Citizenship and Immigration Services (USCIS) to make a determination that the adjustment of status eligibility requirements and conditions are met by the applicant of Haitian nationality pursuant to HRIFA.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 2,000 respondents at 30 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit the USCIS Web site at: <http://www.regulations.gov>.

We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., 3rd floor, Suite 3008, Washington, DC 20529, telephone number 202-272-8377.

Dated: March 4, 2008.

**Arthur Moldenhauer,**  
*Acting Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.*  
[FR Doc. E8-4496 Filed 3-6-08; 8:45 am]  
**BILLING CODE 4410-10-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[ID 100 1220MA 241A: DBG081007]

#### Notice of Public Meeting: Joint Recreation Resource Advisory Council Subcommittee to the Boise and Twin Falls Districts, Bureau of Land Management, U.S. Department of the Interior.

**AGENCY:** Bureau of Land Management, U.S. Department of the Interior.

**ACTION:** Notice of Public Meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Boise and Twin Falls District Recreation Resource Advisory Council (Rec-RAC) Subcommittee, will hold a meeting as indicated below.

**DATES:** The meeting will be held on April 10, 2008, beginning at 9:30 a.m. and adjourning at p.m. The meeting location is the U.S. Department of Labor building, 450 Falls Avenue, Twin Falls, Idaho. Public comment periods will be held before the conclusion of the meeting.

**FOR FURTHER INFORMATION CONTACT:** MJ Byrne, Public Affairs Officer and RAC Coordinator, BLM Boise District, 3948 Development Ave., Boise, ID 83705, Telephone (208) 384-3393, or Heather Tiel-Nelson, Public Affairs Officer, Twin Falls District, 2536 Kimberly Rd., Twin Falls, ID 83301, (208) 735-2063.

**SUPPLEMENTARY INFORMATION:** In accordance with section 4 of the Federal Lands Recreation Enhancement Act of 2005, a Subcommittee has been established to provide advice to the Secretary of the Interior, through the BLM, in the form of recommendations that relate to public concerns regarding the implementation, elimination or expansion of an amenity recreation fee; or recreation fee program on public lands under the jurisdiction of the U.S. Forest Service and/or the BLM in both the Boise and Twin Falls Districts located in southern Idaho. Items on the agenda include review and discussion of information mailed by representatives

of the Boise and Sawtooth National Forests to the Subcommittee Members about proposed implementation, elimination or expansion of identified amenity recreation fees, or fee programs, and; formulation of recommendations for approval or rejection of the fee changes that will be brought before the two full RAC's meeting jointly on May 8, 2008, at the same location in Twin Falls, Idaho. Agenda items and location may change due to changing circumstances. All meetings are open to the public. The public may present written comments to the Subcommittee. Each formal subcommittee meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM Coordinators as provided above. Expedited publication is requested to give the public adequate notice.

Dated: March 3, 2008.

**David Wolf,**

*Associate District Manager.*

[FR Doc. E8-4490 Filed 3-6-08; 8:45 am]

**BILLING CODE 4310-GG-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CA-920-1310-FI]; [CAS 019806B]

#### Proposed Reinstatement of Terminated Oil and Gas Lease CAS 019806B

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Reinstatement of Terminated Oil and Gas Lease.

**SUMMARY:** Under the provisions of Public Law 97-451, Marvin Bultman and Kay L. Fike timely filed a petition for reinstatement of oil and gas lease CAS 019806B for lands in Kern County, California, and it was accompanied by all required rentals and royalties accruing from November 1, 2006, the date of termination.

**FOR FURTHER INFORMATION CONTACT:** Rita Altamira, Land Law Examiner, Branch of Adjudication, Division of Energy & Minerals, BLM California State Office, 2800 Cottage Way, W-1834, Sacramento, California 95825, (916) 978-4378.

**SUPPLEMENTARY INFORMATION:** No valid lease has been issued affecting the lands. The lessee has agreed to new



lease terms for rentals and royalties at rates of \$10.00 per acre or fraction thereof and 18 $\frac{2}{3}$  percent, respectively. The lessee has paid the required \$500 administrative fee and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice. The Lessee has met all the requirements for reinstatement of the lease as set out in sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate the lease effective November 1, 2006, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: February 28, 2008.

**Debra Marsh,**

*Supervisor, Branch of Adjudication, Division of Energy & Minerals.*

[FR Doc. E8-4589 Filed 3-6-08; 8:45 am]

BILLING CODE 4310-40-P

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

[MT-090-1430-ET; MTM 60957]

**Public Land Order No. 7690; Extension of Public Land Order No. 6664; Montana**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order extends the withdrawal created by Public Land Order No. 6664 for an additional 20-year period. This extension is necessary to continue protection of the Bureau of Land Management Petroglyph Canyon and Weatherman Draw Archeological Sites in Carbon County, Montana.

**DATES:** *Effective Date:* March 7, 2008.

**FOR FURTHER INFORMATION CONTACT:** Tom Carroll, BLM, Billings Field Office, 5001 Southgate Drive, Billings, Montana 59101-4669, (406) 896-5242, or Sandra Ward, BLM, Montana State Office, 5001 Southgate Drive, Billings, Montana 59101-4669, (406) 896-5052.

**SUPPLEMENTARY INFORMATION:** The withdrawal extended by this order will expire March 6, 2028, unless, as a result of a review conducted prior to the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (2000), the Secretary determines that the withdrawal shall be further extended.

**Order**

By virtue of the authority vested in the Secretary of the Interior by section

204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

Public Land Order No. 6664 (53 FR 7186), which withdrew 840 acres of public lands from settlement, sale, location, or entry under the general land laws, including the United States mining laws to protect the Petroglyph Canyon and Weatherman Draw Archeological Sites, is hereby extended for an additional 20-year period until March 6, 2028.

Dated: February 29, 2008.

**C. Stephen Allred,**

*Assistant Secretary, Land and Minerals Management.*

[FR Doc. E8-4584 Filed 3-6-08; 8:45 am]

BILLING CODE 4310-55-P

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

[MT-090-1430-ET; WYW 88887]

**Public Land Order No. 7691; Extension of Public Land Order No. 6665; Wyoming**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order extends the withdrawal created by Public Land Order No. 6665 for an additional 20-year period. This extension is necessary to continue protection of the Bureau of Land Management's Britton Springs Administrative Site and Crooked Creek Natural Area in Big Horn County, Wyoming which would otherwise expire on March 6, 2008.

**EFFECTIVE DATE:** March 7, 2008.

**FOR FURTHER INFORMATION CONTACT:** Janice MaChipiness, Bureau of Land Management, Billings Field Office, 5001 Southgate Drive, Billings, Montana 59101-4669, (406) 896-5263, or Sandra Ward, Bureau of Land Management, Montana State Office, 5001 Southgate Drive, Billings, Montana 59101-4669, (406) 896-5052.

**SUPPLEMENTARY INFORMATION:** The withdrawal extended by this order will expire March 6, 2028, unless, as a result of a review conducted prior to the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (2000), the Secretary determines that the withdrawal shall be further extended. Although the lands are located in Wyoming, they are administered by the Bureau of Land Management Montana State Office.

**Order**

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

Public Land Order No. 6665 (53 FR 7187 (1988)), which withdrew 180 acres of public lands from settlement, sale, location, or entry under the general land laws, including the United States mining laws, to protect the Crooked Creek Natural Area/National Natural Landmark and the Britton Springs Administrative Site, is hereby extended for an additional 20-year period until March 6, 2028.

Dated: February 29, 2008.

**C. Stephen Allred,**

*Assistant Secretary, Land and Minerals Management.*

[FR Doc. E8-4594 Filed 3-6-08; 8:45 am]

BILLING CODE 4310-55-P

**INTERNATIONAL TRADE COMMISSION**

[Inv. No. 337-TA-628]

**In the Matter of Certain Computer Products, Computer Components and Products Containing Same; Notice of Commission Determination Not To Review an Initial Determination Granting Complainant's 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 complainant's motion to amend the complaint and notice of investigation.

**FOR FURTHER INFORMATION CONTACT:** Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-3152. 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:** On January 14, 2008, the Commission instituted an investigation under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, based on a complaint filed by International Business Machines Corporation of Armonk, New York ("IBM"), alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain computer products, computer components, and products containing same by reason of infringement of certain claims of U.S. Patent Nos. 5,008,829; 5,249,741; and 5,371,852. 73 FR. 2275 (Jan. 14, 2008). The complainant named ASUS Computer International of Fremont, California, and ASUSTek Computer, Inc. of Peitou Taipei, Taiwan as respondents.

On January 31, 2008, complainant IBM moved for leave to amend the complaint and notice of investigation by adding two additional respondents, Pegatron Technology Corporation and Unihan Technology Corporation, both of Taipei City, Taiwan.

On February 12, 2008, the ALJ issued Order No. 4 granting complainant's motion. No party petitioned for review of the subject 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 4, 2008.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E8-4534 Filed 3-6-08; 8:45 am]

BILLING CODE 7020-02-P

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-1143 (Preliminary)]

### Small Diameter Graphite Electrodes From China

#### Determination

On the basis of the record<sup>1</sup> developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China of small diameter graphite electrodes,<sup>2</sup> provided for in subheading 8545.11.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

#### Commencement of Final Phase Investigation

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling, which will be published in the *Federal Register* as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

<sup>1</sup> The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

<sup>2</sup> Chairman Daniel R. Pearson and Commissioner Dean A. Pinkert made affirmative determinations based on a reasonable indication that an industry in the United States is threatened with material injury by reason of subject imports of small diameter graphite electrodes from China that are alleged to be sold in the United States at less than fair value.

## Background

On January 17, 2008, a petition was filed with the Commission and Commerce by SGL Carbon LLC, Charlotte, NC and Superior Graphite Co., Chicago, IL, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of small diameter graphite electrodes from China. Accordingly, effective January 17, 2008, the Commission instituted antidumping duty investigation No. 731-TA-1143 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference 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 January 25, 2008 (73 FR 4627). The conference was held in Washington, DC, on February 7, 2008, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on March 3, 2008. The views of the Commission are contained in USITC Publication 3985 (March 2008), entitled *Small Diameter Graphite Electrodes from China: Investigation No. 731-TA-1143 (Preliminary)*.

By order of the Commission.

Issued: March 3, 2008.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E8-4491 Filed 3-6-08; 8:45 am]

BILLING CODE 7020-02-P

## DEPARTMENT OF LABOR

### Office of Job Corps; Advisory Committee on Job Corps; Meeting

**AGENCY:** Office of Job Corps, Labor Department.

**ACTION:** Notice of Advisory Committee meeting.

**SUMMARY:** On August 22, 2006, the Advisory Committee on Job Corps (ACJC) was established in accordance with the provisions of the Workforce Investment Act and the Federal Advisory Committee Act. The Committee was established to advance Job Corps' new vision for student achievement aimed at 21st century high-growth employment. The Committee was established to advance Job Corps' new vision for student achievement

aimed at 21st century high-growth employment. This Committee will also evaluate Job Corps program characteristics, including its purpose, goals, and effectiveness, efficiency, and performance measures in order to address the critical issues facing the provision of job training and education to the youth population that it serves. The Committee may provide other advice and recommendations with regard to identifying and overcoming problems, planning program or center development or strengthening relations between Job Corps and agencies, institutions, or groups engaged in related activities.

**DATES:** The meeting will be held on March 19–20, 2008 from 8 a.m. to 4 p.m.

**ADDRESSES:** The Advisory Committee meeting will be held at the Hyatt Regency Jacksonville Riverfront, 225 East Coast Line Drive, Jacksonville, FL 32202. Telephone: (904) 588-1234.

**FOR FURTHER INFORMATION CONTACT:** Crystal Woodard, Office of Job Corps, 202-693-3000 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** On August 22, 2006 the Advisory Committee on Job Corps (71 FR 48949) was established in accordance with the provisions of the Workforce Investment Act, and the Federal Advisory Committee Act. The Committee was established to advance Job Corps' new vision for student achievement aimed at 21st century high-growth employment. This Committee will also evaluate Job Corps program characteristics, including its purpose, goals, and effectiveness, efficiency, and performance measures in order to address the critical issues facing the provision of job training and education to the youth population that it serves. The Committee may provide other advice and recommendations with regard to identifying and overcoming problems, planning program or center development or strengthening relations between Job Corps and agencies, institutions, or groups engaged in related activities.

**Agenda:** The agenda for the meeting will be the continuation of discussion on committee recommendations and final approvals.

**Public Participation:** The meeting will be open to the public. Seating will be available to the public on a first-come first-served basis. Seats will be reserved for the media. Individuals with disabilities should contact the Job Corps official listed above, if special accommodations are needed.

Signed at Washington, DC, this 29th day of February 2008.

**Esther R. Johnson,**

*National Director, Office of Job Corps.*

[FR Doc. E8-4371 Filed 3-6-08; 8:45 am]

BILLING CODE 4510-23-P

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-61,950]

#### **Delphi Corporation, Automotive Holdings Group, Chassis Division, Including On-Site Leased Workers From Bartech, Kettering, OH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on August 17, 2007, applicable to workers of Delphi Corporation, Automotive Holdings Group, Chassis Division, Kettering, Ohio. The notice was published in the **Federal Register** on August 30, 2007 (72 FR 50126).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of dampers and damper components.

New information shows that leased workers of Bartech were employed on-site at the Kettering, Ohio location of Delphi Corporation, Automotive Holdings Group, Chassis Division. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include leased workers of Bartech working on-site at the Kettering, Ohio location of the subject firm.

The intent of the Department's certification is to include all workers employed at Delphi Corporation, Automotive Holdings Group, Chassis Division, Kettering, Ohio who were adversely-impacted by a shift in production of dampers and damper components to Mexico.

The amended notice applicable to TA-W-61,950 is hereby issued as follows:

All workers of Delphi Corporation, Automotive Holdings Group, Chassis Division, including on-site leased workers from Bartech, Kettering, Ohio, who became totally or partially separated from employment on or after September 16, 2007, through August 17, 2009, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 26th day of February 2008.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E8-4438 Filed 3-6-08; 8:45 am]

BILLING CODE 4510-FN-P

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-61,342]

#### **Georgia-Pacific West, Inc. Consumer Products Division Including On-Site Leased Workers From Securitas, Bellingham, WA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on January 7, 2008, applicable to workers of Georgia-Pacific West, Inc., Consumer Products Division, Bellingham, Washington. The notice was published in the **Federal Register** on January 25, 2008 (73 FR 4634).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of tissue, toilet tissue.

New information shows that leased workers of Securitas were employed on-site at the Bellingham, Washington location of Georgia-Pacific West, Inc., Consumer Products Division. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include leased workers of Securitas working on-site at the Bellingham, Washington location of the subject firm.

The intent of the Department's certification is to include all workers employed at Georgia-Pacific West, Inc., Consumer Products Division, Bellingham, Washington who were adversely-impacted by increased company imports.

The amended notice applicable to TA-W-62,342 is hereby issued as follows:

All workers of Georgia-Pacific West, Inc., Consumer Products Division, including on-site leased workers from Securitas, Bellingham, Washington, who became totally or partially separated from employment on or after October 19, 2006, through January 7, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 26th day of February 2008

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E8-4439 Filed 3-6-08; 8:45 am]

BILLING CODE 4510-FN-P

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-62,614]

#### **Weyerhaeuser Green Mountain Lumber Mill, Toutle, WA; Notice of Affirmative Determination Regarding Application for Reconsideration**

By application dated February 11, 2008, the IAM Woodworkers Local W536 (the Union) requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) applicable to workers and former workers of the subject firm. The determination was issued on January 28, 2008. The Notice of determination was published in the **Federal Register** on February 13, 2008 (73 FR 8370). Workers produce rough sawn softwood dimensional lumber.

The negative determination was based on the Department's findings that sales and production at the subject firm remained relatively stable during the relevant period compared to the comparable period the previous year; the subject firm did not shift production of rough sawn softwood dimensional lumber to a foreign country; and the subject firm did not import articles like or directly competitive with the lumber produced by the subject workers. The

determination also stated that the predominant cause of worker separations is the transfer of production to another, domestic, affiliated facility.

In the request for reconsideration, the Union alleged that Weyerhaeuser Corporation, the parent company, operates softwood dimensional lumber facilities in Canada and that increased imports by Weyerhaeuser Corporation contributed importantly to the subject workers' separations.

The Department has carefully reviewed the Union's request for reconsideration and has determined that the Department will conduct further investigation.

#### **Conclusion**

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 29th day of February 2008.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E8-4444 Filed 3-6-08; 8:45 am]

BILLING CODE 4510-FN-P

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-62,444]

#### **Poirier's, Inc. Fall River, MA; Notice of Negative Determination Regarding Application for Reconsideration**

By application dated January 15, 2008, a company official requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on December 12, 2007 and published in the **Federal Register** on December 31, 2007 (72 FR 74344).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

- (1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;
- (2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or
- (3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of

the law justified reconsideration of the decision.

The negative TAA determination issued by the Department for workers of Poirier's, Inc., Fall River, Massachusetts was based on the finding that the worker group does not produce an article within the meaning of Section 222 of the Trade Act of 1974.

The petitioner states that services provided by workers at the subject firm "contribute to the final production process". The petitioner attached the description of various inspections that the car dealer needs to provide to the vehicles before selling them to customers. The petitioner alleges that because the services provided by workers at the subject firm are required by "state and federal laws", workers of the subject firm who retail automobiles should be certified eligible for TAA.

The investigation revealed that the workers of Poirier's, Inc., Fall River, Massachusetts are engaged in retail of new and used cars, auto parts, supplies and service of automobiles. These functions, as described above, are not considered production of an article within the meaning of Section 222 of the Trade Act.

The petitioner did not supply facts not previously considered; nor provide additional documentation indicating that there was either (1) a mistake in the determination of facts not previously considered or (2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination.

After careful review of the request for reconsideration, the Department determines that 29 CFR 90.18(c) has not been met.

#### **Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 26th day of February 2008.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E8-4440 Filed 3-6-08; 8:45 am]

BILLING CODE 4510-FN-P

**DEPARTMENT OF LABOR****Employment and Training Administration**

[TA-W-62,517]

**Berkline/Benchcraft, LLC Including On-Site Workers of Blue Mountain Trucking Blue Mountain, MS; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on January 25, 2008, applicable to workers of Berkline/BenchCraft, LLC, Blue Mountain, Mississippi. The notice was published in the *Federal Register* on February 7, 2008 (73 FR 7319).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of upholstered furniture (stationary and motion).

New information shows that worker separations occurred involving employees of Blue Mountain Trucking, Blue Mountain, Mississippi employed on-site at the Blue Mountain, Mississippi location of Berkline/BenchCraft, LLC.

The Blue Mountain Trucking employees provide trucking support services for the Mississippi and Tennessee production plants of the subject firm.

Based on these findings, the Department is amending this certification to include all workers of Blue Mountain Trucking, working on-site at the Blue Mountain, Mississippi location of the subject firm.

The intent of the Department's certification is to include all workers employed at Berkline/BenCraft, LLC, Blue Mountain, Mississippi who were adversely-impacted by increased company imports of upholstered furniture.

The amended notice applicable to TA-W-62,517 is hereby issued as follows:

All workers of Berkline/BenchCraft, LLC, including on-site workers from Blue Mountain Trucking, Blue Mountain, Mississippi, who became totally or partially separated from employment on or after November 29, 2006, through January 25, 2010, are eligible to apply for adjustment

assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 29th day of February 2008.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E8-4441 Filed 3-6-08; 8:45 am]

BILLING CODE 4510-FN-P

**DEPARTMENT OF LABOR****Employment and Training Administration**

[TA-W-62,571]

**France/A Scott Fetzer Co., Including On-Site Leased Workers of Personnel Management, Inc. (PMI), Fairview, TN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on February 8, 2008, applicable to workers of France/A Scott Fetzer Co., including on-site leased workers of Personnel Management, Inc. (PMI), Fairview, Tennessee. The notice was published in the *Federal Register* on February 22, 2008 (73 FR 9835).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of transformers and ballasts.

New information shows that there was a previous certification, TA-W-55,205, issued on January 26, 2005, for the workers of the France/A Scott Fetzer Co., Fairview, Tennessee. That certification expired January 26, 2007. To avoid an overlap in worker group coverage for the workers of the Fairview, Tennessee location, the certification is being amended to change the impact date from December 10, 2006 to January 27, 2007.

Accordingly, the Department is amending the certification to properly reflect these matters.

The intent of the Department's certification is to include all workers of France/A Scott Fetzer Co. who were adversely affected by increased customer imports.

The amended notice applicable to TA-W-62,571 is hereby issued as follows:

All workers of France/A Scott Fetzer Co., including on-site leased workers of Personnel Management, Inc. (PMI), Fairview, Tennessee, who became totally or partially separated from employment on or after January 27, 2007 through February 8, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 26th day of February 2008.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E8-4443 Filed 3-6-08; 8:45 am]

BILLING CODE 4510-FN-P

**DEPARTMENT OF LABOR****Employment and Training Administration**

[TA-W-62,538]

**ITW Foils Including On-Site Leased Workers From Central Michigan Staffing, Mt. Pleasant, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on January 14, 2008, applicable to workers of ITW Foils, Mt. Pleasant, Michigan. The notice was published in the *Federal Register* on February 1, 2008 (73 FR 6212).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of hot stamp foil.

New information shows that leased workers of Central Michigan Staffing were employed on-site at the Mt. Pleasant, Michigan location of ITW Foils. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include leased workers



of Central Michigan Staffing working on-site at the Mt. Pleasant, Michigan location of the subject firm.

The intent of the Department's certification is to include all workers employed at ITW Foils, Mt. Pleasant, Michigan who were adversely-impacted by a shift in production of hot stamp foils to Canada.

The amended notice applicable to TA-W-62,538 is hereby issued as follows:

All workers of ITW Foils, including on-site leased workers from Central Michigan Staffing, Mt. Pleasant, Michigan, who became totally or partially separated from employment on or after December 4, 2006, through January 14, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 27th day of February 2008.

Elliott S. Kushner,

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E8-4442 Filed 3-6-08; 8:45 am]

BILLING CODE 4510-FN-P

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA-W) number and alternative trade adjustment assistance (ATAA) by (TA-W) number issued during the period of February 19 through February 22, 2008.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A), all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. the sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B), both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. the country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied for the

firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

#### Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

*None*

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

TA-W-62,761; TI Automotive, Plant #27, Marysville, MI: January 28, 2007

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

*None*

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

*None*

#### Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company



name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA-W-62,561; B & G International, Inc., On-Site Leased Workers From ADP Total Source II, Inc., Newark, NJ: December 10, 2006

TA-W-62,746; Reed and Barton Corporation, Taunton, MA: January 24, 2008

TA-W-62,806; Ametek, Sensors Technologies Business Unit Division, Bartow, FL: August 2, 2007

TA-W-62,834; Diamond Electric Manufacturing, DEMI Plant, Dundee, MI: February 11, 2007

TA-W-62,165; Omni Softgoods, Spring Green, WI: September 13, 2006

TA-W-62,581; ADA Metal Products, Inc., On-Site Contracted Workers From Tandem Staffing Solutions, Inc., Lincolnwood, IL: December 17, 2006

TA-W-62,636; Norandal USA, Inc., Newport, AR: January 2, 2007

TA-W-62,679; Hydraulic Technologies Inc., Galion, OH: December 27, 2006

TA-W-62,685; Newton Tool, Swedesboro, NJ: January 4, 2007

TA-W-62,753; Aerotek, Delphi Corp., Automotive Holding Group, Plant #6 and Plant #2, Flint, MI: January 28, 2007

TA-W-62,798A; TAC Worldwide Companies, Working On-Site at Delphi Corp., Electronics and Safety Division, Oak Creek, WI: January 16, 2007

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA-W-62,680; Siemens E & A, Inc., Distribution Products Division, Bellefontaine, OH: January 11, 2007

TA-W-62,682; Plastech Engineered Products, Inc., Winnsboro, SC: January 14, 2007

TA-W-62,754; Silicon Laboratories, Inc., Austin, TX: January 28, 2007

TA-W-62,766; School Apparel, Inc., Star City, AR: January 29, 2007

TA-W-62,798; TAC Worldwide Companies, Working On-Site at Delphi Corp., Powertrain Division, Oak Creek, WI: January 16, 2007

TA-W-62,852; FCI USA, Inc., Electronics Division, On-Site Leased Workers From Manpower, Mt. Union, PA: September 28, 2007

TA-W-62,715; Formica Corporation, Odenton, MD: December 20, 2007

TA-W-62,716; Lunt Manufacturing Co., Inc., Schaumburg Plant, Schaumburg, IL: January 18, 2007

TA-W-62,716A; Lunt Manufacturing Co., Inc., Hampshire Plant, Hampshire, IL: January 18, 2007

TA-W-62,787; Hasbro, Inc., East Longmeadow, MA: January 30, 2007

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA-W-62,830; Prestige Fabricators, Inc., Asheboro, NC: February 11, 2007

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None

#### Negative Determinations For Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. The firm does not have a significant number of workers 50 years of age or older.

TA-W-62,761; TI Automotive, Plant #27, Marysville, MI

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

None

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None

#### Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the

workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA-W-62,369; Doral Manufacturing, Inc., A Subsidiary of TEVA Pharmaceuticals, Inc. Formerly IVAX Pharmaceuticals, Miami, FL.

TA-W-62,369A; TEVA Manufacturing, Inc., Formerly IVAX Pharmaceuticals, Inc., Biscayne Blvd. Facility, Miami, FL.

TA-W-62,818; Chillicothe Paper, Inc., A Subsidiary of Newpage Corporation, Chillicothe, OH.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA-W-62,690; L and W Engineering Co., Inc., Holland, MI.

TA-W-62,752; DynAmerica Manufacturing, LLC, Muncie, IN.

TA-W-62,791; Jacquart Fabric Products, Inc., Ironwood, MI.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA-W-62,369B; TEVA Manufacturing, Inc., Formerly IVAX Pharmaceuticals, Inc., Golden Glades Facility, Miami, FL.

TA-W-62,576; United States Pipe and Foundry Co., LLC, A Subsidiary of Mueller Water Products, Burlington, NJ.

TA-W-62,643; Tri Source, Inc., Shelton, CT.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-62,536; Tower Automotive Operations, Granite City, IL.

TA-W-62,659; Richloom Home Fashions, Richloom Fabrics Corporation, Clinton, SC.

TA-W-62,813; General Teamsters Local 386, Modesto, CA.

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

TA-W-62,655; Warp Processing Co., Inc., Exeter, PA.

I hereby certify that the aforementioned determinations were issued during the period of February 19

through February 22, 2008. Copies of these determinations are available for inspection in Room C-5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: February 28, 2008.

**Ralph DiBattista,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. E8-4437 Filed 3-6-08; 8:45 am]

BILLING CODE 4510-FN-P

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a)

of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than March 17, 2008.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than March 17, 2008.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C-5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 28th day of February 2008.

**Ralph DiBattista,**

*Director, Division of Trade Adjustment Assistance.*

#### APPENDIX—TAA PETITIONS INSTITUTED BETWEEN 2/19/08 AND 2/21/08

TA-W	Subject firm (petitioners)	Location	Date of institution	Date of petition
62859	Fraser NH, LLC (USW)	Gorham, NH	02/19/08	02/14/08
62860	Ullman, a Division of American Greetings, Corp (Wkrs)	Burgaw, NC	02/19/08	02/14/08
62861	Tyden Brammall (Wkrs)	Angola, IN	02/20/08	02/14/08
62862	Liz Claiborne/Dana Buchman (UNITE)	North Bergen, NY	02/20/08	02/19/08
62863	Orient Engine (Comp)	Falmouth, KY	02/20/08	02/15/08
62864	Ametek-U.S. Gauge/Hunter Spring/Aerospace and Defense (Wkrs).	Sellersville, PA	02/20/08	02/08/08
62865	Isola USA Corporation (Comp)	Fremont, CA	02/20/08	02/19/08
62866	International Automotive Components Group (UAW)	Edinburgh, IN	02/20/08	02/09/08
62867	Vanity Fair Brands, LP Distribution Center (Comp)	Mission, TX	02/20/08	02/05/08
62868	West Allis Gray Iron Foundry (Comp)	West Allis, WI	02/20/08	02/18/08
62869	Columbia Lighting (IBEW)	Spokane, WA	02/20/08	02/11/08
62870	The Timken Company (Wkrs)	Clinton, SC	02/21/08	02/20/08
62871	Central Michigan Staffing (State)	Mt. Pleasant, MI	02/21/08	02/20/08
62872	Littel Fuse, LP (Comp)	Irving, TX	02/21/08	02/20/08
62873	Alice Manufacturing Co., Inc. (Comp)	Easley, SC	02/21/08	02/15/08
62874	Fine Pitch Technologies, Inc. (Wkrs)	Wilmington, MA	02/21/08	12/07/07
62875	Bolton Metal Products Company (UAW)	Bellefonte, PA	02/21/08	02/18/08
62876	B and P Alloys, Inc. (State)	Waukesha, WI	02/21/08	02/15/08
62877	Rayloc Division (Wkrs)	Hancock, MD	02/21/08	02/07/08
62878	Murata Power Solutions (State)	Tucson, AZ	02/21/08	02/19/08
62879	ZF Sachs (Wkrs)	Florence, KY	02/21/08	02/20/08
62880	Two Star Dog, Inc. (Comp)	Berkeley, CA	02/21/08	02/20/08
62881	Ross and Roberts, Inc. (State)	Stratford, CT	02/21/08	02/19/08
62882	Glaxo Smith Kline (Comp)	Bristol, TN	02/21/08	02/08/08

[FR Doc. E8-4436 Filed 3-6-08; 8:45 am]

BILLING CODE 4510-FN-P

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-62,880]

#### Two Star Dog, Inc., Berkeley, CA; Notice of Termination of Investigation

In accordance with section 221 of the Trade Act of 1974, as amended, an

investigation was initiated on January 21, 2008 in response to a petition filed by a company official on behalf of workers of Two Star Dog, Inc., Berkeley, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 29th day of February 2008.

**Richard Church,**  
Certifying Officer, Division of Trade  
Adjustment Assistance.

[FR Doc. E8-4435 Filed 3-6-08; 8:45 am]

BILLING CODE 4510-FN-P

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-62,871]

#### Central Michigan Staffing Workers On- Site at ITW Foils Mt. Pleasant, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 21, 2008 in response to a petition filed by a state representative on behalf of workers of Central Michigan Staffing, workers on-site at ITW Foils, Mt. Pleasant, Michigan.

All workers of the subject firm employed on site at ITW Foils, Mt. Pleasant, Michigan are covered by a certification of eligibility to apply for worker adjustment assistance and alternative trade adjustment assistance under petition number TA-W-62,538, as amended on February 27, 2008.

Consequently, further investigation in this case would serve no purpose and the investigation under this petition has been terminated.

Signed at Washington, DC, this 27th day of February 2008.

**Richard Church,**  
Certifying Officer, Division of Trade  
Adjustment Assistance.

[FR Doc. E8-4445 Filed 3-6-08; 8:45 am]

BILLING CODE 4510-FN-P

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

[Docket No. OSHA-2008-0003]

#### Powered Industrial Trucks Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

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

**ACTION:** Request for public comment.

**SUMMARY:** OSHA solicits comments concerning its proposal to extend OMB approval of the information collection requirements contained in the Powered Industrial Truck Standard (29 CFR

1910.178). The information collection requirements addresses truck design, construction, and modification, as well as certification of training and evaluation for truck operators.

**DATES:** Comments must be submitted (postmarked, sent, or received) by May 6, 2008.

#### **ADDRESSES:**

**Electronically:** You may submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

**Facsimile:** If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693-1648.

**Mail, hand delivery, express mail, messenger, or courier service:** When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA-2008-0003, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

**Instructions:** All submissions must include the Agency name and OSHA docket number for the ICR (OSHA-2008-0003). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at <http://www.regulations.gov>. For further information on submitting comments see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

**Docket:** To read or download comments or other material in the docket, go to <http://www.regulations.gov> or the OSHA Docket Office at the address above. All documents in the docket (including this Federal Register notice) are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

**FOR FURTHER INFORMATION CONTACT:** Theda Kenney or Todd Owen,

Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N-3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2222.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

Paragraph (a)(4) requires that employers obtain the manufacturer's written approval before modifying a truck in a manner that affects its capacity and safe operation; if the manufacturer grants such approval, the employer must revise capacity, operation, and maintenance instruction plates, tags, and decals accordingly. For front-end attachments not installed by the manufacturer, paragraph (a)(5) mandates that employers provide a marker on the trucks that identifies the attachment, as well as the weight of both the truck and the attachment when the attachment is at maximum elevation with a laterally centered load. Paragraph (a)(6) specifies that employers must ensure that the markers required by paragraphs (a)(3) through (a)(5) remain affixed to trucks and are legible.

Paragraphs (l)(1) through (l)(6) of the Standard contain the paperwork requirements necessary to certify the training provided to powered industrial truck operators. Accordingly, these paragraphs specify the following requirements for employers:

- *Paragraph (l)(1)*—Ensure that trainees successfully complete the training and evaluation requirements of paragraph (l) prior to operating a truck without direct supervision.

- *Paragraph (l)(2)*—Allow trainees to operate a truck only under the direct supervision of an individual with the knowledge, training, and experience to train operators and to evaluate their performance, and under conditions that do not endanger other employees. The training program must consist of formal instruction, practical training, and evaluation of the trainee's performance in the workplace.

- *Paragraph (l)(3)*—Provide the trainees with initial training on each of 22 specified topics, except on topics that the employer demonstrates do not apply to the safe operation of the truck(s) in the employer's workplace.

- *Paragraphs (l)(4)(i) and (l)(4)(ii)*—Administer refresher training and evaluation on relevant topics to operators found by observation or formal evaluation to operate a truck unsafely, involved in an accident or near-miss incident, or assigned to operate another type of truck, or if the employer identifies a workplace condition that could affect safe truck operation.

- *Paragraph (l)(4)(iii)*—Evaluate each operator's performance at least once every three years.

- *Paragraph (l)(5)*—Train rehires only in specific topics that they performed unsuccessfully during an evaluation and that are appropriate to the employer's truck(s) and workplace conditions.

- *Paragraph (l)(6)*—Certify that each operator meets the training and evaluation requirements specified by paragraph (l). This certification must include the operator's name, the training date, the evaluation date, and the identity of the individual(s) who performed the training and evaluation.

Requiring labels (markings) of modified equipment notifies employees of the conditions under which they can safely operate powered industrial trucks, thereby preventing such hazards as fires and explosions caused by poorly designed electrical systems, rollovers/tipovers that result from exceeding a truck's stability characteristics, and falling loads that occur when loads exceed the lifting capacities of attachments. Certification of training and evaluation provides a means of informing employers that their employees received the training, and demonstrated the performance necessary to operate a truck within its capacity and control limitations. Therefore, by ensuring that employees operate only trucks that are in proper

working order, and do so safely, employers prevent severe injury and death to truck operators and other employees who are in the vicinity of the trucks. Finally, these paperwork requirements are the most efficient means for an OSHA compliance officer to determine that an employer properly notified employees regarding the design and construction of, and modifications made to, the trucks they are operating, and that an employer provided them with the required training.

## II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;

- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;

- The quality, utility, and clarity of the information collected; and

- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

## III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Standard on Powered Industrial Trucks (29 CFR 1910.178). The Agency is requesting to increase its current burden hour estimate associated with this Standard from 773,205 hours to 848,539 hours, a total increase of 75,334 hours. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

*Type of Review:* Extension of a currently approved collection.

*Title:* Powered Industrial Trucks (29 CFR 1910.178).

*OMB Number:* 1218-0242.

*Affected Public:* Business or other for-profit.

*Number of Respondents:* 1,134,699.

*Frequency:* On occasion; annually; triennially.

*Average Time Per Response:* Ranges from two minutes (.03 hour) to mark an approved truck to 6.50 hours to train new truck operators.

*Estimated Total Burden Hours:* 848,539.

*Estimated Cost (Operation and Maintenance):* \$238,245.

## IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA-2008-0003). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693-2350 (TTY (877) 889-5627).

Comments and submissions are posted without change at <http://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the <http://www.regulations.gov> index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the <http://www.regulations.gov> Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

## V. Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506

et seq.) and Secretary of Labor's Order No. 5-2007 (72 FR 31159).

Signed at Washington, DC, on February 29, 2008.

Edwin G. Foulke, Jr.

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E8-4478 Filed 3-6-08; 8:45 am]

BILLING CODE 4510-26-P

## NATIONAL SCIENCE FOUNDATION

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** National Science Foundation.

**ACTION:** Notice and request for comments.

**SUMMARY:** Under the paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3501 et seq.), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public or other Federal agencies to comment on this proposed continuing information collection. The National Science Foundation (NSF) will publish periodic summaries of the proposed projects.

*Comments:* Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Foundation, including whether the information will have practical utility; (b) the accuracy of the Foundation's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments on this notice must be received by May 6, 2008, to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

**FOR FURTHER INFORMATION CONTACT:** Ms. Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292-7556; or send e-mail to [splimpto@nsf.gov](mailto:splimpto@nsf.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8

p.m., eastern time, Monday through Friday.

### SUPPLEMENTARY INFORMATION:

*Title of Collection:* 2008 Survey of Doctorate Recipients.

*OMB Approval Number:* 3145-0020.

*Expiration Date of Approval:*

February, 28, 2009.

*Type of Request:* Intent to seek approval to reinstate an information collection for three years.

### 1. Abstract

The Survey of Doctorate Recipients (SDR) has been conducted biennially since 1973. The 2008 SDR will consist of a sample of individuals under the age 76 who have earned a research doctoral degree in a science, engineering or health field from an U.S. institution. The purpose of this longitudinal panel study is to provide national estimates on the doctoral science and engineering workforce and changes in employment, education and demographic characteristics. The study is one of three components of the Scientists and Engineers Statistical Data System (SESTAT), which produces national estimates of the size and characteristics of the nation's science and engineering population.

The National Science Foundation Act of 1950, as subsequently amended, includes a statutory charge to " \* \* \* provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources, and to provide a source of information for policy formulation by other agencies of the Federal Government." The SDR is designed to comply with these mandates by providing information on the supply and utilization of the nation's doctoral level scientists and engineers. Collected data will be used to produce estimates of the characteristics of these individuals. They will also provide necessary input into the SESTAT data system, which produces national estimates of the size and characteristics of the country's science and engineering population.

The Foundation uses this information to prepare congressionally mandated reports such as *Women, Minorities and Persons with Disabilities in Science and Engineering and Science and Engineering Indicators*. The NSF publishes statistics from the survey in many reports, but primarily in the biennial series, *Characteristics of Doctoral Scientists and Engineers in the United States*. A public release file of collected data, designed to protect respondent confidentiality, also will be made available to researchers on CD-

ROM and on the World Wide Web. A private contractor is currently being selected to conduct this study for NSF. Data will be obtained by mail questionnaire, computer-assisted telephone interviews and web survey beginning October 2008. The survey will be collected in conformance with the Confidential Information and Statistical Efficient Act of 2002. The individual's response to the survey is voluntary. NSF will insure that all information collected will be kept strictly confidential and will be used only for statistical purposes.

### 2. Expected Respondents

A statistical sample of approximately 40,000 individuals with U.S. earned doctorates in science, engineering and health will be contacted in 2008. The total response rate in 2006 was 79%. NSF is also considering sampling 2,000 additional U.S. doctorates that received their degrees in the 2001-2007 academic years, who are non U.S. citizens, and indicated they planned on leaving the United States after they received their doctorate.

### 3. Estimate of Burden

The amount of time to complete the questionnaire may vary depending on an individual's circumstances; however, on average it will take approximately 25 minutes to complete the survey. We estimate that the total annual burden will be 16,700 hours during the collection. If the additional 2,000 respondents who had plans to leave the United States are included in the sample, that will increase the burden an additional 850 hours to a total of 17,550 hours.

Dated: March 4, 2008.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. E8-4483 Filed 3-6-08; 8:45 am]

BILLING CODE 7555-01-P

## NATIONAL SCIENCE FOUNDATION

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** National Science Foundation.

**ACTION:** Notice and request for comments.

**SUMMARY:** Under the paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3501 et seq.), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public or other



Federal agencies to comment on this proposed continuing information collection. The National Science Foundation (NSF) will publish periodic summaries of the proposed projects.

**Comments:** Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Foundation, including whether the information will have practical utility; (b) the accuracy of the Foundation's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments on this notice must be received by May 6, 2008 to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

**FOR FURTHER INFORMATION CONTACT:** Ms. Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292-7556; or send e-mail to [splimpto@nsf.gov](mailto:splimpto@nsf.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** *Title of Collection:* 2008 National Survey of Recent College Graduates.

*OMB Approval Number:* 3145-0077.  
*Expiration Date of Approval:* February 28, 2009.

*Type of Request:* Intent to seek approval to reinstate an information collection for three years.

### 1. Abstract

The National Survey of Recent College Graduates (NSRCG) has been conducted biennially since 1974. The 2008 NSRCG will consist of a sample of individuals who have completed bachelor's and master's degrees in science, engineering and health from U.S. institutions during the academic years 2006 and 2007. The purpose of this study is to provide national estimates on the new entrants into the science and engineering workforce and to provide estimates on the characteristics of recent bachelor's and master's graduates with science, engineering and health degrees. The

study is one of three components of the Scientists and Engineers Statistical Data System (SESTAT), which produces national estimates of the size and characteristics of the nation's science and engineering population.

The National Science Foundation Act of 1950, as subsequently amended, includes a statutory charge to " \* \* \* provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources, and to provide a source of information for policy formulation by other agencies of the Federal Government." The NSRCG is designed to comply with these mandates by providing information on the supply and utilization of the nation's recent bachelor's and master's level scientists and engineers. Collected data will be used to produce estimates of the characteristics of these individuals. They will also provide necessary input into the SESTAT data system, which produces national estimates of the size and characteristics of the country's science and engineering population.

The Foundation uses this information to prepare congressionally-mandated reports such as *Women, Minorities and Persons with Disabilities in Science and Engineering and Science and Engineering Indicators*. NSF publishes statistics from the survey in many reports, but primarily in the biennial series, *Characteristics of Recent Science and Engineering Graduates in the United States*. A public release file of collected data, designed to protect respondent confidentiality, also is expected to be made available to researchers on CD-ROM and on the World Wide Web.

Mathematica Policy Research, Inc. will conduct the study for NSF. Data will be obtained by mail questionnaire, computer-assisted telephone interviews and web survey beginning in October 2008. The survey will be collected in conformance with the Confidential Information Protection and Statistical Efficiency Act of 2002, and the individual's response to the survey is voluntary. NSF will insure that all information collected will be kept strictly confidential and will be used only for statistical purposes.

### 2. Expected Respondents

A statistical sample of approximately 18,000 bachelor's and master's degree recipients in science, engineering, and health will be contacted in 2008. The total response rate in 2006 was 69%.

### 3. Estimate of Burden

The amount of time to complete the questionnaire may vary depending on an individual's circumstances; however, on average it will take approximately 25 minutes to complete the survey. We estimate that the total annual burden will be 7,500 hours during the 2008 survey cycle.

Dated: March 4, 2008.

Suzanne H. Plimpton,  
Reports Clearance Officer, National Science Foundation.

[FR Doc. E8-4484 Filed 3-6-08; 8:45 am]

BILLING CODE 7555-01-P

## NATIONAL SCIENCE FOUNDATION

### Agency Information Collection; Activities: Proposed Collection; Comment Request

**AGENCY:** National Science Foundation.

**ACTION:** Notice and request for comments.

**SUMMARY:** Under the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public or other Federal agencies to comment on this proposed continuing information collection. The National Science Foundation (NSF) will publish periodic summaries of the proposed projects.

**Comments:** Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Foundation, including whether the information will have practical utility; (b) the accuracy of the Foundation's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments on this notice must be received by May 6, 2008, to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

**FOR FURTHER INFORMATION CONTACT:** Ms. Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292-7556; or send e-mail to

splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., eastern time, Monday through Friday.

#### SUPPLEMENTARY INFORMATION:

*Title of Collection:* 2008 National Survey of College Graduates.

*OMB Approval Number:* 3145-0141.

*Expiration Date of Approval:* February 28, 2009.

*Type of Request:* Intent to seek approval to extend an information collection for three years.

#### 1. Abstract

The National Survey of College Graduates (NSCG), formerly called the National Survey of Natural and Social Scientists and Engineers, has been conducted biennially since the 1970's. The 2008 NSCG will consist of a sample of 2006 NSCG respondents under age 76 with at least one bachelor's, master's degree, or foreign doctorate in science, engineering or health field, and/or work in science and engineering or related occupations. The purpose of this longitudinal panel study is to provide national estimates on the science and engineering workforce and changes in employment, education and demographic characteristics. The study is one of three components of the Scientists and Engineers Statistical Data System (SESTAT), which produces national estimates of the size and characteristics of the nation's science and engineering population.

The National Science Foundation Act of 1950, as subsequently amended, includes a statutory charge to " \* \* \* provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources, and to provide a source of information for policy formulation by other agencies of the Federal Government." The NSCG is designed to comply with these mandates by providing information on the supply and utilization of the nation's scientists and engineers. Collected data will be used to produce estimates of the characteristics of these individuals. They will also provide necessary input into the SESTAT labor force data system, which produces national estimates of the size and characteristics of the country's science and engineering population.

The Foundation uses this information to prepare congressionally mandated reports such as *Women, Minorities and Persons with Disabilities in Science and Engineering and Science and*

*Engineering Indicators*. A public release file of the SESTAT data (which includes the NSCG data) designed to protect respondent confidentiality will be made available to researchers on CD-ROM and on the World Wide Web.

The Bureau of the Census, as in the past, will conduct the study for NSF. Data will be obtained by mail questionnaire and computer-assisted telephone interviews beginning in October 2008. The survey will be collected in conformance with the Confidential Information Protection and Statistical Efficiency Act of 2002, and the individual's response to the survey is voluntary. NSF and Bureau of the Census will insure that all information collected will be kept strictly confidential and will be used only for statistical purposes.

#### 2. Expected Respondents

A statistical sample of approximately 60,000 persons, identified as having at least a bachelor's degree and having a degree and/or occupation in science, engineering, or health, will be contacted.

#### 3. Burden on the Public

The amount of time to complete the questionnaire may vary depending on an individual's circumstances; however, on average it will take approximately 25 minutes to complete the survey. NSF estimates that the total annual burden will be 25,000 hours during the 2008 survey cycle.

Dated: March 4, 2008.

**Suzanne H. Plimpton,**  
*Reports Clearance Officer, National Science Foundation.*

[FR Doc. E8-4485 Filed 3-6-08; 8:45 am]

BILLING CODE 7555-01-P

#### NATIONAL SCIENCE FOUNDATION

##### Advisory Committee for Mathematical and Physical Sciences; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

*Name:* Directorate for Mathematical and Physical Sciences Advisory Committee (66).

*Date/Time:* April 3, 2008, 8 a.m.-6 p.m.; April 4, 2008, 8 a.m.-3 p.m.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Room 1235.

*Type of Meeting:* Open.

*Contact Person:* Dr. Morris L. Aizenman, Senior Science Associate,

Directorate for Mathematical and Physical Sciences, Room 1005, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 292-8807.

*Purpose of Meeting:* To provide advice and recommendations concerning NSF science and education activities within the Directorate for Mathematical and Physical Sciences.

*Agenda:* Update on current status of Directorate, Report of Division of Astronomical Sciences Committee of Visitors, Report of Division of Materials Research Committee of Visitors, Meeting of MPSAC with Divisions within MPS Directorate, Discussion of MPS Long-term Planning Activities.

*Summary Minutes:* May be obtained from the contact person listed above.

Dated: March 4, 2008.

**Susanne E. Bolton,**  
*Committee Management Officer.*  
[FR Doc. E8-4434 Filed 3-6-08; 8:45 am]

BILLING CODE 7555-01-P

#### NUCLEAR REGULATORY COMMISSION

[Docket No. 030-34325]

##### Notice of Availability of Environmental Assessment and Finding of No Significant Impact for Amendment of a Materials Permit in Accordance With Byproduct Materials License No. 03-23853-01VA, for Unrestricted Release of a Department of Veterans Affairs Facility in East Orange, NJ

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

#### FOR FURTHER INFORMATION CONTACT:

William Snell, Senior Health Physicist, Decommissioning Branch, Division of Nuclear Materials Safety, Region III, U.S. Nuclear Regulatory Commission, 2443 Warrenton Road, Lisle, Illinois 60532; telephone: (630) 829-9871; fax number: (630) 515-1259; or by e-mail at [wgs@nrc.gov](mailto:wgs@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend a materials permit held under Byproduct Materials License No. 03-23853-01VA. The permit is held by the Department of Veterans Affairs (the Licensee), for its VA New Jersey Health Care System facilities, located at 385 Tremont Avenue, East Orange, New

Jersey (the Facility). Issuance of the amendment would authorize release of Building 13 (described below) for unrestricted use. The Licensee requested this action in a letter dated August 6, 2007. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), Part 51 (10 CFR Part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the *Federal Register*.

## II. Environmental Assessment

### *Identification of Proposed Action*

The proposed action would approve the Licensee's August 6, 2007, materials permit amendment request, resulting in release of Building 13 for unrestricted use. License No. 03-23853-01VA was issued on March 17, 2003, pursuant to 10 CFR parts 30 and 35, and has been amended periodically since that time. This license authorizes the Licensee to use byproduct materials at several Licensee facilities around the country, as authorized on a site-specific basis by permits issued by the Licensee's National Radiation Safety Committee. Under the license, the permits authorize the use of by-product materials for various medical and veterinary purposes, and for use in portable gauges.

The Facility is situated on a 40-acre site and is located in a residential area of East Orange, New Jersey. Within the Facility, Building 13 is a garage built circa 1900 consisting of four bays, and was constructed on a concrete slab with wood frame walls and wood siding. One of the bays was used for low level radioactive waste storage. The garage bay was used to store sealed 55-gallon steel drums of radioactive waste from research, which included paper and plastic products, liquid scintillation vials, and animal carcasses. No open handling of radioactive material occurred in the garage. Beginning in 1958, the VA New Jersey Health Care System in East Orange possessed numerous Atomic Energy Commission and NRC licenses. The licensee stored licensed materials in the garage bay beginning in 1990 through to November 2004, when the existing radioactive waste was moved to another location. The licensee ceased using licensed materials in Building 13 on November 15, 2004, and initiated surveys and decontamination of the building. Based

on the Licensee's historical knowledge of the site and the conditions within Building 13, the Licensee determined that only routine decontamination activities, in accordance with their NRC-approved operating radiation safety procedures, were required. The Licensee was not required to submit a decommissioning plan to the NRC because worker cleanup activities and procedures are consistent with those approved for routine operations. The Licensee conducted final status surveys of Building 13 on November 15, 2004. The results of these surveys along with other supporting information were provided to the NRC to demonstrate that the criteria in Subpart E of 10 CFR Part 20 for unrestricted release have been met.

### *Need for the Proposed Action*

The Licensee has ceased conducting licensed activities in Building 13, and seeks the unrestricted use of Building 13.

### *Environmental Impacts of the Proposed Action*

The historical review of licensed activities conducted in Building 13 shows that such activities involved use of the following radionuclides with half-lives greater than 120 days: Hydrogen-3 and carbon-14. Prior to performing the final status survey, the Licensee conducted decontamination activities, as necessary, in the areas of Building 13 affected by these radionuclides.

The Licensee completed final status surveys on Building 13 on November 15, 2004. The surveys covered the floor area of Building 13. The final status survey report was attached to the Licensee's amendment request dated August 6, 2007. The Licensee elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 by demonstrating that all survey results for surface contamination were at background radiation levels. This release criteria is less than the radionuclide-specific dose-based release criteria, described in NUREG-1757, "Consolidated NMSS Decommissioning Guidance," Volume 2. These values provide acceptable levels of surface contamination to demonstrate compliance with the NRC requirements in Subpart E of 10 CFR Part 20 for unrestricted release. The Licensee's final status survey results were all at background values and are in compliance with the As Low As Reasonably Achievable (ALARA) requirement of 10 CFR 20.1402. The NRC thus finds that the Licensee's final status survey results are acceptable.

Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities" (NUREG-1496) Volumes 1-3 (ML042310492, ML042320379, and ML042330385). The staff finds there were no significant environmental impacts from the use of radioactive material in Building 13. The NRC staff reviewed available docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding Building 13. No such hazards or impacts to the environment were identified. The NRC has identified no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that issuance of the proposed amendment authorizing release of Building 13 for unrestricted use is in compliance with 10 CFR Part 20. Based on its review, the staff considered the impact of the residual radioactivity from Building 13 and concluded that the proposed action will not have a significant effect on the quality of the human environment.

### *Environmental Impacts of the Alternatives to the Proposed Action*

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 30.36(d), requiring that decommissioning of byproduct material facilities be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the Licensee's final status survey data confirmed that Building 13 meets the requirements of 10 CFR 20.1402 for unrestricted release. Additionally, denying the amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

### *Conclusion*

The NRC staff has concluded that the proposed action is consistent with the

NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

#### Agencies and Persons Consulted

NRC provided a draft of this Environmental Assessment to the New Jersey Department of Environmental Protection, Bureau of Environmental Radiation, for review on January 28, 2008. On February 26, 2008, the Bureau of Environmental Radiation responded by e-mail. The State agreed with the conclusions of the EA.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

#### III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

#### IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

1. E. Lynn McGuire, Department of Veterans Affairs, letter to Cassandra Frazier, U.S. Nuclear Regulatory Commission, Region III, dated August 6, 2007 (ADAMS Accession No. ML072210004);
2. Thomas Huston, Department of Veterans Affairs, E-mail to William Snell, U.S. Nuclear Regulatory Commission, Region III, dated

November 1, 2007 (ADAMS Accession No. ML073610425);

3. Regulatory Guide 1.86, "Termination of Operating Licenses for Reactors;"
4. Title 10 Code of Federal Regulations, Part 20, Subpart E, "Radiological Criteria for License Termination;"
5. Title 10 Code of Federal Regulations, Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions;"
6. NUREG-1496, "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities;"
7. NUREG-1757, "Consolidated NMSS Decommissioning Guidance."

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov). These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Lisle, Illinois, this 29th day of February 2008.

For the Nuclear Regulatory Commission,  
**Patrick L. Loudon,**  
*Chief, Decommissioning Branch, Division of Nuclear Materials Safety, Region III.*  
 [FR Doc. E8-4559 Filed 3-6-08; 8:45 am]  
 BILLING CODE 7590-01-P

#### NUCLEAR REGULATORY COMMISSION

##### Advisory Committee on Reactor Safeguards (ACRS); Subcommittee Meeting on Power Uprates (Hope Creek); Notice of Meeting

The ACRS Subcommittee on Power Uprates will hold a meeting on March 20-21, 2008, at 11545 Rockville Pike, Rockville, Maryland, Room T-2B3.

The meeting will be open to public attendance, with the exception of portions that may be closed to discuss proprietary information pursuant to 5 U.S.C. 552b(c)4 for presentations covering information that is proprietary to PPL Hope Creek, LLC or its contractors such as General Electric and Continuum Dynamics.

The agenda for the subject meeting shall be as follows:

*Thursday, March 20-Friday, March 21, 2008-8:30 a.m. until the conclusion of business.*

The Subcommittee will discuss the Hope Creek Generating station extended power uprate application. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, the PSEG Nuclear, LLC (the licensee, PSEG), their contractors (General Electric and Continuum Dynamics) and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Officer, Ms. Zena Abdullahi (Telephone: 301-415-8716) 5 days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 26, 2007 (72 FR 54695).

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 8:45 a.m. and 5:30 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: February 27, 2008.  
**Cayetano Santos,**  
*Chief, Reactor Safety Branch, ACRS.*  
 [FR Doc. E8-4508 Filed 3-6-08; 8:45 am]  
 BILLING CODE 7590-01-P

#### NUCLEAR REGULATORY COMMISSION

##### Advisory Committee on Reactor Safeguards (ACRS); Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on March 19, 2008 at 11545 Rockville Pike, Rockville, Maryland, Room T-3B45.

The entire meeting will be open to public attendance. The agenda for the subject meeting shall be as follows:  
 Wednesday, March 19, 2008-8:30 a.m. until 6 p.m.

The Subcommittee will review the staff's draft safety evaluation regarding Topical Report WCAP-16793-NP, "Evaluation of Long Term Cooling Considering Particulate, Fibrous, and Chemical Debris in the Recirculating



Fluid." The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, the Pressurized Water Reactor Owners Group, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Officer, Mr. David Bessette (Telephone: 301-415-8065) 5 days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the *Federal Register* on September 26, 2007 (72 FR 54695).

Further information regarding this meeting can be obtained by contacting the Designated Federal Officer between 7:45 a.m. and 4:30 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least 2 working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: February 28, 2008.

**Cayetano Santos,**  
Chief, Reactor Safety Branch, ACRS.  
[FR Doc. E8-4509 Filed 3-6-08; 8:45 am]  
BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards (ACRS); Meeting of the Subcommittee on Digital Instrumentation and Control Systems; Notice of Meeting

The ACRS Subcommittee on Digital Instrumentation and Control Systems will hold a meeting on March 20, 2008, Commission Hearing Room, first floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

*Thursday, March 20, 2008—8:30 a.m. until the conclusion of business.*

The Subcommittee will hold discussions with representatives of the NRC staff and the industry regarding digital instrumentation and control systems issues. The Subcommittee will hear presentations by and hold discussions with representatives of the

NRC staff, the industry, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate; for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Officer, Mr. Girija Shukla (telephone 301/415-6855) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Officer between 7:15 a.m. and 5 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: February 27, 2008.

**Cayetano Santos,**  
Branch Chief, ACRS.  
[FR Doc. E8-4507 Filed 3-6-08; 8:45 am]  
BILLING CODE 7590-01-P

## POSTAL SERVICE

### Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Construction and Operation of a Mail Processing Facility in Aliso Viejo, CA; Extension of Time for Comment

**AGENCY:** Postal Service.

**ACTION:** Notice; extension of comment period.

**SUMMARY:** On February 12, 2008, the Postal Service published in the *Federal Register* (73 FR 8076) a notice that, in accordance with the National Environmental Policy Act (NEPA), it intended to prepare an environmental impact statement (EIS) for the proposed construction and operation of a mail processing facility in Aliso Viejo, Orange County, California. The notice invited the public to participate in the project scoping process, to review and comment on the draft EIS, and to attend public meetings. The Postal Service requested written scoping comments by March 9, 2008. The Postal Service is extending the comment period to March 13, 2008.

**DATES:** Please submit written scoping comments by March 13, 2008.

To solicit public comments, a public scoping hearing will be held from 5:30 to 8:30 p.m. on February 27, 2008, at the Wood Canyon Elementary School,

23431 Knollwood Avenue, Aliso Viejo, California; (949) 448-0012.

**ADDRESSES:** To submit comments, request copies of the draft EIS or final EIS when available, or for more information, contact Emmy Andrews, Pacific Facilities Service Office, United States Postal Service, 395 Oyster Point Boulevard, Suite 225, South San Francisco, CA 94080-0300; (650) 615-7200.

**FOR FURTHER INFORMATION CONTACT:** Emmy Andrews, (650) 615-7200.

**Neva R. Watson,**  
Attorney, Legislative.  
[FR Doc. E8-4455 Filed 3-6-08; 8:45 am]

BILLING CODE 7710-12-P

## RAILROAD RETIREMENT BOARD

### Proposed Data Collection Available for Public Comment and Recommendations

**SUMMARY:** In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

*Comments are invited on:* (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

### Title and Purpose of Information Collection

*Employee Non-Covered Service Pension Questionnaire:* OMB 3220-0154.

Section 215(a)(7) of the Social Security Act provides for a reduction in social security benefits based on employment not covered under the Social Security Act or the Railroad Retirement Act (RRA). This provision applies a different social security benefit formula to most workers who are first eligible after 1985 to both a pension based in whole or in part on non-covered employment and a social security retirement or disability benefit. There is a guarantee provision that limits the reduction in the social



security benefit to one-half of the portion of the pension based on non-covered employment after 1956. Section 8011 of Public Law 100-647 changed the effective date of the onset from the first month of eligibility to the first month of concurrent entitlement to the non-covered service benefit and the RRA benefit.

Section 3(a)(1) of the RRA provides that the Tier I benefit of an employee annuity will be equal to the amount (before any reduction for age or deduction for work) the employee would receive if he or she would have been entitled to a like benefit under the

Social Security Act. The reduction for a non-covered service pension also applies to a Tier I portion of employees under the RRA where the annuity or non-covered service pension begins after 1985. Since the amount of a spouse's Tier I benefit is one-half of the employee's Tier I, the spouse annuity is also affected by the employee's non-covered service pension reduction of his or her Tier I benefit.

The RRB utilizes Form G-209, Employee Non-Covered Service Pension Questionnaire, to obtain needed information from railroad retirement employee applicants or annuitants

about the receipt of a pension based on employment not covered under the Railroad Retirement Act or the Social Security Act. It is used as both a supplement to the employee annuity application, and as an independent questionnaire to be completed when an individual who is already receiving an employee annuity, becomes entitled to a pension. One response is requested of each respondent. Completion is required to obtain or retain benefits. The RRB proposes minor non-burden impacting, clarification and editorial changes to Form G-209.

#### ESTIMATE OF ANNUAL RESPONDENT BURDEN

[The estimated annual respondent burden is as follows:]

Form #(s)	Annual responses	Time (min)	Burden (hrs)
G-209 (partial questionnaire) .....	50	1	1
G-209 (full questionnaire) .....	100	8	13
Total .....	150	.....	14

**Additional Information or Comments:** To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751-3363 or send an e-mail request to [Charles.Mierzwa@rrb.gov](mailto:Charles.Mierzwa@rrb.gov). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611-2092 or by e-mail to [Ronald.Hodapp@rrb.gov](mailto:Ronald.Hodapp@rrb.gov). Written comments should be received within 60 days of this notice.

**Charles Mierzwa,**  
Clearance Officer.

[FR Doc. E8-4530 Filed 3-6-08; 8:45 am]

BILLING CODE 7905-01-P

#### RAILROAD RETIREMENT BOARD

##### Proposed Collection; Comment Request

**SUMMARY:** In accordance with the requirement of section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

**Comments are invited on:** (a) Whether the proposed information collection is necessary for the proper performance of

the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

##### Title and Purpose of Information Collection

**Medical Reports:** OMB 3220-0038.

Under Sections 2(a)(1)(iv), 2(a)(2) and 2(a)(3) of the Railroad Retirement Act (RRA), annuities are payable to qualified railroad employees whose physical or mental condition is such that they are unable to (1) work in their regular occupation (occupational disability); or (2) work at all (permanent total disability). The requirements for establishment of disability and proof of continuance of disability are prescribed in 20 CFR part 220.

Under sections 2(c)(1)(ii)(c) and 2(d)(1)(ii) of the RRA, annuities are also payable to qualified spouses and widow(ers), respectively, who have a qualified child who is under a disability which began before age 22. Annuities are also payable to surviving children on the basis of disability under section 2(d)(1)(iii)(C) if the child's disability began before age 22 and to widow(ers)

on the basis of disability under section 2(d)(1) (i)(B). To meet the disability standard, the RRA provides that individuals must have a permanent physical or mental condition such that they are unable to engage in any regular employment.

Under section 2(d)(1)(v) of the RRA, annuities are also payable to remarried and surviving divorced spouses on the basis of, *inter alia*, disability or having a qualified disabled child in care. However, the disability standard in these cases is that found in the Social Security Act. That is, individuals must be able to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment. The RRB also determines entitlement to a period of early disability and early Medicare entitlement for qualified claimants in accordance with section 216 of the Social Security Act.

When making disability determinations, the RRB needs evidence from acceptable medical sources. The RRB currently utilizes Forms G-3EMP, Report of Medical Condition by Employer; G-197, Authorization to Release Medical Information, G-250, Medical Assessment; G-250a, Medical Assessment of Residual Functional Capacity; G-260, Report of Seizure Disorder; RL-11b, Disclosure of Hospital Medical Records; RL-11d, Disclosure of Medical Records from a State Agency; and RL-250, Request for

Medical Assessment, to obtain the necessary medical evidence.

The RRB proposes no changes to the information collection. Completion is

voluntary. One response is requested of each respondent.

#### ESTIMATE OF RESPONDENT BURDEN

Form No.	Annual responses	Time (mins)	Burden (hours)
G-3EMP .....	600	10	100
G-197 .....	6,000	10	1,000
G-250 .....	11,950	30	5,975
G-250a .....	50	20	17
G-260 .....	100	25	42
RL-11b .....	5,000	10	833
RL-11d .....	250	10	42
RL-250 .....	11,950	10	1,992
TOTAL .....	35,900	.....	10,001

#### Additional Information or Comments:

To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751-3363 or send an e-mail request to [Charles.Mierzwa@RRB.GOV](mailto:Charles.Mierzwa@RRB.GOV). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092 or send an e-mail to [Ronald.Hodapp@RRB.GOV](mailto:Ronald.Hodapp@RRB.GOV). Written comments should be received within 60 days of this notice.

Charles Mierzwa,  
Clearance Officer.

[FR Doc. E8-4533 Filed 3-6-08; 8:45 am]  
BILLING CODE 7905-01-P

#### RAILROAD RETIREMENT BOARD

##### Agency Forms Submitted for OMB Review, Request for Comments

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) to request a revision to a currently approved collection of information: 3220-0176, Representative Payee Parental Custody Report. Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collection of information to determine (1) the practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility and clarity of the information that is the subject of collection; and (4) ways to

minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if RRB and OIRA receive them within 30 days of publication date.

Under section 12 (a) of the Railroad Retirement Act (RRA), the Railroad Retirement Board (RRB) is authorized to select, make payments to, and to conduct transactions with, a beneficiary's relative or some other person willing to act on behalf of the beneficiary as a representative payee. The RRB is responsible for determining if direct payment to the beneficiary or payment to a representative payee would best serve the beneficiary's interest. Inherent in the RRB's authorization to select a representative payee is the responsibility to monitor the payee to assure that the beneficiary's interests are protected. The RRB utilizes Form G-99d, Parental Custody Report, to obtain information needed to verify that a parent-for-child representative payee still has custody of the child. One response is required from each respondent. The RRB proposes no changes to Form G-99d.

**Previous Requests for Comments:** The RRB has already published the initial 60-day notice (72 FR 61192-61193 on October 29, 2007) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

##### Information Collection Request (ICR)

**Title:** Representative Payee Parental Custody Monitoring.

**OMB Control Number:** 3220-0176.

**Form(s) submitted:** G-99D.

**Type of request:** Extension of a currently approved collection.

**Affected public:** Individuals or households.

**Abstract:** Under section 12(a) of the Railroad Retirement Act, the RRB is

authorized to select, make payments to, and conduct transactions with an annuitant's relative or some other person willing to act on behalf of the annuitant as a representative payee. The collection obtains information needed to verify the parent-for-child payee still retains custody of the child.

**Changes proposed:** The RRB proposes no changes to Form G-99D.

**The burden estimate for the ICR is as follows:**

**Estimated completion time for Form(s):** Completion time for Form G-99D is estimated at 5 minutes.

**Estimated annual number of respondents:** 1,030.

**Total annual responses:** 1,030.

**Total annual reporting hours:** 86.

**Additional information or comments:** Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer (312-751-3363) or [Charles.Mierzwa@rrb.gov](mailto:Charles.Mierzwa@rrb.gov).

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611-2092 or [Ronald.Hodapp@rrb.gov](mailto:Ronald.Hodapp@rrb.gov) and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,  
Clearance Officer.

[FR Doc. E8-4539 Filed 3-6-08; 8:45 am]  
BILLING CODE 7905-01-P

**SECURITIES AND EXCHANGE  
COMMISSION**

[File No. 500-1]

**In the Matter of: Machine Technology, Inc., Magnum Sports & Entertainment, Inc., Management of Environmental Solutions & Technology Corp., and Mariculture Systems, Inc.; Order of Suspension of Trading**

DATE: March 5, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Machine Technology, Inc. because it has not filed any periodic reports since it filed a Form 10-Q for the period ended May 31, 1994.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Magnum Sports & Entertainment, Inc. because it has not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Management of Environmental Solutions & Technology Corp. because it has not filed any periodic reports since it filed a Form 10-QSB for the period ended June 30, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Mariculture Systems, Inc. because it has not filed any period reports since it filed a Form 10-QSB for the period ended September 30, 2002.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on March 5, 2008, through 11:59 p.m. EDT on March 18, 2008.

By the Commission.

Nancy M. Morris,  
Secretary.

[FR Doc. 08-987 Filed 3-05-08; 9:45 am]

BILLING CODE 8011-01-P

**SECURITIES AND EXCHANGE  
COMMISSION**

[Release No. 34-57411; File No. SR-CBOE-2008-25]

**Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Temporary Membership Status Access Fee**

March 3, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 29, 2008, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under section 19(b)(3)(A),<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

CBOE proposes to adjust the monthly access fee for persons granted temporary CBOE membership status ("Temporary Members") pursuant to Interpretation and Policy .02 under CBOE Rule 3.19 ("Rule 3.19.02"). The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/Legal/>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

**A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

**1. Purpose**

The current access fee for Temporary Members under Rule 3.19.02<sup>5</sup> is \$7,354 per month and took effect on February 1, 2008. The Exchange proposes to revise the access fee to be \$8,468 per month commencing on March 1, 2008.

The Exchange used the following process to set the proposed access fee: The Exchange polled each of the clearing firms that assists in facilitating at least 10% of the transferable CBOE membership leases and obtained the Clearing Firm Floating Monthly Rate<sup>6</sup> designated by each of these clearing firms for the month of March 2008. The Exchange then set the proposed access fee at an amount equal to the highest of these Clearing Firm Floating Monthly Rates.

The Exchange used the same process to set the proposed access fee that it used to set the current access fee. The only difference is that the Exchange used Clearing Firm Floating Monthly Rate information for the month of March 2008 to set the proposed access fee (instead of Clearing Firm Floating Monthly Rate information for the month of February 2008 as was used to set the current access fee) in order to take into account changes in Clearing Firm Floating Monthly Rates for the month of March 2008.

The Exchange believes that the process used to set the proposed access fee and the proposed access fee itself are appropriate for the same reasons set forth in CBOE rule filing SR-CBOE-2008-12 in support of that process and the current access fee.<sup>7</sup>

The proposed access fee will remain in effect until such time either that the Exchange submits a further rule filing pursuant to section 19(b)(3)(A)(ii) of the

<sup>5</sup> See Securities Exchange Act Release No. 56458 (September 18, 2007), 72 FR 54309 (September 24, 2007) (SR-CBOE-2007-107) for a description of the Temporary Membership status under Rule 3.19.02.

<sup>6</sup> The term "Clearing Firm Floating Monthly Rate" refers to the floating monthly rate that a clearing firm designates, in connection with transferable membership leases that the clearing firm assisted in facilitating, for leases that utilize that floating monthly rate.

<sup>7</sup> See Securities Exchange Act Release No. 57293 (February 8, 2008), 73 FR 8729 (February 14, 2008) (SR-CBOE-2008-12), which established the current access fee, for detail regarding the rationale in support of the current access fee and the process used to set that fee, which is also applicable to this proposed rule change as well.

Act<sup>8</sup> to modify the proposed access fee or the Temporary Membership status under Rule 3.19.02 is terminated. Accordingly, the Exchange may further adjust the proposed access fee in the future if the Exchange determines that it would be appropriate to do so taking into consideration lease rates for transferable CBOE memberships prevailing at that time.

The procedural provisions of the CBOE Fee Schedule related to the assessment of the proposed access fee are not proposed to be changed and will remain the same as the current procedural provisions regarding the assessment of the current access fee.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of section 6(b)(4) of the Act,<sup>10</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among persons using its facilities.

### B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>11</sup> and subparagraph (f)(2) of Rule 19b-4<sup>12</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

## 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2008-25 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2008-25. 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-CBOE-2008-25 and should be submitted on or before March 28, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8-4420 Filed 3-6-08; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57415; File No. SR-Amex-2008-16]

### Self-Regulatory Organizations; American Stock Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Permanent Two Pilot Programs That Increase Position and Exercise Limits on Equity Options

March 3, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 29, 2008, the American Stock Exchange, LLC ("Exchange" or "Amex") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to make permanent two pilot programs that increase standard position and exercise limits for equity option classes traded on the Exchange. The text of the proposed rule change is available on the Exchange's Web site (<http://www.amex.com>), at the Exchange's principal office, and at the Commission's Public Reference Room.

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The Exchange is seeking to make permanent two pilot programs that increase position and exercise limits for equity options. The Exchange proposes to amend Rule 904 to permanently establish the increased limits of the two pilot programs.

The first pilot program ("Rule 904 Pilot Program"), which commenced in March 2005<sup>5</sup> and was adopted by all the options exchanges, increased position and exercise limits for options on the QQQQ and equity options classes traded on the Exchange.

The second pilot program, which commenced in January 2007, increased the position and exercise limits for options on the iShares® Russell 2000® Index Fund ("IWM") ("IWM Option Pilot Program") from 250,000 contracts to 500,000 contracts.<sup>6</sup>

<sup>5</sup> See Securities Exchange Act Release No. 51316 (March 3, 2005); 70 FR 12251 (March 11, 2005) (notice of filing and immediate effectiveness of File No. SR-Amex-2005-029). The Pilot Program was extended five times and is due to expire on March 1, 2008. See Securities Exchange Act Release Nos. 56262 (August 15, 2007), 72 FR 47089 (August 22, 2007) (SR-Amex-2007-86); 55226 (February 1, 2007), 72 FR 6300 (February 9, 2007) (SR-Amex-2007-15); 54386 (August 30, 2006), 71 FR 52831 (September 7, 2006) (SR-Amex-2006-75); 53349 (February 22, 2006), 71 FR 10571 (March 1, 2006) (SR-Amex-2006-07); and 52260 (August 15, 2005), 70 FR 48991 (August 22, 2005) (SR-Amex-2005-082).

<sup>6</sup> The IWM Option Pilot Program doubles the position and exercise limits for IWM options under the Rule 904 Pilot Program. See Rule 904, Commentary .07. Absent both of these pilot programs, the standard position and exercise limit for IWM options is 75,000 option contracts. The proposal that established the IWM Option Pilot Program was effective upon filing. See Securities Exchange Act Release No. 55163 (January 24, 2007), 72 FR 4547 (January 31, 2007) (SR-Amex-2007-11). The IWM Option Pilot Program has been extended twice by the Commission, and expires on March 1, 2008. See Securities Exchange Act Release Nos. 57145 (January 14, 2008), 73 FR 3760 (January 22,

The standard position limits were last increased nine years ago, on December 31, 1998.<sup>7</sup> Since that time, there has been a steady increase in the number of accounts that (a) approach the position limit; (b) exceed the position limit; and (c) are granted an exemption to the standard limit.

The Exchange has not encountered any problems or difficulties relating to the two pilot programs since their inception. To the best of the Exchange's knowledge, any violations of position or exercise limits under the pilot programs were immaterial. None of the violations were deemed to be the result of manipulative activities. The Exchange believes that the increase in options volume and lack of evidence of market manipulation since the last position limits increase, and throughout the duration of the two pilot programs, justifies making permanent the Rule 904 Pilot Program and IWM Option Pilot Program.

Furthermore, as the anniversary of listed options trading approaches its 35th year, the Exchange believes that the existing surveillance procedures and options positions reporting requirements at the Amex, at other options exchanges, and at the several clearing firms are capable of properly identifying unusual or illegal trading activity. The Exchange's procedures include daily monitoring of market movements via automated surveillance techniques to identify unusual activities in both options and their underlying securities.

Accordingly, the Exchange represents that its surveillance procedures and reporting procedures, in conjunction with the financial requirements and risk management review procedures already in place at the clearing firms and the Options Clearing Corporation, will serve to adequately address any concerns the Commission may have with respect to account(s) engaging in any manipulative schemes or assuming too high a level of risk exposure.

Moreover, the Exchange believes that the current financial requirements imposed by the Exchange and the Commission adequately address the concerns that a member or its customer may try to maintain an inordinately large unhedged position in an equity option.

Finally, the Exchange expects continued options volume growth as

2008) (SR-Amex-2008-01); and 56090 (July 18, 2007), 72 FR 40907 (July 25, 2007) (SR-Amex-2007-73).

<sup>7</sup> See Securities Exchange Act Release No. 40875 (December 31, 1998), 64 FR 1842 (January 12, 1999) (SR-Amex-98-22) (approving an increase in position limits and exercise limits).

opportunities for investors to participate in the options markets increase and evolve. The Exchange believes that the non-pilot position and exercise limits are restrictive, and returning to those limits will hamper fair and effective competition between the listed options markets and the over-the-counter markets. To date, there have been no adverse affects on the markets as a result of the past increases in the limits for equity options contracts.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act<sup>8</sup> in general and furthers the objectives of Section 6(b)(5)<sup>9</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received by the Exchange on this proposal.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and subparagraph (f)(6) of Rule 19b-4

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).



thereunder.<sup>11</sup> The Exchange notes that the proposed rule change is based on a similar proposal recently approved by the Commission.<sup>12</sup> The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing.

The Rule 904 Pilot Program and the IWM Option Pilot Program were scheduled to expire on March 1, 2008. The Commission believes that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest because it will allow the position and exercise limits to remain at consistent levels during the transition from the pilot programs to permanent status.<sup>13</sup> Therefore, the Commission designates the proposal to be operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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](mailto:rule-comments@sec.gov). Please include File No. SR-Amex-2008-16 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission.

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

<sup>12</sup> See Securities Exchange Act Release No. 57352 (February 19, 2008), 73 FR 10076 (February 25, 2008) (order granting accelerated approval to SR-CBOE-2008-07).

<sup>13</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2008-16. 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 filings 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-Amex-2008-16 and should be submitted on or before March 28, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8-4515 Filed 3-6-08; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57414; File No. SR-BSE-2008-12]

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Permanent Two Pilot Programs That Increase Position and Exercise Limits on Equity Options

March 3, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

<sup>14</sup> 17 CFR 200.30-3(a)(12).

("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 29, 2008, the Boston Stock Exchange, Inc. ("Exchange" or "BSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Rules of the Boston Options Exchange ("BOX"). The Exchange is proposing to make permanent the position and exercise limits that the Exchange is currently applying to equity options on a pilot basis. The text of the rule proposal is available on the Exchange's Web site (<http://www.bostonstock.com>), at the offices of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of the proposed rule change is to make permanent two pilot programs that increase position and exercise limits for equity options. To permanently establish the two pilot programs, the Exchange proposes to amend Section 7 (Position Limits) and

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

Section 9 (Exercise Limits) to Chapter III of the BOX Rules. Section 7 subjects equity options to one of five different position limits depending on the trading volume and outstanding shares of the underlying security. Section 9 establishes exercise limits for the corresponding options at the same levels as the corresponding security's position limits.<sup>5</sup>

The first pilot program, the "Section 7(a) Pilot Program," commenced on March 3, 2005, and provides for an increase to the standard (or "non-pilot") position and exercise limits for equity option contracts and for options on the PowerShares QQQ Trust ("QQQQ").<sup>6</sup>

The second pilot program, the "iShares Russell 2000 Index Fund (IWM) Option Pilot Program," commenced on January 23, 2007, and increases the position and exercise limits for IWM options from 250,000 contracts to 500,000 contracts.<sup>7</sup>

#### Violations

Both pilot programs were in effect during the period of January 1, 2007

<sup>5</sup> Section 9 of Chapter III of the BOX Rules states, "... no Options Participant shall exercise, for any account in which it has an interest or for the account of any Customer, a long position in any options contract where such Options Participant or Customer, acting alone or in concert with others, directly or indirectly, has or will have: (i) Exercised within any five (5) consecutive business days aggregate long positions in any class of options traded on BOX in excess of" the established limits set by the Exchange.

<sup>6</sup> The Section 7(a) Pilot Program was approved by the Commission on March 3, 2005. See Securities Exchange Act Release No. 51317 (March 3, 2005), 70 FR 12254 (March 11, 2005) (SR-BSE-2005-10). The Section 7(a) Pilot Program has been extended five times for six month periods by the Commission, and expires on March 1, 2008. See Securities Exchange Act Release Nos. 52264 (August 15, 2005), 70 FR 48992 (August 22, 2005) (SR-BSE-2005-37); 53347 (February 22, 2006), 71 FR 10573 (March 1, 2006) (SR-BSE-2006-07); 54388 (August 30, 2006), 71 FR 52833 (September 7, 2006) (SR-BSE-2006-32); 55260 (February 8, 2007), 72 FR 7487 (February 15, 2007) (SR-BSE-2007-04); and 56268 (August 15, 2007), 72 FR 47092 (August 22, 2007) (SR-BSE-2007-41). In connection with the March 21, 2007 transfer of sponsorship of the Nasdaq-100 Trust, the name of the trust was changed to the "PowerShares QQQ Trust." See QQQQ prospectus available at <http://www.powershares.com/pdf/IP-QQQ-PRO-1.pdf>.

<sup>7</sup> The IWM Position Limit Pilot Program doubles the position and exercise limits for IWM options under the Section 7(a) Pilot Program. See BOX Rules, Chapter III, Section 7, Supplementary Material .02. Absent both of these pilot programs, the standard position and exercise limits for IWM options are 75,000 option contracts. The proposal that established the IWM Option Pilot Program was effective upon filing. See Securities Exchange Act Release No. 55171 (January 25, 2007), 72 FR 4549 (January 31, 2007) (SR-BSE-2007-03). The IWM Option Pilot Program has been extended twice by the Commission and expires on March 1, 2008. See Securities Exchange Act Release Nos. 56051 (July 12, 2007), 72 FR 39469 (July 18, 2007) (SR-BSE-2007-30); and 57173 (January 18, 2008), 73 FR 4653 (January 25, 2008) (SR-BSE-2008-03).

through January 1, 2008. Any violations of the position limits established during the pilot period which may have occurred during this time were deemed inadvertent—due primarily to miscounting, technical problems, or a misinterpretation of position limit calculation methodologies. None of these violations were deemed to be a result of manipulative activities.

#### Growth in Options Market

Since the last position limit increase, there has been an exponential increase in the overall volume of exchange traded options. Part of this volume is attributable to a corresponding increase in the number of overall market participants. This growth in market participants has in turn brought about additional depth and increased liquidity in exchange traded options.

#### Manipulation

Since the last position limit increase, and throughout the duration of the two pilot programs, the Exchange has not encountered any regulatory issues regarding the applicable position limits, and states that there is a lack of evidence of market manipulation schemes, which justifies making permanent the Section 7(a) and IWM Option Pilot Programs.

The Exchange believes that position and exercise limits, at the non-pilot levels, no longer serve their stated purpose. As the anniversary of listed options trading approaches its 35th year, the Exchange believes that the existing surveillance procedures and reporting requirements at the BSE, and other options exchanges, and at the several clearing firms are capable of properly identifying unusual and/or illegal trading activity. The Exchange's procedures include daily monitoring of market movements via automated surveillance techniques to identify unusual activities in both options and their underlying securities.

Accordingly, the Exchange represents that its surveillance procedures and reporting procedures, in conjunction with the financial requirements and risk management review procedures already in place at the clearing firms and the Options Clearing Corporation, will serve to adequately address any concerns the Commission may have with respect to account(s) engaging in any manipulative schemes or assuming too high a level of risk exposure.

#### Financial Requirements

The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns that a

member or its customer may try to maintain an inordinately large unhedged position in an equity option.

#### Inability To Compete; Retreat to OTC Market

The Exchange has no reason to believe that the current trading volume in equity options will not continue. Rather, the Exchange expects continued options volume growth as opportunities for investors to participate in the options markets increase and evolve. The Exchange believes that the non-pilot position and exercise limits are restrictive, and maintaining those limits will hamper the listed options markets from being able to compete fairly and effectively with the over-the-counter markets.

#### No Adverse Consequences From Past Increases

Equity option position limits have been gradually expanded from 1,000 contracts in 1973 to the current level of 75,000 contracts for the largest and most actively traded equity options. To date, there have been no adverse effects on the markets as a result of these past increases in the limits for equity option contracts.

#### 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>8</sup> in general, and Section 6(b)(5) of the Act,<sup>9</sup> in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, 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 in that it will, if approved, provide uniform greater position and exercise limits for options traded on the options exchanges.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>11</sup> The Exchange notes that the proposed rule change is based on a similar proposal recently approved by the Commission.<sup>12</sup> The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing.

The Section 7(a) Pilot Program and the IWM Option Pilot Program were scheduled to expire on March 1, 2008. The Commission believes that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest because it will allow the position and exercise limits to remain at consistent levels during the transition from the pilot programs to permanent status.<sup>13</sup> Therefore, the Commission designates the proposal to be operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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](mailto:rule-comments@sec.gov). Please include File No. SR-BSE-2008-12 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BSE-2008-12. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BSE-2008-12 and should be submitted on or before March 28, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

Florence E. Harmon,  
Deputy Secretary.

[FR Doc. E8-4514 Filed 3-6-08; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57410; File No. SR-CBOE-2007-96]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Amend the Quarterly Option Series Pilot Program To Permit the Listing of Additional Series

March 3, 2008.

#### I. Introduction

On August 7, 2007, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposal to amend its rules relating to the quarterly option series ("QOS") pilot program ("Pilot Program") to permit the listing of additional series and to adopt a delisting program for outlying QOS series with no open interest. On January 17, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the *Federal Register* on January 28, 2008.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

#### II. Description of the Proposal

Current Exchange rules permit, on a pilot basis, the listing and trading of QOS in options on indexes or options on exchange-traded funds ("ETFs") that satisfy the applicable listing criteria under CBOE rules.<sup>4</sup> QOS trade based on

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

<sup>12</sup> See Securities Exchange Act Release No. 57352 (February 19, 2008), 73 FR 10076 (February 25, 2008) (order granting accelerated approval to SR-CBOE-2008-07).

<sup>13</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> U.S.C. 78s(b)(1).

<sup>17</sup> CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 57170 (January 18, 2008), 73 FR 4927 ("Notice").

<sup>4</sup> See Securities Exchange Act Release No. 54123 (July 11, 2006), 71 FR 40558 (July 17, 2006) (SR-CBOE-2006-65) ("Pilot Program Release"). Under the pilot program, the Exchange may list QOS in up to five currently listed option classes that are either options on ETFs or indexes. The Exchange is also permitted to list QOS in any options class

Continued

calendar quarters that end in March, June, September and December. The Exchange lists QOS that expire at the end of the next consecutive four calendar quarters, as well as the fourth quarter of the next calendar year. Currently, the Exchange lists QOS in five ETF options: (1) Nasdaq-100 Index Tracking Stock (QQQQ); (2) iShares Russell 2000 Index Fund (IWM); (3) DIAMONDS Trust, Series 1 (DIA); (4) Standard and Poor's Depository Receipts/SPDRs (SPY); and (5) Energy Select SPDR (XLE).

CBOE Rule 5.5(e)(3) provides that the Exchange shall list strike prices for a QOS that are within \$5 from the closing price of the underlying security on the preceding day. Recently, the Exchange has received requests from market participants to add additional strike prices for QOS that would be outside of the \$5 price range for setting strikes (hereinafter "+/- \$5 range"). Investors and other market participants have advised the Exchange that they are buying and selling QOS options to trade volatility. In order to adequately replicate the desired volatility exposure, these market participants need to trade several option series, many having strike prices that fall outside the +/- \$5 range currently allowed under the QOS rules.

In addition, other participants have advised the Exchange that their investment strategies involve trading options tied to a particular option "delta,"<sup>5</sup> rather than a particular level of the underlying security or index. At issue is the fact that delta depends on both the relative difference between the level of the underlying security or index and the option strike price, and time to expiration. For example, with IWM trading at \$85 per share, the strike price corresponding to a "25-delta" IWM call (i.e., a call option with a delta of 25) with one month to expiration would be 89. However, the strike price corresponding to a "25-delta" IWM call with 3 months to expiration would be 93, and the strike price of a "25-delta" call with 1 year to expiration would be 106.

In short, CBOE has been advised that the +/- \$5 range for QOS in IWM options is insufficient to satisfy customer demand. In response, the Exchange proposes to amend Rule 5.5(e)

that is selected by other securities exchanges that employ a similar pilot program under their respective rules.

<sup>5</sup> "Delta" is a measure of how an option price will change in response to a \$1 price change in the underlying security or index. For example, an ABC option with a delta of "50" can be expected to change by \$0.50 in response to a \$1 change in the price of ABC.

to permit the Exchange to list strike prices for QOS in ETF options that fall within a percentage range (30%) above and below the price of the underlying ETF. Additionally, upon demonstrated customer interest, the Exchange also will be permitted to open additional strike prices of QOS in ETF options that are more than 30% above or below the current price of the underlying ETF. Market-Makers' trading for their own account will not be considered when determining customer interest under this provision. In addition to the initial listed series, the proposal will permit the Exchange to list up to sixty (60) additional series per expiration month for each QOS in ETF options.

The Exchange also is proposing to implement a delisting policy. Under the proposed delisting policy, the Exchange will, on a monthly basis, review QOS series that are outside a range of five (5) strikes above and five (5) strikes below the current price of the underlying ETF, and delist series with no open interest in both the put and the call series having a strike price: (i) higher than the highest strike price with open interest in the put and/or call series for a given expiration month; or (ii) lower than the lowest strike price with open interest in the put and/or call series for a given expiration month.<sup>6</sup> Notwithstanding the proposed delisting policy, the Exchange will grant customer requests to add strikes and/or maintain strikes in QOS eligible for delisting.

### III. Commission's Findings and Order Granting Approval of the Proposed Rule Change

After careful review and based on the Exchange's representations, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>7</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>8</sup> in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, 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.

<sup>6</sup> For a detailed example of how the delisting policy will work, see Notice, *supra* note 3, at 4928.

<sup>7</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78b(f)(5).

Specifically, the Commission believes that the proposed expansion in the range and number of strike prices that the Exchange may list for QOS will provide investors with added flexibility in the trading of equity options and further the public interest by allowing investors to establish equity options positions that are better tailored to meet their investment objectives. The Commission also believes that the proposal strikes a reasonable balance between the Exchange's desire to accommodate market participants by offering a wider array of investment opportunities and the need to avoid unnecessary proliferation of options series and the corresponding increase in quotes. The Commission notes that the delisting policy proposed by the Exchange is designed to mitigate the number of options series with no open interest, which would reduce quote traffic accordingly.

In approving the proposed rule change, the Commission has relied upon the Exchange's representation that it has the necessary systems capacity to support new options series that will result from this proposal. The Commission expects the Exchange to continue to monitor for option series with little or no open interest and trading activity and, consistent with the delisting policy approved today as part of this proposed rule change, to act promptly to delist such options. In addition, the Commission expects that CBOE will continue to monitor the trading volume associated with the additional option series listed as a result of this proposal and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, OPRA's, and vendors' automated systems.

Finally, the Commission notes that this rule change will become part of the pilot program and, going forward, its effects will be considered by the Commission in the event that the Exchange seeks to renew or make permanent the pilot program.<sup>9</sup> Thus, in

<sup>9</sup> As set forth in the Pilot Program Release, if the Exchange were to propose an extension, expansion, or permanent approval of the Pilot Program, the Exchange must submit, along with any filing proposing such amendments to the program, a report that provides an analysis of the Pilot Program covering the entire period during which the Pilot Program was in effect. See Pilot Program Release, *supra* note 4. The Pilot Program Release requires the Exchange to include in its report, at a minimum: (1) Data and written analysis on the open interest and trading volume in the classes for which QOS were opened; (2) an assessment of the appropriateness of the option classes selected for the Pilot Program; (3) an assessment of the impact of the Pilot Program on the capacity of the Exchange, OPRA, and market data vendors (to the extent data from market data vendors is available);



the Exchange's future reports on the Pilot Program, the Exchange should include analysis of (1) the impact of the additional series on the Exchange's market and quote capacity, and (2) the implementation and effects of the delisting policy, including the number of series eligible for delisting during the period covered by the report, the number of series actually delisted during that period (pursuant to the delisting policy or otherwise), and documentation of any customer requests to maintain QOS strikes that were otherwise eligible for delisting.

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-CBOE-2007-96), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8-4389 Filed 3-6-08; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57392; File No. SR-DTC-2007-16]

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Relating to the Admission of Foreign Entities as Direct Depository Participants

February 27, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on November 16, 2007, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") and on February 5, 2008, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to

(4) any capacity problems or other problems that arose during the operation of the Pilot Program and how the Exchange addressed such problems; (5) any complaints that the Exchange received during the operation of the Pilot Program and how the Exchange addressed them; and (6) any additional information that would assist in assessing the operation of the Pilot Program.

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

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 proposed rule change would amend DTC's policy statement regarding the admission of participants to permit entities that are organized in a foreign country and are not subject to U.S. federal or state regulation ("foreign entities") to become eligible to become direct DTC participants ("Foreign Entity Policy Statement").<sup>2</sup>

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.<sup>3</sup>

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In 1990, DTC adopted a Policy Statement on the Admission of Participants ("1990 Policy Statement") to make clear that in determining whether to grant access to its services, DTC regards as a critical factor that an applicant is subject to comprehensive U.S. federal or state regulation relating to, among other things, capital adequacy, financial reporting and recordkeeping, operating performance, and business conduct.<sup>4</sup> Generally under the 1990 Policy Statement, unless an applicant is subject to U.S. federal or state regulatory agency oversight, the applicant would not be eligible to become a DTC participant.<sup>5</sup> Since 1990,

<sup>2</sup> The National Securities Clearing Corporation ("NSCC") has filed a similar proposed rule change that would permit NSCC to adopt a similar policy statement with respect to the admission of foreign entities as members. Securities Exchange Act Release No. 57391 (February 27, 2008) (File No. SR-NSCC-2007-15).

<sup>3</sup> The Commission has modified parts of these statements.

<sup>4</sup> Securities Exchange Act Release No. 28754 (January 8, 1991), 56 FR 1548 (January 15, 1991) (File No. SR-DTC-90-01).

<sup>5</sup> DTC recognized, however, that any person designated by the Commission pursuant to Section 17A(b)(3)(B)(vi) of the Act, even if not subject to such regulatory oversight, would be eligible for admission. The 1990 Policy Statement was approved by the Commission on January 8, 1991.

DTC has admitted a small number of foreign entities where their obligations to DTC have been guaranteed by creditworthy DTC participants.

The purpose of the proposed Foreign Entity Policy Statement is to establish admissions criteria that will permit a well-qualified foreign entity to become a participant of DTC and to obtain direct access to DTC's services while assuring that the unique risks associated with the admission of foreign entities are adequately addressed.<sup>6</sup>

The admission of foreign entities as participants raises a number of unique risks and issues, including that (1) the entity is not subject to federal or state regulation, (2) that the operation of the laws of the entity's home country and time zone differences<sup>7</sup> may impede the successful exercise of DTC's rights and remedies particularly in the event of the entity's failure to settle, and (3) financial information about the foreign entity made available to DTC for monitoring purposes may be less adequate than the financial information about U.S.-based entities.

The Foreign Participant Policy Statement would require that in addition to executing the standard DTC Participation Agreement the foreign entity enter into a series of undertakings and agreements that are designed to address jurisdictional concerns and to assure that DTC is provided with audited financial information that is acceptable to DTC.<sup>8</sup> The proposed policy statement would also require that the foreign entity (1) be subject to regulation in its home country and (2) be in good standing with its home country regulator.

The Foreign Participant Policy Statement was previously approved by the Commission on a temporary basis in 1997.<sup>9</sup> As currently proposed, the

<sup>6</sup> DTC's proposed "Policy Statement on the Admission of Non-U.S. Entities as Direct Depository Participants" is attached as Exhibit 5 to its filing, which can be found at [http://www.dtcc.com/downloads/legal/rule\\_filings/2007/dtc/2007-16.pdf](http://www.dtcc.com/downloads/legal/rule_filings/2007/dtc/2007-16.pdf).

<sup>7</sup> Time zone differences may complicate communications between a foreign participant and its U.S. Settling Bank with respect to the timely payment of the participant's net debit to DTC including intraday demands for payment. These differences may also delay DTC's receipt of information available in the foreign participant's home country to others including its other creditors about the foreign participant's financial condition on the basis of which DTC would have taken steps to protect the interests of DTC and its participants.

<sup>8</sup> In the Foreign Entity Policy Statement, DTC has reserved the right to waive certain of these criteria where such criteria are inappropriate to a particular applicant or class of applicants (e.g., a foreign government or international or national central securities depositories).

<sup>9</sup> Securities Exchange Act Release Nos. 38600 (May 9, 1997), 62 FR 27086 (May 16, 1997) (File No.

Continued



Foreign Participant Policy Statement would retain all the requirements of the previous version with the exception of the "special financial conditions" requirements, as explained below. It would also include new requirements with respect to non-U.S. GAAP financial statements and anti-money laundering ("AML") risk.

The Foreign Entity Policy Statement previously included "special financial conditions" requirements applicable to participants that were foreign entities. The special financial conditions requirements mandated that a foreign entity have and maintain minimum net capital of 100% of the minimum net capital for the admission of a U.S. entity. A foreign entity was also required to have additional "special collateral" in its account equal to fifty percent of its net debit cap. Any net debit of the foreign entity had to be supported by the value of other, non-special collateral including securities received by the participant valued in accordance with DTC's customary haircuts. Except for U.S. Treasury securities, which received a haircut of 2 percent, securities posted as special collateral received a haircut of 50% of their market value. The foreign entity did not receive credit for special collateral in DTC's collateral monitor. DTC now believes that its net debit cap, collateral monitor, and other risk management controls and procedures applicable to all participants together with the other requirements of the Foreign Entity Policy Statement would adequately limit DTC's exposure in the event of the failure to settle and insolvency of a foreign participant without the need for the special financial conditions requirement.<sup>10</sup>

The Foreign Entity Policy Statement also previously required foreign entities to provide to DTC for financial monitoring purposes audited financial statements prepared in accordance with U.S. generally accepted accounting principles or other generally accepted accounting principles that are satisfactory to DTC. As it is currently

proposed, the Foreign Entity Policy Statement retains this requirement but to address the risk presented by accepting financial statements prepared in non-U.S. GAAP, DTC would increase the existing minimum financial requirements for any foreign entity submitting its financial statements in non-U.S. GAAP by a premium. The premiums would be as follows:

(i) 1 1/2 times the existing requirement for a foreign entity submitting financial statements prepared in accordance with International Financial Reporting Standards ("IFRS"), the Companies Act of 1985 ("UK GAAP"), or Canadian GAAP;

(ii) 5 times the existing requirement for a foreign entity submitting financial statements prepared in accordance with a European Union ("EU") country GAAP other than UK GAAP; and

(iii) 7 times the existing requirement for a foreign entity submitting financial statements prepared in accordance with any other type of GAAP.

Finally, DTC is proposing to add a new requirement to the Foreign Entity Policy Statement that a foreign entity must provide sufficient information to DTC so that DTC can evaluate AML risk.

The proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act. The proposed policy does not unfairly discriminate against foreign entities seeking admission as participants because it appropriately takes into account the unique risks to DTC raised by their admission.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

DTC perceives no impact on competition by reason of the proposed rule change.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-DTC-2007-16 on the subject line.

##### *Paper Comments:*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-DTC-2007-16. 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 DTC. 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-DTC-2007-16 and should be submitted on or before March 28, 2008.

SR-DTC-96-13); 40064 (June 3, 1998), 63 FR 31818 (June 10, 1998) (File No. SR-DTC-98-11); 41466 (May 28, 1999), 64 FR 30077 (June 4, 1999) (File No. SR-DTC-99-12); 42865 (May 30, 2000), 65 FR 36188 (June 7, 2000) (File No. SR-DTC-00-07); 44470 (June 22, 2001), 66 FR 34972 (July 2, 2001) (File No. SR-DTC-2001-10). Approval of the Foreign Participant Policy Statement as previously filed and temporarily approved by the Commission extended through May 31, 2002.

<sup>10</sup> Additionally, in the Foreign Participant Policy Statement, DTC has reserved the right to require a foreign entity to deposit additional amounts to DTC's participants fund and the right to require a letter of credit as the form of participant fund collateral where DTC in its sole discretion believes the entity presents legal risk.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

Florence E. Harmon,  
Deputy Secretary.

[FR Doc. E8-4401 Filed 3-6-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57413; File No. SR-FINRA-2008-007]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Permanent a Pilot Program That Increases Options Position and Exercise Limits

March 3, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 28, 2008, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by FINRA. FINRA has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA seeks to amend NASD Rule 2860 (Options) to make permanent a pilot program that increases options position and exercise limits. In addition, FINRA proposes to amend NASD IM-2860-1 (Position Limits) to revise the examples that illustrate the operation of position limits with the proposed permanent position limits. The text of the proposed rule change is available on FINRA's Web site (<http://www.finra.org>), at FINRA's principal office, and at the Commission's Public Reference Room.

<sup>1</sup> 17 CFR 200.30-3(a)(12).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

FINRA is proposing amendments to its options position and exercise limits in NASD Rule 2860 to make permanent a pilot program that increases position and exercise limits for both standardized and conventional options.<sup>5</sup> In addition, FINRA proposes to amend NASD IM-2860-1 (Position Limits) to revise the examples that illustrate the operation of position limits with the proposed permanent position limits.

NASD Rule 2860(b)(3) subjects standardized and conventional options to one of five different position limits. Options exercise limits, which are set forth in NASD Rule 2860(b)(4), and which incorporate by reference the position limits in Rule 2860(b)(3), also would increase. The original pilot program became effective on March 30, 2005, and has been extended five times. It was scheduled to expire on March 1, 2008.<sup>6</sup> FINRA is proposing to make the

<sup>5</sup> A "conventional option" is an option contract not issued, or subject to issuance by, the Options Clearing Corporation. See NASD Rule 2860(b)(2)(O). Currently, position limits for standardized and conventional options are the same with respect to the same underlying security. The proposed rule change would maintain this parity between standardized and conventional options. FINRA has maintained parity between conventional and standardized options since 1999. See Securities Exchange Act Release No. 40932 (January 11, 1999), 64 FR 2930, 2931 (January 19, 1999) (SR-NASD-98-92). Before 1999, position limits on conventional options were three times greater than the limits for standardized options. See Securities Exchange Act Release No. 40087 (June 12, 1998), 63 FR 33746 (June 19, 1998) (SR-NASD-98-23).

FINRA's limits on standardized equity options are applicable only to those members that are not also members of the exchange on which the option is traded; the limits on conventional options are applicable to all FINRA members. NASD Rule 2860(b)(1)(A); see also Securities Exchange Act Release No. 40932 (January 11, 1999), 64 FR 2930, 2931 (January 19, 1999) (SR-NASD-98-92).

<sup>6</sup> See Securities Exchange Act Release Nos. 52271 (August 16, 2005), 70 FR 49344 (August 23, 2005) (SR-NASD-2005-097); 53346 (February 22, 2006),

pilot program permanent in order to preserve the benefits to the marketplace from the higher levels. The proposed rule change also is substantively identical to a proposal by the Chicago Board Options Exchange, Inc. recently approved by the Commission.<sup>7</sup> FINRA anticipates all other self-regulatory organizations ("SROs") with the pilot program also will seek to make their program permanent. Thus, the proposed rule change will ensure that FINRA's position limits are consistent with those of other SROs.

###### Position and Exercise Limits

The standard position limits were last increased nine years ago, on December 31, 1998.<sup>8</sup> Since that time, there has been a steady increase in the number of accounts that approach the position limit or have been granted an exemption to the applicable position limit. To the best of FINRA's knowledge, during the operation of the pilot program, there have been very few violations of the position limits or exercise limits and none of these violations were deemed to be a result of manipulative activities.

###### Growth in Options Market

Since the last position limit increase, there has been an exponential increase in the overall volume in options trading. Part of this volume is attributable to a corresponding increase in the number of overall market participants. This growth in market participants has in turn brought about additional depth and increased liquidity in options trading. FINRA has no reason to believe that the current trading volume in equity options will not continue. Rather, FINRA expects continued options volume growth as opportunities for investors to participate in the options markets increase and evolve. FINRA believes that the non-pilot position and exercise limits might constrain liquidity in the options markets.

###### Manipulation

Since the last position limit increase, and throughout the duration of the pilot program, FINRA has not encountered any significant regulatory issues regarding the applicable position limits. Moreover, FINRA believes that there is a lack of evidence of market

71 FR 10580 (March 1, 2006) (SR-NASD-2006-025); 54334 (August 18, 2006), 71 FR 50961 (August 28, 2006) (SR-NASD-2006-097); 55225 (February 1, 2007), 72 FR 6634 (February 12, 2007) (SR-NASD-2007-007); and 56265 (August 15, 2007), 72 FR 47102 (August 22, 2007) (SR-FINRA-2007-002).

<sup>7</sup> See Securities Exchange Act Release No. 57352 (February 19, 2008), 73 FR 10076 (February 25, 2008) (SR-CBOE-2008-07).

<sup>8</sup> See Securities Exchange Act Release No. 40875 (December 31, 1998), 64 FR 1842 (January 12, 1999).

manipulation schemes, which justifies the proposed permanent approval of the pilot program. FINRA believes that its existing surveillance procedures and reporting requirements are reasonably designed to detect unusual and/or illegal trading activity. FINRA represents that its surveillance and reporting mechanisms (which have been significantly enhanced since the last position limit increase in 1999) will serve to adequately address any concerns the Commission may have with respect to account(s) engaging in any manipulative schemes resulting from position limit violations.

#### No Adverse Consequences from Past Increases

Equity option position limits have been gradually expanded from 1,000 contracts in 1973 to the current level of 75,000 contracts for the largest and most actively traded equity options. To date, FINRA is unaware of any adverse affects on the markets as a result of these past increases in the limits for equity option contracts.

#### 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>9</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change would make permanent a pilot program increasing options position and exercise limits. FINRA's experience administering the higher limits of the pilot program over the past three years has not revealed any adverse concerns or any other reasons to suggest that such limits should not be made permanent.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

<sup>9</sup> 15 U.S.C. 78o-3(b)(6).

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

FINRA has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>11</sup> FINRA notes that the proposed rule change is based on a similar proposal recently approved by the Commission.<sup>12</sup> FINRA has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing.

The pilot program expanding position and exercise limits on standardized and conventional options was scheduled to expire on March 1, 2008. The Commission believes that waiving the 30-day operative delay of FINRA's proposal is consistent with the protection of investors and the public interest because it will allow the position and exercise limits to remain at consistent levels during the transition from the pilot program to permanent status.<sup>13</sup> Therefore, the Commission designates the proposal to be operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has fulfilled this requirement.

<sup>12</sup> See Securities Exchange Act Release No. 57352 (February 19, 2008), 73 FR 10076 (February 25, 2008) (order granting accelerated approval to SR-CBOE-2008-07).

<sup>13</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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](mailto:rule-comments@sec.gov). Please include File No. SR-FINRA-2008-007 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2008-007. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2008-007 and should be submitted on or before March 28, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8-4513 Filed 3-6-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57416; File No. SR-ISE-2008-20]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1 Thereof, To Make Permanent Two Pilot Programs That Increase Position and Exercise Limits on Equity Options

March 3, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 28, 2008, the International Securities Exchange, LLC ("Exchange" or "ISE"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On February 29, 2008, NYSE submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to make permanent two pilot programs that increase position and exercise limits for equity options. To permanently establish the two pilot programs, the Exchange proposes to amend Rule 412, Position Limits, and Rule 414, Exercise Limits. The text of the proposed rule change is available on the Exchange's Web site (<http://www.ise.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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of the proposed rule change is to make permanent two pilot programs that increase position and exercise limits for equity options. To permanently establish the two pilot programs, the Exchange proposes to amend Rule 412, Position Limits, and Rule 414, Exercise Limits. Rule 412 subjects equity options to one of five different position limits depending on the trading volume and outstanding shares of the underlying security. Rule 414 establishes exercise limits for the corresponding options at the same levels as the corresponding security's position limits.

The first pilot program, the "Rule 412 Pilot Program," commenced on March 2, 2005, and provides for an increase to the standard (or "non-pilot") position and exercise limits for equity option contracts and for options on the PowerShares QQQ Trust ("QQQQ").<sup>6</sup> The second pilot program, the "iShares Russell 2000 Index Fund ("IWM")

<sup>6</sup> The Rule 412 Pilot Program was approved by the Commission on March 2, 2005. See Securities Exchange Act Release Nos. 51295 (March 2, 2005), 70 FR 11292 (March 8, 2005) (SR-ISE-2005-14). The Rule 412 Pilot Program has been extended five times for six month periods by the Commission, and expires on March 1, 2008. See Securities Exchange Act Release Nos. 52265 (August 15, 2005), 70 FR 48996 (August 22, 2005) (SR-ISE-2005-39); 53345 (February 22, 2006), 71 FR 10579 (March 1, 2006) (SR-ISE-2006-10); 54335 (August 18, 2006), 71 FR 50954 (August 28, 2006) (SR-ISE-2006-47); 55311 (February 16, 2007), 72 FR 8408 (February 26, 2007) (SR-ISE-2007-15); and 56263 (August 15, 2007), 72 FR 47105 (August 22, 2007) (SR-ISE-2007-69).

In connection with the March 21, 2007, transfer of sponsorship of the Nasdaq-100 Trust, the name of the trust was changed to the "PowerShares QQQ Trust." See QQQQ prospectus available at <http://www.powershares.com/pdf/P-QQQ-PRO-1.pdf>.

Option Pilot Program," commenced on January 25, 2007, and increases the position and exercise limits for IWM options from 250,000 contracts to 500,000 contracts.<sup>7</sup>

The standard position limits were last increased in 1998. Since that time, there has been a steady increase in the number of accounts that (a) approach the position limit; (b) exceed the position limits; and (c) are granted an exemption to the applicable position limit. The Exchange represents that over the course of the last year, when both pilot programs were in effect, the Exchange's Market Surveillance Department encountered only a handful of violations. The Exchange believes that all of these violations were deemed inadvertent and were due primarily to miscounting, technical problems, or a misinterpretation of position limit calculation methodologies. None of these violations were deemed to be a result of manipulative activities.

Since the last position limit increase, there has been an exponential increase in the overall volume of exchange traded options. Part of this volume is attributable to a corresponding increase in the number of overall market participants. This growth in market participants has in turn brought about additional depth and increased liquidity in exchange traded options.

Further, since the last position limit increase, and throughout the duration of the two pilot programs, the Exchange has not encountered any regulatory issues regarding the applicable position limits, and states that there is a lack of evidence of market manipulation schemes, which justifies making permanent the Rule 412 and IWM Option Pilot Programs.

As the anniversary of listed options trading approaches its 35th year, the Exchange believes that the existing surveillance procedures and options reporting requirements at the ISE, at other options exchanges, and at the several clearing firms are capable of properly identifying unusual and/or illegal trading activity. The Exchange's

<sup>7</sup> The IWM Option Pilot Program doubles the position and exercise limits for IWM options under the Rule 412 Pilot Program. See Rule 412, Supplementary Materials .01. Absent both of these pilot programs, the standard position and exercise limit for IWM options is 75,000 option contracts.

The proposal that established the IWM Option Pilot Program was effective upon filing. See Securities Exchange Act Release No. 55175 (January 25, 2007), 72 FR 4753 (February 1, 2007) (SR-ISE-2007-07). The IWM Option Pilot Program has been extended twice by the Commission and expires on March 1, 2008. See Securities Exchange Act Release Nos. 56020 (July 6, 2007), 72 FR 38109 (July 12, 2007) (SR-ISE-2007-56); and 57144 (January 14, 2008), 73 FR 3785 (January 22, 2008) (SR-ISE-2008-03).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> 15 U.S.C. 78s(b)(1).

<sup>17</sup> 17 CFR 240.19b-4.

In Amendment No. 1, the Exchange made a technical correction to the proposed rule text.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).



procedures include daily monitoring of market movements via automated surveillance techniques to identify unusual activities in both options and their underlying securities.

Accordingly, the Exchange represents that its surveillance procedures and options reporting procedures, in conjunction with the financial requirements and risk management review procedures generally in place at the clearing firms and the Options Clearing Corporation, will serve to adequately address any concerns the Commission may have with respect to account(s) engaging in any manipulative schemes or assuming too high a level of risk exposure. Further, the Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns that a member or its customer may try to maintain an inordinately large unhedged position in an equity option.

The Exchange believes that the trading volume in equity options will continue to grow and that such continued growth provides investors an opportunity to participate in the options markets. The Exchange believes that the non-pilot position and exercise limits are restrictive, and maintaining those limits will hamper the listed options markets from being able to compete fairly and effectively with the over-the-counter markets.

Equity option position limits have been gradually expanded from 1,000 contracts in 1973 to the current level of 75,000 contracts for the largest and most actively traded equity options. To date, there have been no adverse effects on the markets as a result of these past increases in the limits for equity option contracts.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements provided under Section 6(b)(5)<sup>8</sup> of the Act that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

<sup>8</sup> 15 U.S.C. 78(f)(5).

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>10</sup> The Exchange notes that the proposed rule change is based on a similar proposal recently approved by the Commission.<sup>11</sup> The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing.

The Rule 412 Pilot Program and the IWM Option Pilot Program were scheduled to expire on March 1, 2008. The Commission believes that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest because it will allow the position and exercise limits to remain at consistent levels during the transition from the pilot programs to permanent status.<sup>12</sup> Therefore, the Commission designates the proposal to be operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

<sup>11</sup> See Securities Exchange Act Release No. 57352 (February 19, 2008), 73 FR 10076 (February 25, 2008) (order granting accelerated approval to SR-CBOE-2008-07).

<sup>12</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Commission may summarily abrogate the 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](mailto:rule-comments@sec.gov). Please include File No. SR-ISE-2008-20 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2008-20. 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 Commissions Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File



Number SR-ISE-2008-20 and should be submitted on or before March 28, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. E8-4516 Filed 3-6-08; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57391; File No. SR-NSCC-2007-15]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to the Admission of Foreign Entities

February 27, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on November 16, 2007, National Securities Clearing Corporation ("NSCC") 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 primarily by NSCC. 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 proposed rule change would establish a policy statement regarding the admission of entities that are organized in a foreign country and are not subject to U.S. federal or state regulation ("foreign entities") as members of NSCC.<sup>2</sup>

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.<sup>3</sup>

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC Rule 2 and Addendum B to NSCC's Rules address the admission of applicants as NSCC members. NSCC's Rules provide that admission as a member is subject to an applicant's demonstration that it meets NSCC's standards of financial responsibility, operational capability, and character. Additionally, each member must continue to be in a position to demonstrate to NSCC that it meets these standards. The purpose of the proposed rule change is to establish admission criteria that will permit a well-qualified foreign entity to become an NSCC member and thereby obtain direct access to NSCC's services while assuring that the unique risks associated with the admission of foreign entities are adequately addressed.

The admission of foreign entities as members raises a number of unique risks and issues, including that (1) the entity is not subject to U.S. federal or state regulation, (2) the operation of the laws of the entity's home country and time zone differences<sup>4</sup> may impede the successful exercise of NSCC's rights and remedies particularly in the event of the entity's failure to settle, and (3) financial information about the foreign entity made available to NSCC for monitoring purposes may be less adequate than information about U.S.-based entities.

The proposed rule change would add a new Policy Statement<sup>5</sup> to NSCC's Rules that in addition to requiring execution of the standard NSCC Membership Agreement would require a foreign entity to enter into a series of undertakings and agreements that are designed to address jurisdictional concerns and to assure that NSCC is

<sup>3</sup> The Commission has modified parts of these statements.

<sup>4</sup> Time zone differences could complicate communications between the foreign member and its U.S. Settling Bank with respect to the timely payment of the member's net debit to NSCC, including intraday demands for payment. These differences could also delay NSCC's receipt of information available in the member's home country to others (including its other creditors) about the member's financial condition on the basis of which NSCC would have taken steps to protect the interests of NSCC and its members.

<sup>5</sup> NSCC's proposed "Policy Statement on the Admission of Non-U.S. Entities as Direct Clearing Corporation Members" is attached as Exhibit 5 to its filing, which can be found at [http://www.dtcc.com/downloads/legal/rule\\_filings/2007/nsccl/2007-15.pdf](http://www.dtcc.com/downloads/legal/rule_filings/2007/nsccl/2007-15.pdf).

provided with audited financial information that is acceptable to NSCC.<sup>6</sup>

The new Policy Statement would also require that a foreign entity (1) be subject to regulation in its home country and (2) be in good standing with its home country regulator.

The proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act. The proposed rule change does not unfairly discriminate against foreign entities seeking admission as members because it appropriately takes into account the unique risks to NSCC raised by their admission.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC perceives no impact on competition by reason of the proposed rule change.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments from NSCC Participants or others have not been solicited or received on the proposed rule change.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or

<sup>6</sup> In the Policy Statement, NSCC has reserved the right to waive certain of the criteria where such criteria are inappropriate to a particular applicant or class of applicants (e.g., a foreign government or international securities clearing corporation).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> The Depository Trust Company ("DTC") has filed a similar proposed rule change that would permit DTC to adopt a similar policy statement with respect to the admission of foreign entities as participants. Securities Exchange Act Release No. 57392 (February 27, 2008) (File No. SR-DTC-2007-16).

• Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NSCC-2007-15 on the subject line.

#### Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NSCC-2007-15. 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 NSCC. 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-NSCC-2007-15 and should be submitted on or before March 28, 2008.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. E8-4400 Filed 3-6-08; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57412; File No. SR-NYSEArca-2008-21]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the SizeQuote Mechanism Pilot Program for a Period of One Year

March 3, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 15, 2008, 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 substantially by NYSE Arca. NYSE Arca has designated the proposed rule change as one constituting a non-controversial rule change under Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE Arca is proposing to amend its rules in order to extend its SizeQuote Mechanism pilot program ("Pilot Program"),<sup>5</sup> for a one-year period ending February 15, 2009. The text of the proposed rule change is available at <http://www.nyse.com>, NYSE Arca, and the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE Arca included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NYSE Arca has prepared summaries, set forth in Sections A, B, and C below, of the

most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The purpose of this proposal is to extend, for a one year period, the Exchange's SizeQuote Pilot Program. The Pilot Program was initially established when the Exchange filed SR-PCX-2005-35.<sup>6</sup> The Pilot Program was subsequently extended,<sup>7</sup> and was set to expire on February 15, 2008.

The Exchange has represented that at the completion of the Pilot Program, NYSE Arca would provide to the Commission a report summarizing the effectiveness of the SizeQuote program. While the Exchange believes that the SizeQuote Mechanism can be an effective tool for Floor Brokers to use while executing large size orders in open outcry, the mechanism has not been used frequently enough to supply sufficient evidence to evaluate the effectiveness of the Pilot Program. In order to allow for additional time to compile sufficient evidence as to the effectiveness of the Pilot Program, NYSE Arca proposes to extend the Pilot Program for an additional one-year period ending February 15, 2009.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>9</sup> in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, and to protect investors and the public interest.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

<sup>6</sup> See Securities Exchange Act Release No. 51576 (April 19, 2005), 70 FR 21488 (April 26, 2005).

<sup>7</sup> See Securities Exchange Act Release No. 53315 (February 15, 2006), 71 FR 9406 (February 23, 2006) (SR-PCX-2006-09); Securities Exchange Act Release No. 55312 (February 16, 2007), 72 FR 8827 (February 27, 2007) (SR-NYSEArca-2007-16).

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> See NYSE Arca Rule 6.47(f).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

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.

NYSE Arca has requested that the Commission waive the 30-day operative delay to allow NYSE Arca to continue the existing Pilot Program without interruption. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Pilot Program to continue uninterrupted for an additional year and allow the Exchange more time to assess the effectiveness of the Pilot Program. Accordingly, the Commission designates the proposal as operative upon filing with the Commission.<sup>12</sup>

**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.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). Rule 19b-4(f)(6) also requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has determined to grant the Exchange's request to waive the five day pre-filing notice requirement.

<sup>12</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2008-21 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2008-21. 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 NYSE Arca. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2008-21 and should be submitted on or before March 28, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8-4512 Filed 3-6-08; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>13</sup> 17 CFR 200.30-3(a)(12).

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-57418; File No. SR-Phlx-2008-14]

**Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Permanent a Pilot Program That Increases Position and Exercise Limits on Equity Options**

March 3, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 28, 2008, the Philadelphia Stock Exchange, Inc. ("Exchange" or "Phlx") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange seeks to make permanent an existing pilot program (the "Pilot Program"), the terms of which are set forth in Exchange Rule 1001 (Position Limits), which increases the standard position and exercise limits for equity option contracts, including options on the PowerShares QQQ Trust ("QQQQ"). The Pilot Program is scheduled to expire March 1, 2008.<sup>5</sup> The text of the proposed rule change is available on the Exchange's Web site (<http://www.phlx.com>), at the Exchange's principal office, and at the Commission's Public Reference Room.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> See Securities Exchange Act Release Nos. 56267 (August 15, 2007), 72 FR 47114 (August 22, 2007) (SR-Phlx-2007-58); 55285 (February 13, 2007), 72 FR 8053 (February 22, 2007) (SR-Phlx-2007-10); 54387 (August 30, 2006), 71 FR 52842 (September 7, 2006) (SR-Phlx-2006-48); 53388 (February 28, 2006), 71 FR 11458 (March 7, 2006) (SR-Phlx-2006-13); 52261 (August 15, 2005), 70 FR 49004 (August 22, 2005) (SR-Phlx-2005-51); and 51322 (March 4, 2005), 70 FR 12260 (March 11, 2005) (SR-Phlx-2005-17).

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The purpose of the proposed rule change is to make permanent the Pilot Program, which is scheduled to expire March 1, 2008. The Exchange proposes to amend Rule 1001, Position Limits, to permanently establish the increased position limits of the Pilot Program. Exchange Rule 1002, Exercise Limits (not proposed to be amended), establishes exercise limits for the corresponding options at the same levels as the corresponding security's position limits.<sup>6</sup>

#### Standard Position and Exercise Limit

The Pilot Program increases the standard position and exercise limits for equity options traded on the Exchange and for options on the Powershares QQQ Trust ("QQQQ"). The standardized position limits were last increased nine years ago, on December 31, 1998.<sup>7</sup>

#### Violations

The Exchange believes that any findings of violations regarding equity

<sup>6</sup> Rule 1002 states, in relevant part, "[N]o member or member organization shall exercise, for any account in which such member or member organization has an interest or for the account of any partner, officer, director or employee thereof or for the account of any customer, a long position in any option contract of a class of options dealt in on the Exchange (or, respecting an option not dealt in on the Exchange, another exchange if the member or member organization is not a member of that exchange) if as a result thereof such member or member organization, or partner, officer, director or employee thereof or customer, acting alone or in concert with others, directly or indirectly, has or will have exercised within any five (5) consecutive business days aggregate long positions in that class (put or call) as set forth as the position limit in Rule 1001, in the case of options on a stock or on an Exchange-Traded Fund Share \* \* \*."

<sup>7</sup> See Securities Exchange Act Release No. 40875 (December 31, 1998), 64 FR 1842 (January 12, 1999) (SR-Phlx-98-36).

option position and exercise limits since the inception of the Pilot Program were deemed inadvertent—due primarily to miscounting, technical problems, or a misinterpretation of position limit calculation methodologies. No such violations were deemed to be a result of manipulative activities.

#### Growth in the Options Market

Since the last increase in standardized position limits, there has been a significant increase in the overall volume of exchange-traded options. Part of this volume is attributable to a corresponding increase in the number of overall market participants. This growth in market participation has in turn brought about additional depth and increased liquidity in exchange-traded options.

#### Manipulation

Since the last increase in standardized position limits, and throughout the duration of the Pilot Program, the Exchange has not encountered any regulatory issues regarding the applicable position limits, and states that there is a lack of evidence of market manipulation schemes, which justifies making permanent the Pilot Program.

As the anniversary of listed options trading approaches its 35th year, the Exchange believes that the existing surveillance procedures and reporting requirements at the Exchange, at other options exchanges, and at the several clearing firms are capable of properly identifying unusual and/or illegal trading activity. The Exchange's surveillance procedures include daily monitoring of market movements via automated surveillance techniques to identify unusual activities in both options and their underlying securities.

Accordingly, the Exchange represents that its surveillance procedures (which have been significantly enhanced since the last standardized position limit increase in 1999) and reporting procedures, in conjunction with the financial requirements and risk management review procedures already in place at the clearing firms and the Options Clearing Corporation, will serve to adequately address any concerns the Commission may have respecting account(s) engaging in manipulative schemes or assuming too high a level of risk exposure.

#### Financial Requirements

The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address the concerns that a member or its customer may try to

maintain an inordinately large unhedged position in an equity option.

#### Inability To Compete; Retreat to OTC Market

The Exchange expects continued options volume growth as opportunities for investors to participate in options markets increase and evolve. The Exchange also believes that the non-pilot position and exercise limits are restrictive, and returning to those limits will hamper fair and effective competition between the listed options markets and over-the-counter markets.

#### No Adverse Consequences From Past Increases

Equity option position limits have been gradually expanded from 1,000 contracts in 1973 to the current level of 75,000 contracts for the largest and most actively traded equity options. To date, there have been no adverse effects on the markets as a result of these past increases in the position limits for equity option contracts.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>9</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by seeking to make permanent the Pilot Program.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).



significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>11</sup> The Exchange notes that the proposed rule change is based on a similar proposal recently approved by the Commission.<sup>12</sup> The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing.

The Pilot Program was scheduled to expire on March 1, 2008. The Commission believes that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest because it will allow the position and exercise limits to remain at consistent levels during the transition from the Pilot Program to permanent status.<sup>13</sup> Therefore, the Commission designates the proposal to be operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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](mailto:rule-comments@sec.gov). Please include File No. SR-Phlx-2008-14 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2008-14. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2008-14 and should be submitted on or before March 28, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8-4517 Filed 3-6-08; 8:45 am]

**BILLING CODE 8011-01-P**

#### SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA-2008-0009]

#### Modifications to the Disability Determination Procedures; Reinstatement of "Prototype" and "Single Decisionmaker" Tests In States in the Boston Region

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Notice.

**SUMMARY:** Effective March 23, 2008, we are reinstating New Hampshire as a "prototype" State in the disability redesign tests we are conducting under the authority of our regulations. We are also reinstating Maine and Vermont as States that use "single decisionmakers" under the same authority. These three States stopped participating in the disability redesign tests on August 1, 2006, when they began to participate in the Disability Service Improvement (DSI) initiative that we have been testing in our Boston region since that date. On January 15, 2008, we published a final rule in the *Federal Register* suspending the Federal Reviewing Official review level of the DSI process. The final rule will be effective on March 23, 2008. Therefore, Maine, New Hampshire, and Vermont will resume their participation in the disability redesign tests on the effective date of the final rule.

**DATES:** On March 23, 2008, New Hampshire will resume its participation as a prototype State, and Maine and Vermont will resume their participation as single decisionmaker States. Selection of cases for the current tests is scheduled to end no later than September 30, 2009. (71 FR 45890). We will use the same date for Maine, New Hampshire, and Vermont. If we decide to continue selection of cases for these tests beyond this date in Maine, New Hampshire, Vermont, and the other States that are participating in the tests, we will publish another notice in the *Federal Register*.

##### **FOR FURTHER INFORMATION CONTACT:**

Michele Schaefer, Office of Disability Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, 410-594-0083, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

**SUPPLEMENTARY INFORMATION:** Our current rules at §§ 404.906 and 416.1406 authorize us to test, individually or in any combination, different

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

<sup>12</sup> See Securities Exchange Act Release No. 57352 (February 19, 2008), 73 FR 10076 (February 25, 2008) (SR-CBOE-2008-07).

<sup>13</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>14</sup> 17 CFR 200.30-3(a)(12).



modifications to our disability determination procedures. We have conducted several tests under the authority of these rules. One of these tests is a "prototype" that incorporates two modifications to the disability determination procedures that we use:

- A single decisionmaker (SDM), in which disability examiners in the State agencies that make disability determinations for us may make the initial disability determination in most cases without requiring the signature of a medical or psychological consultant, and

- Elimination of the reconsideration level of the administrative review process.

Another test uses SDMs, but keeps the reconsideration level.

Until August 1, 2006, there were 10 States participating in the prototype test: Alabama, Alaska, California (Los Angeles North and West Branches), Colorado, Louisiana, Michigan, Missouri, New Hampshire, New York, and Pennsylvania. Another 10 State agencies participated in the SDM-only test: Florida, Guam, Kansas, Kentucky, Maine, Nevada, North Carolina, Vermont, Washington, and West Virginia. On August 1, 2006, Maine, New Hampshire, and Vermont, which are States in our Boston region, stopped participating in their respective tests because they were among the first States to implement the DSI process.<sup>1</sup> The tests in the other States have continued.

On January 15, 2008, we published a final rule entitled, "Suspension of New Claims to the Federal Reviewing Official Review Level" (73 FR 2411).<sup>2</sup> The Federal Reviewing Official review level was part of the DSI process and replaced the reconsideration level of our administrative review process for cases we adjudicated in the Boston region under the DSI process. As the title of the final rule states, we will be suspending the Federal Reviewing Official process. This means that we will be going back to the same processes we were following before August 1, 2006, whether that process was reconsideration under §§ 404.907 and 416.1407 or the testing procedures under §§ 404.906 and 416.1406. Therefore, as of the effective date of the final rule suspending the FedRO process:

- New Hampshire will become a prototype State again,

- The first level of appeal in all the other States in the Boston region will be reconsideration by the State agency, and
- Maine and Vermont will use SDMs.

Since the rule suspending the use of the Federal Reviewing Official will be effective on March 23, 2008, that is also the date on which we will make the changes described here in Maine, New Hampshire, and Vermont.

In a *Federal Register* notice we published on August 10, 2006, we explained that the selection of cases for the current tests is scheduled to end no later than September 30, 2009 (71 FR 45890). We also explained that we may decide to extend the tests, and that, if we do, we will publish another notice in the *Federal Register*. We are not extending the scheduled ending dates of these tests now, and will use the same date for Maine, New Hampshire, and Vermont that we use for the other States participating in the tests. Therefore, our selection of cases in Maine, New Hampshire, and Vermont will end on or before September 30, 2009, unless we publish another notice in the *Federal Register* extending the tests.

Dated: March 3, 2008.

Linda S. McMahon,

Deputy Commissioner for Operations.

[FR Doc. E8-4531 Filed 3-6-08; 8:45 am]

BILLING CODE 4191-02-P

## DEPARTMENT OF STATE

[Public Notice: 6125]

### 30-Day Notice of Proposed Information Collection: Form DS-4071, Export Declaration of Defense Technical Data or Services; OMB Control Number 1405-0157.

**ACTION:** Notice of request for public comment and submission to OMB of proposed collection of information.

**SUMMARY:** The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Export Declaration of Defense Technical Data or Services.

- *OMB Control Number:* 1405-0157.
- *Type of Request:* Extension of Currently Approved Collection.

- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.

- *Form Number:* DS-4071.
- *Respondents:* Business and Nonprofit Organizations.

- *Estimated Number of Respondents:* 2,000.

- *Estimated Number of Responses:* 10,000.

- *Average Hours per Response:* 30 minutes.

- *Total Estimated Burden:* 5,000 hours.

- *Frequency:* On Occasion.

- *Obligation to Respond:* Mandatory.

**DATES:** Submit comments to the Office of Management and Budget (OMB) for up to 30 days from March 7, 2008.

**ADDRESSES:** Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202-395-4718. You may submit comments by any of the following methods:

- *kastrich@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.

- Mail (paper, disk, or CD-ROM submissions): Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.
- Fax: 202-395-6974.

#### FOR FURTHER INFORMATION CONTACT:

Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the information collection and supporting documents, to Ann K. Ganzer, PM/DDTC, SA-1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522-0112, who may be reached via phone at (202) 663-2792, or via e-mail at [ganzerak@state.gov](mailto:ganzerak@state.gov).

**SUPPLEMENTARY INFORMATION:** We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of our functions.

- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

- Enhance the quality, utility, and clarity of the information to be collected.

- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

#### Abstract of Proposed Collection

Actual export of defense technical data and defense services will be electronically reported directly to the Directorate of Defense Trade Controls

<sup>1</sup> The other States in the Boston region are Connecticut, Massachusetts, and Rhode Island.

<sup>2</sup> In the notice we published on January 15, 2008, we stated that the effective date of the final rule would be March 15, 2008. However, on February 27, 2008, we published a correction notice in the *Federal Register* providing that the effective date would be March 23, 2008 (73 FR 10381).

(DDTC). DDTC administers the International Traffic in Arms Regulations (ITAR) and section 38 of the Arms Export Control Act (AECA). The actual exports must be in accordance with requirements of the ITAR and section 38 of the AECA. DDTC will monitor the information to ensure there is proper control of the transfer of sensitive U.S. technology.

**Methodology:** The exporter will electronically report directly to DDTC the actual export of defense technical data and defense services using DS-4071. DS-4071 is available on DDTC's Web site, <http://www.pmdtcc.state.gov>.

Dated: February 28, 2008.

Frank J. Ruggiero,

Deputy Assistant Secretary for Defense Trade and Regional Security, Bureau of Political-Military Affairs, U.S. Department of State.

[FR Doc. E8-4511 Filed 3-6-08; 8:45 am]

BILLING CODE 4710-25-P

## DEPARTMENT OF STATE

[Public Notice: 6121]

### 30-Day Notice of Proposed Information Collection: DS 4053, Department of State Mentor-Protégé Program Application, OMB 1405-0161

**ACTION:** Notice of request for public comment and submission to OMB of proposed collection of information.

**SUMMARY:** The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- **Title of Information Collection:** Department of State Mentor-Protégé Program Application.
- **OMB Control Number:** OMB 1405-0161.
- **Type of Request:** Extension of a Currently Approved Collection.
- **Originating Office:** Bureau of Administration, Office of Small and Disadvantaged Business Utilization—A/SDBU.
- **Form Number:** DS-4053.
- **Respondents:** Small and large for-profit companies planning to team together in an official mentor-protégé capacity to improve the likelihood of winning DOS contracts.
- **Estimated Number of Respondents:** 14 respondents per year.
- **Estimated Number of Responses:** 14 per year.
- **Average Hours per Response:** 14 hours.
- **Total Estimated Burden:** 21 hours.
- **Frequency:** On Occasion.

- **Obligation to Respond:** Required to Obtain Benefit.

**DATES:** Submit comments to the Office of Management and Budget (OMB) for up to 30 days from March 7, 2008.

**ADDRESSES:** Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202-395-4718. You may submit comments by any of the following methods:

- **E-mail:** [kastrich@omb.eop.gov](mailto:kastrich@omb.eop.gov). You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- **Mail (paper, disk, or CD-ROM submissions):** Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.
- **Fax:** 202-395-6974.

**FOR FURTHER INFORMATION CONTACT:** You may obtain copies of the proposed information collection and supporting documents from Patricia Culbreth, A/SDBU, Patricia Culbreth, SA-6, Room L-500, Washington DC 20522-0602 who may be reached on 703-875-6881. E-mail: [culbrethpb@state.gov](mailto:culbrethpb@state.gov).

**SUPPLEMENTARY INFORMATION:** We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond,

#### *Abstract of proposed collection:*

This information collection facilitates continuation of a mentor-protégé program that encourages business agreements between small and large for-profit companies planning to team together in an official mentor-protégé capacity to improve the likelihood of winning DOS contracts. This program assists the State Department OSDBU office in reaching its small business goals.

**Methodology:** Respondents may submit the information by e-mail using DS-4053, or by letter using fax or postal mail.

**Additional Information:** None.

Dated: February 19, 2008.

Gregory N. Mayberry,

Operations Director, Office of Small and Disadvantaged Business Utilization, Department of State.

[FR Doc. E8-4524 Filed 3-6-08; 8:45 am]

BILLING CODE 4710-24-P

## DEPARTMENT OF STATE

[Public Notice: 6122]

### 30-Day Notice of Proposed Information Collection: Department of State Form DS-1504; Request for Customs Clearance of Merchandise; OMB Control Number 1405-0104

**ACTION:** Notice of request for public comment and submission to OMB of proposed collection of information.

**SUMMARY:** The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- **Title of Information Collection:** Request for Customs Clearance of Merchandise.
  - **OMB Control Number:** 1405-0104.
  - **Type of Request:** Extension of a Currently Approved Collection.
  - **Originating Office:** DS/OFM/VTC/TC.
  - **Form Number:** DS-1504.
  - **Respondents:** Eligible foreign diplomatic or consular missions, certain foreign government organizations, and designated international organizations.
  - **Estimated Number of Respondents:** 350.
  - **Estimated Number of Responses:** 7800.
  - **Average Hours per Response:** 30 minutes.
  - **Total Estimated Burden:** 3900 hours.
  - **Frequency:** On Occasion.
  - **Obligation to Respond:** Required to Obtain or Retain a Benefit.
- DATES:** Submit comments to the Office of Management and Budget (OMB) for up to 30 days from March 7, 2008.
- ADDRESSES:** Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202-395-4718. You may submit comments by any of the following methods:
- **E-mail:** [kastrich@omb.eop.gov](mailto:kastrich@omb.eop.gov). You must include the DS form number, information collection title, and OMB control number in the subject line of your message.

• *Mail (paper, disk, or CD-ROM submissions):* Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.  
• *Fax:* 202-395-6974.

**FOR FURTHER INFORMATION CONTACT:**

Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Ms. Irina Kolb, DS/OFM/TC, 3507 International Place, NW., U.S. Department of State, Washington, DC 2008, who may be reached on 202-895-3683, or by e-mail at [kaufmani@state.gov](mailto:kaufmani@state.gov).

**SUPPLEMENTARY INFORMATION:** We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

**Abstract of Proposed Collection**

Exemption from customs duties is a privilege enjoyed by foreign diplomatic and consular personnel on assignment in the United States under the provision of the Vienna Conventions on Diplomatic and Consular Relations and the terms of various bilateral agreements. Under the Foreign Missions Act of 1982 (as amended), 22 U.S.C. 4301 *et seq.*, the Department of State's Office of Foreign Missions (OFM) is given the authority to grant privileges and benefits, based on reciprocity. Form DS-1504 "Request for Customs Clearance of Merchandise" provides OFM with the necessary information to provide and administer the benefit effectively and efficiently.

**Methodology**

Paper copies of the Form DS-1504 are either hand carried or mailed to OFM. Foreign Missions can access this from on the OFM website in Portable Document Format (PDF), which provides a data-input and print feature for clean and legible paper copies. An electronic submission option is expected to be made available to respondents in 2008.

Dated: February 21, 2008.

**Claude J. Nebel,**

*Deputy Assistant Secretary of State and Deputy Director, Office of Foreign Missions, Bureau of Diplomatic Security, Department of State.*

[FR Doc. E8-4526 Filed 3-6-08; 8:45 am]

BILLING CODE 4710-43-P

**DEPARTMENT OF STATE**

[Public Notice 6124]

**Culturally Significant Objects Imported for Exhibition Determinations:  
"Ateliers Jean Prouvé"**

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Ateliers Jean Prouvé", imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Museum of Modern Art, from on or about April 25, 2008, until on or about April 25, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453-8048). The address is U.S. Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: February 21, 2008.

**C. Miller Crouch,**

*Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. E8-4528 Filed 3-6-08; 8:45 am]

BILLING CODE 4710-05-P

**DEPARTMENT OF STATE**

[Public Notice 6108]

**Notice of Meeting of the Advisory Committee on International Law**

A meeting of the Advisory Committee on International Law will take place on Friday, March 28, 2008, from 10 a.m. to approximately 4 p.m., in Room 1107 of the United States Department of State, 2201 C Street, NW., Washington, DC. The meeting will be chaired by the Legal Adviser of the Department of State, John B. Bellinger, III, and will be open to the public up to the capacity of the meeting room. It is anticipated that the agenda of the meeting will cover a range of current international legal topics, including issues in treaty practice; the U.S. and the International Law Commission (ILC); United Nations targeted sanctions; and the proposed executive agreement with Iraq. Members of the public will have an opportunity to participate in the discussion.

Entry to the building is controlled and will be facilitated by advance arrangements. Members of the public who wish to attend the session should, by Wednesday, March 26, 2008, notify the Office of the Assistant Legal Adviser for Claims and Investment Disputes (telephone: 202-776-8436) of their name, date of birth; citizenship (country); ID number, *i.e.*, U.S. government ID (agency), U.S. military ID (branch), passport (country) or driver's license (state); professional affiliation, address and telephone number in order to arrange admittance. This includes admittance for government employees as well as others. All attendees must use the "C" Street entrance. One of the following valid IDs will be required for admittance: Any U.S. driver's license with photo, a passport, or a U.S. government agency ID. Because an escort is required at all times, attendees should expect to remain in the meeting for the entire morning or afternoon session.

Dated: March 3, 2008.

**Sharla Draemel,**

*Attorney-Adviser, Office of Claims and Investment Disputes, Office of the Legal Adviser, Executive Director, Advisory Committee on International Law, Department of State.*

[FR Doc. E8-4525 Filed 3-6-08; 8:45 am]

BILLING CODE 4710-08-P

**DEPARTMENT OF STATE****[Public Notice 6123]****In the Matter of the Designation of Sirajuddin Haqqani, aka Sirajuddin Haqqani, aka Siraj Haqqani, aka Saraj Haqqani, aka Saraj Haqqani, as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended**

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the individual known as Sirajuddin Haqqani (aka Sirajuddin Haqqani, aka Siraj Haqqani, aka Saraj Haqqani, aka Saraj Haqqani) has committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that "prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously," I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: February 29, 2008.

**Condoleezza Rice,**

*Secretary of State, Department of State.*

[FR Doc. E8-4527 Filed 3-6-08; 8:45 am]

**BILLING CODE 4710-10-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****[Summary Notice No. PE-2008-08]****Petition for Exemption; Summary of Petition Received**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** This notice contains a summary of a petition seeking relief

from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number involved and must be received on or before March 27, 2008.

**ADDRESSES:** You may send comments identified by Docket Number FAA-2007-0041 using any of the following methods:

- **Government-wide rulemaking Web site:** Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.
- **Mail:** Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590.
- **Fax:** Fax comments to the Docket Management Facility at 202-493-2251.
- **Hand Delivery:** Bring comments to the Docket Management Facility in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Privacy:** We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78).

**Docket:** To read background documents or comments received, go to <http://www.regulations.gov> at any time or to the Docket Management Facility in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Jan Thor, ANM-113, (425) 227-2127, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98057-3356, or Frances Shaver, (202)-267-9681. Office of Rulemaking, Federal Aviation Administration, 800

Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC on March 4, 2008.

**Pamela Hamilton-Powell,**  
*Director, Office of Rulemaking.*

**Petition for Exemption**

**Docket No.:** FAA-2007-0041.

**Petitioner:** The Boeing Company.

**Section of 14 CFR Affected:**

§§ 25.785(j); 25.807(d), (g)(1) and (i)(1); 25.809(a); 25.810(a)(1); 25.812(e); 25.813(b); 25.857(e); and 25.1447(c)(1).

**Description of Relief Sought:** To allow carriage of up to 4 supernumeraries on the flightdeck of the B767-300 Boeing Converted Freighter airplane which has a main deck Class E cargo compartment. The supernumeraries would be allowed access to this compartment during flight.

[FR Doc. E8-4587 Filed 3-6-08; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Railroad Administration****Petition for Special Approval of Alternative Compliance**

In accordance with Title 49 Code of Federal Regulations (CFR) 238.21, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for special approval of alternative compliance, under 49 CFR 238.230, from the American Public Transportation Association (APTA). The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

**American Public Transportation Association**

[Docket Number FRA-2007-0010]

APTA seeks FRA approval of an industrywide safety appliance standard for all newly manufactured passenger cars, in accordance with 49 CFR 238.230(d). This section provides a process by which a railroad or a railroad's recognized representative may request approval of safety appliance arrangements on any passenger car considered a car of special construction under 49 CFR 231.18. Asserting that it has become difficult to apply FRA's safety appliance regulations, contained in 49 CFR part 231, to modern passenger equipment, on September 4, 2007, APTA petitioned FRA for approval of



APTA Standard SS-M-016-06, "Standard for Safety Appliances for Rail Passenger Cars," as an alternative means to comply with 49 CFR part 231.

APTA has submitted a final copy of APTA Standard SS-M-016-06, together with a table that compares the APTA standard to FRA's safety appliance regulations contained in 49 CFR part 231 and drawings (referred to as plates) that reflect placement of safety appliances in accordance with the APTA standard. An annex has also been included in the APTA standard, which contains a sample car inspection checklist that could be used by railroads and car builders for quality control and to confirm proper design and installation of the safety appliances on newly manufactured passenger cars. All of these documents are available in Docket Number FRA-2007-0010, the docket for this proceeding, which can be accessed online at <http://www.regulations.gov>.

Written comments on this petition must be received by April 7, 2008. Comments received after that date will be considered to the extent possible without incurring additional expenses or delays. You may submit written comments and related information (identified by Docket Number FRA-2007-0010) by any of the following methods:

*Web site:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

*Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590.

*Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. EST, Monday through Friday, except Federal holidays.

*Fax:* 202-493-2251.

FRA anticipates being able to resolve this petition without a public, oral hearing. However, if FRA receives a specific request for a public, oral hearing prior to April 7, 2008, one will be scheduled, and FRA will publish a supplemental notice in the **Federal Register** to inform interested parties of the date, time, and location of any such hearing.

Anyone is able to search the electronic-form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Note that all comments received will be posted without change to <http://www.regulations.gov>, including any

personal information provided. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78), or you may visit <http://DocketsInfo.dot.gov>.

Issued in Washington, DC on March 4, 2008.

**Grady C. Cothen, Jr.,**  
Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E8-4521 Filed 3-6-08; 8:45 am]

BILLING CODE 4910-06-P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

#### Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 11, 2007, and comments were due by February 11, 2008. No comments were received.

**DATES:** Comments must be submitted on or before April 7, 2008.

**FOR FURTHER INFORMATION CONTACT:** Rita Jackson, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202-366-0284; or e-mail: [rita.jackson@marad.dot.gov](mailto:rita.jackson@marad.dot.gov). Copies of this collection also can be obtained from that office.

**SUPPLEMENTARY INFORMATION:** Maritime Administration (MARAD).

*Title:* U.S. Merchant Marine Academy Candidate Application for Admission.  
*OMB Control Number:* 2133-0010.

*Type of Request:* Extension of currently approved collection.

*Affected Public:* Individuals desiring to become students at the U.S. Merchant Marine Academy.

*Forms:* KP 2-65.

*Abstract:* The collection consists of Parts I, II, and III of Form KP 2-65 (U.S. Merchant Marine Academy Candidate Application). Part I of the form is completed by individuals wishing to be

admitted as students to the U.S. Merchant Marine Academy.

*Annual Estimated Burden Hours:* 12,500 hours.

**ADDRESSES:** Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

*Comments Are Invited on:* 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

**Authority:** 49 CFR 1.66.

Issued in Washington, DC on February 20, 2008.

**Christine Gurland,**  
Acting Secretary, Maritime Administration.  
[FR Doc. E8-4467 Filed 3-6-08; 8:45 am]

BILLING CODE 4910-81-P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD-2008-0019]

#### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel KELANA.

**SUMMARY:** As authorized by Public Law 105-383 and Public Law 107-295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD-2008-0019 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S.



vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105-383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

**DATES:** Submit comments on or before April 7, 2008.

**ADDRESSES:** Comments should refer to docket number MARAD-2008-0019. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at <http://www.regulations.gov>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21-203, Washington, DC 20590. Telephone 202-366-5979.

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel KELANA is:

*Intended Use:* "Private Multiday/ Overnight Sightseeing Excursions. Kelana offers 4 private staterooms each with head and shower plus 2 crew quarters, full galley, and common areas to support 12 guests. Draft is shallow enough to allow for multi-day, multi-port charters in the Chesapeake Bay." *Geographic Region:* "Primary Operation intended for Chesapeake Bay and its Tributaries."

#### Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the

name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78).

Dated: February 29, 2008.

By order of the Maritime Administrator,  
**Christine Gurland**,  
*Acting Secretary, Maritime Administration.*  
[FR Doc. E8-4431 Filed 3-6-08; 8:45 am]  
BILLING CODE 4910-81-P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD-2008-0020]

#### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel WOLFEPACK.

**SUMMARY:** As authorized by Public Law 105-383 and Public Law 107-295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD-2008-0020 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105-383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

**DATES:** Submit comments on or before April 7, 2008.

**ADDRESSES:** Comments should refer to docket number MARAD-2008-0020. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at <http://www.regulations.gov>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21-203, Washington, DC 20590. Telephone 202-366-5979.

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel WOLFEPACK is:

*Intended Use:* "Local day sail on Salem Sound Salem, MA."  
*Geographic Region:* "Massachusetts Bay, MA."

#### Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78).

Dated: February 29, 2008.

By order of the Maritime Administrator,  
**Christine Gurland**,  
*Acting Secretary, Maritime Administration.*  
[FR Doc. E8-4432 Filed 3-6-08; 8:45 am]  
BILLING CODE 4910-81-P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD-2008-0023]

#### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of

the Coastwise Trade Laws for the vessel CIRCE.

**SUMMARY:** As authorized by Public Law 105-383 and Public Law 107-295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD-2008-0023 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105-383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

**DATES:** Submit comments on or before April 7, 2008.

**ADDRESSES:** Comments should refer to docket number MARAD-2008-0023. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at <http://www.regulations.gov>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21-203, Washington, DC 20590. Telephone 202-366-5979.

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel CIRCE is:

*Intended Use:* "Run charters for sportfishing and pleasure cruising; not for commercial sale/catch of fish."

*Geographic Region:* "Florida Keys, Florida Coastal Waters."

#### Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78).

Dated: February 29, 2008.

By order of the Maritime Administrator.

**Christine Gurland,**

*Acting Secretary, Maritime Administration.*

[FR Doc. E8-4433 Filed 3-6-08; 8:45 am]

**BILLING CODE 4910-81-P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD-2008-0021]

#### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel JULIET.

**SUMMARY:** As authorized by Public Law 105-383 and Public Law 107-295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD-2008-0021 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105-383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in

that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

**DATES:** Submit comments on or before April 7, 2008.

**ADDRESSES:** Comments should refer to docket number MARAD-2008-0021. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at <http://www.regulations.gov>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21-203, Washington, DC 20590. Telephone 202-366-5979.

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel JULIET is:

*Intended Use:* "Sailing and scuba diving charters."

*Geographic Region:* "Puerto Rico, U.S. Virgin Islands, Florida and California."

#### Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78).

Dated: February 29, 2008.

By order of the Maritime Administrator.

**Christine Gurland,**

*Acting Secretary, Maritime Administration.*

[FR Doc. E8-4446 Filed 3-6-08; 8:45 am]

**BILLING CODE 4910-81-P**

**DEPARTMENT OF TRANSPORTATION****Maritime Administration**

[Docket No. MARAD-2008-0017]

**Requested Administrative Waiver of the Coastwise Trade Laws****AGENCY:** Maritime Administration, Department of Transportation.**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel PRINCE OF TIDES.

**SUMMARY:** As authorized by Public Law 105-383 and Public Law 107-295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD-2008-0017 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105-383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

**DATES:** Submit comments on or before April 7, 2008.

**ADDRESSES:** Comments should refer to docket number MARAD-2008-0017. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at <http://www.regulations.gov>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except

federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21-203, Washington, DC 20590. Telephone 202-366-5979.

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel PRINCE OF TIDES is:

*Intended Use:* "Leisure charter of passengers to include but not limited to cost only charters of wounded warrior program soldiers."

*Geographic Region:* "Oregon, Washington, Alaska."

**Privacy Act**

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy-Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78).

Dated: February 20, 2008.

By order of the Maritime Administrator.

**Christine Gurland,**

*Acting Secretary, Maritime Administration.*  
[FR Doc. E8-4450 Filed 3-6-08; 8:45 am]

BILLING CODE 4910-81-P

**DEPARTMENT OF TRANSPORTATION****Maritime Administration**

[Docket No. MARAD-2008-0022]

**Requested Administrative Waiver of the Coastwise Trade Laws****AGENCY:** Maritime Administration, Department of Transportation.**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel KAI SEI.

**SUMMARY:** As authorized by Public Law 105-383 and Public Law 107-295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief

description of the proposed service, is listed below. The complete application is given in DOT docket MARAD-2008-0022 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105-383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

**DATES:** Submit comments on or before April 7, 2008.

**ADDRESSES:** Comments should refer to docket number MARAD-2008-0022. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at <http://www.regulations.gov>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21-203, Washington, DC 20590. Telephone 202-366-5979.

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel KAI SEI is:

*Intended Use:* "Learn to sail square-rig weekends and other length trips, participation in tall ship events."

*Geographic Region:* "Majority of time in vicinity of San Francisco Bay. Occasionally coastal California, Oregon and Washington State."

**Privacy Act**

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78).

Dated: February 29, 2008.

By order of the Maritime Administrator.

**Christine Gurland,**

*Acting Secretary, Maritime Administration.*  
[FR Doc. E8-4451 Filed 3-6-08; 8:45 am]

BILLING CODE 4910-81-P

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****Art Advisory Panel—Notice of Closed Meeting**

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of Closed Meeting of Art Advisory Panel.

**SUMMARY:** Closed meeting of the Art Advisory Panel will be held in Washington, D.C.

**DATES:** The meeting will be held April 2 and 3, 2008.

**ADDRESSES:** The closed meeting of the Art Advisory Panel will be held on April 2 and 3, 2008, in Room 4136 beginning at 9:30 a.m., Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:** Karen Carolan, C:AP:ART, 1099 14th Street, NW., Washington, DC 20005. Telephone (202) 435-5609 (not a toll free number).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App., that a closed meeting of the Art Advisory Panel will be held on April 2 and 3, 2008, in Room 4136 beginning at 9:30 a.m., Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in Federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of 26 U.S.C. 6103.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7), and that the meeting will not be open to the public.

**Sarah Hall Ingram,**  
*Chief, Appeals.*

[FR Doc. E8-4447 Filed 3-6-08; 8:45 am]

BILLING CODE 4830-01-P

## Corrections

Federal Register

Vol. 73, No. 46

Friday, March 7, 2008

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

### DEPARTMENT OF JUSTICE

#### Antitrust Division

#### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open DeviceNet Vendor Association, Inc.

##### Correction

In notice document 07-3413 beginning on page 38618 in the issue of Friday, July 13, 2007 make the following corrections:

1. On page 38618, in the third column, in the subject line "Devicenet" is corrected to read as set forth above.
2. On the same page, in the same column, in this document's first full paragraph, in the fifth line, "Device Net" should read "DeviceNet".

[FR Doc. C7-3413 Filed 3-6-08; 8:45 am]

BILLING CODE 1505-01-D

### DEPARTMENT OF JUSTICE

#### Antitrust Division

#### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Semiconductor Test Consortium, Inc.

##### Correction

In notice document 07-6120 appearing on page 72389 in the issue of Thursday, December 20, 2007, make the following correction:

In the first column, in this document's first paragraph, in the third line, "national Cooperative" should read "National Cooperative".

[FR Doc. C7-6120 Filed 3-6-08; 8:45 am]

BILLING CODE 1505-01-D

### DEPARTMENT OF JUSTICE

#### Antitrust Division

#### Notice Pursuant to the National Cooperative Research and Production Act of 1993—PXI Systems Alliance, Inc.

##### Correction

In notice document 07-6124 beginning on page 72388 in the issue of

Thursday, December 20, 2007, make the following corrections:

1. On page 72389, in the first column, in the 11th line from the top, "changes its name to" should read "changed its name to".
2. On the same page, in the same column, in the second full paragraph, in the seventh line, "march 8, 2001" should read "March 8, 2001".

[FR Doc. C7-6124 Filed 3-6-08; 8:45 am]

BILLING CODE 1505-01-D

### DEPARTMENT OF JUSTICE

#### Antitrust Division

#### Notice Pursuant to the National Cooperative Research and Production Act of 1933 — Open Devicenet Vendor Association, Inc.

##### Correction

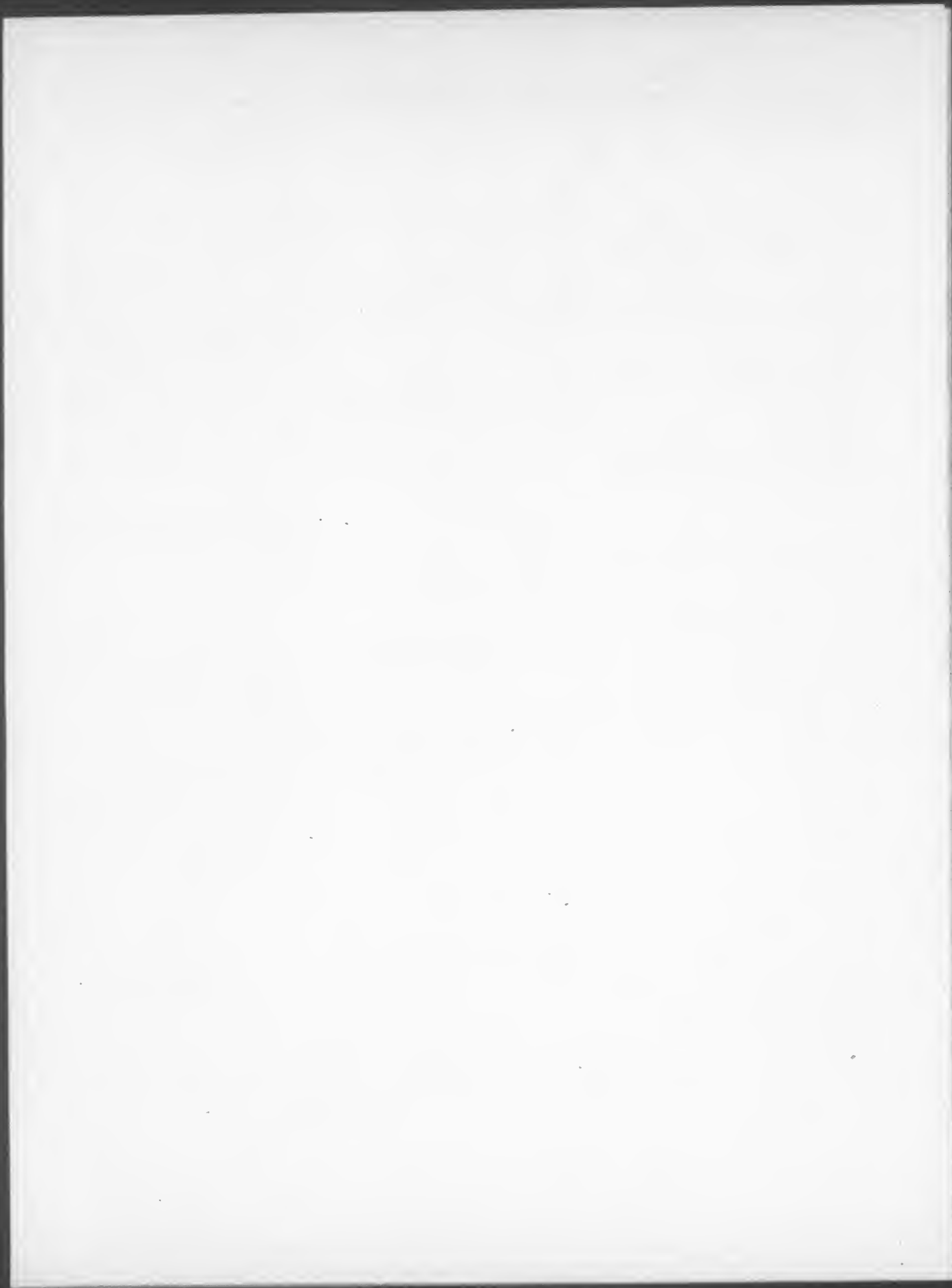
In notice document 07-6227, appearing on page 74331 in the issue of Monday, December 31, 2007, make the following correction:

In the second column, in the first full paragraph, twelve lines from the bottom should read "Eilersen Electric A/S, Kokkedal".

[FR Doc. C7-6227 Filed 3-6-08; 8:45 am]

BILLING CODE 1505-01-D







# Federal Register

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Friday,  
March 7, 2008

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Part II

## Department of Housing and Urban Development

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Federal Property Suitable as Facilities To  
Assist the Homeless; Notice

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5186-N-10]

### Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**FOR FURTHER INFORMATION CONTACT:**

Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7266, Washington, DC 20410; telephone (202) 708-1234; TTY number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800-927-7588.

**SUPPLEMENTARY INFORMATION:** In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where

property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to John Hicks, Division of Property Management, Program Support Center, HHS, room 5B-17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Army:* Ms. Veronica Rines, Headquarters, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, Attn: DAIM-ZS, Rm. 8536, 2511 Jefferson Davis Hwy.,

Arlington, VA 22202; (703) 601-2545; (These are not toll-free numbers).

Dated: February 28, 2008.

**Mark R. Johnston,**

*Deputy Assistant Secretary for Special Needs.*

**Title V, Federal Surplus Property Program; Federal Register Report for 03/07/08**

#### Suitable/Available Properties

##### Building

Alaska

Bldg. 00001

Kiana Natl Guard Armory

Kiana AK 99749

Landholding Agency: Army

Property Number: 21200340075

Status: Excess

Comments: 1200 sq. ft., butler bldg., needs repair, off-site use only

Bldg. 00001

Holy Cross Armory

High Cross AK 99602

Landholding Agency: Army

Property Number: 21200710051

Status: Excess

Comments: 1200 sq. ft. armory, off-site use only

Bldg. 00105

Ft. Richardson

Ft. Richardson AK

Landholding Agency: Army

Property Number: 21200740040

Status: Excess

Comments: 4992 sq. ft., most recent use—housing, off-site use only

#### Suitable/Available Properties

##### Building

Alaska

4 Bldgs.

Ft. Richardson

00112, 00113, 00114, 00115

Ft. Richardson AK

Landholding Agency: Army

Property Number: 21200740041

Status: Excess

Comments: 5184 sq. ft., most recent use—housing, off-site use only

Bldgs. 00120, 00129

Ft. Richardson

Ft. Richardson AK

Landholding Agency: Army

Property Number: 21200740042

Status: Excess

Comments: 4766 sq. ft., most recent use—housing, off-site use only

Bldg. 00136

Ft. Richardson

Ft. Richardson AK

Landholding Agency: Army

Property Number: 21200740043

Status: Excess

Comments: 2383 sq. ft., most recent use—housing, off-site use only

Bldgs. 00139, 00148

Ft. Richardson

Ft. Richardson AK

Landholding Agency: Army

Property Number: 21200740044

Status: Excess

Comments: 4766 sq. ft., most recent use—housing, off-site use only

**Suitable/Available Properties****Building**

## Alaska

6 Bldgs.

Ft. Richardson

00366, 00367, 00369, 00371, 00372, 00373

Ft. Richardson AK

Landholding Agency: Army

Property Number: 21200740045

Status: Excess

Comments: 13743/12642 sq. ft., most recent use—housing, off-site use only

Bldgs. 00392, 00394

Ft. Richardson

Ft. Richardson AK

Landholding Agency: Army

Property Number: 21200740046

Status: Excess

Comments: 18496 sq. ft., most recent use—housing, off-site use only

6 Bldgs.

Ft. Richardson

00413, 00414, 00415, 00416, 00417, 00418

Ft. Richardson AK

Landholding Agency: Army

Property Number: 21200740047

Status: Excess

Comments: 13056 sq. ft., most recent use—housing, off-site use only

**Suitable/Available Properties****Building**

## Alaska

6 Bldgs.

Ft. Richardson

00424, 00425, 00427, 00428, 00429, 00431

Ft. Richardson AK

Landholding Agency: Army

Property Number: 21200740048

Status: Excess

Comments: 13056 sq. ft., most recent use—housing, off-site use only

## Arizona

Bldg. S-306

Yuma Proving Ground

Yuma Co: Yuma/La Paz AZ 85365-9104

Landholding Agency: Army

Property Number: 21199420346

Status: Unutilized

Comments: 4103 sq. ft., 2-story, needs major rehab, off-site use only

Bldg. 503, Yuma Proving Ground

Yuma Co: Yuma AZ 85365-9104

Landholding Agency: Army

Property Number: 21199520073

Status: Underutilized

Comments: 3789 sq. ft., 2-story, major structural changes required to meet floor loading code requirements, presence of asbestos, off-site use only

**Suitable/Available Properties****Building**

## Arizona

Bldg. 43002

Fort Huachuca

Cochise AZ 85613-7010

Landholding Agency: Army

Property Number: 21200440066

Status: Excess

Comments: 23,152 sq. ft., presence of asbestos/lead paint, most recent use—dining, off-site use only

## Arkansas

7 Bldgs.

Pine Bluff Arsenal

Jefferson AR 71602

Landholding Agency: Army

Property Number: 21200740176

Status: Unutilized

Directions: 12300, 12302, 12304, 12306, 12308, 12310, 12312

Comments: 2400 sq. ft., major repairs, lead base paint abatement required, most recent use—housing, off-site use only

Bldgs. 13700 thru 13709

Pine Bluff Arsenal

Jefferson AR 71602

Landholding Agency: Army

Property Number: 21200740177

Status: Unutilized

Comments: 2328 sq. ft., major repairs, lead base paint abatement required, most recent use—housing, off-site use only

**Suitable/Available Properties****Building**

## California

Bldgs. 18026, 18028

Camp Roberts

Monterey CA 93451-5000

Landholding Agency: Army

Property Number: 21200130081

Status: Excess

Comments: 2024 sq. ft., concrete, poor condition, off-site use only

Bldgs. 00576, 00577

Moffett Field

Santa Clara CA 94035

Landholding Agency: Army

Property Number: 21200710056

Status: Unutilized

Comments: 1968/2400 sq. ft., most recent use—youth shelter, possible asbestos, off-site use only

Bldgs. 08420, 08460, 08480

Moffett Field

Santa Clara CA 94035

Landholding Agency: Army

Property Number: 21200710102

Status: Unutilized

Comments: 8710 sq. ft., possible asbestos/lead paint, most recent use—6 family dwelling unit, off-site use only

**Suitable/Available Properties****Building**

## California

Bldg. 07180

Moffett Field

Santa Clara CA 94035

Landholding Agency: Army

Property Number: 21200740049

Status: Unutilized

Comments: 10256 sq. ft., presence of asbestos/lead paint, most recent use—housing, off-site use only

Bldgs. 5, 6, 7

Bell AFRC

Bell CA 90201

Landholding Agency: Army

Property Number: 21200740050

Status: Unutilized

Comments: 198,000 sq. ft., warehouses, presence of asbestos/lead paint, need major repairs, off-site use only

## Colorado

Bldgs. 25, 26, 27

Pueblo Chemical Depot

Pueblo CO 81006

Landholding Agency: Army

Property Number: 21200420178

Status: Unutilized

Comments: 1311 sq. ft., presence of asbestos/lead paint; most recent use—housing, off-site use only

**Suitable/Available Properties****Building**

## Colorado

Bldg. 00127

Pueblo Chemical Depot

Pueblo CO 81006

Landholding Agency: Army

Property Number: 21200420179

Status: Unutilized

Comments: 8067 sq. ft., presence of asbestos, most recent use—barracks, off-site use only

Bldg. 01516

Fort Carson

El Paso CO 80913

Landholding Agency: Army

Property Number: 21200640116

Status: Unutilized

Comments: 723 sq. ft., needs repair, most recent use—storage, off-site use only

## Georgia

Bldg. 322

Fort Benning

Ft. Benning Co: Muscogee GA 31905

Landholding Agency: Army

Property Number: 21199720156

Status: Unutilized

Comments: 9600 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. 2593

Fort Benning

Ft. Benning Co: Muscogee GA 31905

Landholding Agency: Army

Property Number: 21199720167

Status: Unutilized

Comments: 13644 sq. ft., needs rehab, most recent use—parachute shop, off-site use only

**Suitable/Available Properties****Building**

## Georgia

Bldg. 2595

Fort Benning

Ft. Benning Co: Muscogee GA 31905

Landholding Agency: Army

Property Number: 21199720168

Status: Unutilized

Comments: 3356 sq. ft., needs rehab, most recent use—chapel, off-site use only

Bldg. 4476

Fort Benning

Ft. Benning Co: Muscogee GA 31905

Landholding Agency: Army

Property Number: 21199720184

Status: Unutilized

Comments: 3148 sq. ft., needs rehab, most recent use—vehicle maint. shop, off-site use only

Bldg. 4232

Fort Benning null Co: Muscogee GA 31905

Landholding Agency: Army

Property Number: 21199830291

Status: Unutilized  
 Comments: 3720 sq. ft., needs rehab, most recent use—maint. bay, off-site use only  
 Bldg. 2815  
 Fort Benning  
 Ft. Benning Co: Muscogee GA 31905  
 Landholding Agency: Army  
 Property Number: 21199930129  
 Status: Unutilized  
 Comments: 2578 sq. ft., most recent use—hdqts. bldg., off-site use only

**Suitable/Available Properties***Building*

Georgia

Bldgs. 5974–5978  
 Fort Benning  
 Ft. Benning Co: Muscogee GA 31905  
 Landholding Agency: Army  
 Property Number: 21199930135  
 Status: Unutilized  
 Comments: 400 sq. ft., most recent use—storage, off-site use only  
 Bldg. 5993  
 Fort Benning  
 Ft. Benning Co: Muscogee GA 31905  
 Landholding Agency: Army  
 Property Number: 21199930136  
 Status: Unutilized  
 Comments: 960 sq. ft., most recent use—storage, off-site use only

Bldg. 5994  
 Fort Benning  
 Ft. Benning Co: Muscogee GA 31905  
 Landholding Agency: Army  
 Property Number: 21199930137  
 Status: Unutilized  
 Comments: 2016 sq. ft., most recent use—storage, off-site use only

Bldg. T-1003  
 Fort Stewart  
 Hinesville Co: Liberty GA 31514  
 Landholding Agency: Army  
 Property Number: 21200030085  
 Status: Excess  
 Comments: 9267 sq. ft., poor condition, most recent use—admin., off-site use only

**Suitable/Available Properties***Building*

Georgia

Bldg. T0130  
 Fort Stewart  
 Hinesville Co: Liberty GA 31314–5136  
 Landholding Agency: Army  
 Property Number: 21200230041  
 Status: Excess  
 Comments: 10,813 sq. ft., off-site use only  
 Bldg. T0157  
 Fort Stewart  
 Hinesville Co: Liberty GA 31314–5136  
 Landholding Agency: Army  
 Property Number: 21200230042  
 Status: Excess  
 Comments: 1440 sq. ft., off-site use only

Bldgs. T291, T292  
 Fort Stewart  
 Hinesville Co: Liberty GA 31314–5136  
 Landholding Agency: Army  
 Property Number: 21200230044  
 Status: Excess  
 Comments: 5220 sq. ft. each, off-site use only  
 Bldg. T0295

Fort Stewart  
 Hinesville Co: Liberty GA 31314–5136  
 Landholding Agency: Army  
 Property Number: 21200230045  
 Status: Excess  
 Comments: 5220 sq. ft., off-site use only

**Suitable/Available Properties***Building*

Georgia

Bldg. 4476  
 Fort Benning  
 Ft. Benning Co: Chattahoochee GA 31905  
 Landholding Agency: Army  
 Property Number: 21200420034  
 Status: Excess  
 Comments: 3148 sq. ft., most recent use—veh. maint. shop, off-site use only  
 Bldg. 9029  
 Fort Benning  
 Ft. Benning Co: Chattahoochee GA 31905  
 Landholding Agency: Army  
 Property Number: 21200420050  
 Status: Excess  
 Comments: 7356 sq. ft., most recent use—heat plant bldg., off-site use only

Bldg. 11370  
 Fort Benning  
 Ft. Benning Co: Chattahoochee GA 31905  
 Landholding Agency: Army  
 Property Number: 21200420051  
 Status: Excess  
 Comments: 9602 sq. ft., most recent use—nco/enl bldg., off-site use only

Bldg. T924  
 Fort Stewart  
 Ft. Stewart Co: Liberty GA 31314  
 Landholding Agency: Army  
 Property Number: 21200420194  
 Status: Excess  
 Comments: 9360 sq. ft., most recent use—warehouse, off-site use only

**Suitable/Available Properties***Building*

Georgia

Bldg. 00924  
 Fort Stewart  
 Ft. Stewart Co: Liberty GA 31314  
 Landholding Agency: Army  
 Property Number: 21200510065  
 Status: Excess  
 Comments: 9360 sq. ft., most recent use—warehouse, off-site use only

Bldg. 9019  
 Fort Benning  
 Chattahoochee GA 31905  
 Landholding Agency: Army  
 Property Number: 21200520102  
 Status: Unutilized  
 Comments: 7243 sq. ft., poor condition, most recent use—BN HQ Bldg., off-site use only

Bldgs. 9198, 9199  
 Fort Benning  
 Chattahoochee GA 31905  
 Landholding Agency: Army  
 Property Number: 21200520108  
 Status: Unutilized  
 Comments: 1008 sq. ft., poor condition, most recent use—admin., off-site use only

Bldg. 08585  
 Hunter Army Airfield  
 Savannah Co: Chatham GA 31409

Landholding Agency: Army  
 Property Number: 21200530078  
 Status: Excess  
 Comments: 165 sq. ft., most recent use—plant, off-site use only

**Suitable/Available Properties***Building*

Georgia

Bldg. 01150  
 Hunter Army Airfield  
 Savannah Co: Chatham GA 31409  
 Landholding Agency: Army  
 Property Number: 21200610037  
 Status: Excess  
 Comments: 137 sq. ft., most recent use—flam mat storage, off-site use only  
 Bldg. 01151  
 Hunter Army Airfield  
 Savannah Co: Chatham GA 31409  
 Landholding Agency: Army  
 Property Number: 21200610038  
 Status: Excess  
 Comments: 78 sq. ft., most recent use—flam mat storage, off-site use only

Bldg. 01153  
 Hunter Army Airfield  
 Savannah Co: Chatham GA 31409  
 Landholding Agency: Army  
 Property Number: 21200610039  
 Status: Excess  
 Comments: 211 sq. ft., most recent use—flam mat storage, off-site use only

Bldg. 01530  
 Fort Stewart  
 Liberty GA 31314  
 Landholding Agency: Army  
 Property Number: 21200610048  
 Status: Excess  
 Comments: 80 sq. ft., most recent use—scale house, off-site use only

**Suitable/Available Properties***Building*

Georgia

Bldg. 08032  
 Fort Stewart  
 Liberty GA 31314  
 Landholding Agency: Army  
 Property Number: 21200610051  
 Status: Excess  
 Comments: 2592 sq. ft., needs rehab, most recent use—storage/stable, off-site use only

Bldg. 07783  
 Fort Stewart  
 Hinesville GA 31314  
 Landholding Agency: Army  
 Property Number: 21200640093  
 Status: Excess  
 Comments: 8640 sq. ft., most recent use—maintenance hangar, off-site use only

Bldg. 08061  
 Fort Stewart  
 Hinesville GA 31314  
 Landholding Agency: Army  
 Property Number: 21200640094  
 Status: Excess  
 Comments: 1296 sq. ft., most recent use—weather station, off-site use only

4 Bldgs. 8642, 8643, 8649, 8656  
 Fort Benning  
 Ft. Benning GA 31905  
 Landholding Agency: Army



Property Number: 21200740051  
Status: Unutilized  
Comments: various sq. ft., most recent use—  
range support facility, off-site use only

**Suitable/Available Properties***Building*

## Georgia

Bldg. 00100

Hunter Army Airfield  
Chatham GA 31409

Landholding Agency: Army

Property Number: 21200740052

Status: Excess

Comments: 10893 sq. ft., most recent use—  
battalion hdqts., off-site use only

Bldg. 00129

Hunter Army Airfield  
Chatham GA 31409

Landholding Agency: Army

Property Number: 21200740053

Status: Excess

Comments: 4815 sq. ft., presence of asbestos,  
most recent use—religious education  
facility, off-site use only

Bldg. 00145

Hunter Army Airfield  
Chatham GA 31409

Landholding Agency: Army

Property Number: 21200740054

Status: Excess

Comments: 11590 sq. ft., presence of  
asbestos, most recent use—post chapel, off-  
site use only

Bldg. 00811

Hunter Army Airfield  
Chatham GA 31409

Landholding Agency: Army

Property Number: 21200740055

Status: Excess

Comments: 42853 sq. ft., most recent use—  
co hq bldg, off-site use only**Suitable/Available Properties***Building*

## Georgia

Bldg. 00812

Hunter Army Airfield  
Chatham GA 31409

Landholding Agency: Army

Property Number: 21200740056

Status: Excess

Comments: 1080 sq. ft., most recent use—  
power plant, off-site use only

Bldg. 00850

Hunter Army Airfield  
Chatham GA 31409

Landholding Agency: Army

Property Number: 21200740057

Status: Excess

Comments: 108,287 sq. ft., presence of  
asbestos, most recent use—aircraft hangar,  
off-site use only

Bldg. 00860

Hunter Army Airfield  
Chatham GA 31409

Landholding Agency: Army

Property Number: 21200740058

Status: Excess

Comments: 10679 sq. ft., presence of  
asbestos, most recent use—maint. hangar,  
off-site use only

Bldg. 01028

Hunter Army Airfield  
Chatham GA 31409  
Landholding Agency: Army  
Property Number: 21200740059

Status: Excess

Comments: 870 sq. ft., most recent use—  
storage, off-site use only**Suitable/Available Properties***Building*

## Georgia

Bldg. 00955

Fort Stewart  
Hinesville GA 31314

Landholding Agency: Army

Property Number: 21200740060

Status: Excess

Comments: 120 sq. ft., most recent use—  
storage, off-site use only

Bldg. 00957

Fort Stewart  
Hinesville GA 31314

Landholding Agency: Army

Property Number: 21200740061

Status: Excess

Comments: 6072 sq. ft., most recent use—  
recycling facility, off-site use only

Bldg. 00971

Fort Stewart  
Hinesville GA 31314

Landholding Agency: Army

Property Number: 21200740062

Status: Excess

Comments: 4000 sq. ft., most recent use—  
vehicle maint., off-site use only

Bldg. 01015

Fort Stewart  
Hinesville GA 31314

Landholding Agency: Army

Property Number: 21200740063

Status: Excess

Comments: 7496 sq. ft., most recent use—  
storage, off-site use only**Suitable/Available Properties***Building*

## Georgia

Bldg. 01209

Fort Stewart  
Hinesville GA 31314

Landholding Agency: Army

Property Number: 21200740064

Status: Excess

Comments: 4786 sq. ft., presence of asbestos,  
most recent use—vehicle maint., off-site  
use only

Bldg. 07335

Fort Stewart  
Hinesville GA 31314

Landholding Agency: Army

Property Number: 21200740065

Status: Excess

Comments: 4400 sq. ft., most recent use—  
chapel, off-site use only

Bldg. 245

Fort Benning  
Ft. Benning GA 31905

Landholding Agency: Army

Property Number: 21200740178

Status: Unutilized

Comments: 1102 sq. ft., most recent use—fld  
ops, off-site use only

Bldg. 2580

Fort Benning  
Ft. Benning GA 31905  
Landholding Agency: Army  
Property Number: 21200740179  
Status: Unutilized  
Comments: 1943 sq. ft., most recent use—org.  
str., off-site use only

**Suitable/Available Properties***Building*

## Georgia

Bldg. 2748

Fort Benning  
Ft. Benning GA 31905

Landholding Agency: Army

Property Number: 21200740180

Status: Unutilized

Comments: 3990 sq. ft., most recent use—  
office, off-site use only

Bldg. 3819

Fort Benning  
Ft. Benning GA 31905

Landholding Agency: Army

Property Number: 21200740181

Status: Unutilized

Comments: 4241 sq. ft., most recent use—  
gen. str., off-site use only

Bldg. 3866

Fort Benning  
Ft. Benning GA 31905

Landholding Agency: Army

Property Number: 21200740182

Status: Unutilized

Comments: 944 sq. ft., most recent use—  
office, off-site use only

Bldg. 8682

Fort Benning  
Ft. Benning GA 31905

Landholding Agency: Army

Property Number: 21200740183

Status: Unutilized

Comments: 780 sq. ft., most recent use—  
admin., off-site use only**Suitable/Available Properties***Building*

## Georgia

Bldg. 10800

Fort Benning  
Ft. Benning GA 31905

Landholding Agency: Army

Property Number: 21200740184

Status: Unutilized

Comments: 16,628 sq. ft., off-site use only

Bldgs. 11302, 11303, 11304

Fort Benning  
Ft. Benning GA 31905

Landholding Agency: Army

Property Number: 21200740185

Status: Unutilized

Comments: various sq. ft., most recent use—  
ACS center, off-site use only

## Hawaii

P-88

Aliamanu Military Reservation  
Honolulu Co: Honolulu HI 96818

Landholding Agency: Army

Property Number: 21199030324

Status: Unutilized

Directions: Approximately 600 feet from  
Main Gate on Aliamanu Drive.Comments: 45,216 sq. ft. underground tunnel  
complex, pres. of asbestos, clean-up

required of contamination, use of respirator required by those entering property, use limitations

#### Suitable/Available Properties

##### Building

##### Illinois

##### Bldg. 54

Rock Island Arsenal

Rock Island Co: Rock Island IL 61299

Landholding Agency: Army

Property Number: 21199620666

Status: Unutilized

Comments: 2000 sq. ft., most recent use—oil storage, needs repair, off-site use only

##### Bldg. AR112

Sheridan Reserve

Arlington Heights IL 60052-2475

Landholding Agency: Army

Property Number: 21200110081

Status: Unutilized

Comments: 1000 sq. ft., off-site use only

Bldgs. 634, 639

Fort Sheridan

Ft. Sheridan IL 60037

Landholding Agency: Army

Property Number: 21200740186

Status: Unutilized

Comments: 3731/3706 sq. ft., most recent use—classroom/storage, off-site use only

#### Suitable/Available Properties

##### Building

##### Iowa

##### Bldg. 00691

Iowa Army Ammo Plant

Middletown Co: Des Moines IA 52638

Landholding Agency: Army

Property Number: 21200510073

Status: Unutilized

Comments: 2581 sq. ft. residence, presence of lead paint, possible asbestos

##### Bldg. 00691

Iowa Army Ammo Plant

Middletown Co: Des Moines IA 52638

Landholding Agency: Army

Property Number: 21200520113

Status: Unutilized

Comments: 2581 sq. ft., presence of asbestos/lead paint, most recent use—residential

##### Kansas

##### Bldg. 00393

Fort Leavenworth

Leavenworth KS

Landholding Agency: Army

Property Number: 21200740066

Status: Unutilized

Comments: 63 sq. ft., most recent use—maint. facility, off-site use only

##### Bldg. 00423

Fort Leavenworth

Leavenworth KS 66027

Landholding Agency: Army

Property Number: 21200740067

Status: Unutilized

Comments: 8200 sq. ft., most recent use—maint. facility, off-site use only

#### Suitable/Available Properties

##### Building

##### Kansas

Bldg. 00426

Fort Leavenworth

Leavenworth KS 66027

Landholding Agency: Army

Property Number: 21200740068

Status: Unutilized

Comments: 480 sq. ft., most recent use—dog kennel, off-site use only

##### Bldg. 00449

Fort Leavenworth

Leavenworth KS 66027

Landholding Agency: Army

Property Number: 21200740069

Status: Unutilized

Comments: 997 sq. ft., most recent use—access control, off-site use only

##### Louisiana

##### Bldg. 8423

Fort Polk

Ft. Polk Co: Vernon Parish LA 71459

Landholding Agency: Army

Property Number: 21199640528

Status: Underutilized

Comments: 4172 sq. ft., most recent use—barracks

##### Bldg. T7125

Fort Polk

Ft. Polk LA 71459

Landholding Agency: Army

Property Number: 21200540088

Status: Unutilized

Comments: 1875 sq. ft., off-site use only

#### Suitable/Available Properties

##### Building

##### Louisiana

Bldgs. T7163, T8043

Fort Polk

Ft. Polk LA 71459

Landholding Agency: Army

Property Number: 21200540089

Status: Unutilized

Comments: 4073/1923 sq. ft., off-site use only

##### Maryland

##### Bldg. 0459B

Aberdeen Proving Ground

Aberdeen Co: Harford MD 21005-5001

Landholding Agency: Army

Property Number: 21200120106

Status: Unutilized

Comments: 225 sq. ft., poor condition, most recent use—equipment bldg., off-site use only

##### Bldg. 00785

Aberdeen Proving Ground

Aberdeen Co: Harford MD 21005-5001

Landholding Agency: Army

Property Number: 21200120107

Status: Unutilized

Comments: 160 sq. ft., poor condition, most recent use—shelter, off-site use only

##### Bldg. E5239

Aberdeen Proving Ground

Aberdeen Co: Harford MD 21005-5001

Landholding Agency: Army

Property Number: 21200120113

Status: Unutilized

Comments: 230 sq. ft., most recent use—storage, off-site use only

#### Suitable/Available Properties

##### Building

##### Maryland

Bldg. E5317

Aberdeen Proving Ground

Aberdeen Co: Harford MD 21005-5001

Landholding Agency: Army

Property Number: 21200120114

Status: Unutilized

Comments: 3158 sq. ft., presence of asbestos/lead paint, most recent use—lab, off-site use only

##### Bldg. E5637

Aberdeen Proving Ground

Aberdeen Co: Harford MD 21005-5001

Landholding Agency: Army

Property Number: 21200120115

Status: Unutilized

Comments: 312 sq. ft., presence of asbestos/lead paint, most recent use—lab, off-site use only

##### Bldg. 219

Ft. George G. Meade

Ft. Meade Co: Anne Arundel MD 20755

Landholding Agency: Army

Property Number: 21200140078

Status: Unutilized

Comments: 8142 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

##### Bldg. 294

Ft. George G. Meade

Ft. Meade Co: Anne Arundel MD 20755

Landholding Agency: Army

Property Number: 21200140081

Status: Unutilized

Comments: 3148 sq. ft., presence of asbestos/lead paint, most recent use—entomology facility, off-site use only

#### Suitable/Available Properties

##### Building

##### Maryland

##### Bldg. 1007

Ft. George G. Meade

Ft. Meade Co: Anne Arundel MD 20755

Landholding Agency: Army

Property Number: 21200140085

Status: Unutilized

Comments: 3108 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

##### Bldg. 2214

Fort George G. Meade

Fort Meade Co: Anne Arundel MD 20755

Landholding Agency: Army

Property Number: 21200230054

Status: Unutilized

Comments: 7740 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—storage, off-site use only

##### Bldg. 00375

Aberdeen Proving Grounds

Aberdeen Co: Harford MD 21005

Landholding Agency: Army

Property Number: 21200320107

Status: Unutilized

Comments: 64 sq. ft., most recent use—storage, off-site use only

#### Suitable/Available Properties

##### Building

##### Maryland

##### Bldg. 0385A

Aberdeen Proving Grounds

Aberdeen Co: Harford MD 21005

Landholding Agency: Army

Property Number: 21200320110

Status: Unutilized  
 Comments: 944 sq. ft., off-site use only  
 Bldg. 00523  
 Aberdeen Proving Grounds  
 Aberdeen Co: Harford MD 21005  
 Landholding Agency: Army  
 Property Number: 21200320113  
 Status: Unutilized  
 Comments: 3897 sq. ft., most recent use—  
 paint shop, off-site use only  
 Bldg. 0700B  
 Aberdeen Proving Grounds  
 Aberdeen Co: Harford MD 21005  
 Landholding Agency: Army  
 Property Number: 21200320121  
 Status: Unutilized  
 Comments: 505 sq. ft., off-site use only  
 Bldg. 01113  
 Aberdeen Proving Grounds  
 Aberdeen Co: Harford MD 21005  
 Landholding Agency: Army  
 Property Number: 21200320128  
 Status: Unutilized  
 Comments: 1012 sq. ft., off-site use only

**Suitable/Available Properties***Building*

Maryland

Bldgs. 01124, 01132  
 Aberdeen Proving Grounds  
 Aberdeen Co: Harford MD 21005  
 Landholding Agency: Army  
 Property Number: 21200320129  
 Status: Unutilized  
 Comments: 740/2448 sq. ft., most recent  
 use—lab, off-site use only  
 Bldg. 03558  
 Aberdeen Proving Grounds  
 Aberdeen Co: Harford MD 21005  
 Landholding Agency: Army  
 Property Number: 21200320133  
 Status: Unutilized  
 Comments: 18,000 sq. ft., most recent use—  
 storage, off-site use only  
 Bldg. 05262  
 Aberdeen Proving Grounds  
 Aberdeen Co: Harford MD 21005  
 Landholding Agency: Army  
 Property Number: 21200320136  
 Status: Unutilized  
 Comments: 864 sq. ft., most recent use—  
 storage, off-site use only  
 Bldg. 05608  
 Aberdeen Proving Grounds  
 Aberdeen Co: Harford MD 21005  
 Landholding Agency: Army  
 Property Number: 21200320137  
 Status: Unutilized  
 Comments: 1100 sq. ft., most recent use—  
 maint bldg., off-site use only

**Suitable/Available Properties***Building*

Maryland

Bldg. E5645  
 Aberdeen Proving Grounds  
 Aberdeen Co: Harford MD 21005  
 Landholding Agency: Army  
 Property Number: 21200320150  
 Status: Unutilized  
 Comments: 548 sq. ft., most recent use—  
 storage, off-site use only  
 Bldg. 00435

Aberdeen Proving Grounds  
 Aberdeen Co: Harford MD 21005  
 Landholding Agency: Army  
 Property Number: 21200330111  
 Status: Unutilized  
 Comments: 1191 sq. ft., needs rehab, most  
 recent use—storage, off-site use only  
 Bldg. 0449A  
 Aberdeen Proving Grounds  
 Aberdeen Co: Harford MD 21005  
 Landholding Agency: Army  
 Property Number: 21200330112  
 Status: Unutilized  
 Comments: 143 sq. ft., needs rehab, most  
 recent use—substation switch bldg., off-site  
 use only  
 Bldg. 0460  
 Aberdeen Proving Grounds  
 Aberdeen Co: Harford MD 21005  
 Landholding Agency: Army  
 Property Number: 21200330114  
 Status: Unutilized  
 Comments: 1800 sq. ft., needs rehab, most  
 recent use—electrical EQ bldg., off-site use  
 only

**Suitable/Available Properties***Building*

Maryland

Bldg. 00914  
 Aberdeen Proving Grounds  
 Aberdeen Co: Harford MD 21005  
 Landholding Agency: Army  
 Property Number: 21200330118  
 Status: Unutilized  
 Comments: needs rehab, most recent use—  
 safety shelter, off-site use only  
 Bldg. 00915  
 Aberdeen Proving Grounds  
 Aberdeen Co: Harford MD 21005  
 Landholding Agency: Army  
 Property Number: 21200330119  
 Status: Unutilized  
 Comments: 247 sq. ft., needs rehab, most  
 recent use—storage, off-site use only  
 Bldg. 01189  
 Aberdeen Proving Grounds  
 Aberdeen Co: Harford MD 21005  
 Landholding Agency: Army  
 Property Number: 21200330126  
 Status: Unutilized  
 Comments: 800 sq. ft., needs rehab, most  
 recent use—range bldg., off-site use only  
 Bldg. E1413  
 Aberdeen Proving Grounds  
 Aberdeen Co: Harford MD 21005  
 Landholding Agency: Army  
 Property Number: 21200330127  
 Status: Unutilized  
 Comments: needs rehab, most recent use—  
 observation tower, off-site use only

**Suitable/Available Properties***Building*

Maryland

Bldg. E3175  
 Aberdeen Proving Grounds  
 Aberdeen Co: Harford MD 21005  
 Landholding Agency: Army  
 Property Number: 21200330134  
 Status: Unutilized  
 Comments: 1296 sq. ft., needs rehab, most  
 recent use—hazard bldg., off-site use only

4 Bldgs.  
 Aberdeen Proving Grounds  
 Aberdeen Co: Harford MD 21005  
 Landholding Agency: Army  
 Property Number: 21200330135  
 Status: Unutilized  
 Directions: E3224, E3228, E3230, E3232,  
 E3234  
 Comments: sq. ft. varies, needs rehab, most  
 recent use—lab test bldgs., off-site use only  
 Bldg. E3241  
 Aberdeen Proving Grounds  
 Aberdeen Co: Harford MD 21005  
 Landholding Agency: Army  
 Property Number: 21200330136  
 Status: Unutilized  
 Comments: 592 sq. ft., needs rehab, most  
 recent use—medical res bldg., off-site use  
 only

**Suitable/Available Properties***Building*

Maryland

Bldg. E3300  
 Aberdeen Proving Grounds  
 Aberdeen Co: Harford MD 21005  
 Landholding Agency: Army  
 Property Number: 21200330139  
 Status: Unutilized  
 Comments: 44,352 sq. ft., needs rehab, most  
 recent use—chemistry lab, off-site use only  
 Bldg. E3335  
 Aberdeen Proving Grounds  
 Aberdeen Co: Harford MD 21005  
 Landholding Agency: Army  
 Property Number: 21200330144  
 Status: Unutilized  
 Comments: 400 sq. ft., needs rehab, most  
 recent use—storage, off-site use only  
 Bldgs. E3360, E3362, E3464  
 Aberdeen Proving Grounds  
 Aberdeen Co: Harford MD 21005  
 Landholding Agency: Army  
 Property Number: 21200330145  
 Status: Unutilized  
 Comments: 3588/236 sq. ft., needs rehab,  
 most recent use—storage, off-site use only  
 Bldg. E3542  
 Aberdeen Proving Grounds  
 Aberdeen Co: Harford MD 21005  
 Landholding Agency: Army  
 Property Number: 21200330148  
 Status: Unutilized  
 Comments: 1146 sq. ft., needs rehab, most  
 recent use—lab test bldg., off-site use only

**Suitable/Available Properties***Building*

Maryland

Bldg. E4420  
 Aberdeen Proving Grounds  
 Aberdeen Co: Harford MD 21005  
 Landholding Agency: Army  
 Property Number: 21200330151  
 Status: Unutilized  
 Comments: 14,997 sq. ft., needs rehab, most  
 recent use—police bldg., off-site use only  
 4 Bldgs.  
 Aberdeen Proving Grounds  
 Aberdeen Co: Harford MD 21005  
 Landholding Agency: Army  
 Property Number: 21200330154  
 Status: Unutilized

Directions: E5005, E5049, E5050, E5051  
Comments: sq. ft. varies, needs rehab, most recent use—storage, off-site use only

Bldg. E5068

Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005  
Landholding Agency: Army  
Property Number: 21200330155

Status: Unutilized

Comments: 1200 sq. ft., needs rehab, most recent use—fire station, off-site use only

#### Suitable/Available Properties

##### Building

Maryland

Bldgs. 05448, 05449

Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005  
Landholding Agency: Army  
Property Number: 21200330161

Status: Unutilized

Comments: 6431 sq. ft., needs rehab, most recent use—enlisted UHP, off-site use only

Bldg. 05450

Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005  
Landholding Agency: Army  
Property Number: 21200330162

Status: Unutilized

Comments: 2730 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldgs. 05451, 05455

Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005  
Landholding Agency: Army  
Property Number: 21200330163

Status: Unutilized

Comments: 2730/6431 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 05453

Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005  
Landholding Agency: Army  
Property Number: 21200330164

Status: Unutilized

Comments: 6431 sq. ft., needs rehab, most recent use—admin., off-site use only

#### Suitable/Available Properties

##### Building

Maryland

Bldg. E5609

Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005  
Landholding Agency: Army  
Property Number: 21200330167

Status: Unutilized

Comments: 2053 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E5611

Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005  
Landholding Agency: Army  
Property Number: 21200330168

Status: Unutilized

Comments: 11,242 sq. ft., needs rehab, most recent use—hazard bldg., off-site use only

Bldg. E5634

Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005  
Landholding Agency: Army  
Property Number: 21200330169  
Status: Unutilized

Comments: 200 sq. ft., needs rehab, most recent use—flammable storage, off-site use only

Bldg. E5654

Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005  
Landholding Agency: Army  
Property Number: 21200330171

Status: Unutilized

Comments: 21,532 sq. ft., needs rehab, most recent use—storage, off-site use only

#### Suitable/Available Properties

##### Building

Maryland

Bldg. E5942

Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005  
Landholding Agency: Army  
Property Number: 21200330176

Status: Unutilized

Comments: 2147 sq. ft., needs rehab, most recent use—igloo storage, off-site use only

Bldgs. E5952, E5953

Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005  
Landholding Agency: Army  
Property Number: 21200330177

Status: Unutilized

Comments: 100/24 sq. ft., needs rehab, most recent use—compressed air bldg., off-site use only

Bldgs. E7401, E7402

Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005  
Landholding Agency: Army  
Property Number: 21200330178

Status: Unutilized

Comments: 256/440 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E7407, E7408

Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005  
Landholding Agency: Army  
Property Number: 21200330179

Status: Unutilized

Comments: 1078/762 sq. ft., needs rehab, most recent use—decon facility, off-site use only

#### Suitable/Available Properties

##### Building

Maryland

Bldg. 3070A

Aberdeen Proving Ground  
Harford MD 21005  
Landholding Agency: Army  
Property Number: 21200420055

Status: Unutilized

Comments: 2299 sq. ft., most recent use—heat plant, off-site use only

Bldg. E5026

Aberdeen Proving Ground  
Harford MD 21005  
Landholding Agency: Army  
Property Number: 21200420056

Status: Unutilized

Comments: 20,536 sq. ft., most recent use—storage, off-site use only

Bldg. 05261

Aberdeen Proving Ground  
Harford MD 21005  
Landholding Agency: Army

Property Number: 21200420057

Status: Unutilized

Comments: 10,067 sq. ft., most recent use—maintenance, off-site use only

Bldg. E5876

Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005  
Landholding Agency: Army  
Property Number: 21200440073

Status: Unutilized

Comments: 1192 sq. ft., needs rehab, most recent use—storage, off-site use only

#### Suitable/Available Properties

##### Building

Maryland

Bldg. 00688

Aberdeen Proving Ground  
Aberdeen Co: Harford MD 21005  
Landholding Agency: Army  
Property Number: 21200530080

Status: Unutilized

Comments: 24,192 sq. ft., most recent use—ammo, off-site use only

Bldg. 04925

Aberdeen Proving Ground  
Aberdeen Co: Harford MD 21005  
Landholding Agency: Army  
Property Number: 21200540091

Status: Unutilized

Comments: 1326 sq. ft., off-site use only

Bldg. 00255

Aberdeen Proving Ground  
Harford MD 21005  
Landholding Agency: Army  
Property Number: 21200720052

Status: Unutilized

Comments: 64 sq. ft., most recent use—storage, off-site use only

Bldg. 00638

Aberdeen Proving Ground  
Harford MD 21005  
Landholding Agency: Army  
Property Number: 21200720053

Status: Unutilized

Comments: 4295 sq. ft., most recent use—storage, off-site use only

#### Suitable/Available Properties

##### Building

Maryland

Bldg. 00721

Aberdeen Proving Ground  
Harford MD  
Landholding Agency: Army  
Property Number: 21200720054

Status: Unutilized

Comments: 135 sq. ft., most recent use—storage, off-site use only

Bldgs. 00936, 00937

Aberdeen Proving Ground  
Harford MD 21005  
Landholding Agency: Army  
Property Number: 21200720055

Status: Unutilized

Comments: 2000 sq. ft., most recent use—storage, off-site use only

Bldgs. E1410, E1434

Aberdeen Proving Ground  
Harford MD 21005  
Landholding Agency: Army  
Property Number: 21200720056  
Status: Unutilized

Comments: 2276/3106 sq. ft., most recent use—laboratory, off-site use only

Bldg. 03240  
Aberdeen Proving Ground  
Harford MD 21005  
Landholding Agency: Army  
Property Number: 21200720057  
Status: Unutilized  
Comments: 10,049 sq. ft., most recent use—office, off-site use only

#### Suitable/Available Properties

##### Building

Maryland  
Bldg. E3834  
Aberdeen Proving Ground  
Harford MD 21005  
Landholding Agency: Army  
Property Number: 21200720058  
Status: Unutilized  
Comments: 72 sq. ft., most recent use—office, off-site use only

Bldgs. E4465, E4470, E4480  
Aberdeen Proving Ground  
Harford MD 21005  
Landholding Agency: Army  
Property Number: 21200720059  
Status: Unutilized  
Comments: 17658/16876/17655 sq. ft., most recent use—office, off-site use only

Bldgs. E5137, 05219  
Aberdeen Proving Ground  
Harford MD 21005  
Landholding Agency: Army  
Property Number: 21200720060  
Status: Unutilized  
Comments: 3700/8175 sq. ft., most recent use—office, off-site use only

Bldg. E5236  
Aberdeen Proving Ground  
Harford MD 21005  
Landholding Agency: Army  
Property Number: 21200720061  
Status: Unutilized  
Comments: 10,325 sq. ft., most recent use—storage, off-site use only

#### Suitable/Available Properties

##### Building

Maryland  
Bldg. E5282  
Aberdeen Proving Ground  
Harford MD 21005  
Landholding Agency: Army  
Property Number: 21200720062  
Status: Unutilized  
Comments: 4820 sq. ft., most recent use—hazard bldg., off-site use only

Bldgs. E5736, E5846, E5926  
Aberdeen Proving Ground  
Harford MD 21005  
Landholding Agency: Army  
Property Number: 21200720063  
Status: Unutilized  
Comments: 1069/4171/11279 sq. ft., most recent use—storage, off-site use only

Bldg. E6890  
Aberdeen Proving Ground  
Harford MD 21005  
Landholding Agency: Army  
Property Number: 21200720064  
Status: Unutilized  
Comments: 1 sq. ft., most recent use—impact area, off-site use only

#### Suitable/Available Properties

##### Building

Missouri  
Bldg. T1497  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65473–5000  
Landholding Agency: Army  
Property Number: 21199420441  
Status: Underutilized  
Comments: 4720 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T2139  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65473–5000  
Landholding Agency: Army  
Property Number: 21199420446  
Status: Underutilized  
Comments: 3663 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T2385  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65473  
Landholding Agency: Army  
Property Number: 21199510115  
Status: Excess  
Comments: 3158 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only

#### Suitable/Available Properties

##### Building

Missouri  
Bldg. 2167  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65473–5000  
Landholding Agency: Army  
Property Number: 21199820179  
Status: Unutilized  
Comments: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldgs. 2192, 2196, 2198  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65473–5000  
Landholding Agency: Army  
Property Number: 21199820183  
Status: Unutilized  
Comments: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

12 Bldgs  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65473–8944  
Landholding Agency: Army  
Property Number: 21200410110  
Status: Unutilized  
Directions: 07036, 07050, 07054, 07102, 07400, 07401, 08245, 08249, 08251, 08255, 08257, 08261.

Comments: 7152 sq. ft. 6 plex housing quarters, potential contaminants, off-site use only

#### Suitable/Available Properties

##### Building

Missouri  
6 Bldg  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65743–8944  
Landholding Agency: Army  
Property Number: 21200410111  
Status: Unutilized  
Directions: 07044, 07106, 07107, 08260, 08281, 08300  
Comments: 9520 sq. ft., 8 plex housing quarters, potential contaminants, off-site use only

15 Bldgs  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65743–8944  
Landholding Agency: Army  
Property Number: 21200410112  
Status: Unutilized  
Directions: 08242, 08243, 08246–08248, 08250, 08252–08254, 08256, 08258–08259, 08262–08263, 08265

Comments: 4784 sq. ft., 4 plex housing quarters, potential contaminants, off-site use only

Bldgs 08283, 08285  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65743–8944

Landholding Agency: Army  
Property Number: 21200410113  
Status: Unutilized  
Comments: 2240 sq. ft. 2 plex housing quarters, potential contaminants, off-site use only

#### Suitable/Available Properties

##### Building

Missouri  
15 Bldgs  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65743–0827  
Landholding Agency: Army  
Property Number: 21200410114  
Status: Unutilized  
Directions: 08267, 08269, 08271, 08273, 08275, 08277, 08279, 08290, 08296, 08301  
Comments: 4784 sq. ft., 4 plex housing quarters, potential contaminants, off-site use only

Bldg 09432  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65743–8944

Landholding Agency: Army  
Property Number: 21200410115  
Status: Unutilized  
Comments: 8724 sq. ft., 6-plex housing quarters, potential contaminants, off-site use only

Bldgs. 5006 and 5013  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65743–8944

Landholding Agency: Army  
Property Number: 21200430064  
Status: Unutilized  
Comments: 192 sq. ft., needs repair, most recent use—generator bldg., off-site use only



**Suitable/Available Properties****Building****Missouri**

Bldgs. 13210, 13710

Fort Leonard Wood

Ft. Leonard Wood Co: Pulaski MO 65743-8944

Landholding Agency: Army

Property Number: 21200430065

Status: Unutilized

Comments: 144 sq. ft. each, needs repair, most recent use—communication, off-site use only

**Montana**

Bldg. 00405

Fort Harrison

Ft. Harrison Co: Lewis/Clark MT 59636

Landholding Agency: Army

Property Number: 21200130099

Status: Unutilized

Comments: 3467 sq. ft., most recent use—storage, security limitations.

Bldg. T0066

Fort Harrison

Ft. Harrison Co: Lewis/Clark MT 59636

Landholding Agency: Army

Property Number: 21200130100

Status: Unutilized

Comments: 528 sq. ft., needs rehab, presence of asbestos, security limitations.

Bldg. 00001

Sheridan Hall USARC

Helena MT 59601

Landholding Agency: Army

Property Number: 21200540093

Status: Unutilized

Comments: 19,321 sq. ft., most recent use—Reserve Center

**Suitable/Available Properties****Building****Montana**

Bldg. 00003

Sheridan Hall USARC

Helena MT 59601

Landholding Agency: Army

Property Number: 21200540094

Status: Unutilized

Comments: 1950 sq. ft., most recent use—maintenance/storage

**New Jersey**

Bldg. 732

Armament R Engineering Center

Picatinny Arsenal Co: Morris NJ 07806-5000

Landholding Agency: Army

Property Number: 21199740315

Status: Unutilized

Comments: 9077 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 816C

Armament R, D, Center

Picatinny Arsenal Co: Morris NJ 07806-5000

Landholding Agency: Army

Property Number: 21200130103

Status: Unutilized

Comments: 144 sq. ft., most recent use—storage, off-site use only

**Suitable/Available Properties****Building****New Mexico**

Bldg. 34198

White Sands Missile Range

Dona Ana NM 88002

Landholding Agency: Army

Property Number: 21200230062

Status: Excess

Comments: 107 sq. ft., most recent use—security, off-site use only

**New York**

Bldg. 1227

U.S. Military Academy

Highlands Co: Orange NY 10996-1592

Landholding Agency: Army

Property Number: 21200440074

Status: Unutilized

Comments: 3800 sq. ft., needs repair, possible asbestos/lead paint, most recent use—maintenance, off-site use only

Bldg. 2218

Stewart Newburg USARC

New Windsor Co: Orange NY 12553-9000

Landholding Agency: Army

Property Number: 21200510067

Status: Unutilized

Comments: 32,000 sq. ft., poor condition, requires major repairs, most recent use—storage/services

**Suitable/Available Properties****Building****New York**

7 Bldgs.

Stewart Newburg USARC

New Windsor Co: Orange NY 12553-9000

Landholding Agency: Army

Property Number: 21200510068

Status: Unutilized

Directions: 2122, 2124, 2126, 2128, 2106, 2108, 2104

Comments: sq. ft. varies, poor condition, needs major repairs, most recent use—storage/services

**Oklahoma**

Bldg. T-838, Fort Sill

838 Macomb Road

Lawton Co: Comanche OK 73503-5100

Landholding Agency: Army

Property Number: 21199220609

Status: Unutilized

Comments: 151 sq. ft., wood frame, 1 story, off-site removal only, most recent use—vet facility (quarantine stable)

Bldg. T-954, Fort Sill

954 Quinette Road

Lawton Co: Comanche OK 73503-5100

Landholding Agency: Army

Property Number: 21199240659

Status: Unutilized

Comments: 3571 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—motor repair shop

**Suitable/Available Properties****Building****Oklahoma**

Bldg. T-3325, Fort Sill

3325 Naylor Road

Lawton Co: Comanche OK 73503-5100

Landholding Agency: Army

Property Number: 21199240681

Status: Unutilized

Comments: 8832 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—warehouse

Bldg. T-4226

Fort Sill

Lawton Co: Comanche OK 73503

Landholding Agency: Army

Property Number: 21199440384

Status: Unutilized

Comments: 114 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only

Bldg. P-1015, Fort Sill

Lawton Co: Comanche OK 73501-5100

Landholding Agency: Army

Property Number: 21199520197

Status: Unutilized

Comments: 15402 sq. ft., 1-story, most recent use—storage, off-site use only

Bldg. P-366, Fort Sill

Lawton Co: Comanche OK 73503

Landholding Agency: Army

Property Number: 21199610740

Status: Unutilized

Comments: 482 sq. ft., possible asbestos, most recent use—storage, off-site use only

**Suitable/Available Properties****Building****Oklahoma**

Building T-2952

Fort Sill

Lawton Co: Comanche OK 73503-5100

Landholding Agency: Army

Property Number: 21199710047

Status: Unutilized

Comments: 4,327 sq. ft., possible asbestos and leadpaint, most recent use—motor repair shop, off-site use only

Building P-5042

Fort Sill

Lawton Co: Comanche OK 73503-5100

Landholding Agency: Army

Property Number: 21199710066

Status: Unutilized

Comments: 119 sq. ft., possible asbestos and leadpaint, most recent use—heatplant, off-site use only

4 Buildings

Fort Sill

Lawton Co: Comanche OK 73503-5100

Landholding Agency: Army

Property Number: 21199710086

Status: Unutilized

Directions: T-6465, T-6466, T-6467, T-6468

Comments: various sq. ft., possible asbestos and leadpaint, most recent use—range support, off-site use only

**Suitable/Available Properties****Building****Oklahoma**

Bldg. T-810

Fort Sill

Lawton Co: Comanche OK 73503-5100

Landholding Agency: Army

Property Number: 21199730350

Status: Unutilized

Comments: 7205 sq. ft., possible asbestos/lead paint, most recent use—hay storage, off-site use only

Bldgs. T-837, T-839

Fort Sill

Lawton Co: Comanche OK 73503-5100

Landholding Agency: Army

Property Number: 21199730351

Status: Unutilized

Comments: approx. 100 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. P-934

Fort Sill

Lawton Co: Comanche OK 73503-5100

Landholding Agency: Army

Property Number: 21199730353

Status: Unutilized

Comments: 402 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

#### Suitable/Available Properties

##### Building

Oklahoma

Bldgs. T-1468, T-1469

Fort Sill

Lawton Co: Comanche OK 73503-5100

Landholding Agency: Army

Property Number: 21199730357

Status: Unutilized

Comments: 114 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T-1470

Fort Sill

Lawton Co: Comanche OK 73503-5100

Landholding Agency: Army

Property Number: 21199730358

Status: Unutilized

Comments: 3120 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T-1954, T-2022

Fort Sill

Lawton Co: Comanche OK 73503-5100

Landholding Agency: Army

Property Number: 21199730362

Status: Unutilized

Comments: approx. 100 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T-2184

Fort Sill

Lawton Co: Comanche OK 73503-5100

Landholding Agency: Army

Property Number: 21199730364

Status: Unutilized

Comments: 454 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

#### Suitable/Available Properties

##### Building

Oklahoma

Bldgs. T-2186, T-2188, T-2189

Fort Sill

Lawton Co: Comanche OK 73503-5100

Landholding Agency: Army

Property Number: 21199730366

Status: Unutilized

Comments: 1656-3583 sq. ft., possible asbestos/lead paint, most recent use—vehicle maint. shop, off-site use only

Bldg. T-2187

Fort Sill

Lawton Co: Comanche OK 73503-5100

Landholding Agency: Army

Property Number: 21199730367

Status: Unutilized

Comments: 1673 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T-2291 thru T-2296

Fort Sill

Lawton Co: Comanche OK 73503-5100

Landholding Agency: Army

Property Number: 21199730372

Status: Unutilized

Comments: 400 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only

#### Suitable/Available Properties

##### Building

Oklahoma

Bldgs. T-3001, T-3006

Fort Sill

Lawton Co: Comanche OK 73503-5100

Landholding Agency: Army

Property Number: 21199730383

Status: Unutilized

Comments: approx. 9300 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T-3314

Fort Sill

Lawton Co: Comanche OK 73503-5100

Landholding Agency: Army

Property Number: 21199730385

Status: Unutilized

Comments: 229 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. T-5041

Fort Sill

Lawton Co: Comanche OK 73503-5100

Landholding Agency: Army

Property Number: 21199730409

Status: Unutilized

Comments: 763 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T-5420

Fort Sill

Lawton Co: Comanche OK 73503-5100

Landholding Agency: Army

Property Number: 21199730414

Status: Unutilized

Comments: 189 sq. ft., possible asbestos/lead paint, most recent use—fuel storage, off-site use only

#### Suitable/Available Properties

##### Building

Oklahoma

Bldg. T-7775

Fort Sill

Lawton Co: Comanche OK 73503-5100

Landholding Agency: Army

Property Number: 21199730419

Status: Unutilized

Comments: 1452 sq. ft., possible asbestos/lead paint, most recent use—private club, off-site use only

4 Bldgs.

Fort Sill

P-617, P-1114, P-1386, P-1608

Lawton Co: Comanche OK 73503-5100

Landholding Agency: Army

Property Number: 21199910133

Status: Unutilized

Comments: 106 sq. ft., possible asbestos/lead paint, most recent use—utility plant, off-site use only

Bldg. P-746

Fort Sill

Lawton Co: Comanche OK 73503-5100

Landholding Agency: Army

Property Number: 21199910135

Status: Unutilized

Comments: 6299 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

#### Suitable/Available Properties

##### Building

Oklahoma

Bldgs. P-2581, P-2773

Fort Sill

Lawton Co: Comanche OK 73503-5100

Landholding Agency: Army

Property Number: 21199910140

Status: Unutilized

Comments: 4093 and 4129 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. P-2582

Fort Sill

Lawton Co: Comanche OK 73503-5100

Landholding Agency: Army

Property Number: 21199910141

Status: Unutilized

Comments: 3672 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldgs. P-2912, P-2921, P-2944

Fort Sill

Lawton Co: Comanche OK 73503-5100

Landholding Agency: Army

Property Number: 21199910144

Status: Unutilized

Comments: 1390 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. P-2914

Fort Sill

Lawton Co: Comanche OK 73503-5100

Landholding Agency: Army

Property Number: 21199910146

Status: Unutilized

Comments: 1236 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

#### Suitable/Available Properties

##### Building

Oklahoma

Bldg. P-5101

Fort Sill

Lawton Co: Comanche OK 73503-5100

Landholding Agency: Army

Property Number: 21199910153

Status: Unutilized

Comments: 82 sq. ft., possible asbestos/lead paint, most recent use—gas station, off-site use only

Bldg. S-6430

Fort Sill

Lawton Co: Comanche OK 73503-5100

Landholding Agency: Army

Property Number: 21199910156

Status: Unutilized

Comments: 2080 sq. ft., possible asbestos/lead paint, most recent use—range support, off-site use only

Bldg. T-6461

Fort Sill

Lawton Co: Comanche OK 73503-5100

Landholding Agency: Army

Property Number: 21199910157

Status: Unutilized  
Comments: 200 sq. ft., possible asbestos/lead paint, most recent use—range support, off-site use only

#### Suitable/Available Properties

##### Building

Oklahoma

Bldg. T-6462

Fort Sill

Lawton Co: Comanche OK 73503-5100

Landholding Agency: Army

Property Number: 21199910158

Status: Unutilized

Comments: 64 sq. ft., possible asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. P-7230

Fort Sill

Lawton Co: Comanche OK 73503-5100

Landholding Agency: Army

Property Number: 21199910159

Status: Unutilized

Comments: 160 sq. ft., possible asbestos/lead paint, most recent use—transmitter bldg., off-site use only

Bldg. S-4023

Fort Sill

Lawton Co: Comanche OK 73503-5100

Landholding Agency: Army

Property Number: 21200010128

Status: Unutilized

Comments: 1200 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. P-747

Fort Sill

Lawton Co: Comanche OK 73503-5100

Landholding Agency: Army

Property Number: 21200120120

Status: Unutilized

Comments: 9232 sq. ft., possible asbestos/lead paint, most recent use—lab, off-site use only

#### Suitable/Available Properties

##### Building

Oklahoma

Bldg. P-842

Fort Sill

Lawton Co: Comanche OK 73503-5100

Landholding Agency: Army

Property Number: 21200120123

Status: Unutilized

Comments: 192 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T-911

Fort Sill

Lawton Co: Comanche OK 73503-5100

Landholding Agency: Army

Property Number: 21200120124

Status: Unutilized

Comments: 3080 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. P-1672

Fort Sill

Lawton Co: Comanche OK 73503-5100

Landholding Agency: Army

Property Number: 21200120126

Status: Unutilized

Comments: 1056 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. S-2362

Fort Sill

Lawton Co: Comanche OK 73503-5100

Landholding Agency: Army

Property Number: 21200120127

Status: Unutilized

Comments: 64 sq. ft., possible asbestos/lead paint, most recent use—gatehouse, off-site use only

#### Suitable/Available Properties

##### Building

Oklahoma

Bldg. P-2589

Fort Sill

Lawton Co: Comanche OK 73503-5100

Landholding Agency: Army

Property Number: 21200120129

Status: Unutilized

Comments: 3672 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. 01276, 01278

Fort Sill

Lawton Co: Comanche OK 73501-5100

Landholding Agency: Army

Property Number: 21200520119

Status: Unutilized

Comments: 1533 sq. ft., most recent use—maintenance, off-site use only

Bldgs. 00937, 00957

Fort Sill

Lawton OK 73501

Landholding Agency: Army

Property Number: 21200710104

Status: Unutilized

Comments: 1558 sq. ft., most recent use—storage shed, off-site use only

Bldg. 01514

Fort Sill

Lawton OK 73501

Landholding Agency: Army

Property Number: 21200710105

Status: Unutilized

Comments: 1602 sq. ft., most recent use—storage, off-site use only

#### Suitable/Available Properties

##### Building

South Carolina

Bldg. 3605

Fort Jackson

Ft. Jackson Co: Richland SC 29207

Landholding Agency: Army

Property Number: 21199820188

Status: Unutilized

Comments: 711 sq. ft., needs repair, most recent use—storage

Bldg. 1765

Fort Jackson

Ft. Jackson Co: Richland SC 29207

Landholding Agency: Army

Property Number: 21200030109

Status: Unutilized

Comments: 1700 sq. ft., need repairs, presence of asbestos/lead paint, most recent use—training bldg., off-site use only

South Dakota

Bldg. 03001

Jonas H. Lien AFRC  
Sioux Falls SD 57104

Landholding Agency: Army

Property Number: 21200740187

Status: Unutilized

Comments: 33282 sq. ft., most recent use—training center

#### Suitable/Available Properties

##### Building

South Dakota

Bldg. 03003

Jonas H. Lien AFRC

Sioux Falls SD 57104

Landholding Agency: Army

Property Number: 21200740188

Status: Unutilized

Comments: 4675 sq. ft., most recent use—vehicle maint. shop

Texas

Bldg. 7137, Fort Bliss

El Paso Co: El Paso TX 79916

Landholding Agency: Army

Property Number: 21199640564

Status: Unutilized

Comments: 35,736 sq. ft., 3-story, most recent use—housing, off-site use only

Bldg. 92043

Fort Hood

Ft. Hood Co: Bell TX 76544

Landholding Agency: Army

Property Number: 21200020206

Status: Unutilized

Comments: 450 sq. ft., most recent use—storage, off-site use only

Bldg. 92044

Fort Hood

Ft. Hood Co: Bell TX 76544

Landholding Agency: Army

Property Number: 21200020207

Status: Unutilized

Comments: 1920 sq. ft., most recent use—admin., off-site use only

#### Suitable/Available Properties

##### Building

Texas

Bldg. 92045

Fort Hood

Ft. Hood Co: Bell TX 76544

Landholding Agency: Army

Property Number: 21200020208

Status: Unutilized

Comments: 2108 sq. ft., most recent use—maint., off-site use only

Bldg. 56305

Fort Hood

Ft. Hood Co: Bell TX 76544

Landholding Agency: Army

Property Number: 21200220143

Status: Unutilized

Comments: 2160 sq. ft., most recent use—admin., off-site use only

Bldgs. 56620, 56621

Fort Hood

Ft. Hood Co: Bell TX 76544

Landholding Agency: Army

Property Number: 21200220146

Status: Unutilized

Comments: 1120 sq. ft., most recent use—shower, off-site use only

Bldgs. 56626, 56627

Fort Hood  
 Ft. Hood Co: Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200220147  
 Status: Unutilized  
 Comments: 1120 sq. ft., most recent use—  
 shower, off-site use only

#### Suitable/Available Properties

##### Building

Texas  
 Bldg. 56628  
 Fort Hood  
 Ft. Hood Co: Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200220148  
 Status: Unutilized  
 Comments: 1133 sq. ft., most recent use—  
 shower, off-site use only

Bldgs. 56636, 56637  
 Fort Hood  
 Ft. Hood Co: Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200220150  
 Status: Unutilized  
 Comments: 1120 sq. ft., most recent use—  
 shower, off-site use only

Bldg. 56638  
 Fort Hood  
 Ft. Hood Co: Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200220151  
 Status: Unutilized  
 Comments: 1133 sq. ft., most recent use—  
 shower, off-site use only

Bldgs. 56703, 56708  
 Fort Hood  
 Ft. Hood Co: Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200220152  
 Status: Unutilized  
 Comments: 1306 sq. ft., most recent use—  
 shower, off-site use only

#### Suitable/Available Properties

##### Building

Texas  
 Bldg. 56758  
 Fort Hood  
 Ft. Hood Co: Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200220154  
 Status: Unutilized  
 Comments: 1133 sq. ft., most recent use—  
 shower, off-site use only

Bldgs. P6220, P6222  
 Fort Sam Houston  
 Camp Bullis  
 San Antonio Co: Bexar TX  
 Landholding Agency: Army  
 Property Number: 21200330197  
 Status: Unutilized  
 Comments: 384 sq. ft., most recent use—  
 carport/storage, off-site use only

Bldgs. P6224, P6226  
 Fort Sam Houston  
 Camp Bullis  
 San Antonio Co: Bexar TX  
 Landholding Agency: Army  
 Property Number: 21200330198  
 Status: Unutilized  
 Comments: 384 sq. ft., most recent use—  
 carport/storage, off-site use only

#### Suitable/Available Properties

##### Building

Texas  
 Bldg. 90036  
 Fort Hood  
 Ft. Hood Co: Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200640098  
 Status: Excess  
 Comments: 13,124 sq. ft., presence of  
 asbestos, most recent use—admin., off-site  
 use only

Bldg. 92039  
 Fort Hood  
 Ft. Hood Co: Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200640101  
 Status: Excess  
 Comments: 80 sq. ft., most recent use—  
 storage, off-site use only

Bldgs. 04281, 04283  
 Fort Hood  
 Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200720085  
 Status: Excess  
 Comments: 4000/8020 sq. ft., most recent  
 use—storage shed, off-site use only

Bldg. 04284  
 Fort Hood  
 Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200720086  
 Status: Excess  
 Comments: 800 sq. ft., presence of asbestos,  
 most recent use—storage shed, off-site use  
 only

#### Suitable/Available Properties

##### Building

Texas  
 Bldg. 04285  
 Fort Hood  
 Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200720087  
 Status: Excess  
 Comments: 8000 sq. ft., most recent use—  
 storage shed, off-site use only

Bldg. 04286  
 Fort Hood  
 Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200720088  
 Status: Excess  
 Comments: 36,000 sq. ft., presence of  
 asbestos, most recent use—storage shed,  
 off-site use only

Bldg. 04291  
 Fort Hood  
 Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200720089  
 Status: Excess  
 Comments: 6400 sq. ft., presence of asbestos,  
 most recent use—storage shed, off-site use  
 only

Bldg. 4410  
 Fort Hood  
 Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200720090  
 Status: Excess

Comments: 12,956 sq. ft., presence of  
 asbestos, most recent use—simulation  
 center, off-site use only

#### Suitable/Available Properties

##### Building

Texas  
 Bldgs. 10031, 10032, 10033  
 Fort Hood  
 Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200720091  
 Status: Excess  
 Comments: 2578/3383 sq. ft., presence of  
 asbestos, most recent use—admin., off-site  
 use only

Bldgs. 56524, 56532  
 Fort Hood  
 Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200720092  
 Status: Excess  
 Comments: 600 sq. ft., presence of asbestos,  
 most recent use—dining, off-site use only

Bldg. 56435  
 Fort Hood  
 Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200720093  
 Status: Excess  
 Comments: 3441 sq. ft., presence of asbestos,  
 most recent use—barracks, off-site use only

Bldg. 05708  
 Fort Hood  
 Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200720094  
 Status: Excess  
 Comments: 1344 sq. ft., most recent use—  
 community center, off-site use only

#### Suitable/Available Properties

##### Building

Texas  
 Bldg. 90001  
 Fort Hood  
 Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200720095  
 Status: Excess  
 Comments: 3574 sq. ft., presence of asbestos,  
 most recent use—transmitter bldg., off-site  
 use only

Bldg. 90060  
 Fort Hood  
 Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200720096  
 Status: Excess  
 Comments: 96 sq. ft., presence of asbestos,  
 most recent use—lab, off-site use only

Bldgs. 90063, 90064, 90065  
 Fort Hood  
 Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200720097  
 Status: Excess  
 Comments: 1519/1798/1800 sq. ft., presence  
 of asbestos, most recent use—lab, off-site  
 use only

Bldg. 90066  
 Fort Hood  
 Bell TX 76544

Landholding Agency: Army  
 Property Number: 21200720098  
 Status: Excess  
 Comments: 8107 sq. ft., presence of asbestos,  
 most recent use—equipment bldg., off-site  
 use only

**Suitable/Available Properties**

*Building*

Texas

Bldg. 93013

Fort Hood

Bell TX 76544

Landholding Agency: Army

Property Number: 21200720099

Status: Excess

Comments: 800 sq. ft., most recent use—club,  
 off-site use only

Bldg. 04249

Fort Hood

Bell TX 76544

Landholding Agency: Army

Property Number: 21200740080

Status: Excess

Comments: 2741 sq. ft., presence of asbestos,  
 most recent use—admin., off-site use only

Bldg. 06987

Fort Hood

Bell TX 76544

Landholding Agency: Army

Property Number: 21200740090

Status: Excess

Comments: 192 sq. ft., presence of asbestos,  
 most recent use—access control, off-site  
 use only

**Suitable/Available Properties**

*Building*

Texas

5 Bldgs.

Fort Hood

Bell TX 76544

Landholding Agency: Army

Property Number: 21200740195

Status: Excess

Directions: 56541, 56546, 56547, 56548,  
 56638

Comments: 1120/1133 sq. ft., presence of  
 asbestos, most recent use—lavatory, off-site  
 use only

Bldg. 1610

Fort Bliss

El Paso TX 79916

Landholding Agency: Army

Property Number: 21200810059

Status: Excess

Comments: 11056 sq. ft., concrete/stucco,  
 most recent use—gas station/store, off-site  
 use only

Bldg. 1680

Fort Bliss

El Paso TX 79916

Landholding Agency: Army

Property Number: 21200810060

Status: Excess

Comments: 3690 sq. ft., concrete/stucco, most  
 recent use—restaurant, off-site use only

**Suitable/Available Properties**

*Building*

Utah

Bldg. 00001

Borgstrom Hall USARC

Ogden UT 84401

Landholding Agency: Army

Property Number: 21200740196

Status: Excess

Comments: 16543 sq. ft., most recent use—  
 training center, off-site use only

Bldg. 00002

Borgstrom Hall USARC

Ogden UT 84401

Landholding Agency: Army

Property Number: 21200740197

Status: Excess

Comments: 3842 sq. ft., most recent use—  
 vehicle maint. shop, off-site use only

Bldg. 00005

Borgstrom Hall USARC

Ogden UT 84401

Landholding Agency: Army

Property Number: 21200740198

Status: Excess

Comments: 96 sq. ft., most recent use—  
 storage, off-site use only

**Suitable/Available Properties**

*Building*

Virginia

Bldg. 1559

Fort Eustis

Ft. Eustis VA 23604

Landholding Agency: Army

Property Number: 21200130156

Status: Unutilized

Comments: 2892 sq. ft., most recent use—  
 storage, off-site use only

Fort Story

Ft. Story VA 23459

Landholding Agency: Army

Property Number: 21200720065

Status: Unutilized

Comments: 525 sq. ft., most recent use—  
 power plant, off-site use only

Bldg. 00942

Fort Story

Ft. Story VA 23459

Landholding Agency: Army

Property Number: 21200720066

Status: Unutilized

Comments: 84 sq. ft., most recent use—  
 shower, off-site use only

Bldg. 01025

Fort Story

Ft. Story VA 23459

Landholding Agency: Army

Property Number: 21200720070

Status: Unutilized

Comments: 4800 sq. ft., most recent use—  
 admin., off-site use only

**Suitable/Available Properties**

*Building*

Virginia

Bldg. 01028

Fort Story

Ft. Story VA 23459

Landholding Agency: Army

Property Number: 21200720071

Status: Unutilized

Comments: 2398 sq. ft., most recent use—  
 admin., off-site use only

Bldg. 01633

Fort Eustis

Ft. Eustis VA 23604

Landholding Agency: Army

Property Number: 21200720076

Status: Unutilized

Comments: 240 sq. ft., most recent use—  
 storage, off-site use only

Bldg. 02786

Fort Eustis

Ft. Eustis VA 23604

Landholding Agency: Army

Property Number: 21200720084

Status: Unutilized

Comments: 1596 sq. ft., most recent use—  
 admin., off-site use only

**Suitable/Available Properties**

*Building*

Washington

Bldg. CO909, Fort Lewis

Ft. Lewis Co: Pierce WA 98433-9500

Landholding Agency: Army

Property Number: 21199630205

Status: Unutilized

Comments: 1984 sq. ft., possible asbestos/  
 lead paint, most recent use—admin., off-  
 site use only

Bldg. 1164, Fort Lewis

Ft. Lewis Co: Pierce WA 98433-9500

Landholding Agency: Army

Property Number: 21199630213

Status: Unutilized

Comments: 230 sq. ft., possible asbestos/lead  
 paint, most recent use—storehouse, off-site  
 use only

Bldg. 1307, Fort Lewis

Ft. Lewis Co: Pierce WA 98433-9500

Landholding Agency: Army

Property Number: 21199630216

Status: Unutilized

Comments: 1092 sq. ft., possible asbestos/  
 lead paint, most recent use—storage, off-  
 site use only

Bldg. 1309, Fort Lewis

Ft. Lewis Co: Pierce WA 98433-9500

Landholding Agency: Army

Property Number: 21199630217

Status: Unutilized

Comments: 1092 sq. ft., possible asbestos/  
 lead paint, most recent use—storage, off-  
 site use only

**Suitable/Available Properties**

*Building*

Washington

Bldg. 2167, Fort Lewis

Ft. Lewis Co: Pierce WA 98433-9500

Landholding Agency: Army

Property Number: 21199630218

Status: Unutilized

Comments: 288 sq. ft., possible asbestos/lead  
 paint, most recent use—warehouse, off-site  
 use only

Bldg. 4078, Fort Lewis

Ft. Lewis Co: Pierce WA 98433-9500

Landholding Agency: Army

Property Number: 21199630219

Status: Unutilized

Comments: 10200 sq. ft., needs rehab,  
 possible asbestos/lead paint, most recent  
 use—warehouse, off-site use only

Bldg. 9599, Fort Lewis

Ft. Lewis Co: Pierce WA 98433-9500

Landholding Agency: Army

Property Number: 21199630220

Status: Unutilized



Comments: 12366 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. A1404, Fort Lewis  
Ft. Lewis Co: Pierce WA 98433  
Landholding Agency: Army  
Property Number: 21199640570  
Status: Unutilized  
Comments: 557 sq. ft., needs rehab, most recent use—storage, off-site use only

#### Suitable/Available Properties

##### Building

Washington  
Bldg. EO347  
Fort Lewis  
Ft. Lewis Co: Pierce WA 98433  
Landholding Agency: Army  
Property Number: 21199710156  
Status: Unutilized  
Comments: 1800 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. B1008, Fort Lewis  
Ft. Lewis Co: Pierce WA 98433  
Landholding Agency: Army  
Property Number: 21199720216  
Status: Unutilized  
Comments: 7387 sq. ft., 2-story, needs rehab, possible asbestos/lead paint, most recent use—medical clinic, off-site use only

Bldgs. CO509, CO709, CO720  
Fort Lewis  
Ft. Lewis Co: Pierce WA 98433  
Landholding Agency: Army  
Property Number: 21199810372  
Status: Unutilized  
Comments: 1984 sq. ft., possible asbestos/lead paint, needs rehab, most recent use—storage, off-site use only

#### Suitable/Available Properties

##### Building

Washington  
Bldg. 5162  
Fort Lewis  
Ft. Lewis Co: Pierce WA 98433  
Landholding Agency: Army  
Property Number: 21199830419  
Status: Unutilized  
Comments: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. 5224  
Fort Lewis  
Ft. Lewis Co: Pierce WA 98433  
Landholding Agency: Army  
Property Number: 21199830433  
Status: Unutilized  
Comments: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—educ. fac., off-site use only

Bldg. U001B  
Fort Lewis  
Ft. Lewis Co: Pierce WA 98433  
Landholding Agency: Army  
Property Number: 21199920237  
Status: Excess  
Comments: 54 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

#### Suitable/Available Properties

##### Building

Washington  
Bldg. U001C  
Fort Lewis  
Ft. Lewis Co: Pierce WA 98433  
Landholding Agency: Army  
Property Number: 21199920238  
Status: Unutilized  
Comments: 960 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—supply, off-site use only

10 Bldgs.  
Fort Lewis  
Ft. Lewis Co: Pierce WA 98433  
Landholding Agency: Army  
Property Number: 21199920239  
Status: Excess  
Directions: U002B, U002C, U005C, U015I, U016E, U019C, U022A, U028B, 0091A, U093C  
Comments: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

6 Bldgs.  
Fort Lewis  
Ft. Lewis Co: Pierce WA 98433  
Landholding Agency: Army  
Property Number: 21199920240  
Status: Unutilized  
Directions: U003A, U004B, U006C, U015B, U016B, U019B  
Comments: 54 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

#### Suitable/Available Properties

##### Building

Washington  
Bldg. U004D  
Fort Lewis  
Ft. Lewis Co: Pierce WA 98433  
Landholding Agency: Army  
Property Number: 21199920241  
Status: Unutilized  
Comments: 960 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—supply, off-site use only

Bldg. U005A  
Fort Lewis  
Ft. Lewis Co: Pierce WA 98433  
Landholding Agency: Army  
Property Number: 21199920242  
Status: Unutilized  
Comments: 360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

7 Bldgs.  
Fort Lewis  
Ft. Lewis Co: Pierce WA 98433  
Landholding Agency: Army  
Property Number: 21199920245  
Status: Excess  
Directions: U014A, U022B, U023A, U043B, U059B, U060A, U101A  
Comments: needs repair, presence of asbestos/lead paint, most recent use—ofc/tower/support, off-site use only

#### Suitable/Available Properties

##### Building

Washington  
Bldg. U015J

Fort Lewis  
Ft. Lewis Co: Pierce WA 98433  
Landholding Agency: Army  
Property Number: 21199920246  
Status: Excess  
Comments: 144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U018B  
Fort Lewis  
Ft. Lewis Co: Pierce WA 98433  
Landholding Agency: Army  
Property Number: 21199920247  
Status: Unutilized  
Comments: 121 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldg. U018C  
Fort Lewis  
Ft. Lewis Co: Pierce WA 98433  
Landholding Agency: Army  
Property Number: 21199920248  
Status: Unutilized  
Comments: 48 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

#### Suitable/Available Properties

##### Building

Washington  
Bldg. U024D  
Fort Lewis  
Ft. Lewis Co: Pierce WA 98433  
Landholding Agency: Army  
Property Number: 21199920250  
Status: Unutilized  
Comments: 120 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—ammo bldg., off-site use only

Bldg. U027A  
Fort Lewis  
Ft. Lewis Co: Pierce WA  
Landholding Agency: Army  
Property Number: 21199920251  
Status: Excess  
Comments: 64 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tire house, off-site use only

Bldg. U031A  
Fort Lewis  
Ft. Lewis Co: Pierce WA 98433  
Landholding Agency: Army  
Property Number: 21199920253  
Status: Excess  
Comments: 3456 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—line shed, off-site use only

#### Suitable/Available Properties

##### Building

Washington  
Bldg. U031C  
Fort Lewis  
Ft. Lewis Co: Pierce WA 98433  
Landholding Agency: Army  
Property Number: 21199920254  
Status: Unutilized  
Comments: 32 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. U040D  
Fort Lewis  
Ft. Lewis Co: Pierce WA 98433  
Landholding Agency: Army  
Property Number: 21199920255  
Status: Excess

Comments: 800 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldgs. U052C, U052H

Fort Lewis

Ft. Lewis Co: Pierce WA 98433

Landholding Agency: Army

Property Number: 21199920256

Status: Excess

Comments: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

**Suitable/Available Properties**

*Building*

Washington

Bldgs. U035A, U035B

Fort Lewis

Ft. Lewis Co: Pierce WA 98433

Landholding Agency: Army

Property Number: 21199920257

Status: Excess

Comments: 192 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Bldg. U035C

Fort Lewis

Ft. Lewis Co: Pierce WA 98433

Landholding Agency: Army

Property Number: 21199920258

Status: Excess

Comments: 242 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldg. U039A

Fort Lewis

Ft. Lewis Co: Pierce WA 98433

Landholding Agency: Army

Property Number: 21199920259

Status: Excess

Comments: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

**Suitable/Available Properties**

*Building*

Washington

Bldg. U039B

Fort Lewis

Ft. Lewis Co: Pierce WA 98433

Landholding Agency: Army

Property Number: 21199920260

Status: Excess

Comments: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—grandstand/bleachers, off-site use only

Bldg. U039C

Fort Lewis

Ft. Lewis Co: Pierce WA 98433

Landholding Agency: Army

Property Number: 21199920261

Status: Excess

Comments: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

Bldg. U043A

Fort Lewis

Ft. Lewis Co: Pierce WA 98433

Landholding Agency: Army

Property Number: 21199920262

Status: Excess

Comments: 132 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

**Suitable/Available Properties**

*Building*

Washington

Bldg. U052A

Fort Lewis

Ft. Lewis Co: Pierce WA 98433

Landholding Agency: Army

Property Number: 21199920263

Status: Excess

Comments: 69 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U052E

Fort Lewis

Ft. Lewis Co: Pierce WA 98433

Landholding Agency: Army

Property Number: 21199920264

Status: Excess

Comments: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. U052G

Fort Lewis

Ft. Lewis Co: Pierce WA 98433

Landholding Agency: Army

Property Number: 21199920265

Status: Excess

Comments: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

**Suitable/Available Properties**

*Building*

Washington

3 Bldgs.

Fort Lewis

Ft. Lewis Co: Pierce WA 98433

Landholding Agency: Army

Property Number: 21199920266

Status: Excess

Directions: U058A, U103A, U018A

Comments: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U059A

Fort Lewis

Ft. Lewis Co: Pierce WA 98433

Landholding Agency: Army

Property Number: 21199920267

Status: Excess

Comments: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U093B

Fort Lewis

Ft. Lewis Co: Pierce WA 98433

Landholding Agency: Army

Property Number: 21199920268

Status: Excess

Comments: 680 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

**Suitable/Available Properties**

*Building*

Washington

4 Bldgs.

Fort Lewis

Ft. Lewis Co: Pierce WA 98433

Landholding Agency: Army  
Property Number: 21199920269

Status: Excess

Directions: U101B, U101C, U507B, U557A

Comments: 400 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. U110B

Fort Lewis

Ft. Lewis Co: Pierce WA 98433

Landholding Agency: Army

Property Number: 21199920272

Status: Excess

Comments: 138 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

6 Bldgs.

Fort Lewis

Ft. Lewis Co: Pierce WA 98433

Landholding Agency: Army

Property Number: 21199920273

Status: Excess

Directions: U111A, U015A, U024E, U052F, U109A, U110A

Comments: 1000 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support/shelter/mess, off-site use only

**Suitable/Available Properties**

*Building*

Washington

Bldg. U112A

Fort Lewis

Ft. Lewis Co: Pierce WA 98433

Landholding Agency: Army

Property Number: 21199920274

Status: Excess

Comments: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Bldg. U115A

Fort Lewis

Ft. Lewis Co: Pierce WA 98433

Landholding Agency: Army

Property Number: 21199920275

Status: Excess

Comments: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U507A

Fort Lewis

Ft. Lewis Co: Pierce WA 98433

Landholding Agency: Army

Property Number: 21199920276

Status: Excess

Comments: 400 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

**Suitable/Available Properties**

*Building*

Washington

Bldg. C0120

Fort Lewis

Ft. Lewis Co: Pierce WA 98433

Landholding Agency: Army

Property Number: 21199920281

Status: Excess

Comments: 384 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—scale house, off-site use only

Bldg. 01205

Fort Lewis

Ft. Lewis Co: Pierce WA 98433

Landholding Agency: Army  
Property Number: 21199920290  
Status: Excess

Comments: 87 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storehouse, off-site use only

Bldg. 01259

Fort Lewis

Ft. Lewis Co: Pierce WA 98433

Landholding Agency: Army

Property Number: 21199920291

Status: Excess

Comments: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

**Suitable/Available Properties**

*Building*

Washington

Bldg. 01266

Fort Lewis

Ft. Lewis Co: Pierce WA 98433

Landholding Agency: Army

Property Number: 21199920292

Status: Excess

Comments: 45 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Bldg. 1445

Fort Lewis

Ft. Lewis Co: Pierce WA 98433

Landholding Agency: Army

Property Number: 21199920294

Status: Excess

Comments: 144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—generator bldg., off-site use only

Bldgs. 03091, 03099

Fort Lewis

Ft. Lewis Co: Pierce WA 98433

Landholding Agency: Army

Property Number: 21199920296

Status: Excess

Comments: Various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only

**Suitable/Available Properties**

*Building*

Washington

Bldg. 4040

Fort Lewis

Ft. Lewis Co: Pierce WA 98433

Landholding Agency: Army

Property Number: 21199920298

Status: Excess

Comments: 8326 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shed, off-site use only

Bldgs. 4072, 5104

Fort Lewis

Ft. Lewis Co: Pierce WA 98433

Landholding Agency: Army

Property Number: 21199920299

Status: Excess

Comments: 24/36 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. 4295

Fort Lewis

Ft. Lewis Co: Pierce WA 98433

Landholding Agency: Army

Property Number: 21199920300

Status: Excess

Comments: 48 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

**Suitable/Available Properties**

*Building*

Washington

Bldg. 6191

Fort Lewis

Ft. Lewis Co: Pierce WA 98433

Landholding Agency: Army

Property Number: 21199920303

Status: Excess

Comments: 3663 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—exchange branch, off-site use only

Bldgs. 08076, 08080

Fort Lewis

Ft. Lewis Co: Pierce WA 98433

Landholding Agency: Army

Property Number: 21199920304

Status: Excess

Comments: 3660/412 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. 08093

Fort Lewis

Ft. Lewis Co: Pierce WA 98433

Landholding Agency: Army

Property Number: 21199920305

Status: Excess

Comments: 289 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—boat storage, off-site use only

**Suitable/Available Properties**

*Building*

Washington

Bldg. 8279

Fort Lewis

Ft. Lewis Co: Pierce WA 98433

Landholding Agency: Army

Property Number: 21199920306

Status: Excess

Comments: 210 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—fuel disp. fac., off-site use only

Bldgs. 8280, 8291

Fort Lewis

Ft. Lewis Co: Pierce WA 98433

Landholding Agency: Army

Property Number: 21199920307

Status: Excess

Comments: 800/464 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 8956

Fort Lewis

Ft. Lewis Co: Pierce WA 98433

Landholding Agency: Army

Property Number: 21199920308

Status: Excess

Comments: 100 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

**Suitable/Available Properties**

*Building*

Washington

Bldg. 9530

Fort Lewis

Ft. Lewis Co: Pierce WA 98433

Landholding Agency: Army  
Property Number: 21199920309  
Status: Excess

Comments: 64 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only

Bldg. 9574

Fort Lewis

Ft. Lewis Co: Pierce WA 98433

Landholding Agency: Army

Property Number: 21199920310

Status: Excess

Comments: 6005 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—veh. shop., off-site use only

Bldg. 9596

Fort Lewis

Ft. Lewis Co: Pierce WA 98433

Landholding Agency: Army

Property Number: 21199920311

Status: Excess

Comments: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—gas station, off-site use only

**Suitable/Available Properties**

*Building*

Wisconsin

Bldg. 05018

Fort McCoy

Monroe WI 54656

Landholding Agency: Army

Property Number: 21200740199

Status: Unutilized

Comments: 192 sq. ft., most recent use—wellhouse, off-site use only

Bldgs. 07012, 07022, 07033

Fort McCoy

Monroe WI 54656

Landholding Agency: Army

Property Number: 21200740200

Status: Unutilized

Comments: 384 sq. ft., most recent use—garage, off-site use only

*Land*

Maryland

2 acres

Fort Meade

Odenton Rd/Rt 175

Ft. Meade MD 20755

Landholding Agency: Army

Property Number: 21200640095

Status: Unutilized

Comments: Light industrial

**Suitable/Available Properties**

*Land*

Maryland

16 acres

Fort Meade

Rt 198/Airport Road

Ft. Meade MD 20755

Landholding Agency: Army

Property Number: 21200640096

Status: Unutilized

Comments: Light industrial

Ohio

Land

Defense Supply Center

Columbus Co: Franklin OH 43216-5000

Landholding Agency: Army

Property Number: 21200340094

Status: Excess  
Comments: 11 acres, railroad access

**South Carolina**

One Acre  
Fort Jackson  
Columbia Co: Richland SC 29207  
Landholding Agency: Army  
Property Number: 21200110089  
Status: Underutilized  
Comments: Approx. 1 acre

**Suitable/Available Properties**

**Land**

Texas  
1 acre  
Fort Sam Houston  
San Antonio Co: Bexar TX 78234  
Landholding Agency: Army  
Property Number: 21200440075  
Status: Excess  
Comments: 1 acre, grassy area

**Suitable/Unavailable Properties**

**Building**

Alabama  
Bldg. 01433  
Fort Rucker  
Ft. Rucker Co: Dale AL 36362  
Landholding Agency: Army  
Property Number: 21200220098  
Status: Excess  
Comments: 800 sq. ft., most recent use—  
office, off-site use only

Bldg. 30105

Fort Rucker

Ft. Rucker Co: Dale AL 36362

Landholding Agency: Army

Property Number: 21200510052

Status: Excess

Comments: 4100 sq. ft., most recent use—  
admin., off-site use only

**Suitable/Unavailable Properties**

**Building**

Alabama  
Bldg. 40115  
Fort Rucker  
Ft. Rucker Co: Dale AL 36362  
Landholding Agency: Army  
Property Number: 21200510053  
Status: Excess  
Comments: 34,520 sq. ft., most recent use—  
storage, off-site use only

Bldg. 25303

Fort Rucker

Dale AL 36362

Landholding Agency: Army

Property Number: 21200520074

Status: Excess

Comments: 800 sq. ft., most recent use—  
airfield operations, off-site use only

Bldg. 25304

Fort Rucker

Dale AL 36362

Landholding Agency: Army

Property Number: 21200520075

Status: Excess

Comments: 1200 sq. ft., poor condition, most  
recent use—fire station, off-site use only

**Suitable/Unavailable Properties**

**Building**

Arizona  
Bldg. 22529  
Fort Huachuca  
Cochise AZ 85613-7010  
Landholding Agency: Army  
Property Number: 21200520077  
Status: Excess  
Comments: 2543 sq. ft., most recent use—  
storage, off-site use only

Bldg. 22541

Fort Huachuca

Cochise AZ 85613-7010

Landholding Agency: Army

Property Number: 21200520078

Status: Excess

Comments: 1300 sq. ft., most recent use—  
storage, off-site use only

Bldg. 30020

Fort Huachuca

Cochise AZ 85613-7010

Landholding Agency: Army

Property Number: 21200520079

Status: Excess

Comments: 1305 sq. ft., most recent use—  
storage, off-site use only

Bldg. 30021

Fort Huachuca

Cochise AZ 85613-7010

Landholding Agency: Army

Property Number: 21200520080

Status: Excess

Comments: 144 sq. ft., most recent use—  
storage, off-site use only

**Suitable/Unavailable Properties**

**Building**

Arizona  
Bldg. 22040  
Fort Huachuca  
Cochise AZ 85613  
Landholding Agency: Army  
Property Number: 21200540076  
Status: Excess  
Comments: 1131 sq. ft., presence of asbestos/  
lead paint, most recent use—storage, off-  
site use only

Bldg. 22540

Fort Huachuca

Cochise AZ 85613-7010

Landholding Agency: Army

Property Number: 21200620067

Status: Excess

Comments: 958 sq. ft., most recent use—  
storage, off-site use only

**Colorado**

Bldg. S6264

Fort Carson

Ft. Carson Co: El Paso CO 80913

Landholding Agency: Army

Property Number: 21200340084

Status: Unutilized

Comments: 19,499 sq. ft., most recent use—  
office, off-site use only

**Suitable/Unavailable Properties**

**Building**

Colorado

Bldg. S6285

Fort Carson

Ft. Carson Co: El Paso CO 80913

Landholding Agency: Army

Property Number: 21200420176

Status: Unutilized

Comments: 19,478 sq. ft., most recent use—  
admin., off-site use only

Bldg. S6287

Fort Carson

Ft. Carson Co: El Paso CO 80913

Landholding Agency: Army

Property Number: 21200420177

Status: Unutilized

Comments: 10,076 sq. ft., presence of  
asbestos, most recent use—admin., off-site  
use only

Bldg. 06225

Fort Carson

El Paso CO 80913-4001

Landholding Agency: Army

Property Number: 21200520084

Status: Unutilized

Comments: 24,263 sq. ft., most recent use—  
admin., off-site use only

**Suitable/Unavailable Properties**

**Building**

Georgia

Bldgs. 00960, 00961, 00963

Fort Benning

Ft. Benning Co: Chattahoochee GA

Landholding Agency: Army

Property Number: 21200330107

Status: Unutilized

Comments: 11,110 sq. ft., most recent use—  
housing, off-site use only

Bldg. T201

Hunter Army Airfield

Garrison Co: Chatham GA 31409

Landholding Agency: Army

Property Number: 21200420002

Status: Excess

Comments: 1828 sq. ft., most recent use—  
credit union, off-site use only

Bldg. T234

Hunter Army Airfield

Garrison Co: Chatham GA 31409

Landholding Agency: Army

Property Number: 21200420008

Status: Excess

Comments: 2624 sq. ft., most recent use—  
admin., off-site use only

Bldg. T702

Hunter Army Airfield

Garrison Co: Chatham GA 31409

Landholding Agency: Army

Property Number: 21200420010

Status: Excess

Comments: 9190 sq. ft., most recent use—  
storage, off-site use only

**Suitable/Unavailable Properties**

**Building**

Georgia

Bldg. T703

Hunter Army Airfield

Garrison Co: Chatham GA 31409

Landholding Agency: Army

Property Number: 21200420011

Status: Excess

Comments: 9190 sq. ft., most recent use—  
storage, off-site use only

Bldg. T704

Hunter Army Airfield

Garrison Co: Chatham GA 31409  
Landholding Agency: Army  
Property Number: 21200420012  
Status: Excess  
Comments: 9190 sq. ft., most recent use—  
storage, off-site use only

Bldg. P813  
Hunter Army Airfield  
Garrison Co: Chatham GA 31409  
Landholding Agency: Army  
Property Number: 21200420013  
Status: Excess  
Comments: 43,055 sq. ft., most recent use—  
maint. hanger/Co Hq., off-site use only

Bldgs. S843, S844, S845  
Hunter Army Airfield  
Garrison Co: Chatham GA 31409  
Landholding Agency: Army  
Property Number: 21200420014  
Status: Excess  
Comments: 9383 sq. ft., most recent use—  
maint hanger, off-site use only

#### Suitable/Unavailable Properties

##### Building

Georgia  
Bldg. P925  
Hunter Army Airfield  
Garrison Co: Chatham GA 31409  
Landholding Agency: Army  
Property Number: 21200420015  
Status: Excess  
Comments: 27,681 sq. ft., most recent use—  
fitness center, off-site use only

Bldg. P1277  
Hunter Army Airfield  
Garrison Co: Chatham GA 31409  
Landholding Agency: Army  
Property Number: 21200420024  
Status: Excess  
Comments: 13,981 sq. ft., most recent use—  
barracks/dining, off-site use only

Bldg. T1412  
Hunter Army Airfield  
Garrison Co: Chatham GA 31409  
Landholding Agency: Army  
Property Number: 21200420025  
Status: Excess  
Comments: 9186 sq. ft., most recent use—  
warehouse, off-site use only

Bldg. 8658  
Hunter Army Airfield  
Garrison Co: Chatham GA 31409  
Landholding Agency: Army  
Property Number: 21200420029  
Status: Excess  
Comments: 8470 sq. ft., most recent use—  
storage, off-site use only

#### Suitable/Unavailable Properties

##### Building

Georgia  
Bldg. 8659  
Hunter Army Airfield  
Garrison Co: Chatham GA 31409  
Landholding Agency: Army  
Property Number: 21200420030  
Status: Excess  
Comments: 8470 sq. ft., most recent use—  
storage, off-site use only

Bldgs. 8675, 8676  
Hunter Army Airfield  
Garrison Co: Chatham GA 31409

Landholding Agency: Army  
Property Number: 21200420031  
Status: Excess  
Comments: 4000 sq. ft., most recent use—  
ship/recv facility, off-site use only

Bldg. 5962-5966  
Fort Benning  
Ft. Benning Co: Chattahoochee GA 31905  
Landholding Agency: Army  
Property Number: 21200420035  
Status: Excess

Comments: 2421 sq. ft., most recent use—  
igloo storage, off-site use only  
Bldgs. 5967-5971

Fort Benning  
Ft. Benning Co: Chattahoochee GA 31905  
Landholding Agency: Army  
Property Number: 21200420036  
Status: Excess  
Comments: 1813 sq. ft., most recent use—  
igloo storage, off-site use only

#### Suitable/Unavailable Properties

##### Building

Georgia  
Bldgs. 5974-5977  
Fort Benning  
Ft. Benning Co: Chattahoochee GA 31905  
Landholding Agency: Army  
Property Number: 21200420037  
Status: Excess  
Comments: 400 sq. ft., most recent use—igloo  
storage, off-site use only

Bldg. 5978  
Fort Benning  
Ft. Benning Co: Chattahoochee GA 31905  
Landholding Agency: Army  
Property Number: 21200420038  
Status: Excess  
Comments: 1344 sq. ft., most recent use—  
igloo storage, off-site use only

Bldg. 5981  
Fort Benning  
Ft. Benning Co: Chattahoochee GA 31905  
Landholding Agency: Army  
Property Number: 21200420039  
Status: Excess  
Comments: 2028 sq. ft., most recent use—  
ammo storage, off-site use only

Bldgs. 5984-5988  
Fort Benning  
Ft. Benning Co: Chattahoochee GA 31905  
Landholding Agency: Army  
Property Number: 21200420040  
Status: Excess  
Comments: 1816 sq. ft., most recent use—  
igloo storage, off-site use only

#### Suitable/Unavailable Properties

##### Building

Georgia  
Bldg. 5993  
Fort Benning  
Ft. Benning Co: Chattahoochee GA 31905  
Landholding Agency: Army  
Property Number: 21200420041  
Status: Excess  
Comments: 960 sq. ft., most recent use—  
storage, off-site use only

Bldg. 5994  
Fort Benning  
Ft. Benning Co: Chattahoochee GA 31905  
Landholding Agency: Army

Property Number: 21200420042  
Status: Excess  
Comments: 2016 sq. ft., most recent use—  
ammo storage, off-site use only

Bldg. 5995  
Fort Benning  
Ft. Benning Co: Chattahoochee GA 31905  
Landholding Agency: Army  
Property Number: 21200420043  
Status: Excess  
Comments: 114 sq. ft., most recent use—  
storage, off-site use only

Bldg. 9000  
Fort Benning  
Ft. Benning Co: Chattahoochee GA 31905  
Landholding Agency: Army  
Property Number: 21200420045  
Status: Excess  
Comments: 9313 sq. ft., most recent use—  
headquarters bldg., off-site use only

#### Suitable/Unavailable Properties

##### Building

Georgia  
Bldgs. 9002, 9005  
Fort Benning  
Ft. Benning Co: Chattahoochee GA 31905  
Landholding Agency: Army  
Property Number: 21200420046  
Status: Excess  
Comments: 3555 sq. ft., most recent use—  
classroom, off-site use only

Bldg. 9025  
Fort Benning  
Ft. Benning Co: Chattahoochee GA 31905  
Landholding Agency: Army  
Property Number: 21200420047  
Status: Excess  
Comments: 3707 sq. ft., most recent use—  
headquarters bldg., off-site use only

Bldg. 9026  
Fort Benning  
Ft. Benning Co: Chattahoochee GA 31905  
Landholding Agency: Army  
Property Number: 21200420048  
Status: Excess  
Comments: 3867 sq. ft., most recent use—  
headquarters bldg., off-site use only

Bldg. T01  
Fort Stewart  
Ft. Stewart Co: Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200420181  
Status: Excess  
Comments: 11,682 sq. ft., most recent use—  
admin., off-site use only

#### Suitable/Unavailable Properties

##### Building

Georgia  
Bldg. T04  
Fort Stewart  
Ft. Stewart Co: Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200420182  
Status: Excess  
Comments: 8292 sq. ft., most recent use—  
admin., off-site use only

Bldg. T05  
Fort Stewart  
Ft. Stewart Co: Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200420183



Status: Excess  
Comments: 7992 sq. ft., most recent use—  
admin., off-site use only

Bldg. T06  
Fort Stewart  
Ft. Stewart Co: Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200420184

Status: Excess  
Comments: 3305 sq. ft., most recent use—  
communication center, off-site use only

Bldg. T55  
Fort Stewart  
Ft. Stewart Co: Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200420187

Status: Excess  
Comments: 6490 sq. ft., most recent use—  
admin., off-site use only

#### Suitable/Unavailable Properties

##### Building

Georgia  
Bldg. T85  
Fort Stewart  
Ft. Stewart Co: Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200420188

Status: Excess  
Comments: 3283 sq. ft., most recent use—  
post chapel, off-site use only

Bldg. T131  
Fort Stewart  
Ft. Stewart Co: Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200420189

Status: Excess  
Comments: 4720 sq. ft., most recent use—  
admin., off-site use only

Bldg. T132  
Fort Stewart  
Ft. Stewart Co: Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200420190

Status: Excess  
Comments: 4720 sq. ft., most recent use—  
admin., off-site use only

Bldg. T157  
Fort Stewart  
Ft. Stewart Co: Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200420191

Status: Excess  
Comments: 1440 sq. ft., most recent use—  
education center, off-site use only

#### Suitable/Unavailable Properties

##### Building

Georgia  
Bldg. 01002  
Fort Stewart  
Ft. Stewart Co: Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200420197

Status: Excess  
Comments: 9267 sq. ft., most recent use—  
maintenance shop, off-site use only

Bldg. 01003  
Fort Stewart  
Ft. Stewart Co: Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200420198

Status: Excess

Comments: 9267 sq. ft., most recent use—  
admin, off-site use only

Bldg. 19101  
Fort Stewart  
Ft. Stewart Co: Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200420215

Status: Excess  
Comments: 6773 sq. ft., most recent use—  
simulator bldg., off-site use only

Bldg. 19102  
Fort Stewart  
Ft. Stewart Co: Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200420216

Status: Excess  
Comments: 3250 sq. ft., most recent use—  
simulator bldg., off-site use only

#### Suitable/Unavailable Properties

##### Building

Georgia  
Bldg. T19111  
Fort Stewart  
Ft. Stewart Co: Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200420217

Status: Excess  
Comments: 1440 sq. ft., most recent use—  
admin., off-site use only

Bldg. 19112  
Fort Stewart  
Ft. Stewart Co: Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200420218

Status: Excess  
Comments: 1344 sq. ft., most recent use—  
storage, off-site use only

Bldg. 19113  
Fort Stewart  
Ft. Stewart Co: Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200420219

Status: Excess  
Comments: 1440 sq. ft., most recent use—  
admin., off-site use only

Bldg. T19201  
Fort Stewart  
Ft. Stewart Co: Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200420220

Status: Excess  
Comments: 960 sq. ft., most recent use—  
physical fitness center, off-site use only

#### Suitable/Unavailable Properties

##### Building

Georgia  
Bldg. 19202  
Fort Stewart  
Ft. Stewart Co: Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200420221

Status: Excess  
Comments: 1210 sq. ft., most recent use—  
community center, off-site use only

Bldgs. 19204 thru 19207  
Fort Stewart  
Ft. Stewart Co: Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200420222

Status: Excess  
Comments: 960 sq. ft., most recent use—  
admin., off-site use only

Bldgs. 19208 thru 19211  
Fort Stewart  
Ft. Stewart Co: Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200420223

Status: Excess  
Comments: 1540 sq. ft., most recent use—  
general installation bldg., off-site use only

Bldg. 19212  
Fort Stewart  
Ft. Stewart Co: Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200420224

Status: Excess  
Comments: 1248 sq. ft., off-site use only

#### Suitable/Unavailable Properties

##### Building

Georgia  
Bldg. 19213  
Fort Stewart  
Ft. Stewart Co: Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200420225

Status: Excess  
Comments: 1540 sq. ft., most recent use—  
general installation bldg., off-site use only

Bldg. 19214  
Fort Stewart  
Ft. Stewart Co: Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200420226

Status: Excess  
Comments: 1796 sq. ft., most recent use—  
transient UPH, off-site use only

Bldg. 19215  
Fort Stewart  
Ft. Stewart Co: Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200420227

Status: Excess  
Comments: 1948 sq. ft., most recent use—  
transient UPH, off-site use only

Bldg. 19216  
Fort Stewart  
Ft. Stewart Co: Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200420228

Status: Excess  
Comments: 1540 sq. ft., most recent use—  
transient UPH, off-site use only

#### Suitable/Unavailable Properties

##### Building

Georgia  
Bldg. 19217  
Fort Stewart  
Ft. Stewart Co: Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200420229

Status: Excess  
Comments: 120 sq. ft., most recent use—nav  
aids bldg., off-site use only

Bldg. 19218  
Fort Stewart  
Ft. Stewart Co: Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200420230

Status: Excess  
Comments: 2925 sq. ft., most recent use—  
general installation bldg., off-site use only

Bldgs. 19219, 19220  
Fort Stewart

Ft. Stewart Co: Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200420231  
Status: Excess  
Comments: 1200 sq. ft., most recent use—  
general installation bldg., off-site use only

Bldg. 19223  
Fort Stewart  
Ft. Stewart Co: Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200420232  
Status: Excess  
Comments: 6433 sq. ft., most recent use—  
transient UPH, off-site use only

#### Suitable/Unavailable Properties

##### Building

Georgia  
Bldg. 19225  
Fort Stewart  
Ft. Stewart Co: Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200420233  
Status: Excess  
Comments: 4936 sq. ft., most recent use—  
dining facility, off-site use only

Bldg. 19226  
Fort Stewart  
Ft. Stewart Co: Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200420234  
Status: Excess  
Comments: 136 sq. ft., most recent use—  
general purpose installation bldg., off-site  
use only

Bldg. T19228  
Fort Stewart  
Ft. Stewart Co: Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200420235  
Status: Excess  
Comments: 400 sq. ft., most recent use—  
admin., off-site use only

Bldg. 19229  
Fort Stewart  
Ft. Stewart Co: Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200420236  
Status: Excess  
Comments: 640 sq. ft., most recent use—  
vehicle shed, off-site use only

#### Suitable/Unavailable Properties

##### Building

Georgia  
Bldg. 19232  
Fort Stewart  
Ft. Stewart Co: Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200420237  
Status: Excess  
Comments: 96 sq. ft., most recent use—  
general purpose installation, off-site use  
only

Bldg. 19233  
Fort Stewart  
Ft. Stewart Co: Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200420238  
Status: Excess  
Comments: 48 sq. ft., most recent use—fire  
support, off-site use only  
Bldg. 19236

Fort Stewart  
Ft. Stewart Co: Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200420239  
Status: Excess  
Comments: 1617 sq. ft., most recent use—  
transient UPH, off-site use only

Bldg. 19238  
Fort Stewart  
Ft. Stewart Co: Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200420240  
Status: Excess  
Comments: 738 sq. ft., off-site use only

#### Suitable/Unavailable Properties

##### Building

Georgia  
Bldg. 01674  
Fort Benning  
Ft. Benning Co: Chattahoochee GA 31905  
Landholding Agency: Army  
Property Number: 21200510056  
Status: Unutilized  
Comments: 5311 sq. ft., needs rehab, most  
recent use—gen. inst., off-site use only

Bldg. 01675  
Fort Benning  
Ft. Benning Co: Chattahoochee GA 31905  
Landholding Agency: Army  
Property Number: 21200510057  
Status: Unutilized  
Comments: 5475 sq. ft., needs rehab, most  
recent use—gen. inst., off-site use only

Bldg. 01676  
Fort Benning  
Ft. Benning Co: Chattahoochee GA 31905  
Landholding Agency: Army  
Property Number: 21200510058  
Status: Unutilized  
Comments: 7209 sq. ft., needs rehab, most  
recent use—gen. inst., off-site use only

Bldg. 01677  
Fort Benning  
Ft. Benning GA 31905  
Landholding Agency: Army  
Property Number: 21200510059  
Status: Unutilized  
Comments: 5311 sq. ft., needs rehab, most  
recent use—gen. inst., off-site use only

#### Suitable/Unavailable Properties

##### Building

Georgia  
Bldg. 01678  
Fort Benning  
Ft. Benning Co: Chattahoochee GA 31905  
Landholding Agency: Army  
Property Number: 21200510060  
Status: Unutilized  
Comments: 6488 sq. ft., needs rehab, most  
recent use—gen. inst., off-site use only

Bldg. 00051  
Fort Stewart  
Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200520087  
Status: Excess  
Comments: 3196 sq. ft., most recent use—  
court room, off-site use only

Bldg. 00052  
Fort Stewart  
Liberty GA 31314

Landholding Agency: Army  
Property Number: 21200520088  
Status: Excess  
Comments: 1250 sq. ft., most recent use—  
admin., off-site use only

Bldg. 00053  
Fort Stewart  
Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200520089  
Status: Excess  
Comments: 2844 sq. ft., most recent use—  
admin., off-site use only

#### Suitable/Unavailable Properties

##### Building

Georgia  
Bldg. 00054  
Fort Stewart  
Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200520090  
Status: Excess  
Comments: 4425 sq. ft., most recent use—  
admin., off-site use only

Bldg. 02023  
Fort Benning  
Chattahoochee GA 31905  
Landholding Agency: Army  
Property Number: 21200520093  
Status: Unutilized  
Comments: 6138 sq. ft., poor condition, most  
recent use—Fh Sr NCO, off-site use only

Bldg. 2750  
Fort Benning  
Chattahoochee GA 31905  
Landholding Agency: Army  
Property Number: 21200520094  
Status: Unutilized  
Comments: 3707 sq. ft., poor condition, most  
recent use—health clinic, off-site use only

Bldg. 2819  
Fort Benning  
Chattahoochee GA 31905  
Landholding Agency: Army  
Property Number: 21200520095  
Status: Unutilized  
Comments: 40,442 sq. ft., poor condition, off-  
site use only

#### Suitable/Unavailable Properties

##### Building

Georgia  
Bldg. 2843  
Fort Benning  
Chattahoochee GA 31905  
Landholding Agency: Army  
Property Number: 21200520096  
Status: Unutilized  
Comments: 9000 sq. ft., poor condition, most  
recent use—auto center, off-site use only

Bldg. 9013  
Fort Benning  
Chattahoochee GA 31905  
Landholding Agency: Army  
Property Number: 21200520099  
Status: Unutilized  
Comments: 40303 sq. ft., poor condition,  
most recent use—enlisted housing, off-site  
use only

Bldg. 9050  
Fort Benning  
Chattahoochee GA 31905

Landholding Agency: Army  
Property Number: 21200520104  
Status: Unutilized  
Comments: 9313 sq. ft., poor condition, most recent use—BDE HQ Bldg., off-site use only

Bldg. 09075  
Fort Benning  
Chattahoochee GA 31905  
Landholding Agency: Army  
Property Number: 21200520106  
Status: Unutilized  
Comments: 1500 sq. ft., poor condition, most recent use—BN HQ Bldg., off-site use only

#### Suitable/Unavailable Properties

##### Building

Georgia

Bldgs. 10039, 10041  
Fort Benning  
Muscogee GA 31905  
Landholding Agency: Army  
Property Number: 21200520110  
Status: Unutilized  
Comments: 2375 sq. ft., poor condition, most recent use FH JR NCO/ENL, off-site use only

Bldg. 11326  
Fort Benning  
Muscogee GA 31905  
Landholding Agency: Army  
Property Number: 21200520112  
Status: Unutilized  
Comments: 9602 sq. ft., poor condition, most recent use—FH JR NCO/ENL, off-site use only

Bldg. 01243  
Hunter Army Airfield  
Savannah Co: Chatham GA 31409  
Landholding Agency: Army  
Property Number: 21200610040  
Status: Excess  
Comments: 1258 sq. ft., most recent use—ref/ac facility, off-site use only

Bldg. 01244  
Hunter Army Airfield  
Savannah Co: Chatham GA 31409  
Landholding Agency: Army  
Property Number: 21200610041  
Status: Excess  
Comments: 4096 sq. ft., presence of asbestos, most recent use—hdqts. facility, off-site use only

#### Suitable/Unavailable Properties

##### Building

Georgia

Bldg. 01318  
Hunter Army Airfield  
Savannah Co: Chatham GA 31409  
Landholding Agency: Army  
Property Number: 21200610042  
Status: Excess  
Comments: 1500 sq. ft., most recent use—storage, off-site use only

Bldg. 00612  
Fort Stewart  
Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200610043  
Status: Excess  
Comments: 5298 sq. ft., needs rehab, most recent use—health clinic, off-site use only  
Bldg. 00614

Fort Stewart  
Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200610044  
Status: Excess  
Comments: 10,157 sq. ft., needs rehab, most recent use—brigade hqtrs, off-site use only

Bldg. 00618  
Fort Stewart  
Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200610045  
Status: Excess  
Comments: 6137 sq. ft., needs rehab, most recent use—brigade hqtrs, off-site use only

#### Suitable/Unavailable Properties

##### Building

Georgia

Bldg. 00628  
Fort Stewart  
Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200610046  
Status: Excess  
Comments: 10,050 sq. ft., needs rehab, most recent use—brigade hqtrs, off-site use only

Bldg. 01079  
Fort Stewart  
Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200610047  
Status: Excess  
Comments: 7680 sq. ft., most recent use—range/target house, off-site use only

Bldg. 07901  
Fort Stewart  
Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200610049  
Status: Excess  
Comments: 4800 sq. ft., most recent use—range support, off-site use only

Bldg. 08031  
Fort Stewart  
Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200610050  
Status: Excess  
Comments: 1296 sq. ft., most recent use—range/target house, off-site use only

#### Suitable/Unavailable Properties

##### Building

Georgia

Bldg. 08081  
Fort Stewart  
Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200610052  
Status: Excess  
Comments: 1296 sq. ft., most recent use—range/target house, off-site use only

Bldg. 08252  
Fort Stewart  
Liberty GA 31314  
Landholding Agency: Army  
Property Number: 21200610053  
Status: Excess  
Comments: 145 sq. ft., most recent use—control tower, off-site use only

Kentucky  
Bldg. 06894

Fort Campbell  
Christian KY 42223  
Landholding Agency: Army  
Property Number: 21200630070  
Status: Unutilized  
Comments: 4240 sq. ft., most recent use—vehicle maintenance shop, off-site use only

Bldg. 06895  
Fort Campbell  
Christian KY 42223  
Landholding Agency: Army  
Property Number: 21200630071  
Status: Unutilized  
Comments: 4725 sq. ft., most recent use—storage, off-site use only

#### Suitable/Unavailable Properties

##### Building

Louisiana

Bldg. T401  
Fort Polk  
Ft. Polk LA 71459  
Landholding Agency: Army  
Property Number: 21200540084  
Status: Unutilized  
Comments: 2169 sq. ft., most recent use—admin., off-site use only

Bldgs. T406, T407, T411  
Fort Polk  
Ft. Polk LA 71459  
Landholding Agency: Army  
Property Number: 21200540085  
Status: Unutilized  
Comments: 6165 sq. ft., most recent use—admin., off-site use only

Bldg. T412  
Fort Polk  
Ft. Polk LA 71459  
Landholding Agency: Army  
Property Number: 21200540086  
Status: Unutilized  
Comments: 12,251 sq. ft., most recent use—admin., off-site use only

Bldgs. T414, T421  
Fort Polk  
Ft. Polk LA 71459  
Landholding Agency: Army  
Property Number: 21200540087  
Status: Unutilized  
Comments: 6165/1688 sq. ft., most recent use—admin., off-site use only

#### Suitable/Unavailable Properties

##### Building

Maryland

Bldg. 8608  
Fort George G. Meade  
Ft. Meade MD 20755-5115  
Landholding Agency: Army  
Property Number: 21200410099  
Status: Unutilized  
Comments: 2372 sq. ft., concrete block, most recent use—PX exchange, off-site use only

Bldg. 8612  
Fort George G. Meade  
Ft. Meade MD 20755-5115  
Landholding Agency: Army  
Property Number: 21200410101  
Status: Unutilized  
Comments: 2372 sq. ft., concrete block, most recent use—family life ctr., off-site use only

Bldg. 0001A

Federal Support Center  
Olney Co: Montgomery MD 20882  
Landholding Agency: Army  
Property Number: 21200520114  
Status: Unutilized  
Comments: 9000 sq. ft., most recent use—  
storage

Bldg. 0001C  
Federal Support Center  
Olney Co: Montgomery MD 20882  
Landholding Agency: Army  
Property Number: 21200520115  
Status: Unutilized  
Comments: 2904 sq. ft., most recent use—  
mess hall

#### Suitable/Unavailable Properties

##### Building

###### Maryland

Bldgs. 00032, 00H14, 00H24  
Federal Support Center  
Olney Co: Montgomery MD 20882  
Landholding Agency: Army  
Property Number: 21200520116  
Status: Unutilized  
Comments: various sq. ft., most recent use—  
storage

Bldgs. 00034, 00H016  
Federal Support Center  
Olney Co: Montgomery MD 20882  
Landholding Agency: Army  
Property Number: 21200520117  
Status: Unutilized  
Comments: 400/39 sq. ft., most recent use—  
storage

Bldgs. 00H10, 00H12  
Federal Support Center  
Olney Co: Montgomery MD 20882  
Landholding Agency: Army  
Property Number: 21200520118  
Status: Unutilized  
Comments: 2160/469 sq. ft., most recent  
use—vehicle maintenance

#### Suitable/Available Properties

##### Building

###### Michigan

Bldg. 00001  
Sheridan Hall USARC  
501 Euclid Avenue  
Helena Co: Lewis MI 59601-2865  
Landholding Agency: Army  
Property Number: 21200510066  
Status: Unutilized  
Comments: 19,321 sq. ft., most recent use—  
reserve center

###### Missouri

Bldg. 1230  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65743-  
8944  
Landholding Agency: Army  
Property Number: 21200340087  
Status: Unutilized  
Comments: 9160 sq. ft., most recent use—  
training, off-site use only

Bldg. 1621  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65743-  
8944  
Landholding Agency: Army  
Property Number: 21200340088  
Status: Unutilized

Comments: 2400 sq. ft., most recent use—  
exchange branch, off-site use only

#### Suitable/Available Properties

##### Building

###### Missouri

Bldg. 5760  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65743-  
8944  
Landholding Agency: Army  
Property Number: 21200410102  
Status: Unutilized  
Comments: 2000 sq. ft., most recent use—  
classroom, off-site use only

Bldg. 5762  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65743-  
8944  
Landholding Agency: Army  
Property Number: 21200410103  
Status: Unutilized  
Comments: 104 sq. ft., off-site use only

Bldg. 5763  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65743-  
8944  
Landholding Agency: Army  
Property Number: 21200410104  
Status: Unutilized  
Comments: 120 sq. ft., most recent use—  
observation tower, off-site use only

Bldg. 5765  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65743-  
8944  
Landholding Agency: Army  
Property Number: 21200410105  
Status: Unutilized  
Comments: 800 sq. ft., most recent use—  
range support, off-site use only

#### Suitable/Available Properties

##### Building

###### Missouri

Bldg. 5760  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65743-  
8944  
Landholding Agency: Army  
Property Number: 21200420059  
Status: Unutilized  
Comments: 2000 sq. ft., most recent use—  
classroom, off-site use only

Bldg. 5762  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65743-  
8944  
Landholding Agency: Army  
Property Number: 21200420060  
Status: Unutilized  
Comments: 104 sq. ft., off-site use only

Bldg. 5763  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65743-  
8944  
Landholding Agency: Army  
Property Number: 21200420061  
Status: Unutilized  
Comments: 120 sq. ft., most recent use—obs.  
tower, off-site use only

Bldg. 5765  
Fort Leonard Wood

Ft. Leonard Wood Co: Pulaski MO 65743-  
8944

Landholding Agency: Army  
Property Number: 21200420062  
Status: Unutilized  
Comments: 800 sq. ft., most recent use—  
support bldg., off-site use only

#### Suitable/Available Properties

##### Building

###### Missouri

Bldg. 00467  
Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65743  
Landholding Agency: Army  
Property Number: 21200530085  
Status: Unutilized  
Comments: 2790 sq. ft., most recent use—fast  
food facility, off-site use only

###### New York

Bldgs. 1511-1518  
U.S. Military Academy  
Training Area  
Highlands Co: Orange NY 10996  
Landholding Agency: Army  
Property Number: 21200320160  
Status: Unutilized  
Comments: 2400 sq. ft. each, needs rehab,  
most recent use—barracks, off-site use only

Bldgs. 1523-1526  
U.S. Military Academy  
Training Area  
Highlands Co: Orange NY 10996  
Landholding Agency: Army  
Property Number: 21200320161  
Status: Unutilized  
Comments: 2400 sq. ft. each, needs rehab,  
most recent use—barracks, off-site use only

#### Suitable/Available Properties

##### Building

###### New York

Bldgs. 1704-1705, 1721-1722  
U.S. Military Academy  
Training Area  
Highlands Co: Orange NY 10996  
Landholding Agency: Army  
Property Number: 21200320162  
Status: Unutilized  
Comments: 2400 sq. ft. each, needs rehab,  
most recent use—barracks, off-site use only

###### Bldg. 1723

U.S. Military Academy  
Training Area  
Highlands Co: Orange NY 10996  
Landholding Agency: Army  
Property Number: 21200320163  
Status: Unutilized  
Comments: 2400 sq. ft., needs rehab, most  
recent use—day room, off-site use only

###### Bldgs. 1706-1709

U.S. Military Academy  
Training Area  
Highlands Co: Orange NY 10996  
Landholding Agency: Army  
Property Number: 21200320164  
Status: Unutilized  
Comments: 2400 sq. ft. each, needs rehab,  
most recent use—barracks, off-site use only

**Suitable/Available Properties***Building*

New York

Bldgs. 1731-1735

U.S. Military Academy  
Training Area

Highlands Co: Orange NY 10996

Landholding Agency: Army

Property Number: 21200320165

Status: Unutilized

Comments: 2400 sq. ft. each, needs rehab,  
most recent use—barracks, off-site use only

North Carolina

Bldg. N4116

Fort Bragg

Ft. Bragg Co: Cumberland NC 28310

Landholding Agency: Army

Property Number: 21200240087

Status: Excess

Comments: 3944 sq. ft., possible asbestos/  
lead paint, most recent use—community  
facility, off-site use only

Texas

Bldgs. 4219, 4227

Fort Hood

Ft. Hood Co: Bell TX 76544

Landholding Agency: Army

Property Number: 21200220139

Status: Unutilized

Comments: 8056, 500 sq. ft., most recent  
use—admin., off-site use only**Suitable/Available Properties***Building*

Texas

Bldgs. 4229, 4230, 4231

Fort Hood

Ft. Hood Co: Bell TX 76544

Landholding Agency: Army

Property Number: 21200220140

Status: Unutilized

Comments: 9000 sq. ft., most recent use—hq.  
bldg., off-site use only

Bldgs. 4244, 4246

Fort Hood

Ft. Hood Co: Bell TX 76544

Landholding Agency: Army

Property Number: 21200220141

Status: Unutilized

Comments: 9000 sq. ft., most recent use—  
storage, off-site use only

Bldgs. 4260, 4261, 4262

Fort Hood

Ft. Hood Co: Bell TX 76544

Landholding Agency: Army

Property Number: 21200220142

Status: Unutilized

Comments: 7680 sq. ft., most recent use—  
storage, off-site use only

Bldg. 04335

Fort Hood

Bell TX 76544

Landholding Agency: Army

Property Number: 21200440090

Status: Excess

Comments: 3378 sq. ft., possible asbestos,  
most recent use—general, off-site use only**Suitable/Available Properties***Building*

Texas

Bldg. 04465

Fort Hood

Bell TX 76544

Landholding Agency: Army

Property Number: 21200440094

Status: Excess

Comments: 5310 sq. ft., possible asbestos,  
most recent use—general, off-site use only

Bldg. 04468

Fort Hood

Bell TX 76544

Landholding Agency: Army

Property Number: 21200440096

Status: Excess

Comments: 3100 sq. ft., possible asbestos,  
most recent use—misc., off-site use only

Bldg. 04473

Fort Hood

Bell TX 76544

Landholding Agency: Army

Property Number: 21200440097

Status: Excess

Comments: 3100 sq. ft., possible asbestos,  
most recent use—general, off-site use only

Bldgs. 04475-04476

Fort Hood

Bell TX 76544

Landholding Agency: Army

Property Number: 21200440098

Status: Excess

Comments: 3241 sq. ft., possible asbestos,  
most recent use—general, off-site use only**Suitable/Unavailable Properties***Building*

Texas

Bldg. 04477

Fort Hood

Bell TX 76544

Landholding Agency: Army

Property Number: 21200440099

Status: Excess

Comments: 3100 sq. ft., possible asbestos,  
most recent use—general, off-site use only

Bldg. 07002

Fort Hood

Bell TX 76544

Landholding Agency: Army

Property Number: 21200440100

Status: Excess

Comments: 2598 sq. ft., possible asbestos,  
most recent use—fire station, off-site use  
only

Bldg. 57001

Fort Hood

Bell TX 76544

Landholding Agency: Army

Property Number: 21200440105

Status: Excess

Comments: 53,024 sq. ft., possible asbestos,  
most recent use—storage, off-site use only

Bldgs. 125, 126

Fort Hood

Bell TX 76544

Landholding Agency: Army

Property Number: 21200620075

Status: Excess

Comments: 2700/7200 sq. ft., presence of  
asbestos, most recent use—admin., off-site  
use only**Suitable/Unavailable Properties***Building*

Texas

Bldg. 190

Fort Hood

Bell TX 76544

Landholding Agency: Army

Property Number: 21200620076

Status: Excess

Comments: 2995 sq. ft., presence of asbestos,  
most recent use—conf. center, off-site use  
only

Bldg. 02240

Fort Hood

Bell TX 76544

Landholding Agency: Army

Property Number: 21200620078

Status: Excess

Comments: 487 sq. ft., presence of asbestos,  
most recent use—pool svc bldg, off-site use  
only

Bldg. 04164

Fort Hood

Bell TX 76544

Landholding Agency: Army

Property Number: 21200620079

Status: Excess

Comments: 2253 sq. ft., presence of asbestos,  
most recent use—storage, off-site use only

Bldgs. 04218, 04228

Fort Hood

Bell TX 76544

Landholding Agency: Army

Property Number: 21200620080

Status: Excess

Comments: 4682/9000 sq. ft., presence of  
asbestos, most recent use—admin, off-site  
use only**Suitable/Unavailable Properties***Building*

Texas

Bldg. 04272

Fort Hood

Bell TX 76544

Landholding Agency: Army

Property Number: 21200620081

Status: Excess

Comments: 7680 sq. ft., presence of asbestos,  
most recent use—storage, off-site use only

Bldg. 04415

Fort Hood

Bell TX 76544

Landholding Agency: Army

Property Number: 21200620083

Status: Excess

Comments: 1750 sq. ft., presence of asbestos,  
most recent use—classroom, off-site use  
only

4 Bldgs

Fort Hood

04419, 04420, 04421, 04424

Bell TX 76544

Landholding Agency: Army

Property Number: 21200620084

Status: Excess

Comments: 5310 sq. ft., presence of asbestos,  
most recent use—admin., off-site use only**Suitable/Unavailable Properties***Building*

Texas

4 Bldgs.

Fort Hood

04425, 04426, 04427, 04429

Bell TX 76544

Landholding Agency: Army



Property Number: 21200620085  
 Status: Excess  
 Comments: 5310 sq. ft., presence of asbestos,  
 most recent use—admin., off-site use only  
 Bldg. 04430  
 Fort Hood  
 Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200620087  
 Status: Excess  
 Comments: 3241 sq. ft., presence of asbestos,  
 most recent use—storage, off-site use only  
 Bldg. 04434  
 Fort Hood  
 Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200620088  
 Status: Excess  
 Comments: 5310 sq. ft., presence of asbestos,  
 most recent use—admin., off-site use only  
 Bldg. 04439  
 Fort Hood  
 Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200620089  
 Status: Excess  
 Comments: 3312 sq. ft., presence of asbestos,  
 most recent use—co ops bldg, off-site use  
 only

**Suitable/Unavailable Properties***Building*

Texas

Bldgs. 04470, 04471  
 Fort Hood  
 Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200620090  
 Status: Excess  
 Comments: 3241 sq. ft., presence of asbestos,  
 most recent use—admin., off-site use only  
 Bldg. 04493  
 Fort Hood  
 Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200620091  
 Status: Excess  
 Comments: 3108 sq. ft., presence of asbestos,  
 most recent use—housing maint., off-site  
 use only  
 Bldg. 04494  
 Fort Hood  
 Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200620092  
 Status: Excess  
 Comments: 2686 sq. ft., presence of asbestos,  
 most recent use—repair bays, off-site use  
 only  
 Bldg. 04632  
 Fort Hood  
 Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200620093  
 Status: Excess  
 Comments: 4000 sq. ft., presence of asbestos,  
 most recent use—storage, off-site use only

**Suitable/Unavailable Properties***Building*

Texas

Bldg. 04640  
 Fort Hood

Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200620094  
 Status: Excess  
 Comments: 1600 sq. ft., presence of asbestos,  
 most recent use—storage, off-site use only  
 Bldg. 04645  
 Fort Hood  
 Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200620095  
 Status: Excess  
 Comments: 5300 sq. ft., presence of asbestos,  
 most recent use—storage, off-site use only  
 Bldg. 04906  
 Fort Hood  
 Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200620096  
 Status: Excess  
 Comments: 1040 sq. ft., presence of asbestos,  
 most recent use—storage, off-site use only  
 Bldg. 20121  
 Fort Hood  
 Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200620097  
 Status: Excess  
 Comments: 5200 sq. ft., presence of asbestos,  
 most recent use—rec center, off-site use  
 only

**Suitable/Unavailable Properties***Building*

Texas

Bldg. 70004  
 Fort Hood  
 Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200620100  
 Status: Excess  
 Comments: 800 sq. ft., presence of asbestos,  
 most recent use—recreation, off-site use  
 only  
 Bldg. 91052  
 Fort Hood  
 Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200620101  
 Status: Excess  
 Comments: 224 sq. ft., presence of asbestos,  
 most recent use—lab/test, off-site use only  
 Bldg. 1345  
 Fort Hood  
 Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200740070  
 Status: Excess  
 Comments: 240 sq. ft., presence of asbestos,  
 most recent use—oil storage, off-site use  
 only  
 Bldgs. 1348, 1941  
 Fort Hood  
 Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200740071  
 Status: Excess  
 Comments: 640/900 sq. ft., presence of  
 asbestos, most recent use—admin., off-site  
 use only

**Suitable/Unavailable Properties***Building*

Texas

Bldg. 1919  
 Fort Hood  
 Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200740072  
 Status: Excess  
 Comments: 80 sq. ft., presence of asbestos,  
 most recent use—pump station, off-site use  
 only  
 Bldg. 1943  
 Fort Hood  
 Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200740073  
 Status: Excess  
 Comments: 780 sq. ft., presence of asbestos,  
 most recent use—rod & gun club, off-site  
 use only  
 Bldg. 1946  
 Fort Hood  
 Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200740074  
 Status: Excess  
 Comments: 2880 sq. ft., presence of asbestos,  
 most recent use—storage, off-site use only  
 Bldg. 4205  
 Fort Hood  
 Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200740075  
 Status: Excess  
 Comments: 600 sq. ft., presence of asbestos,  
 most recent use—storage, off-site use only

**Suitable/Unavailable Properties***Building*

Texas

Bldg. 4207  
 Fort Hood  
 Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200740076  
 Status: Excess  
 Comments: 2240 sq. ft., presence of asbestos,  
 most recent use—maint. shop, off-site use  
 only  
 Bldg. 4208  
 Fort Hood  
 Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200740077  
 Status: Excess  
 Comments: 9464 sq. ft., presence of asbestos,  
 most recent use—warehouse, off-site use  
 only  
 Bldgs. 4210, 4211, 4216  
 Fort Hood  
 Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200740078  
 Status: Excess  
 Comments: 4625/5280 sq. ft., presence of  
 asbestos, most recent use—maint., off-site  
 use only  
 Bldg. 4219A  
 Fort Hood  
 Bell TX 76544  
 Landholding Agency: Army  
 Property Number: 21200740079

Status: Excess  
 Comments: 446 sq. ft., presence of asbestos,  
 most recent use—storage, off-site use only

**Suitable/Unavailable Properties***Building*

Texas

Bldg. 04252

Fort Hood

Bell TX 76544

Landholding Agency: Army

Property Number: 21200740081

Status: Excess

Comments: 9000 sq. ft., presence of asbestos,  
 most recent use—storage, off-site use only

Bldg. 4255

Fort Hood

Bell TX 76544

Landholding Agency: Army

Property Number: 21200740082

Status: Excess

Comments: 448 sq. ft., presence of asbestos,  
 off-site use only

Bldg. 04480

Fort Hood

Bell TX 76544

Landholding Agency: Army

Property Number: 21200740083

Status: Excess

Comments: 2700 sq. ft., presence of asbestos,  
 most recent use—storage, off-site use only

Bldg. 04485

Fort Hood

Bell TX 76544

Landholding Agency: Army

Property Number: 21200740084

Status: Excess

Comments: 640 sq. ft., presence of asbestos,  
 most recent use—maint., off-site use only

**Suitable/Unavailable Properties***Building*

Texas

Bldgs. 04487, 04488

Fort Hood

Bell TX 76544

Landholding Agency: Army

Property Number: 21200740085

Status: Excess

Comments: 48/80 sq. ft., presence of asbestos,  
 most recent use—utility bldg., off-site use  
 only

Bldg. 04489

Fort Hood

Ft. Hood TX 76544

Landholding Agency: Army

Property Number: 21200740086

Status: Excess

Comments: 880 sq. ft., presence of asbestos,  
 most recent use—admin., off-site use only

Bldgs. 4491, 4492

Fort Hood

Bell TX 76544

Landholding Agency: Army

Property Number: 21200740087

Status: Excess

Comments: 3108/1040 sq. ft., presence of  
 asbestos, most recent use—maint., off-site  
 use only

Bldgs. 04902, 04905

Fort Hood

Bell TX 76544

Landholding Agency: Army

Property Number: 21200740088

Status: Excess

Comments: 2575/6136 sq. ft., presence of  
 asbestos, most recent use—vet bldg., off-  
 site use only

**Suitable/Unavailable Properties***Building*

Texas

Bldgs. 04914, 04915, 04916

Fort Hood

Bell TX 76544

Landholding Agency: Army

Property Number: 21200740089

Status: Excess

Comments: 371 sq. ft., presence of asbestos,  
 most recent use—animal shelter, off-site  
 use only

Bldg. 20102

Fort Hood

Bell TX 76544

Landholding Agency: Army

Property Number: 21200740091

Status: Excess

Comments: 252 sq. ft., presence of asbestos,  
 most recent use—recreation services, off-  
 site use only

Bldg. 20118

Fort Hood

Bell TX 76544

Landholding Agency: Army

Property Number: 21200740092

Status: Excess

Comments: 320 sq. ft., presence of asbestos,  
 most recent use—maint., off-site use only

Bldg. 29027

Fort Hood

Bell TX 76544

Landholding Agency: Army

Property Number: 21200740093

Status: Excess

Comments: 2240 sq. ft., presence of asbestos,  
 most recent use—hdqts bldg, off-site use  
 only

**Suitable/Unavailable Properties***Building*

Texas

Bldg. 56017

Fort Hood

Bell TX 76544

Landholding Agency: Army

Property Number: 21200740094

Status: Excess

Comments: 2592 sq. ft., presence of asbestos,  
 most recent use—admin., off-site use only

Bldg. 56202

Fort Hood

Bell TX 76544

Landholding Agency: Army

Property Number: 21200740095

Status: Excess

Comments: 1152 sq. ft., presence of asbestos,  
 most recent use—training, off-site use only

Bldg. 56224

Fort Hood

Bell TX 76544

Landholding Agency: Army

Property Number: 21200740096

Status: Excess

Comments: 80 sq. ft., presence of asbestos,  
 off-site use only

Bldg. 56305

Fort Hood

Bell TX 76544

Landholding Agency: Army

Property Number: 21200740097

Status: Excess

Comments: 2160 sq. ft., presence of asbestos,  
 most recent use—admin., off-site use only

**Suitable/Unavailable Properties***Building*

Texas

Bldg. 56311

Fort Hood

Bell TX 76544

Landholding Agency: Army

Property Number: 21200740098

Status: Excess

Comments: 480 sq. ft., presence of asbestos,  
 most recent use—laundry, off-site use only

Bldg. 56327

Fort Hood

Bell TX 76544

Landholding Agency: Army

Property Number: 21200740099

Status: Excess

Comments: 6000 sq. ft., presence of asbestos,  
 most recent use—admin., off-site use only

Bldg. 56329

Fort Hood

Bell TX 76544

Landholding Agency: Army

Property Number: 21200740100

Status: Excess

Comments: 2080 sq. ft., presence of asbestos,  
 most recent use—officers qtrs., off-site use  
 only

**Suitable/Unavailable Properties***Building*

Texas

9 Bldgs.

Fort Hood

Bell TX 76544

Landholding Agency: Army

Property Number: 21200740101

Status: Excess

Directions: 56526, 56527, 56528, 56530,  
 56531, 56536, 56537, 56538, 56540

Comments: various sq. ft., presence of  
 asbestos, most recent use—lavatory, off-site  
 use only

Bldg. 92043

Fort Hood

Bell TX 76544

Landholding Agency: Army

Property Number: 21200740102

Status: Excess

Comments: 450 sq. ft., presence of asbestos,  
 most recent use—storage, off-site use only

Bldg. 92072

Fort Hood

Bell TX 76544

Landholding Agency: Army

Property Number: 21200740103

Status: Excess

Comments: 2400 sq. ft., presence of asbestos,  
 most recent use—admin., off-site use only

**Suitable/Unavailable Properties***Building*

Texas

Bldg. 92083

Fort Hood

Bell TX 76544  
Landholding Agency: Army  
Property Number: 21200740104  
Status: Excess  
Comments: 240 sq. ft., presence of asbestos, most recent use—utility bldg., off-site use only

Bldgs. 04213, 04227  
Fort Hood  
Bell TX 76544  
Landholding Agency: Army  
Property Number: 21200740189  
Status: Excess  
Comments: 14183/10500 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldg. 4404  
Fort Hood  
Bell TX 76544  
Landholding Agency: Army  
Property Number: 21200740190  
Status: Excess  
Comments: 8043 sq. ft., presence of asbestos, most recent use—training bldg., off-site use only

Bldg. 56607  
Fort Hood  
Bell TX 76544  
Landholding Agency: Army  
Property Number: 21200740191  
Status: Excess  
Comments: 3552 sq. ft., presence of asbestos, most recent use—chapel, off-site use only

#### Suitable/Unavailable Properties

##### Building

Texas  
Bldg. 91041  
Fort Hood  
Bell TX 76544  
Landholding Agency: Army  
Property Number: 21200740192  
Status: Excess  
Comments: 1920 sq. ft., presence of asbestos, most recent use—shed, off-site use only

5 Bldgs.  
Fort Hood 93010, 93011, 93012, 93014  
Bell TX 76544  
Landholding Agency: Army  
Property Number: 21200740193  
Status: Excess  
Comments: 210/800 sq. ft., presence of asbestos, most recent use—private club, off-site use only

Bldg. 94031  
Fort Hood  
Bell TX 76544  
Landholding Agency: Army  
Property Number: 21200740194  
Status: Excess  
Comments: 1008 sq. ft., presence of asbestos, most recent use—training, off-site use only

#### Suitable/Unavailable Properties

##### Building

Virginia  
Bldg. T2827  
Fort Pickett  
Blackstone Co: Nottoway VA 23824  
Landholding Agency: Army  
Property Number: 21200320172  
Status: Unutilized  
Comments: 3550 sq. ft., presence of asbestos, most recent use—dining, off-site use only

Bldg. T2841  
Fort Pickett  
Blackstone Co: Nottoway VA 23824  
Landholding Agency: Army  
Property Number: 21200320173  
Status: Unutilized  
Comments: 2950 sq. ft., presence of asbestos, most recent use—dining, off-site use only

Bldg. 01014  
Fort Story  
Ft. Story VA 23459  
Landholding Agency: Army  
Property Number: 21200720067  
Status: Unutilized  
Comments: 1014 sq. ft., most recent use—admin., off-site use only

Bldg. 01022  
Fort Story  
Ft. Story VA 23459  
Landholding Agency: Army  
Property Number: 21200720068  
Status: Unutilized  
Comments: 2398 sq. ft., most recent use—dining, off-site use only

#### Suitable/Unavailable Properties

##### Building

Virginia  
4 Bldgs.  
Fort Story  
01023, 01029, 01036, 01038  
Ft. Story VA 23459  
Landholding Agency: Army  
Property Number: 21200720069  
Status: Unutilized  
Comments: 4800 sq. ft., most recent use—barracks, off-site use only

Bldg. 01063  
Fort Story  
Ft. Story VA 23459  
Landholding Agency: Army  
Property Number: 21200720072  
Status: Unutilized  
Comments: 2000 sq. ft., most recent use—storage, off-site use only

Bldg. 00215  
Fort Eustis  
Ft. Eustis VA 23604  
Landholding Agency: Army  
Property Number: 21200720073  
Status: Unutilized  
Comments: 2540 sq. ft., most recent use—admin., off-site use only

#### Suitable/Unavailable Properties

##### Building

Virginia  
4 Bldgs.  
Fort Eustis  
01514, 01523, 01528, 01529  
Ft. Eustis VA 23604  
Landholding Agency: Army  
Property Number: 21200720074  
Status: Unutilized  
Comments: 4720 sq. ft., most recent use—admin., off-site use only

4 Bldgs.  
Fort Eustis  
01534, 01542, 01549, 01557  
Ft. Eustis VA 23604  
Landholding Agency: Army  
Property Number: 21200720075  
Status: Unutilized

Comments: 4720 sq. ft., most recent use—admin., off-site use only

Bldgs. 01707, 01719  
Fort Eustis  
Ft. Eustis VA 23604  
Landholding Agency: Army  
Property Number: 21200720077  
Status: Unutilized  
Comments: 4720 sq. ft., most recent use—admin., off-site use only

#### Suitable/Unavailable Properties

##### Building

Virginia  
Bldg. 01720  
Fort Eustis  
Ft. Eustis VA 23604  
Landholding Agency: Army  
Property Number: 21200720078  
Status: Unutilized  
Comments: 1984 sq. ft., most recent use—admin., off-site use only

Bldgs. 01721, 01725  
Fort Eustis  
Ft. Eustis VA 23604  
Landholding Agency: Army  
Property Number: 21200720079  
Status: Unutilized  
Comments: 4720 sq. ft., most recent use—admin., off-site use only

Bldgs. 01726, 01735, 01736  
Fort Eustis  
Ft. Eustis VA 23604  
Landholding Agency: Army  
Property Number: 21200720080  
Status: Unutilized  
Comments: 1144 sq. ft., most recent use—admin., off-site use only

Bldgs. 01734, 01745, 01747  
Fort Eustis  
Ft. Eustis VA 23604  
Landholding Agency: Army  
Property Number: 21200720081  
Status: Unutilized  
Comments: 4720 sq. ft., most recent use—admin., off-site use only

#### Suitable/Unavailable Properties

##### Building

Virginia  
Bldg. 01741  
Fort Eustis  
Ft. Eustis VA 23604  
Landholding Agency: Army  
Property Number: 21200720082  
Status: Unutilized  
Comments: 1984 sq. ft., most recent use—admin., off-site use only

Bldg. 02720  
Fort Eustis  
Ft. Eustis VA 23604  
Landholding Agency: Army  
Property Number: 21200720083  
Status: Unutilized  
Comments: 400 sq. ft., most recent use—storage, off-site use only

Washington  
Bldg. 05904  
Fort Lewis  
Ft. Lewis Co: Pierce WA 98433-9500  
Landholding Agency: Army  
Property Number: 21200240092

Status: Excess  
Comments: 82 sq. ft., most recent use—guard shack, off-site use only

**Unsuitable Properties**

*Buildings (by State)*

**Alabama**  
92 Bldgs.  
Redstone Arsenal  
Redstone Arsenal Co: Madison AL 35898—  
Landholding Agency: Army  
Property Number: 21200040005—  
21200040012, 21200120018,  
21200220003—21200220004,  
21200240007—21200240022,  
21200330001—2120330004, 21200340011,  
21200340095, 21200420068—21200420071,  
21200440001, 21200520002,  
21200540002—21200540006,  
21200610003—21200610004, 21200620002,  
21200630020, 21200740108  
Status: Unutilized  
Reason: Secured Area, Extensive deterioration

19 Bldgs., Fort Rucker  
Ft. Rucker Co: Dale AL 36362  
Landholding Agency: Army  
Property Number: 21200040013,  
21200440005, 21200540001, 21200540100,  
21200610008, 21200620001,  
21200640002—21200640005, 21200720001  
Status: Unutilized  
Reason: Extensive deterioration

Bldg. 01271  
Fort McClellan  
Ft. McClellan Co: Calhoun AL 36205—5000  
Landholding Agency: Army  
Property Number: 21200430004  
Status: Unutilized  
Reason: Extensive deterioration

**Alaska**  
3 Bldgs., Fort Wainwright  
Ft. Wainwright AK 99703  
Landholding Agency: Army  
Property Number: 21200610001—  
21200610002  
Status: Unutilized  
Reason: Within 2000 ft. of flammable or explosive material Secured area Floodway

3 Bldgs., Fort Richardson  
Ft. Richardson Co: AK 99505  
Landholding Agency: Army  
Property Number: 21200340006  
Status: Excess  
Reason: Extensive deterioration

Bldg. 02A60  
Noatak Armory  
Kotzebue AK  
Landholding Agency: Army  
Property Number: 21200740105  
Status: Excess  
Reasons: Within 2000 ft. of flammable or explosive material

Bldg. 01212  
Ft. Greely  
Ft. Greely AK 99731  
Landholding Agency: Army  
Property Number: 21200740106  
Status: Unutilized  
Reasons: Extensive deterioration Secured Area Within 2000 ft. of flammable or explosive material

**Arizona**  
32 Bldgs.  
Navajo Depot Activity  
Bellemont Co: Coconino AZ 86015—  
Location: 12 miles west of Flagstaff, Arizona on I-40  
Landholding Agency: Army  
Property Number: 219014560—219014591  
Status: Underutilized  
Reason: Secured Area

10 properties: 753 earth covered igloos; above ground standard magazines  
Navajo Depot Activity  
Bellemont Co: Coconino AZ 86015—  
Landholding Agency: Army  
Property Number: 219014592—219014601  
Status: Underutilized  
Reason: Secured Area

7 Bldgs.  
Navajo Depot Activity  
Bellemont Co: Coconino AZ 86015—5000  
Landholding Agency: Army  
Property Number: 219030273, 219120177—  
219120181  
Status: Unutilized  
Reason: Secured Area

102 Bldgs.  
Camp Navajo  
Bellemont Co: AZ 86015  
Landholding Agency: Army  
Property Number: 21200140006—  
21200140010, 21200740109—21200740114  
Status: Unutilized  
Reason: Within 2000 ft. of flammable or explosive material Secured Area (Most are extensively deteriorated)

7 Bldgs.  
Papago Park Military Rsv  
Phoenix AZ 85008  
Landholding Agency: Army  
Property Number: 21200740001—  
21200740002  
Status: Unutilized  
Reason: Extensive deterioration Within airport runway clear zone Secured Area

**Arkansas**  
190 Bldgs., Fort Chaffee  
Ft. Chaffee Co: Sebastian AR 72905—5000  
Landholding Agency: Army  
Property Number: 219630019, 219630021,  
219630029, 219640462—219640477,  
21200110001—21200110017,  
21200140011—21200140014, 21200530001  
Status: Unutilized  
Reason: Extensive deterioration

**California**  
Bldg. 18  
Riverbank Army Ammunition Plant  
5300 Claus Road  
Riverbank Co: Stanislaus CA 95367—  
Landholding Agency: Army  
Property Number: 219012554  
Status: Unutilized  
Reason: Within 2000 ft. of flammable or explosive material Secured Area

12 Bldgs.  
Riverbank Army Ammunition Plant  
Riverbank Co: Stanislaus CA 95367—  
Landholding Agency: Army  
Property Number: 219013582—219013588,  
219013590, 219240444—219240446,  
21200530003  
Status: Underutilized

Reason: Secured Area  
Bldgs. 13, 171, 178 Riverbank Ammun Plant  
5300 Claus Road  
Riverbank Co: Stanislaus CA 95367—  
Landholding Agency: Army  
Property Number: 219120162—219120164  
Status: Underutilized  
Reason: Secured Area

40 Bldgs.  
DDDRW Sharpe Facility  
Tracy Co: San Joaquin CA 95331  
Landholding Agency: Army  
Property Number: 219610289, 21199930021,  
21200030005—21200030015, 21200040015,  
21200120029—21200120039, 21200130004,  
21200240025—21200240030, 21200330007  
Status: Unutilized  
Reason: Secured Area

61 Bldgs.  
Los Alamitos Co: Orange CA 90720—5001  
Landholding Agency: Army  
Property Number: 219520040, 21200530002  
Status: Unutilized  
Reason: Extensive deterioration

8 Bldgs.  
Sierra Army Depot  
Herlong Co: Lassen CA 96113  
Landholding Agency: Army  
Property Number: 21199840015,  
21199920033—21199920036  
Status: Underutilized  
Reason: Within 2000 ft. of flammable or explosive material Secured Area

569 Bldgs., Camp Roberts  
Camp Roberts Co: San Obispo CA  
Landholding Agency: Army  
Property Number: 21199730014, 219820205—  
219820234, 21200530004, 21200540007—  
21200540031  
Status: Excess  
Reason: Secured Area Extensive deterioration

24 Bldgs.  
Presidio of Monterey Annex  
Seaside Co: Monterey CA 93944  
Landholding Agency: Army  
Property Number: 21199940051  
Status: Unutilized  
Reason: Extensive deterioration

46 Bldgs.  
Fort Irwin  
Ft. Irwin Co: San Bernardino CA 92310  
Landholding Agency: Army  
Property Number: 21199920037—  
21199920038, 21200030016—21200030018,  
21200040014, 21200110018—21200110020,  
21200130002—21200130003,  
21200210001—21200210005,  
21200240031—21200240033  
Status: Unutilized  
Reason: Secured Area Extensive deterioration

5 Bldgs.  
Fort Hunter Liggett  
Monterey CA 93928  
Landholding Agency: Army  
Property Number: 21200740115—  
21200740116  
Status: Unutilized  
Reasons: Extensive deterioration

5 Bldgs., March AFRC  
Riverside CA 92518  
Landholding Agency: Army  
Property Number: 21200710001—  
21200710002  
Status: Unutilized

Reasons: Extensive deterioration

Colorado

Bldgs. T-317, T-412, 431, 433

Rocky Mountain Arsenal

Commerce Co: Adams CO 80022-2180

Landholding Agency: Army

Property Number: 219320013-219320016

Status: Unutilized

Reason: Within 2000 ft. of flammable or explosive material Secured Area Extensive deterioration

17 Bldgs., Fort Carson

Ft. Carson Co: El Paso CO 80913-5023

Landholding Agency: Army

Property Number: 219830024, 21200130006-

21200130009, 21200420161-21200420164,

21200720003, 21200740003-21200740004

Status: Unutilized

Reason: Extensive deterioration (Some are within 2000 ft. of flammable or explosive material)

16 Bldgs., Pueblo Chemical Depot

Pueblo CO 81006-9330

Landholding Agency: Army

Property Number: 21200030019-

21200030021, 21200420165-21200420166,

21200610009-21200610010, 21200630023,

21200720002, 21200720007-21200720008

Status: Unutilized

Reason: Extensive deterioration

Georgia

Fort Stewart, Sewage Treatment Plant

Ft. Stewart Co: Hinesville GA 31314

Landholding Agency: Army

Property Number: 219013922

Status: Unutilized

Reason: Sewage treatment

10 Bldgs., Fort Gordon

Augusta Co: Richmond GA 30905

Landholding Agency: Army

Property Number: 21200610012,

21200720009-21200720010

Status: Unutilized

Reason: Extensive deterioration

152 Bldgs., Fort Benning

Ft. Benning Co: Muscogee GA 31905

Landholding Agency: Army

Property Number: 219610320, 219720017-

219720019, 219810028, 219810030,

219830073, 21200030026, 21200330008-

21200330010, 21200410001-21200410009,

21200430011-21200430016, 21200440009,

21200510003, 21200540032-21200540033,

21200610011, 21200620004,

21200630024-21200630027,

21200640007-21200640021, 21200710011,

21200720004-21200720006,

21200740005-21200740006,

21200740120-21200740122

Status: Unutilized

Reason: Extensive deterioration

32 Bldgs.

Fort Gillem

Forest Park Co: Clayton GA 30050

Landholding Agency: Army

Property Number: 219620815, 21199920044-

21199920050, 21200140016, 21200220011-

21200220012, 21200230005,

21200340013-21200340016,

21200420074-21200420082

Status: Unutilized

Reason: Extensive deterioration Secured Area

28 Bldgs., Fort Stewart

Hinesville Co: Liberty GA 31314

Landholding Agency: Army

Property Number: 21199940060,

21200540034, 21200710005-21200710009,

21200720011, 21200740007,

21200740123-21200740125

Status: Unutilized

Reason: Extensive deterioration

8 Bldgs., Hunter Army Airfield

Savannah Co: Chatham GA 31409

Landholding Agency: Army

Property Number: 219830068, 21200710010,

21200720012, 21200740117-21200740119

Status: Unutilized

Reason: Extensive deterioration

6 Bldgs., Fort McPherson

Ft. McPherson Co: Fulton GA 30330-5000

Landholding Agency: Army

Property Number: 21200040016-

21200040018, 21200230004, 21200520004

Status: Unutilized

Reason: Secured Area

Bldgs. 00023, 00049, 00070, Camp Merrill

Dahlonega Co: Lumpkin GA 30533

Landholding Agency: Army

Property Number: 21200520005

Status: Unutilized

Reason: Extensive deterioration

Hawaii

30 Bldgs.

Schofield Barracks

Wahiawa Co: Wahiawa HI 96786

Landholding Agency: Army

Property Number: 219014836-219014837,

21200540035-21200540037,

21200620008-21200620010, 21200640022,

21200740009-21200740012

Status: Unutilized

Reason: Secured Area (Most are extensively deteriorated)

70 Bldgs.

Kipapa Ammo Storage Site

Honolulu Co: HI 96786

Landholding Agency: Army

Property Number: 21200520006,

21200620011

Status: Unutilized

Reason: Extensive deterioration

9 Bldgs.

Wheeler Army Airfield

Honolulu Co: HI 96786

Landholding Agency: Army

Property Number: 2120052007-

21200520008, 21200620006-21200620007,

21200630028

Status: Unutilized

Reason: Extensive deterioration

140 Bldgs., Aliamanu

Honolulu Co: HI 96818

Landholding Agency: Army

Property Number: 21200440015-

21200440017, 21200620005

Status: Unutilized

Reason: Contamination (Some are in a secured area)

7 Bldgs., Kalaeloa

Kapolei HI 96707

Landholding Agency: Army

Property Number: 21200640108-

21200640112

Status: Unutilized

Reasons: Extensive deterioration

Facilities 00001, 00002

Tanapag USARC

Tanapag HI

Landholding Agency: Army

Property Number: 21200740008

Status: Unutilized

Reasons: Extensive deterioration

Idaho

Bldg. 00110, Wilder

Canyon ID 83676

Landholding Agency: Army

Property Number: 21200740134

Status: Unutilized

Reasons: Secured Area Extensive

deterioration

Illinois

3 Bldgs.

Rock Island Arsenal

Rock Island Co: Rock Island IL 61299-5000

Landholding Agency: Army

Property Number: 219620428, 21200140043-

21200140044

Status: Unutilized

Reason: Some are in a secured area Some are

extensively deteriorated Some are within

2000 ft. of flammable or explosive material

15 Bldgs.

Charles Melvin Price Support Center

Granite City Co: Madison IL 62040

Landholding Agency: Army

Property Number: 219820027, 21199930042-

21199930053

Status: Unutilized

Reason: Secured Area, Floodway Extensive

deterioration

Indiana

135 Bldgs.

Newport Army Ammunition Plant

Newport Co: Vermillion IN 47966-

Landholding Agency: Army

Property Number: 219011584, 219011586-

219011587, 219011589-219011590,

219011592-219011627, 219011629-

219011636, 219011638-219011641,

219210149, 219430336, 219430338,

219530079-219530096, 219740021-

219740026, 219820031-219820032,

21199920063, 21200330015-21200330016,

21200440019, 21200610013-21200610014,

21200710025

Status: Unutilized

Reason: Secured Area (Some are extensively

deteriorated)

2 Bldgs.

Atterbury Reserve Forces Training Area

Edinburgh Co: Johnson IN 46124-1096

Landholding Agency: Army

Property Number: 219230030-219230031

Status: Unutilized

Reason: Extensive deterioration

Bldgs. 300, 00112, 00123

Fort Benjamin Harrison

Indianapolis Co: Marion IN 46216

Landholding Agency: Army

Property Number: 21200320011,

21200430017

Status: Unutilized

Reason: Contamination

Iowa

199 Bldgs.

Iowa Army Ammunition Plant

Middletown Co: Des Moines IA 52638

Landholding Agency: Army

Property Number: 219012605-219012607,

219012609, 219012611, 219012613,

219012620, 219012622, 219012624,



- 219013706-219013738, 219120172-219120174, 219440112-219440158, 219520002, 219520070, 219740027, 21200220022, 21200230019-21200230023, 21200330012-21200330014, 21200340017, 21200420083, 21200430018, 21200440018, 21200510004-21200510006, 21200520009, 21200540038-21200540039, 21200620012, 21200710020-21200710024, 21200740126-21200740133  
 Status: Unutilized  
 Reason: (Many are in a Secured Area) (Most are within 2000 ft. of flammable or explosive material)
- 27 Bldgs., Iowa Army Ammunition Plant  
 Middletown Co: Des Moines IA 52638  
 Landholding Agency: Army  
 Property Number: 219230005-219230029, 219310017, 219340091  
 Status: Unutilized  
 Reason: Extensive deterioration
- Kansas  
 37 Bldgs.  
 Kansas Army Ammunition Plant  
 Production Area  
 Parsons Co: Labette KS 67357-  
 Landholding Agency: Army  
 Property Number: 219011909-219011945  
 Status: Unutilized  
 Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material)
- 121 Bldgs.  
 Kansas Army Ammunition Plant  
 Parsons Co: Labette KS 67357  
 Landholding Agency: Army  
 Property Number: 219620518-219620638  
 Status: Unutilized  
 Reason: Secured Area
- 3 Bldgs.  
 Fort Riley  
 Ft. Riley Co: Riley KS 66442  
 Landholding Agency: Army  
 Property Number: 21200310007, 21200540040, 21200740135  
 Status: Unutilized  
 Reason: Extensive deterioration
- Bldgs. 00111, 00417  
 Fort Leavenworth  
 Leavenworth KS 66027  
 Landholding Agency: Army  
 Property Number: 21200740013  
 Status: Unutilized  
 Reason: Extensive deterioration
- Kentucky  
 Bldg. 126  
 Lexington—Blue Grass Army Depot  
 Lexington Co: Fayette KY 40511-  
 Landholding Agency: Army  
 Property Number: 219011661  
 Status: Unutilized  
 Reason: Secured Area Sewage treatment facility
- Bldg. 12  
 Lexington—Blue Grass Army Depot  
 Lexington Co: Fayette KY 40511  
 Landholding Agency: Army  
 Property Number: 219011663  
 Status: Unutilized  
 Reason: Industrial waste treatment plant
- 37 Bldgs., Fort Knox  
 Ft. Knox Co: Hardin KY 40121-  
 Landholding Agency: Army  
 Property Number: 21200130028-21200130029, 21200440025-21200440026, 21200510007-21200510009, 21200640023, 21200740014  
 Status: Unutilized  
 Reason: Extensive deterioration
- 90 Bldgs., Fort Campbell  
 Ft. Campbell Co: Christian KY 42223  
 Landholding Agency: Army  
 Property Number: 21200110038-21200110043, 21200140053, 21200220029, 21200330018, 21200520012-21200520015, 21200530007, 21200610015, 21200640024-21200640032, 21200720014-21200720025, 21200740139  
 Status: Unutilized  
 Reason: Extensive deterioration
- 29 Bldgs.  
 Blue Grass Army Depot  
 Richmond Co: Madison KY 40475  
 Landholding Agency: Army  
 Property Number: 21200520011, 21200620013, 21200640033-21200640035, 21200710026-21200710030, 21200720013, 21200740136-21200740138  
 Status: Unutilized  
 Reason: Secured Area
- Louisiana  
 528 Bldgs.  
 Louisiana Army Ammunition Plant  
 Doylin Co: Webster LA 71023-  
 Landholding Agency: Army  
 Property Number: 219011714-219011716, 219011735-219011737, 219012112, 219013863-219013869, 219110131, 219240138-219240147, 219420332, 219610049-219610263, 219620002-219620200, 219620749-219620801, 219820047-219820078  
 Status: Unutilized  
 Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material) (Some are extensively deteriorated)
- 81 Bldgs., Fort Polk  
 Ft. Polk Co: Vernon Parish LA 71459-7100  
 Landholding Agency: Army  
 Property Number: 21199920070, 21200130030-21200130043, 21200530008-21200530017, 21200610016-21200610019, 21200620014, 21200640036-21200640048  
 Status: Unutilized  
 Reason: Extensive deterioration (Some are in Floodway)
- Maryland  
 110 Bldgs., Aberdeen Proving Ground  
 Aberdeen City Co: Harford MD 21005-5001  
 Landholding Agency: Army  
 Property Number: 219012610, 219012638-219012640, 219012658, 219610489-219610490, 219730077, 219810076-219810112, 219820090, 219820096, 21200120059, 21200120060, 21200410017-21200410032, 21200420098-21200420100, 21200440027, 21200520021, 21200740015, 21200740141-21200740144  
 Status: Unutilized  
 Reason: Most are in a secured area (Some are within 2000 ft. of flammable or explosive material) (Some are in a floodway) (Some are extensively deteriorated)
- 63 Bldgs., Ft. George G. Meade  
 Ft. Meade Co: Anne Arundel MD 20755-  
 Landholding Agency: Army  
 Property Number: 219810065, 21200140059-21200140060, 21200410014, 21200510018, 21200520020, 21200620015, 21200640050, 21200710031, 21200740016  
 Status: Unutilized  
 Reason: Extensive deterioration
- Bldg. 00211, Curtis Bay Ordnance Depot  
 Baltimore Co: MD 21226  
 Landholding Agency: Army  
 Property Number: 21200320024  
 Status: Unutilized  
 Reason: Extensive deterioration
- 5 Bldgs., Fort Detrick  
 Frederick Co: MD 21702  
 Landholding Agency: Army  
 Property Number: 21200540041, 21200640113, 21200720026, 21200740140  
 Status: Unutilized  
 Reason: Secured Area
- Bldg. 0001B  
 Federal Support Center  
 Olney Co: Montgomery MD 20882  
 Landholding Agency: Army  
 Property Number: 21200530018  
 Status: Underutilized  
 Reason: Within 2000 ft. of flammable or explosive material
- Massachusetts  
 Bldg. 3462, Camp Edwards  
 Massachusetts Military Reservation  
 Bourne Co: Barnstable MA 02462-5003  
 Landholding Agency: Army  
 Property Number: 219230095  
 Status: Unutilized  
 Reason: Secured Area; Extensive deterioration
- Bldg. 1211 Camp Edwards  
 Massachusetts Military Reservation  
 Bourne Co: Barnstable MA 02462-5003  
 Landholding Agency: Army  
 Property Number: 219310020  
 Status: Unutilized  
 Reason: Secured Area
- Facility No. 0G001  
 LTA Granby  
 Granby Co: Hampshire MA  
 Landholding Agency: Army  
 Property Number: 219810062  
 Status: Unutilized  
 Reason: Extensive deterioration
- 6 Bldgs.  
 Fera USARC  
 Danvers Co: Essex MA 01923-1121  
 Landholding Agency: Army  
 Property Number: 21200420089-21200420092  
 Status: Unutilized  
 Reason: Extensive deterioration
- Michigan  
 Bldgs. 5755-5756  
 Newport Weekend Training Site  
 Carleton Co: Monroe MI 48166  
 Landholding Agency: Army  
 Property Number: 219310060-219310061  
 Status: Unutilized  
 Reason: Secured Area; Extensive deterioration
- 54 Bldgs.  
 Fort Custer Training Center  
 2501 26th Street  
 Augusta Co: Kalamazoo MI 49102-9205  
 Landholding Agency: Army  
 Property Number: 21200220058-21200220062, 21200410036-21200410042, 21200540048-21200540051

- Status: Unutilized  
Reason: Extensive deterioration  
39 Bldgs.  
US Army Garrison-Selfridge  
Macomb Co: MI 48045  
Landholding Agency: Army  
Property Number: 21200420093,  
21200510020-21200510023  
Status: Unutilized  
Reason: Secured Area  
4 Bldgs., Poxin USAR Center  
Southfield Co: Oakland MI 48034  
Landholding Agency: Army  
Property Number: 21200330026-  
21200330027, 21200420095  
Status: Unutilized  
Reason: Extensive deterioration  
20 Bldgs.  
Grayling Army Airfield  
Grayling Co: Crawford MI 49739  
Landholding Agency: Army  
Property Number: 21200410034-  
21200410035, 21200540042-21200540047  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 001, Crabble USARC  
Saginaw MI 48601-4099  
Landholding Agency: Army  
Property Number: 21200420094  
Status: Unutilized  
Reason: Extensive deterioration  
Bldg. 00714  
Selfridge Air Natl Guard Base  
Macomb Co: MI 48045  
Landholding Agency: Army  
Property Number: 21200440032  
Status: Unutilized  
Reason: Extensive deterioration  
4 Bldgs.  
Detroit Arsenal  
T0209, T0216, T0246, T0247  
Warren Co: Macomb MI 88397-5000  
Landholding Agency: Army  
Property Number: 21200520022  
Status: Unutilized  
Reason: Secured Area  
Minnesota  
160 Bldgs.  
Twin Cities Army Ammunition Plant  
New Brighton Co: Ramsey MN 55112  
Landholding Agency: Army  
Property Number: 219120166, 219210014-  
219210015, 219220227-219220235,  
219240328, 219310056, 219320152-  
219320156, 219330096-219330106,  
219340015, 219410159-219410189,  
219420198-219420283, 219430060-  
219430064, 21200130053-21200130054  
Status: Unutilized  
Reason: Secured Area (Most are within 2000  
ft. of flammable or explosive material.)  
(Some are extensively deteriorated)
- Missouri  
83 Bldgs., Lake City Army Ammo. Plant  
Independence Co: Jackson MO 64050  
Landholding Agency: Army  
Property Number: 219013666-219013669,  
219530134, 219530136, 21199910023-  
21199910035, 21199920082, 21200030049  
Status: Unutilized  
Reason: Secured Area (Some are within 2000  
ft. of flammable or explosive material)  
9 Bldgs.
- St. Louis Army Ammunition Plant  
4800 Goodfellow Blvd.  
St. Louis Co: St. Louis MO 63120-1798  
Landholding Agency: Army  
Property Number: 219120067-219120068,  
219610469-219610475  
Status: Unutilized  
Reason: Secured Area (Some are extensively  
deteriorated.)  
34 Bldgs., Fort Leonard Wood  
Ft. Leonard Wood Co: Pulaski MO 65473-  
5000  
Landholding Agency: Army  
Property Number: 219430075, 21199910020-  
21199910021, 21200320025,  
21200330028-21200330031, 21200430029,  
21200530019, 21200640051-21200640052,  
21200740145-21200740148  
Status: Unutilized  
Reason: Within 2000 ft. of flammable or  
explosive material (Some are extensively  
deteriorated.)  
Bldg. P4122, U.S. Army Reserve Center  
St. Louis Co: St. Charles MO 63120-1794  
Landholding Agency: Army  
Property Number: 21200240055  
Status: Unutilized  
Reason: Extensive deterioration  
Bldgs. P4074, P4072, P4073  
St. Louis Ordnance Plant  
St. Louis Co: St. Charles MO 63120-1794  
Landholding Agency: Army  
Property Number: 21200310019  
Status: Unutilized  
Reason: Extensive deterioration  
Montana  
5 Bldgs., Fort Harrison  
Ft. Harrison Co: Lewis/Clark MT 59636  
Landholding Agency: Army  
Property Number: 21200420104,  
21200740018  
Status: Excess  
Reasons: Secured Area Extensive  
deterioration  
Nevada  
Bldg. 292  
Hawthorne Army Ammunition Plant  
Hawthorne Co: Mineral NV 89415  
Landholding Agency: Army  
Property Number: 219013614  
Status: Unutilized  
Reason: Secured Area  
39 Bldgs.  
Hawthorne Army Ammunition Plant  
Hawthorne Co: Mineral NV 89415  
Landholding Agency: Army  
Property Number: 219012013, 219013615-  
219013643,  
Status: Underutilized  
Reason: Secured Area (Some within airport  
runway clear zone; many within 2000 ft. of  
flammable or explosive material)  
Group 101, 34 Bldgs.  
Hawthorne Army Ammunition Plant  
Hawthorne Co: Mineral NV 89415-0015  
Landholding Agency: Army  
Property Number: 219830132  
Status: Unutilized  
Reason: Within 2000 ft. of flammable or  
explosive material; Secured Area  
New Jersey  
235 Bldgs., Picatinny Arsenal  
Dover Co: Morris NJ 07806-5000  
Landholding Agency: Army
- Landholding Agency: Army  
Property Number: 219010444-219010474,  
219010639-219010664, 219010680-  
219010715, 219012428, 219012430,  
219012433-219012465, 219012469,  
219012475, 219012765, 00219014306,  
219014311, 219014317, 219140617,  
219230123, 219420006, 219530147,  
219540005, 219540007, 219740113-  
219740127, 21199940094-21199940099,  
21200130057-21200130063, 21200220063,  
21200230072-21200230075,  
21200330047-21200330063,  
21200410043-21200410044,  
21200520024-21200520039,  
21200530022-21200530028,  
21200620017-21200620022,  
21200630001-21200630019, 21200720028,  
21200720102-21200720104  
Status: Excess  
Reason: Secured Area (Most are within 2000  
ft. of flammable or explosive material.)  
(Some are extensively deteriorated and in  
a floodway)  
6 Bldgs., Ft. Monmouth  
Ft. Monmouth Co: NJ 07703  
Landholding Agency: Army  
Property Number: 21200430030,  
21200510025-21200510027  
Status: Unutilized  
Reason: Extensive deterioration  
6 Bldgs., Fort Dix  
Burlington NJ 08640  
Landholding Agency: Army  
Property Number: 21200740019,  
21200740149  
Status: Unutilized  
Reason: Extensive deterioration  
New Mexico  
166 Bldgs.  
White Sands Missile Range  
Dona Ana Co: NM 88002  
Landholding Agency: Army  
Property Number: 21200410045-  
21200410049, 21200440034-21200440045,  
21200620023  
Status: Excess  
Reason: Secured Area  
New York  
Bldg. 12, Watervliet Arsenal  
Watervliet NY  
Landholding Agency: Army  
Property Number: 219730099  
Status: Unutilized  
Reason: Extensive deterioration (Secured  
Area)  
13 Bldgs., Youngstown Training Site  
Youngstown Co: Niagara NY 14131  
Landholding Agency: Army  
Property Number: 21200220064-  
21200220069  
Status: Unutilized  
Reason: Extensive deterioration  
Bldgs. 1716, 3014, 3018 U.S. Military  
Academy  
West Point Co: NY 10996  
Landholding Agency: Army  
Property Number: 21200330064,  
21200410050, 21200520040  
Status: Unutilized  
Reason: Extensive deterioration  
74 Bldgs., Fort Drum  
Ft. Drum Co: Jefferson NY 13602  
Landholding Agency: Army

Property Number: 21200340027-  
21200340029, 21200410051,  
21200420112-21200420128, 21200440046,  
21200520041-21200520047, 21200530021,  
21200540057-21200540059, 21200720106  
Status: Unutilized

Reason: Extensive deterioration  
Bldg. 108, Fredrick J ILL, Jr. USARC  
Bullville Co: Orange NY 10915-0277

Landholding Agency: Army  
Property Number: 21200510028  
Status: Unutilized

Reason: Secured Area

Bldgs. 107, 112, 113  
Kerry P. Hein USARC NY058

Shoreham Co: Suffolk NY 11778-9999  
Landholding Agency: Army  
Property Number: 21200510054  
Status: Excess

Reason: Secured Area  
10 Bldgs., Fort Hamilton  
Brooklyn NY 11252

Landholding Agency:  
Property Number: 21200740150-  
21200740153

Status: Underutilized  
Reason: Secured Area

North Carolina

406 Bldgs. Fort Bragg

Ft. Bragg Co: Cumberland NC 28307

Landholding Agency: Army  
Property Number: 219640074, 219710102-  
219710110, 219710224, 219810167,  
21200410056, 21200430042,  
21200440050-21200440051,

21200530029-21200530047, 21200540060,  
21200610020, 21200620024-21200620039,  
21200630029-21200630053,  
21200640053-21200640060, 21200640114,  
21200720029-21200720035,  
21200740020-21200740023,  
21200740154-21200740159

Status: Unutilized  
Reason: Extensive deterioration

3 Bldgs., Military Ocean Terminal  
Southport Co: Brunswick NC 28461-5000

Landholding Agency: Army  
Property Number: 219810158-219810160,  
21200330032

Status: Unutilized  
Reason: Secured Area

North Dakota

Bldgs. 440, 455, 456, 3101, 3110

Stanley R. Mickelsen  
Nekoma Co: Cavalier ND 58355

Landholding Agency: Army  
Property Number: 21199940103-  
21199940107

Status: Unutilized  
Reason: Extensive deterioration

Ohio

186 Bldgs.

Ravenna Army Ammunition Plant  
Ravenna Co: Portage OH 44266-9297

Landholding Agency: Army  
Property Number: 21199840069-  
21199840104, 21200240064,  
21200420131-21200420132,  
21200530051-21200530052

Status: Unutilized

Reason: Secured Area

7 Bldgs., Lima Army Tank Plant

Lima OH 45804-1898

Landholding Agency: Army  
Property Number: 219730104-219730110

Status: Unutilized  
Reason: Secured Area

Bldg. 201, Defense Supply Center  
Columbus Co: Franklin OH 43216

Landholding Agency: Army  
Property Number: 21200640061

Status: Unutilized  
Reason: Secured Area

Oklahoma

26 Bldgs., Fort Sill

Lawton Co: Comanche OK 73503

Landholding Agency: Army  
Property Number: 219510023, 21200330065,  
21200430043, 21200530053-21200530060

Status: Unutilized  
Reason: Extensive deterioration

Bldgs. MA050, MA070, Regional Training  
Institute

Oklahoma City Co: OK 73111

Landholding Agency: Army  
Property Number: 21200440052

Status: Unutilized  
Reason: Extensive deterioration

Bldgs. GRM03, GRM24, GRM26, GRM34  
Camp Gruber Training Site

Braggs Co: OK 74423  
Landholding Agency: Army

Property Number: 21200510029-  
21200510032

Status: Unutilized  
Reason: Extensive deterioration

28 Bldgs., McAlester Army Ammo Plant  
McAlester Co: Pittsburg OK 74501

Landholding Agency: Army  
Property Number: 21200510033-  
21200510039, 21200520048,  
21200740024-21200740025

Status: Excess  
Reason: Secured Area

Oregon

11 Bldgs.

Tooele Army Depot

Umatilla Depot Activity  
Hermiston Co: Morrow/Umatilla OR 97838

Landholding Agency: Army  
Property Number: 219012174-219012176,  
219012178-219012179, 219012190-  
219012191, 219012197-219012198,  
219012217, 219012229

Status: Underutilized  
Reason: Secured Area

34 Bldgs.

Tooele Army Depot

Umatilla Depot Activity  
Hermiston Co: Morrow/Umatilla OR 97838-

Landholding Agency: Army  
Property Number: 219012177, 219012185-  
219012186, 219012189, 219012195-  
219012196, 219012199-219012205,  
219012207-219012208, 219012225,  
219012279, 219014304-219014305,  
219014782, 219030362-219030363,  
219120032, 21199840108-21199840110,  
21199920084-21199920090

Status: Unutilized  
Reason: Secured Area

Pennsylvania

23 Bldgs., Fort Indiantown Gap

Annville Co: Lebanon PA 17003-5011

Landholding Agency: Army

Property Number: 219810183-219810190  
Status: Unutilized

Reason: Extensive deterioration  
Bldgs. 00026, 00123

Defense Distribution Depot  
New Cumberland Co: York PA 17070-5001

Landholding Agency: Army  
Property Number: 21200640063

Status: Unutilized  
Reason: Extensive deterioration

Bldg. 01006, Tobyhanna Army Depot  
Tobyhanna Co: Monroe PA 18466

Landholding Agency: Army  
Property Number: 21200330068

Status: Unutilized  
Reason: Extensive deterioration

52 Bldgs.

Letterkenny Army Depot  
Chambersburg Co: Franklin PA 17201

Landholding Agency: Army  
Property Number: 21200420134-  
21200420144, 21200430045-21200430051,  
21200630054-21200630063, 21200640062

Status: Unutilized  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area,  
Extensive deterioration

6 Bldgs. Carlisle Barracks  
Cumberland Co: PA 17013

Landholding Agency: Army  
Property Number: 21200540062,  
21200640115, 21200720107, 21200740026

Status: Excess  
Reason: Extensive deterioration

Puerto Rico

39 Bldgs., Fort Buchanan

Guaynabo Co: PR 00934

Landholding Agency: Army  
Property Number: 21200530061-  
21200530063, 21200610023, 21200620041

Status: Unutilized  
Reason: Secured Area (Some are extensively  
deteriorated)

South Carolina

41 Bldgs., Fort Jackson  
Ft. Jackson Co: Richland SC 29207

Landholding Agency: Army  
Property Number: 219440237, 219440239,  
219620312, 219620317, 219620348,  
219620351, 219640138-219640139,  
21199640148-21199640149, 219720095,  
219720097, 219730130, 219730132,  
219730145-219730157, 219740138,  
219820102-219820111, 219830139-  
219830157, 21200520050

Status: Unutilized  
Reason: Extensive deterioration

South Dakota

Bldgs. 00038, 00039  
Lewis & Clark USARC

Bismarck SD 58504  
Landholding Agency: Army

Property Number: 21200710033  
Status: Unutilized

Reasons: Secured Area

Tennessee

89 Bldgs., Holston Army Ammunition Plant  
Kingsport Co: Hawkins TN 61299-6000

Landholding Agency: Army  
Property Number: 219012304-219012309,  
219012311-219012312, 219012314,

219012316-219012317, 219012328,  
219012330, 219012332, 219012334,  
219012337, 219013790, 219140613,  
219440212-219440216, 219510025-  
219510027, 21200230035, 21200310040,  
21200320054-21200320073, 21200340056,  
21200510042, 21200530064-21200530065,  
21200640069-21200640072, 21200710035,  
21200740160

Status: Unutilized

Reason: Secured Area (Some are within 2000 ft. of flammable or explosive material)

54 Bldgs., Milan Army Ammunition Plant

Milan Co: Gibson TN 38358

Landholding Agency: Army

Property Number: 219240447-219240449,  
21200520051-21200520052,

21200640064-21200640068,  
21200740027-21200740029

Status: Unutilized

Reason: Secured Area (Some are extensively deteriorated)

Bldg. Z-183A

Milan Army Ammunition Plant

Milan Co: Gibson TN 38358

Landholding Agency: Army

Property Number: 219240783

Status: Unutilized

Reason: Within 2000 ft. of flammable or explosive material

141 Bldgs., Fort Campbell

Ft. Campbell Co: Montgomery TN 42223

Landholding Agency: Army

Property Number: 21200220023,  
21200240065, 21200330094-

21200330100, 21200430052-2100430054,  
21200440057-21200440058, 21200510043,  
21200520053-21200520062,  
21200540063-21200540069,  
21200610024-21200610031,  
21200620042-21200620044, 21200620064,  
21200710034

Status: Unutilized

Reason: Extensive deterioration

Texas

20 Bldgs., Lone Star Army Ammunition Plant

Highway 82 West

Texarkana Co: Bowie TX 75505-9100

Landholding Agency: Army

Property Number: 219012524, 219012529,  
219012533, 219012536, 219012539-

219012540, 219012542, 219012544-  
219012545, 219030337-219030345

Status: Unutilized

Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

154 Bldgs.

Longhorn Army Ammunition Plant

Karnack Co: Harrison TX 75661-

Landholding Agency: Army

Property Number: 219620827, 21200340062-  
21200340073

Status: Unutilized

Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material)

16 Bldgs., Red River Army Depot

Texarkana Co: Bowie TX 75507-5000

Landholding Agency: Army

Property Number: 219420315-219420327,  
219430095-219430097

Status: Unutilized

Reason: Secured Area (Some are extensively deteriorated)

104 Bldgs. Fort Bliss

El Paso Co: El Paso TX 79916

Landholding Agency: Army

Property Number: 219730160-219730186,  
219830161-219830197, 21200310044,  
21200320079, 21200340059,  
21200540070-21200540073,  
21200640073-21200640075, 21200710036,  
21200740030, 21200740161

Status: Unutilized

Reason: Extensive deterioration

8 Bldgs., Fort Hood

Ft. Hood Co: Bell TX 76544

Landholding Agency: Army

Property Number: 21200420146,  
21200720108-21200720111

Status: Unutilized

Reason: Extensive deterioration

Bldgs. 05110, 06088, Fort Sam Houston

Camp Bullis Co: Bexar TX

Landholding Agency: Army

Property Number: 21200520063

Status: Excess

Reason: Extensive deterioration

Bldg. D5040, Grand Prairie Reserve Complex

Tarrant Co: TX 75051

Landholding Agency: Army

Property Number: 21200620045

Status: Unutilized

Reasons: Secured Area, Extensive deterioration

Utah

39 Bldgs.

Tooele Army Depot

Tooele Co: Tooele UT 84074-5008

Landholding Agency: Army

Property Number: 21200620046,  
21200640076, 21200710037-21200710041,  
21200740162-21200740165

Status: Unutilized

Reason: Secured Area

Bldg. 9307

Dugway Proving Ground

Dugway Co: Tooele UT 84022-

Landholding Agency: Army

Property Number: 219013997

Status: Underutilized

Reason: Secured Area

13 Bldgs.

Deseret Chemical Depot

Tooele UT 84074

Landholding Agency: Army

Property Number: 219820120-219820121,  
21200610032-21200610034, 21200620047,  
21200720036-21200720037

Status: Unutilized

Reason: Secured Area

Extensive deterioration

Bldgs. 00259, 00206

Ogden Maintenance Center

Weber Co: UT 84404

Landholding Agency: Army

Property Number: 21200530066

Status: Excess

Reason: Secured Area

Virginia

363 Bldgs.

Radford Army Ammunition Plant

Radford Co: Montgomery VA 24141-

Landholding Agency: Army

Property Number: 219010833, 219010836,  
219010842, 219010844, 219010847-  
219010890, 219010892-219010912,  
219011521-219011577, 219011581-

Status: Unutilized

Reason: Extensive deterioration

13 Bldgs., Fort Eustis

Ft. Eustis Co: VA 23604

Landholding Agency: Army

Property Number: 21200210025-  
21200210026, 21200740037, 21200740168

Status: Unutilized

Reason: Extensive deterioration

63 Bldgs.

U.S. Army Combined Arms Support

Command

Fort Lee Co: Prince George VA 23801-

Landholding Agency: Army

Property Number: 219240107, 219620866-  
219620876, 219740156, 219830208-  
219830210, 21199940130, 21200430059-  
21200430060, 21200620048, 21200630064,  
21200640077-21200640080, 21200710042,  
21200740033-21200740035, 21200740166

Status: Unutilized

Reason: Extensive deterioration

(Some are in a secured area.)

56 Bldgs.

Red Water Field Office

Radford Army Ammunition Plant

Radford VA 24141

Landholding Agency: Army

Property Number: 219430341-219430396

Status: Unutilized

Reason: Within 2000 ft. of flammable or explosive material Secured Area

219011583, 219011585, 219011588,  
219011591, 219013559-219013570,  
219110142-219110143, 219120071,  
219140618-219140633, 219220210-  
219220218, 219230100-219230103,  
219240324, 219440219-219440225,  
219510032-219510033, 219520037,  
219520052, 219530194, 219610607-  
219610608, 219830223-219830267,  
21200020079-21200020081, 21200230038,  
21200240071-21200240072,  
21200510045-21200510046,  
21200740031-21200740032,  
21200740169-21200740171

Status: Unutilized

Reason: Within 2000 ft. of flammable or explosive material Secured Area

(Some are extensively deteriorated)

13 Bldgs., Radford Army Ammunition Plant

Radford Co: Montgomery VA 24141-

Landholding Agency: Army

Property Number: 219010834-219010835,  
219010837-219010838, 219010840-  
219010841, 219010843, 219010845-  
219010846, 219010891, 219011578-  
219011580

Status: Unutilized

Reason: Within 2000 ft. of flammable or explosive material Secured Area

Latrine, detached structure

63 Bldgs.

U.S. Army Combined Arms Support

Command

Fort Lee Co: Prince George VA 23801-

Landholding Agency: Army

Property Number: 219240107, 219620866-  
219620876, 219740156, 219830208-  
219830210, 21199940130, 21200430059-  
21200430060, 21200620048, 21200630064,  
21200640077-21200640080, 21200710042,  
21200740033-21200740035, 21200740166

Status: Unutilized

Reason: Extensive deterioration

(Some are in a secured area.)

56 Bldgs.

Red Water Field Office

Radford Army Ammunition Plant

Radford VA 24141

Landholding Agency: Army

Property Number: 219430341-219430396

Status: Unutilized

Reason: Within 2000 ft. of flammable or explosive material Secured Area

85 Bldgs., Fort A.P. Hill

Bowling Green Co: Caroline VA 22427

Landholding Agency: Army

Property Number: 21200310058,  
21200310060, 21200410069-21200410076,  
21200430057, 21200510051, 21200740167

Status: Unutilized

Reason: Secured Area

Extensive deterioration

61 Bldgs., Fort Belvoir

Ft. Belvoir Co: Fairfax VA 22060-5116

Landholding Agency: Army

Property Number: 21200130076-  
21200130077, 21200710043-21200710049,  
21200720043-21200720051

Status: Unutilized

Reason: Extensive deterioration

13 Bldgs., Fort Eustis

Ft. Eustis Co: VA 23604

Landholding Agency: Army

Property Number: 21200210025-  
21200210026, 21200740037, 21200740168

Status: Unutilized

Reason: Extensive deterioration

63 Bldgs.

U.S. Army Combined Arms Support

Command

Fort Lee Co: Prince George VA 23801-

Landholding Agency: Army

Property Number: 219240107, 219620866-  
219620876, 219740156, 219830208-  
219830210, 21199940130, 21200430059-  
21200430060, 21200620048, 21200630064,  
21200640077-21200640080, 21200710042,  
21200740033-21200740035, 21200740166

Status: Unutilized

Reason: Extensive deterioration

(Some are in a secured area.)

56 Bldgs.

Red Water Field Office

Radford Army Ammunition Plant

Radford VA 24141

Landholding Agency: Army

Property Number: 219430341-219430396

Status: Unutilized

Reason: Within 2000 ft. of flammable or explosive material Secured Area

85 Bldgs., Fort A.P. Hill

Bowling Green Co: Caroline VA 22427

Landholding Agency: Army

Property Number: 21200310058,  
21200310060, 21200410069-21200410076,  
21200430057, 21200510051, 21200740167

Status: Unutilized

Reason: Secured Area

Extensive deterioration

61 Bldgs., Fort Belvoir

Ft. Belvoir Co: Fairfax VA 22060-5116

Landholding Agency: Army

Property Number: 21200130076-  
21200130077, 21200710043-21200710049,  
21200720043-21200720051

Status: Unutilized

Reason: Extensive deterioration

13 Bldgs., Fort Eustis

Ft. Eustis Co: VA 23604

Landholding Agency: Army

Status: Unutilized  
Reason: Extensive deterioration  
58 Bldgs.  
Fort Pickett  
Blackstone Co: Nottoway VA 23824  
Landholding Agency: Army  
Property Number: 21200220087-  
21200220092, 21200320080-21200320087,  
21200620049-21200620052, 21200720042  
Status: Unutilized  
Reason: Extensive deterioration  
Bldg. 00723, Fort Story  
Ft. Story Co: Princess Ann VA 23459  
Landholding Agency: Army  
Property Number: 21200310046  
Status: Unutilized  
Reason: Extensive deterioration  
13 Bldgs., Defense Supply Center  
Richmond VA 23297  
Landholding Agency: Army  
Property Number: 21200720038-  
21200720040, 21200720112, 21200740036  
Washington  
693 Bldgs., Fort Lewis  
Ft. Lewis Co: Pierce WA 98433-5000  
Landholding Agency: Army  
Property Number: 219610006, 219610009-  
219610010, 219610045-219610046,  
219620512-219620517, 219640183,  
219720142-219720151, 219810205-  
219810242, 219820132, 21199910064-  
21199910078, 21199920125-21199920174,  
21199930080-21199930104, 21199940134,  
21200120068, 21200140072-21200140073,  
21200210075, 21200220097,  
21200330104-21200330106, 21200430061,  
21200620053-21200620059,  
21200630067-21200630069,  
21200640087-21200640090, 21200740172  
Status: Unutilized  
Reason: Secured Area  
Extensive deterioration  
Bldg. HBC07, Fort Lewis  
Huckleberry Creek Mountain Training Site  
Co: Pierce WA  
Landholding Agency: Army  
Property Number: 219740166  
Status: Unutilized  
Reason: Extensive deterioration  
Bldg. 415, Fort Worden  
Port Angeles Co: Clallam WA 98362  
Landholding Agency: Army  
Property Number: 21199910062  
Status: Excess  
Reason: Extensive deterioration  
Bldg. U515A, Fort Lewis  
Ft. Lewis Co: Pierce WA 98433  
Landholding Agency: Army  
Property Number: 21199920124  
Status: Excess  
Reason: gas chamber  
Bldgs. 02401, 02402  
Vancouver Barracks Cemetery  
Vancouver Co: WA 98661  
Landholding Agency: Army  
Property Number: 21200310048

Status: Unutilized  
Reason: Extensive deterioration  
4 Bldgs. Renton USARC  
Renton Co: WA 980058  
Landholding Agency: Army  
Property Number: 21200310049  
Status: Unutilized  
Reason: Extensive deterioration  
Wisconsin  
5 Bldgs.  
Badger Army Ammunition Plant  
Baraboo Co: Sauk WI 53913-  
Landholding Agency: Army  
Property Number: 219011209-219011210,  
219011217  
Status: Underutilized  
Reason: Within 2000 ft. of flammable or  
explosive material Friable asbestos Secured  
Area  
153 Bldgs.  
Badger Army Ammunition Plant  
Baraboo Co: Sauk WI 53913-  
Landholding Agency: Army  
Property Number: 219011104, 219011106,  
219011108-219011113, 219011115-  
219011117, 219011119-219011120,  
219011122-219011139, 219011141-  
219011142, 219011144, 219011148-  
219011208, 219011213-219011216,  
219011218-219011234, 219011236,  
219011238, 219011240, 219011242,  
219011244, 219011247, 219011249,  
219011251, 219011256, 19011259,  
219011263, 219011265, 219011268,  
219011270, 219011275, 219011277,  
219011280, 219011282, 219011284,  
219011286, 219011290, 219011293,  
219011295, 219011297, 219011300,  
219011302, 219011304-219011311,  
219011317, 219011319-219011321,  
219011323  
Status: Unutilized  
Reason: Within 2000 ft. of flammable or  
explosive material Friable asbestos Secured  
Area  
4 Bldgs.  
Badger Army Ammunition Plant  
Baraboo Co: Sauk WI  
Landholding Agency: Army  
Property Number: 219013871-219013873,  
219013875  
Status: Underutilized  
Reason: Secured Area  
906 Bldgs.  
Badger Army Ammunition Plant  
Baraboo Co: Sauk WI  
Landholding Agency: Army  
Property Number: 219013876-219013878,  
219210097-219210099, 219220295-  
219220311, 219510065, 219510067,  
219510069-219510077, 219740184-  
219740271, 21200020083-21200020155,  
21200240074-21200240080  
Status: Unutilized  
Reason: (Most are in a secured area)  
(Most are within 2000 ft. of flammable or  
explosive material)

(Some are extensively deteriorated)

*Land (by State)*

Indiana

Newport Army Ammunition Plant  
East of 14th St. & North of S. Blvd.  
Newport Co: Vermillion IN 47966-  
Landholding Agency: Army  
Property Number: 219012360  
Status: Unutilized  
Reason: Within 2000 ft. of flammable or  
explosive material Secured Area

Maryland

Approx. 1 acre  
Fort Meade  
Anne Arundel MD 20755  
Landholding Agency: Army  
Property Number: 21200740017  
Status: Unutilized  
Reasons: Other—no public access

Minnesota

Portion of R.R. Spur  
Twin Cities Army Ammunition Plant  
New Brighton Co: Ramsey MN 55112  
Landholding Agency: Army  
Property Number: 219620472  
Status: Unutilized  
Reason: Landlocked

New Jersey

Land

Armament Research Development & Eng.  
Center

Route 15 North

Picatinny Arsenal Co: Morris NJ 07806

Landholding Agency: Army

Property Number: 219013788

Status: Unutilized

Reason: Secured Area

Spur Line/Right of Way

Armament Rsch., Dev., & Eng. Center

Picatinny Arsenal Co: Morris NJ 07806-5000

Landholding Agency: Army

Property Number: 219530143

Status: Unutilized

Reason: Floodway

2.0 Acres, Berkshire Trail

Armament Rsch., Dev., & Eng. Center

Picatinny Arsenal Co: Morris NJ 07806-5000

Landholding Agency: Army

Property Number: 21199910036

Status: Underutilized

Reasons: Within 2000 ft. of flammable or  
explosive material Secured Area

Texas

Land—Approx. 50 acres

Lone Star Army Ammunition Plant

Texarkana Co: Bowie TX 75505-9100

Landholding Agency: Army

Property Number: 219420308

Status: Unutilized

Reason: Secured Area

[FR Doc. E8-4186 Filed 3-6-08; 8:45 am]

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# Federal Register

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Friday,  
March 7, 2008

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Part III

## Department of Transportation

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Federal Aviation Administration

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14 CFR Parts 23, 25, 27 et al.  
Revisions to Cockpit Voice Recorder and  
Digital Flight Data Recorder Regulations;  
Final Rule

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

14 CFR Parts 23, 25, 27, 29, 91, 121, 125, 129 and 135

[Docket No. FAA-2005-20245; Amendment No. 23-58, 25-124, 27-43, 29-50, 91-300, 121-338, 125-54, 129-45, and 135-113]

RIN 2120-AH88

### Revisions to Cockpit Voice Recorder and Digital Flight Data Recorder Regulations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

**SUMMARY:** This final rule amends cockpit voice recorder (CVR) and digital flight data recorder (DFDR) regulations affecting certain air carriers, operators, and aircraft manufacturers. This final rule increases the duration of certain CVR recordings, increases the data recording rate for certain DFDR parameters, requires physical separation of the DFDR and CVR, improves the reliability of the power supplies to both the CVR and DFDR, and requires that certain datalink communications received on an aircraft be recorded if datalink communication equipment is installed. This final rule is based on recommendations issued by the National Transportation Safety Board following its investigations of several accidents and incidents, and includes other revisions the FAA has determined are necessary. These changes to CVR and DFDR systems are intended to improve the quality and quantity of information recorded, and increase the potential for retaining important information needed for accident and incident investigations.

**DATES:** These amendments become effective April 7, 2008.

**FOR FURTHER INFORMATION CONTACT:** For technical questions contact: Timothy W. Shaver, Avionics Systems Branch, Aircraft Certification Service, AIR-130, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 385-4686; facsimile (202) 385-4651; e-mail [tim.shaver@faa.gov](mailto:tim.shaver@faa.gov). For legal questions contact: Karen L. Petronis, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3073; facsimile (202) 267-3073; e-mail [karen.petronis@faa.gov](mailto:karen.petronis@faa.gov).

**SUPPLEMENTARY INFORMATION:**

#### Authority for This Rulemaking

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701. Under that section, the FAA is charged with prescribing regulations providing minimum standards for other practices, methods and procedures necessary for safety in air commerce. This regulation is within the scope of that authority since flight data recorders are the only means available to account for aircraft movement and flight crew actions critical to finding the probable cause of incidents or accidents, including data that could prevent future incidents or accidents.

#### Background

##### A. Statement of the Problem

For many years, the National Transportation Safety Board (NTSB) has experienced difficulties while investigating aircraft accidents and incidents. The information recorded on cockpit voice recorders (CVRs) and Digital Flight Data Recorders (DFDRs) has not always been sufficient to support the NTSB's investigations. The problems encountered by the NTSB include the limited duration of CVR recordings preceding an incident, and the loss of power to both CVRs and DFDRs. These issues arose in the investigation of the following accidents and incidents: Alaska Airlines, Inc. flight 261 on January 31, 2000; EgyptAir flight 990 on October 31, 1999; Delta Air Lines, Inc. flight 2461 on December 15, 1998; Swissair flight 111 on September 2, 1998; SilkAir flight 185 on December 19, 1997; ValuJet Airlines flight 592 on May 11, 1996; Trans World Airlines, Inc. flight 800 on July 17, 1996; and ValuJet Airlines flight 597 on June 8, 1995. The notice of proposed rulemaking that preceded this final rule was published on February 28, 2005 ("Revisions to Cockpit Voice Recorder and Digital Flight Data Recorder Regulations," 70 FR 9752) and discusses these accidents and incidents in more detail, starting on page 9753.

##### B. NTSB Recommendations

Based on its findings following these investigations, the NTSB issued five safety recommendations for improving the flight recorder systems on all aircraft required to carry a CVR and a DFDR.

##### Recommendation No. A-96-89.

Within two years, require all aircraft required to have a CVR to be retrofitted with a CVR that receives, on dedicated channels, (1) uninterrupted input from the boom or mask microphone and headphones of each crewmember; and (2) uninterrupted input from an area microphone. During these recordings, a sidetone must be produced only when the transmitter or interphone is selected. Finally, all audio signals received by hand-held microphones must be recorded on the respective flight crewmember's channel when keyed to the "ON" position.

##### Recommendation No. A-96-171.

Require that all newly manufactured CVRs intended for use on airplanes have a minimum recording duration of two hours.

##### Recommendation No. A-99-16.

By January 1, 2005, retrofit all airplanes that are required to carry a CVR and an FDR with a CVR that (1) meets the standards of the Technical Standard Order on Cockpit Voice Recorder Systems, TSO-C123a, or later revision; (2) is capable of recording the last two hours of audio; and (3) is fitted with a 10-minute independent power source that is located with the CVR and that automatically engages and provides 10 minutes of operation whenever power to the recorder ceases, either by normal shutdown or by a loss of power to the bus.

##### Recommendation No. A-99-17.

Require all aircraft manufactured after January 1, 2003, that are required to carry a CVR and a DFDR, to be equipped with two combination (CVR/DFDR) recording systems. One system should be located as close to the cockpit as practicable and the other as far aft as practicable. Both recording systems should be capable of recording all mandatory data parameters covering the previous 25 hours of operation and all cockpit audio and controller-pilot datalink communications for the previous two hours of operation. The system located near the cockpit should be provided with an independent power source that engages automatically and provides 10 minutes of operation whenever normal aircraft power ceases. The aft system should be powered by the bus that provides the maximum reliability for operation without jeopardizing service to essential or emergency loads. The system near the cockpit should be powered by the bus that provides the second highest reliability for operation without jeopardizing service to essential or emergency loads.

##### Recommendation No. A-99-18.

Amend § 25.1457 (for CVRs) and

§ 25.1459 (for DFDRs) to require that CVRs, DFDRs, and redundant combination CVR/DFDR units be powered from separate generator buses with the highest reliability.

### C. Summary of the NPRM

In February 2005, we proposed changes to the regulations that address the NTSB's recommendations (70 FR 9752; February 28, 2005)(the NPRM). We agreed with recommendation Nos. A-96-89, A-96-171, A-99-18, and parts of Nos. A-99-16 and A-99-17.

In the NPRM, we proposed that all CVRs be able to retain the last two hours of cockpit conversation, and that a better technical standard for equipment be mandatory. We proposed that aircraft carry an independent power source to power CVRs for 10 minutes after main power sources fail. We also proposed language to standardize across operating parts when a CVR is operated.

We proposed wiring requirements that would ensure that each CVR and DFDR receives its electrical power from the bus that provides the maximum reliability for operation of each recorder without jeopardizing service to essential or emergency loads. Each recorder also must remain powered for as long as possible without jeopardizing emergency operation of the aircraft. These requirements would apply to newly manufactured aircraft.

We proposed that CVRs and DFDRs be installed in separate containers in all airplanes; rotorcraft would be allowed to have a single combined unit for both recorders. For aircraft that have both a CVR and a DFDR, we proposed that the interphone communications requirements described in the certification rules apply to all part 23 and part 25 airplanes.

We proposed increased data recording rates for certain flight control parameters that would apply to both airplanes and rotorcraft.

We proposed that datalink communications be recorded when datalink systems are installed on airplanes after a certain date, and we sought comment on the nature and scope of what should be required to be recorded, acknowledging that the state of the technology is still developing.

We did not propose to adopt the NTSB recommendation that the 10-minute CVR power supply be installed as a retrofit on current aircraft, that aircraft carry a deployable recorder system, or that each airplane carry two complete recording systems. In evaluating these recommendations, we determined that the anticipated costs were too great to justify any potential benefit, or that there was insufficient

data to compare probable costs and benefits. We did request comment on each of these items.

A more detailed discussion of each proposed change can be found in the NPRM document on pages 9755-9762.

### Discussion of Comments

#### A. General Summary

The FAA received 55 submissions from 53 commenters (two commenters each submitted two comments) in response to the NPRM.

Six commenters supported the proposal in its entirety. Thirty-two commenters generally supported the intent, but offered detailed alternatives or changes to various sections. The supporting commenters included airframe manufacturers, aircraft operators, industry associations, an accident investigator, and several individuals.

Three commenters opposed the proposal in its entirety and requested that we either abandon or postpone the proposed requirements. One commenter did not specifically state opposition, but it was inferred from the comment. Eight commenters objected to the proposed changes specifically for part 27 and part 29 rotorcraft, for part 91 and part 135 aircraft, or for aircraft with fewer than 60 seats. Some of these commenters also questioned the FAA's analysis of the effect of the proposed rule on small businesses. The opposing commenters included aircraft operators, industry associations, and individuals.

In the three remaining comments, one individual commenter offered a specific language change to the proposed rule without stating support or opposition to the rest of it. The other two comments were joint submissions from four members of the U.S. House of Representatives that expressed strong support for the use of deployable recorder systems.

#### B. Proposed Retrofits for Part 91 and Part 135 Aircraft

Two parts of the proposed rule would affect aircraft currently operating under parts 91 and 135 by requiring equipment retrofits. These include the requirements that CVRs use solid state memory (replacing magnetic tape) and have two hours of recording capability, up from as little as 15 minutes in part 91.

The National Air Transportation Association (NATA) expressed disappointment with what it considers the agency's failure to include a meaningful review of the impact of these two proposed requirements on part 91 and part 135 operators. The

NATA provided examples of aircraft models it does not believe were considered, as well as the types of information that the association asserts should have been collected by the FAA for analysis. The NATA suggested itself as a source of the data, but did not include with its comment any of the data it suggested the FAA collect.

The National Business Aviation Association (NBAA) submitted a similar comment, indicating that a broad segment of on-demand operators would have to comply with the proposed regulations, but that there was no indication that we properly evaluated their effect on those operators. As an example, the NBAA noted that the cost of development of a supplemental type certificate that would be needed for more than 15,000 aircraft was not determined or accounted for in the regulatory evaluation.

Similarly, the Regional Airline Association (RAA) said that the regulatory evaluation does not adequately describe the benefits of the proposed equipment retrofit, and does not feel that there is enough information in the regulatory evaluation for them to comment on adequately.

These associations urged the FAA to retract those parts of the rule that affect these operators, or to take no further action until more comprehensive data can be gathered and analyzed. Each commenter believes that the cost estimates would be significantly higher than those presented in the NPRM.

We reviewed our analysis of the impact of the two CVR changes proposed as retrofits for part 91 and 135 airplanes (2-hour recorders and independent power supply), and we have concluded that our regulatory evaluation did not include several issues raised by the commenters. Since we are not able to quantify the potential burden of the two CVR retrofit requirements on these operators, we have removed the two CVR requirements from the final rule for aircraft operating under parts 91 and 135. For other reasons discussed below, we are also not adopting the proposed 'checklist to checklist' language for part 91 or part 135. New applicability sections will retain the same checklist language as exists in the affected part.

However, we are adopting the datalink recording requirement for these two operating parts. If an operator of an aircraft under part 91 or 135 voluntarily installs datalink equipment after two years from the effective date of the rule, the requirement for datalink recordation will apply. This is consistent with the requirement facing operators under parts 121 and 125, and we have no

reason to discriminate between these operating rules. We are also adopting the requirement for separate containers for CVRs and DFDRs (except for rotorcraft) as it imposes no cost since it is a codification of current FAA policy and no combined recorder has ever been approved for installation on an airplane.

The NPRM also contained several other requirements that will affect only newly manufactured airplanes that may operate under parts 91 and 135. The commenters provided no reason why those upgrades that must be incorporated at the time of aircraft manufacture should not be applicable to all categories of aircraft regardless of the eventual operator. In general, the proposed CVR and DFDR upgrades on wiring, data rates, and interphone communications will be adopted as proposed for all newly manufactured aircraft. Similarly, the CVR requirements for 2-hour solid state recorders and the addition of a backup power system will remain for all newly manufactured aircraft. Again, we are unable to draw a distinction between the eventual operating regulations for aircraft of any size that have yet to be manufactured.

#### C. CVR Recording Duration

The FAA proposed that all CVRs be able to retain the last two hours of cockpit audio. Both the NTSB and the Transportation Safety Board of Canada noted that the short duration of available cockpit audio hindered the investigation of several accidents.

The Air Line Pilots Association (ALPA) did not support the proposal to increase CVR recording time because the FAA did not propose any increase in the privacy protections regarding the access and use of information recorded on a CVR. The ALPA stated that existing protections are inadequate despite years of its attempts to change the standard.

We recognize that ALPA and others have concerns about the use of CVR data, and we continue to work to address these concerns. We are unable to concur with the conclusion that those concerns outweigh the investigative need for more information, especially when it is so readily available and affordable. The history of accident investigation contains several examples of CVR recordings that begin well into a conversation of the problem under investigation. The adverse effect on safety of these abbreviated recordings cannot be ignored.

Boeing Commercial Airplanes (Boeing) agreed that the additional data from a longer duration recorder would have been a significant benefit in accident investigation. Boeing notes that

the proposed requirement for part 129 airplanes, however, does not specify a recording duration, which it noted may have been an omission.

The language we proposed for § 129.22 (now § 129.24) would require the CVR on a U.S. registered airplane to record the information that would be required to be recorded if the aircraft were operated under part 121, 125, or 135. This requirement captures the proposed requirement in those parts for two hours of CVR recording time. No change to the final rule is necessary for the two-hour duration to apply to part 129 airplanes.

In addition to its comment on the economic value of the retrofit, the RAA questioned the value of a two hour recorder on flights that are on average much shorter. Since many of the RAA's constituents operate flights of less than 60 minutes, the RAA stated that the current 30 minute recording time is sufficient to capture relevant voice data.

Although we agreed with the commenters concerning the evaluation of retrofit costs, the FAA cannot agree that a different standard should apply to certain aircraft when they are in regional operation. The benefit of this additional information is the same regardless of individual flight duration. Further, aircraft transfer between routes and operating parts, and none of the aircraft cited by the RAA are limited by design to flights of 30 minutes or less.

Smiths Aerospace, LLC (Smiths) commented that the standard proposed in the final rule for CVRs, TSO-C123a, mirrors the standard set forth in EUROCAE document ED-56, which allows for the combined (merged) recording of three non-area microphone signals into a single recording after the first 30 minutes. Smiths suggested that allowing combined audio for 90 of the proposed 120 minutes will reduce the quality and effectiveness of the recording. Smiths also proposed language that would specifically prohibit the use of magnetic tape recorders, since it was the agency's stated intent in the NPRM.

While an interesting technical consideration, the FAA did not propose a change to the TSO standard (which is based on ED-56) in the NPRM, and the process for changing TSOs is separate and complex. We also believe that a requirement for two hours of recording time is enough to eliminate the use of magnetic tape recorders for those aircraft subject to the requirement. Further, Smiths did not indicate where this language would be inserted, and a change in the retrofit applicability for parts 91 and 135 would simply add to

the confusion about current requirements.

No change to the 2-hour recording duration has been made in the final rule based on these comments.

#### D. CVR Independent Power Supply

Seven commenters (ALPA, Boeing, Smiths, the NTSB, the Aerospace Industries Association (AIA), Radiant Power Corporation (Radiant) and Airbus) expressed concern that the proposed requirement for a Recorder Independent Power Supply (RIPS) for CVRs did not address installation issues. These commenters want to minimize the possibility of an inadvertent disconnect from the CVR that could result from damage to the RIPS or to exposed, lengthy wiring. These commenters suggested several installation solutions, including:

- Installing a combination kit of the CVR plus the RIPS (AIA), or integrating the RIPS in the CVR (Airbus, Radiant, Smiths); and
- Co-locating the CVR and the RIPS (ALPA) or locating the RIPS as close as practical to the CVR (Airbus, Boeing, NTSB).

The FAA agrees with the concern raised by these commenters. We have considered the various installation solutions suggested by the commenters, and have determined that requiring the RIPS to be installed as close as practicable to the CVR is the best solution. This configuration will minimize the distance between the CVR and the RIPS and the amount of wiring necessary, decreasing the potential for a power failure affecting the CVR when main power is lost and the RIPS unit engages. Therefore, the final rule contains a requirement that the RIPS be installed as close as practicable to the CVR.

As to the integration of the RIPS into the CVR unit, we do not have enough data to support either mandating or prohibiting a combined RIPS/CVR unit. The decision to combine the units is best left to the system designer for individual aircraft. Our TSO-C155 and other industry standards allow for certification of RIPS as either a combined or stand-alone unit. Combined units would meet the "as close as practicable" standard of the regulation.

Boeing noted the term "independent" could be interpreted to mean the RIPS must be a separate piece of equipment and cannot be incorporated into the CVR. Boeing suggested adding a new subparagraph to § 25.1457 that would allow, but does not require, incorporation of the RIPS as part of the CVR.

As stated, the purpose of the RIPS equipment is to ensure the CVR continues to function for 10 minutes following the loss of its main power source by having its own independent power source. The term "independent" does not describe the location of the RIPS as it relates to the CVR. In TSO-C155, we state that the RIPS may be a part of the CVR or separate from it.

Five commenters (AIA, ALPA, Boeing, L3 Communications (L3) and the NTSB) suggested the final rule should contain a 4-year retrofit RIPS requirement similar to that proposed for the 30-minute-to-2-hour CVR conversion. The NTSB stated the benefits of such a requirement vastly outweigh the additional costs. Boeing agreed, stating that a RIPS retrofit would have significant value for in-service aircraft. The ALPA and AIA support a RIPS retrofit requirement for all aircraft operating under part 121, while L3 noted that it had anticipated the need for such equipment, and that their product development is complete and represents an available, cost-effective solution.

While the FAA recognizes the benefits of expanding the RIPS requirement beyond newly manufactured aircraft, we remain unable to mandate retrofit as a cost-beneficial change. When we considered the option for the NPRM, we found that the cost of a RIPS retrofit was considerable and the burden on current operators would be substantial. Even if the equipment is already available, a RIPS retrofit could easily require major alterations and extensive aircraft rework. While expressing their support, the commenters did not provide any data that changes our conclusion.

#### *E. RIPS on Rotorcraft*

Three commenters, Bell Helicopter Textron Inc. (Bell), Eurocopter Deutschland GmbH (Eurocopter) and the Helicopter Association International (HAI), recommended the RIPS requirement not apply to part 27 and 29 rotorcraft. Bell stated the NPRM failed to make a case for small to medium rotorcraft (fewer than 20 passengers) and noted that these aircraft are much less likely to suffer the types of events and failures that occur in fixed wing aircraft.

Eurocopter stated that a RIPS requirement is not relevant for rotorcraft for two reasons, first citing three EUROCAE documents that forbid shutdown of a CVR by the crew. Second, when the CVR is already powered by the safest electrical power bus, a RIPS would not decrease the probability of a failure, but would add

substantial installation and annual costs.

The lack of historical data supporting a need for RIPS for CVRs in rotorcraft was also cited by HAI. It noted that the proposed rule is directed at transport category airplanes, where RIPS can be justified, but does not make the case for small to medium rotorcraft certificated under part 27 or part 29. The HAI stated that the increase in system weight, cost and complexity would provide little or no enhancement to safety.

As a consequence of the proposed RIPS installation, Columbia Helicopters, Inc. (Columbia) asked the FAA to consider possible unwanted consequences on helicopters operating under part 133 external load operation (non-passenger carrying) rules. Columbia noted that the added weight and operating cost of a RIPS might discourage these operators from voluntarily installing CVRs. Columbia suggested language limiting the RIPS requirement to passenger carrying operations.

The final rule includes part 27 and 29 rotorcraft with fewer than 20 passengers in the RIPS requirement, as proposed. The purpose of the RIPS requirement is to record additional pilot communications, environmental noises and other information (such as from a cockpit-mounted area microphone) if all power is lost. A loss of power is possible on aircraft of all types. We are unable to distinguish rotorcraft from other aircraft when the possibility of power loss is considered, and the benefits are considered the same. We do not require compliance with EUROCAE standards; our regulations must reflect our requirements.

The FAA does not agree the RIPS requirement might discourage part 133 operators from voluntarily installing CVRs. The RIPS requirement is for newly manufactured aircraft whose operating rules require a CVR. There is no mandated RIPS retrofit if a CVR is installed on an aircraft that does not require one for operation.

The CVR and RIPS TSOs provide the minimum performance standards for this equipment. However, neither one requires that RIPS be installed; that is done by regulation. If a part 133 operator voluntarily chooses to install a CVR, it is not currently required to also install the RIPS, nor is the operator prevented from installing a RIPS. This decision is totally up to the part 133 operator. Therefore, we do not agree with the commenter that adding the RIPS requirement to parts 27 and 29 would affect the decision to voluntarily install a CVR.

#### *F. RIPS Duration Requirement*

Three commenters (Boeing and two individuals) requested that the FAA change the duration of the RIPS power requirement. Boeing requested that the requirement be changed from 10 minutes to  $10\pm 1$  minutes, to prevent erasure or overwriting of valuable data, and to be consistent with TSO C-155 for RIPS, and other industry standards from EUROCAE's ED-112 (Minimum Operational Performance Specification for Crash Protected Airborne Recorder Systems) and ARINC 777 (Recorder Independent Power Supply). If adopted, Boeing suggested that the final rule state that the " $10\pm 1$  minutes" means the backup power source must operate at least 9 minutes, but not longer than 11 minutes.

One individual commenter suggested increasing the time to 30 minutes because 10 minutes is too short a time period to record everything during a power failure. The commenter provided no details or examples of the need for 30 minutes. A second individual stated that the 10-minute standard is insufficient, but did not specify what the duration should be.

The FAA agrees with Boeing that the final rule should be consistent with the TSO and industry standards. The final rule requires the RIPS to provide  $10\pm 1$  minutes of electrical power to operate both the cockpit voice recorder and cockpit area microphone. We are not including the additional suggested language since the documents cited by Boeing establish that  $10\pm 1$  minutes means the backup power source shall run at least 9 minutes, but not longer than 11 minutes, and repetition of the language is not necessary.

The other commenters did not explain why the international standard of 10 minutes is not appropriate nor provide any other support for their positions.

#### *G. Other RIPS Issues*

Airbus stated that two years is not enough time to integrate a RIPS into current aircraft designs. Airbus stated that TSO-C155 requires that a RIPS system provide both a failure monitoring function and indications to the flightcrew. Airbus requested that the compliance time be changed to four years, to account for the modifications, qualification and certification of RIPS equipment.

We agree that RIPS installation on newly manufactured aircraft will require integration into the existing warning and indication systems. However, Airbus did not provide us with any specific data to support its position that this requirement could not



be accomplished two years after this final rule. Further, no other airframe manufacturer expressed this concern. The 2-year compliance date for the installation of RIPS into newly manufactured airplanes is adopted as proposed.

Airbus and Boeing each noted that the CVR may also provide power for the cockpit area microphone and associated electronics, such as a preamplifier. Since the proposed RIPS requirement only applies to the CVR, they expressed concern that the additional equipment may not be powered and would render the CVR useless despite its own power. Each commenter suggested that language be added to § 25.1457 that addresses a continuation of power to all parts of the CVR system required for recording area microphone audio input.

The FAA agrees with Boeing and Airbus. In addition to the reference for 10±1 minutes of electrical power discussed above, the regulation has been changed to include power to operate both the cockpit voice recorder and the cockpit-mounted area microphone.

AirTran Airways (AirTran) requested that any RIPS requirement ensure CVR interchangeability so that operators will not have to maintain separate CVR inventories for aircraft that have the RIPS and those that do not.

While we recognize that CVR interchangeability is desirable, the type of CVR (and RIPS) on a given aircraft is driven by installation and component design, not by regulation. The CVR and RIPS each have a TSO (as well as ARINC standards) that will ensure that as long as an operator uses these components, interchangeability should not be an issue. AirTran and other operators need to provide input to the manufacturers of airframes and CVRs during the development of RIPS equipment. The final rule does not address CVR interchangeability.

#### H. CVR and DFDR Wiring Requirements

##### 1. Single Electrical Failure

We proposed that CVRs and DFDRs be installed so that no single electrical failure could disable the recorders.

Bell requested the FAA exclude part 27 and part 29 rotorcraft with fewer than 20 passengers from the requirement that no single electrical failure will disable both the CVR and DFDR. Bell referred to historical data presented by the United Kingdom Aircraft Accident Investigation Board (AAIB) and Bell's own experience with combined recorders, to conclude that this requirement is unnecessary and would result in significant development and certification costs.

Bell also stated that the "no single electrical failure could disable both the CVR and DFDR" language was ambiguous. Bell noted that it has been interpreted in different ways, and that if it is applied to either the failure of any single electrical component within a combined CVR/DFDR, or to a single electrical failure external to the recorder, it would make most available recorders obsolete. Bell suggested that if the applicability to all rotorcraft is maintained, the language be changed to indicate that the single electrical failure at issue is external to the recorder.

Columbia Helicopters made a similar argument, noting that for an allowed combined recorder, the requirement is confusing and contradictory, and requested that the language be clarified.

The FAA acknowledges that the separation of electrical power has not been an issue on rotorcraft to date. However, the potential problem being addressed by the "no single electrical failure" requirement remains in any tiered electrical power system and may affect all aircraft, fixed wing or rotorcraft. We also agree that the language of the proposed requirement could be misinterpreted in a combined recorder installation. Since the intent of the regulation is to prevent electrical failures of aircraft wiring or electrical power *external to the recorder* from disabling both recorder functions, we have changed §§ 23.1457(d)(4), 25.1459(a)(7), 27.1457(d)(4) and 29.1459(a)(6) to reflect this interpretation. However, we remain unable to distinguish rotorcraft by the number of passengers, and the rule is adopted for all helicopters with the modifications described here.

The NTSB and the AIA recommended the no single electrical failure requirement be expanded beyond newly manufactured aircraft to include the existing fleet. The NTSB noted that, with this change, the final rule would comply with the NTSB recommendation on this subject. The NTSB also stated that since most existing aircraft already meet this requirement, any retrofit requirement would have a minimal economic impact. The AIA suggested the FAA consider including the current fleet after conducting a cost-benefit analysis.

The FAA considered this option while developing the NPRM and found that a wiring retrofit represents a significant economic burden, and could require extensive aircraft rework in order to rewire not only the recorder systems, but other aircraft systems that are affected by changes made for the recorders. The commenters did not provide any new data for either the

costs or benefits that would change our conclusion. The final rule remains applicable only to aircraft manufactured two years after this final rule.

##### 2. Single Electrical Failure vs. Most Reliable Bus

In addition to the requirement that no single electrical failure disable both recorders discussed above, we proposed that all newly manufactured aircraft have a CVR and DFDR installed that receives its electrical power from the bus that provides the maximum reliability of operation.

AirTran and Northwest Airlines (Northwest) suggested the proposed language for these two requirements is contradictory. AirTran stated that, in order to have the DFDR and CVR on different sources to preclude a single failure from disabling both units, one of the units is likely to be on a less reliable source than the other. Northwest asked if requiring both the CVR and FDR to be powered by the most reliable bus would create an opportunity for a single point electrical failure that disabled both recorders, violating the single failure proposal.

We disagree that the two requirements are contradictory. Proper system design will allow the CVR and the FDR to be powered by different, but equally reliable, buses. This will ensure that a single point failure does not affect both. We recognize that some sensors in the DFDR system may be powered by buses that are lower in the electrical hierarchy than the recorders. While some information may be lost if these lower buses fail, the failure itself could provide insight as to the sequence of events occurring during an accident or incident and does not create an issue with the failure of power to the recorder itself.

##### 3. Most Reliable Bus—Other Comments

The ATA expressed concern that the proposed language regarding power to the recorders from the most reliable bus (§§ 25.1457(d)(1) and 25.1459(a)(3)) is vague, and proposed different language for these sections. Northwest expressed the concern that the last sentence in each paragraph is redundant and suggested the proposed language is redundant with the existing paragraph.

We have reviewed the proposed language and have concluded it properly conveys the intent of the requirements. The language suggested by the ATA introduces terms that would be open to numerous interpretations, and suggests a requirement for recorder power much more restrictive than our intent.

Regarding Northwest's comment that the second sentence in each paragraph is redundant, we note that, while similar, they address two separate issues. The first sentence addresses the source of the recorder's power (i.e., the bus). The second sentence addresses the situation experienced during Swissair flight 111, in which the flightcrew disabled the electric bus that powered both the CVR and the DFDR while searching for a source of smoke in the cockpit.

Smiths suggested that all CVRs on newly manufactured aircraft provide dual isolated power bus inputs to provide the recorders with the most reliable and available power and reduce the possibility of a single electrical failure disabling a recorder.

We reviewed Smiths' proposal, but the commenter did not provide any information comparing its suggestion to the proposed rule, any suggestion of the extent to which it might be used, or the cost of such a requirement. We concluded that our proposal to require the DFDR and the CVR to be powered by separate buses is sufficient and is performance-based.

#### *I. Separate Containers*

Boeing noted the proposal stated that each separate container must meet the "crashworthiness requirements already in the regulations." Boeing assumed this statement refers to §§ 25.1457(e) and 25.1459(b) and requested clarification.

The phrase "crashworthiness requirements already in the regulations" refers to the existing requirements in parts 91, 121, 125 and 135 for installing recorders (both CVR and DFDR) that meet the crashworthiness requirements of TSO-C123a or TSO-C124a.

Columbia sought clarification on the applicability of the proposed requirements of §§ 27.1459 and 29.1459. Columbia interpreted the proposal to require all helicopters currently equipped with combination recorders to meet the entirety of the certification sections cited four years after the adoption of the final rule, which would require a retrofit of several items, including the 10 minute RIPS. Columbia suggested this interpretation did not reflect the intent of the FAA and recommended rewording the rule to remove any confusion.

We believe the commenter is misreading the proposal. Columbia referred to "proposed 135.152(1)," but that is not a valid reference. Proposed § 135.152(l) (lower case "L") addresses only the recorder containers, and means that part 23 and 25 airplanes must maintain the recorders in two separate boxes, while part 27 and 29 rotorcraft

may have one combined unit. A combined unit must meet all of the requirements for both DFDRs and CVRs, which are determined by aircraft age.

The other DFDR and CVR requirements are mandated in § 135.152(m)(1), which applies to aircraft manufactured two years after the rule, and repeats the new container reference; there is no retrofit requirement for the other certification sections referring to wiring if the installation is not altered. On this topic, the commenter may also have been confused by the discussion in the preamble of the proposed rule, which indicates that if a rotorcraft operator changes a current two-unit installation to a single combined unit, the new power and wiring requirements must be met. Since a single combined unit is optional, the rule does not impose the new wiring requirements unless the operator chooses to make the change, and the operator must consider the cost of the rewiring as part of its decision to change to a single combined unit.

#### *J. Dual Combination Recorders*

When the NTSB recommended the installation of two full recording systems, it was included as part of a much larger system recommendation. The NTSB suggested that each aircraft have a system that included two combination recorders, one fore and one aft, with a RIPS attached to the forward combination recorder. The NTSB recommended this as a retrofit.

We did not propose the installation of two full sets of recording equipment, referred to as "dual combination recorders," as recommended by the NTSB because of the substantial costs involved. We did propose that a RIPS be installed for the CVRs on newly manufactured airplanes.

Several commenters, including Airbus, ALPA, Boeing, Embraer, Honeywell, Smiths, and the NTSB, each suggested some variation on our allowing the use of combination recorders. In a related issue, three individual commenters recommended placing the CVR and DFDR in separate parts of the aircraft to increase the chances of survival. The commenters raised issues of cost, survivability, separate location, and redundancy in arguing for combination recorders.

Generally, if two combination recorders are installed, one would be designated as the DFDR and one as the CVR in accordance with the separate container requirement. As a follow-on to this configuration, several commenters requested that one combination recorder be located at the front of the airplane to act as the CVR.

These suggestions bring up several issues when one or more combination recorders are installed, including non-functioning equipment for Minimum Equipment List (MEL) relief, RIPS units, and the regulations on recorder location and separate containers.

Accordingly, the FAA is revising the regulations to allow for the following in the final rule:

(1) When a single combination recorder is used in place of *either* a DFDR or a CVR, it will only be allowed to function as the chosen unit. The combination recorder and the single function recorder must maintain the requirements for aft location and separate boxes. No relief from any regulation is granted by this configuration. If one combination box is used, it cannot be used as a CVR located near the cockpit.

(2) When two combination recorders are used, one may be located near the cockpit. This recorder will function as the CVR and, in newly manufactured airplanes, may be co-located with the RIPS. In the event of an equipment failure subject to relief under an operator's MEL, no further relief is given than for separate units.

The FAA does not consider the voluntary installation of two combination recorders to be the redundant/dual system envisioned by the NTSB recommendation. The use of two combination recorders is not mandated for any installation. Single-purpose recorders are the regulatory minimum, and when used, all of the requirements including separate containers, wiring, and aft location remain the same.

#### *K. Increased DFDR Recording Rates*

##### *1. Need for 16 Hertz (Hz) Requirement*

The FAA proposed an increase in the recording rate to 16 Hz for certain flight control parameters on aircraft manufactured two years after the final rule. While acknowledging that parameters recorded at 1 or 2 Hz are inadequate, five commenters, Airbus, AirTran, ATA, Boeing, and Embraer, suggested that a 16 Hz recording rate is excessive and could be very costly.

Airbus argued the proposed rate would not only affect the DFDR and associated interface units, but would also require redesign of the aircraft's systems providing the parameter data. Airbus stated the impact of such a redesign is not covered in the compliance cost estimates in the NPRM, nor is the proposed 2-year time frame realistic for a redesign of these systems. Therefore, Airbus recommended replacing the existing standard with a

sampling rate appropriate to a given aircraft type and supplied rates for each of its aircraft models. Airbus's comment does not include information on how the FAA would decide which rate is appropriate for any given aircraft, or how such a standard could be established or its estimated cost for each model aircraft.

AirTran noted the proposed sampling rate for each flight control unit (nine total) would exceed the capacity of the DFDR system installed in its fleet. AirTran recommended a sampling rate equal to the recording capacity of the DFDR systems. For AirTran's installed DFDR systems, this capacity is roughly 8 Hz.

The ATA noted that some in-production aircraft do not provide data at the 16 Hz rate. These aircraft would require an extensive and costly redesign to keep component interchangeability. Therefore, ATA proposed changing the 16 Hz recording rate to a recording rate requirement that is "at a maximum rate available from that aircraft system up to 16 Hz."

Boeing stated that 16 Hz is not necessary if the goal is to make the recorded control motions unambiguous. Instead, a change to 16 Hz would result in unnecessarily large data analysis files and require significant added costs to change the signal source. Boeing recommended recording at 4 Hz.

Embraer suggested the 16 Hz recording rate will require a substantial amount of data memory capacity on DFDRs that may not be available. This would result in the removal of some recorded parameters or installing new DFDRs having more data memory. Embraer proposed the FAA require a recording rate of 8 Hz, or the maximum sensor output frequency, whichever is less.

The FAA appreciates the detailed comments received on this subject. We have reconsidered the proposal and agree that a 16 Hz recording rate, while desirable, is not practicable for most installations. We remain convinced that existing recording rates for certain primary flight controls are lagging behind available technology and that a change is necessary. Therefore, in the final rule, the new recording rate is 8 Hz for specified parameters on aircraft manufactured two years after this final rule. This rate will sufficiently increase the reliability of the data received and will not require any modifications to the systems that provide the parameter data to the DFDR system. For some newly manufactured airplanes, additional recorder capacity may be required, but the source equipment will remain as is installed today.

Boeing recommended that the final rule prohibit interleaving, since that practice impacts the true sampling rate. Interleaving is the practice of sampling inputs and combining those samples to comply with sampling rate requirements. For example, if the left elevator position is recorded two times per second, and the right elevator two times per second, the total of these two measurements are combined to derive a sampling rate of four times per second. This practice was originally necessary to meet the sampling rate requirements on DFDR systems with smaller memory capacity. This practice is undesirable because, in reality, alternating the inputs only provides data at the lower rate for each interleaved position. In some cases, such as for inboard and outboard aileron surface positions, the inboard surface is locked out under certain flight conditions. When the parameters from these surfaces are interleaved, the result is no data for half of the samples.

We agree with Boeing and have changed the language of the final rule to state that alternately sampling inputs to meet the applicable sampling interval is not permitted. The prohibition on interleaving applies to those flight control parameters subject to footnote 20 to part 121 Appendix M (and its equivalent in other operating parts).

#### 2. 16 Hz Requirement—Applicability

Four commenters (Bombardier, Dassault, Embraer and Honeywell) recommended that any requirement to increase sampling rates apply only to new aircraft type certification programs, rather than newly manufactured aircraft.

Bombardier noted that a sampling interval of 0.0625 seconds (16 Hz) would require a major redesign of existing equipment from the data source through data concentrator units to the FDR. None of the current equipment on Bombardier's products was designed to process data at 16 Hz. Bombardier contended the cost estimates in the NPRM severely underestimated the equipment redesign costs and the subsequent test and certification costs. These extensive changes would require more than two years to develop and certify.

Dassault stated the proposed 16 Hz requirement could require a complete electrical and mechanical modification, and result in a recertification of the entire DFDR installation. In addition, Dassault noted that a 16 Hz sampling rate is too high for flight controls and adds no value.

Embraer stated that, on some of its airplanes, neither the force sensors for the flight controls nor the data

acquisition systems can support the proposed sample rate of 16 Hz, and would require new equipment. Embraer recommended a lower sample rate (8 Hz), and proposed that a 16 Hz sample rate apply to new aircraft type certification programs only.

Honeywell noted that, for aircraft in production, any increase in the sampling rate of a control surface position or a control input would require a change to the systems that provide source data to the DFDR system. Honeywell also stated that a sampling rate of 16 times per second, while reasonable for some parameters, might be burdensome or inefficient for others. Honeywell suggested that a performance-based standard for recording would be superior to the one proposed, with the actual rate to be established as part of the certification process.

We are adopting an 8 Hz requirement in the final rule rather than the 16 Hz proposed. Based on the comments, we have determined that 8 Hz is the maximum rate that can be achieved without requiring modification of the systems and equipment that provide individual parameter data to the DFDR system. The need for some increase in the sampling rate has been addressed in the NTSB recommendations, as well as a study done by the FAA and NASA. The study clearly shows that critical control surface position data can be lost at the lower sampling rates, and that it is true for all aircraft. The final rule requirement for an 8 Hz recording rate will apply to all newly manufactured aircraft.

#### 3. 16 Hz Requirement—Other Comments

The NTSB expressed disappointment that the proposed increase in the sampling rate does not address existing aircraft, as called for in NTSB Recommendation A-03-49.

As discussed in the NPRM, the FAA was unable to justify the substantial economic burden that would be imposed on current operators to apply this as a retrofit requirement. As detailed by the commenters, it is anticipated that it could be a significant burden to incorporate into newly manufactured aircraft, much less as a retrofit to much older aircraft whose recording systems and source equipment are not equipped to record at the higher proposed rate. While we recognize the benefits of increasing the sampling rates of flight control parameters on existing aircraft, we are unable to quantify that benefit or balance it against the costs. The NTSB

has not provided us with data that would change this conclusion.

An individual commented that the proposed language "the sampling interval per second is 16" for footnote 5 of Appendix E to part 91 is ambiguous. The commenter recommended changing this to "the minimum sampling rate is 16 samples per second" or "the maximum sampling interval is .0625 second."

The proposed language is consistent with industry practice and the footnotes already in Appendix E to part 91 and the other applicable flight recorder appendices that have been in use for years. No change was made based on this comment.

#### L. 25-Hour Recorder

Eurocopter stated the proposed increased duration for DFDR recording in § 91.609(c)(3) (25 hours) should not be applied to rotorcraft, based on its experience that rotorcraft missions do not exceed 10 hours.

Based on its experience in investigating aircraft accidents and incidents, the NTSB determined that an FDR duration of 25 hours would address many of the issues it has faced. The FAA has chosen to make the 25-hour DFDR recording retention standard for all new aircraft. As the commenter noted, increased recording time is a matter of memory, and is not a technical challenge. While we acknowledge Eurocopter's suggestion that regulations for fixed-wing aircraft and rotorcraft might have different goals, we believe that the issue of recording time should be maintained as a standard regardless of aircraft type. We have no data to suggest that recording time needs be specific to aircraft type or operation, and believe that standardization makes the regulations less complicated and less expensive by using the same available equipment.

#### M. Datalink Communication (DLC)

##### 1. International Compatibility

Three commenters, Airbus, Boeing and an individual, noted that the Joint Aviation Authorities (JAA) is also preparing a regulation on DLC recording and requested that the FAA ensure the U.S. regulations are harmonized with the JAA's. They expressed concern that as proposed, the regulations are incompatible.

The FAA believes the proposed DLC recording regulation is compatible with the DLC regulations proposed by the JAA. The proposed rule is designed to be performance-based, with the message set to be recorded and approved at the time of aircraft certification. Since we

do not define the message set, we do not foresee an instance in which a DLC system certificated under the regulations proposed by the JAA would not be in compliance with our requirement as proposed.

In response to the JAA's Notice of Proposed Amendment (NPA), the FAA has sent several comments concerning general and specific provisions of the proposal. We acknowledge that the two proposals are not harmonized, and we believe the scope of the current NPA would result in significant costs on some operators without a resulting safety benefit. We have asked that several technical issues be clarified, including parts of ED-112 and whether the regulation would apply to aircraft with ACARS only. We will continue working with the JAA (and the European Aviation Safety Agency (EASA) when it assumes responsibility for this issue from the JAA) to make the regulations more compatible but will not delay the issuance of this rule since our rule is more performance-based and less dependent on the resolution of individual technical issues.

The International Air Transport Association (IATA) stated that before the United States proposes a DLC recording requirement, the International Civil Aviation Organization (ICAO) should take the lead to substantiate the datalink recording requirements and provide clear guidance on the data that needs to be recorded (including its relevance to accident investigation). The IATA stated that industry cannot address the desired architecture for all aircraft types until these two issues are resolved.

Since no specific message set is required, we consider our regulation to be adaptable to ICAO or the JAA's proposed requirements at the time an aircraft is certificated. We do not believe it is in anyone's interest to wait for another international standard to be settled before recording is required, and we built the described flexibility into our standard.

##### 2. Definitions of DLCs and Approved Message Sets

Thirteen commenters addressed the issue of what DLCs should be recorded and what would constitute an approved message set. These commenters criticized the proposed requirement to record "all datalink communications" as open to interpretation, ambiguous and poorly defined. These commenters sought clarification and requested that clear guidance material be available when the final rule is published. A sampling of the comments on DLC message sets includes suggestions to:

- Record "flight deck datalink communications" rather than "all" to eliminate the recording of navigation, surveillance and maintenance, and cabin and passenger communications.
- Not require the recording of flight deck crew interaction, including cabin terminal messages, maintenance computer messages, engine condition monitoring messages, or atmosphere/wind reports.
- Limit recording to communications between aircraft and air traffic control via the air traffic network.
- Record all DLCs sent and received regardless of their content or format, or whether they are "approved message sets;" this would be the least restrictive to implement and provide the most information to investigators.
- Place the definition of "approved data message set" in part 121 (and parts 91, 125 and 135 as appropriate), similar to the current FDR parameters.
- Make the definition of approved message sets flexible to respond to changes in technology, such as higher bandwidth.

The types of messages and the content of those messages that will be recorded will be determined during certification of the DLC system. The rule language is performance-based, with the intent that system design would be driven by customer needs and regulatory compliance. The "approved message set" will be comprised of the messages provided by the system being installed, and will be determined by certification personnel. Concurrent with the publication of this rule, we are publishing a Notice of Availability of Advisory Circular, AC 20-160. The AC identifies Controller-Pilot Datalink Communications (CPDLC) as one set of messages that are anticipated to be included in the required message set. An example of a CPDLC message set can also be found in ICAO Document 4444 "Air Traffic Management Procedures for Air Navigation Services", Appendix 5. However, we anticipate that as new datalink systems and capabilities are developed, the message sets of that equipment will evolve and will need to be evaluated to determine which parts need to be recorded to comply with the regulations. A rule that requires approval at certification anticipates this evolution without creating regulatory lists that cannot be changed as quickly as the technology develops and thus hinders system evolution and improvements.

##### 3. Compliance Time

The NTSB objected to the proposed requirement to record DLCs two years after datalink equipment is installed.



The NTSB failed to see the reason for the delay when the installed communications equipment should have the capability of outputting the required datalink messages to the voice recorder at the time of installation.

The NTSB's interpretation of the proposed requirement is incorrect. The requirement is to record DLCs on any aircraft on which DLC equipment is voluntarily installed beginning two years from the effective date of the final rule. For the first two years after the effective date of the final rule, DLC equipment can be installed on aircraft regardless of whether the messages can be recorded. However, beginning two years from the date of the final rule, DLC messages must be recorded as of the date of equipment installation or certification, whether the equipment is installed as a retrofit or at new certification.

Northwest requested that, for newly manufactured aircraft, the compliance date be extended to the 2010–2012 timeframe rather than two years after the final rule. Northwest stated that more time is needed to approve the different message sets that will be used by air carriers and to create the required ground infrastructure.

While developing the NPRM, the FAA considered the factors listed by Northwest, but determined that two years from the effective date of the final rule is sufficient for airframe and recorder manufacturers to develop compliant systems for the DLC recording requirement, especially since installation remains optional. No other comments were received indicating this time period is insufficient. We also note that the topic has been under consideration internationally for years.

#### 4. Existing DLC Capability

Japan Air Lines (JAL) requested clarification on the applicability to airplanes equipped with DLC equipment before the 2-year date, in order to properly estimate the anticipated financial impacts and effects on production and maintenance.

Similarly, AirTran requested the final rule specify that aircraft that are DLC-equipment capable, but have never had it fully installed, are not subject to the recording requirements. AirTran also requested that the recording requirement not apply to airplanes on which DLC is installed "post delivery" or it will deter installation of DLC equipment.

Boeing stated the regulation should require datalink recording only if DLCs are used operationally, rather than if DLC equipment is installed, noting that

many aircraft have the equipment, but it is not enabled or used.

The requirement for recording DLC is determined when the DLC system is installed and certified. If the system is installed and certified before April 7, 2010, there is no requirement for those systems to record messages. If the DLC system is installed and certified (at manufacture or by retrofit) after April 7, 2010, the DLC system must be examined to determine whether its message set installed at the time must be recorded. The messages that must be recorded become the approved message set for that installation. If a provisional (inactive) system is installed and certificated before April 7, 2010, and requires no further certification when the system is activated, then there is no recording requirement for that system even if the activation occurs after two years. However, a change in such a system (especially a change to the message set being used) may trigger the requirement to record as though the whole system were a new installation under the regulation.

#### 5. Datalink Recording Requirement Applicability

Several commenters (ATA, AirTran, Airbus, Boeing and RAA) suggested that the applicability of the datalink recording requirement be changed or that the requirement be completely withdrawn. The ATA proposed that on-board recording of datalink communications "only apply to new (datalink system) installations on aircraft in production." Airbus concurred with the requirement for newly manufactured aircraft, but requested that the requirement for recording messages from newly installed systems on existing aircraft be delayed until 2010. The RAA requested that "the proposal to retrofit airplanes for recording datalink messages also be withdrawn." Boeing commented that "[T]he appropriate point to introduce onboard recording is at a new airplane type certification program or, for existing production models, at a major upgrade to the next generation of datalink communications, such as FANS 2 or equivalent." The commenters provided the following reasons in support of withdrawing the requirement or changing the proposed recording applicability:

- High costs of incorporation would delay and/or prevent the installation and use of DLCs, diminishing the safety benefits associated with datalink operations, and the benefits of reduced separation and increased traffic.
- Incorporation during a new type certification program lessens the

economic impact by allowing it to be introduced during the aircraft design process.

- Most DLC applications are related to air traffic control, are still evolving, and are not yet sufficient to replace the aircraft/controller voice communication entirely or to supplement voice communication as planned.

- Current DLC systems cannot support recording functions without significant upgrades or replacement with newer systems. The aircraft modifications required would significantly exceed the expenses for changing the CVR and wiring only.

The FAA recognizes these concerns, but we continue to believe that the two year applicability in the rule provides the best balance of compliance time and technological development. If an operator cannot justify the expense of a recording system for a new DLC installation, then it is because the benefits of having the system will be outweighed. This is why we tied the requirement to the voluntary installation of DLC systems. The recording requirement remains the same as proposed—that new installations (at certification or on retrofit) of datalink accomplished two years after the compliance date must be recorded.

#### 6. Technical Issues

An individual commenter questioned the amount of memory needed to meet the two-hour DLC recording requirement. This commenter noted the amount of data that could theoretically be received in two hours will increase as developments in DLCs are deployed. Therefore, an agreed methodology (for formatting and storing messages in memory) will be needed to support certification.

Smiths concurred with the proposed rule, and noted the capacity of DLCs to be recorded is dependent on the aircraft system design (such as an ARINC 429 databus or AFDX network). Smiths expressed concern that too many messages to be recorded could exceed the capacity of the allocated 2-hour recording partition.

To meet current recorder requirements, recorder manufacturers have developed procedures to calculate the necessary memory requirements depending on system design and installation. Therefore, the FAA has no reason to believe these manufacturers will be unable to determine the amount of memory needed to meet the two-hour DLC recording requirement.

The NTSB noted that adding a properly placed cockpit video camera would allow DLCs displayed to the crew to be recorded on the video image



recorder. Since the use of video technology would not require any modifications to an aircraft's communication or display systems, the NTSB stated that this approach to recording DLCs might greatly reduce the time and expense of retrofitting older aircraft.

Our NPRM did not propose the installation of cockpit video cameras and our regulatory evaluation did not include their use in cost estimates or benefits analysis, nor has the use of cockpit video been proposed for public or industry comment. The issue of cockpit video is unsettled and would dramatically delay the implementation of DLC recording standards that are already being developed internationally. The FAA is not adverse to certification of an image recorder system that meets the operational requirements of this rule, but no image recording system will be mandated to comply with DLC recording requirements.

#### 7. TSO for DLC

Bombardier recommended that a TSO for CVRs with datalink recording capability be prepared and released for comment with any proposed operating rule mandating the use of TSO approved equipment where DLC recording is required.

The FAA has issued TSO-C176 which identifies the minimum performance standards for a Crash Protected Datalink Recorder. The TSO is based on EUROCAE minimum performance standards document ED-112. Our TSO allows the certification of a stand-alone recorder or a recorder that combines this function with other recorder functions (DFDR, CVR).

The ALPA disagreed with the proposal to record two hours of DLCs and recommends they be recorded for the entire duration of flight. The ALPA stated that the importance of DLCs to an investigation makes it imperative that these communications be captured for the entire duration of flight. The commenter believed this would most easily be accomplished by recording these communications on the FDR.

Since the duration of any particular flight is variable, the FAA has established a minimum DLC recording duration of at least two hours to match the requirement for the CVR. Ground stations also record CPDLC messages, so any messages that occur outside of the 2-hour minimum could be retrieved from a ground source.

#### N. Recordation of Cockpit Communication or Audio Signals

The NPRM proposed that the expansion of the recordation of cockpit

audio signals be the same for all part 23 and part 25 aircraft regardless of operating part. No comments were received on this portion of the NPRM, and the proposal is adopted without change.

#### O. Checklist-to-Checklist Requirement

The FAA proposed language to standardize across all operating parts when CVRs must be in operation. This is known as the "checklist to checklist" requirement.

Five commenters, ATA, Boeing, Dassault, Northwest, and one individual, said the proposed language was confusing. The ATA and one individual commenter noted the proposed wording could require changes to existing CVRs from ones that operate once electrical power is applied to the respective power supply bus, to ones that can be switched "on" or "off" by the flight crew when the checklist is used.

Northwest stated that while most of its aircraft appear to meet the intent of this language, the proposed language could require an automatic shutoff of the CVR on completion of the final checklist. Since some CVR systems stop the CVR five minutes after final engine shutdown, this situation would require a costly retrofit. Northwest added that any such requirement should not be effective at the adoption of the final rule, since changes may take longer to implement.

Boeing proposed changing the language to clarify that the goal is a minimum recording time as described. Boeing also suggests a longer compliance time. It inferred the intent of the proposal is to record cockpit voice communications as soon as possible before the flight and as long as possible after the flight.

The FAA reviewed the proposed language and agrees with the commenters that a change in the current language could cause undue confusion. It was never our intent to change the current operation of CVRs. In preparing the NPRM, we found the existing regulations on CVR start/stop criteria lacked consistency between operating parts. We were trying to address this issue by proposing a single standard that specified the minimum time period for CVR operation (checklist-to-checklist). CVR operation was not intended to be limited to this minimum time period, and existing CVR systems would not need to be modified to run only during this minimum time period if their current operation had them starting sooner or ending later than the proposed criteria.

We also discovered that providing consistent language throughout the operating parts could be more complicated and confusing than warranted by the minor inconsistencies that now exist. Questions of compliance time, applicability to aircraft of certain age, and the differences in the construction of the operating parts have caused us to decide not to adopt the proposed language. Since we never intended to change how CVRs operate, the decision to leave the current language in the rules is not expected to have any negative effects. Where new applicability paragraphs are being adopted, they will use the same checklist language as had been used previously in that part.

We received a considerable number of comments regarding specific operation of CVRs under the proposed checklist to checklist requirement. Since we have decided not to include the proposed change in the final rule, we are not including any discussion of those comments.

#### P. Deployable Recorders—Request for Comments

In the NPRM, the FAA sought comments and information about the feasibility of and specifications for a deployable flight recorder system. We received 12 comments in response to this request. Eight commenters (ALPA, DRS Technologies (DRS), Hall and Associates, LLC (Hall), National Air Disaster Alliance/Foundation (NADA/F), Representatives John J. Duncan, Jr. and William J. Pascrell, Jr. in a joint submission, and Representatives Harold Rogers and David Price in a joint submission) supported the use of deployable recorder systems. These commenters cited a number of reasons for supporting deployable flight recorders, including:

- Since fixed and deployable recorders have different survivability characteristics, the use of both types would provide maximum redundancy and improve the odds of recovering complete, undamaged recorders for data analysis.

- Deployable system technology could dramatically reduce the time and cost to locate and recover recorders.

- The expansion of aviation practices such as the production of larger aircraft, increasing numbers of flights, increased polar and over water flights, and the onset of free flight, present new demands on investigators and compound the need for immediate access to better information.

- The time savings associated with recovery would have a dramatic effect on the U.S. economy. Since September

11, 2001, an airline crash without a known cause is more likely to cause the traveling public to lose faith in the air transportation system, costing the U.S. economy billions of dollars.

- Current recorder standards no longer meet safety and security needs, where heightened security threats demand that officials have complete information as quickly as possible to determine the cause of a crash.

Five commenters (Boeing, IATA, Northwest and two individuals) did not support the use of deployable recorder systems for several reasons, including:

- Since existing recording systems provide enough data and are protected from all but the most extreme crash conditions, it is doubtful that a deployable flight recorder would significantly increase data survivability.

- The survivability and recoverability of the current fixed recorders is acceptable and the costs of implementing deployable recorder systems are not balanced by sufficient benefits.

- Deployable recorder systems may present a safety hazard if the event of an inadvertent deployment over populated areas or active runways, or if manual deployment distracts a flightcrew from its primary tasks during an emergency.

- The safety hazards to maintenance personnel or the public from a misfire are considerable.

Smiths expressed neither objection to nor support for deployable recorder systems, but said that, because of uncertain dynamics, deployable systems should be qualified to the identical survivability requirements as fixed recorders.

The FAA appreciates all the information provided in response to our request for comments. This information is helpful and will aid us in understanding the technology involved, possible future applications for deployable recorder systems, and the consequences of their design and installation.

Despite several requests, this final rule does not include a requirement for deployable recorder systems. The request for comments in the NPRM was made to bring the issue to the public's attention. We would need significant amounts of information concerning design and cost before we could begin to properly assess such an addition. We will not delay the CVR and DFDR improvements promulgated in this final rule while we continue our analysis of new technology. Deployable recorder systems may be addressed in a future rulemaking action.

## Q. Miscellaneous Comments

### 1. Applicability

Four commenters (Boeing, Radiant and two individuals) suggested changes to the general applicability of the proposed rule. Boeing stated that all aircraft operating in the U.S. should be subject to the proposed requirements. Boeing noted that accidents and incidents involving non-U.S.-registered aircraft (such as EgyptAir 990) have been the subject of FAA and NTSB investigations, and stated that the additional data gained from investigations involving these aircraft would be just as useful as in data gained during investigations of U.S.-registered aircraft.

Two individual commenters suggested that we expand the applicability of the proposed rules. One recommended the rule apply to all carriers, while another suggested the rule should apply to all operators and manufacturers.

In contrast, Radiant asked us to restrict the final rule to aircraft with a "reasonable service life remaining" or a "foreseeable future in commercial aviation." Radiant proposed limiting the final rule to those aircraft models being manufactured as of December 31, 2005. Radiant stated this change would result in a modern CVR and independent power supply being installed in most of the world fleet of active commercial aircraft.

Like all countries, the FAA has limited authority to require the installation of particular equipment on aircraft not on our registry but merely flying in our airspace.

Similarly, while the NTSB plays a primary role in investigating accidents involving U.S.-registered aircraft, its role in investigations involving other countries' aircraft is usually by invitation. The accident investigation authority from the country in which the aircraft is registered usually leads these investigations and may ask the NTSB to participate. Other regulatory authorities are free to increase the CVR/DFDR regulations for aircraft of their registry if they desire.

Further, this final rule changes the regulations in both certification parts (23, 25, 27, and 29) and operating parts (91, 121, 125, 129, and 135), affecting anyone who is regulated by those parts. While some operators were excluded from certain retrofit requirements adopted here, that was done following considerable analysis that showed a significant economic burden would be imposed. Our analysis demonstrates that the scope of the final rule is sufficient to meet the safety goal of more

reliable flight information at an acceptable cost.

Finally, Radiant did not provide any criteria for determining what a "reasonable service life remaining" would be, nor its proposed "foreseeable future in commercial aviation." As such, we have no response. Radiant's proposed cutoff date ("airplanes that are still being produced as of December 31, 2005") would exclude several popular aircraft models from the final rule, including the Boeing 757 and 737 "Classic," and all McDonnell Douglas airplanes. These airplanes are expected to remain in the U.S. fleet in large numbers for many years. Radiant's proposed date would also exclude seven of the eight aircraft models involved in the incidents/accidents cited in the NTSB recommendations that are the basis for this rulemaking. No changes to the final rule were made based on these comments.

### 2. Harmonization

Five commenters (AIA, Airbus, Boeing, Bombardier and one individual) expressed concern that the proposal in the NPRM is not harmonized with parallel activities currently being considered by the JAA. These commenters consider it vital that these regulations are harmonized or the affected industry could face conflicting requirements, significant compliance costs and potentially complex system designs in an attempt to satisfy two different sets of regulations. The commenters suggest that a common set of technical requirements be implemented within a similar time frame. Since both the FAA and the JAA are proposing flight recorder changes, the commenters urged the FAA to use this opportunity to harmonize the requirements before promulgating a final rule.

The FAA continues to work with JAA (and we will work with the European Aviation Safety Agency (EASA) when it takes over responsibility for this issue from the JAA), ICAO and other non-U.S. regulatory bodies to harmonize our regulations whenever possible, but we do not change our position or our regulations solely for the sake of harmonization. When we determine that the need exists for a certain regulation, and the other regulatory agencies find that a more stringent or lenient requirement is appropriate, we review their findings and will revise our regulation if our regulatory goals are met, an equivalent level of safety is achieved, and there is no burden imposed on the industry if a change is made. This is the approach we have taken when drafting the NPRM and this

final rule, but we will not delay the timing of our rulemaking simply to accommodate the continuing consideration of issues by numerous other regulatory bodies.

### 3. Definition of "Date of Manufacture"

Dassault noted the "date of manufacture" determines the applicability of certain requirements and the NPRM does not define this term. This omission could lead to different interpretations and disagreements between operators, manufacturers and the FAA. Therefore, Dassault recommended the FAA define this term in the final rule.

While we use the term 'date of manufacture' in several regulations, we do not routinely define it each time. In general, the date of manufacture is usually considered the date an aircraft receives its airworthiness certificate. There may be other circumstances that modify this date, however, and we will not attempt to set a strict definition for purposes of this rule.

### 4. CVRs—Automatic Stop Requirement

The NTSB and Airbus recommended removal of the existing requirement that CVRs have an automatic means of stopping 10 minutes after crash impact. They both noted the proposal to replace the 30-minute CVR with a 2-hour CVR makes this requirement less important.

While it may seem appropriate to remove a rule that was originally written for short-duration recorders, removal of a certification rule has a broader impact than suggested by the commenters. Because the 2-hour recorder requirement is an operating rule, the effect of removing a certification requirement is not parallel. And although the 10-minute rule may be considered less important, it is not without merit and cannot be considered unnecessary.

The commenters did not make a case that the current certification requirement is burdensome, or that it is a hindrance or inconsistent with the proposed new operating requirements, only that it is less important than it once was. The NTSB comment indicates that its real concern is the use of switches that can be activated prematurely as a means of implementing the stop criteria. While the NTSB suggested that gravitation accelerator switches (g-switches) can be removed at the time of replacement with a 2-hour solid state recorder, their suggestion does not include the actual g-switch ban they desire, the regulation in which that change might be implemented, or the costs to implement it. The two largest aircraft manufacturers are already

producing airplanes with 2-hour solid state recorders, which means the aircraft already comply with the rule. Removing the g-switches would be a new retrofit on which we have not solicited comment, including alternative technologies for complying with the certification rule, and for which we have no cost estimates. The comments are insufficient to support the need for, and do not properly estimate the scope of, the recommended change. No change has been made to the regulations-based on this comment.

### 5. FDRs—Start/Stop Criteria

The ALPA recommended changing the DFDR start/stop criteria to mirror the proposed CVR criteria for newly manufactured and new certificated designs. It noted that at least one manufacturer has DFDR start/stop criteria based on the status of the parking brake, which can adversely affect the ability to obtain complete, accurate or relevant DFDR data.

The NTSB proposed different DFDR start/stop criteria. The NTSB stated that the FDR should start operating either before engine start for the purpose of flight or by an automatic means when engine oil pressure is sensed on any engine. The DFDR should then operate continuously until termination of the flight when all engines are shut down.

The NTSB also requested a change to the airworthiness requirements in the regulations. This change would provide for the automatic application of electrical power to the DFDR at liftoff to safeguard against the failure of any automatic or manual means of powering the DFDR.

The FAA is not including the changes to DFDR start/stop criteria. There is no historical evidence that the start/stop functions on aircraft have interfered with accident investigations. The only aircraft cited by ALPA are no longer in production, so requirements for newly manufactured airplanes would have no effect. We believe the existing regulations on DFDR start/stop criteria are satisfactory. These regulations require the DFDR to operate from the instant the airplane begins its takeoff roll until it has completed its landing roll. We believe this standard allows the DFDR to capture all the critical data from the recorded parameters during all phases of flight.

In addition, neither ALPA nor the NTSB indicated how their proposed changes would significantly improve the quality or quantity of information recorded, or increase the potential for retaining important information needed during accident and incident investigations. As the NTSB pointed

out, most airframe manufacturers and operators already begin DFDR operation at engine start. Therefore, the proposed changes would have no effect on these aircraft. As for the Canada Air Challenger CL-600 accident cited by the NTSB, this is not an example of a drawback of the existing DFDR start/stop criteria. The manufacturer's design to start DFDR operation once the anti-collision (strobe) light switch is placed in the "on" position allows operators to meet the existing DFDR start/stop criteria (as long as the switch is "on" before takeoff roll begins). The fact that the pilots of the CL-600 involved in the accident failed to take this step implies an operational error and not a design problem with the airplane.

Finally, changing the FDR start/stop criteria was not proposed in the NPRM. We did not perform a regulatory evaluation of the impact of this change, and no costs for implementation were provided by either commenter suggesting it. Since we are unable to support the change as necessary, we are not incorporating it in this final rule.

### 6. DFDR Activation Switch—Request for Comments

In the NPRM, the FAA requested comments on the cost to retrofit a switch for the flight crew to activate the DFDR to record at the start of the checklist. We received only one comment in response to this request. Boeing asked if there was a typo in the request (CVR rather than DFDR), as this subject matter is not discussed elsewhere in the NPRM.

The request for comments on this subject was an error in the NPRM. We believe the existing regulations on DFDR start/stop criteria are satisfactory.

### R. Errors and Inconsistencies in NPRM

Dassault noted the sampling interval of parameter 23 in Appendix F to part 135 would change from 0.5 (= 2 Hz) to 0.25 (= 4 Hz). However, the sampling interval for the same parameter in Appendix M to part 121 and Appendix E to part 125 remains unchanged (0.5 (= 2 Hz)). Dassault recommended no change to parameter 23 in Appendix F to part 135 so it is consistent with Appendix M to part 121 and Appendix E to part 125.

The proposed changes to parameter 23 in Appendix F were in error. No change is being made to that parameter.

Airbus and Boeing noted that proposed § 129.1(b) removes the requirement that §§ 129.16, 129.32, and 129.33 apply to operations of U.S.-registered aircraft solely outside the U.S. Those sections refer to damage-tolerance inspections, repair assessments and

aging airplane requirements. Airbus and Boeing assumed this omission was inadvertent and recommended the FAA change § 129.1(b) to reinsert these requirements.

The FAA thanks the commenters for bringing this to our attention. The proposed rule intended only to add new § 129.22 (now § 129.24) to the applicability of § 129.1(b), not to eliminate any existing requirements. This has been corrected in the final rule.

Airbus and Boeing noted errors in part 121 Appendix M, part 125 Appendix E and part 135 Appendix F for the resolution of parameters 12a, 14a, 15 and 88. They stated that they believe the existing resolutions for these parameters are correct and were not meant to be changed.

The FAA agrees. The final rule reflects the resolutions for those four parameters without change.

Boeing stated the new wording in the "Remarks" column for parameter 1 in part 121 Appendix M is unclear. Boeing noted its preference for the existing language and proposed the FAA keep it.

The published version of the NPRM introduced an error; the "Remarks" column was not intended to be changed except to correct the word "second" to "seconds."

Boeing recommended the FAA make several editorial changes to part 121, Appendix M as clarifications:

(i) In the "Parameters" column for Parameter 23, insert the word "speed" before "brake."

(ii) In the "Parameters" column for Parameter 19, change the word "trim" to "trim."

(iii) In the "Resolution" column for Parameter 26, revise the existing wording "1 ft + 5% above 500 ft" to read "1 ft up to and including 500 ft, 1 ft + 5% of full range above 500 ft."

The Parameter 23 listing is corrected in the final rule. Since the Parameter 19 listing is correct in the 2006 Code of Federal Regulations, no further action is necessary. Regarding the Parameter 26 listing, Boeing presented nothing to indicate that the current text is a problem or has led to misunderstanding, and has given no reason other than its preference why this should be revised. No change has been made in the final rule.

Boeing also stated that the "Remarks" column for Parameter 85 should be corrected, from "0.5 second" to "2 seconds" because, when sampled alternately at 4-second intervals as indicated in the table, the result will provide a sample each two seconds.

The commenter is misreading the rule; the specification is correct as published. The suggested rewording

would double the sample time. Two seconds refers to four interleaved samples of 0.5 seconds each.

Honeywell had two comments about the language in § 91.609. First, Honeywell noted the proposed addition of paragraphs (i), (j) and (k) and asked why there is no paragraph (h). Second, Honeywell asked why the phrase "\* \* \* using a recorder that meets the standards of TSO-C124a, or later revision" is missing in § 91.609(c)(2) when it is in § 91.609(c)(3) and other proposed similar revisions.

In 1999, the FAA issued Notice No. 99-19 (64 FR 63140, November 18, 1999), which proposed to increase the number of DFDR parameters required for all Boeing 737 series airplanes. A new paragraph (h) for § 91.609 was part of that proposal. When this rule was proposed, the next available paragraph was (i). Since this final rule will publish before the 1999 proposal, the paragraphs added to § 91.609 in this rule will be (h), (i) and (j).

Honeywell is incorrect about including TSO-C124a in § 91.609(c)(2). Inclusion of the standard would be a retrofit we did not intend nor estimate the costs for. The TSO-C124a standard is for newly manufactured aircraft only.

#### *S. Items Not Proposed*

Four commenters (ALPA, the NTSB and two individuals) recommended the FAA add new CVR and DFDR requirements as part of this final rule.

The ALPA requested that we require all newly manufactured CVRs and DFDRs to meet the underwater locator beacon (ULB) security-of-attachment standard specified in the EUROCAE ED-112 document. The ALPA noted that in some recent accidents there have been cases where the ULB has become nearly or fully separated from the CVR or FDR memory module.

The ULB standard of ED-112 document is included in all of the new FAA TSOs on recorders (numbers 123b, 124b, 166 and 167).

Three commenters (NTSB, ALPA and L3) recommended that the FAA require the replacement of magnetic tape flight recorders in the final rule. The commenters noted that magnetic tape FDRs are more problematic than magnetic tape CVRs and far less reliable than solid-state DFDRs.

The replacement of magnetic tape flight recorders was not proposed in the NPRM and represents a significant change that is beyond the scope of the rulemaking. The commenters did not provide any data on the extent of usage or the cost of replacement, nor has the public (including affected operators) been allowed to comment. The final rule

does not contain a provision requiring the replacement of magnetic tape FDRs.

The ALPA expressed concern the FAA did not propose any new requirements in response to NTSB Safety Recommendation A-03-050 that was issued following the Board's investigation of the American Airlines flight 587 accident that occurred at Jamaica Bay, New York on November 12, 2001. During the investigation, the NTSB determined that the rudder (and other) control surface position information recorded on the DFDR was filtered before it was recorded. This filtering made it difficult for the NTSB to approximate the actual rudder surface movement during the accident. The NTSB recommended that the FAA act to remove known flight control parameter filtering on three models of aircraft. In its comment, ALPA urged the FAA, as part of this rulemaking, to consider additional DFDR modifications in response to the NTSB recommendation.

On July 7, 2004, the FAA hosted a public meeting to discuss the NTSB recommendation and the issue of filtered flight data in general. The purpose of this meeting was to gather information from industry and other interested parties about current practices on processing of data as it is recorded on all transport airplanes. Representatives from Airbus, ALPA, the Allied Pilots Association (APA), Boeing and the NTSB each made presentations at the meeting.

We completed our analysis of issues surrounding filtered flight data and the options available to us to address the NTSB's recommendation. On November 15, 2006, we published a proposed rule that addresses filtered flight data (71 FR 66634) and this subject is being addressed as a separate regulatory issue.

Six commenters supported the use of a ground recording system. Five of these commenters (APA, AirTran, RAA and two individuals) raised this issue as part of their objection to the datalink communication (DLC) proposal. These commenters noted that ground recording is a more cost efficient means of capturing DLCs since the same data that will be recorded on the aircraft is available for accident investigation at the receiving ground based stations. These commenters see no merit in requiring DLC recording on aircraft.

The remaining individual commenter suggested a ground recording system as an alternative to recording any data on an aircraft as this would eliminate the loss of data during a crash.

The FAA agrees that ground recording systems are a useful tool to assist in accident investigations. However, these systems cannot be adopted as the



primary source of data recording. In the past, the NTSB and other accident investigators have encountered significant problems in acquiring ground recorded data. Liability and other legal concerns have caused some private entities that perform ground recording and some foreign governments to delay the release of recorded data for long periods. The NTSB and other accident investigators have repeatedly expressed their desire that recorded data remain on the aircraft because of the immediate availability of the data once the recorders are located.

Further, for ground recording systems to function as intended, all countries or private entities recording data would need compatible systems, the specifications for which have not been proposed. There are no international standards in place for such recording, and we have no way of ensuring that it would happen.

The ALPA suggested we require a system that provides an electronic common time reference information to the CVR, the DFDR, and any other onboard recorders. They noted that, as part of every accident investigation, the relative timing of the CVR and DFDR events must be determined, and that it is a manual, labor-intensive effort by accident investigators that could introduce uncertainty into the results. A system to provide electronic common time reference information to the CVR and DFDR would eliminate these problems.

The NTSB viewed installing the new 2-hour CVR as an ideal opportunity to require all aircraft equipped with a CVR to also have pilot boom microphones.

An individual asked us to consider accelerometer outputs and wheel rotation as required parameters. The commenter noted that current accelerometer outputs are extremely noisy, making it difficult to extract usable data. The commenter suggested that recording wheel rotation is an excellent way of determining initial touchdown.

For the balance of the issues, none of these were included in the NPRM and are beyond the scope of the proposed rule changes. The commenters did not submit any data on the cost of the suggested changes, nor have they been estimated as part of this rulemaking. While they may be worthy considerations for future rulemaking, none of the suggested changes are necessary as part of the changes being adopted in this rulemaking. No changes have been made to the final rule based on these suggestions.

#### *T. Comments on Cost/Benefit Analysis*

Empire Airlines said that the FAA's cost-benefit analysis did not consider the cumulative economic impact of the several operational and equipment rules the agency has issued during the last two years.

Our regulatory evaluations estimate the cost of each rule individually. Different rules affect different parties and the cumulative impact on any one operator would be impossible to estimate and would not be relevant for any other operator.

An individual commented that the FAA's economic analysis did not include the cost to re-engineer equipment and to install the equipment for recording datalink communications if DLC equipment is installed after the compliance date.

In the Initial Regulatory Evaluation, we estimated a cost of \$762,500 the first time a manufacturer engineers a DLC recording system. We estimated a cost of \$262,500 for engineering the second airplane model, presuming much of the work from the first can carry over. Similarly, we estimated an engineering cost of \$75,000 for each remaining model in a series. Retrofitting an aircraft to be DLC capable would require significant engineering, while the cost of engineering to record datalink communications would be a minimal extension of the overall effort with a resultant minimal cost.

Bell Helicopter stated that compliance with the "no single electrical failure could disable both the CVR and DFDR" requirement is open to two interpretations—each of which would have different cost implications. If the correct interpretation were that "No failure of a single electrical bus shall disable both the CVR and DFDR", it estimates that it would cost \$100,000 per "application" to comply with the rule, plus a recurring cost of approximately \$5,000 to the operator. If the correct interpretation is that "No single electrical failure external to the recorder, or the failure of any single electrical component within a combined CVR/DFDR, shall disable both the CVR and DFDR", Bell states that all or most of the current recorders will be obsolete. If this occurs, "a major industry wide design will be required." Bell estimates that costs for development of a new recorder and TSO would be in the millions of dollars, recertification costs will be approximately \$250,000 per model, and the recurrent costs to operators will approach \$50,000 per rotorcraft to replace existing recorders."

As discussed previously, we have added the phrase "external to the

recorder" to clarify our intent. We accept Bell's estimated cost of \$100,000 per model with a recurring cost of \$5,000 to the operator. The IATA commented that the airlines must carry the costs of all the new requirements, and that the FAA did not substantiate the benefits of the proposed changes in the accidents cited in the NPRM. The IATA also noted that the proposed benefits are speculative, in that they "may result in safety benefits," and thus do not justify the costs in equipment and impact on operations.

As described in the Initial Regulatory Evaluation, any benefits from this final rule are dependent upon investigating authorities gaining additional, better quality information that they are able to use to determine the causes of future accidents with greater certainty, which could result in safety improvements being adopted sooner. We are unable to predict with certainty whether this additional information will or will not provide incremental benefits in the investigation of any future accident or incident. This has always been true for flight recorder requirements, which by nature do not fit the traditional cost/benefit analysis. As always, we rely on the expertise of the NTSB that the additional information is important to its ability to fully investigate accidents and incidents as aircraft technology evolves.

Regarding the proposal to require 2-hour solid state CVRs, Northwest commented that it would have to modify 105 of its 30-minute solid state CVRs at a cost of \$767,000 (a per airplane cost of about \$7,300) and replace 15 CVRs at a cost of \$180,000 (a per airplane cost of \$12,000).

In the Initial Regulatory Evaluation, we estimated retrofitting a 30-minute solid state CVR would cost about \$8,140 (\$7,500 for the equipment and \$640 for the labor). Since our estimates were based on older information, we accept Northwest's estimate of \$7,300 per airplane and have used it in the Final Regulatory Evaluation. We also estimated that it would cost \$17,500 to replace a unit, and are adopting Northwest's estimate for use in the Final Regulatory Evaluation. No other comments on these costs were received.

Northwest also described three costs it believes should be added to the regulatory evaluation: (1) The cost to modify a solid-state CVR from TSO-C123 to TSO-C123a; (2) The cost for new test equipment to download and decode additional datalink information from the CVR; and (3) The additional routine maintenance cost, such as battery reconditioning, for the CVR-RIPS installed on new aircraft.



Regarding the cost of conversion to TSO-C123a, we contacted four of the major equipment vendors, who stated that their CVRs manufactured under TSO-C123 already meet the requirements of TSO-C123a, and that if necessary, a service bulletin could be issued to re-identify the recorder.

Regarding the cost of DLC test equipment, as we stated in the Initial Regulatory Evaluation, we believe this cost would be minimal. Northwest did not provide any estimated costs for this item, no other commenter raised it as a cost issue, and DLC remains an optional installation. Accordingly, we have no basis to change our estimates on the cost of this item.

Regarding additional maintenance costs, in the Initial Regulatory Evaluation we estimated that the average RIPS battery would be replaced every two years; we will continue to use that estimate in our cost calculations. We also estimated that one additional hour would be required for the CVR-RIPS system maintenance; we have used that estimate in our cost calculations in the Final Regulatory Evaluation.

Boeing stated that the total cost of all the proposed requirements were undervalued by 20 to 35 percent. In making this statement, Boeing cites costs associated with equipment, testing, and certification and "uncertainties in the statement of work" such as the DLC requirements "are driving a level of assumptions that affect potential cost outcomes."

We accept that Boeing's information is based on more recent information than we used for the Initial Regulatory Evaluation, and have revised our Final Regulatory Evaluation to include this estimate. No other commenters presented specific information addressing this issue.

#### Section-By-Section Analysis

The following is a summary of the changes to the current text of the regulations. This summary does not include the reasons for these changes because we have already discussed them as part of the above disposition of comments.

#### A. Part 23—Airworthiness Standards: Normal, Utility, Acrobatic, and Commuter Category Airplanes

Section 23.1457, Cockpit voice recorders, is being amended to:

(1) Add a new paragraph (a)(6) requiring the recordation of datalink communications. No change was made from the language proposed in the NPRM.

(2) Amend paragraph (d)(1) to add the duration of CVR power as a sentence at

the end of the paragraph. No change was made from the language proposed in the NPRM.

(3) Add a new paragraph (d)(4) regarding a single electrical failure not disabling the CVR and DFDR. The final rule adds the phrase "external to the recorder" as requested by commenters to clarify where the failure may not occur.

(4) Add a new paragraph (d)(5) that requires an independent power source for the CVR and the cockpit-mounted area microphone, the capacity for automatic switching to the independent source, and the allowable location of the power source. At the request of the commenters, the final rule specifies the duration of power as 10 +/-1 minutes, adds the area microphone, and specifies the location of the power source.

(5) Add a new paragraph (d)(6) requiring that the CVR be in a separate container from the flight data recorder. No change was made from the language proposed in the NPRM.

(6) Revise paragraph (e) by expanding the CVR location requirements to include the use of a combination recorder that acts as the CVR and its location near the cockpit. This was not included in the language proposed in the NPRM. Comments concerning the use of combination recorders with an independent power source led to the addition of these provisions to clarify these possibilities and change the allowable location of the CVR.

Section 23.1459, Flight data recorders, is being amended to:

(1) Revise paragraph (a)(3) to add the duration of DFDR power as a sentence at the end of the paragraph. No change was made from the language proposed in the NPRM.

(2) Add a new paragraph (a)(6) regarding a single electrical failure not disabling the CVR and DFDR. The final rule adds the phrase "external to the recorder" as requested by commenters to clarify where the failure may not occur.

(3) Add a new paragraph (a)(7) requiring that the DFDR be in a separate container from the CVR, and that a combination recorder may be used. If a combination recorder is used to comply with the CVR requirement and located near the cockpit, the aft-mounted DFDR used to comply with this paragraph must also be a combination unit. The language proposed in the NPRM was changed to mirror the revised requirement for CVRs in § 23.1457(d)(6) and (e)(2).

#### B. Part 25—Airworthiness Standards: Transport Category Airplanes

Section 25.1457, Cockpit voice recorders, is being amended to:

(1) Add a new paragraph (a)(6) requiring the recordation of datalink communications. No change was made from the language proposed in the NPRM.

(2) Amend paragraph (d)(1) to add the duration of CVR power as a sentence at the end of the paragraph. No change was made from the language proposed in the NPRM.

(3) Add a new paragraph (d)(4) regarding a single electrical failure not disabling the CVR and DFDR. The final rule adds the phrase "external to the recorder" as requested by commenters to clarify where the failure may not occur.

(4) Add a new paragraph (d)(5) that requires an independent power source for the CVR and the cockpit-mounted area microphone, the capacity for automatic switching to the independent source, and the allowable location of the power source. At the request of the commenters, the final rule specifies the duration of power as 10 ± 1 minutes, adds the area microphone, and specifies the location of the power source.

(5) Add a new paragraph (d)(6) requiring that the CVR be in a separate container from the flight data recorder. No change was made from the language proposed in the NPRM.

(6) Revise paragraph (e) by expanding the CVR location requirements to include the use of a combination recorder that acts as the CVR and its location near the cockpit. This was not included in the language proposed in the NPRM. Comments concerning the use of combination recorders with an independent power source led to the addition of these provisions to clarify these possibilities and change the allowable location of the CVR.

Section 25.1459, Flight data recorders, is being amended to:

(1) Revise paragraph (a)(3) to add the duration of DFDR power as a sentence at the end of the paragraph. No change was made from the language proposed in the NPRM.

(2) Add a new paragraph (a)(7) regarding a single electrical failure not disabling the CVR and DFDR. The final rule adds the phrase "external to the recorder" as requested by commenters to clarify where the failure may not occur.

(3) Add a new paragraph (a)(8) requiring that the DFDR be in a separate container from the CVR, and that a combination recorder may be used. If a combination recorder is used to comply

with the CVR requirement and located near the cockpit, the aft-mounted DFDR used to comply with this paragraph must also be a combination unit. This language proposed in the NPRM was changed to mirror the revised requirement for CVRs in § 25.1457(d)(6) and (e)(2).

**C. Part 27—Airworthiness Standards: Normal Category Rotorcraft**

Section 27.1457, Cockpit voice recorders, is being amended to:

(1) Add a new paragraph (a)(6) requiring the recordation of datalink communications. No change was made from the language proposed in the NPRM.

(2) Revise paragraph (d)(1) to add the duration of CVR power as a sentence at the end of the paragraph. No change was made from the language proposed in the NPRM.

(3) Add a new paragraph (d)(4) regarding a single electrical failure not disabling the CVR and DFDR whether installed as separate units or as a single combined unit. The final rule adds the phrase "external to the recorder" as requested by commenters to clarify where the failure may not occur.

(4) Add a new paragraph (d)(5) that requires an independent power source for the CVR and the cockpit-mounted area microphone, the capacity for automatic switching to the independent source, and the allowable location of the power source. At the request of the commenters, the final rule specifies the duration of power as  $10 \pm 1$  minutes, adds the area microphone, and specifies the location of the power source.

(5) Add a new paragraph (h) to allow the installation of a single combined unit when both a cockpit voice recorder and flight data recorder are required. The language was changed to clarify that combination recorders must meet all of the CVR and DFDR standards.

Section 27.1459, Flight data recorders, is being amended to:

(1) Revise paragraph (a)(3) to add the duration of DFDR power as a sentence at the end of the paragraph. No change was made from the language proposed in the NPRM.

(2) Add a new paragraph (a)(6) regarding a single electrical failure not disabling the CVR and DFDR whether installed as separate units or as a single combined unit. The final rule adds the phrase "external to the recorder" as requested by commenters to clarify where the failure may not occur.

(3) Add a new paragraph (e) to allow the installation of a single combined unit when both a cockpit voice recorder and flight data recorder are required. The language was changed to clarify

that combination recorders must meet all of the CVR and DFDR standards.

**D. Part 29—Airworthiness Standards: Transport Category Rotorcraft**

Section 29.1457, Cockpit voice recorders, is being amended to:

(1) Add a new paragraph (a)(6) requiring the recordation of datalink communications. No change was made from the language proposed in the NPRM.

(2) Revise paragraph (d)(1) to add the duration of CVR power as a sentence at the end of the paragraph. No change was made from the language proposed in the NPRM.

(3) Add a new paragraph (d)(4) regarding a single electrical failure not disabling the CVR and DFDR whether installed as separate units or as a single combined unit. The final rule adds the phrase "external to the recorder" as requested by commenters to clarify where the failure may not occur.

(4) Add a new paragraph (d)(5) that requires an independent power source for the CVR and the cockpit-mounted area microphone, the capacity for automatic switching to the independent source, and the allowable location of the power source. At the request of the commenters, the final rule specifies the duration of power as  $10 \pm 1$  minutes, adds the area microphone, and specifies the location of the power source.

(5) Add a new paragraph (h) to allow the installation of a single combined unit when both a cockpit voice recorder and flight data recorder are required. The language was changed to clarify that combination recorders must meet all of the CVR and DFDR standards.

Section 29.1459, Flight data recorders, is being amended to:

(1) Revise paragraph (a)(3) to add the duration of DFDR power as a sentence at the end of the paragraph. No change was made from the language proposed in the NPRM.

(2) Add a new paragraph (a)(6) regarding a single electrical failure not disabling the CVR and DFDR whether installed as separate units or as a single combined unit. The final rule adds the phrase "external to the recorder" as requested by commenters to clarify where the failure may not occur.

(3) Add a new paragraph (e) to allow the installation of a single combined unit when both a cockpit voice recorder and flight data recorder are required. The language was changed to clarify that combination recorders must meet all of the CVR and DFDR standards.

**E. Part 91—General Operating and Flight Rules**

Section 91.609, Flight data recorders and cockpit voice recorders, is being amended to:

(1) Add a new paragraph (c)(2) that includes the separate container requirements for CVRs and DFDRs on part 23 or part 25 airplanes. *The requirement to retain the last 25 hours of recorded DFDR data, which was proposed in the NPRM as a retrofit, is not included.*

(2) Add a new paragraph (c)(3), applicable to aircraft manufactured two years after the effective date of this rule, that requires compliance with all provisions of the flight data recorder certification requirements in §§ 23.1459, 25.1459, 27.1459, or 29.1459, as applicable. The additions to these sections include the power duration requirement, the single electrical failure requirement, and the separate container/combination unit requirements noted in the amendments to the certification parts. New paragraph (c)(3) also requires that these newly manufactured airplanes have DFDRs that retain the last 25 hours of recorded information using a recorder that meets the standard of TSO-C124a, or later revision. The language proposed in the NPRM was changed slightly for clarification; no substantive changes to the proposed requirements were made.

(3) The proposed revision to paragraph (e)(2) to include new "checklist-to-checklist" language is not included in this final rule. No retrofit of this new procedure is required; the previous version of this language in paragraph (e)(2) remains in effect.

(4) Add a new paragraph (h) that includes the separate container requirements for CVRs and DFDRs on part 23 or part 25 airplanes. (Note that this was proposed as paragraph (i) because the paragraph (h) designation was proposed in a separate rulemaking that is not yet final). This paragraph also requires transport category airplanes to meet additional recording requirements in §§ 23.1457 or 25.1457, as proposed in the NPRM. *The requirement to retain two hours of recorded information on a CVR that meets the requirements of TSO-C123a, which was proposed in the NPRM as a retrofit, is not included.*

(5) Add a new paragraph (i), applicable to aircraft manufactured two years after the effective date of this rule, that requires compliance with all provisions of the cockpit voice recorder certification requirements in §§ 23.1457, 25.1457, 27.1457, or 29.1457, as applicable. The additions to these sections include the power duration

requirement, the single electrical failure requirement, and the separate container/combination unit requirements noted in the amendments to the certification parts. This paragraph also requires that newly manufactured airplanes retain the last two hours of recorded information and that the CVR meets the requirements of TSO-C123a, or later revision. These requirements are adopted as proposed, except for a change in the paragraph designation.

(6) Add a new paragraph (j) that requires all airplanes and rotorcraft that are required to have a CVR to record datalink communications if they install DLC equipment two years after the effective date of this rule. This requirement is adopted as proposed except for a change in the paragraph designation.

(7) Appendix E to part 91, Airplane Flight Recorder Specifications, is being amended to add footnote 5 to the parameter for Stabilizer Trim Position or Pitch Control Position. No change was made from the language proposed in the NPRM.

(8) Appendix F to part 91, Helicopter Flight Recorder Specifications, is being amended to add footnote 4 changing the sampling interval for five parameters. No change was made from the language proposed in the NPRM.

#### *F. Part 121—Operating Requirements: Domestic Flag and Supplemental Operations*

Section 121.343, Flight recorders, is being amended to:

(1) Revise the title of the section to say "Flight data recorders."

(2) Revise paragraph (c) to change the date from 1994 to 1995.

(3) Add a new paragraph (m) to specify that after August 20, 2001, § 121.343 applies only to the aircraft models listed in § 121.344(l)(2). No change was made from the language proposed in the NPRM.

Section 121.344, Digital flight data recorders for transport category airplanes, is being amended to add a new paragraph (m) that requires all newly manufactured airplanes comply with additional paragraphs of § 25.1459, and have a DFDR that retains the last 25 hours of recorded information and meet the standards of TSO-C124a, or later revision. No change was made from the language proposed in the NPRM, except for the paragraph designation.

Section 121.344a, Digital flight data recorders for 10–19 seat airplanes, is being amended to add a new paragraph (g) that requires all newly manufactured airplanes comply with additional paragraphs of §§ 23.1459 or 25.1459, and have DFDRs that retain the last 25

hours of recorded data and meet the standards of TSO-C124a, or later revision. No change was made from the language proposed in the NPRM.

Section 121.359, Cockpit voice recorders, is being amended to:

(1) Add a new paragraph (i) that requires airplanes manufactured before April 7, 2010 be retrofitted with CVRs that meet the separate container requirement, retain the last two hours of recorded information using a CVR that meets the standard of TSO-C123a, or later revision, and meet additional recording requirements in §§ 23.1457 or 25.1457. Four years is allowed for the retrofit of these items. We are not adopting the checklist to checklist language proposed in the NPRM. We are adopting the same checklist to checklist language as exists in other applicability paragraphs of this section. Otherwise, no change was made from the language proposed in the NPRM.

(2) Add a new paragraph (j) that requires newly manufactured airplanes have a CVR that meets all of §§ 23.1457 or 25.1457, and retains the last two hours of recorded information using a CVR that meets the standard of TSO-C123a, or later revision. We are not adopting the checklist to checklist language proposed in the NPRM. We are adopting the same checklist to checklist language as exists in other applicability paragraphs of this section. Otherwise, no change was made from the language proposed in the NPRM.

(3) Add a new paragraph (k) that requires the recordation of datalink communications if DLC equipment is installed two years after the effective date of this rule. No change was made from the language proposed in the NPRM.

Appendix M to part 121, Airplane Flight Recorder Specifications, is amended to:

(1) Revise parameter 1 to correct a typographical error.

(2) Revise parameters 12a, 12b, 13a, 13b, 14a, 14b, 15, 16, 17, and 88 to add footnote 18 (proposed as footnote 20) for newly manufactured airplanes. Footnote 18 changes the seconds per sampling interval to 0.125 for these parameters and prohibits alternate sampling (interleaving). The NPRM proposed 16 Hz for these parameters; the final rule requires they be sampled and recorded at 8 Hz, and adds the prohibition on interleaving samples.

(3) The NPRM publication of the appendix included several errors in the resolution column; none of the current resolution percentages are being changed.

#### *G. Part 125—Certification and Operations: Airplanes Having a Seating Capacity of 20 or More Passengers or a Maximum Payload Capacity of 6,000 Pounds or More; and Rules Governing Persons On Board Such Aircraft*

Section 125.225, Flight recorders, is being amended to:

(1) Revise the title of the section to say "Flight data recorders."

(2) Add a new paragraph (j) to specify that after August 20, 2001, § 125.225 applies only to the aircraft models listed in § 125.226(l)(2). No change was made from the language proposed in the NPRM.

Section 125.226, Digital flight data recorders, is being amended to add a new paragraph (m) that requires all newly manufactured airplanes comply with additional paragraphs of § 25.1459, and have a DFDR that retains the last 25 hours of recorded data and meet the standards of TSO-C124a, or later revision. No change was made from the language proposed in the NPRM, except for the paragraph designation.

Section 125.227, Cockpit voice recorders, is being amended to:

(1) Add a new paragraph (g) that requires airplanes manufactured before April 7, 2010 to retrofit their CVRs to meet the separate container requirement, retain the last 2 hours of recorded information using a CVR that meets the standard of TSO-C123a, or later revision, and meet additional paragraphs of § 25.1457. Four years is allowed for the retrofit of these items. We are not adopting the checklist to checklist language proposed in the NPRM. We are adopting the same checklist to checklist language as exists in paragraph (a) of this section. Otherwise, no change was made from the language proposed in the NPRM.

(2) Add a new paragraph (h) that requires newly manufactured airplanes have a CVR that meets all of § 25.1457, retains the last 2 hours of recorded information using a CVR that meets the standard of TSO-C123a, or later revision. We are not adopting the checklist to checklist language proposed in the NPRM. We are adopting the same checklist to checklist language as exists in paragraph (a) of this section. Otherwise, no change was made from the language proposed in the NPRM.

(3) Add a new paragraph (i) that requires the recordation of datalink communications if DLC equipment is installed two years after the effective date of this rule. No change was made from the language proposed in the NPRM.

Appendix E to part 125, Airplane Flight Recorder Specifications, is being amended to:

(1) Revise parameters 12a, 12b, 13a, 13b, 14a, 14b, 15, 16, 17, and 88 to add footnote 18 (proposed as footnote 20) for newly manufactured airplanes. Footnote 18 changes the seconds per sampling interval to 0.125 for these parameters and prohibits alternate sampling (interleaving). The NPRM proposed 16 Hz for these parameters; the final rule requires they be sampled and recorded at 8 Hz, and adds the prohibition on interleaving samples.

(2) Revise parameter 23 to correct an errant reference to part 121. No changes were made from the language proposed in the NPRM.

(3) The NPRM publication of the appendix included several errors in the resolution column; none of the current resolution percentages are being changed.

#### *H. Part 129—Operations: Foreign Air Carriers and Foreign Operators of U.S.-Registered Aircraft Engaged in Common Carriage*

Section 129.1, Applicability, is being amended to revise paragraph (b) to add new § 129.24 (proposed as § 129.22) to the applicability. The NPRM inadvertently omitted several section references from this paragraph and did not account for other changes that had been made to § 129.1. The only change being adopted is the added reference to § 129.22 on CVRs.

Section 129.24 (proposed as § 129.22), Cockpit voice recorders, is being added. This section requires that airplanes operated under part 129 be equipped with an approved CVR that meets the standards of TSO-C123a, or later revision, and record the information that the airplane would be required to record if it were operated under part 121, 125, or 135, using the compliance times for the applicable part. No change was made from the language proposed in the NPRM.

#### *I. Part 135—Operating Requirements: Commuter and On Demand Operations and Rules Governing Persons On Board Such Aircraft*

Section 135.151, Cockpit voice recorders, is amended to:

(1) Add a new paragraph (f) that includes the separate container requirements for CVRs and DFDRs on part 23 or part 25 airplanes. This paragraph also requires transport category airplanes to meet additional recording requirements in §§ 23.1457 or 25.1457, as proposed in the NPRM. *The requirement to retain two hours of recorded information on a CVR that meets the requirements of TSO-C123a, which was proposed in the NPRM as a retrofit, is not included.*

(2) Add a new paragraph (g), applicable to certain aircraft manufactured two years after the effective date of this rule, that requires compliance with specified provisions of the cockpit voice recorder certification requirements in § 23.1457, § 25.1457, § 27.1457, or § 29.1457, as applicable. The additions to these sections include the power duration requirement, the single electrical failure requirement, and the separate container/combination unit requirements noted in the amendments to the certification parts. This paragraph also requires that newly manufactured airplanes retain the last two hours of recorded information and that the CVR meets the requirements of TSO-C123a, or later revision. The checklist to checklist language being adopted is the same language that exists in paragraphs (a)(2) and (b) (2) of this section, not the language proposed in the NPRM. Otherwise, no change was made to the language proposed in the NPRM.

(3) Add a new paragraph (h), that requires all airplanes or rotorcraft that are required to have a CVR to record datalink communications if DLC equipment is installed two years after the effective date of this rule. No change was made to the language proposed in the NPRM.

Section 135.152, Flight recorders, is amended to:

(1) Add a new paragraph (l) that requires separate containers for CVRs and DFDRs on airplanes, and allows for combined recorders on rotorcraft.

(2) Add a new paragraph (m) that requires that newly manufactured airplanes have a DFDR that meets additional provisions of the flight data recorder certification requirements in §§ 23.1459, 25.1459, 27.1459, or 29.1459, as applicable. The additions to these sections include the power duration requirement, the single electrical failure requirement, and the separate container/combination unit requirements noted in the amendments to the certification parts. New paragraph (m)(2) also requires that these newly manufactured airplanes have DFDRs that retain the last 25 hours of recorded information using a recorder that meets the standard of TSO-C124a, or later revision. No change was made to the language proposed in the NPRM.

Appendix C to part 135, Helicopter Flight Recorder Specifications, is being amended to add footnote 4, changing the sampling interval for five parameters for rotorcraft manufactured two years after the date of the final rule. No change was made to the language proposed in the NPRM.

Appendix E to part 135, Helicopter Flight Recorder Specifications, is being

amended to add footnote 3, changing the sampling interval on the Pilot Input—Primary Controls parameter for rotorcraft manufactured two years after the date of the final rule. No change was made to the language proposed in the NPRM.

Appendix F to part 135, Airplane Flight Recorder Specification, is being amended to:

(1) Correct the last word of the title of the appendix to read 'Specifications.'

(2) Revise parameters 12a, 12b, 13a, 13b, 14a, 14b, 15, 16, 17, and 88 to add footnote 18 for newly manufactured airplanes. Footnote 18 changes the seconds per sampling interval to 0.125 for these parameters and prohibits alternate sampling (interleaving). The NPRM proposed 16 Hz for these parameters; the final rule requires they be sampled and recorded at 8 Hz, and adds the prohibition on interleaving samples.

(3) The NPRM publication of the appendix included several errors in the resolution column; none of the current resolution percentages are being changed.

(4) The NPRM introduced several errors to the proposed change to parameter 23; parameter 23 is not being changed.

#### **Paperwork Reduction Act**

Information collection requirements associated with this final rule have been approved previously by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and have been assigned OMB Control Number 2120-0700.

#### **International Compatibility**

In keeping with U.S. obligations, under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified the following difference: ICAO Annex 6, section 6.3.1.5.1, calls for recording all datalink communication messages, including controller-pilot datalink communications, on all aircraft by January 1, 2007. The FAA is not requiring the retrofit of datalink communication recording equipment on aircraft. The FAA intends to file a difference with ICAO.



### Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation from the base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, the FAA has determined that this final rule: (1)

Has benefits that justify its costs, (2) is not an economically "significant regulatory action" as defined in section 3(f) of Executive Order 12866, (3) is "significant" as defined in DOT's Regulatory Policies and Procedures; (4) will not have a significant economic impact on a substantial number of small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

#### A. Total Costs and Benefits of This Rule

The undiscounted cost of this rule is \$239 million (\$169 million in present value terms at a discount rate of 7 percent and \$206 million in present value terms at a discount rate of 3 percent). This rule adopts certain NTSB recommendations and is in response to the Swissair 11 and Alaska Airlines 261 accidents. The following discussion provides more detailed cost and benefit information:

#### B. Who Is Affected by This Rule

Manufacturers of aircraft type certificated under parts 23, 25, 27 and 29, and operators of aircraft operated under parts 91, 121, 125, 129 and 135.

#### C. Assumptions and Standard Values

- Period of analysis is 2007–2017.
- Discount rates are 7 percent and 3 percent.
- Burdened labor rate for an aviation engineer is \$125 an hour.
- Burdened labor rate for an aviation mechanic is \$85 an hour.
- Number of airplanes to be retrofitted is 7,575.

- It costs \$19,900 to change from a magnetic tape CVR to a 2-hour solid state CVR. The change will result in an annual operational and maintenance cost reduction of \$910 for these airplanes.

- It costs \$8,140 to change from a 30-minute memory solid state CVR to a 2-hour solid state CVR.

- The maximum cost for a future production commercial airplane is \$10,020 for RIPS, for recording DLC, and for the DFDR changes. Annual increased operational and maintenance costs are \$1,400.

- The cost of RIPS for a future production large helicopter is \$3,840. Annual increased operational and maintenance costs are \$1,300.

- The maximum cost for a future production business jet is \$8,520 for RIPS, for recording DLC, and for the DFDR changes. Annual increased operational and maintenance costs are \$1,000.

- Cost of aviation fuel is \$1.60 per gallon.

- The primary sources for this information are: (1) Industry responses to a 2002 FAA survey and (2) public comments we received in response to the NPRM.

#### D. Costs of This Rule

Since the publication of the notice we have learned that almost all of the manufacturers have been installing the newer equipment that was proposed and operators have been retiring older aircraft. As Table 1 shows, the costs estimated in this final rule are significantly less (approximately \$90 million) than we estimated in the NPRM.

TABLE 1.—SIGNIFICANT DIFFERENCES IN ASSUMPTIONS AND PARAMETERS USED FOR THE RULE AND FOR THE PROPOSAL

Assumption/parameter	Final rule	Proposal
Present Value (7%) of Total Costs .....	\$169 .....	\$256
Time Frame for Analysis .....	11 Years (2007–2017) .....	20 Years (2003–2022).
Part 121 Airplanes:		
Number of Magnetic Tape CVRs to be replaced .....	2,941 .....	5,904
Number of 30-Minute Memory Solid State CVRs to be replaced .....	4,634 .....	3,741
Number of Production Airplanes with 30-Minute Memory Recorders .....	394 .....	13,658
Percent of All Production Airplanes with 30-Minute Memory Recorders .....	10% .....	100%
Cost of Increased Memory/2 hours .....	\$1,500 .....	\$3,500
Need RIPS (number of aircraft) .....	3,935 .....	13,658
Cost of RIPS .....	\$4,180 .....	\$2,820
Record CPDLC (number of aircraft) .....	1,181 .....	13,658
Percent that will Record CPDLC .....	20% .....	100%
Increased FDR and DFDAU Capacity .....	3,935 .....	13,658
Large Production Helicopters:		
Number of Production Helicopters with 30-Minute Memory CVRs .....	0 .....	1,337
Need RIPS (number of aircraft) .....	259 .....	1,337
Record CPDLC (number of aircraft) .....	0 .....	1,337
Business Jets:		
Number of Production Business Jets for which costs were estimated .....	3,575 .....	0
Miscellaneous:		



TABLE 1.—SIGNIFICANT DIFFERENCES IN ASSUMPTIONS AND PARAMETERS USED FOR THE RULE AND FOR THE PROPOSAL—Continued

Assumption/parameter	Final rule	Proposal
Price of Aviation Fuel .....	\$1.60 .....	\$0.75

#### E. Benefits of This Rule

The rule increases the amount and quality of the information being recorded, which may result in new or revised safety rules (for airplane manufacturing or operations) or in voluntary changes to airline and pilot procedures that may produce a safer fleet and operations. Although we did not adopt all of the NTSB recommendations concerning CVR and DFDR modifications, we chose the course of action that maximizes safety benefits relative to compliance costs.

#### F. Alternatives Considered

We modified the proposed rule based on the comments. In particular, unlike the proposed rule, the final rule does not require part 91 operators to retrofit their airplanes. The proposed retrofit of a 2-hour CVR would have affected approximately 15,000 airplanes at a total cost that would have been several hundred million dollars. Any potential benefits would be far outweighed by these costs.

We had proposed new sampling frequencies of 16 times per second for 9 flight control parameters; the final rule requires sampling at 8 times per second. Manufacturers commented that some entire DFDR systems would need to be re-engineered at a potential cost of millions of dollars per aircraft model. Further, recording parameters at 16 times per second would not yield comparatively better information given the costs to obtain it.

#### G. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96-354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA believes that this final rule will not have a significant impact on a substantial number of entities for the following reasons:

The rule affects manufacturers of part 23 and part 25 airplanes. For these manufacturers, a small entity is one with 1,500 or fewer employees. No manufacturer of part 23 or part 25 aircraft that could be affected by these operational regulations (turbine powered aircraft with 10 or more seats) has fewer than 1,500 employees.

The rule also affects all operators of airplanes with 10 or more seats operating under parts 91, 121, 129, and 135. Some of these operators are small entities that must retrofit their airplanes. The cost to retrofit an individual airplane is between \$8,140 and \$19,900. We have operating revenue for 24 of the 46 small air carriers affected. Of these 24 small air carriers, the maximum one-time cost will be 0.71 percent of 2005's revenue for one airline and for the remaining 23 small air carriers, the percentage will not exceed 0.35 percent. The FAA does not consider it a significant economic impact when total one-time compliance costs are less than one percent of a year's revenue.

Therefore, as the FAA Acting Administrator, I certify that this rule does not have a significant economic impact on a substantial number of small entities.

#### H. International Trade Impact Assessment

The Trade Agreement Act of 1979 (Pub. L. 96-39) prohibits Federal agencies from establishing any

standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA assessed the potential effect of this rule and determined that it responds to a domestic safety objective and is not considered an unnecessary barrier to trade.

#### I. Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of \$100 million or more (adjusted annually for inflation) by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of \$128.1 million in lieu of \$100 million.

This rule does not contain such a mandate. The requirements of Title II do not apply.

#### Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications.

#### Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this

proposed rulemaking action qualifies for a categorical exclusion.

#### Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94-163, as amended (43 U.S.C. 6362), and FAA Order 1053.1. It has been determined that the notice is not a major regulatory action under the provisions of the EPCA.

#### Availability of Rulemaking Documents

You may obtain an electronic copy of this final rule using the Internet by:

- (1) Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
- (2) Visiting the FAA's Regulations and Policies Web page at [http://www.faa.gov/regulations\\_policies/](http://www.faa.gov/regulations_policies/); or
- (3) Accessing the Government Printing Office's Web page at <http://www.gpoaccess.gov/fr/index.html>.

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

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the *Federal Register* published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://DocketsInfo.dot.gov>.

#### Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question about this document, you may contact your local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You may find out more about SBREFA on the Internet at [http://www.faa.gov/regulations\\_policies/rulemaking/sbre\\_act/](http://www.faa.gov/regulations_policies/rulemaking/sbre_act/).

#### List of Subjects

- 14 CFR Part 23  
Aircraft, Aviation safety.
- 14 CFR Part 25  
Aircraft, Aviation safety.

#### 14 CFR Part 27

Aircraft, Aviation Safety.

#### 14 CFR Part 29

Aircraft, Aviation Safety.

#### 14 CFR Part 91

Aircraft, Aviation safety.

#### 14 CFR Part 121

Air carriers, Aircraft, Aviation safety, Charter flights, Safety, Transportation.

#### 14 CFR Part 125

Aircraft, Aviation safety.

#### 14 CFR Part 129

Air carriers, Aircraft, Aviation safety.

#### 14 CFR Part

135 Air taxis, Aircraft, Aviation safety.

#### The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends parts 23, 25, 27, 29, 91, 121, 125, 129, and 135 of Title 14, Code of Federal Regulations, as follows:

#### PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, ACROBATIC, AND COMMUTER CATEGORY AIRPLANES

■ 1. The authority citation for part 23 continues to read as follows:

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

■ 2. Amend § 23.1457 by removing the period at the end paragraph (d)(3) and adding a semicolon in its place, by revising paragraphs (d)(1) and (e), and by adding new paragraphs (a)(6), (d)(4), (d)(5), and (d)(6) to read as follows:

#### § 23.1457 Cockpit voice recorders.

(a) \* \* \*

(6) If datalink communication equipment is installed, all datalink communications, using an approved data message set. Datalink messages must be recorded as the output signal from the communications unit that translates the signal into usable data.

\* \* \* \* \*

(d) \* \* \*

(1) It receives its electrical power from the bus that provides the maximum reliability for operation of the cockpit voice recorder without jeopardizing service to essential or emergency loads. The cockpit voice recorder must remain powered for as long as possible without jeopardizing emergency operation of the airplane;

\* \* \* \* \*

(4) Any single electrical failure external to the recorder does not disable

both the cockpit voice recorder and the flight data recorder;

(5) It has an independent power source—

(i) That provides 10 ± 1 minutes of electrical power to operate both the cockpit voice recorder and cockpit-mounted area microphone;

(ii) That is located as close as practicable to the cockpit voice recorder; and

(iii) To which the cockpit voice recorder and cockpit-mounted area microphone are switched automatically in the event that all other power to the cockpit voice recorder is interrupted either by normal shutdown or by any other loss of power to the electrical power bus; and

(6) It is in a separate container from the flight data recorder when both are required. If used to comply with only the cockpit voice recorder requirements, a combination unit may be installed.

(e) The recorder container must be located and mounted to minimize the probability of rupture of the container as a result of crash impact and consequent heat damage to the recorder from fire.

(1) Except as provided in paragraph (e)(2) of this section, the recorder container must be located as far aft as practicable, but need not be outside of the pressurized compartment, and may not be located where aft-mounted engines may crush the container during impact.

(2) If two separate combination digital flight data recorder and cockpit voice recorder units are installed instead of one cockpit voice recorder and one digital flight data recorder, the combination unit that is installed to comply with the cockpit voice recorder requirements may be located near the cockpit.

\* \* \* \* \*

3. Amend § 23.1459 by revising the section heading, by removing the period at the end of paragraph (a)(4) and adding a semicolon in its place, by removing the word "and" after the semicolon in paragraph (a)(5), by revising paragraph (a)(3) to read as follows, and by adding new paragraphs (a)(6) and (a)(7) to read as follows:

#### § 23.1459 Flight data recorders.

(a) \* \* \*

(3) It receives its electrical power from the bus that provides the maximum reliability for operation of the flight data recorder without jeopardizing service to essential or emergency loads. The flight data recorder must remain powered for as long as possible without jeopardizing emergency operation of the airplane;

\* \* \* \* \*

(6) Any single electrical failure external to the recorder does not disable both the cockpit voice recorder and the flight data recorder; and

(7) It is in a separate container from the cockpit voice recorder when both are required. If used to comply with only the flight data recorder requirements, a combination unit may be installed. If a combination unit is installed as a cockpit voice recorder to comply with § 23.1457(e)(2), a combination unit must be used to comply with this flight data recorder requirement.

\* \* \* \* \*

#### PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

■ 4. The authority citation for part 25 continues to read as follows:

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

■ 5. Amend § 25.1457 by removing the word "and" after the semicolon in paragraph (d)(2), by removing the period at the end of paragraph (d)(3) and adding a semicolon in its place, by revising paragraphs (d)(1) and (e) to read as follows, and by adding new paragraphs (a)(6), (d)(4), (d)(5), and (d)(6) to read as follows:

##### § 25.1457 Cockpit voice recorders.

(a) \* \* \*

(6) If datalink communication equipment is installed, all datalink communications, using an approved data message set. Datalink messages must be recorded as the output signal from the communications unit that translates the signal into usable data.

\* \* \* \* \*

(d) \* \* \*

(1) It receives its electrical power from the bus that provides the maximum reliability for operation of the cockpit voice recorder without jeopardizing service to essential or emergency loads. The cockpit voice recorder must remain powered for as long as possible without jeopardizing emergency operation of the airplane;

\* \* \* \* \*

(4) Any single electrical failure external to the recorder does not disable both the cockpit voice recorder and the flight data recorder;

(5) It has an independent power source—

(i) That provides  $10 \pm 1$  minutes of electrical power to operate both the cockpit voice recorder and cockpit-mounted area microphone;

(ii) That is located as close as practicable to the cockpit voice recorder; and

(iii) To which the cockpit voice recorder and cockpit-mounted area microphone are switched automatically in the event that all other power to the cockpit voice recorder is interrupted either by normal shutdown or by any other loss of power to the electrical power bus; and

(6) It is in a separate container from the flight data recorder when both are required. If used to comply with only the cockpit voice recorder requirements, a combination unit may be installed.

(e) The recorder container must be located and mounted to minimize the probability of rupture of the container as a result of crash impact and consequent heat damage to the recorder from fire.

(1) Except as provided in paragraph (e)(2) of this section, the recorder container must be located as far aft as practicable, but need not be outside of the pressurized compartment, and may not be located where aft-mounted engines may crush the container during impact.

(2) If two separate combination digital flight data recorder and cockpit voice recorder units are installed instead of one cockpit voice recorder and one digital flight data recorder, the combination unit that is installed to comply with the cockpit voice recorder requirements may be located near the cockpit.

\* \* \* \* \*

■ 6. Amend § 25.1459 by revising the section heading, by removing the period at the end of paragraph (a)(4) and adding a semicolon in its place, by removing the word "and" after the semicolon in paragraph (a)(5), by removing the period at the end of paragraph (a)(6) and adding a semicolon in its place, by revising paragraph (a)(3) to read as follows, and by adding new paragraphs (a)(7) and (a)(8) to read as follows:

##### § 25.1459 Flight data recorders.

(a) \* \* \*

(3) It receives its electrical power from the bus that provides the maximum reliability for operation of the flight data recorder without jeopardizing service to essential or emergency loads. The flight data recorder must remain powered for as long as possible without jeopardizing emergency operation of the airplane;

\* \* \* \* \*

(7) Any single electrical failure external to the recorder does not disable both the cockpit voice recorder and the flight data recorder; and

(8) It is in a separate container from the cockpit voice recorder when both are required. If used to comply with only the flight data recorder

requirements, a combination unit may be installed. If a combination unit is installed as a cockpit voice recorder to comply with § 25.1457(e)(2), a combination unit must be used to comply with this flight data recorder requirement.

\* \* \* \* \*

#### PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

■ 7. The authority citation for part 27 continues to read as follows:

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

■ 8. Amend § 27.1457 by removing the word "and" after the semicolon in paragraph (d)(2), by removing the period at the end of paragraph (d)(3) and adding a semicolon in its place, by revising paragraph (d)(1) to read as follows, and by adding new paragraphs (a)(6), (d)(4), (d)(5), and (h) to read as follows:

##### § 27.1457 Cockpit voice recorders.

(a) \* \* \*

(6) If datalink communication equipment is installed, all datalink communications, using an approved data message set. Datalink messages must be recorded as the output signal from the communications unit that translates the signal into usable data.

\* \* \* \* \*

(d) \* \* \*

(1) It receives its electrical power from the bus that provides the maximum reliability for operation of the cockpit voice recorder without jeopardizing service to essential or emergency loads. The cockpit voice recorder must remain powered for as long as possible without jeopardizing emergency operation of the rotorcraft;

\* \* \* \* \*

(4) Whether the cockpit voice recorder and digital flight data recorder are installed in separate boxes or in a combination unit, no single electrical failure external to the recorder may disable both the cockpit voice recorder and the digital flight data recorder; and

(5) It has an independent power source—

(i) That provides  $10 \pm 1$  minutes of electrical power to operate both the cockpit voice recorder and cockpit-mounted area microphone;

(ii) That is located as close as practicable to the cockpit voice recorder; and

(iii) To which the cockpit voice recorder and cockpit-mounted area microphone are switched automatically in the event that all other power to the

cockpit voice recorder is interrupted either by normal shutdown or by any other loss of power to the electrical power bus.

(h) When both a cockpit voice recorder and a flight data recorder are required by the operating rules, one combination unit may be installed, provided that all other requirements of this section and the requirements for flight data recorders under this part are met.

■ 9. Amend § 27.1459 by revising the section heading and paragraph (a)(3) to read as follows, and by adding new paragraphs (a)(6) and (e) to read as follows:

**§ 27.1459 Flight data recorders.**

(a) \* \* \*

(3) It receives its electrical power from the bus that provides the maximum reliability for operation of the flight data recorder without jeopardizing service to essential or emergency loads. The flight data recorder must remain powered for as long as possible without jeopardizing emergency operation of the rotorcraft;

(6) Whether the cockpit voice recorder and digital flight data recorder are installed in separate boxes or in a combination unit, no single electrical failure external to the recorder may disable both the cockpit voice recorder and the digital flight data recorder.

(e) When both a cockpit voice recorder and a flight data recorder are required by the operating rules, one combination unit may be installed, provided that all other requirements of this section and the requirements for cockpit voice recorders under this part are met.

**PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT**

■ 10. The authority citation for part 29 continues to read as follows:

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

■ 11. Amend § 29.1457 by removing the word “and” after the semicolon in paragraph (d)(2), by removing the period at the end of paragraph (d)(3) and adding a semicolon in its place, by revising paragraph (d)(1) to read as follows, and by adding new paragraphs (a)(6), (d)(4), (d)(5), and (h) to read as follows:

**§ 29.1457 Cockpit voice recorders.**

(a) \* \* \*

(6) If datalink communication equipment is installed, all datalink

communications, using an approved data message set. Datalink messages must be recorded as the output signal from the communications unit that translates the signal into usable data.

(d) \* \* \*

(1) It receives its electrical power from the bus that provides the maximum reliability for operation of the cockpit voice recorder without jeopardizing service to essential or emergency loads. The cockpit voice recorder must remain powered for as long as possible without jeopardizing emergency operation of the rotorcraft;

(4) Whether the cockpit voice recorder and digital flight data recorder are installed in separate boxes or in a combination unit, no single electrical failure external to the recorder may disable both the cockpit voice recorder and the digital flight data recorder; and

(5) It has an independent power source—

(i) That provides 10 ± 1 minutes of electrical power to operate both the cockpit voice recorder and cockpit-mounted area microphone;

(ii) That is located as close as practicable to the cockpit voice recorder; and

(iii) To which the cockpit voice recorder and cockpit-mounted area microphone are switched automatically in the event that all other power to the cockpit voice recorder is interrupted either by normal shutdown or by any other loss of power to the electrical power bus.

(h) When both a cockpit voice recorder and a flight data recorder are required by the operating rules, one combination unit may be installed, provided that all other requirements of this section and the requirements for flight data recorders under this part are met.

■ 12. Amend § 29.1459 by revising the section heading, by removing the word “and” after the semicolon in paragraph (a)(4), by removing the period at the end of paragraph (a)(5) and adding “; and” in its place, by revising paragraph (a)(3) to read as follows and by adding new paragraphs (a)(6) and (e) to read as follows:

**§ 29.1459 Flight data recorders.**

(a) \* \* \*

(3) It receives its electrical power from the bus that provides the maximum reliability for operation of the cockpit voice recorder without jeopardizing service to essential or emergency loads. The cockpit voice recorder must remain

powered for as long as possible without jeopardizing emergency operation of the rotorcraft;

(6) Whether the cockpit voice recorder and digital flight data recorder are installed in separate boxes or in a combination unit, no single electrical failure external to the recorder may disable both the cockpit voice recorder and the digital flight data recorder.

(e) When both a cockpit voice recorder and a flight data recorder are required by the operating rules, one combination unit may be installed, provided that all other requirements of this section and the requirements for cockpit voice recorders under this part are met.

**PART 91—GENERAL OPERATING AND FLIGHT RULES**

■ 13. The authority citation for part 91 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

14. Amend § 91.609 by revising the section heading, by redesignating paragraph (c) as (c)(1), and by adding new paragraphs (c)(2), (c)(3), (h), (i), and (j) to read as follows:

**§ 91.609 Flight data recorders and cockpit voice recorders.**

(c) \* \* \*

(2) All airplanes subject to paragraph (c)(1) of this section that are manufactured before April 7, 2010, by April 7, 2012, must meet the requirements of § 23.1459(a)(7) or § 25.1459(a)(8) of this chapter, as applicable.

(c)(3) All airplanes and rotorcraft subject to paragraph (c)(1) of this section that are manufactured on or after April 7, 2010, must meet the flight data recorder requirements of § 23.1459, § 25.1459, § 27.1459, or § 29.1459 of this chapter, as applicable, and retain at least the last 25 hours of recorded information using a recorder that meets the standards of TSO–C124a, or later revision.

(h) All airplanes required by this section to have a cockpit voice recorder and a flight data recorder, that are manufactured before April 7, 2010, must by April 7, 2012, have a cockpit voice recorder that also—

(1) Meets the requirements of § 23.1457(d)(6) or § 25.1457(d)(6) of this chapter, as applicable; and

(2) If transport category, meets the requirements of § 25.1457(a)(3), (a)(4), and (a)(5) of this chapter.

(i) All airplanes or rotorcraft required by this section to have a cockpit voice recorder and flight data recorder, that are manufactured on or after April 7, 2010, must have a cockpit voice recorder installed that also—

(1) Meets the requirements of § 23.1457, § 25.1457, § 27.1457, or § 29.1457 of this chapter, as applicable; and

(2) Retains at least the last 2 hours of recorded information using a recorder that meets the standards of TSO-C123a, or later revision.

(j) All airplanes or rotorcraft required by this section to have a cockpit voice recorder and a flight data recorder, that install datalink communication

equipment on or after April 7, 2010, must record all datalink messages as required by the certification rule applicable to the aircraft.

■ 15. Amend appendix E to part 91 by adding footnote 5 to the Stabilizer Trim Position or Pitch Control Position, under the heading Parameters to read as set forth below. The text of footnotes 1, 3, and 4 is reprinted without change for the convenience of the reader.

APPENDIX E TO PART 91.—AIRPLANE FLIGHT RECORDER SPECIFICATIONS

Parameters	Range	Installed system <sup>1</sup> minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution <sup>4</sup> read out (percent)
Stabilizer Trim Position or Pitch Control Position <sup>5</sup> .	Full Range	±3% unless higher uniquely required	1	31

<sup>1</sup> When data sources are aircraft instruments (except altimeters) of acceptable quality to fly the aircraft, the recording system, excluding these sensors (but including all other characteristics of the recording system), shall contribute no more than half of the values in this column.

<sup>3</sup> Percent of full range.

<sup>4</sup> This column applies to aircraft manufactured after October 11, 1991.

<sup>5</sup> For Pitch Control Position only, for all aircraft manufactured on or after April 7, 2010, the sampling interval (per second) is 8. Each input must be recorded at this rate. Alternately sampling inputs (interleaving) to meet this sampling interval is prohibited.

■ 16. Amend appendix F to part 91 by adding footnote 4 to the Collective, Pedal Position, Lat. Cyclic, Long. Cyclic, and Controllable Stabilator Position, under the heading Parameters to read as set forth below. The text of footnotes 1 through 4 is reprinted without change for the convenience of the reader.

APPENDIX F TO PART 91.—HELICOPTER FLIGHT RECORDER SPECIFICATIONS

Parameters	Range	Installed system <sup>1</sup> minimum accuracy (to recovered data) (in percent)	Sampling interval (per second)	Resolution <sup>3</sup> read out (in percent)
Collective <sup>4</sup>	Full Range	±3	2	21
Pedal Position <sup>4</sup>	Full Range	±3	2	21
Lat. Cyclic <sup>4</sup>	Full Range	±3	2	21
Long. Cyclic <sup>4</sup>	Full Range	±3	2	21
Controllable Stabilator Position <sup>4</sup>	Full Range	±3	2	21

<sup>1</sup> When data sources are aircraft instruments (except altimeters) of acceptable quality to fly the aircraft, the recording system, excluding these sensors (but including all other characteristics of the recording system), shall contribute no more than half of the values in this column.

<sup>2</sup> Percent of full range.

<sup>3</sup> This column applies to aircraft manufactured after October 11, 1991.

<sup>4</sup> For all aircraft manufactured on or after April 7, 2010, the sampling interval per second is 4.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 17. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 46105.

■ 18. Amend § 121.343 by revising the section heading, by amending paragraph (c) by revising “1994” to read “1995”, and by adding new paragraph (m) to read as follows:

§ 121.343 Flight data recorders.

(m) After August 20, 2001, this section applies only to the airplane models listed in § 121.344(l)(2). All other airplanes must comply with the requirements of § 121.344, as applicable.

■ 19. Amend § 121.344 by adding new paragraph (m) to read as follows:

§ 121.344 Digital flight data recorders for transport category airplanes.

(m) All aircraft subject to the requirements of this section that are manufactured on or after April 7, 2010,



must have a digital flight data recorder installed that also—

(1) Meets the requirements of § 25.1459(a)(3), (a)(7), and (a)(8) of this chapter; and

(2) Retains the 25 hours of recorded information required in paragraph (h) of this section using a recorder that meets the standards of TSO-C124a, or later revision.

■ 20. Amend § 121.344a by adding new paragraph (g) to read as follows:

**§ 121.344a Digital flight data recorders for 10–19 seat airplanes.**

\* \* \* \* \*

(g) All airplanes subject to the requirements of this section that are manufactured on or after April 7, 2010, must have a digital flight data recorder installed that also—

(1) Meets the requirements in § 23.1459(a)(3), (a)(6), and (a)(7) or § 25.1459(a)(3), (a)(7), and (a)(8) of this chapter, as applicable; and

(2) Retains the 25 hours of recorded information required in § 121.344(g) using a recorder that meets the standards of TSO-C124a, or later revision.

■ 21. Amend § 121.359 by adding new paragraphs (i), (j), and (k) to read as follows:

**§ 121.359 Cockpit voice recorders.**

\* \* \* \* \*

(i) By April 7, 2012, all turbine engine-powered airplanes subject to this section that are manufactured before April 7, 2010, must have a cockpit voice recorder installed that also—

(1) Meets the requirements of § 23.1457(d)(6) or § 25.1457(d)(6) of this chapter, as applicable;

(2) Retains at least the last 2 hours of recorded information using a recorder that meets the standards of TSO-C123a, or later revision; and

(3) Is operated continuously from the use of the checklist before the flight to completion of the final checklist at the end of the flight.

(4) If transport category, meets the requirements in § 25.1457(a)(3), (a)(4), and (a)(5) of this chapter.

(j) All turbine engine-powered airplanes subject to this section that are manufactured on or after April 7, 2010,

must have a cockpit voice recorder installed that also—

(1) Meets the requirements of § 23.1457 or § 25.1457 of this chapter, as applicable;

(2) Retains at least the last 2 hours of recorded information using a recorder that meets the standards of TSO-C123a, or later revision; and

(3) Is operated continuously from the use of the checklist before the flight to completion of the final checklist at the end of the flight.

(k) All airplanes required by this part to have a cockpit voice recorder and a flight data recorder, that install datalink communication equipment on or after April 7, 2010, must record all datalink messages as required by the certification rule applicable to the airplane.

■ 22. Amend appendix M to part 121 by revising parameters 1, 12a, 12b, 13a, 13b, 14a, 14b, 15, 16 and 17 and 88, and adding footnote 18, to read as set forth below. The text of footnotes 1, 3, 4, 5, 6, 7, and 8 are reprinted without change for the convenience of the reader.

\* \* \* \* \*

**APPENDIX M TO PART 121.—AIRPLANE FLIGHT RECORDER SPECIFICATIONS**

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
1. Time or relative times counts. <sup>1</sup>	24 Hrs, 0 to 4095 ...	±0.125% per hour ...	4 .....	1 sec .....	UTC time preferred when available. Count increments each 4 seconds of system operation.
12a. Pitch control(s) position (nonfly-by-wire systems). <sup>18</sup>	Full Range .....	±2° unless higher accuracy uniquely required.	0.5 or 0.25 for airplanes operated under § 121.344(f).	0.5% of full range ...	For airplanes that have a flight control breakaway capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5 or 0.25, as applicable.
12b. Pitch control(s) position (fly-by-wire systems). <sup>3 18</sup>	Full Range .....	±2° unless higher accuracy uniquely required.	0.5 or 0.25 for airplanes operated under § 121.344(f).	0.2% of full range ...	
13a. Lateral control position(s) (nonfly-by-wire). <sup>18</sup>	Full Range .....	±2° unless higher accuracy uniquely required.	0.5 or 0.25 for airplanes operated under § 121.344(f).	0.2% of full range ...	For airplanes that have a flight control breakaway capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5 or 0.25, as applicable.
13b. Lateral control position(s) (fly-by-wire). <sup>4 18</sup>	Full Range .....	±2° unless higher accuracy uniquely required.	0.5 or 0.25 for airplanes operated under § 121.344(f).	0.2% of full range.	

APPENDIX M TO PART 121.—AIRPLANE FLIGHT RECORDER SPECIFICATIONS—Continued

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
14a. Yaw control position(s) (nonfly-by-wire). <sup>5 18</sup>	Full Range .....	±2° unless higher accuracy uniquely required.	0.5 .....	0.3% of full range ...	For airplanes that have a flight control breakaway capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5.
14b. Yaw control position(s) (fly-by-wire). <sup>18</sup>	Full Range .....	±2° unless higher accuracy uniquely required.	0.5 .....	0.2% of full range ...	
15. Pitch control surface(s) position. <sup>6 18</sup>	Full Range .....	±2° unless higher accuracy uniquely required.	0.5 or 0.25 for airplanes operated under § 121.344(f).	0.3% of full range ...	For airplanes fitted with multiple or split surfaces, a suitable combination of inputs is acceptable in lieu of recording each surface separately. The control surfaces may be sampled alternately once per second to produce the sampling interval of 0.5 or 0.25, as applicable.
16. Lateral control surface(s) position. <sup>7 18</sup>	Full Range .....	±2° unless higher accuracy uniquely required.	0.5 or 0.25 for airplanes operated under § 121.344(f).	0.3% of full range ...	A suitable combination of surface position sensors is acceptable in lieu of recording each surface separately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5 or 0.25, as applicable.
17. Yaw control surface(s) position. <sup>8 18</sup>	Full Range .....	±2° unless higher accuracy uniquely required.	0.5 .....	0.2% of full range ...	For airplanes with multiple or split surfaces, a suitable combination of surface position sensors is acceptable in lieu of recording each surface separately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5.
88. All cockpit flight control input forces (control wheel, control column, rudder pedal). <sup>18</sup>	Full Range Control wheel ±70 lbs. Control column ±85 lbs. Rudder pedal ±165 lbs.	±5% .....	1 .....	0.3% of full range ...	For fly-by-wire flight control systems, where flight control surface position is a function of the displacement of the control input device only, it is not necessary to record this parameter. For airplanes that have a flight control breakaway capability that allows either pilot to operate the control independently, record both control force inputs. The control force inputs may be sampled alternately once per 2 seconds to produce the sampling interval of 1.

<sup>1</sup> For A300 B2/B4 airplanes, resolution = 6 seconds.

\* \* \* \* \*

<sup>3</sup> For A318/A319/A320/A321 series airplanes, resolution = 0.275% (0.088°>0.064°). For A330/A340 series

airplanes, resolution = 2.20% (0.703°>0.064°).

<sup>4</sup> For A318/A319/A320/A321 series airplanes, resolution = 0.22% (0.088°>0.080°). For A330/A340 series airplanes, resolution = 1.76% (0.703°>0.080°).

<sup>5</sup> For A330/A340 series airplanes, resolution = 1.18% (0.703°>0.120°).

<sup>6</sup> For A330/A340 series airplanes, resolution = 0.783% (0.352°>0.090°).

<sup>7</sup> For A330/A340 series airplanes, aileron resolution = 0.704% (0.352°>0.100°). For A330/A340 series airplanes, spoiler resolution = 1.406% (0.703°>0.100°).

<sup>8</sup> For A330/A340 series airplanes, resolution = 0.30% (0.176° > 0.12°). For A330/A340 series airplanes, seconds per sampling interval = 1.

\* \* \* \* \*

<sup>18</sup> For all aircraft manufactured on or after April 7, 2010, the seconds per sampling interval is 0.125. Each input must be recorded at this rate. Alternately sampling inputs (interleaving) to meet this sampling interval is prohibited.

**PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT**

■ 23. The authority citation for part 125 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

■ 24. Amend § 125.225 by revising the section heading and by adding new paragraph (j) to read as follows:

**§ 125.225 Flight data recorders.**

\* \* \* \* \*

(j) After August 20, 2001, this section applies only to the airplane models listed in § 125.226(l)(2). All other airplanes must comply with the requirements of § 125.226.

■ 25. Amend § 125.226 by adding new paragraph (m) to read as follows:

**§ 125.226 Digital flight data recorders.**

\* \* \* \* \*

(m) All aircraft subject to the requirements of this section that are manufactured on or after April 7, 2010, must have a flight data recorder installed that also—

(1) Meets the requirements in § 25.1459(a)(3), (a)(7), and (a)(8) of this chapter; and

(2) Retains the 25 hours of recorded information required in paragraph (f) of this section using a recorder that meets the standards of TSO-C124a, or later revision.

■ 26. Amend § 125.227 by adding new paragraphs (g), (h), and (i) to read as follows:

**§ 125.227 Cockpit voice recorders.**

\* \* \* \* \*

(g) By April 7, 2012, all turbine engine-powered airplanes subject to this section that are manufactured before April 7, 2010, must have a cockpit voice recorder installed that also—

(1) Meets the requirements of § 25.1457(a)(3), (a)(4), (a)(5), and (d)(6) of this chapter;

(2) Retains at least the last 2 hours of recorded information using a recorder that meets the standards of TSO-C123a, or later revision; and

(3) Is operated continuously from the start of the use of the checklist (before

starting the engines for the purpose of flight), to the completion of the final checklist at the termination of the flight.

(h) All turbine engine-powered airplanes subject to this section that are manufactured on or after April 7, 2010, must have a cockpit voice recorder installed that also—

(1) Meets the requirements of § 25.1457(a)(3) through (a)(6), (d)(1), (d)(4), (d)(5), and (d)(6) of this chapter;

(2) Retains at least the last 2 hours of recorded information using a recorder that meets the standards of TSO-C123a, or later revision; and

(3) Is operated continuously from the start of the use of the checklist (before starting the engines for the purpose of flight), to the completion of the final checklist at the termination of the flight.

(i) All turbine engine-powered airplanes required by this part to have a cockpit voice recorder and a flight data recorder, that install datalink communication equipment on or after April 7, 2010, must record all datalink messages as required by the certification rule applicable to the airplane.

■ 27. Amend appendix E to part 125 by revising parameters 12a, 12b, 13a, 13b, 14a, 14b, 15, 16, 17, 23, and 88, and adding footnote 18, to read as set forth below. The text of footnotes 3, 4, 5, 6, 8, and 12 are reprinted without change for the convenience of the reader.

\* \* \* \* \*

**APPENDIX E TO PART 125.—AIRPLANE FLIGHT RECORDER SPECIFICATIONS**

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
12a. Pitch control(s) position (nonfly-by-wire systems) <sup>18</sup> .	Full range .....	±2° unless higher accuracy uniquely required.	0.5 or 0.25 for airplanes operated under § 125.226(f).	0.5% of full range ...	For airplanes that have a flight control breakaway capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5 or 0.25, as applicable.
12b. Pitch control(s) position (fly-by-wire systems) <sup>3 18</sup> .	Full range .....	±2° unless higher accuracy uniquely required.	0.5 or 0.25 for airplanes operated under § 125.226(f).	0.2% of full range.	
13a. Lateral control position(s) (nonfly-by-wire) <sup>18</sup> .	Full range .....	±2° unless higher accuracy uniquely required.	0.5 or 0.25 for airplanes operated under § 125.226(f).	0.2% of full range ...	For airplanes that have a flight control break away capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5 or 0.25, as applicable.

## APPENDIX E TO PART 125.—AIRPLANE FLIGHT RECORDER SPECIFICATIONS—Continued

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
13b. Lateral control position(s) (fly-by-wire) <sup>4 18</sup> .	Full range .....	±2° unless higher accuracy uniquely required.	0.5 or 0.25 for airplanes operated under § 125.226(f).	0.2% of full range.	
14a. Yaw control position(s) (nonfly-by-wire) <sup>5 18</sup> .	Full range .....	±2° unless higher accuracy uniquely required.	0.5 .....	0.3% of full range ...	For airplanes that have a flight control breakaway capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5.
14b. Yaw control position(s) (fly-by-wire) <sup>18</sup> .	Full range .....	±2° unless higher accuracy uniquely required.	0.5 .....	0.2% of full range.	
15. Pitch control surface(s) position <sup>6 18</sup> .	Full range .....	±2° unless higher accuracy uniquely required.	0.5 or 0.25 for airplanes operated under § 125.226(f).	0.3% of full range ...	For airplanes fitted with multiple or split surfaces, a suitable combination of inputs is acceptable in lieu of recording each surface separately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5 or 0.25, as applicable.
16. Lateral control surface(s) position <sup>7 18</sup> .	Full Range .....	±2° unless higher accuracy uniquely required.	0.5 or 0.25 for airplanes operated under § 125.226(f).	0.2% of full range ...	A suitable combination of surface position sensors is acceptable in lieu of recording each surface separately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5 or 0.25, as applicable.
17. Yaw control surface(s) position <sup>8 18</sup> .	Full range .....	±2° unless higher accuracy uniquely required.	0.5 .....	0.2% of full range ...	For airplanes fitted with multiple or split surfaces, a suitable combination of surface position sensors is acceptable in lieu of recording each surface separately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5.
23. Ground Spoiler Position or Speed Brake Selection <sup>12</sup> .	Full Range or Each Position (discrete).	±2° Unless higher accuracy uniquely required.	1 or 0.5 for airplanes operated under § 125.226(f).	0.2% of full range.	
88. All cockpit flight control input forces (control wheel, control column, rudder pedal) <sup>18</sup> .	Full range Control wheel ±70 lbs. Control column ±85 lbs. Rudder pedal ±165 lbs.	±5% .....	1 .....	0.3% of full range ...	For fly-by-wire flight control systems, where flight control surface position is a function of the displacement of the control input device only, it is not necessary to record this parameter. For airplanes that have a flight control breakaway capability that allows control independently, record both control force inputs. The control force inputs may be sampled alternately once per 2 seconds to produce the sampling interval of 1.

\* \* \* \* \*

<sup>3</sup> For A318/A319/A320/A321 series airplanes, resolution = 0.275% (0.088°>0.064°).

For A330/A340 series airplanes, resolution = 2.20% (0.703°>0.064°).

<sup>4</sup> For A318/A319/A320/A321 series airplanes, resolution = 0.22% (0.088°>0.080°).

For A330/A340 series airplanes, resolution = 1.76% (0.703°>0.080°).

<sup>5</sup> For A330/A340 series airplanes, resolution = 1.18% (0.703°>0.120°).

<sup>6</sup> For A330/A340 series airplanes, resolution = 0.783% (0.352°>0.090°).

<sup>7</sup> For A330/A340 series airplanes, aileron resolution = 0.704% (0.352°>0.100°).

For A330/A340 series airplanes, spoiler resolution = 1.406% (0.703°>0.100°).

<sup>8</sup> For A330/A340 series airplanes, resolution = 0.30% (0.176°>0.12°).

For A330/A340 series airplanes, seconds per sampling interval = 1.

\* \* \* \* \*

<sup>12</sup> For A330/A340 series airplanes, spoiler resolution = 1.406% (0.703°>0.100°).

\* \* \* \* \*

<sup>18</sup> For all aircraft manufactured on or after April 7, 2010, the seconds per sampling interval is 0.125. Each input must be recorded at this rate. Alternately sampling inputs (interleaving) to meet this sampling interval is prohibited.

#### **PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE**

■ 28. The authority citation for part 129 continues to read as follows:

**Authority:** 49 U.S.C. 1372, 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901–44904, 44906, 44912, 46105, Pub. L. 107–71, sec. 104.

■ 29. Amend § 129.1 by revising paragraph (b) to read as follows:

##### **§ 129.1 Applicability.**

\* \* \* \* \*

(b) *Operations of U.S.-registered aircraft solely outside the United States.* In addition to the operations specified under paragraph (a) of this section, §§ 129.14, 129.16, 129.20, 129.24, 129.32 and 129.33 also apply to U.S.-registered aircraft operated solely outside the United States in common carriage by a foreign person or foreign air carrier.

\* \* \* \* \*

■ 30. Amend part 129 by adding new § 129.24 to read as follows:

##### **§ 129.24 Cockpit voice recorders.**

No person may operate an aircraft under this part that is registered in the United States unless it is equipped with

an approved cockpit voice recorder that meets the standards of TSO–C123a, or later revision. The cockpit voice recorder must record the information that would be required to be recorded if the aircraft were operated under part 121, 125, or 135 of this chapter, and must be installed by the compliance times required by that part, as applicable to the aircraft.

#### **PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT**

■ 31. The authority citation for part 135 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 41706, 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

■ 32. Amend § 135.151 by adding new paragraphs (f), (g), and (h) to read as follows:

##### **§ 135.151 Cockpit voice recorders.**

\* \* \* \* \*

(f) By April 7, 2012, all airplanes subject to paragraph (a) or paragraph (b) of this section that are manufactured before April 7, 2010, and that are required to have a flight data recorder installed in accordance with § 135.152, must have a cockpit voice recorder that also—

(1) Meets the requirements in § 23.1457(d)(6) or § 25.1457(d)(6) of this chapter, as applicable; and

(2) If transport category, meet the requirements in § 25.1457(a)(3), (a)(4), and (a)(5) of this chapter.

(g)(1) No person may operate a multiengine, turbine-powered airplane or rotorcraft that is manufactured on or after April 7, 2010, that has a passenger seating configuration of six or more seats, for which two pilots are required by certification or operating rules, and that is required to have a flight data recorder under § 135.152, unless it is equipped with an approved cockpit voice recorder that also—

(i) Is installed in accordance with the requirements of § 23.1457, § 25.1457, § 27.1457(a)(6), (d)(1), (d)(4), (d)(5), and (h), or § 29.1457(a)(6), (d)(1), (d)(4), (d)(5), and (h) of this chapter, as applicable;

(ii) Is operated continuously from the use of the check list before the flight, to completion of the final check list at the end of the flight; and

(iii) Retains at least the last 2 hours of recorded information using a recorder that meets the standards of TSO–C123a, or later revision.

(2) No person may operate a multiengine, turbine-powered airplane or rotorcraft that is manufactured on or after April 7, 2010, has a passenger seating configuration of 20 or more seats, and that is required to have a flight data recorder under § 135.152, unless it is equipped with an approved cockpit voice recorder that also—

(i) Is installed in accordance with the requirements of § 23.1457, § 25.1457, § 27.1457(a)(6), (d)(1), (d)(4), (d)(5), and (h), or § 29.1457(a)(6), (d)(1), (d)(4), (d)(5), and (h) of this chapter, as applicable;

(ii) Is operated continuously from the use of the check list before the flight, to completion of the final check list at the end of the flight; and

(iii) Retains at least the last 2 hours of recorded information using a recorder that meets the standards of TSO–C123a, or later revision.

(h) All airplanes or rotorcraft required by this part to have a cockpit voice recorder and a flight data recorder, that install datalink communication equipment on or after April 7, 2010, must record all datalink messages as required by the certification rule applicable to the aircraft.

■ 33. Amend § 135.152 by revising the section heading and by adding new paragraphs (l) and (m) to read as follows:

##### **§ 135.152 Flight data recorders.**

\* \* \* \* \*

(l) By April 7, 2012, all aircraft manufactured before April 7, 2010, must also meet the requirements in § 23.1459(a)(7), § 25.1459(a)(8), § 27.1459(e), or § 29.1459(e) of this chapter, as applicable.

(m) All aircraft manufactured on or after April 7, 2010, must have a flight data recorder installed that also—

(1) Meets the requirements of § 23.1459(a)(3), (a)(6), and (a)(7), § 25.1459(a)(3), (a)(7), and (a)(8), § 27.1459(a)(3), (a)(6), and (e), or § 29.1459(a)(3), (a)(6), and (e) of this chapter, as applicable; and

(2) Retains the 25 hours of recorded information required in paragraph (d) of this section using a recorder that meets the standards of TSO–C124a, or later revision.

■ 34. Amend appendix C to part 135 by adding footnote 4 to the Collective, Pedal Position, Lat. Cyclic, Long. Cyclic, and Controllable Stabilator Position, under the heading Parameters to read as set forth below. The text of footnotes 1 through 3 is reprinted without change for the convenience of the reader.



APPENDIX C TO PART 135.—HELICOPTER FLIGHT RECORDER SPECIFICATIONS

Parameters	Range	Installed system <sup>1</sup> minimum accuracy (to recovered data) (percent)	Sampling interval (per second)	Resolution <sup>1</sup> read out (percent)
Collective <sup>4</sup>	Full Range	±3	2	2 <sup>1</sup>
Pedal Position <sup>4</sup>	Full Range	±3	2	2 <sup>1</sup>
Lat. Cyclic <sup>4</sup>	Full Range	±3	2	2 <sup>1</sup>
Long. Cyclic <sup>4</sup>	Full Range	±3	2	2 <sup>1</sup>
Controllable Stabilator Position <sup>4</sup>	Full Range	±3	2	2 <sup>1</sup>

<sup>1</sup> When data sources are aircraft instruments (except altimeters) of acceptable quality to fly the aircraft, the recording system, excluding these sensors (but including all other characteristics of the recording system), shall contribute no more than half of the values in this column.

<sup>2</sup> Percent of full range.

<sup>3</sup> This column applies to aircraft manufactured after October 11, 1991.

<sup>4</sup> For all aircraft manufactured on or after April 7, 2010, the sampling interval per second is 4.

- 35. Amend appendix E to part 135 by adding footnote 3 to the Pilot Input—Primary Controls (Collective, Longitudinal Cyclic, Lateral Cyclic, Pedal) parameter to read as set forth below. The text of footnotes 1 and 2 is reprinted without change for the convenience of the reader.

APPENDIX E TO PART 135.—HELICOPTER FLIGHT RECORDER SPECIFICATIONS

Parameters	Range	Accuracy sensor input to DFDR readout (percent)	Sampling interval (per second)	Resolution <sup>2</sup> read out (percent)
Pilot Input—Primary Controls (Collective, Longitudinal Cyclic, Lateral Cyclic, Pedal) <sup>3</sup> .	Full Range	±3	2	10.5

<sup>1</sup> Percent of full range.

<sup>2</sup> This column applies to aircraft manufactured after October 11, 1991.

<sup>3</sup> For all aircraft manufactured on or after April 7, 2010, the sampling interval per second is 4.

- 36. Amend appendix F to part 135 by revising the appendix heading and parameters 12a, 12b, 13a, 13b, 14a, 14b, 15, 16, 17, and 88, and adding footnote 18, to read as set forth below. The text of footnotes 3 through 8 is reprinted without change for the convenience of the reader.

APPENDIX F TO PART 135.—AIRPLANE FLIGHT RECORDER SPECIFICATIONS

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
12a. Pitch control(s) position (nonfly-by-wire systems) <sup>18</sup> .	Full Range	±2° unless higher accuracy uniquely required.	0.5 or 0.25 for airplanes operated under § 135.152(j).	0.5% of full range ...	For airplanes that have a flight control breakaway capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5 or 0.25, as applicable.
12b. Pitch control(s) position (fly-by-wire systems) <sup>3 18</sup> .	Full Range	±2° unless higher accuracy uniquely required.	0.5 or 0.25 for airplanes operated under § 135.152(j).	0.2% of full range ...	

## APPENDIX F TO PART 135.—AIRPLANE FLIGHT RECORDER SPECIFICATIONS—Continued

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
13a. Lateral control position(s) (nonfly-by-wire) <sup>18</sup> .	Full Range .....	±2° unless higher accuracy uniquely required.	0.5 or 0.25 for airplanes operated under § 135.152(j).	0.2% of full range ...	For airplanes that have a flight control breakaway capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5 or 0.25, as applicable.
13b. Lateral control position(s) (fly-by-wire) <sup>4 18</sup> .	Full Range .....	±2° unless higher accuracy uniquely required.	0.5 or 0.25 for airplanes operated under § 135.152(j).	0.2% of full range ...	
14a. Yaw control position(s) (nonfly-by-wire) <sup>5 18</sup> .	Full Range .....	±2° unless higher accuracy uniquely required.	0.5 .....	0.3% of full range ...	For airplanes that have a flight control breakaway capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling of 0.5 or 0.25, as applicable.
14b. Yaw control position(s) (fly-by-wire) <sup>18</sup> .	Full Range .....	±2° unless higher accuracy uniquely required.	0.5 .....	0.2% of full range ...	
15. Pitch control surface(s) position <sup>6 18</sup> .	Full Range .....	±2° unless higher accuracy uniquely required.	0.5 or 0.25 for airplanes operated under § 135.152(j)..	0.3% of full range ...	For airplanes fitted with multiple or split surfaces, a suitable combination of inputs is acceptable in lieu of recording each surface separately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5 or 0.25, as applicable.
16. Lateral control surface(s) position <sup>7 18</sup> .	Full Range .....	±2° unless higher accuracy uniquely required.	0.5 or 0.25 for airplanes operated under § 135.152(j).	0.2% of full range ...	A suitable combination of surface position sensors is acceptable in lieu of recording each surface separately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5 or 0.25, as applicable.
17. Yaw control surface(s) position <sup>8 18</sup> .	Full Range .....	±2° unless higher accuracy uniquely required.	0.5 .....	0.2% of full range ...	For airplanes with multiple or split surfaces, a suitable combination of surface position sensors is acceptable in lieu of recording each surface separately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5.

APPENDIX F TO PART 135.—AIRPLANE FLIGHT RECORDER SPECIFICATIONS—Continued

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
88. All cockpit flight control input forces (control wheel, control column, rudder pedal) <sup>18</sup> .	Full Range Control wheel ± 70 lbs. Control column ± 85 lbs. Rudder pedal ± 165 lbs.	± 5°	1	0.3% of full range ...	For fly-by-wire flight control systems, where flight control surface position is a function of the displacement of the control input device only, it is not necessary to record this parameter. For airplanes that have a flight control breakaway capability that allows either pilot to operate the control independently, record both control force inputs. The control force inputs may be sampled alternately once per 2 seconds to produce the sampling interval of 1.

\* \* \* \* \*

<sup>3</sup> For A318/A319/A320/A321 series airplanes, resolution = 0.275% (0.088° > 0.064°).

For A330/A340 series airplanes, resolution = 2.20% (0.703° > 0.064°).

<sup>4</sup> For A318/A319/A320/A321 series airplanes, resolution = 0.22% (0.088° > 0.080°).

For A330/A340 series airplanes, resolution = 1.76% (0.703° > 0.080°).

<sup>5</sup> For A330/A340 series airplanes, resolution = 1.18% (0.703° > 0.120°).

<sup>6</sup> For A330/A340 series airplanes, resolution = 0.783% (0.352° > 0.090°).

<sup>7</sup> For A330/A340 series airplanes, aileron resolution = 0.704% (0.352° > 0.100°).

For A330/A340 series airplanes, spoiler resolution = 1.406% (0.703° > 0.100°).

<sup>8</sup> For A330/A340 series airplanes, resolution = 0.30% (0.176° > 0.12°).

For A330/A340 series airplanes, seconds per sampling interval = 1.

\* \* \* \* \*

<sup>18</sup> For all aircraft manufactured on or after April 7, 2010, the seconds per sampling

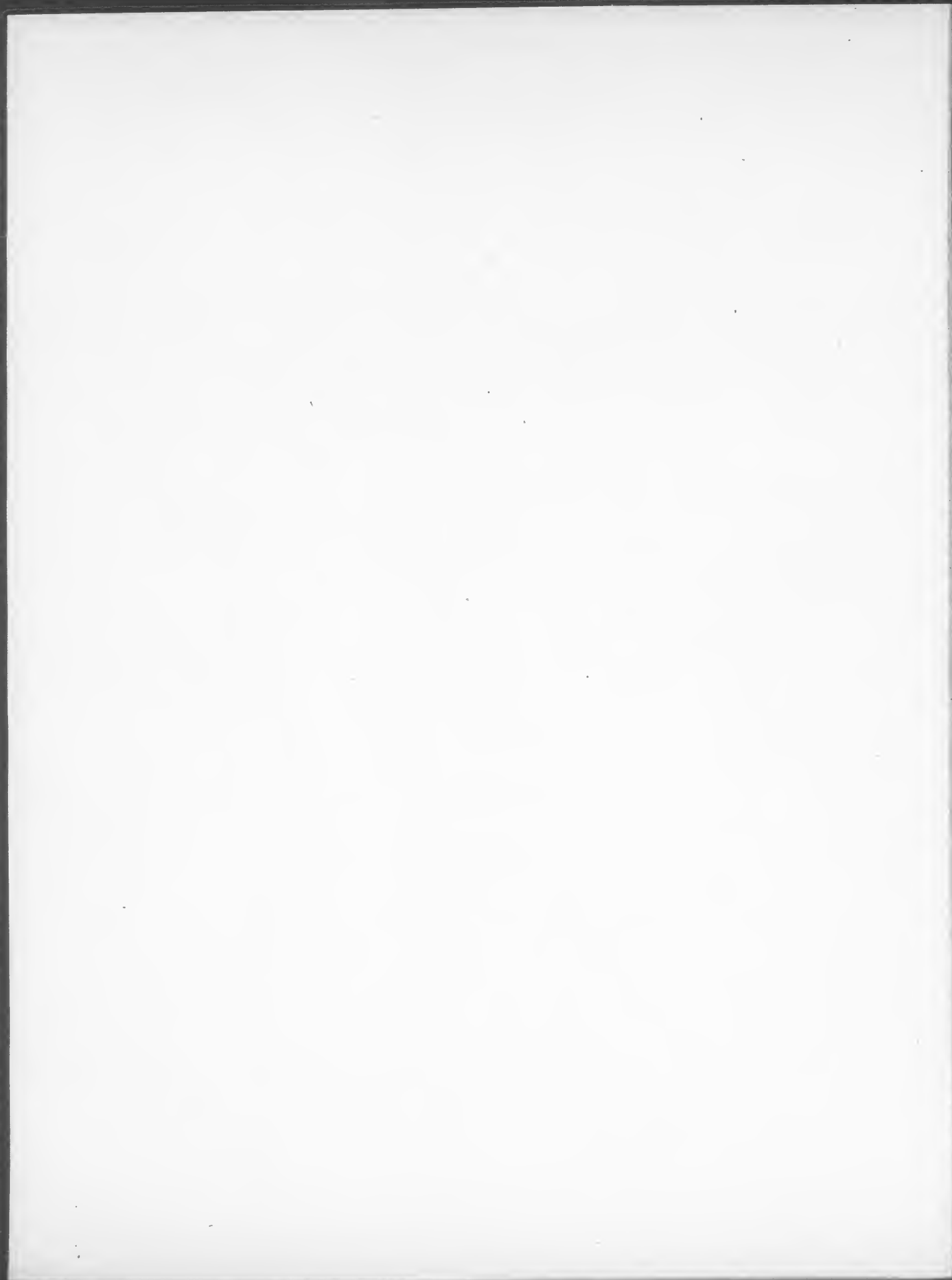
interval is 0.125. Each input must be recorded at this rate. Alternately sampling inputs (interleaving) to meet this sampling interval is prohibited.

Issued in Washington, DC, on February 19, 2008.

**Robert A. Sturgell,**  
*Acting Administrator.*

[FR Doc. E8-3949 Filed 3-6-08; 8:45 am]

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# Federal Register

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Friday,  
March 7, 2008

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Part IV

## Department of Energy

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Federal Energy Regulatory Commission

18 CFR Part 35

Wholesale Competition in Regions With  
Organized Electric Markets; Proposed  
Rules



**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**18 CFR Part 35**

[Docket Nos. RM07-19-000 and AD07-7-000]

**Wholesale Competition in Regions With Organized Electric Markets**

Issued February 22, 2008.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations under the Federal Power Act to improve the operation of organized wholesale electric markets in the areas of: Demand response and market pricing during a period of operating reserve shortage; long-term power contracting; market-monitoring policies; and the responsiveness of regional transmission

organizations (RTOs) and independent system operators (ISOs) to stakeholders and customers, and ultimately to the consumers who benefit from and pay for electricity services. The Commission proposes to require that each RTO and ISO make certain filings that propose amendments to its tariff, in order to comply with the proposed requirements in each area, or that demonstrate that its existing tariff and market design already satisfy the requirements. The Commission invites all interested persons to submit comments in response to the regulations proposed herein.

**DATES:** Comments are due April 21, 2008.

**ADDRESSES:** You may submit comments, identified by docket number by any of the following methods.

- Agency Web site: <http://ferc.gov>. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.

- Mail/Hand Delivery: Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

*Instructions:* For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

**FOR FURTHER INFORMATION CONTACT:** David Kathan (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. *David.Kathan@ferc.gov*, (202) 502-6404.

Tina Ham (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. *Tina.Ham@ferc.gov*, (202) 502-6224.

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## APPENDIX A: Commenter Acronyms

### I. Introduction

1. The Federal Energy Regulatory Commission (Commission) is proposing reforms to improve the operation of organized wholesale electric power markets.<sup>1</sup> Ensuring the competitiveness of organized wholesale markets is integral to the Commission fulfilling its statutory mandate to ensure adequate and reliable non-discriminatory service at just and reasonable rates. Effective competition protects consumers by providing greater supply options, encouraging new entry and innovation, and encouraging demand response and energy efficiency. In the past several years, the Commission has received both formal and informal comments from market participants, consumer and industry organizations, state regulators, and others recommending improvements to competitive wholesale markets.

2. In response to these comments, the Commission held three public conferences in 2007 in order to gather more information on competition at the wholesale level and other related issues. At the first conference on competition issues, held on February 27, 2007, most speakers addressed issues affecting the RTO and ISO regions, including the

<sup>1</sup> Organized market regions are areas of the country in which a regional transmission organization (RTO) or independent system operator (ISO) operates day-ahead and/or real-time energy markets.

levels of wholesale prices, the need for long-term power contracts, the effectiveness of market monitoring, and the lack of adequate demand response.<sup>2</sup> On April 5, 2007, the Commission also held a technical conference on market monitoring policies and heard from interested commenters on issues such as the development of the concept and functions of market monitoring and the market monitoring units' (MMU) role with respect to the Commission, ISOs and RTOs, and various stakeholders.<sup>3</sup> The Commission then held a second competition conference on May 8, 2007, to examine in more detail several specific concerns and challenges identified in the first conference. This second conference focused on regions with organized markets administered by RTOs and ISOs and dealt with: (1) Demand response, including the role of demand response during a period of operating reserve shortage; (2) fostering long-term power contracting; and (3) the responsiveness of RTOs and ISOs to customers and other stakeholders.<sup>4</sup>

3. Based on the record compiled at these three conferences, the Commission issued an Advance Notice

<sup>2</sup> See Second Supplemental Notice of Conference, Conference on Competition in Wholesale Power Markets, Docket No. AD07-7-000 (Feb. 26, 2007).

<sup>3</sup> See Notice of Agenda for the Conference, Review of Market Monitoring Policies, Docket No. AD07-8-000 (Mar. 30, 2007).

<sup>4</sup> See Supplemental Notice of Conference, Conference on Competition in Wholesale Power Markets, Docket No. AD07-7-000 (Apr. 19, 2007).

of Proposed Rulemaking (ANOPR)<sup>5</sup> on June 22, 2007 to identify and implement improvements to specific aspects of organized wholesale markets. In the ANOPR, the Commission identified four issues in organized market regions that were not being adequately addressed or under consideration in other proceedings. These areas were: (1) The role of demand response in organized markets and greater use of market prices to elicit demand response during a period of operating reserve shortage; (2) increasing opportunities for long-term power contracting; (3) strengthening market monitoring; and (4) enhancing the responsiveness of RTOs and ISOs to customers and other stakeholders, and ultimately to the consumers who benefit from and pay for electricity services.

4. The Commission received several thousand pages of comments from over a hundred commenters in response to the ANOPR (a list of commenters and their abbreviated names the Commission will use for them in this document appears in Appendix A).<sup>6</sup> After review of the comments, and pursuant to our responsibility under

<sup>5</sup> *Wholesale Competition in Regions with Organized Electric Markets*, Advance Notice of Proposed Rulemaking, 72 FR 36,276 (July 2, 2007), FERC Stats. & Regs. ¶ 32,617 (2007).

<sup>6</sup> We do not summarize in this NOPR every comment received in response to the ANOPR. The Commission has reviewed and considered each comment submitted, however, and appreciates the careful consideration the commenters have given to this proceeding.

sections 205 and 206 of the Federal Power Act (FPA)<sup>7</sup> to ensure that rates, charges, classifications, and service of public utilities (and any rule, regulation, practice, or contract affecting any of these) are just and reasonable and not unduly discriminatory, the Commission is making several proposals in this NOPR designed to ensure just and reasonable rates and to remedy undue discrimination and preference and to improve wholesale competition in regions with organized markets. These proposals reflect the record compiled by the Commission in its conferences and in comments to the ANOPR. These proposals, along with background information and a summary of comments received, will be described in detail in the sections below.

5. In proposing the reforms in the four areas described below, the Commission recognizes that there are differences of opinion on the appropriate scope of this rulemaking, as well as on the four specific issues described in the ANOPR. We are therefore guided by the record in this proceeding and the need to undertake timely and concrete reforms where the record supports them. From the commencement of our first technical conference in this proceeding, our goal has been to identify any specific reforms that can be made to optimize the efficiency of organized markets for the benefit of customers, and ultimately the consumers who benefit from and pay for electricity services. As we explain further below, however, this proceeding does not represent the final effort to improve the efficiency of competitive markets. Rather, we will continue to evaluate other specific reforms that may be necessary.

6. In the area of demand response and the use of market prices to elicit demand response, the Commission proposes several requirements for ISOs and RTOs. These proposals include requirements to: (1) Accept bids from demand response resources in their markets for certain ancillary services, comparable to any other resources; (2) eliminate, during a system emergency, a charge to a buyer in the energy market for taking less electric energy in the real-time market than purchased in the day-ahead market; (3) permit an aggregator of retail customers (ARC) to bid demand response on behalf of retail customers directly into the organized energy market; (4) modify their market rules, as necessary, to allow the market-clearing price, during periods of operating reserve shortage, to reach a level that rebalances supply and demand so as to maintain reliability while providing

sufficient provisions for mitigating market power; and (5) study whether further reforms are necessary to eliminate barriers to demand response in organized markets.

7. In the section on long-term power contracting, the Commission proposes that ISOs and RTOs be required to dedicate a portion of their Web sites for market participants to post offers to buy or sell power on a long-term basis. This proposal is designed to promote greater use of long-term contracts through improving transparency among market participants.

8. In the area of improving market monitoring, the Commission proposes that each RTO and ISO provide its MMU with access to market data, resources and personnel sufficient to carry out its duties, and that the MMU (or the external MMU in a hybrid structure) report directly to the RTO or ISO board. In addition, the Commission proposes to require that the MMU's functions include: (1) Identifying ineffective market rules and recommending proposed rules and tariff changes; (2) reviewing and reporting on the performance of the wholesale markets to the RTO or ISO, the Commission, and other interested entities; and (3) notifying appropriate Commission staff of instances in which a market participant's behavior requires investigation. The Commission also proposes expanding the list of recipients to receive MMU recommendations regarding rule and tariff changes, and broadening the scope of behavior to be reported to the Commission. The Commission further proposes to remove the MMU from tariff administration, require each RTO and ISO to include ethics standards for MMU employees in its tariff, and consolidate all its MMU provisions in one section of its tariff. The Commission also proposes expanding the dissemination of MMU market information to a broader constituency, with reports made on a more frequent basis, and reducing the time period before energy market bid and offer data are released to the public.

9. Finally, the Commission proposes to establish new criteria intended to ensure that an RTO or ISO is responsive to its customers and stakeholders, and ultimately to the consumers who benefit from and pay for electricity services. These principles will include: (1) Inclusiveness; (2) fairness in balancing diverse interests; (3) representation of minority positions; and (4) ongoing responsiveness.

10. In each of these four areas, the Commission will require RTOs and ISOs to consult with their stakeholders and make a compliance filing that details

why the entity's existing practices comply with the final rule in this proceeding, or the entity's plans to attain compliance.

11. Finally, as indicated above, these reforms do not represent our final effort to improve the functioning of competitive organized markets for the benefit of consumers. For example, although we are proposing specific reforms to eliminate barriers to demand response, we propose to require each RTO or ISO to study whether further reforms are necessary to eliminate barriers to demand response in organized markets. Any reforms must ensure that demand response resources are treated on a comparable basis as other resources. We also are ordering a staff technical conference on proposals by American Forest and Portland Cement Association, *et al.* to modify the design of organized markets. Finally, we direct, as explained further below, each RTO or ISO to provide a forum for affected consumers to voice specific concerns (and to propose regional solutions) on how to improve the efficient operation of competitive markets. The Commission therefore will continue to evaluate reforms in this area, but will not allow the prospect of other reforms to delay the benefits to consumers from those proposed herein.

## II. Background

12. As the Commission noted in the ANOPR, national policy has been, and continues to be, to foster competition in wholesale electric power markets.<sup>8</sup> This policy was embraced in the recent Energy Policy Act of 2005 (EPAct 2005),<sup>9</sup> and is reflected in Commission policy and practice. The Commission, in fulfilling its responsibility to "guard the consumer from exploitation by non-competitive electric power companies,"<sup>10</sup> relies on both its own regulations and competition to ensure consumer protection. In doing so, the Commission is aware of the need to vary the mix of regulation and competition based on the circumstances of the time, taking into account advances of technology, changes in economies of scale, and new state and federal laws that affect the energy industry.

13. The Commission has acted over the last few decades to implement Congressional policy to expand the wholesale electric power markets to facilitate entry of new generators and to support competitive markets. Absent a

<sup>8</sup> ANOPR, FERC Stats. & Regs. ¶ 32,617 at P 4.

<sup>9</sup> Pub. L. No. 109-58, 119 Stat. 594 (2005).

<sup>10</sup> *Nat'l Ass'n for the Advancement of Colored People v. FPC*, 520 F.2d 432, 438 (DC Cir. 1975), *aff'd*, 425 U.S. 662 (1976).

<sup>7</sup> 16 U.S.C. 824d-824e (2000).

single national power market, the development of regional markets is the best method of facilitating competition within the power industry, and the Commission has made sustained efforts to recognize and foster such markets. The Commission acknowledges that significant differences exist between regions, including differences in industry structure, mix of ownership, sources for electric generation, population densities, and weather patterns. Some regions have organized spot markets administered by an RTO or ISO, and others rely solely on bilateral contracting between wholesale sellers and buyers. The Commission recognizes and respects these differences across various regions. At the same time, wholesale competition can serve customers well in all regions. The focus of this proceeding is on further improving the operation of wholesale competitive markets in organized market regions.<sup>11</sup>

14. Some perceived challenges in the organized wholesale markets may be closely related to state retail issues, and the distinction between wholesale and retail competition challenges is often blurred. For example, wholesale customers typically have more advanced meters than retail customers; organized market rates vary with time of day whereas retail rates typically do not; and retail choice programs, which tend to be in areas served by organized wholesale markets, may rely on RTOs or ISOs to provide or arrange for the provision of some functions previously carried out by vertically integrated utilities. This has created challenges for wholesale market design. Although the Commission acknowledges that issues with retail markets are often intertwined with wholesale market issues, the Commission will not address retail market issues in this proceeding. This rulemaking is designed to focus on wholesale markets; issues related to retail markets will vary by state and are more appropriately considered in separate proceedings before the affected state(s) or the Commission where the specific interaction between the retail and wholesale market can be explored.

15. Comments received on the ANOPR and made during technical conferences highlight several potential problems with wholesale competition both inside and outside the organized

market regions that are within the scope of this proceeding. In the ANOPR, the Commission noted that it was not addressing potential reforms outside the organized market regions, explaining that many of the important concerns discussed during the first technical conference (e.g., nondiscriminatory access to transmission, nondiscriminatory rules for power procurement) were already being addressed in other proceedings. Similarly, the Commission has chosen to limit this proceeding to four discrete areas involving wholesale competition within organized markets. As explained further below, however, these are not the final reforms the Commission may pursue with respect to organized markets; rather, we will continue to evaluate specific proposals that may serve to strengthen organized markets.

### III. Proposals To Expand the Scope of the Proceeding

16. Several parties propose to expand the scope of this proceeding beyond the four areas covered in the ANOPR. We received a request from APPA, in its comments on the ANOPR, and a request from AARP, *et al.*, a group consisting of 41 entities, for a large-scale investigation of the workings of organized markets with respect to their ability to produce just and reasonable rates. APPA and AARP, *et al.* state that the current market system allows incumbent sellers (those power suppliers with older power plants) to make excess profits while disadvantaging certain power suppliers with new generation. APPA and AARP, *et al.* argue that this has resulted in increased cost to consumers without the corresponding benefit of new generation being built. APPA and AARP, *et al.* claim that the Commission has a responsibility under sections 205 and 206 of the FPA to investigate the workings of organized markets based on their allegations of unjust and unreasonable rates.

17. The Commission acknowledges the concerns of APPA and AARP; *et al.*; however, we decline to initiate the broad investigation APPA and AARP, *et al.* have requested as part of this proceeding. As noted above, by listening to the concerns of market participants, and evaluating the record of this proceeding, we have identified four specific areas in which reforms can improve wholesale electricity market operations. Through the competition conferences and the ANOPR process, we have developed a solid record in favor of making those reforms, and a strong sense of what the Commission can do to be helpful in these four areas. It is

important that the Commission move forward with regard to the specific reforms under consideration in this proposed rulemaking to foster improvements in the near term to the competitive operation of existing organized markets administered by RTOs and ISOs. Further, we also note that the approach we are taking in this NOPR is consistent with the ISO/RTO Council's proposal.<sup>12</sup>

18. In contrast to the specific reforms proposed herein, APPA and AARP, *et al.* request a broad, generic inquiry into alleged (but not specified) market design flaws. Their request not only fails to offer any specific solutions, but also fails to appreciate the differences in market design that exist in each region. Over the past five years, the Commission has undertaken significant market design reforms in most regions. We have not adopted a standard market design, but rather have undertaken different reforms, at different times in each region to reflect the differing characteristics of each market. The Commission has devoted considerable resources over the years to improving the market designs in each organized market to ensure that they produce just and reasonable rates. We summarize some of these efforts below.

19. For example, in response to the California energy crisis of 2000–2001, the Commission worked with CAISO and its stakeholders to develop a Market Redesign and Technology Upgrade program designed to improve the efficiency and proper working of the market through improved modeling and new forward markets,<sup>13</sup> which the Commission subsequently approved in part. In 2004, the Commission approved the Midwest ISO's open access transmission and energy markets tariff, which provides for terms and conditions necessary to implement a market-based congestion management program and energy spot markets.<sup>14</sup> This includes a day-ahead energy market and a real-time energy market,

<sup>12</sup> ISO/RTO Council urges the Commission to focus on determining the appropriate means of addressing issues that are ripe for this NOPR and which ones might be better considered in existing forums. It states that existing stakeholder processes provide an appropriate forum for targeted consideration of various issues, including the ones raised by APPA and AARP, *et al.* ISO/RTO Council at 1, 3.

<sup>13</sup> *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274 (2006), *order on reh'g*, 119 FERC ¶ 61,076 (2007).

<sup>14</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163, *order on reh'g*, 109 FERC ¶ 61,157 (2004), *order on reh'g*, 111 FERC ¶ 61,043, *reh'g denied*, 112 FERC ¶ 61,086 (2005), *aff'd sub nom. Wisconsin Public Power, Inc. v. FERC*, 493 F.3d 239 (DC Cir. 2007).

<sup>11</sup> The following RTOs and ISOs have organized markets: PJM Interconnection, LLC (PJM), New York Independent System Operator, Inc. (NYISO), Midwest Independent Transmission System Operator, Inc. (Midwest ISO), ISO New England, Inc. (ISO-NE), California Independent Service Operator Corp. (CAISO), and Southwest Power Pool, Inc. (SPP).

locational marginal pricing, and a market for financial transmission rights.

20. The Commission has also acted on proposals developed by regional entities to ensure that adequate price signals exist in the market for both short-term and long-term electric power transactions, by addressing pricing issues during reserve shortages and by approving forward capacity markets. The Commission has approved a demand curve for capacity markets in the region operated by NYISO. The Commission approved PJM's Reliability Pricing Model to provide an auction process for forward capacity contracting. The Commission also approved a settlement agreement for ISO-NE to create a transitional forward capacity market to meet the needs of its stakeholders.<sup>15</sup> These actions were designed to minimize the disruption during periods of operating reserve shortage and encourage new investment in generation, while accepting variation between regions and allowing for regional choice.

21. The Commission has also issued region-specific orders providing for cost allocation for new transmission investment, removing uncertainty over the cost responsibility for the development of new transmission. In Opinion No. 494,<sup>16</sup> the Commission approved PJM's policy for determining recovery of transmission costs for existing and new facilities, providing for region-wide cost sharing for certain new extra high-voltage transmission facilities. The Commission also approved the Midwest ISO's transitional pricing scheme, which incorporates cost sharing for new transmission facilities.<sup>17</sup>

22. In addition to these region-specific actions, the Commission has addressed incentives for the building of new generation and transmission in all regions with organized markets. In Order No. 679,<sup>18</sup> the Commission allowed parties building transmission to

apply for recovery of prudently incurred costs for construction work in progress, pre-operations, and abandoned facilities, and it provided for application for an incentive rate of return on equity for new transmission investment. As a further means of reducing uncertainty and spurring investment, the Commission finalized rules for interconnection for large, small and wind generators. These rules remove barriers to interconnection by streamlining the process of, and improving incentives for, building new generation. The Commission has also acted to improve certainty in the cost of transmission for electric customers by creating rules for long-term transmission rights in Order Nos. 681 and 681-A.<sup>19</sup>

23. In Order No. 890, the Commission reformed the open access transmission tariff (OATT) to ensure that it continues to provide nondiscriminatory access to transmission service. Among other things, Order No. 890 requires an open and transparent regional transmission planning process.<sup>20</sup> The Commission is now focusing on the compliance phase of OATT reform to ensure that it is implemented properly.<sup>21</sup> The Commission also has been pursuing a cooperative dialogue with the National Association of Regulatory Utility Commissioners (NARUC) to identify and analyze models for competitive power procurement. This effort is designed to enhance the ability of load-serving entities (LSEs) to acquire reliable power supplies at competitive prices. As noted in the ANOPR, the Commission has also acted to investigate demand response in organized markets, through a Commission report and a recent technical conference. This conference was designed to examine demand response resources in markets, grid operations and expansion, and best practices for the measurement and evaluation of demand response resources.<sup>22</sup> The Commission also held a technical conference on December 11, 2007 to explore issues surrounding the

management of interconnection queues.<sup>23</sup>

24. In recognition of our continuing respect for regional differences in market design, we believe that, if there are specific concerns about the market designs in a particular region, they should be considered, in the first instance, at the regional level. We therefore direct each RTO or ISO to provide a forum for affected consumers to voice specific concerns (and to propose regional solutions) to the issues raised generically by APPA and AARP, *et al.* Although most existing stakeholder processes already allow for the submission of such proposals, we encourage RTOs and ISOs to give priority to any significant concerns that may be raised on these issues, including concerns as to the value to the market of significant changes to the market rules. For example, PJM recently has conducted a series of forums on long-term contracts to gather information and facilitate the exchange of ideas on this important issue. We encourage similar efforts on the concerns raised by APPA and AARP, *et al.* Any proposed solutions should be vetted through the stakeholder process and ultimately considered by the boards of the RTOs or ISOs. Ultimately, such matters may be brought to the Commission after consideration by the region. We encourage each region to commence the consideration of any such issues in the near future and not await the issuance of a final rule in this proceeding.

25. However, those entities that have such concerns have a responsibility to propose solutions to address those concerns. For example, American Forest submitted comments that contained a mechanism, the Financial Performance Obligation (FPO), to address concerns that they raised regarding the structure of organized markets. Portland Cement Association, *et al.*, also included a proposed solution in its comments to address their concerns regarding the organized markets. We are encouraged by entities that actually propose solutions rather than merely identify concerns without proposing any meaningful ways to address those concerns. While we do not adopt these proposals in this proceeding, we believe that they warrant additional consideration. Therefore, as explained below, we direct Staff to convene a technical conference regarding the American Forest and Portland Cement Association, *et al.*, proposals so that the Commission and the industry can learn

<sup>15</sup> *Devon Power, LLC*, 115 FERC ¶ 61,340, order on reh'g, 117 FERC ¶ 61,133 (2006), appeal pending sub nom. *Moine Pub. Utils. Comm'n v. FERC*, No. 06-1403 (DC Cir. 2007).

<sup>16</sup> *PJM Interconnection, LLC*, 119 FERC ¶ 61,063 (2007) (Opinion No. 494), reh'g pending.

<sup>17</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,106, order on reh'g and technical conference, 117 FERC ¶ 61,241 (2006), order on reh'g, 118 FERC ¶ 61,208 (2007), appeal pending sub nom. *Public Service Comm'n of Wisconsin v. FERC*, No. 06-1408 (D.C. Cir., filed Dec. 13, 2006); *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,209, order on reh'g, 120 FERC ¶ 61,080 (2007).

<sup>18</sup> *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, order on reh'g, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), order on reh'g, 119 FERC ¶ 61,062 (2007).

<sup>19</sup> *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, FERC Stats. & Regs. ¶ 31,226, order on reh'g, Order No. 681-A, 117 FERC ¶ 61,201 (2006).

<sup>20</sup> This addresses, in part, concerns raised by some commenters regarding posting of future transmission constraints and congestion costs.

<sup>21</sup> ANOPR, FERC Stats. & Regs. ¶ 32,617 at P 33 (citing *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 FR 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, order on reh'g, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007)).

<sup>22</sup> *Supplemental Notice, Demand Response in Wholesale Markets*, Docket No. AD07-11-000 (April 6, 2007).

<sup>23</sup> *Notice of Technical Conference, Interconnection Queuing Practices*, Docket No. AD08-2-000 (November 2, 2007).



more about the proposals and the merit of adopting such changes where appropriate.

#### IV. Discussion

##### A. Demand Response and Pricing During Periods of Operating Reserve Shortages in Organized Markets

26. This section of the NOPR proposes several reforms to further eliminate barriers to demand response in organized energy markets. These reforms must ensure that demand response is treated comparably to other resources. The Commission proposes to require RTOs and ISOs to: (1) Accept bids from demand response resources in their markets for certain ancillary services, comparable to other resources; (2) eliminate, during a system emergency, certain charges to buyers in the energy market for voluntarily reducing demand; and (3) permit ARCs to bid demand response on behalf of retail customers directly into the RTO's or ISO's organized markets.<sup>24</sup> We also propose that RTOs and ISOs modify their rules governing price formation during periods of operating reserve shortage. These proposals, if adopted, would require market rules to ensure that demand response can participate directly and is treated comparably to supply resources in the organized electric energy and ancillary services markets. We also propose to require that each RTO and ISO study further reforms to address any remaining barriers to ensure that demand response is treated comparably to other resources and to report to the Commission within six months of the date of the final rule in this proceeding. In addition, we propose that each RTO or ISO must adopt reasonable standards necessary for system operators to call on demand response resources, and mechanisms to measure, verify, and ensure compliance with any such standards.<sup>25</sup> As discussed further below, we intend to direct staff to convene a technical conference to explore issues that the RTOs and ISOs should include as part of these studies. The specific reforms being proposed here are therefore the next step in removing barriers to demand response, but not the final step.

<sup>24</sup> We will use the phrase "aggregation of retail customers" to refer to parties that aggregate demand response bids (which are mostly from retail loads), or ARCs.

<sup>25</sup> We understand that some RTOs and ISOs may already be developing measurement and verification requirements, as well as appropriate mechanisms to ensure compliance. It is not our intention that these programs be delayed based on our proposals here.

#### 1. Background

27. The Commission has expressed the view on numerous occasions that the wholesale electric power market works best when demand can respond to the wholesale price.<sup>26</sup> Based on the view that the value to customers of electric power varies,<sup>27</sup> the Commission's policy is to eliminate barriers to the participation of demand response in the organized power markets, in part because demand response helps to hold down wholesale power prices; increases awareness of energy usage; provides for more efficient operation of markets; mitigates market power; enhances reliability; and encourages new technologies that support the use of renewable energy resources, distributed generation, and advanced metering. The reforms we propose today would further facilitate demand response by removing several barriers to demand response. This will benefit customers of electric energy because increased demand response will improve price signals and provide for greater flexibility. We provide background on the benefits of demand response and prior Commission actions addressing demand response below.

##### a. Importance of Demand Response to Competition in RTO/ISO Areas

28. A well-functioning competitive wholesale electric market should reflect current supply and demand conditions. Enabling demand-side responses, as well as supply-side resources, improves the economic operation of electric power markets by aligning prices more closely with the value customers place on electric power.

29. Demand response helps to reduce prices in competitive wholesale markets in at least three ways. First, demand response has both a direct effect and an indirect effect on wholesale demand. The direct effect occurs when demand response is bid directly into the wholesale market: lower demand means a lower wholesale price. Demand response at retail, if not bid directly into the wholesale market by a retail customer, affects the wholesale market indirectly because it reduces the need for power by the retail customers' LSE

<sup>26</sup> *New England Power Pool and ISO New England, Inc.*, 101 FERC ¶ 61,344, at P 44-49 (2002), *order on reh'g*, 103 FERC ¶ 61,304, *order on reh'g*, 105 FERC ¶ 61,211 (2003); *PJM Interconnection, LLC*, 95 FERC ¶ 61,306 (2001); *PJM Interconnection, LLC*, 99 FERC ¶ 61,227 (2002); *Southwest Power Pool, Inc.*, 116 FERC ¶ 61,289 (2006).

<sup>27</sup> That is, for two customers at the same time and place, one customer may prefer to reduce consumption if the price is high, and the other may be willing to pay a high price to avoid curtailment in an emergency.

and in turn reduces that LSE's need to purchase power from the wholesale market.<sup>28</sup>

30. Second, demand response tends to flatten an area's load profile. The combination of reductions in peak demand and a shift of at least a portion of this peak demand to non-peak periods due to demand response would tend to make peak and off-peak demand less divergent—a flatter load profile. A flatter load profile would reduce the need to use the more costly resources during periods of high demand, which tends to shift the distribution of resource types toward lower-cost base load generation and away from higher-cost peaking generation. This effect tends to lower the overall average cost to produce energy.<sup>29</sup>

31. Third, demand response can help reduce generator market power. As more demand response generally is available during peak periods, power suppliers need to account more for the price responsiveness of load when they consider submitting higher-price bids. The more demand response is able to reduce the peak price, the more downward pressure it places on generator bidding strategies by increasing the risk to a supplier that it will not be dispatched if it bids too high.<sup>30</sup>

##### b. Prior Commission Actions To Address Demand Response

32. The Commission has issued numerous orders over the last several years on various aspects of electric demand response in organized markets. A goal of most of these orders was to remove unnecessary obstacles to demand response participating in the wholesale power markets of RTOs and ISOs.<sup>31</sup>

33. These orders approved various types of demand response programs, including programs to allow demand response to be used as a capacity resource<sup>32</sup> and as a resource during

<sup>28</sup> See Federal Energy Regulatory Commission, *Assessment of Demand Response and Advanced Metering: Staff Report*, Docket No. AD06-2-000, at 11 (August 8, 2006) (2006 FERC Staff Demand Response Assessment).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 12.

<sup>31</sup> See, e.g., *New York Indep. Sys. Operator, Inc.*, 92 FERC ¶ 61,073, *order on clarification*, 92 FERC ¶ 61,181 (2000), *order on reh'g*, 97 FERC ¶ 61,154 (2001); *New England Power Pool and ISO New England, Inc.*, 100 FERC ¶ 61,287, *order on reh'g*, 101 FERC ¶ 61,344 (2002), *order on reh'g*, 103 FERC ¶ 61,304, *order on reh'g*, 105 FERC ¶ 61,211 (2003); *PJM Interconnection, LLC*, 95 FERC ¶ 61,306 (2001); *PJM Interconnection, LLC*, 99 FERC ¶ 61,139 (2002); *PJM Interconnection, LLC*, 99 FERC ¶ 61,227 (2002).

<sup>32</sup> See, e.g., *PJM Interconnection, LLC*, 117 FERC ¶ 61,331 (2006); *Devon Power LLC*, 115 FERC

Continued

system emergencies,<sup>33</sup> to allow wholesale buyers and qualifying large retail buyers to bid demand response directly into the day-ahead and real-time energy markets and certain ancillary service markets, particularly as a provider of operating reserves, as well as programs to accept bids from ARCs.<sup>34</sup> The Commission also has approved special demand response applications such as use of demand response for synchronized reserves and regulation service.<sup>35</sup> The theme underlying the Commission's approval of these programs has been to allow demand response resources to participate in these markets on a basis that is comparable to other resources.

34. The Commission has approved programs that allow smaller retail customers—that cannot individually meet the RTO or ISO minimum bid size threshold—to combine individual demand response into a larger block for bidding into the organized markets, if permitted by state law, without having to go through their LSE.<sup>36</sup> A third-party ARC, often called a curtailment service provider, typically provides this aggregation service. The aggregate demand response may be bid directly into the energy and ancillary services markets.

35. In addition, the Commission has explicitly addressed demand response in its recent Final Rules on OATT Reform (Order No. 890) and reliability standards (Order No. 693).<sup>37</sup> Order No. 890 requires any public utility with an OATT to allow qualified demand response resources to participate in its regional transmission planning process on a comparable basis to generation resources and to allow qualified demand response to provide certain ancillary services. Specifically, the

¶ 61,340, *order on reh'g*, 117 FERC ¶ 61,133 (2006), *appeal pending sub nom. Moine Pub. Utils. Comm'n v. FERC*, No. 06-1403 (DC Cir. 2007).

<sup>33</sup> See, e.g., *New York Indep. Sys. Operator, Inc.*, 95 FERC ¶ 61,136 (2001); *NSTAR Services Co. v. New England Power Pool and ISO New England, Inc.*, 100 FERC ¶ 61,287, *order on reh'g*, 101 FERC ¶ 61,344 (2002), *order on reh'g*, 103 FERC ¶ 61,304, *order on reh'g*, 105 FERC ¶ 61,211 (2003); *PJM Interconnection, LLC*, 99 FERC ¶ 61,139 (2002).

<sup>34</sup> See, e.g., *New York Indep. Sys. Operator, Inc.*, 95 FERC ¶ 61,223 (2001); *New England Power Pool and ISO New England, Inc.*, 100 FERC ¶ 61,287, *order on reh'g*, 101 FERC ¶ 61,344 (2002), *order on reh'g*, 103 FERC ¶ 61,304, *order on reh'g*, 105 FERC ¶ 61,211 (2003); *PJM Interconnection, LLC*, 99 FERC ¶ 61,227 (2002).

<sup>35</sup> See, e.g., *PJM Interconnection, LLC*, 114 FERC ¶ 61,201 (2006).

<sup>36</sup> *Supra* note 34.

<sup>37</sup> See *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, 72 FR 16,416 (April 4, 2007), FERC Stats. & Regs. ¶ 31,242, *order on reh'g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

Commission agreed with Alcoa's request that load resources (*i.e.*, demand response) should be permitted to self-supply and sell ancillary services to third parties.<sup>38</sup> In doing so, the Commission also made clear that a transmission provider may use non-generation resources in meeting its OATT obligation to provide ancillary services, so long as those resources are capable of providing the service.<sup>39</sup> Order No. 693 requires the Electricity Reliability Organization to revise its reliability standards so that all technically feasible resource options, including demand response and generating resources, may be employed in the management of grid operations and emergencies.<sup>40</sup>

36. The Commission has also worked closely with state regulators to examine demand response issues. The NARUC-FERC Collaborative Dialogue on Demand Response began in November 2006 to explore state-federal coordination of efforts to promote and integrate demand response into retail and wholesale markets. The Commission has conducted several technical conferences on demand response over the last several years, most recently on April 23, 2007.<sup>41</sup> In addition, as mentioned, in response to a requirement of EPAct 2005<sup>42</sup> to assess demand response capability nationally, in August 2006 the Commission published a staff report on demand response and advanced metering.<sup>43</sup> In September 2007, the Commission published its second annual staff report on demand response and advanced metering.<sup>44</sup>

<sup>38</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 887-88.

<sup>39</sup> E.g., Order No. 890, FERC Stats. & Regs. ¶ 31,241 at OATT Schedule 5 (Operating Reserve—Spinning Reserve Service). Order No. 890 does not require transmission providers, however, to purchase ancillary services from non-generation resources or generation resources.

<sup>40</sup> Order No. 693 directed the Electricity Reliability Organization to develop new versions of its BAL-002, BAL-005, and EOP-002 reliability standards to allow demand side resources to provide contingency reserves. Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 330-35, 404-06, 573.

<sup>41</sup> For example, the Commission conducted a technical conference on January 25, 2006 to help prepare for a survey and a staff report on demand response in Docket No. AD06-2-000. See *supra* note 28. The April 23, 2007 conference was convened in Docket No. AD07-11-000.

<sup>42</sup> Public Law No. 109-58, § 1252(e)(3), 119 Stat. 594, 966 (2005).

<sup>43</sup> See *2006 FERC Staff Demand Response Assessment*.

<sup>44</sup> See Federal Energy Regulatory Commission, *2007 Assessment of Demand Response and Advanced Metering: Staff Report*, (September 2007) (*2007 FERC Staff Demand Response Assessment*).

## 2. The Need for Commission Action

37. While the Commission and the various RTOs and ISOs have done much to eliminate barriers to demand response in organized power markets, more needs to be done to ensure comparable treatment of all resources. The *2006 FERC Staff Demand Response Assessment* estimated the total installed demand response capability from existing programs nationally to be 37,500 MWs, or about five percent of current peak demand.<sup>45</sup> Several reports indicate that the potential demand response capability available in the United States may be much greater.<sup>46</sup>

38. The Commission's policy is to eliminate barriers to the participation of demand response in the organized power markets by ensuring comparable treatment of resources. This position is consistent with EPAct 2005, which states that demand response shall be encouraged and unnecessary barriers to demand response participation in energy, capacity, and ancillary service markets shall be eliminated.<sup>47</sup> The Commission can take additional steps to further encourage demand response to improve the operation of the organized energy and ancillary services markets by removing several unnecessary barriers to demand response participation.<sup>48</sup>

39. The Commission can further eliminate barriers to the participation of demand response in certain ancillary services markets. Some forms of demand response are well suited to provide the ancillary services of spinning reserves, supplemental

<sup>45</sup> *2006 FERC Staff Demand Response Assessment* at 7.

<sup>46</sup> See, e.g., Ahmad Faruqi *et al.*, The Brattle Group, *The Power of Five Percent: How Dynamic Pricing Can Save \$35 Billion in Electricity Costs* (May 16, 2007), available at <http://www.brattle.com/documents/UploadLibrary/Upload574.pdf>.

<sup>47</sup> Section 1252(f) of the EPAct 2005 states that, "[i]t is the policy of the United States that time-based pricing and other forms of demand response whereby electricity customers are provided with electricity price signals and the ability to benefit by responding to them, shall be encouraged, the deployment of such technology and devices that enable electricity customers to participate in such pricing and demand response systems shall be facilitated, and unnecessary barriers to demand response participation in energy, capacity, and ancillary service markets shall be eliminated."

<sup>48</sup> We note that while the Commission can remove some obstacles to demand participation in organized markets, more effective demand response also requires the action of state commissions. An effective way for demand to respond to price is at the retail level, through some form of time-based retail rates (e.g., rates that vary by hour, such as real-time pricing, or by blocks of time, such as time-of-use rates or critical peak pricing). Demand response is more effective when retail rates are tied to current wholesale market-clearing prices. Effective demand response can be achieved by linking the wholesale and retail markets.

reserves, energy imbalance, and regulation and frequency response.<sup>49</sup> Because demand is always connected and demand response, in principle, can always be available, some forms of demand response resources may be able to provide a rapid, near real-time response.<sup>50</sup> Nevertheless, not all RTOs and ISOs allow demand response to participate in ancillary services markets. ISO-NE, NYISO, and CAISO allow demand response resources to provide supplemental (non-spinning) reserves. As of mid-2007, only PJM allows demand response resources to provide synchronized reserves (PJM's term for spinning reserves) and regulation service.<sup>51</sup>

40. In Order No. 890, the Commission modified the definitions of certain ancillary services in the *pro forma* open access transmission tariff to clarify that demand response is eligible to supply these ancillary services on a comparable basis to generation resources. Order No. 890 concluded, however, that procurement and pricing of ancillary services—including issues related to competitive procurement—were beyond the scope of that rulemaking. Though RTOs and ISOs procure ancillary services through competitive market means, they are not currently required to accept bids from qualified demand response providers to provide ancillary services even if those providers are technically capable of doing so. This hinders the integration of qualified demand response resources into these RTO and ISO ancillary services markets.

41. One reason for the lack of participation of demand response in some ancillary service markets may be that market rules for bidding and participating in ancillary services markets were developed with generation in mind and may not accommodate demand response resources. For example, many demand response resources can respond quickly and at a low cost if called upon for a short duration, which may make them well suited for providing operating reserves. If market rules require, however, that a single bid be made into a joint energy-plus-reserves market (also known as a "co-optimized" market), those seeking to offer operating reserves risk being dispatched to provide energy or other

ancillary services for which they are not well suited. As a result, a potential operating reserve provider that does not wish to be called upon frequently or for a prolonged period in the energy market may simply decide not to participate in a co-optimized market, and consequently not be a source for providing demand response resources as operating reserves. Market rules that do not allow a demand response provider to limit the frequency and duration of interruption may thereby create a disincentive for a demand response resource to bid into the operating reserves market.<sup>52</sup>

42. Further, demand response providers need market rules that allow bids to be flexible and that reflect bidders' willingness to offer various levels of service depending on the market prices. While the design of today's organized markets does allow some flexible and some price-sensitive bidding into day-ahead and real-time energy markets, the Commission is nevertheless concerned that some market features may inhibit LSEs and other demand response providers from bidding load reductions into energy markets. For example, in most organized markets, if an LSE's actual purchase from the real-time market differs from the purchase it scheduled in the day-ahead market, it may be assessed an uplift charge (separate from any imbalance charge). This uplift charge recovers certain costs of extra generation when day-ahead purchases exceed real-time purchases. However, these costs may be minimal during an emergency when there is no extra generation. Further, this uplift charge may unnecessarily discourage an LSE from urging retail customers to conserve energy during a system emergency. RTO and ISO tariffs also do not impose these types of charges on generators that generate more power during system emergencies than scheduled. Eliminating this uplift charge for demand response sought by RTOs or ISOs from buyers in an emergency removes a disincentive for this demand response and promotes comparable treatment of demand and supply resources.

43. Organized energy market rules also may restrict the type of bid that a LSE or ARC may submit.<sup>53</sup> There is usually a minimum bid size threshold

in an RTO or ISO market. Also, it is hard for some demand response providers to participate if, for example, they are not able to start and stop frequently or if cycling output up and down produces excessive stress on their equipment. Aggregation programs can improve the participation of small retail loads that lack standing as an LSE or individually cannot meet a requirement that a demand response bid be of minimum size. These programs allow a larger number of customers to access demand response programs, which increases the potential market and reliability benefits realized from demand response in wholesale markets. The 2006 FERC Staff Demand Response Assessment and comments that we have received indicate, however, that more needs to be done to facilitate the direct participation of ARCs in energy markets.

44. Another factor that may limit participation in demand response programs is the use of bid caps and price caps in wholesale market design. Bid caps and price caps in RTO and ISO markets are designed to limit the opportunity to exercise market power in these markets, but they also may prevent the markets from expressing prices that are legitimately high due to a shortage. These caps may not permit buyers in RTO and ISO wholesale energy markets to see prices high enough to signal that there is a period of operating reserve shortage and that reliability is at risk. Moreover, when power is in short supply and price is high, retail prices remain fixed, and retail customers do not adjust their demand to react to wholesale price signals. Consequently, both generation and demand response can be in short supply at once, and the market-clearing price may not reflect the actual cost of providing more power or the value to customers of not being interrupted. Further, as discussed in the long-term contracting section below, capping the exposure of LSEs to higher prices may reduce their incentive to explore various hedging activities, such as participating in interruptible demand response programs, entering into long-term contracts or similar power supply procurement options, and building new generating units.

45. Certain demand response programs may themselves act to dampen prices during a period of operating reserve shortage. The term "emergency demand response program" is used here to refer to a demand response program where participants agree to reduce demand if called on by the RTO or ISO during a system emergency. They may be paid a fixed price rather than the market-clearing price when called on.

<sup>49</sup> See 2006 FERC Staff Demand Response Assessment at 51. For an explanation of each of these ancillary services, see the *pro forma* OATT, Schedules 3 through 6, contained in Order No. 890.

<sup>50</sup> For example, electric-arc steel furnaces have the capability to adjust their consumption rapidly, and air conditioner cycling programs can respond within several minutes of execution.

<sup>51</sup> We note, however, that no resource has yet qualified to provide this service to PJM.

<sup>52</sup> See 2006 FERC Staff Demand Response Assessment at 123.

<sup>53</sup> In some cases, this may be intended to treat a demand response resource bid the same as a generation bid, but more often, bidding features available to generation, such as a guaranteed minimum price, are not available to demand response resources.

As a result, the market-clearing price may decrease because demand is reduced when an emergency demand response resource is used, even though that resource is the highest-valued resource used at the time. The reduced price is contrary to the signal that should be sent in an emergency. Only NYISO has integrated its emergency demand response programs into the market-clearing process.<sup>54</sup>

### 3. Proposed Reforms

46. In order to further eliminate barriers to demand response in organized markets, the Commission proposes reforms to obligate RTOs and ISOs to: (1) Accept bids from demand response resources in its markets for certain ancillary services, comparable to any other resources; (2) eliminate, during a system emergency, a charge to a buyer in the energy market for taking less electric energy in the real-time market than purchased in the day-ahead market; (3) permit an ARC to bid a demand response on behalf of retail customers directly into the RTO's or ISO's organized energy markets, unless the laws or regulations of the relevant electric retail regulatory authority do not permit a retail customer to participate; and (4) modify their market rules to allow the market-clearing price to accurately reflect the value of energy during periods of operating reserve shortage. The Commission also proposes to require RTOs and ISOs to study whether further reforms are necessary to eliminate barriers to demand response in organized markets. We believe that these proposals ensure comparable treatment of demand response resources. We discuss these proposals in greater detail below.

### 9. Ancillary Services Provided by Demand Response Resources

#### i. Preliminary Proposals in the ANOPR

47. In the ANOPR, the Commission sought comment on obligating RTOs and ISOs to purchase demand response resources in their markets for certain ancillary services, similar to any other resources, if the resources meet the necessary technical requirements and submit a bid under the generally-applicable bidding rules at or below the market-clearing price. The Commission contemplated granting an exception where the seller would not be permitted to do so by state retail laws or regulations. The Commission proposed to require modifications to RTO and ISO tariffs that would apply this

requirement for energy imbalance, spinning reserves, and supplemental reserves, as defined in the *pro forma* OATT, or their functional equivalents in an RTO or ISO tariff. To be eligible to supply these ancillary services, the Commission stated that demand response resources must be capable of reducing demand within seconds or minutes and must meet the RTO's or ISO's reasonable size, telemetry, metering, and bidding requirements.

48. The Commission also sought comment on requiring modifications to RTO and ISO tariffs to provide that demand response resources must be allowed to provide spinning and supplemental reserves without also being required to sell into the energy market.

49. The Commission requested comment on, among other things, whether each RTO or ISO should propose its own minimum requirements (for example, as to minimum size bids, measurement, and telemetry) or whether the Commission should specify the appropriate minimum requirements in a Commission rule.

#### ii. Comments on the ANOPR Proposals and Questions

50. Most of the commenters that address the Commission's proposal in the ANOPR support having an RTO or ISO accept bids from demand response resources for certain ancillary services on a comparable basis. For example, BlueStar Energy states that the Commission's proposal "will lead to greater economic efficiency, and reduce costs and risks for retail customers."<sup>55</sup> Industrial Coalitions states that the Commission's current proposal is the next logical step, after Order No. 890, in promoting the integration of demand response resources into all RTO- and ISO-coordinated markets and services.<sup>56</sup>

51. Other commenters raise concerns with the ability of smaller entities to fully participate as resource providers for ancillary services. APPA argues that it may be difficult to reconcile the technical requirements for end users, necessitated by the instantaneous nature of certain ancillary services, with the desire of many larger loads for reliability, flexibility, and convenience, thus making it unlikely that many demand response resources will want to provide ancillary services.<sup>57</sup> The California PUC argues that requiring demand response resources to satisfy all requirements for service provision comparable to those applied to supply

resources could construct considerable barriers to participation of small demand response resources.<sup>58</sup>

52. NYISO and National Grid support the participation of demand response to the extent practical in the ancillary services market. They request, however, that the Commission clarify that it would not require the RTO or ISO to "purchase" certain ancillary services from demand response resources but to accept bids from them.<sup>59</sup>

53. Multiple commenters supported the Commission's proposal to allow demand response resources to provide reserves without being required to sell into the energy market. Alcoa, for example, states that demand-responsive load supplying ancillary services does not create market power concerns because such services are not the primary business of demand response resources.<sup>60</sup> Strategic Energy states that the proposal would allow customers to offer operating reserves without disrupting the company business via prolonged shutdowns to satisfy an energy schedule.<sup>61</sup>

54. Conversely, several commenters oppose the Commission's proposal. ISO-NE does not support the proposal because its core market design does not allow separate bids to be placed in the energy and reserve markets for any resources.<sup>62</sup> NYISO concurs, claiming that the proposal would not be efficient in New York because NYISO's market design co-optimizes energy and ancillary services through an integrated dispatch process and generators in New York must make themselves available to supply energy in order to be eligible to supply ancillary services.<sup>63</sup> Thus, any change to NYISO's market design could lead to inefficient scheduling outcomes. NYISO does state, however, that its existing bidding procedures are flexible enough to permit demand response resources to structure their bids in a way that virtually eliminates the possibility that they may be selected to provide energy involuntarily. NYISO asserts that it could develop new bidding rules that would allow demand response resources to specify that they: (1) Could not be called on for more than an hour or a certain maximum number of times per day; or (2) would be subject to energy management limits. NYISO asserts that such rules would allow demand side resources to convey their limitations on frequency and duration of

<sup>54</sup> The Commission approved this change in 2003. *New York Indep. Sys. Operator, Inc.*, 102 FERC ¶ 61,313 (2003).

<sup>55</sup> BlueStar Energy at 2.

<sup>56</sup> Industrial Coalitions at 13-14.

<sup>57</sup> APPA at 48.

<sup>58</sup> California PUC at 7.

<sup>59</sup> NYISO at 28; National Grid at 5.

<sup>60</sup> Alcoa at 18-19.

<sup>61</sup> Strategic Energy at 4.

<sup>62</sup> ISO-NE at 19.

<sup>63</sup> NYISO at 32.



activation without undermining the co-optimized market design.

55. A majority of commenters assert that the Commission should allow RTOs and ISOs to develop their own minimum requirements for demand response participation in ancillary services markets. EEI states that the Commission recognized that the various organized markets and state regulatory programs are different and had different physical and state requirements.<sup>64</sup> Dominion Resources, Pepco, PGC, PG&E, and SPP agree. EEI further argues that given all the regional differences in control systems and market software, having a standardized set of requirements may result in unnecessary expense and delay in implementation in certain regions by requiring incompatible infrastructure. PGC claims that a "one-size fits all" minimum requirements rule would be inappropriate, and states that allowing each RTO or ISO region to establish its own requirements would permit each system the flexibility to modify requirements as they gain additional experience with demand response resources.<sup>65</sup> Pepco argues for RTO/ISO-established technical requirements because the types of generation resources available, transmission constraints, and load pattern characteristics for each region would all be taken into account, and would be appropriate for that region.<sup>66</sup>

### iii. Commission Proposal

56. The Commission proposes to obligate each RTO or ISO to accept bids from demand response resources, on a basis comparable to any other resources, for ancillary services that are acquired in a competitive bidding process, if the demand response resources (1) are technically capable of providing the ancillary service and meet the necessary technical requirements, and (2) submit a bid under the generally-applicable bidding rules at or below the market-clearing price, unless the laws or regulations of the relevant electric retail regulatory authority do not permit a retail customer to participate. This proposal would apply to competitively-bid markets, if any, for energy imbalance, spinning reserves, supplemental reserves, reactive supply and voltage control, and regulation and frequency response as defined in the *pro forma* OATT, or to the markets of their functional equivalents in an RTO or ISO tariff. We propose that demand response resources that are capable of reducing

demand within the response time requirement for the ancillary service and that meet reasonable requirements adopted by the RTO or ISO as to size, telemetry, metering, and bidding be eligible to supply energy imbalance, spinning reserves, supplemental reserves, reactive and voltage control, and regulation and frequency response. In the compliance filing to be submitted within six months of the final rule, the RTO or ISO must adopt reasonable standards necessary for system operators to call on demand response resources, and mechanisms to measure, verify, and ensure compliance with any such standards. Such standards would be subject to Commission approval.

57. We believe that this policy would increase the competitiveness of ancillary services markets, help reduce the price of ancillary services, and improve the reliability of the grid. Experience in the PJM, CAISO, and ERCOT markets has demonstrated that certain demand response resources can provide some ancillary services reliably. Moreover, this proposal would require that, for ancillary services acquired in a competitive process, RTOs and ISOs make any necessary changes to their tariffs and market rules to allow for direct demand response resource participation in the ancillary services markets.

58. We clarify, in response to NYISO's and National Grid's requests, that this proposal would not require an RTO or ISO to purchase certain ancillary services from demand response resources, but rather to accept bids from them for ancillary services acquired in a competitive bidding process, and if they meet minimum technical requirements and clear the market, on a basis comparable to other resources. The purpose of the proposal is to ensure that all RTOs and ISOs treat demand response resources comparably with other resources in the market rules for energy imbalance, spinning reserves, supplemental reserves, reactive and voltage control, and regulation and frequency response. This proposal does not require the adoption of a competitive bidding process where one was previously not utilized.

59. The California PUC's argument that ancillary services market rules for comparable and nondiscriminatory access for demand response resources may be a barrier to participation of small demand response resources has merit. Experiments and pilot programs suggest that resources below minimum size thresholds in RTO and ISO markets have the potential to respond quickly

and reliably.<sup>67</sup> Adjusting minimum size thresholds and telemetry requirements to accommodate smaller demand response resources may result in a significant increase in potential sources of operating reserves. Without extensive experience with the ability of smaller demand response resources to provide ancillary services, however, it is premature to mandate specific conditions under which RTOs and ISOs must accommodate smaller resources into the spinning reserves, supplemental reserves, energy imbalance markets, reactive and voltage control, and regulation and frequency response. Instead, we propose to direct the RTOs and ISOs to perform an assessment of the technical feasibility and value to the market of smaller loads providing some ancillary services one year from the effective date of the final rule, including whether (and how) smaller resources can reliably and economically provide operating reserves through pilot projects or other mechanisms.<sup>68</sup>

60. In the ANOPR, the Commission made a preliminary proposal to remove a disincentive for demand response to offer operating reserves. The proposal was to modify RTO and ISO tariffs to provide that demand resources must be allowed to provide spinning and supplemental reserves without also being required to sell into the energy market, explaining that customers may be more likely to offer demand response as operating reserves if they do not need to worry about disruptions to their businesses by participating in the energy markets. We are sympathetic, however, to concerns raised in ISO-NE's and NYISO's comments that the ANOPR proposal could undo their recent success in resolving design problems of disjointed markets by combining and co-optimizing their energy and ancillary services markets. The Commission is mindful of these concerns and does not intend to negatively affect the market efficiencies created by co-optimized market designs.

61. NYISO suggests, however, that the development of new bidding rules could limit the exposure of demand response resources selling into the energy market—rules that would not require changes to its co-optimized markets. Resource bids in RTO and ISO markets typically allow bidders to specify various parameters of their bid (e.g., price, quantity, startup and no-load

<sup>64</sup> EEI at 12.

<sup>65</sup> PGC at 10–11.

<sup>66</sup> Pepco at 7.

<sup>67</sup> See 2006 FERC Staff Demand Response Assessment at 114.

<sup>68</sup> For example, ISO-NE is assessing whether small demand response resources can provide operating reserves in its Demand Response Reserves Pilot.



costs, and minimum downtime between starts). NYISO suggests new parameters that would allow demand response bidders to specify additional constraints on the dispatch of their resources. In its comments, NYISO offers that a demand response bidder could specify the maximum duration in hours that a bid can be dispatched, maximum number of times that a bid can be dispatched during a day, and a maximum amount of energy that a resource can produce either daily or weekly, and that those parameters could be incorporated into the bidding rules. We believe that NYISO's suggestion has merit.

62. We propose here to require RTOs and ISOs to allow demand response resources to specify limits on the frequency and duration of their service in their bids to provide ancillary services—or their bids into the joint energy-ancillary services market in the co-optimized RTO markets. These limits are comparable to the limits generators may specify on price, quantity, startup and no-load costs, and minimum downtime between starts—limits that may not be available to demand response resources. The proposal is for RTOs and ISOs to incorporate new parameters into their bidding rules that allow demand response resources to specify a maximum duration in hours that the demand response resource may be dispatched, a maximum number of times that the demand response resource may be dispatched during a day, and a maximum amount of electric energy that the demand response resource may be required to provide either daily or weekly. We expect that this requirement would encourage demand response in the spinning reserves, supplemental reserves, and regulation and frequency response markets by reducing the risk that demand response resources would be called on too frequently or for too long a period. We ask for comment on whether these new parameters should be available for all bids, not just demand response resources. These new bidding parameters could benefit energy-limited resources or runtime-limited resources, e.g., hydropower and units with environmental restrictions. The new bidding parameters could also benefit resources that cannot start and stop quickly. The proposal should not require fundamental changes to existing market designs,<sup>69</sup> or affect the efficiencies of co-optimized markets.

63. An RTO or ISO must either propose amendments to its tariff to

comply with the proposed requirement or demonstrate that its existing tariff and market design already satisfy the requirement. This filing would be submitted within six months of the date the final rule is published in the **Federal Register**. The Commission will assess whether each filing satisfies the proposed requirement and will issue additional orders as necessary.

64. We request comment on this proposed requirement for RTOs and ISOs to allow demand response resources to specify a maximum duration for dispatch, a maximum number of times per day that demand response resources could be called, or a maximum amount of energy per day or week, and on whether other bidding parameters should be considered. We note that any parameters must accommodate the characteristics of demand response resources but must not have the effect of creating an undue preference for demand response resources vis-à-vis other resources. Further, we intend that the bidding parameters would be implemented at all RTOs and ISOs. Finally, we agree with commenters that it would not be appropriate for the Commission to develop in a rulemaking a standardized set of minimum requirements for minimum size bids, measurement, telemetry, and other factors. Instead, we will allow each RTO or ISO to develop its own minimum requirements, including bidding parameters. We propose to require the RTOs and ISOs confer with each other and to provide a technical and factual basis for any necessary regional variations.

#### b. Deviation Charge

##### i. Preliminary Proposals in the ANOPR

65. In the ANOPR, the Commission stated that it was considering a proposal to modify RTO and ISO tariffs to eliminate, during a system emergency, a charge to a buyer in the energy market for taking less electric energy in the real-time market than purchased in the day-ahead market.<sup>70</sup>

66. The Commission requested comment on whether an RTO or ISO should assess a deviation charge for a day-ahead to real-time load reduction in the absence of a system emergency. The Commission noted that eliminating the deviation charge might have unintended consequences and asked whether it would result in an unfair reallocation of these costs to others; whether it was important to retain the deviation charge to discourage poor scheduling practices;

or whether eliminating the deviation charge would introduce opportunities for gaming behavior.

##### ii. Comments on the ANOPR Proposals and Questions

67. The vast majority of commenters support the preliminary proposal in the ANOPR to modify RTO and ISO tariffs to eliminate a deviation charge during a system emergency.<sup>71</sup> For instance, APPA asserts that it does not make much sense to penalize entities that help the RTO alleviate a system emergency.<sup>72</sup> SMUD states that eliminating penalties for load reductions during a system emergency is a sensible approach to promoting further development of demand response as a resource eligible to be bid into organized markets.<sup>73</sup>

68. Several supporters prefer allowing RTOs and ISOs the flexibility to establish rules for settling deviations. For example, SoCal Edison-SDG&E believe each RTO or ISO is different, and that allowing each region to determine specific deviation charges based on individual circumstances may make more sense than adopting uniform standards. In their opinion, such an approach would help mitigate any unintended consequences, such as gaming.<sup>74</sup>

69. Other commenters who disagree with the Commission's preliminary proposal are concerned about the uplift costs resulting from the elimination of deviation charges. DC Energy argues that eliminating the deviation charge penalty for demand response participants would negatively impact the market and result in unfair cost reallocation.<sup>75</sup> It maintains that such elimination would create two classes of market participants and have a deleterious affect on the market by inefficiently and unfairly reallocating costs to others.

70. Two commenters raise concerns about the applicability of the proposal to virtual bidding.<sup>76</sup> APPA and the

<sup>71</sup> A number of commenters appear to misunderstand the proposal. Several did not distinguish a voluntary reduction in power purchase between day-ahead and real time (the intent here) from a demand response bidder that fails to deliver its accepted demand response.

<sup>72</sup> APPA at 53.

<sup>73</sup> SMUD at 4.

<sup>74</sup> SoCal Edison-SDG&E at 2-3.

<sup>75</sup> DC Energy at 4.

<sup>76</sup> Virtual bidding, sometimes called "convergence bidding," involves sales or purchases in the RTO or ISO day-ahead market that do not go to physical delivery. For example, an entity that does not serve load may make a purchase in the day-ahead market, which it must pay for, and then take no power in real time. This lack of consumption is treated as a sale of the power in the real-time spot market. By making virtual energy

<sup>69</sup> Bidding rules at RTOs and ISOs such as Midwest ISO and PJM already incorporate aspects of these proposed new bidding parameters.

<sup>70</sup> The Commission noted that it would refer to the charge that it proposed to eliminate during an emergency as a "deviation charge."

Connecticut and Massachusetts Municipals worry that virtual bidders may engage in market manipulation. Connecticut and Massachusetts Municipals argue that virtual bidders' virtual load in the day-ahead market may create the appearance of a shortage even without corresponding real-time load. Therefore, the Commission should tailor any deviation exemption to apply to physical loads only.<sup>77</sup> APPA agrees.<sup>78</sup>

71. Suppliers predominantly support the Commission's additional ANOPR proposal to eliminate deviation charges absent system emergencies. These commenters argue that any load reduction, during either a system emergency or non-emergency, would benefit all loads in RTOs and ISOs through greater market efficiency. Other commenters, including the RTOs and ISOs, however, oppose this proposal. Arguments against eliminating deviation charges for non-emergency periods include concerns about potential gaming and inaccurate scheduling. APPA states that in order to ensure accurate schedules and cost accountability, deviation charges should remain in place absent a system emergency.<sup>79</sup> EEI argues that the elimination of this charge during non-emergencies "sends the wrong price signal to market participants, provides a disincentive to minimize deviations, and leads to increased costs to the market."<sup>80</sup> PJM states that little reliability value is associated with load reductions during non-emergencies, and therefore waiving the deviation charges is not justified, particularly when costs would have to be collected through a socialized uplift charge.<sup>81</sup>

### iii. Commission Proposal

72. The Commission proposes to require that all RTO and ISO tariffs be modified to eliminate a charge, which we refer to as a deviation charge,<sup>82</sup> to a buyer<sup>83</sup> in the energy market for taking

sales or purchases in the day-ahead market and settling these positions in the real-time market, any market participant can arbitrage price differences between the two markets.

<sup>77</sup> Connecticut and Massachusetts Municipals at 40.

<sup>78</sup> APPA at 53.

<sup>79</sup> *Id.* at 54.

<sup>80</sup> EEI at 17-19.

<sup>81</sup> PJM at 7-8.

<sup>82</sup> Deviation charges recover certain costs including importantly generators' costs (such as start-up costs) that exceed their energy market revenues when real-time demand is less than forecast. These "uplift" costs may include the cost of the extra generators committed after the close of the day-ahead market that are not recovered from sales of energy at real-time LMPs.

<sup>83</sup> Examples of buyers in RTO and ISO energy markets include a load serving entity that purchases electricity to meet the load requirements of its retail

less electric energy in the real-time market during a real-time market period for which the RTO or ISO declares an operating reserve shortage or makes a generic request to reduce load to avoid an operating reserve shortage.

73. An RTO or ISO must either propose amendments to its tariff to comply with the proposed requirement or demonstrate that its existing tariff and market design already satisfy the requirement to eliminate the deviation charge during a system emergency. This filing would be submitted within six months of the date the final rule is published in the **Federal Register**. The Commission will assess whether each filing satisfies the proposed requirement and will issue additional orders as necessary.

74. Commenters supporting this proposal make sound arguments for it. We agree that removal of this deviation charge during a system emergency would remove a disincentive for greater demand response in the real-time market. A buyer may be deterred from reducing load during periods when supplies are tight and the real-time price is high if that buyer is subject to a charge for reducing its real-time consumption from its day-ahead purchases. If that buyer takes the appropriate action to reduce load and is accordingly penalized by a deviation charge, this unintended disincentive may lead the buyer to maintain a high load or discourage an LSE from calling on the demand response capabilities of its retail customers. Removal of this disincentive is important during a system emergency when load reduction is needed (and valued) most.

75. RTO and ISO tariffs already contain provisions associated with the dispatch of generators during real time, and specify payments and deviation charges for uninstructed deviations. During system emergencies, all available generation resources are instructed to increase output if possible. Because these units are instructed to increase output, RTO and ISO tariffs do not impose deviation charges on generators that generate more power during system emergencies than scheduled. Elimination of deviation charges for demand response by buyers ensures comparability between demand and supply resources.

76. As noted above, although a majority of commenters express support for this proposal, a significant number appear to misunderstand it. For example, some commenters appear to believe that the Commission proposed

customers or a retail customer that purchases electricity directly from the wholesale market.

to remove any penalty for a day-ahead bidder of demand response who fails to reduce demand in real time, and oppose this idea as discriminating in favor of a demand response provider.

Accordingly, we provide two clarifications. First, this proposal applies to demand response that is in addition to the demand response of participants in RTO/ISO wholesale demand response programs. If demand response program participants reduce demand as directed, RTOs and ISOs already do not levy a deviation charge. We are not proposing to remove any penalty for a day-ahead bidder of demand response who fails to follow directions to reduce demand in real time. This proposal focuses on demand response from LSEs and other buyers that consume less total energy in real time during system emergencies than they had scheduled in the day-ahead market.<sup>84</sup> Second, deviation charges would be eliminated only when the RTO or ISO announces an emergency situation after the close of the day-ahead market. The RTO or ISO could inform buyers either by instituting formal procedures that direct LSEs and electric utilities to activate retail demand response programs during a system emergency or by requesting voluntary load reductions, which may occur prior to or at the same time that a system emergency is declared. This is intended to ensure that buyers are not penalized when they voluntarily reduce load to improve system reliability at the request of a system operator.

77. In response to concerns that eliminating the deviation charge during a system emergency would result in an unfair allocation of the uplift costs or the creation of an unfair subsidy to demand response, we recognize that a deviation charge covers real costs to generators and others. These costs include those associated with the extra generation committed after the close of the day-ahead market that are not recovered from sales of energy in real time. Since demand response during system emergencies can be instrumental in maintaining system reliability and reducing overall energy prices, the Commission proposes that these costs be allocated to all loads of the RTO or ISO.

78. The Commission's proposal to eliminate deviation charges during a system emergency applies to physical load reductions. With regard to virtual

<sup>84</sup> Note that under our proposal, if a demand response program participant reduces demand at greater levels than instructed during a system emergency, it will not be subjected to a deviation charge for the higher than instructed demand response.

purchases, we believe that, during an emergency, these day-ahead purchases may not cause unneeded generation to be committed to the market because an emergency by its nature is a time when the system is short of generation. As a result, we believe that virtual purchasers may not cause significant additional costs during an emergency. Indeed, virtual purchases may enhance reliability by increasing the amount of generation resources available in real time during a system emergency. Assessing a deviation charge on virtual purchasers during an emergency may be unfair and may discourage helpful virtual bidding. Some commenters contend that virtual purchases add to system costs but do not address whether they add to costs during an emergency situation when the system is short of generation. The Commission seeks comment on whether to require RTO and ISO tariffs to be modified to eliminate deviation charges for virtual purchasers during system emergencies.

79. We do not propose to modify RTO and ISO tariffs to eliminate deviation charges absent a system emergency, in light of the comments we received regarding this ANOPR proposal. We are concerned about the resulting possibility of market manipulation and inefficiencies if deviation charges are removed, as raised by several commenters. Given the reliability value associated with demand response during system emergencies, socialization of related uplift costs is supportable.

### c. Aggregation of Retail Customers

#### i. Preliminary Proposals in the ANOPR

80. In the ANOPR the Commission sought comment on requiring RTOs and ISOs to amend their market rules as necessary to permit an ARC to bid demand response on behalf of retail customers directly into the RTO's or ISO's organized markets. Under the preliminary proposal, the amended market rules could not exclude a demand response bid from a third-party ARC that is not an LSE, unless state laws or regulations do not permit this. RTOs and ISOs would have the same rules for ARC participation as for LSEs, except as needed to comply with state laws and regulations, unless the RTO or ISO satisfactorily explained the reason for any such difference. As part of the preliminary proposal, the Commission suggested directing RTOs and ISOs to coordinate to identify common issues, best practices, and market rules that are consistent between regions, particularly in the areas of market procedures, bidding protocols, communication

protocols, and measurement and verification, and having them report to the Commission on their coordination efforts.

81. The Commission also requested comments on whether ARCs allow for inappropriate compensation when a retail customer is paid for wholesale demand response and also saves in its retail bill from the same demand response. The Commission noted that some argue that the payments to customers for demand response are a form of double payment that provides an unjustified subsidy.

#### ii. Comments on the ANOPR Proposals and Questions

82. A large number of commenters address at great length the proposal to require an RTO to accept a demand response bid into its energy market from an ARC, if permitted by state law. A majority—including such diverse entities as EPSA, CAISO, and Industrial Consumers—appears to support the basic proposal although many raise implementation concerns. Comments in opposition to the proposal also vary widely and represent a diversity of interests, from SoCal Edison-SDG&E to the Massachusetts Attorney General. They offer a variety of reasons not to require market rule changes, with most concluding that this topic is a subject better suited for detailed stakeholder negotiations than a generic rulemaking. State regulators generally like the state law exemption, but several worry that the program could have unintended consequences and is inappropriate for non-retail access states. Public power, cooperatives, and other retail service providers not regulated by state commissions ask for clarification that an RTO or ISO may not accept a bid from an ARC that aggregates their customers if their own retail regulations would not permit this.<sup>85</sup>

83. Commenters identified multiple benefits associated with ARCs. ARCs provide valuable services to retail customers by handling various tasks such as developing demand response action plans, handling event notifications from system operators, and managing payment.<sup>86</sup> ARCs can reduce the RTOs' and ISOs' administrative burden of managing individual customers' demand response participation.<sup>87</sup> ARCs with risk and portfolio management expertise can manage a portfolio of diverse demand response resources to achieve greater

value and reliability with the aggregated demand response resource.<sup>88</sup>

84. RTOs and ISOs indicate that standardization of several technical issues may be beneficial. For example, PJM notes that a few areas that can be standardized, including (1) the method for determining baseline consumption, (2) the tools for establishing the uniform baseline and measuring the demand response, (3) the interface tools that allow demand response providers to use a common portal and protocol for offering demand response into the organized markets, and (4) the telemetry and metering requirements.<sup>89</sup> Several commenters, however, express concern that any rules for aggregation must be tailored to the specific design of the particular market and regional circumstances. They argue that these rules should not be developed in a generic Commission rulemaking process. Instead, the Commission should allow these rules to be developed by the RTO or ISO through a regional stakeholder process.<sup>90</sup>

85. In response to ANOPR questions about how much to compensate a demand response aggregator for reducing its consumption of electric energy, voluminous comments were received ranging from strong arguments for paying the full market price to strong arguments for avoiding "double compensation." Many commenters oppose having a Commission regulation setting a price to compensate for allegedly incorrect retail prices. Several point out that if retail customers faced real-time market prices, a retail aggregation program or any issue of compensation would not be needed. The commenters that want to see a transition to retail customers paying "efficient" market prices do not want permanent Commission regulations that compensate for "inefficient" retail prices:

#### iii. Commission Proposal

86. The Commission proposes to require RTOs and ISOs to amend their market rules as necessary to permit an ARC to bid demand response on behalf of retail customers directly into the RTO's or ISO's organized markets, unless the laws or regulations of the relevant electric retail regulatory authority do not permit a retail customer to participate.

<sup>85</sup> See, e.g., Energy Curtailment at 10–15; EnerNOC at 6; Public Interest Organizations at 9–10.

<sup>86</sup> PJM at 9–10.

<sup>87</sup> E.g., NY TO at 8; LPPC at 5–6; Kansas CC at 2–4; SoCal Edison-SDG&E at 3; Old Dominion at 9; Massachusetts AG at 2–3; Northeast Utilities at 8.

<sup>88</sup> APPA at 56; NRECA at 13; EEI at 19; AEP at 4–5; California Municipals at 8–9.

<sup>89</sup> See Public Interest Organizations at 10.

<sup>90</sup> See EnerNOC at 6.

87. This proposal would reduce a barrier to demand response by permitting an ARC to act as an intermediary for many small retail loads that cannot individually participate in the organized market. We agree with commenters that aggregating small retail customers into larger pools of resources allows more customers to access demand response programs, which increases the potential market and reliability benefits realized from demand response in wholesale markets.<sup>91</sup> Experience with existing aggregation programs in PJM, NYISO, and ISO-NE has shown that these programs increased demand responsiveness in these regions.

88. In response to comments on the ANOPR's preliminary proposal, we offer these clarifications of our proposal here. The ARC's demand response bid must meet the same requirements as a demand response bid from any other entity, such as an LSE. The bidder only has the opportunity to be among the bids that clear the market; it does not guarantee that the bid will clear the market and be selected. In response to comments from public power entities, cooperatives, and other such entities with retail customers that are sometimes not subject to state public utility regulation, we clarify that, for the purposes of the ARC part of this rule, the term "relevant electric retail regulatory authority" means the entity that establishes the retail electric prices and any retail competition policies for those customers, such as the city council for a municipal utility or the governing board of a cooperative utility.<sup>92</sup> An ARC can bid demand response either on behalf of only one retail customer or multiple retail customers. Except for circumstances where the laws and regulations of the relevant retail regulatory authority do not permit a retail customer to participate, there is no prohibition on who may be an ARC, and an individual customer may serve as an ARC on behalf of itself and others. Finally, RTOs or ISOs may specify certain requirements, such as registration with the RTO or ISO and creditworthiness and other requirements, which qualify a resource

provider to make a bid and requests comments on whether there is any reason not to subject ARC to the same requirements as any other bidder in the energy market.

89. As mentioned, we received voluminous comments on the issue of compensation to a demand response aggregator, with comments on this issue differing widely. A standard compensation approach may not be feasible given the differences in market designs across the regions, and we are persuaded that a rule that fixes a single pricing method in regulations may not be appropriate. However, the appropriate valuation of demand response in organized markets is addressed further below in our proposal for pricing during a period of operating reserve shortage.

90. We agree with commenters who argue that each region's market design is different and that it is important for the ARC provisions to consider these regional differences. For this reason, we do not propose to require detailed generic market rule amendments for ARCs. We propose instead to require RTOs and ISOs to amend their tariffs and market rules as necessary to allow an ARC to bid demand response directly into the RTO's or ISO's organized market in accordance with the following criteria:

- The ARC's demand response bid must meet the same requirements as a demand response bid from any other entity such as an LSE. For example,
  - Its aggregate demand response must be as verifiable as eligible LSE or large industrial customer demand response that are bid directly into the market.
- The requirements for measurement and verification of aggregated demand response should be comparable to the requirements for other providers of demand response resources, regarding such matters as transparency, ability to be documented, and ensuring compliance.

Demand response bids from an ARC must not be treated differently from the demand response bids of an LSE or a large industrial customer.

- The RTO or ISO may require the ARC to be an RTO member if membership is a requirement for other bidders.
- Single aggregated bids consisting of individual demand response from a single area, reasonably defined, may be required by RTOs and ISOs.
- An RTO or ISO may place appropriate restrictions on demand response participation by any customer to avoid counting the same demand response resource more than once.

- The market rules do not have to allow bids from an ARC where this is not permitted under the laws or regulations of the relevant electric retail regulatory authority. The RTO or ISO must receive explicit notification from the relevant retail regulatory authority in order to disqualify a bid from an ARC that includes the demand response of that authority's retail customers.

91. We request comment about whether these criteria are appropriate and whether there are additional appropriate criteria for allowing an ARC to bid demand response.

92. An RTO or ISO must either propose amendments to its tariff to comply with the proposed requirement or demonstrate that its existing tariff and market design already satisfy the requirement to permit an ARC to bid a demand response on behalf of retail customers.<sup>93</sup> This filing would be submitted within six months of the date the final rule is published in the **Federal Register**. The Commission will assess whether each filing satisfies the proposed requirement and will issue additional orders as necessary.

93. We note, however, that cooperation and coordination among the RTOs and ISOs in developing standard terms for demand response programs would be beneficial. Accordingly, we encourage RTOs and ISOs to coordinate their efforts through the ISO/RTO Council to identify common issues, best practices, and market rules that are consistent between regions (particularly in the areas of market procedures, bidding protocols, communication protocols, and measurement and verification) or act to develop common business practices and measurement and verification protocols through the North American Energy Standards Board (NAESB).

#### d. Potential Future Demand Response Reforms

94. The need for, and the focus on, demand response will continue to increase. Although the Commission is proposing specific reforms to eliminate barriers to demand response here, we believe that other reforms may be necessary in the future. However, we do not wish to delay the adoption of these specific reforms while the Commission and industry continue to study and consider other advances in this area. Rather, we believe that the reforms proposed here should proceed while the

<sup>91</sup> See, e.g., PJM at 8; EnerNOC at 5-7; Alcoa at 22; Public Interest Organizations at 6-10.

<sup>92</sup> We do not intend to require an RTO or ISO to accept a demand response bid from an ARC that has aggregated the demand responses of retail customers if this is not permitted by laws or regulations of those regulatory entities covered by the term "state regulatory authority" for those retail customers or if the retail customers are served at retail by a "nonregulated electric utility," as these two terms are defined in sections 3(9) and 3(17) of the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2602(9), (17) (2000).

<sup>93</sup> In particular, this proposal would not necessarily require any change to an existing aggregation program that already functions well if the existing program satisfies the proposed criteria. See NEPOOL Participants at 12; TAPS at 19-21; Silicon Valley Power at 7-8.



Commission and stakeholders study what additional efforts are needed and develop a record to support further reforms.

95. In order to achieve this goal, we intend to direct staff to hold a technical conference shortly after receiving the comments on this NOPR to consider the following issues for demand response participation in the wholesale markets: (1) If there are barriers to comparable treatment of demand response that have not previously been identified and what they are; (2) potential solutions to eliminate any potential barriers to comparable treatment of demand response; (3) appropriate compensation for demand response; and (4) the need for and the ability to standardize terms, practices, rules and procedures associated with demand response, among other things. The proposed technical conference will provide a forum for RTOs/ISOs, demand response providers, and other stakeholders to express their views regarding these issues. It will also serve as guidance to the RTOs/ISOs of the areas that they should include as part of the study we propose to order as well as other issues identified in the course of the study. We propose to require each RTO or ISO to assess and report on the barriers to comparable treatment of demand response resources that are within the Commission's jurisdiction, including those listed above, and to submit its findings and any proposed solutions along with a timeline for implementation to address barriers to the Commission within six months of the Final Rule (RTO and ISO studies). To ensure that minority views are adequately represented, we propose to require that the RTO or ISO identify any significant minority views in its filing. We also will require the Independent Market Monitor for each RTO or ISO to provide its views on this issue to the Commission.

96. These RTO and ISO studies will have significant value. They have the potential to provide independent critical analysis and a basis for additional reform. In this regard, we note that section 529 of the Energy Independence and Security Act of 2007 (EISA) requires the Commission to complete a national assessment of demand response both to estimate the potential for demand response and to determine how to overcome the barriers to achieving that potential.<sup>94</sup> We believe that the RTO and ISO studies we are proposing to require will help us in preparing the assessment and ultimately

in developing a national action plan on demand response as required by EISA. These studies will also provide a sound platform and record for the Commission to consider whether there should be additional reforms to remove barriers to demand response in organized markets that ensure comparable and fair treatment of demand response resources as required by the EISA.<sup>95</sup> We seek comment on the proposed approach to identify and assess remaining barriers to comparable treatment of demand response as well as any particular issues or areas that should be addressed in the RTO and ISO reports.

#### e. Market Rules Governing Price Formation During Periods of Operating Reserve Shortage

##### i. Preliminary Proposals in the ANOPR

97. In the ANOPR, the Commission sought comment on modifying market rules that limit the market-clearing price during an emergency, that is, when the amount of available supply falls short of demand plus the operating reserve requirement.<sup>96</sup> When this happens, reliability is threatened and market rules that limit the market price may have the unintended effect of discouraging demand response. Limiting the price also discourages existing generators needed mostly for emergencies from continuing operation and discourages entry of new generation. The ANOPR presented for comment four possible approaches to addressing this problem.

98. First, the Commission proposed requiring RTOs and ISOs to increase the energy supply offer caps and demand bid caps above the current levels during an emergency. This could also result in a market-clearing price higher than the existing caps. Second, the Commission proposed requiring RTOs and ISOs to allow only demand bid caps to be raised above the current level, while keeping generation offer caps in place. Such high demand bids would be allowed to set the market price if they clear the market. As a third possible approach, the Commission proposed requiring a demand curve for operating reserves in each RTO or ISO market. Finally, as a fourth approach, the Commission proposed requiring RTOs and ISOs to modify their market rules to set the market-clearing price for all supply and demand response resources dispatched during an emergency at the payment

made to participants in an emergency demand response program.<sup>97</sup>

##### ii. Comments on the ANOPR Proposals and Questions

99. Many commenters advocate an RTO-by-RTO approach instead of a rulemaking for addressing this issue.<sup>98</sup> They call for the Commission to identify the general features of a solution, allowing each RTO and ISO and its regional stakeholders to develop the details. Others request that the Commission act only in coordination with state regulators because the ability of ultimate consumers to reduce demand in an emergency depends on retail metering, pricing, and other programs.

100. Many other commenters spoke for or against all four approaches collectively. Those opposed to allowing buyers to see a higher price during an emergency argue that the proposals are based on an incorrect assumption that higher prices would reduce demand. They contend that most of the buyers in an RTO's or ISO's market are LSEs with an obligation to buy regardless of the price; thus, the ultimate consumers (at retail) will not see the higher price or reduce demand.<sup>99</sup> Some opposing commenters argue that the proposals in varying degrees would create new opportunities for generators to exercise market power.<sup>100</sup> Further, they oppose some of the proposals because they would result in an administratively determined price instead of a true market price.<sup>101</sup>

101. Those in support of allowing buyers to see a higher price during an emergency argue that prices should be determined by an unencumbered market where buyers and sellers are allowed to make bids and offers with no restriction.<sup>102</sup>

<sup>97</sup> Based on comments on the ANOPR's preliminary proposals, we note that there may be some confusion regarding the second and fourth approaches. We clarify that a demand bid is different from a demand response bid. The first is an offer by a potential purchaser to buy a certain amount of energy at a given market price, and the second is an offer by a purchaser to reduce its normal purchase by a given amount in return for compensation.

<sup>98</sup> *E.g.*, Ameren at 31; CAISO at 19–20; EEI at 11; National Grid at 10; NEPOOL Participants at 15–17; NYISO at 34–35; PJM MMU at 6–7; PG&E at 9.

<sup>99</sup> *See, e.g.*, APPA at 59; Industrial Coalitions at 10–12; LPPC at 7–8; OPSI at 38; PJM MMU at 7; Public Interest Organizations at 11; TAPS at 21.

<sup>100</sup> *See, e.g.*, Ameren at 29; Connecticut and Massachusetts Municipals at 41–42; EEI at 25; Industrial Consumers at 22; PJM Power Providers at 2–6; PPL Parties at 5–9.

<sup>101</sup> *See, e.g.*, EEI at 29; Reliant at 5; PJM Power Providers at 31.

<sup>102</sup> *See, e.g.*, AEP at 5; The Alliance at 9; Constellation at 5–6; EPSA at 33; Reliant at 5–7; Strategic Energy at 9.

<sup>94</sup> The Energy Independence and Security Act of 2007, Pub. L. No. 110–140, 121 Stat. 1492 (2007).

<sup>95</sup> 42 U.S.C. 8241 *et seq.* (2000), amended by EISA, Pub. L. No. 110–140, 529, 121 Stat. 1492 (2007).

<sup>96</sup> We note that in this section of the NOPR, we refer to this emergency period as a period of operating reserve shortage.



102. In general, among those who favored one or more of the ANOPR's four approaches, the first (raise all caps during an emergency) and third (have a demand curve for operating reserves) approaches received the strongest support. The second (raise only demand bid caps during an emergency) and fourth (allow the payments for emergency demand response to set the market-clearing price during an emergency) approaches had the weakest support.

103. In comments on the first approach—lifting energy bid caps and price caps above the current levels only during an emergency—supporters say that this course of action allows buyers and sellers to set a true market price for electricity during an emergency, reduces demand by the appropriate amount, and allows investors in new generation to assess the value to buyers of new generating resources. This approach also has strong opposition, with particular concerns about the potential for generators to exercise market power and the inability of customers to respond to high prices.

104. The few commenters supporting the second approach—raising bid caps above the current level only for demand bids—say that it decreases generators' ability to manipulate the market compared to the first option. They also make the general point that it is important to let buyers express their true value for power. Those objecting to this proposal raised many of the same concerns that were raised regarding the first approach. For instance, they allege that even raising bid caps only for demand bids would allow generators to physically withhold some portion of their output from the market to obtain higher prices for the remaining output. Commenters also argued that the proposal was based on the false assumption that buyers that do not enter a bid to purchase at a high price will not be served. These commenters maintain that utilities shed load only as a last resort during an emergency, and emergency curtailment programs dictate the allocation of power during a shortage in a way that has nothing to do with the price bid into the energy market.

105. Support for the third approach of establishing a demand curve for operating reserves rests heavily on its track record, namely that the Commission has approved these programs before and many regions have experience with them.<sup>103</sup> Arguments

against this specific proposal are largely objections to administratively determined demand curves where prices may be set at levels that do not reflect competitive market conditions.

106. In commenting on the fourth approach—setting the market-clearing price at the payment made to participants in an emergency demand response program—a few commenters state that this approach is preferable to allowing no higher price during an emergency at all and could be supported as a transitional step in the process of removing all bid and offer caps. Opposition to this approach is based on the market price being administratively determined and a variety of other reasons, for example, that it is inappropriate to set an energy price based on a reliability payment.

#### iii. Commission Proposal

107. We have carefully considered the comments on this issue and continue to believe that existing market rules appear to be unjust, unreasonable and unduly discriminatory or preferential during times of scarcity. In particular, they may not accurately reflect the true value of energy and, by failing to do so, may harm reliability, inhibit demand response, deter new entry of demand response and generation resources and thwart innovation. However, we are cognizant of the fact that this is a difficult issue and that any change in market rules must consider the issue of market power, recognize regional differences in market rules, and be based on a sound factual record. We first explain the potential need for reform and then we describe our proposal to address this issue.

108. In a competitive market, demand and supply respond to price. If the price of energy is artificially capped during times of scarcity, this will constitute a barrier to effectively attracting new generation and demand resources into organized markets. When the system faces a shortage of operating reserves, additional resources are needed for operating reserves that help to maintain grid reliability. At such times, market prices can elicit demand response from certain customers who are equipped to respond and, thus, help balance the system. When bid and offer caps are in place, however, it is not always possible to elicit the optimal level of demand or generator response.

109. Some commenters argue that certain barriers to demand response remain and that the Commission should not undertake any reform until such

barriers are removed. The Commission is taking several important, concrete steps in this rulemaking to eliminate remaining barriers to demand response that are indicated by the existing record to ensure comparable and fair treatment of demand response resources. We recognize, however, that some barriers may remain. That is why we are requiring each RTO or ISO, as explained above, to undertake a further study of this issue and report back to the Commission. However, even if some barriers remain (certain of which may be subject to state jurisdiction, not our jurisdiction), price remains an important factor in encouraging demand response. Without prices that reflect the true value of energy, we cannot expect the full integration of demand response into organized markets. We therefore do not believe that reforms in this area should be delayed until every barrier to demand response, whether retail or wholesale, technological or regulatory, is identified and addressed. We have, however, included as a primary criterion for approving price reform during periods of operating reserve shortage an adequate record demonstrating that provisions exist for mitigating market power and deterring gaming behavior. These could include, but are not limited to, use of demand resources to discipline bidding behavior to competitive levels during periods of operating reserve shortages.

110. We recognize that not all customers are at present equipped to respond to scarcity pricing. Nevertheless, putting rules in place that allow the fraction of the load currently able to respond can have a very positive effect on the market and help reduce prices for all.<sup>104</sup> Further, with the modifications that this proposal anticipates, more buyers would find it worthwhile to invest in technologies that allow them to respond to prices. This group could include not only large manufacturers and others buying directly from the RTO or ISO market, but also ARCs, and LSEs which can implement retail demand response programs designed to reduce load during reserve shortages.

111. The Commission's proposed reforms are also intended to increase reliability. Our proposal is limited to periods of true scarcity (i.e., when there is a shortage of operating reserves). We have a duty to implement rules that ensure adequate supplies. If the price of energy during these periods is

<sup>103</sup> Duke Energy at 11; EPSA at 35; PJM MMU at 6-7; National Grid at 10-11; NEPOOL Participants

at 16; New England Power Generators at 6-7; NYISO at 35; NY TO at 10.

<sup>104</sup> See 2006 FERC Staff Demand Response Assessment at 7. As reported in the 2006 FERC Staff Demand Response Assessment, as little as five percent of load responding to price may discipline market prices.

artificially constrained, demand cannot respond efficiently and therefore the likelihood of involuntary curtailments is increased. Thus, demand resources may be a low cost resource that can be used to meet operating reserves requirements at the lowest total cost of maintaining reliability. Furthermore, by artificially capping prices, the price signals necessary to attract new entry by both generation and demand resources are muted and long-term resource adequacy is harmed.

112. This is not merely a theoretical problem. In regions such as PJM and New England, the Commission has found in prior orders that existing energy and capacity markets did not encourage sufficient new entry and that these regions therefore faced serious reliability problems.<sup>105</sup> The Commission adopted forward capacity markets in those regions to avoid the threats to reliability and the real costs to our economy of inadequate generation and demand resources. The reforms we propose here can help to avoid these problems in other regions. Moreover, as we explain below, in regions that already have such capacity markets, the reforms proposed here can reduce the level of revenues that must be recovered in such capacity markets.

113. Some commenters appear to misunderstand our proposal and suggest that we are proposing to lift the caps on generation in every organized market. This is not correct. Only one of our proposals would lift price caps on generators bidding energy into organized markets. The other three would not do so, but rather would seek to better reflect the value of energy during times of scarcity through other means.

114. In regions that have already adopted forward capacity markets, the lifting of such price caps on energy would primarily shift revenues from capacity markets to energy markets. In New England and PJM, the revenues collected by generators in the energy market are deducted from the revenues that need to be recovered in the capacity markets. Moreover, by shifting the price signals from capacity markets to energy markets, the Commission is encouraging greater demand response, as demand response may face fewer barriers to participating in energy markets than forward capacity markets.

115. Finally, and most importantly, we are not proposing to change the rules in each region without regard to the

specific circumstances facing that region. As we explain below, each region will be permitted to demonstrate that its current rules do not need to be reformed because they already adequately reflect the value of energy during periods of scarcity.

116. Other commenters raise market power concerns. We agree that we have a duty to guard the consumer against exploitation by sellers with market power and we will fulfill that duty. As we explain below, we are proposing that market power issues be adequately addressed before any reforms in this area are adopted.

117. We now explain our proposal for reform in this area. We propose to require each organized market to make a compliance filing, within six months of a final rule in this proceeding, proposing any necessary reforms to ensure that the market price for energy accurately reflects the value of such energy during periods of scarcity (i.e., an operating reserve shortage). Because there are regional differences in market design, we will not mandate any one type of reform in this area. Rather, each region may propose one of the four approaches described in the ANOPR (and summarized further below) or it may propose a different approach. Alternatively, a region may demonstrate that its existing market rules already reflect the value of energy during periods of scarcity and therefore do not need to be reformed.

118. In recognition of the concerns of many commenters, we also propose to adopt further requirements to ensure that any reforms in this area are supported by adequate factual support and show how they are designed to protect consumers against the exercise of market power. First, each RTO or ISO proposing to reform or demonstrate the adequacy of its existing market rules in this area must provide an adequate factual record for the Commission to evaluate its proposal. Specifically, the RTO or ISO should provide historical evidence in its region regarding the interaction of supply and demand during periods of scarcity and the resulting effects on the market price for energy. To the extent this evidence indicates that the region's market rules are inadequate during these periods, the RTO or ISO must then explain and support why its proposed reforms are tailored to address those inadequacies. This factual record will allow the Commission to discharge its duty to ensure that any reform is necessary and narrowly tailored to address the circumstances in that region.

119. As a general matter, we will consider the factual record compiled by

the RTO or ISO to determine whether its proposal, or its demonstration as to its existing market rules, would:

- Improve reliability by reducing demand and increasing generation during periods of operating reserve shortage;
- Make it more worthwhile for customers to invest in demand response technologies;
- Encourage existing generation and demand resources needed during an operating reserve shortage to remain in business;
- Encourage entry of new generation and demand resources;
- Provide comparable treatment and compensation to demand resources during periods of operating reserve shortages; and
- Have provisions for mitigating market power and deterring gaming behavior, including, but not limited to, use of demand resources to discipline bidding behavior to competitive levels during periods of operating reserve shortages.

120. We request comment on whether these criteria are appropriate and whether there are additional criteria that we should consider in evaluating a proposal for pricing during a period of operating reserve shortage by RTOs and ISOs.

121. Second, the Commission will require any RTO proposing reform in this area to address the adequacy of any mitigation measures that would be in place during periods of operating reserve shortage. We recognize that many commenters have raised market power concerns and we take those concerns seriously. However, we note that enhanced demand responsiveness and increased entry by generators can help to mitigate seller market power by lowering market prices.<sup>106</sup> Moreover, we note that generator bid and offer caps are not increased in three of the four options proposed.<sup>107</sup> These caps provide further protection against the exercise of seller market power. Further, the Commission notes that other market power mitigation measures remain in

<sup>106</sup> See B.F. Neenan *et al.*, Neenan Associates, 2004 NYISO Demand Response Program Evaluation, at E-5, (Feb. 2005); David B. Patton, Potomac Economics, 2006 State of the Market Report—The Midwest ISO, at 44 (May 2007).

<sup>107</sup> In the first approach, bid and offer caps would increase for both sellers and buyers. In the second approach, bid and offer caps for buyers would be increased, but bid and offer caps for sellers would remain in place. In the third approach, based on a demand curve for operating reserves, bid and offer caps would remain in place for both sellers and buyers. In the fourth approach (which proposes that payments to participants in an emergency demand response program could set the market-clearing price), bid and offer caps would again remain in place for both sellers and buyers.

<sup>105</sup> *Devon Power, LLC*, 115 FERC ¶ 61,340, order on reh'g, 117 FERC ¶ 61,133 (2006), appeal pending sub nom. *Maine Pub. Utils. Comm'n v. FERC*, No. 06-1403 (DC Cir. 2007); *PJM Interconnection, LLC*, 117 FERC ¶ 61,331 (2006).

place during times when operating reserves are insufficient. For example, conduct and impact tests are applied in ISO-NE, NYISO, and Midwest ISO. A pivotal supplier test is used in PJM. PJM and CAISO mitigate bids by generators chosen out of merit order. Moreover, the Commission intends to closely monitor market behavior during periods of operating reserve shortage to ensure that market participants are following market rules and to guard against the exercise of market power.

122. In addition, to ensure that we have an adequate record on the issue of market power mitigation, we propose to solicit the views of the Independent Market Monitor for each RTO or ISO region on any proposed reforms in this area.

123. We now briefly summarize the four approaches discussed in the ANOPR and referred to above. As noted, however, these are not the only approaches that may be considered. Under the first approach, RTOs and ISOs would increase the energy supply offer caps and demand bid caps above the current levels only during an emergency. For example, if operating reserves drop below levels required in mandatory reliability standards, then bid caps would be allowed to rise above existing caps. As we described above, increasing energy supply offer and demand bid caps would allow the market to clear at a price above the current (or non-emergency) cap.<sup>108</sup> Customers and LSEs could then decide whether to purchase energy at the higher price, and those who place a higher value on energy could continue to buy it while those who do not value it as highly could reduce their demand. Thus, this proposal would allow supply and demand to operate more efficiently to allocate limited supply to those who value it the most.

124. Under the second approach, RTOs and ISOs would increase bid caps above the current level only for demand bids (i.e., the buyers' offers to purchase a certain amount of energy at a given price) while keeping generation bid caps in place. That is, a buyer would be allowed to inform the RTO or ISO about how much energy it would purchase at various prices above the current bid caps. These demand bids would be

allowed to set the market price if they clear the market. As with the other approaches, the higher market price under this approach would create an incentive for all buyers to lower their demands during an emergency. Demand that is price-sensitive would be reduced until available supply can meet the demand plus the need for operating reserves. This proposal does not change any rules that govern how demand response resources operate in the market.<sup>109</sup>

125. The third approach is for an RTO or ISO to establish a demand curve for operating reserves. The RTO or ISO would establish market rules that set real-time prices at specific pre-determined values (typically above the market-wide offer and bid caps) during an operating reserve shortage. The price level would increase with the severity of the shortage. This approach will ensure that market prices reflect tight conditions on the grid without altering any of the market power mitigation restrictions on either supply offers or demand bids. The Commission has already approved this option in the NYISO and ISO-NE markets.<sup>110</sup> These existing programs for pricing during reserve shortages have been implemented and activated during periods of operating reserve shortage in these regions. Moreover, the exposure to higher prices would increase the incentive for load to engage in hedging activities, and higher prices during shortages should attract new generation. As long as the prices that are implemented during reserve shortages are based on costs relevant to the market (such as the cost of new peak generation entry), and the particular characteristics of RTO and ISO regions, demand curves for operating reserves should induce sufficient supply and demand responses. A properly designed demand curve for operating reserves should also alleviate concerns about administratively determined prices. As

<sup>109</sup> We clarify that this approach refers to demand, not demand response. That is, this proposal allows a buyer to submit a bid to purchase energy at a price that exceeds the current bid cap. This proposal in no way affects demand response resources that participate in a program where they are paid some amount of money to reduce their consumption.

<sup>110</sup> The Commission approved market rules for NYISO and ISO-NE that include a demand curve for operating reserves that sets the real-time market price when operating reserves are low. *New York Inaep. Sys. Operator, Inc.*, 106 FERC ¶ 61,111 (2004); *New England Power Pool and ISO New England Inc.*, 115 FERC ¶ 61,175 (2006). See David B. Patton & Pallas LeeVanSchaik, *2006 Assessment of the Electricity Markets in New England* (June 2007); David B. Patton & Pallas LeeVanSchaik, *2006 State of the Market Report New York ISO* (July 2007).

noted above, the demand curve is a reflection of the costs of entering the energy market and indicates the prices suppliers would expect to be paid to provide that energy to the market. Thus, while the demand curve is administratively determined, it is based on market conditions.

126. Under the fourth approach, an RTO or ISO would amend its market rules to set the market-clearing price for all supply and demand response resources dispatched equal to the payment made to participants in an emergency demand response program.<sup>111</sup> Since the emergency demand response programs are only called during an emergency when demand needs to be reduced quickly, they should be the marginal resource and set the market-clearing price. Without such a rule, demand response payments are made to those demand response resources that respond to the RTO's or ISO's call to reduce load, yet prices are still set by the generation resource with the highest running costs (or at the price cap). This proposal would set the market-clearing price by the actual marginal reliability resource, the demand response resource. For example, if participants in emergency demand response programs were paid \$500/MWh to reduce their consumption when directed, then the \$500/MWh payment would set the market-clearing price in the zones where the program was active.

127. This rulemaking approach to demand response is directed at all RTOs and ISOs to ensure that all meet certain basic demand response goals. However, we do not intend to alter current RTO and ISO shortage pricing programs if the compliance filings satisfy us that the current programs meet the intent of this requirement. Some RTOs and ISOs have already dedicated considerable resources to develop various shortage-pricing programs. These programs have been developed through established stakeholder processes in the RTOs and ISOs and have been approved by the Commission and determined to be just and reasonable. Thus, the requirement proposed here may be satisfied by a filing demonstrating that the RTO or ISO already has a Commission-approved approach for pricing during periods of operating reserve shortage that meets the requirements previously discussed (i.e., in P 117, 118 and 120).

128. Each RTO or ISO may also consider a "phase-in" of its specific

<sup>111</sup> RTOs and ISOs would have to amend their market rules on unit commitment and settlement to adjust wholesale energy prices outside the normal clearing process.

<sup>108</sup> Under this proposal, the price and bid caps would be removed in the real-time market during an operating reserve shortage, but not necessarily in the day-ahead market. Thus, the price and bid caps would be removed normally for only a fraction of the spot market. In a severe shortage when the system operator is aware that the day-ahead market will produce insufficient generation for day-ahead energy and operating reserves, the price and bid caps would also be removed for the day-ahead market.

emergency pricing method, over a period of years (e.g., three years). This phase-in period can gradually introduce customers to price increases during an emergency and allow them to develop ways to reduce demand during an emergency to avoid high prices. We note that the phase-in may be linked to key factors such as the deployment of the advanced metering needed to implement their proposed method, provided the phase-in period is not protracted. However, the full deployment of advanced metering is not a requirement for the implementation of emergency pricing as price and demand responsiveness can be achieved without such a prerequisite.

#### B. Long-Term Power Contracting in Organized Markets

129. In the ANOPR, the Commission offered for comment three proposals intended to facilitate long-term contracting in organized markets, along with questions about whether to modify Electric Quarterly Reports (EQR) data requirements to facilitate long-term contracting. Following review of the comments, the Commission proposes to require that ISOs and RTOs dedicate a portion of their Web sites for market participants to post offers to buy or sell electric energy on a long-term basis. The Commission will consider reasonable additional steps in response to comments on this NOPR, and continues to encourage ISOs and RTOs to work within their authorities with stakeholders to facilitate long-term power contracting.

##### 1. Background

130. Long-term power contracts are an important element in a functioning electric power market. Forward power contracting allows buyers and sellers to hedge against the risk that prices may fluctuate in the future. Both buyers and sellers should be able to create portfolios of short, intermediate, and long-term power supplies to manage risk and meet customer demand. Long-term contracts also improve price stability, mitigate the risk of the abuse of market power, and provide a platform for investment in new generation and transmission.

131. As the Commission noted in the ANOPR, an organized market region naturally should facilitate long-term contracting by eliminating pancaked rates for long distance power sales, eliminating loop flow problems within its footprint, and ensuring reliable transmission operation over a large area. RTO and ISO transmission services also expand the size of the markets available to buyers and sellers of long-term power

contracts, and provide independent and unified transmission scheduling and operation services over a large area.

132. While most of the comments submitted in response to the ANOPR and testimony from parties at the Commission's technical conference on May 8, 2007 agree as to the importance of long-term contracts, opinions vary as to the extent of a problem with long-term contracts in the market and its causes. Many customers argue that issues of market design and over-reliance on the spot market have driven up prices, making long-term contracting difficult. On the other hand, many power sellers believe that markets are operating well, but parties are unable to reach long-term contracts due to differing price expectations and differing assessments of long-term risk.

133. The Commission has already taken action in other areas to facilitate long-term contracting. In Order No. 681, the Commission adopted a Final Rule on long-term transmission rights for organized market regions designed to assure availability of long-term transmission at a predictable cost.<sup>112</sup> The Commission then adopted transmission planning reforms in Order No. 890 to provide an open and transparent process for wholesale entities and transmission providers to plan for the long-term needs of their customers. Interconnection rules for large, small and wind generators in Order Nos. 2003, 2006 and 661 have improved the interconnection process and provide for interconnection with network integration service to facilitate long-term reliance on new generation.<sup>113</sup> The Commission has also reformed capacity markets in several regions to shift reliance from short-term purchases to forward markets held sufficiently in advance of delivery (e.g., three years) to be more consistent with

<sup>112</sup> *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, FERC Stats. & Regs. ¶ 31,226 (2006), *order on reh'g*, Order No. 681-A, 117 FERC ¶ 61,201 (2006).

<sup>113</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Not'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (DC Cir. 2007); *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, FERC Stats. & Regs. ¶ 31,180, *order on reh'g*, Order No. 2006-A, FERC Stats. & Regs. ¶ 31,196 (2005), *order granting clarification*, Order No. 2006-B, FERC Stats. & Regs. ¶ 31,221 (2006), *appeal pending sub nom. Consolidated Edison Co. of New York, Inc., et al. v. FERC* Docket No. 06-1018, *et al.*; *Interconnection for Wind Energy*, Order No. 661, FERC Stats. & Regs. ¶ 31,186, *order on reh'g*, Order No. 661-A, FERC Stats. & Regs. ¶ 31,198 (2005).

the time necessary to construct new generation.<sup>114</sup>

##### 2. The Need for Commission Action

134. As noted above, long-term power contracts are an important element of a working market. They enable buyers and sellers to manage risks, they promote stability in pricing, and they provide a solid foundation for the financing of new generation. Despite this importance, both buyers and sellers perceive that it is increasingly difficult to enter into long-term contracts, and that fewer long-term contracts are being signed as a result.

135. The Commission believes that further transparency in long-term electric energy markets would facilitate efforts by both sellers and buyers to incorporate long-term contracts as an essential part of their energy portfolios. This is especially true for new market participants that may not be aware of the full range of contract options available to them, including the full range of potential contract counterparties. During the panel on long-term contracting at the second Commission competition conference, a representative from PJM stated that he had spoken to what he termed "smaller players" who indicated that they were willing to contract for power but were unaware of who the available counterparties were.<sup>115</sup> These "smaller players" said that they would be interested in a bulletin board on the PJM Web site that would facilitate networking.<sup>116</sup>

136. While the market has the most important role to play in disseminating information, an RTO or ISO can play an important role in promoting greater transparency and liquidity in long-term power markets, and thus help reduce possible over-reliance on its spot markets. The information systems it operates are well suited for making such information available to the parties in its region.<sup>117</sup> As discussed below, several commenters support having RTOs and ISOs provide a section of their Web sites for a long-term contract bulletin board, which they believe would be a useful tool in assisting parties in finding interested

<sup>114</sup> *Devon Power, LLC*, 115 FERC ¶ 61,340, *order on reh'g*, 117 FERC ¶ 61,333 (2006), *appeal pending sub nom. Moine Pub. Utils. Comm'n v. FERC*, No. 06-1403 (DC Cir. 2007); *PJM Interconnection, LLC*, 117 FERC ¶ 61,331 (2006).

<sup>115</sup> Transcript of Conference at 187, Conference on Competition in Wholesale Power Markets, Docket No. AD07-7-000 (May 8, 2007).

<sup>116</sup> *Id.*

<sup>117</sup> *See id.* at 117.



counterparties and facilitating long-term contracts.

137. In light of these comments and our own observation, the Commission will take action in this area. We do so because of the importance of long-term contracts to a working market and because we believe greater transparency in the market will facilitate such long-term contracts. We therefore propose that regional organizations play a supporting role in encouraging voluntary contracting by providing an online forum in which potential buyers and sellers may exchange information.

### 3. Preliminary Proposals in the ANOPR

138. Given the importance of long-term contracts, in the ANOPR the Commission requested comment on any concrete steps it could take to facilitate voluntary long-term power contracting in organized market regions.<sup>118</sup> Specifically, the Commission solicited comment on whether it should encourage greater market transparency by requiring RTOs and ISOs to post information that could facilitate long-term contracts, such as aggregate information on long-term contract prices and quantities, and if so, how the information could be reported so that it protects the confidentiality of individual contracts. The Commission also asked whether disseminating other information, such as estimates of transmission constraints and long-term congestion costs, would be helpful to long-term contracting.

139. The Commission also solicited comment on whether it should require or encourage efforts to develop new standardized forward products and whether standardized products would facilitate long-term contracting. The Commission inquired about what role it should play, whether the Commission should encourage RTOs or ISOs to play an active role in this area (or whether that would place them in a position of undertaking commercial functions), and whether this was a role better played by NAESB or other industry groups.

140. Third, the Commission asked whether it should require ISOs and RTOs to dedicate a portion of their Web sites for market participants to post offers to buy or sell power long-term. The Commission asked whether this proposal would prove helpful, or whether it was a service that would be better provided by the market.

<sup>118</sup> The Commission noted, however, that it was mindful of the limits of its jurisdiction in seeking comment on this issue, as the Commission cannot compel buyers and sellers to enter into long-term contracts. The Commission also noted that the purchasing practices of LSEs are often dictated by state policies, not those of this Commission.

141. Finally, the Commission requested comments on whether it should consider any modification of the data requirements of the EQR—for example, to report the start date, term, and end date of long-term power contracts—to provide information that would make transparent the average prices of long-term power contracts of various terms and vintages.

### 4. Comments on the ANOPR Proposals and Questions

142. Commenters filed extensive comments agreeing with the Commission on the importance of long-term contracts in a functioning market. They differ, however, on the nature and extent of the problems with long-term contracting, what measures would best address the problems, and whether the Commission should attempt to deal with the various problems by requiring RTO or ISO actions.

143. Most commenters recommend against most of the actions proposed by the Commission in the ANOPR, which address the problems through regulations applicable to RTOs or ISOs. Some of these commenters argue that market participants and the private sector should address concerns over long-term contracting opportunities, while others argue that the Commission can improve long-term contracting opportunities by addressing larger structural issues, identified below.

144. The preliminary proposal to require RTOs and ISOs to reserve a section of their Web sites for parties to post offers to buy or sell power under long-term contracts has the most support, although most commenters do not necessarily support making this a regulatory requirement. A minority of commenters support this proposal—some strongly—including several RTOs and ISOs, state regulators, wholesale sellers, many small wholesale buyers, and Joint Consumer Advocates. Commenters indicate that such a Web site would be useful for many market participants, particularly new market participants, and would help facilitate long-term contracting. Midwest ISO and PJM indicate that they have already begun working on posting such discussion boards on their Web sites, and other RTOs and ISOs such as SPP indicate support for providing space on their Web sites to post such offers.

145. Commenters opposed to this proposal indicate that the market already adequately performs this function, and that the RTOs and ISOs should be able to determine on their own whether to have a Web site section for bulletin board postings. EEI and Duke Energy note that PJM once had a

bulletin board for similar purposes that fell into disuse, likely due to a lack of interest from market participants. Many commenters, such as EPSA, argue that RTOs and ISOs should be allowed to determine, in consultation with stakeholders, what to post on their Web sites. Some commenters state that legal issues may arise from having RTOs or ISOs post information, including concerns over confidentiality and potential liability for the posting of incorrect information, and that these issues should be addressed before any action is taken. The New England Conference said that it supports a regional, voluntary solution, where regional working groups would be created to discuss measures to increase information sharing.

146. Commenters offer little support for the ANOPR proposal to require RTOs and ISOs to develop new standardized forward products. Those few commenters supporting the proposal believe that new products would assist customers in developing long-term contracts. Some commenters, such as the New York PSC and NRG, offer qualified support for the concept of improved forward products, but state that the Commission should encourage RTO or ISO participation in developing such products rather than require their development by the RTOs and ISOs themselves.

147. A large majority of commenters oppose this proposed requirement. They say that the market already supplies standardized products, and that it is better equipped to do so than RTOs or ISOs. EEI notes that it already has a process for developing standardized products that involves working with market participants to adjust to changes in the market. Many commenters also note that long-term contracts vary considerably from transaction to transaction, making standardized products difficult to develop unless they are quite general and so less useful than they are for short-term transactions. Finally, some commenters note that this proposed requirement would be an undue burden to ISOs and RTOs.

148. Most commenters argue strongly against adopting the ANOPR's preliminary proposal to require ISOs and RTOs to post information on long-term contract prices and quantities. They argue that this proposed requirement is unnecessary, is possibly counterproductive, and would create additional expense for the ISO or RTO. A few, such as BlueStar and DC Energy, support the proposal, arguing that it would increase transparency in the market, which would lead to greater liquidity and increased long-term



contracting. Some ISOs and RTOs also indicate that they would be willing to post information if directed to do so, but that confidentiality concerns would need to be addressed. Many commenters think that the requirement would not be useful because of the wide variation in long-term contract provisions and the time lag between contracting and posting of the information.<sup>119</sup> Others, such as the OMS, argue that the data collection requirement would unduly burden RTOs and ISOs. The burden would be unnecessary, according to PG&E, PSEG, Allegheny, Ameren and others, because the market and trade press already provide sufficient data. Finally, many commenters point to a concern over the confidentiality of data and the possibility that posted data could be used to game the market.

149. Only a few commenters address the Commission's request for comments on whether we should consider modifications to the information collected on long-term contracts in the EQR. These commenters are generally opposed to having the Commission modify the EQR data reporting requirements. Although SUEZ Energy supports increased reporting requirements, arguing that it would create increased transparency for providers of retail service, most commenters believe that the information in the EQR is already sufficient and that any new information requirements could have negative effects on confidentiality or markets. For instance, Old Dominion notes that modifying EQR data could reveal competitive information and result in reduced forward liquidity for physical transactions.

150. The Commission also requested comments on additional steps that it could take to promote long-term contracting opportunities. Many commenters point to the importance of contract certainty, long-term stability of market rules and regulatory policies, and proper market design in supporting long-term contracting, although comments vary on how best to provide for these elements. For instance, Old Dominion argues that the Commission should reaffirm its commitment to incremental changes to market design to prevent instability. PSEG notes that the Commission should resist changing tariffs and should not revise contracts under FPA section 206, where either the buyer or seller has miscalculated risks.

151. A majority of commenters indicate that structural impediments to long-term contracting prevent market

participants from fully utilizing long-term contracts as part of their energy portfolios. Impediments cited include differences between buyers and sellers in assessing the appropriate long-term price and assessing long-term risks, over-reliance on spot markets, market design, and regulatory uncertainty. Many commenters, such as FirstEnergy, point to buyers' and sellers' inability to agree on a long-term price as the real problem with long-term contracts. Some commenters suggest that the Commission should review over-reliance on the spot markets, which, they assert, affects forward prices and creates a disincentive for parties to engage in long-term deals.

152. Commenters also propose a variety of more fundamental approaches for the Commission to consider for dealing with long-term contracting. Some commenters argue that the Commission should take a more sweeping look at the markets as a whole, noting that problems with long-term contracting are merely a symptom of market inefficiency. These include a request for an investigation of RTO markets and mandating long-term contracting through dedicating portions of transmission lines for long-term arrangements or requiring entities to have a percentage of their portfolios as long-term contracts.

153. Two commenters, American Forest and Portland Cement Association, *et al.*, include fairly detailed proposals to address problems with the incentives for long-term contracting. American Forest's proposal, the Financial Performance Obligation (FPO), appears to require every generating unit that receives a capacity payment to financially guarantee the delivery of energy to the real-time market at or below a specified strike price in any hour in which it is dispatched by the RTO to provide service. American Forest maintains that the FPO would connect capacity and energy markets and would provide a hedge to load by shifting short-term risk of market volatility in energy markets to suppliers. It argues that the linked real-time market clearing price and capacity price that would result from the FPO would provide an incentive for suppliers to take steps, such as long-term contracting, to hedge short-term volatility, and prevent suppliers from double recovering revenues from capacity and energy payments. Portland Cement Association, *et al.*'s proposal offers an alternative market design framework, Forward Capacity and Energy Market, suggesting that a combination of competitive and administrative procedures could be

used to obtain the lowest-cost combination of fixed and variable costs while preserving the locational economic signals of Locational Marginal Pricing. It argues that the proposed framework also would establish economic incentives for both buyers (e.g., LSEs and large customers) and suppliers to negotiate long-term bilateral contracts.

154. A significant number of commenters state that the Commission should take no action on the long-term contracting topic, but should instead leave any long-term contracting solution to the market.

#### 5. Proposed Reforms

155. The Commission proposes to require ISOs and RTOs to dedicate a portion of their Web sites for market participants to post offers to buy or sell power on a long-term basis. We are not proposing here the other potential actions considered in the ANOPR and are not proposing to address in this docket the other long-term contracting issues raised by some commenters.

156. The proposal for an RTO/ISO Web site "bulletin board" for posting long-term offers to sell or buy is designed to facilitate the long-term contracting process by increasing the transparency of available sellers and buyers for market participants. Providing a place for buyers and sellers to offer long-term power transaction opportunities should alleviate concerns about sellers and buyers being unable to find one another and should encourage more long-term contracting and improve efficiency in the market at little cost. Improving information flow can only increase liquidity among buyers and sellers. The Commission believes that this requirement will not be burdensome for ISOs and RTOs to implement.

157. The Commission does not propose to mandate the specific type of bulletin board that each ISO and RTO must post, but will require each to work with its stakeholders in designing a solution that works for its market participants. We have in mind, however, an RTO/ISO bulletin board that would allow persons to post offers to sell or buy without making the RTO or ISO responsible for the content of the offers. We are encouraged that some ISOs and RTOs have already undertaken this effort.

158. The Commission proposes to require ISOs and RTOs to make a compliance filing within six months of the date of publication of the final rule in the *Federal Register*. This filing should explain the actions the ISO or RTO has taken to comply with the long-

<sup>119</sup> See Pepco at 13; New England Power Generators at 8; Dynegy at 3.

term contracts bulletin board requirement and provide information on the bulletin board the ISO or RTO has chosen to implement.

159. The Commission seeks public comment on its proposal not to set by rule the specific type of bulletin board that each ISO and RTO must post. This includes comment on whether any features are important enough to specify generically, such as the structure for the webpage, the extent to which the ISO or RTO must seek feedback on its web design, or whether the ISO or RTO or the market participant must post the information. Further, we seek comment on our assumption that the costs involved with implementing the proposal are minimal and should be recovered in the same manner as other Web site costs. In addition, the Commission solicits comment on the proposal that the RTO or ISO should not be responsible for the content of the offers on its bulletin board. Is a Web site that includes a clear disclaimer adequate to protect RTOs and ISOs from liability, or should the Commission take additional action? Do market participants that post offers but fail to reach agreement with counterparties on contract terms and conditions have any liability issues?

160. As we noted earlier, PJM recently has conducted a series of forums on long-term contracts to gather information and facilitate the exchange of ideas.<sup>120</sup> We encourage similar efforts by other RTOs or ISOs, and the ISO/RTO Council. We encourage RTOs and ISOs already working on solutions to these issues to take appropriate steps to ensure timely implementation of reasonable solutions as soon as they are ready. The Commission also directs Commission staff to perform an analysis of the level of long-term contracting in organized market regions.

161. In addition, while we appreciate the proposals of American Forest and Portland Cement Association, *et al.* to resolve disincentives to conduct long-term contracting, we have concerns that various aspects of the proposals, such as the impact of the proposal on capacity markets, would require additional development, review and consideration before it would be ripe for inclusion in a rulemaking. The shift of revenues from the spot market to some form of forward obligation or hedging option that could occur with the FPO may well have advantages, but this shift may create new concerns among LSEs and others about capacity market operations and

price levels. To help develop a greater level of understanding of the proposals we direct staff to conduct a technical conference in a separate proceeding to examine the FPO and Portland Cement Association, *et al.*'s alternative market designs and related issues.

### C. Market-Monitoring Policies

162. This section of the NOPR proposes regulations implementing market monitoring policies.

#### 1. Background

163. Market monitors have played an integral role in the organized electric markets since the latter's inception, providing valuable reporting and analysis services not only to the Commission, but also to RTOs and ISOs, to market participants, and to state commissions. In light of their importance, the Commission has required that all RTOs and ISOs incorporate a market monitoring function.<sup>121</sup>

164. The span of years over which market monitors have now been in existence has given the Commission and others in the industry a track record upon which to evaluate the appropriate roles MMUs should play and the protections that might be adopted to assist them in performing those roles. In this NOPR, we propose reforms for MMUs designed to improve their abilities to monitor and report on the operation of organized wholesale electric markets.

#### 2. Prior Commission Actions Regarding Market Monitoring

165. The Commission undertook its first generic consideration of market monitoring in Order No. 2000, which required an RTO to include market monitoring as one of its minimum functions and to submit a market monitoring plan as part of its RTO proposal.<sup>122</sup> The Order did not, however, impose a specific MMU structure on the RTOs. The Commission noted in Order No. 2000 that while

MMUs were not intended to supplant Commission authority, they should be designed in such a way as to provide the Commission with an additional means of detecting market power abuses, market design flaws and opportunities for improvements in market efficiency.<sup>123</sup> The Commission ordered RTOs to incorporate in their market monitoring plans certain standards to be met by the MMUs, which included ensuring objective information about the markets that the RTO operates or administers, proposing appropriate action regarding opportunities for efficiency improvement, identifying market design flaws or market power abuses, and evaluating whether market participants comply with market rules.<sup>124</sup> The Commission observed that the information to be gleaned from market monitoring would be beneficial not only to the Commission, but also to state commissions and market participants.<sup>125</sup>

166. The Commission next addressed the role of market monitors in its 2003 Order Amending Market-Based Rate Tariffs and Authorizations.<sup>126</sup> The Commission clarified the duties of MMUs in connection with enforcement matters, directing that MMUs refer compliance issues to the Commission<sup>127</sup> and limiting direct enforcement action by the MMUs to objectively identifiable and sanctioned behavior expressly set forth in the RTO/ISO tariffs.<sup>128</sup> In its subsequent Order on Rehearing, the Commission clarified that MMU personnel were not a substitute for Commission enforcement staff.<sup>129</sup> Instead, MMUs were to provide information to the Commission and its staff, so that the Commission could take appropriate action under the FPA.

167. In May of 2005, the Commission issued a Policy Statement on Market Monitoring Units,<sup>130</sup> identifying four tasks which MMUs perform for which they need access to data and other

<sup>121</sup> *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,155 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092, at 30,993 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (DC Cir. 2001).

<sup>122</sup> Prior to this first generic consideration of market monitoring, the Commission addressed market monitoring in connection with individual RTO/ISO proposals. See *Pacific Gas and Electric Co.*, 77 FERC ¶ 61,265 (1996), *order on reh'g*, 81 FERC ¶ 61,122 (1997), *order on clarification*, 83 FERC ¶ 61,033 (1998) (requiring the ISO to file a detailed monitoring plan and listing minimum elements for such a plan); *Pennsylvania-New Jersey-Maryland Intercorrelation*, 81 FERC ¶ 61,257 (1997) (PJM Formation Order) (requiring PJM to develop a market monitoring program to evaluate market power and design flaws).

<sup>123</sup> Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,156.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003) (Market Behavior Rules Order), *order on reh'g*, 107 FERC ¶ 61,175 (2004) (Market Behavior Rules Rehearing Order).

<sup>127</sup> Market Behavior Rules Order, 105 FERC ¶ 61,218 at P 184.

<sup>128</sup> *Id.* P 182.

<sup>129</sup> Market Behavior Rules Rehearing Order, 107 FERC ¶ 61,175 at P 165.

<sup>130</sup> *Market Monitoring Units in Regional Transmission Organizations and Independent System Operators*, 111 FERC ¶ 61,267 (2005) (Policy Statement).

<sup>120</sup> More information on the PJM forums is available at <http://www.pjm.com/committees/stakeholders/drs/lc.html>.

resources.<sup>131</sup> In an Appendix to the Policy Statement, the Commission set forth detailed Protocols for the MMUs to follow in referring potential tariff or Market Behavior Rule violations to the Commission.<sup>132</sup>

168. In 2006, PJM Interconnection, LLC (PJM) filed proposed revisions to the MMU sections of its tariff, with the general aim of conforming its tariff to the provisions of the Policy Statement.<sup>133</sup> Several parties filed comments, arguing that PJM's tariff should contain a clear statement of the MMU's independence and should set forth all the rules relevant to the responsibilities and functions of the MMU. In the Commission's Order on Rehearing and Compliance Filing, we noted that these concerns were of a generic nature and not necessarily limited to PJM.<sup>134</sup>

### 3. The Need for Commission Action

169. The concerns raised by intervenors in the PJM case impressed upon the Commission the need to undertake a generic examination of MMUs, to see if their roles could be enhanced so as to improve the efficiency and transparency of organized wholesale electric markets. To that end, the Commission announced that we would hold a technical conference to explore the issues raised by the commenters.<sup>135</sup>

170. The Commission held the technical conference on market monitoring policies on April 5, 2007. At the conference, the Commissioners

<sup>131</sup> *Id.* P 2-3. These functions were: (1) To identify ineffective market rules and tariff provisions and recommend proposed rule and tariff changes to the ISO or RTO that promote wholesale competition and efficient market behavior; (2) to review and report on the performance of wholesale markets in achieving customer benefits; (3) to provide support to the ISO or RTO in the administration of Commission-approved tariff provisions related to markets administered by the ISO or RTO; and (4) to identify instances in which a market participant's behavior may require investigation and evaluation to determine whether a tariff violation has occurred, or which may be a potential Market Behavior Rule violation, and immediately notify appropriate Commission staff for possible investigation.

<sup>132</sup> *Id.* at Appendix A. The Market Behavior Rules extant at the time of the Policy Statement have since been in part rescinded, with the remainder codified. See *Conditions for Public Utility Market-Based Rate Authorization Holders*, Order No. 674, FERC Stats. & Regs. ¶ 31,208 (2006) (Order No. 674). Rescinded Market Behavior Rule 2 has been replaced by the Commission's Anti-Manipulation Rules. See *Prohibition of Energy Market Manipulation*, Order No. 670, FERC Stats. & Regs. ¶ 31,202 (Order No. 670), *order denying reh'g*, 114 FERC ¶ 61,300 (2006).

<sup>133</sup> *PJM Interconnection, LLC*, 116 FERC ¶ 61,038 (2006) (PJM Tariff Order).

<sup>134</sup> *PJM Interconnection, LLC*, 117 FERC ¶ 61,263, at P 19 (2006) (PJM Tariff Rehearing Order).

<sup>135</sup> *Id.* P 20.

heard from interested commenters on several general subjects.<sup>136</sup> Two principal issues received the bulk of attention from the commenters at the technical conference. Those were: (i) The need for, and suggested methods of achieving, independence on the part of MMUs so they can perform their assigned functions; and (ii) the content and proper recipients of the market data and analysis developed by the MMUs. These issues are in accord with our own observations of areas within the market monitoring function that need reform. For that reason, we have included proposals in this NOPR designed to strengthen market monitoring and thereby enhance the performance and transparency of organized RTO/ISO markets.

### 4. Proposed Reforms

171. The Commission advanced proposals in the ANOPR that responded to the concerns expressed by commenters at the technical conference and that reflected the Commission's own observations formed from working within the framework of the existing market monitoring provisions. These proposals were designed to strengthen market monitoring by safeguarding MMU independence and fostering useful and transparent market analysis. The Commission sought comment on the proposals, which fell within the two general areas of (i) independence and function and (ii) information sharing. In this NOPR, the Commission analyzes the comments received and presents revised proposals.

#### a. Independence and Function

172. In the ANOPR, the Commission acknowledged the importance of independence on the part of MMUs, and stated that there are several means by which to balance independence and accountability. The Commission proposed a balanced and flexible approach to the problem which included oversight protection, tariff safeguards and tools, the elimination of conflicts of interest, and certain changes in the functions MMUs are expected to perform. The Commission solicited comments on the proposed changes.

<sup>136</sup> These subjects included: the development of the concept and functions of market monitoring, the MMUs' role with respect to the Commission, the MMUs' role with respect to ISOs and RTOs, and the MMUs' role with respect to the various stakeholders such as states, generators, transmission providers, and customers. See Second Notice of Technical Conference, Review of Market Monitoring Policies, Docket No. AD07-8-000 (March 9, 2007).

#### i. Structure and Tools

##### (a) Preliminary Proposals in the ANOPR

173. The Commission declined in the ANOPR to propose a "one size fits all" approach to the structure of MMUs, noting that there was no appreciable difference among the performance of the market monitors that could be attributed to whether they were external (an independent contractor who is hired by the RTO or ISO) or internal (one whose personnel are employees of the RTO or ISO). Therefore, the Commission proposed that it be left to the discretion of each RTO or ISO to decide whether it should have an internal MMU, an external MMU, or a hybrid MMU (consisting of both an internal market monitor and an external market monitor).

174. To ensure that MMUs would have adequate tools with which to do their job, the Commission proposed requiring each RTO or ISO to include in its tariff a provision imposing upon itself the obligation to provide its MMU with access to market data, resources, and personnel sufficient to enable the MMU to carry out its functions. We also proposed that RTOs and ISOs include a tariff provision directing the MMU to report to the Commission any concerns it has with inadequate access to market data, resources, or personnel, and to describe the steps it has taken with the RTO or ISO to resolve these concerns.

##### (b) Comments on the ANOPR Proposals and Questions

175. The overwhelming bulk of the commenters agreed with the Commission's proposal and opposed imposition of a "one size fits all" approach. A few favored-one or the other structure. Exelon, Strategic Energy, and Suez favored an external model, on the grounds it could best ensure independence.<sup>137</sup> NJBPU favored an internal model, at least with respect to PJM.<sup>138</sup>

176. There was also limited support for an alternative reporting structure. The Ohio PUC proposed that MMUs report to federal-state boards,<sup>139</sup> and the FTC suggested the Commission consider the costs and benefits of alternative arrangements, which presumably would involve a structure other than an employment or contractual relationship between the MMU and the RTO or ISO.<sup>140</sup>

<sup>137</sup> Exelon at 25; Strategic Energy at 13; Suez at 9.

<sup>138</sup> NJBPU at 1-2.

<sup>139</sup> Ohio PUC at 9-14.

<sup>140</sup> FTC at 16-17. No particular alternative arrangement was suggested.

177. APPA stated that the real issue to be resolved is not structure but assuring the independence of the MMU. It proposed "rules of the road" to accomplish that objective, most of which have to do with providing the MMU with adequate tools with which to do its job.<sup>141</sup> Joint Consumers Advocates also proposed specific MMU principles, most involving oversight or tools.<sup>142</sup>

178. Most commenters supported the Commission's proposal that RTOs and ISOs include in their tariffs a requirement that they must provide the MMU with adequate tools with which to do its job.<sup>143</sup> Some stated that access to resources must be full and unfettered.<sup>144</sup> Others, while generally supporting the proposal, called for budgetary and cost containment provisions.<sup>145</sup> The North Carolina Commission proposed transparency of budget, with any disputes being made subject to Commission review.<sup>146</sup> Some commenters proposed that the MMU's offices be located on the premises of the RTO or ISO.<sup>147</sup> The PJM MMU argued for control over its own data repository.<sup>148</sup> EEI stated it did not believe a tariff provision requiring the MMU to report to the Commission any concerns it has with adequacy of resources was needed, as MMUs are in regular contact with the Commission and can convey any concerns they may have in this regard.<sup>149</sup>

#### (c) Commission Proposal

179. The Commission agrees with the bulk of the commenters that the nature of the MMU structure is not determinative of either independence or quality of performance, and proposes that each RTO and ISO decide for itself, through its appropriate stakeholder process, whether it will have an external, internal or hybrid MMU structure. The Commission also declines to remove MMUs from oversight by their RTOs and ISOs; the MMU's principal duties involve monitoring RTO/ISO markets and advising the RTO or ISO on market performance. The fact that MMUs also have reporting obligations to outside parties does not

change the relationship they have with the RTOs and ISOs, which are, by Commission policy, required to maintain a market monitoring function. It is also doubtful that an alternative outside structural arrangement, such as reporting to a federal-state board, could as effectively replicate the existing close exchange of data between the RTO or ISO and the MMU, which all acknowledge is vital if the MMU is to properly perform its duties.

180. The Commission further proposes that each RTO or ISO include in its tariff a provision imposing upon itself the obligation to provide its MMU with access to market data, resources, and personnel sufficient to enable the MMU to carry out its functions. The RTO or ISO should, in addition, also be mindful of these obligations in developing its market monitoring budget. Furthermore, to ensure independence of the MMU and its analyses, the RTO or ISO tariff should specifically provide that the MMU shall have access to the RTO's or ISO's database of market information. The tariff should also specify that any data created by the MMUs, including reconfiguring of the RTO/ISO data, be kept within the exclusive control of the MMU.

181. The Commission declines to micro-manage the RTO/ISO relationships with their MMUs to the extent of requiring that MMU offices be located on the RTO/ISO premises. We are of the view that concerns of this type, as well as appropriate budgetary constraints, are best worked out on an individual basis.

182. The Commission has reconsidered its ANOPR proposal regarding inclusion of a tariff provision directing the MMU to report to the Commission any concerns it has with inadequate access to market data, resources, or personnel, or to describe the steps it has taken with the RTO or ISO to resolve these concerns. The inclusion of such a requirement may suggest that the Commission anticipates non-compliance on the part of the RTOs and ISOs, whereas the opposite is true. Furthermore, as EEI notes, adequate mechanisms are already in place for the MMU to bring any concerns it may have to the Commission's attention, including the complaint process, referrals to the Commission's Office of Enforcement, and informal discussions with Commission staff.

#### ii. Oversight

##### (a) Preliminary Proposals in the ANOPR

183. The Commission noted that an inherent tension exists in a structure

that requires MMUs to report to RTO/ISO management yet, at the same time, perform evaluations and issue reports that may be critical of that management. We stated that it could be difficult for an MMU to discharge these oversight and reporting obligations effectively unless it had some degree of independence from RTO/ISO management. The Commission proposed that each RTO and ISO, in addition to maintaining a market monitoring function, be required to have its MMU, whether internal, external, or a hybrid combination of the two, report either directly to the RTO's or ISO's board of directors or directly to a committee of independent board directors.<sup>150</sup> The ANOPR sought comment on the Commission's authority to impose this type of requirement on RTOs and ISOs, as well as on the proposal itself.

##### (b) Comments on the ANOPR Proposals and Questions

184. The great preponderance of commenters agreed with the Commission's proposal, stating that reporting to the RTO or ISO board would give the MMU more independence than if the MMU were to report to management.<sup>151</sup> However, CAISO and NYISO propose that in the case of a hybrid structure such as theirs (i.e., one which has both an internal, employee-staffed MMU and an external, non-employee-staffed MMU), the internal MMU be permitted to report to management, with the external MMU reporting to the board.<sup>152</sup> CAISO states that this reporting arrangement ensures that the chief executive officer is attuned to the needs of the MMU and that other employees in the organization are committed to supporting its functions, while NYISO states that the arrangement enables its internal market monitor to work closely with the rest of company staff and have greater opportunities to review real-time market operations. Others suggested that the MMU report to management for administrative purposes (such as human resources and payroll).<sup>153</sup>

185. A few commenters opposed any RTO or ISO reporting requirement at all, preferring that the MMU report to the

<sup>150</sup> The ANOPR noted that this policy would mark a departure from the holding in the PJM Tariff Order. PJM Tariff Order, 116 FERC ¶ 61,038 at P 38 (2006).

<sup>151</sup> See, e.g., BP Energy at 29-30; BlueStar Energy at 6; Dynegy at 4; EPSA at 45; FirstEnergy at 10; Industrial Consumers at 21; Joint Consumer Advocates at 19; Mirant at 11; NARUC at 10; NEPOOL Participants at 28; Pepco at 15; Steel Producers at 18.

<sup>152</sup> CAISO at 3; NYISO at 26.

<sup>153</sup> EEI at 43; SoCal Edison-SDG&E at 10.

<sup>141</sup> APPA at 72-73.

<sup>142</sup> Joint Consumer Advocates at 16-19.

<sup>143</sup> See, e.g., Ameren at 36-37; Duke Energy at 20; FirstEnergy at 10; NYISO at 16; Ohio PUC at 12-14; Portland Cement at 17; Xcel at 23.

<sup>144</sup> American Forest at 45; APPA at 70; The Alliance at 17.

<sup>145</sup> EEI at 42; EPSA at 4; Mirant at 11; North Carolina Commission at 7; Pepco at 15; PJM Power Providers at 8; PSEG at 17; Reliant at 16.

<sup>146</sup> North Carolina Commission at 7.

<sup>147</sup> See, e.g., NYISO at 20; North Carolina Commission at 6.

<sup>148</sup> PJM MMU at 10.

<sup>149</sup> EEI at 43.



Commission or to a joint federal/state board.<sup>154</sup> NRECA proposed that the Commission periodically audit the quality of the MMU's reports and investigations,<sup>155</sup> and TAPS proposed that any change in the MMU's status, such as contract termination or renewal, be reviewed and approved by the Commission.<sup>156</sup>

186. Reliant proposed that the MMU must report to a full cross-section of the board.<sup>157</sup> Conversely, other commenters felt that management representatives on the board should be excluded from MMU oversight.<sup>158</sup> PJM agreed with the ANOPR proposal, but expressed concern that the board might be given an oversight responsibility without the authority to actually oversee the MMU.<sup>159</sup> PJM states that any approach that does not place responsibility in the Commission for the functioning and performance of MMUs, while limiting the RTO's ability to supervise or oversee the MMU, would "raise serious legal questions about the Commission's ability to limit a public utility's management of its business."<sup>160</sup> This conditional objection was the only comment that suggested the Commission may not have the authority to order the proposed reporting relationship.<sup>161</sup>

#### (c) Commission Proposal

187. The Commission proposes that the MMU, for purposes of supervision over its market monitoring functions, should report to the RTO or ISO board rather than to management. The Commission further proposes that management representatives on the board be excluded from this oversight function. However, the RTOs and ISOs, should they deem it appropriate, may have the MMU report to management for administrative purposes, such as pension management, payroll and the like. Furthermore, the Commission is sympathetic to the desires expressed by CAISO and NYISO to retain the advantages they see in their hybrid reporting structures. Thus, if an RTO or

ISO has two market monitoring bodies, an internal and an external one, the Commission proposes that the RTO or ISO may have the internal MMU report to management with respect to both its market monitoring and administrative functions, and the external MMU report to the board.

188. The Commission, as noted above, finds little merit in the suggestions that the MMU report to a body other than the RTO or ISO, such as to the Commission or to a federal/state board. Commenters afford no details as to how this structural arrangement could be achieved, either from an economic, jurisdictional, or practical point of view, or how such a potentially cumbersome structure as a joint inter-governmental body could oversee MMUs in a timely and responsive manner. The Commission itself will be adequately informed of the results of MMU monitoring through the referral process and through the various venues for the sharing of market information; this sharing of market information applies as well to the states and other interested bodies, who will thereby be adequately apprised of MMU performance and can bring any concerns they may have in this regard to the RTO or ISO or to the Commission.

189. The Commission declines to propose a formal auditing procedure for MMUs, but expects that their work product will be of the highest quality. The Commission remains free to undertake an audit in any given instance, should that appear to be appropriate, and any concerns regarding the quality of MMU work product can always be brought to the Commission's attention. The Commission also declines to propose a blanket requirement that all changes in MMU status, such as contract termination or renewal, be subject to Commission review and approval. Although requirements of this type are currently contained in the contractual arrangements of certain RTOs and ISOs,<sup>162</sup> the Commission declines to propose extending this requirement to all RTOs and ISOs, in accordance with our reluctance to

impose a "one size fits all" approach in structural areas. We believe the issue should be dealt with on a case-by-case basis.

190. With respect to PJM's concern that it may be burdened with oversight responsibility over MMUs without possessing full authority to carry out that responsibility, the Commission notes that its reporting proposal does nothing to increase the limitations on an RTO's or ISO's authority over its MMU. For MMUs that currently report to management, the proposal merely shifts oversight from management to the board.<sup>163</sup> Furthermore, the monitoring functions of MMUs affect sales for resale and the transmission of electric power in interstate commerce, and as such are properly subject to Commission regulation to ensure MMU objectivity. As we noted in Order No. 2000,<sup>164</sup> the Commission has a responsibility to protect against anticompetitive effects in electricity markets,<sup>165</sup> and an independent MMU is an important element upon which we rely to safeguard such competition. Our proposal maintains oversight authority within the RTO or ISO, while fostering MMU independence through the elimination of direct management control. For these reasons, the Commission believes the proposal strikes the appropriate balance between MMU independence and RTO/ISO oversight.

#### iii. Functions

##### (a) Preliminary Proposals in the ANOPR

191. Noting that the issue of independence is integrally related to that of the functions MMUs are expected to perform, the Commission proposed continuing the following existing functions of MMUs: (1) Identifying ineffective market rules and

<sup>154</sup> See, e.g., OMS at 14-15; OPSI at 4-6; Ohio PUC at 9; North Carolina Commission at 6.

<sup>155</sup> NRECA at 26.

<sup>156</sup> TAPS at 58.

<sup>157</sup> Reliant at 16.

<sup>158</sup> OPSI at 4-6; Old Dominion at 22.

<sup>159</sup> PJM at 22-24.

<sup>160</sup> PJM at 24. PJM argues that the Commission does not have jurisdiction over utility employment relationships or contracts with service providers, on the grounds these functions do not constitute "a sale for resale or transmission of electric power in interstate commerce." PJM at n. 41.

<sup>161</sup> California PUC did not disagree that the Commission can require MMUs to report to the RTO or ISO board, but requested the Commission to set forth the basis for this authority and provide an opportunity to comment. California PUC at 17.

<sup>162</sup> E.g., Midwest ISO cannot terminate its agreement with its market monitor (an independent contractor) without Commission approval. Open Access Transmission and Energy Markets Tariff for the Midwest Independent Transmission System Operator, Inc., Attachment S-1, FERC Electric Tariff, Third Revised Volume No. 1, Second Revised Sheet No. 1659 (2005). SPP cannot terminate its agreement with its external market monitor without Commission approval. Southwest Power Pool Open Access Transmission Tariff, FERC Electric Tariff, Fourth Revised Volume No. 1, Attachment AJ, § 11, Second Revised Sheet No. 699 (2006). The same is true for ISO-NE. Participants Agreement among ISO New England, Inc. and the New England Power Pool, et al., § 9.4.5.

<sup>163</sup> PJM cites *Cal. Indep. Sys. Operator Corp. v. FERC*, 372 F.3d 395 (DC Cir. 2004), in support of its concern. However, that case involved FERC's attempt to replace existing CAISO board members with a slate proposed by an independent search firm. Obviously, alteration of the very composition of an RTO or ISO board is an entirely different matter from a requirement that MMUs report to the board, instead of to management. The latter requirement in no way interferes with the internal composition of the board. Furthermore, the cited case noted that if FERC concluded that CAISO lacked the independence or other necessary attributes to constitute an ISO, it need not approve CAISO as an ISO. *Id.* at 404. Similarly, it is the Commission's view that the MMU may lack sufficient independence if it reports to management, rather than to the board; thus we may require RTOs and ISOs, as a condition of their continued RTO/ISO status, to incorporate the proposed requirement in their tariffs.

<sup>164</sup> Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,155.

<sup>165</sup> See *Gulf States Utilities v. FPC*, 411 U.S. 747, 758-59 (1973).



tariff provisions and recommending proposed rule and tariff changes; (2) reviewing and reporting on the performance of the wholesale markets; and (3) identifying and notifying the Commission staff of instances in which a market participant's behavior may require investigation. The Commission also proposed requiring the MMUs to advise the Commission and other interested entities, in addition to the RTO or ISO, of recommendations for rule or tariff changes; retaining the existing Protocols (with appropriate updates) governing referral of potential market violations to the Commission, which are included as an Appendix to the Policy Statement;<sup>166</sup> and expanding the subject matter of such referrals to include suspected rule or tariff violations committed by an RTO or ISO as well as by market participants, as well as suspected violations of other Commission-approved rules and regulations, such as Affiliate Restrictions<sup>167</sup> and Standards of Conduct.

(b) Comments on the ANOPR Proposals and Questions

192. There was general agreement from commenters concerning continuation of the three functions identified in the ANOPR. Several commenters stated that MMUs should not themselves participate in effectuating market design, although they should advise the RTO or ISO on proposed weaknesses in the existing market design and make suggestions for improving it.<sup>168</sup> A few commenters opposed reporting suspected RTO or ISO violations, arguing that this would impair the frank exchange of information between RTO or ISO employees and the MMU.<sup>169</sup> However, most comments on the subject supported such reporting, and several commenters suggested that such reporting be expanded to include instances of inappropriate dispatch (either too conservative or too

aggressive) which, although not constituting tariff violations, might nonetheless impair optimal market performance.<sup>170</sup>

193. Several commenters opposed a requirement that MMUs report suspected violations of the Standards of Conduct or Affiliate Restrictions, arguing that the MMUs do not have expertise in this area and should not be diverted from their main task of monitoring the markets.<sup>171</sup> A number of the comments suggested that the MMUs should not audit for such violations, but should report them if they come across them in the ordinary course of business.<sup>172</sup> Similarly, some commenters suggested that MMUs should not audit for suspected rule or tariff violations by the RTOs or ISOs, but should report them if they came across them in the ordinary course of business.<sup>173</sup>

194. The commenters generally supported reporting proposed tariff or rule changes to other interested parties as well as to the RTO and ISO, particularly mentioning market participants and stakeholders.<sup>174</sup> NEPOOL Participants, however, cautioned that in certain instances this might effectively broadcast the existence of a "loophole" that could be exploited before a rule or tariff change could be accomplished.<sup>175</sup>

(c) Commission Proposal

195. The Commission notes that its proposals in the ANOPR did not contemplate that the MMU make market design decisions itself, which are within the purview of the RTO or ISO through stakeholder processes and Commission approval, but rather that the MMU should advise the RTO or ISO and the Commission in this area. It was also not the Commission's intention that the MMU be required to seek out potential violations by the RTO or ISO, or audit for Standards of Conduct or Affiliate Restrictions violations. The Commission agrees that any proactive investigations in these areas would divert the resources of the MMU from its primary responsibilities and potentially embroil it in areas not within its core expertise. Standards of Conduct and Affiliate Restrictions violations in particular may be difficult to identify without possession of specialized knowledge.

Therefore, the Commission agrees that any suspected violations in these areas need be referred only if discovered in the ordinary course of the MMU's monitoring duties. Any final determination as to whether a violation has occurred would, of course, be the responsibility of the Commission.

196. However, the Commission finds little merit in the suggestion that our proposal to require MMUs to report suspected misconduct by RTOs and ISOs would impair the frank exchange of information between RTO or ISO employees and the MMU. Such an argument could equally be applied to scrutiny by any independent entity and, taken to its logical conclusion, would effectively exempt RTOs and ISOs from investigation. Permitting such an exemption might encourage a culture of lax adherence to rule and tariff requirements.

197. The Commission agrees that an RTO or ISO could conduct dispatch in such a way as to result in unnecessary market inefficiencies, and therefore proposes that the MMU should advise Commission staff of any substantial concerns it has along these lines.<sup>176</sup> With respect to broadening the reporting of proposed rule and tariff changes to other interested parties as well as to the RTO or ISO, the Commission finds merit in the concern that such broad dissemination of information might make entities aware of a "loophole" that could be exploited before the necessary rule or tariff change could be effected. For that reason, the Commission proposes that an exception be made to the general rule of full disclosure, which exception would provide that in the event the MMU believes broad dissemination of such information in a given instance could lead to exploitation, that it limit distribution of the information to the RTO or ISO and to Commission staff, with an explanation of why further dissemination should be avoided at that time.

198. The Commission therefore proposes that the functions an MMU is to perform include the following: (1) Evaluating existing and proposed market rules, tariff provisions and market design elements for their effectiveness, and recommending

<sup>166</sup> The Commission clarified that since issuance of the Policy Statement, Market Behavior Rule 2, referred to in the Protocols, has been rescinded and replaced by the Commission's Anti-Manipulation Rules. Therefore, violations currently to be referred to the Commission include conduct suspected of violating the Anti-Manipulation Rules, as well as tariff violations and violations of the remaining, codified Market Behavior Rules. See Order No. 674 and Order No. 670.

<sup>167</sup> The previous term "Code of Conduct" has been replaced by "Affiliate Restrictions" in the final rule for *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity, and Ancillary Services by Public Utilities*, Order No. 697, 72 FR 39,904 (July 20, 2007), FERC Stats. & Regs. ¶ 31,252 (2007).

<sup>168</sup> See, e.g., Old Dominion at 23; OMS at 18; OPSI at 9; NY TO at 15.

<sup>169</sup> NYISO at 25-26; CAISO at 7-8.

<sup>170</sup> Strategic Energy at 13.

<sup>171</sup> See, e.g., EEL at 45; EPSA at 47; Exelon at 26; FirstEnergy at 10-11; Pepco at 17.

<sup>172</sup> Duke Energy at 23; NYISO at 25-26; ISO-NE at 8-9.

<sup>173</sup> ISO-NE at 8; Duke Energy at 22.

<sup>174</sup> See, e.g., Old Dominion at 23; Pepco at 16; Ameren at 13; APPA at 76-77.

<sup>175</sup> NEPOOL Participants at 29-30.

<sup>176</sup> If the MMU believes the dispatch practice rises to the level of a tariff violation, the MMU should follow the procedures outlined in the Protocols for referring market violations to the Commission, which involve a written referral to the Office of Enforcement with copies to the Office of Energy Market Regulation and the Commission's Office of the General Counsel. Otherwise, its concerns should be brought to the attention of the Division of Energy Market Oversight in the Office of Enforcement.

proposed rule and tariff changes not only to the RTO or ISO, but also to the Commission's Office of Energy Market Regulation staff and to other interested entities such as state commissions and market participants, with the caveat that the MMU is not to effectuate its proposed market design itself (a task belonging to the RTO or ISO), and with the further caveat that the MMU should limit distribution of its identifications and recommendations to the RTO or ISO and to Commission staff in the event it believes broader dissemination could lead to exploitation, with an explanation of why further dissemination should be avoided at that time; (2) reviewing and reporting on the performance of the wholesale markets to the RTO or ISO, the Commission, and other interested entities such as state commissions and market participants; and (3) identifying and notifying the Commission's Office of Enforcement staff of instances in which a market participant's behavior, or that of the RTO or ISO, may require investigation, including suspected rule or tariff violations, market manipulation, inappropriate dispatch, and suspected violations of Commission-approved rules and regulations.

199. In furtherance of its goal of ensuring independent analysis on the part of MMUs, the Commission also proposes that RTOs and ISOs include a provision in their tariffs specifying that they may not alter the reports generated by the MMUs nor dictate the conclusions reached by the MMUs, although they may establish a reasonable mechanism for review and comment on MMU reports while still in draft form. The Commission believes this proposal will enable the MMU to receive potentially helpful comment, while removing the ability of the RTO or ISO to unreasonably influence or impede the MMU's analysis.

#### iv. Mitigation and Operations

##### (a) Preliminary Proposals in the ANOPR

200. The Commission expressed concern about whether it was possible for MMUs to maintain independence in evaluating and reporting on market performance while at the same time providing support to the RTO or ISO in the administration of its tariff, which often takes the form of MMU-conducted market power mitigation. The Commission noted that because the operation and mitigation functions performed by MMUs directly affect market outcomes and performance, an inherent conflict arises when an MMU reports on market outcomes that the MMU itself has influenced. For these

reasons, the Commission proposed requiring that MMUs refrain from assisting the RTO or ISO in tariff administration, from participating in RTO/ISO market operations such as mitigation, and from taking direct actions to influence the market, and instead concentrate on their role of providing market evaluation, reports, and advice.

##### (b) Comments on the ANOPR Proposals and Questions

201. As to the issue of tariff administration, there was substantial, although not universal, agreement that this was a task which properly falls within the purview of the RTO or ISO, not the MMU. A few commenters took a middle position, suggesting that in a hybrid structure, the internal MMU could be involved in tariff administration, but not the external MMU.<sup>177</sup> Some commenters requested clarification as to what was envisioned in the concept of tariff administration.<sup>178</sup>

202. There was no such agreement on the proposal to remove MMUs from mitigation, and this issue proved to be the most contentious one in the entire market monitoring section. A substantial minority of commenters concurred in the ANOPR proposal, agreeing that it constituted a conflict of interest for the MMUs to conduct mitigation, and stating that it would compromise the MMU's independence for it to both evaluate market performance and conduct mitigation.<sup>179</sup> A number of market participants, such as Dominion Resources, FirstEnergy, Duke Energy, Dynegy and Pepco, support the proposal. NCEMC, AWEA, and Silicon Valley Power also support the proposal.

203. EPSCA stated that the MMU should not assist tariff administration or market operations, including mitigation, on any independent basis not clearly outlined in the tariff.<sup>180</sup> EEL agreed that there should be a functional separation between the MMUs and the operational activities of the RTOs and ISOs, which EEL states can be accomplished either by having the RTOs and ISOs perform operational functions, or having the internal market monitor perform them.<sup>181</sup>

204. A majority of commenters, representing a spectrum of market

participants, consumer groups, and RTOs and ISOs, opposed the proposal to remove the MMU from mitigation, and advanced a variety of reasons against it.<sup>182</sup> Several commenters, including Portland Cement, the Pennsylvania PUC, OPSI and OMS, maintained that it would create an even greater conflict of interest, because the RTO or ISO would have a role both in rule development and implementation.<sup>183</sup> Commenters also stated that the RTO or ISO would be more heavily influenced than would an MMU by market participants, upon whom it depends for its existence, and that its employees have close personal relationships with market participants and are often former employees of market participants.<sup>184</sup> OMS suggested RTO or ISO management might be hesitant to perform a needed mitigation measure if the measure were to affect a market participant with a credible threat to leave the RTO or ISO.<sup>185</sup> Potomac Economics suggested the RTO or ISO can be insulated from market participant influence by having the MMU administer mitigation, whereas if the RTO or ISO had responsibility for the task it would face the full brunt of market participant displeasure and influence.<sup>186</sup> Midwest ISO and OPSI opined that consumers would feel less confidence in the fair application of mitigation were the function to be transferred to the RTO or ISO.<sup>187</sup>

205. Another argument against the proposal was voiced by the Pennsylvania PUC, which stated that RTO and ISO managers have acquired their primary expertise in transmission or generation operations and have little expertise in economics.<sup>188</sup> ISO-NE and TAPS suggested that administering mitigation gives the MMU better familiarity with the working of the market and assists it in performing its analytical functions.<sup>189</sup> Other commenters stated that most mitigation is non-discretionary, and therefore would not draw the MMU into a substantial conflict of interest as far as its analytic tasks are concerned.<sup>190</sup> One commenter suggested that a technical

<sup>182</sup> See, e.g., American Forest at 47-49; APPA at 74-77; BP Energy at 31; California PUC at 21-23; Industrial Coalitions at 21-23; Joint Consumer Advocates at 20-21; NARUC at 11; NEPOOL Participants at 30-32; Northeast Utilities at 13-14; New England Power Generators at 12-13; OMS at 23; OPSI at 13-19; Pennsylvania PUC at 16-17.

<sup>183</sup> Portland Cement at 19; Pennsylvania PUC at 16; OPSI at 17; OMS at 23.

<sup>184</sup> See, e.g., Portland Cement at 19.

<sup>185</sup> OMS at 23.

<sup>186</sup> Potomac Economics at 7-8.

<sup>187</sup> Midwest ISO at 25-26; OPSI at 13.

<sup>188</sup> Pennsylvania PUC at 16-17.

<sup>189</sup> ISO-NE at 10-12; TAPS at 59.

<sup>190</sup> See, e.g., Potomac Economics at 6.

<sup>177</sup> EEL at 46; New York PSC at 11-12; NY TO at 16-17.

<sup>178</sup> See, e.g., OMS at 25-26; OPSI at 20-22; PSEGC at 17-19.

<sup>179</sup> See, e.g., Ameren at 39; Xcel at 24; Dynegy at 5; Duke Energy at 23; EPSCA at 45-46; Mirant at 13.

<sup>180</sup> EPSCA at 45.

<sup>181</sup> EEL at 46.

conference be convened to examine the issue.<sup>191</sup>

206. The RTOs and ISOs, including ISO-NE, Midwest ISO, and NYISO, were mainly opposed to removing the MMU from mitigation.<sup>192</sup> CAISO stated it had no opinion, but wanted clarification as to whether the ISO or an independent entity would do the mitigation.<sup>193</sup> SPP stated it did not object, but indicated that it believed it would be in compliance if its internal MMU administered the mitigation (which was not the intent of the ANOPR proposal).<sup>194</sup> PJM, whose market monitor does not administer mitigation, supports the proposal.<sup>195</sup>

#### (c) Commission Proposal

207. The ANOPR proposal to remove MMUs from tariff administration was designed to strengthen their independence. The current practice of allowing MMUs to support the RTOs and ISOs in tariff administration necessarily makes their role subordinate to that of the RTOs and ISOs, and thus weakens that independence. Furthermore, freeing MMUs from tariff administration would allow them to objectively monitor the markets, without the bias that might arise from their personal involvement in tariff administration.

208. Some commenters argue that RTOs and ISOs do not currently have individuals qualified to carry out mitigation. If true, this condition is simply a reflection of the fact that the RTOs and ISOs have not needed to hire such personnel, since the MMUs were already performing the task for them. If necessary, RTOs and ISOs could acquire the staff needed to carry out mitigation functions, and once this was accomplished the MMUs would be able to concentrate on their core job of monitoring the markets, without the potential conflict of interest that arises from reviewing their own mitigation.

209. Several commenters contend that RTOs and ISOs are more susceptible to influence from market participants than are MMUs, and therefore would not be as diligent in performing mitigation. However, mitigation is supposed to be nondiscretionary in nature. RTOs and ISOs, as well as MMUs, are required to limit the administration of tariff compliance to those provisions expressly set forth in the tariff, involve objectively identifiable behavior, and do

not subject the seller to sanctions or consequences other than those expressly approved by the Commission and set forth in the tariff, with the right of appeal to the Commission.<sup>196</sup> That being the case, any failure by the RTO or ISO to carry out required mitigation would be readily apparent to the MMU, whose job of monitoring the markets necessarily includes determining whether mitigation has been properly performed. Any persistent or substantial failure by the RTO or ISO in this regard would constitute a tariff violation and, as such, should be referred to the Commission's Office of Enforcement staff.

210. The Commission therefore proposes that MMUs be removed from tariff administration, including mitigation. Although we believe the advantages of doing so outweigh the temporary transition pains that may result, we are nonetheless sensitive to the many concerns raised by those commenters who oppose the proposal. We therefore solicit comments on the activities that would be needed to make the transition to RTO/ISO-administered mitigation, on any difficulties the MMU might be anticipated to experience in monitoring mitigation performed by the RTO or ISO, and any additional sensitivities that commenters wish to raise regarding the proposal.

#### v. Ethics

##### (a) Preliminary Proposals in the ANOPR

211. The Commission proposed imposing certain minimum ethics standards upon market monitor personnel, in particular prohibiting such personnel from owning financial interests in any market participants. The Commission noted that all existing RTOs and ISOs have some type of conflict of interest or other ethics provisions, although not always in their tariffs, and proposed standardizing such provisions and requiring their inclusion in the tariffs themselves.

##### (b) Comments on the ANOPR Proposals and Questions

212. Most commenters agreed that certain minimum ethical standards should be imposed on MMU employees, citing in particular conflict of interest provisions.<sup>197</sup> Many argued that the RTOs and ISOs be allowed the flexibility to develop their own provisions, in addition to the core

minimum set forth by the Commission.<sup>198</sup> Some commenters thought it unnecessary to include the standards in the tariffs, suggesting they could be posted on the RTO or ISO Web site instead.<sup>199</sup>

##### (c) Commission Proposal

213. The Commission agrees with the majority of the commenters that ethical standards for MMU employees should be included in the RTO or ISO tariff. Such inclusion would allow protest by intervenors and permit Commission review and enforcement.

214. In light of the fact that RTOs and ISOs currently impose ethical standards on their MMUs, although not always in their tariffs, and which in some cases are the same standards they apply to their other employees, the Commission proposes that development of the particular ethical standards to be applied to MMUs be left in the first instance to the discretion of the RTOs and ISOs. However, the Commission believes these standards should include certain minimum requirements to be imposed on MMU employees, as follows: (i) Employees shall have no material affiliation (to be defined by the RTO or ISO) with any market participant or affiliate; (ii) employees shall not serve as an officer, employee, or partner of a market participant; (iii) employees shall have no material financial interest in any market participant or affiliate (allowing for such potential exceptions as mutual funds and non-directed investments); (iv) employees shall not engage in any market transactions other than the performance of their duties under the tariff; (v) employees shall not be compensated, other than by the RTO or ISO, for any expert witness testimony or other commercial services to the RTO or ISO or to any other party in connection with any legal or regulatory proceeding or commercial transaction relating to the RTO or ISO or to the RTO or ISO markets; (vi) employees may not accept anything of value from a market participant in excess of a *de minimis* amount, to be decided on by the RTO or ISO; and (vii) employees must advise their supervisor (or, in the case of the MMU manager himself, advise the RTO or ISO board) in the event they seek employment with a market participant and must disqualify themselves from participating in any matter that would

<sup>191</sup> New England Conference at 19.

<sup>192</sup> ISO-NE at 9-12; Midwest ISO at 25; NYISO at 23-24.

<sup>193</sup> CAISO at 8.

<sup>194</sup> SPP at 10.

<sup>195</sup> PJM at 25-27.

<sup>196</sup> Market Behavior Rules Order, 105 FERC ¶ 61,218 at P 182; Policy Statement, 111 FERC ¶ 61,267 at P 5.

<sup>197</sup> See, e.g., Duke Energy at 24; Old Dominion at 25; OMS at 27-28; OPSI at 22; Silicon Valley Power at 13; Steel Producers at 19.

<sup>198</sup> See, e.g., APPA at 77; EEI at 49; Midwest ISO at 28; NYISO at 17; Pepco at 18-19.

<sup>199</sup> EPSA at 46; Exelon at 27.

have an effect on the financial interest of such market participant.<sup>200</sup>

#### vi. Tariff Provisions

##### (a) Preliminary Proposals in the ANOPR

215. The Commission proposed that each RTO and ISO set forth all its provisions involving market monitoring in one section of its tariff, noting that in order for MMUs to achieve transparency of function, the detailed obligations imposed upon them must be made clear and accessible, and also be subject to approval and enforcement by the Commission.

##### (b) Comments on the ANOPR Proposals and Questions

216. There was widespread support for this proposal, although some commenters proposed that non-substantive MMU provisions be posted instead on the RTO or ISO Web site.<sup>201</sup> Duke Energy proposed that the RTO or ISO be allowed to perform centralization of the tariff provisions the next time it makes an amendment to its market monitoring rules.<sup>202</sup> The PJM MMU proposed that MMU provisions be included elsewhere in the tariff as well as in the MMU section, if the context so requires.<sup>203</sup>

##### (c) Commission Proposal

217. In accordance with the bulk of the comments on this subject, the Commission proposes that the RTOs and ISOs be required to include in their tariffs, and centralize in one section, all their MMU provisions. Including all MMU provisions in the tariff will ensure they are subject to the compliance requirements that attach to tariff provisions, and will give notice to interested parties, and thus an opportunity to intervene, when a tariff filing is made. As noted in the ANOPR, centralization of the MMU provisions has the obvious advantage of clarity and ease of reference. The Commission also proposes that the RTOs and ISOs include a mission statement for the MMU in the introductory portions of the section. This statement should set forth the goals to be achieved by the MMU, including the protection of both consumers and market participants by the identification and reporting of

<sup>200</sup> Some external MMUs may currently have business associations which would be prohibited under these proposed minimum requirements, such as unrelated consulting work for participants in its RTO's or ISO's markets. If that is the case, the RTO or ISO should propose a suitable transition plan in its compliance filing.

<sup>201</sup> EPSA at 46; Pepco at 19.

<sup>202</sup> Duke Energy at 24.

<sup>203</sup> PJM MMU at 17.

market design flaws and market power abuses.

218. The Commission disagrees with the comment requesting that the RTOs or ISOs be permitted to delay centralization until such time as they may choose, or otherwise be required, to make an amendment to their MMU rules. Such amendments will in all likelihood be required after issuance of a final rulemaking in this proceeding, and in any event the requirement should not be unduly onerous. Therefore, the Commission proposes that the RTOs and ISOs centralize their MMU tariff provisions when they make their compliance filings in connection with this proceeding. The Commission also sees no reason to forbid the RTOs and ISOs from posting MMU provisions elsewhere in their tariffs as well as in their MMU sections, should clarity and context so require, as long as appropriate cross-referencing is made.

##### b. Information Sharing

219. The Commission advanced proposals in the ANOPR that responded to requests of commenters at the technical conference for dissemination of expanded market information, and to a broader group of recipients. In particular, given the integral relationship between wholesale and retail rates, the Commission acknowledged the need for information by state commissions to assist them in performing their regulatory functions. However, the Commission noted that since public disclosure of certain information could harm market participants or could facilitate collusion under some circumstances, it was necessary to balance the need for information access with confidentiality concerns. The Commission solicited comments on the proposed changes.

##### i. Enhanced Information Dissemination

##### (a) Preliminary Proposals in the ANOPR

220. The Commission proposed enhancing the dissemination of information in several areas. Specifically, the Commission proposed that MMUs be required to report comprehensively on aggregate market and RTO/ISO performance on a regular basis, but no less frequently than quarterly, to Commission staff, to staff of interested state commissions, and to the management and board of directors of the RTOs or ISOs. Further, the Commission proposed that MMUs should be required to deliver materials supporting their conclusions; make one or more of their staff members available for a conference call with representatives from the Commission,

state commissions, and RTO or ISO; and work cooperatively to develop any further materials which might be useful to the Commission, to the state commissions and to the RTOs or ISOs.<sup>204</sup> Finally, the Commission proposed that offer and bid data, without identification of the market participants and with a lag of three months, be posted on the RTO or ISO Web site.

221. The Commission requested comment on whether the proposal met the needs of the state commissions and whether there were other kinds of information needed by state commissions to fulfill their regulatory responsibilities. The Commission further solicited comment on whether there was a generic standard or test that could be used to determine what specific information should be provided to state commissions.

##### (b) Comments on the ANOPR Proposals and Questions

222. No comments were received proposing a generic standard or test to determine the specific information that should be provided to state commissions. There were relatively few comments identifying specific types of data needed;<sup>205</sup> rather, most commenters supporting greater access argued that state agencies should receive all available market information in order to assist them in their regulatory tasks.<sup>206</sup>

223. There was substantial support for the proposal to require quarterly reports and conference calls.<sup>207</sup> Some commenters, however, thought comprehensive reports would be too costly and unduly time consuming.<sup>208</sup> Pepco suggested that these quarterly

<sup>204</sup> The Commission clarified that such reports and meetings were not intended to restrict the MMU from meeting individually with Commission staff, staff of state commissions, market participants, or other stakeholders, or sharing information with these various constituencies, subject to appropriate restrictions on confidentiality.

<sup>205</sup> The California PUC set forth a lengthy list of desired market information, such as confidential and disaggregated data, bid data, generator dispatch data, generator performance data, unit commitment, scheduled and operational levels, and what units set clearing prices. It cautioned, however, that California's needs are specific to its market design and structure as a single state ISO, and that data reporting protocols would vary from state to state. California PUC at 27-30.

<sup>206</sup> See, e.g., FirstEnergy at 11; NARUC at 6; Massachusetts AG at 5; Joint Consumer Advocates at 22; New York PSC at 13.

<sup>207</sup> See, e.g., BlueStar Energy at 6-7; Duke Energy at 26; Industrial Consumers at 37; NEPOOL Participants at 32; New England Conference at 19; North Carolina Electric Membership at 11; NRECA at 24; Old Dominion at 26.

<sup>208</sup> EEI at 50; EPSA at 48; Mirant at 15; Duke Energy at 26.



reports not be as extensive as the current annual reports, in order to avoid an excessive drain on the money and resources of the MMUs.<sup>209</sup> There was also concern that confidentiality protections be observed.<sup>210</sup> At least one commenter suggested that state attorneys general be included in the process as well as state commissions, since not all energy providers and consumers are associated with entities regulated by state commissions.<sup>211</sup> Some commenters, although recognizing that inclusion of market participants in conference calls would be unwieldy, proposed that they be included in the dissemination of the reports.<sup>212</sup>

224. There was substantial comment on the proposal to reduce the lag period for offer and bid data to three months, with a majority either favoring the Commission's proposal or not actively opposing it.<sup>213</sup> Some commenters stated that the lag period should be even shorter than three months, arguing that such information is released in Australia and the United Kingdom in close to real time, with no apparent adverse effects.<sup>214</sup> Others favored retention of the six-month period.<sup>215</sup> There was substantial support for something slightly longer than three months, in order to avoid the problem of data release within the same season; such release, it was argued, would provide opportunities for collusion and market power abuse.<sup>216</sup> EEI notes that different RTOs and ISOs have reached differing conclusions as to the appropriate lag time, and suggested that the Commission take into account regional differences, with a lag time no greater than six months and no less than three months.<sup>217</sup>

225. Some commenters argued that masking the identity of the participants harmed the smaller players, contending that the larger players already have software programs which enable them to ascertain the identities of the participants.<sup>218</sup> OPSI supported maintaining confidentiality by the

aggregation of cost data,<sup>219</sup> and Reliant argued that bidding data should be masked to avoid matching offers with the known output of the plant in question, thereby revealing the identity of the participant.<sup>220</sup>

(c) Commission Proposal

226. The Commission declines to propose a generic standard or test to determine the type of information that may be disseminated to state commissions. Inasmuch as there was no support for such a standard, the Commission believes the type of information to be released may most fruitfully continue to be developed on a case-by-case basis, so long as it generally consists of market analyses of the type regularly gathered by the MMUs in the course of business, and so long as it remains subject to appropriate confidentiality restrictions.

227. The Commission proposes that market participants be included in the dissemination of reports, which could be accomplished via posting them on the RTO or ISO Web site. However, the Commission agrees that including market participants on conference calls would be unwieldy, and proposes limiting participation on such calls to Commission staff, RTO and ISO staff, staff of interested state commissions, and staff of state attorneys general should they express a desire to attend.

228. The Commission agrees that quarterly reports should not be as extensive as the annual state of the market reports. Preparing overly extensive reports would divert the attention of the MMUs from their tasks of daily monitoring and of providing recommendations to the RTO or ISO and the Commission regarding desirable rule and tariff changes. The Commission also believes that the annual state of the market reports have proven to be useful documents, and proposes that the RTOs and ISOs include in their tariffs a requirement for the MMUs to produce them, with the same dissemination (or broader, if desired) as the quarterly reports.

229. The Commission is persuaded by the comments that no harm generally would result from shortening the current six-month lag period.<sup>221</sup> However, the Commission

acknowledges that in some instances release of such information in the same season could afford opportunities for collusion.<sup>222</sup> Therefore, the Commission proposes that the time period for the release of offer and bid data be reduced to three months, but that the RTO or ISO may propose a shorter period, with accompanying justification. However, if the RTO or ISO demonstrates a potential collusion concern, it may propose a four-month lag period or, alternatively, some other mechanism to delay the release of a report if the release were otherwise to occur in the same season as reflected in the data.

230. The Commission proposes retaining the practice of masking the identity of participants when releasing offer and bid data. The possibility raised by a few commenters that some players may be able to surmise the identity of participants argues, if anything, for further protection, not for less. The Commission further proposes that the RTO or ISO include in its compliance filing a justification of its policy regarding the aggregation or lack thereof of offer data and of cost data, discussing the manner in which it believes its policy avoids participant harm and the possibility of collusion, while fostering market transparency.

ii. Tailored Requests for Information

(a) Preliminary Proposals in the ANOPR

231. The Commission proposed that state commissions may make reasonable requests for additional tailored information from the MMUs, acknowledging that information such as general analyses of the market and aggregated price data may assist state commissions in performing their regulatory functions. The Commission stated that these requests should be limited to information regarding general market trends and performance, and not encompass information designed to aid state enforcement or actions against individual companies. This restriction was proposed in light of the limited resources of MMUs, and the fact that states have their own enforcement agencies which are more properly employed for such tasks. However, the Commission proposed that a state commission could, on a case-by-case basis, request that the Commission authorize the release of otherwise proscribed data. The Commission would then evaluate whether there was a

<sup>209</sup> Pepco at 19–20.

<sup>210</sup> Constellation at 19; J. Aron, Barclays, Morgan Stanley at 6; Old Dominion at 26.

<sup>211</sup> APPA at 84. See also LPPC at 15.

<sup>212</sup> See, e.g., Old Dominion at 26.

<sup>213</sup> See, e.g., Reliant at 22; PJM at 29; PSEG at 20; SMUD at 15; CAISO at 10; Connecticut and Massachusetts Municipals at 27; DC Energy at 9; Massachusetts AG at 5; Midwest ISO at 29; NEPOOL Participants at 33.

<sup>214</sup> Industrial Consumers at 37–38; TAPS at 61.

<sup>215</sup> See, e.g., Ameren at 42; Duke Energy at 26–27; Dynegy at 6; Industrial Coalitions at 24; NJBPU at 2; PJM MMU at 18.

<sup>216</sup> See, e.g., Dynegy at 6; NJBPU at 2; OMS at 35; OPSI at 29; Old Dominion at 26.

<sup>217</sup> EEI at 52–53.

<sup>218</sup> Pennsylvania PUC at 18; TAPS at 62.

<sup>219</sup> OPSI at 30. OPSI includes reference price or unit estimated cost data within the term.

<sup>220</sup> Reliant at 22. Reliant used the term “bid data,” which the Commission assumes refers to offers, given the company's concern over matching offers to unit output.

<sup>221</sup> The Commission recently approved the request of ISO-NE and NEPOOL to shorten the lag time for release of ISO-NE offer and bid data from six months to roughly three months. *ISO New England Inc. and New England Power Pool*, 121 FERC ¶ 61,035 (2007) (ISO-NE Bid/Offer Order).

<sup>222</sup> In the ISO-NE Bid/Offer Order, we found that the combination of ISO-NE's ability to expeditiously file for a rule change if negative impacts on the market were experienced, and the existing tariff language that masks the bid/offer data, adequately protected against the risk of collusion.



compelling need for the requested information, and decide whether adequate protections could be fashioned for commercially sensitive material.

(b) Comments on the ANOPR Proposals and Questions

232. There was substantial support for the Commission's proposal to allow state commissions to make tailored requests for information, with the caveat that such requests should not be permitted to place too great a burden on the workload of the MMUs.<sup>223</sup> Several commenters suggested this problem could be solved by limiting the information provided by the MMU to that generated in the ordinary course of business.<sup>224</sup> Other commenters objected to the restriction prohibiting the release of information designed for enforcement purposes, arguing that the states have little other means of access to the necessary information.<sup>225</sup> A number of commenters cautioned that requests for information must be accompanied by assurances of confidentiality.<sup>226</sup> At least some RTOs and ISOs currently have provisions in their tariffs governing the release of confidential information;<sup>227</sup> however, OMS asserts that such tariff provisions (at least with respect to Midwest ISO) are so restrictive as to effectively bar the release of needed information.<sup>228</sup> Several commenters proposed that before an MMU be allowed to release information pertaining to a particular market participant, that the participant be given the opportunity to object and to correct any inaccurate information proposed to be released.<sup>229</sup>

(c) Commission Proposal

233. The Commission notes that entertaining tailored requests for information from state commissions subjects the MMU to the risk that it will be diverted from its core functions of monitoring the market and making rule and tariff recommendations to the RTO or ISO. Therefore, the decision as to whether to respond to such requests, assuming they otherwise fall within acceptable parameters, should be made by the MMU, in light of its budgetary and time limitations.

<sup>223</sup> See, e.g., Reliant at 19; PJM Power Providers at 10.

<sup>224</sup> See, e.g., PJM Power Providers at 10; Exelon at 28.

<sup>225</sup> NARUC at 9; Ohio PUC at 19.

<sup>226</sup> Constellation at 19; Joint Consumer Advocates at 22; Midwest ISO at 30.

<sup>227</sup> See, e.g., Midwest ISO at 30; SPP at 11.

<sup>228</sup> OMS at 31.

<sup>229</sup> See, e.g., EEI at 51; FirstEnergy at 11; DC Energy at 8.

234. The Commission continues to believe its proposed restriction on information designed for enforcement purposes is a reasonable one. Such requests would not only implicate serious confidentiality concerns, they could overwhelm the MMU's workload, as they would likely involve more detailed investigations than would be required for general market information or for MMU referrals to the Commission. While states may not have the tools and expertise to monitor the market as effectively as can the MMUs, they do have access to resources to carry out enforcement functions. Furthermore, the costs of state enforcement should rightfully be borne by the states, not by the MMUs or RTOs and ISOs. Therefore, the Commission proposes that MMUs may entertain requests for information from state commissions, so long as such information pertains to general market trends and performance, is not designed to aid state enforcement or actions against individual companies,<sup>230</sup> and the MMU can accommodate such requests within its budgetary and time constraints without jeopardizing its ability to perform its core tariff-defined functions.

235. The Commission also believes that while confidentiality provisions serve a useful purpose, they should not be drafted in such a way as to impose unnecessary barriers to the dissemination of information. Therefore, the Commission proposes that RTOs and ISOs develop confidentiality provisions for their tariffs that will protect commercially sensitive material, but which will not be so restrictive as to permit the release of little if any information.

236. The Commission also agrees that if requested information pertains to specific market participants, other than offer and bid data, that as a matter of fairness the named market participant should be given notice and the opportunity to contest the information. Therefore, the Commission proposes that the RTOs and ISOs include such a provision in their tariffs.

237. In the ANOPR, the Commission proposed permitting state commissions to petition the Commission on a case-by-case basis for information that does not fall within the proposed acceptable parameters. This safety valve should alleviate state concerns that they may be prevented from acquiring information for which they have a compelling need, while also ensuring that the

<sup>230</sup> However, if during the ordinary course of its activities an MMU were to discover evidence of wrongdoing that was within a state commission's jurisdiction, it is expected that the MMU would report such information to the state commission.

Commission will be able to examine such requests in light both of state needs and the ability to fashion adequate confidentiality protections. Therefore, the Commission proposes that the RTOs and ISOs note the availability of this exception in their tariffs.

iii. Commission Referrals

(a) Preliminary Proposals in the ANOPR

238. The Commission stated that MMUs should continue to respect the confidentiality of their referrals of suspected wrongdoing to the Commission, and not disclose such referrals to other entities, including state commissions. The Commission also expressed its intention not to disseminate information regarding its investigations, noting that the Commission's rules require that such information be kept nonpublic unless the Commission authorizes, in any given case, that it be publicly disclosed.<sup>231</sup> The Commission noted, however, that it intended to continue the practice of Commission staff providing the MMUs with generic feedback regarding enforcement issues.

(b) Comments on the ANOPR Proposals and Questions

239. Comments were received on both sides of this issue, with state representatives arguing for release of MMU referral information, for the results of Commission investigations, and for disclosure of the progress of Commission investigations.<sup>232</sup> Other commenters acknowledged the legal and policy considerations noted by the Commission, and concurred in the need to maintain confidentiality.<sup>233</sup> The California PUC, while stating that it understood the need for confidentiality, proposed that in the event wrongdoing is discovered that affects a state commission with appropriate jurisdiction, that such commission should be notified of the wrongdoing.<sup>234</sup> Some commenters argued that state bodies have procedures in place to protect confidentiality, and so should not be barred from receiving such information from the MMUs and the Commission.<sup>235</sup> Constellation, however, cautions that these procedures may not protect disclosure from Freedom of

<sup>231</sup> 18 CFR 1b.9 (2007). Other exceptions include cases where the information has been made a matter of public record in an adjudicatory proceeding, and where disclosure is required by the Freedom of Information Act, 5 U.S.C. 552 *et seq.* (2006).

<sup>232</sup> See, e.g., California PUC at 32; Ohio PUC at 19; OMS at 37-38; OPSI at 31-32.

<sup>233</sup> See, e.g., Reliant at 19; Exelon at 29.

<sup>234</sup> California PUC at 32.

<sup>235</sup> See, e.g., New York PSC at 15; North Carolina Commission at 7; OPSI at 32.

Information Act (FOIA) requests or requests made under equivalent state statutes.<sup>236</sup>

(c) Commission Proposal

240. The Commission notes that the commenters that argued for the release of referral and investigative information to such bodies as state commissions did not generally address the substantial legal and policy arguments against such release, other than to note that some state bodies have confidentiality procedures (which may or may not withstand FOIA-type requests). As the Commission observed in the ANOPR, not only do Commission rules prohibit such release, but release could impede the willingness of market participants to self-report and otherwise cooperate in investigations, and could injure innocent persons who might be erroneously implicated or adversely affected by simply being associated with an investigation. Therefore, the Commission proposes that the existing provisions regarding the confidentiality of MMU referrals to the Commission, as well as the confidentiality of the progress and results of its own investigations, be retained.

c. Pro Forma Tariff

i. Preliminary Proposals in the ANOPR

241. Finally, the Commission in the ANOPR stated our intent to include in this NOPR a proposed pro forma MMU section for RTO/ISO tariffs, which would contain standardized core provisions but also allow for regional variations. The Commission stated that it anticipates including in the pro forma MMU section protocols for the referral of tariff, rule and market manipulation violations to the Office of Enforcement, as well as protocols for the referral of perceived market design flaws and recommended tariff changes to the Office of Energy Market Regulation. The Commission solicited comments on the structure and content of such a pro forma section.

ii. Comments on the ANOPR Proposals and Questions

242. There was substantial support for a pro forma tariff section of core MMU provisions. However, a number of entities, such as the Midwest ISO, cautioned that a pro forma tariff would ignore regional variations, disregard stakeholder consensus and increase compliance burdens. Those arguing for a pro forma tariff supported the ANOPR proposal that each RTO or ISO be given the flexibility to propose individual provisions, in order to reflect regional

variations. NYISO cautioned against the Commission attempting a pro forma mitigation provision.

iii. Commission Proposal

243. The Commission had proposed in the ANOPR that a pro forma MMU tariff section would be limited to essential core MMU provisions, such as functions, oversight, tools and information sharing, thus freeing the RTOs and ISOs to propose regional variations. In light of the fact that in this NOPR we are proposing that many important aspects of the market monitoring relationship with the RTOs and ISOs be left to the discretion of the individual RTOs and ISOs, and in light of the fact that there may well be other regional variations which the RTOs and ISOs may wish to propose, the Commission believes a pro forma tariff section, which would necessarily have a large number of blank subsections, would be of limited value.

244. For that reason, the Commission proposes that instead of requiring the RTOs and ISOs to follow the outlines of a pro forma MMU tariff section, that they conform their tariff to the requirements that will be ultimately set forth in the rulemaking to be issued in this docket, including centralization of the MMU provisions in one section. The Commission also proposes that each RTO and ISO include in its tariff protocols for the referral of tariff, rule and market manipulation violations to the Office of Enforcement, revised as discussed above, and for the referral of perceived market design flaws and recommended tariff changes to the Office of Energy Market Regulation.

*D. Responsiveness of RTOs and ISOs to Stakeholders and Customers*

245. In this section of the NOPR, the Commission proposes to establish new criteria intended to ensure that an RTO or ISO board is responsive to the RTO's or ISO's customers and other stakeholders. These criteria will include: (1) Inclusiveness; (2) fairness in balancing diverse interests; (3) representation of minority positions; and (4) ongoing responsiveness. The Commission proposes to require each RTO or ISO to submit a compliance filing demonstrating that it has in place or will adopt practices and procedures to ensure that it is responsive to stakeholders and customers. In the compliance filing, the Commission encourages each RTO or ISO to evaluate what practices and procedures may best satisfy the responsiveness criteria.

246. In the ANOPR, the Commission made a preliminary proposal to improve responsiveness of RTO and ISO boards

of directors to customers and other stakeholders. By responsiveness, we mean an RTO or ISO board's willingness, as evidenced in its practices and procedures, to directly receive concerns and recommendations from customers and other stakeholders, and to fully consider and take actions in response to the issues that are raised. We also sought comment on several issues focusing on whether and how RTO and ISO responsiveness to stakeholders can be improved, including management practices and stakeholder participation in the budgeting process.

1. Background

247. In Order No. 888, the Commission encouraged but did not require the formation of ISOs, delineating eleven principles defining the operations and structure of a properly functioning ISO.<sup>237</sup> Similarly, in Order No. 2000, the Commission encouraged utilities to join RTOs voluntarily and set out the characteristics that an RTO must possess and the minimum functions that it must perform.<sup>238</sup> Embodied in Order Nos. 888 and 2000 is the requirement that the regional transmission entity be independent from market participants.

248. Although it required independence, Order No. 2000 did not mandate detailed governance requirements for an RTO board of directors. The Commission stated that, given the early stage of RTO formation, it would be "counterproductive" to impose a one-size-fits-all approach to governance when RTOs may have varying structures based on their regional needs.<sup>239</sup> Therefore, the Commission stated that it would review governance proposals on a case-by-case basis.<sup>240</sup> The Commission also provided guidance based on existing governance arrangements, emphasizing the

<sup>237</sup> *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities: Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,730-32 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub non*, *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (DC Cir. 2000), *off'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

<sup>238</sup> Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 at 30,993.

<sup>239</sup> *Id.* at 31,073. The Commission noted that existing ISOs have varying forms of governance. Some used a two-tier form of governance with a non-stakeholder board and advisory committees of stakeholders while one ISO in particular, CAISO, employed a decision-making board consisting of both stakeholders and non-stakeholders. *Id.*

<sup>240</sup> *Id.* at 31,073-74.

<sup>236</sup> Constellation at 19.

importance of stakeholder input regarding both RTO formation and ongoing operations. The Commission stated that stakeholder committees should have balanced representation on such committees so that no one stakeholder class dominates the committee's recommendations. The Commission added that, in the case of a non-stakeholder board, it is important that this board not become isolated.<sup>241</sup> For these reasons, the Commission explained that both formal and informal mechanisms should be used to ensure that stakeholders can convey their concerns to the non-stakeholder board. This standard is no different for currently-operating ISOs, as the ISO principle of independence requires fair representation of all types of users of the system to ensure that the ISO formulates policies, operates the system, and resolves disputes in a fair and non-discriminatory manner.<sup>242</sup>

## 2. Preliminary Proposals in the ANOPR

249. In the ANOPR, the Commission made the preliminary conclusion that representatives of RTO and ISO customers and other stakeholders should have some form of effective direct access to the RTO or ISO board of directors.<sup>243</sup> The Commission asked whether each RTO and ISO should be required to develop and implement a means to ensure that customers and other stakeholders have such access.<sup>244</sup> The Commission made the preliminary proposal that either of two mechanisms, a hybrid board or a board advisory committee, could accomplish the goal of enhancing customer and other stakeholder access to the board.<sup>245</sup>

250. The Commission explained that a hybrid board would be composed of both independent members and stakeholder members, with each member holding a seat on the board and participating fully in board decisions with an equal vote. The Commission stated that a hybrid board would directly expose the board to stakeholders' concerns and that it believed that it should be possible to structure a hybrid board without sacrificing overall board independence.<sup>246</sup>

251. Alternatively, the Commission suggested that a board advisory

committee, comprised of senior executives of the various stakeholder groups, could serve as an expert panel that would inform the board of stakeholder views. The board advisory committee would have no voting authority on board decisions, but could make recommendations directly to the board on matters before the board and on matters it believes the board should address. The Commission stated that it envisioned such a committee to include members selected to represent a reasonable range of diverse interests.<sup>247</sup>

252. Based on these two models of improving RTO and ISO responsiveness, the Commission sought comments on the following questions:

- How should any hybrid board be structured? What is an appropriate limit on the percentage of non-independent board members? If a variety of customer views are to be represented, what implications does this have for the size of the board?
- What, if any, rules and restrictions should be placed on the stakeholder board members of a hybrid board?
- Can the reform proposed here be met through other means such as increased direct board interaction with customers and other stakeholders, e.g., through open board meetings or through required attendance of board members at major stakeholder meetings of the RTO?

• Are there measures—such as customer satisfaction measures, cost oversight benchmarks, or stakeholder participation measures—that RTOs and ISOs should use to assess the success of the mechanism for improving responsiveness?

253. In the ANOPR, the Commission also requested comment on whether any reforms are necessary to increase management responsiveness to stakeholders. Among specific topics, the Commission requested comment on whether it should encourage or require RTOs and ISOs to publish a strategic plan that includes plans for ensuring responsiveness to customers and stakeholders, set performance criteria for executive managers based in part on responsiveness to stakeholders, and relate executive compensation to a measure of responsiveness to stakeholders.

## 3. Comments on the ANOPR Proposals and Questions

254. The Commission received numerous responses from commenters regarding the questions posed in the ANOPR. A majority agrees with the Commission's conclusion that more

effective direct access to RTO and ISO boards is needed. They do not agree, however, on the mechanism to achieve that goal. Some commenters favor the hybrid board, but many express concern with this approach, preferring the board advisory committee. Several commenters support using both a hybrid board and a board advisory committee,<sup>248</sup> noting that the two approaches are not mutually exclusive.<sup>249</sup> Several commenters discussed changes in RTO and ISO management practices to improve the responsiveness.

### a. Comments on the Hybrid Board Approach

255. Some commenters support the proposal for a hybrid board approach, stating that a hybrid board would improve RTO responsiveness and allow stakeholder access to an RTO and ISO board.<sup>250</sup> While they believe that such a board would be a good mechanism to achieve the Commission's goal, they also state that some requirements on how such a board should be structured are necessary. For example, California Munis state that stakeholder board members should not form a majority of an RTO's or ISO's board under a hybrid board form of governance.<sup>251</sup> SMUD states that a hybrid board should include diverse representation and must be properly balanced so that no single interest is unduly influential.<sup>252</sup> TAPS recommends that within a hybrid board, independent directors should hold a majority of board seats to prevent capture by stakeholders.<sup>253</sup> Further, before implementing the hybrid board approach, the Connecticut and Massachusetts Municipals recommend that the Commission provide clarity regarding any possible conflict of interest concerns among stakeholder directors.<sup>254</sup>

256. Industrial Consumers recommend that the Commission require each RTO or ISO to establish a hybrid board, but only if representatives of loads (large and small customers) are assured equal representation with

<sup>248</sup> E.g., AEP at 7; Ameren at 44; APPA at 88. SMUD states that the Commission should explore both approaches. SMUD at 20–22.

<sup>249</sup> NYISO suggested a shared governance model as an alternative to the hybrid board and the board advisory committee models proposed in the ANOPR. NYISO at 6.

<sup>250</sup> E.g., California Munis at 15; Silicon Valley Power at 15; Connecticut and Massachusetts Municipals at 16; Wisconsin Industrial at 11; TAPS at 34; Industrial Consumers at 40.

<sup>251</sup> California Munis at 15.

<sup>252</sup> SMUD at 21.

<sup>253</sup> TAPS at 34.

<sup>254</sup> Connecticut and Massachusetts Municipals at 17.

<sup>241</sup> *Id.*

<sup>242</sup> Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,730–31.

<sup>243</sup> ANOPR, FERC Stats. & Regs. ¶ 32,617 at P 148.

<sup>244</sup> *Id.* P 149.

<sup>245</sup> *Id.* P 151, 153.

<sup>246</sup> The Commission also noted that certain restrictions may be necessary for the hybrid board proposal to ensure that stakeholder members do not inappropriately serve their own interests. *Id.* P 152.

<sup>247</sup> *Id.* P 153–54.

supply-side interests. They note that Electric Reliability Council of Texas (ERCOT) already has a hybrid board.<sup>255</sup> Industrial Consumers propose that non-independent stakeholder members should represent less than half of the total ISO and RTO board (unlike in ERCOT). They add that an equal number of stakeholders should represent supply-side and demand-side (consumer) interests.<sup>256</sup> To that end, Industrial Consumers state that it may be necessary to require some form of rotation among stakeholder groups. Finally, they note that all existing ISO and RTO boards already have a "hybrid" feature because some members are retired utility executives, and they urge the Commission to consider counting such members as stakeholders in hybrid boards.

257. Wisconsin Industrial also recommends a hybrid board structure, with the condition that end-use customer and supplier representation be equal. Wisconsin Industrial believes that a hybrid board has an advantage in that a variety of stakeholder interests can be objectively and directly represented without first being filtered through RTO and ISO management.<sup>257</sup>

258. Further, several of the commenters that support the hybrid board oppose the advisory board committee, noting that such a committee would not provide for direct discussion and information exchange, and that its advice could be ignored by board members.<sup>258</sup> Others note the disadvantages of an advisory board committee.<sup>259</sup>

259. Many commenters, however, do not support the hybrid board approach, emphasizing that a hybrid board can, among other things, jeopardize the independence of an RTO or ISO

<sup>255</sup> Industrial Consumers note that the ERCOT hybrid board is composed of the following: (1) Five unaffiliated independent board members (two serve as chair and vice chair); (2) independent power marketers; (3) industrial consumers; (4) commercial consumers; (5) independent retail electric providers; (6) electric cooperatives; (7) residential consumers; (8) investor-owned utilities; (9) independent generators; and (10) municipally-owned utilities. Industrial Consumers at 41.

<sup>256</sup> For example, a ten-member board would have four stakeholder members: two representing suppliers and two representing consumers. *Id.*

<sup>257</sup> Wisconsin Industrial at 11.

<sup>258</sup> *E.g.*, TAPS at 40-42.

<sup>259</sup> For example, Indianapolis P&L notes that, while the Midwest ISO advisory committee provides some value, it faces challenges in its communication with the board of directors because management views are sometimes at odds with stakeholder views, the time for the advisory committee to consult with the board on technically complex issues is limited, and competing messages from committee members dilute and muddle the message. Indianapolis P&L at 6-7.

board.<sup>260</sup> They contend that RTO and ISO independence must be preserved because it gives participants in organized wholesale markets the confidence that: (1) The markets are being administered fairly; (2) proprietary and critical infrastructure information is being protected; and (3) customers will ultimately receive the benefits of competition.

260. Many commenters argue that stakeholder representation on a hybrid board would conflict with stakeholders' fiduciary responsibility to their employers, making it difficult for the stakeholder member to be impartial when the goal of that member's organization is to maximize its company's profits. Therefore, they note that it is unrealistic to expect stakeholder board members to refrain from acting in the best interests of the entity with which they are affiliated.

261. Some commenters also question whether a hybrid board can ensure fair representation, arguing that smaller companies are less likely to have the resources necessary to participate in such a board,<sup>261</sup> thus not all sectors of the market would be fairly represented, resulting in the potential for undue influence.

262. To address those concerns for undue influence, commenters have suggested that the selection of non-independent board members should require a supermajority vote. APPA recommends that RTO and ISO stakeholder directors be elected by a supermajority of stakeholder sectors, contending that stakeholder representatives should be balanced between generation and load interests.<sup>262</sup> APPA further expands on its proposal by stating that using a supermajority election process will "ensure that well-respected and knowledgeable members of the stakeholder community serve in this capacity."<sup>263</sup> TAPS suggests that a supermajority vote requirement for selection of stakeholder board members would go a long way to mitigate concerns that the stakeholder board members would use their position

<sup>260</sup> *E.g.*, California PUC at 34-35; DC Energy at 9; Comverge at 12; Dominion Resources at 10; Duke Energy at 29; Dynegy at 7; FirstEnergy at 12; Industrial Coalitions at 27; ITC at 5-13; Joint Consumer Advocates at 24; North Carolina Commission at 8; OMS at 42; NARUC at 12; Old Dominion at 31; Pepco at 22; The Alliance at 19; Xcel at 27.

<sup>261</sup> *E.g.*, Comverge at 12; Industrial Coalitions at 25-28; The Alliance at 19-20.

<sup>262</sup> APPA at 13.

<sup>263</sup> *Id.* at 93.

inappropriately to advance their parochial interests.<sup>264</sup>

263. Further, some commenters contend that a hybrid board composed of both independent and stakeholder members could complicate and impede effective board decision-making because of the effort of non-independent stakeholders to serve their own interests.<sup>265</sup> They note that a hybrid board is far more likely to be unwieldy and ineffective because of the need to represent so many different market interests. Several commenters also argue that the Commission does not have the legal authority to dictate the composition of the board of a Commission-regulated entity.<sup>266</sup>

#### b. Comments on the Board Advisory Committee Approach

264. Many commenters indicate that having a board advisory committee is the preferable approach to achieving the Commission's goal of improving responsiveness of RTOs and ISOs.<sup>267</sup> They state that a board advisory committee with a wide range of stakeholder interests that has direct access to the board of directors would increase RTO and ISO responsiveness and be the most effective way to balance the interests of stakeholders.

265. Several commenters state that a board advisory committee would be a good starting point for improving communications between the board and stakeholders. For example, North Carolina Electric Membership believes that a board advisory committee would allow stakeholders to provide and receive strategic insight to the boards.<sup>268</sup> In addition to such a committee, it notes the need for more opportunities for communication between the board and the stakeholders. Such communication can be achieved by board member attendance at major stakeholder meetings and by board solicitation of stakeholder position papers on relevant

<sup>264</sup> TAPS at 45. Both APPA and TAPS reference a similar recommendation from a Wisconsin Public Power Inc. (WPPPI) white paper, contained as Attachment A to the TAPS comments. WPPPI suggests that "selection of the interested [non-independent] board members should require supermajority voting approval" and that "an election of an interested board member should require an affirmative vote of 67 [percent] of all sectors." *Id.* at 70.

<sup>265</sup> *E.g.*, Alcoa at 28; DC Energy at 10; California PUC at 35.

<sup>266</sup> See, e.g., California PUC at 35 (citing *Cal. Indep. Sys. Operator Corp. v. FERC*, 372 F.3d 395 (DC Cir. 2004)).

<sup>267</sup> *E.g.*, California PUC at 36; Comverge at 12; Suez at 9; Old Dominion at 31; OPSI at 42; Joint Consumer Advocates at 24; North Carolina Commission at 9; NARUC at 12; Pepco at 22-23; Xcel at 27-28.

<sup>268</sup> North Carolina Electric Membership at 4.



issues.<sup>269</sup> A few of the commenters also note that they support open RTO and ISO board meetings.<sup>270</sup>

266. Some commenters suggest guidelines on how a board advisory committee should be structured and how it should function. For example, OPSI states that the board advisory committee: (1) Must have authority to make recommendations directly to the board on matters before the board and on matters it believes the board should address; (2) must be required to allow for the communication of minority views to the board; and (3) should have membership limited to a reasonable number of individuals.<sup>271</sup> OPSI and NARUC recommend that state commissions and state consumer advocates be entitled to representation on the board advisory committee.<sup>272</sup> North Carolina Commission proposes that the board advisory committee should be given the right to suggest nominees to board positions and that the RTO and ISO board could be required to respond in writing to proposals submitted by the advisory committee.

267. Additionally, LPPC states that a board advisory committee must be closely involved in RTO and ISO board discussions, must represent a broader range of stakeholder interests, and should supplement, not replace, existing stakeholder representation on operating technical committees.<sup>273</sup>

#### c. Comments on the Need To Increase Management Responsiveness

268. APPA, TAPS, and the Connecticut and Massachusetts Municipals recommend that RTO and ISO mission statements and/or charters clearly define consumer-oriented goals.

<sup>269</sup> For example, North Carolina Electric Membership suggests "town hall" sessions for members where board attendance is required on topics derived by the liaison committee (*i.e.*, board advisory committee). It also notes that requiring the board to explain the basis for its decision on particular issues in writing could improve communication and add transparency to the process. North Carolina Electric Membership at 5.

<sup>270</sup> For example, the OMS believes that an open board meeting would allow stakeholders to assess the nature and quality of the information being provided to the board, whether the board has adequately understood and considered stakeholder issues and concerns, and whether the board has made a fair and balanced decision. OMS at 43. In contrast, SMUD does not support open board meetings, but suggests that a better alternative may be for boards to hold technical sessions with stakeholders for information gathering before board meetings take place. SMUD at 22.

<sup>271</sup> OPSI at 43.

<sup>272</sup> *Id.* See also NARUC at 12.

<sup>273</sup> LPPC at 17. See also Industrial Consumers at 41 (suggesting that a board advisory committee should be balanced, be charged with electing the board members, and be responsible for approving any changes in the bylaws).

They recommend that these documents be modified to require the RTO or ISO to provide "reliable service at the lowest possible reasonable rates,"<sup>274</sup> or similar wording to that effect. APPA would include an explicit obligation that the RTO or ISO work to reduce power costs to consumers.

269. Several commenters also addressed the topic of performance criteria for executive managers' responsiveness to stakeholder and consumer interests. For example, DC Energy supports the Commission requiring each RTO and ISO to take steps to ensure management responsiveness, such as stakeholder input on public strategic plans, periodic measurement of customer satisfaction, and RTO- or ISO-developed performance criteria for executive managers with a focus on reliability and market efficiency criteria.<sup>275</sup> North Carolina Commission suggests the Commission focus on measures of responsiveness such as timely responses to customer or stakeholder requests.<sup>276</sup> The North Carolina Commission also suggests that the Commission should focus on behavior-based measures to improve RTO and ISO effectiveness, such as whether the RTO and ISO has clear staff assignments; whether it has contact information easily available on its Web site; the length of time for a stakeholder to secure an answer to a question; how long it takes a market participant to receive a correction of a billing or settlement error; and how often transmission service or interconnection studies are delayed. LPPC suggests four areas that should be covered in performance measures include accomplishment of the mission, ability to meet budget projections, compliance with NERC standards, and measured stakeholder satisfaction.<sup>277</sup> CAISO supports Commission adoption of performance criteria for executive managers, stating that it has already implemented most of the ANOPR proposals, including an incentive compensation program for all employees that contains specific goals for improving stakeholder processes and timely response to stakeholder inquiries.<sup>278</sup>

#### d. Comments on Regional Differences

270. In addition to the two approaches described in the ANOPR, several commenters suggest that the Commission should allow for regional

differences, and not administer a one-size-fits-all approach.<sup>279</sup> Instead, given the differences among RTOs and ISOs in governance and stakeholder needs, the Commission should require RTOs and ISOs to work with customers and other stakeholders to create programs specific to each regional entity. For example, EEI notes that it is important that each RTO and ISO have the flexibility to adopt the means of direct stakeholder access that is most effective for that particular RTO or ISO.<sup>280</sup> NARUC also notes that stakeholder representation in RTO and ISO processes is not uniform across all sectors; therefore, it urges the Commission to review RTO and ISO processes to ensure equivalent treatment of all stakeholders.<sup>281</sup>

271. OPSI recommends that the Commission not impose particular mandates, but should express its intention to hold RTO and ISO boards accountable, and leave it to the boards to develop appropriate ways to ensure such responsiveness. OPSI also urges the Commission to establish an annual opportunity for interested parties to submit an assessment of the RTO's or ISO's performance in the preceding year to the Commission.<sup>282</sup>

#### 4. The Need for Commission Action

272. In Order No. 2000, the Commission determined that independence is a required characteristic necessary for an RTO to prevent any undue discrimination and to bring benefits to market participants. In that respect, the Commission stated that an RTO's decision-making process must be independent in both reality and perception.<sup>283</sup> The Commission did not believe that detailed guidance regarding governance structure was necessary given the early stage of RTO formation and the varying structures of governance among regional entities. Instead, the Commission required RTOs to have an "open architecture" so that the organization and its members would have the necessary flexibility to improve the structure, geographic scope, market scope, and operations of the

<sup>279</sup> *E.g.*, Allegheny at 7; ISO-NE at 31-33; EPSCA at 50; Pepco at 23; SPP at 12-13; National Grid at 17-20; EEI at 57-61.

<sup>280</sup> EEI recommends that the Commission issue a policy statement declaring that stakeholders should have effective direct access to RTO and ISO boards and executive management. It also argues that "the Commission should not take any action that would require the basic structure of RTOs and ISOs and their underlying governing contracts, such as the transmission owners' agreement, to be reopened without the consent of the parties involved." EEI at 59.

<sup>281</sup> NARUC at 13.

<sup>282</sup> OPSI at 45.

<sup>283</sup> Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,061.

<sup>274</sup> TAPS at 33.

<sup>275</sup> DC Energy at 10.

<sup>276</sup> North Carolina Commission at 9-10.

<sup>277</sup> LPPC at 19.

<sup>278</sup> CAISO at 14.



organization. Although the Commission required that proposed changes continue to satisfy RTO minimum characteristics and functions,<sup>284</sup> open architecture allowed the original RTO design to evolve to reflect changes in member needs.

273. Since Order No. 2000 was issued, RTOs and ISOs have evolved. Given the size and complexity of RTOs and ISOs today, it is not surprising that tension has arisen between the goals of independent decision-making and responsiveness to stakeholders, as an RTO or ISO cannot satisfy every group on every issue. The RTO and ISO management and boards of directors face increasing difficulty (as well as increasing responsibility) in understanding the impact of their decisions on the various stakeholder classes. Attempting to accommodate stakeholders' needs on each issue has been a difficult task borne by the boards and other employees of the RTOs and ISOs.

274. Creating a mechanism and process to enable the board to be responsive to the needs of stakeholders is critical to an independent governance structure. Moreover, it is necessary for customers and other stakeholders to have confidence in the decisions that come out of RTO and ISO processes. Similarly, management responsiveness to customers and stakeholders plays an important role in implementing the RTO and ISO policies and achieving its objectives in a manner that customers and other stakeholders perceive to be fair, balanced, and effective. The Commission proposes a set of criteria, discussed below, for assessing the mechanism or process by which an RTO or ISO achieves board responsiveness to its members and customers.

##### 5. Proposed Reform

275. The Commission proposes to require each RTO and ISO to demonstrate in a compliance filing that it is achieving RTO and ISO responsiveness, and we propose to assess the filed practices or procedures for achieving RTO and ISO board responsiveness using the following criteria: (1) Inclusiveness; (2) fairness in balancing diverse interests; (3) representation of minority positions; and (4) ongoing responsiveness. We believe that access by customers and other stakeholders to the board based on these criteria will provide them with the opportunity to ensure that their concerns are considered. We also believe that any RTO or ISO practices or procedures that satisfy these criteria

will ensure that RTO and ISO boards and management are reasonably responsive to the needs of RTO and ISO members and customers.

276. Accordingly, an RTO or ISO must comply with this proposed requirement by submitting a filing that proposes changes to its responsiveness practices and procedures to comply with the proposed requirement or that demonstrates its practices and procedures already satisfy the requirement for responsiveness. This filing would be submitted within six months of the date the final rule is published in the **Federal Register**. The Commission will assess whether each filing satisfies the proposed requirement and issue additional orders as necessary.

277. The Commission agrees with commenters that a one-size-fits-all approach may not be beneficial given the varying structure and needs of each regional entity. Therefore, instead of prescribing a specific mechanism for all RTOs and ISOs, the Commission proposes to take a flexible approach. Various mechanisms may satisfy the proposed criteria. We encourage each RTO or ISO to develop a mechanism that best suits its own governance structure and stakeholder needs. The Commission presented two options for consideration, the board advisory committee and the hybrid board.<sup>285</sup> While we view the board advisory committee as a particularly strong mechanism for enhancing responsiveness, the Commission expects each RTO or ISO and its stakeholders to develop the mechanism that best suits its needs.

278. We seek comment, however, on whether RTOs and ISOs should be encouraged, or required, to base their process for selecting non-independent members of the board or of a board advisory committee on a supermajority vote of eligible stakeholders.

279. We propose to require each RTO and ISO, in its compliance filing, to demonstrate that it has satisfied the following criteria:

- **Inclusiveness**—The practices and procedures must ensure that any customer or other stakeholder affected by the operation of the RTO or ISO, or its representative is permitted to communicate its views to the RTO or ISO board.
- **Fairness in Balancing Diverse Interests**—The practices and procedures

<sup>285</sup> Any RTO or ISO that chooses to propose a hybrid board structure must ensure that the non-independent board members constitute less than a majority of the board and must limit the eligibility to be a non-independent board member to market participants in that RTO or ISO market.

must ensure that the interests of customers or other stakeholders are equitably considered and that deliberation and consideration of RTO and ISO issues are not dominated by any single stakeholder category.

- **Representation of Minority Positions**—The practices and procedures must ensure that, in instances where stakeholders are not in total agreement on a particular issue, minority positions are communicated to the board at the same time as majority positions.

- **Ongoing Responsiveness**—The practices and procedures must provide for stakeholder input into RTO or ISO decisions as well as mechanisms to provide feedback to stakeholders to ensure that information exchange and communication continue over time.

280. The Commission proposes to require that each RTO and ISO post on its Web site a mission statement or charter for its organization. The Commission encourages each RTO and ISO to set forth in these documents the organization's purpose, guiding principles, and commitment to responsiveness to customers and other stakeholders, and ultimately to the consumers who benefit from and pay for electricity services.

281. We also encourage each RTO and ISO to ensure that its management programs, including, but not limited to, incentive compensation plans for executive managers, give appropriate weight to stakeholder responsiveness. Such plans should give appropriate consideration to important service delivery goals such as reducing congestion costs, timely response to transmission service requests, prompt resolution of statements, billing, and disputes, and other customer service measures of performance.<sup>286</sup>

##### V. Applicability of the Proposed Rule and Compliance Procedures

282. The Commission has a responsibility under FPA sections 205 and 206 to ensure that the rates, charges, classifications, and service of public utilities (and any rule, regulation, practice, or contract affecting any of these) are just and reasonable and not unduly discriminatory, and to remedy undue discrimination in the provision of such services. Our action in this NOPR proposes to fulfill those responsibilities by proposing reforms to improve the operation of organized

<sup>286</sup> The Commission understands that RTO and ISO executive management compensation plans may already be based on various measures of performance. If these already adequately take account of customer responsiveness, the RTO or ISO may report this in its compliance filing.

<sup>284</sup> *Id.* at 31,170.

wholesale markets. It is necessary to remedy any problems in wholesale markets to ensure that rates and services in RTO and ISO markets remain just and reasonable and not unduly discriminatory.

283. The Commission proposes to apply the final rule in this proceeding to all RTOs and ISOs by requiring them to demonstrate compliance with the proposed requirements discussed in each section of the NOPR: (1) Demand response; (2) long-term power contracting; (3) market monitoring; and (4) RTO and ISO responsiveness. The Commission proposes to require each RTO and ISO to report to the Commission, on the deadlines specified below or six months following its certification as an RTO or commencement of operations as an ISO, that describes whether the entity is already in compliance with the requirements of the final rule, or describing its plans to attain compliance, including a timeline with intermediate deadlines and appropriate proposed tariff and market rule revisions. The Commission will assess whether each filing satisfies the proposed requirements and issue further orders for each RTO and ISO.

284. For the proposed requirements under demand response, the filing addressing ancillary services and deviation charges, and the filing for ARCs and shortage pricing must be submitted within six months of the date

the final rule is published in the **Federal Register**.

285. The filing to comply with the proposed requirements regarding long-term contracts, MMU reforms and RTO responsiveness must be submitted within six months of the date the final rule is published in the **Federal Register**.

**VI. Information Collection Statement**

286. The Office of Management and Budget (OMB) regulations require approval of certain information collection requirements imposed by agency rules.<sup>287</sup> Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number. This NOPR amends the Commission's regulations to improve the operation of organized wholesale electric power markets. The objective of this proposed rule is to improve market design and competition in organized markets. Through this rule the Commission hopes to provide remedies by ensuring (1) that new criteria are established so RTOs and ISOs are responsive to their customers and stakeholders; (2) improve market monitoring within RTOs and ISOs by requiring them to provide their Market Monitoring Units with access to

market data and sufficient resources to perform their duties; (3) transparency in the marketplace by requiring RTOs and ISOs to dedicate portions of their Web sites so market participants can avail themselves of information concerning offers to buy or sell power on a long-term basis; and (4) require RTOs and ISOs to institute certain reforms in the demand response programs to remove several disincentives and barriers to provide for more efficient operation of markets while at the same time encouraging new technologies. Filings by RTOs and ISOs would be made under Part 35 of the Commission's regulations. The information provided for under Part 35 is identified as FERC-516.

287. The Commission is submitting these reporting requirements to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act.<sup>288</sup> Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques.

*Burden Estimate:* The Public Reporting burden for the requirements contained in the NOPR is as follows:

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FERC-516 Task Allow demand response to provide certain ancillary services .....	6	1	433	2,598
Remove certain deviation charges .....	5	1	288	1,440
Permit aggregation of Retail Customers .....	6	1	102.5	615
Allow pricing to ration demand during a shortage .....	6	1	649	3,894
Long-term contract postings .....	6	1	30	180
MMUs .....	6	1	129	774
Require RTO board responsiveness to customers .....	6	1	180	1080
Require RTO self-assessment .....	6	1	650	3,900
<b>Totals .....</b>				<b>14,481</b>

*Total Annual Hours for Collection:* (Reporting + recordkeeping, (if appropriate)) = Total hours for performing tasks 1 through 8 as identified above = 14,481 hours.

*Information Collection Costs:* The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost to be:

Legal expertise = \$473,526 (2,368 hours @ \$200 an hour)

Technical Expertise = \$712,038 (4,747 hours @ \$150 an hour) (RTO/ISO Senior Staff, Stakeholder participants)  
 Administrative Support = \$108,701 (2,718 hours @ \$40 an hour)  
 IT Support = \$236,448 (2,489 hours @ \$95 an hour)  
 Participatory Expenditures = \$2,160,000 (96 participants @ \$1,000 per day on average 4.5 days per activity for five of the eight activities identified above)  
 Total = \$3,690,713

\* Differences in RTO/ISO staff hourly rates are to differentiate between administrative support staff and senior staff.

Total cost estimates: \$3,690,713.  
 Title: FERC-516 "Electric Rate Schedule Filings".

Action: Proposed Collections.  
 OMB Control No: 1902-0096.  
 Respondents: Business or other for profit, and/or not for profit institutions.  
 Frequency of Responses: One time to initially comply with the rule, and then

<sup>287</sup> 5 CFR 1320.11 (2007).

<sup>288</sup> 44 U.S.C. 3507(d) (2000).

on occasion as needed to revise or modify.

**Necessity of the Information:** This proposed rule, if adopted, would further the improvement of competitive wholesale electric markets and the provision of transmission services in the RTO and ISO regions. The Commission recognizes that significant differences exist among the regions, industry structures, and sources of electric generation, population demographics and even weather patterns. In fulfilling its responsibilities under sections 205 and 206 of the Federal Power Act, the Commission is required to address, and has the authority to remedy, undue discrimination and anticompetitive effects.

**Internal review:** The Commission has reviewed the requirements pertaining to transmission organizations with organized electricity markets and determined the proposed requirements are necessary to meet the provisions of the Federal Power Act.

288. These requirements conform to the Commission's plan for efficient information collection, communication and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

289. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, Attention: Michael Miller, Office of the Executive Director, Phone: (202) 502-8415, fax: (202) 273-0873, e-mail: [michael.miller@ferc.gov](mailto:michael.miller@ferc.gov). Comments on the requirements of the proposed rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Energy Regulatory Commission, fax (202) 395-7285, e-mail: [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov).

## VII. Environmental Analysis

290. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.<sup>289</sup> The Commission concludes that neither an Environmental Assessment nor an Environmental Impact statement is required for this NOPR under section

380.4(a)(15) of the Commission's regulations, which provides a categorical exemption for approval of actions under sections 205 and 206 of the FPA relating to the filing of schedules containing all rates and charges for the transmission or sale subject to the Commission's jurisdiction, plus the classification, practices, contracts, and regulations that affect rates, charges, classifications, and services.<sup>290</sup>

## VIII. Regulatory Flexibility Act Certification

291. The Regulatory Flexibility Act of 1980 (RFA)<sup>291</sup> generally requires a description and analysis of rules that will have significant economic impact on a substantial number of small entities. Most, if not all, of the transmission organizations to which the requirements of this rule would apply do not fall within the definition of small entities.<sup>292</sup>

Those entities to be impacted directly by this rule include the following:

- California Independent Service Operator Corp. (CAISO) is a nonprofit organization comprised of more than 90 electric transmission companies and generators operating in its markets and serving more than 30 million customers.
- New York Independent System Operator, Inc. (NYISO) is a nonprofit organization that oversees wholesale electricity markets serving 19.2 million customers. NYISO manages a 10,775-mile network of high-voltage lines.
- PJM Interconnection, LLC (PJM) is comprised of more than 450 members including power generators, transmission owners, electricity distributors, power marketers and large industrial customers and serving 13 states and the District of Columbia.
- Southwest Power Pool, Inc. (SPP) is comprised of 50<sup>+</sup> members serving 4.5 million customers in 8 states and has 52,301 miles of transmission lines.
- Midwest Independent Transmission System Operator, Inc. (Midwest ISO) is a nonprofit organization with over

131,000 megawatts of installed generation. Midwest ISO has 93,600 miles of transmission lines and serves 15 states and one Canadian province.

- ISO New England Inc. (ISO-NE) is a regional transmission organization serving 6 states in New England. The system is comprised of more than 8,000 miles of high voltage transmission lines and several hundred generating facilities of which more than 350 are under ISO-NE's direct control.

Therefore, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

## IX. Comment Procedures

292. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due April 21, 2008. Comments must refer to Docket Nos. AD07-7-000 and RM07-19-000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

293. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

294. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

295. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

## X. Document Availability

296. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.gov>)

<sup>290</sup> 18 CFR 380.4(a)(15) (2007).

<sup>291</sup> 5 U.S.C. 601-12 (2000).

<sup>292</sup> The RFA definition of "small entity" refers to the definition provided in the Small Business Act, which defines a "small business concern" as a business that is independently owned and operated and that is not dominant in its field of operation. See 5 U.S.C. 601(3), citing to Section 3 of the Small Business Act, 15 U.S.C. 632 (2000). The Small Business Size Standards component of the North American Industry Classification system defines a small utility as one that, including its affiliates is primarily engaged in the generation, transmission, or distribution of electric energy for sale, and whose total electric output for the preceding fiscal years did not exceed 4 MWh. 13 CFR 121.202 (Sector 22, Utilities, North American Industry Classification System, NAICS) (2004).

<sup>289</sup> *Regulations Implementing the National Environmental Policy Act*, Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426.

297. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

298. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202-502-6652 (toll free at 1-866-208-3676) or e-mail at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

#### List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By direction of the Commission. Commissioner Kelly concurring in part and dissenting in part with a separate statement attached. Commissioner Wellinghoff concurring with a separate statement attached.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

In consideration of the foregoing, the Commission proposes to amend part 35, Chapter I, Title 18, of the *Code of Federal Regulations*, as follows:

#### PART 35—FILING OF RATE SCHEDULES AND TARIFFS

1. The authority citation for part 35 continues to read as follows:

**Authority:** 16 U.S.C. 791a-825r, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352.

2. Amend § 35.28 as follows:

a. Amend paragraph (b) to add paragraphs (b)(4), (b)(5), (b)(6), and (b)(7).

b. Add a new paragraph (g).

#### § 35.28 Non-discriminatory open access transmission tariff.

\* \* \* \* \*

(b) \* \* \*

(4) *Demand response* means a reduction in the consumption of electric energy by customers from their expected consumption in response to an increase in the price of electric energy or to incentive payments designed to induce lower consumption of electric energy.

(5) *Demand response resource* means a resource capable of providing demand response.

(6) An *operating reserve shortage* means a period when the amount of available supply falls short of demand plus the operating reserve requirement.

(7) *Market Monitoring Unit (MMU)* means the person or entity responsible for carrying out the market monitoring functions which the Commission has ordered Commission-approved ISOs and RTOs to perform.

\* \* \* \* \*

(g) *Tariffs and operations of Commission-approved ISOs and RTOs*—(1) Demand response and pricing. (i) *Ancillary services provided by demand response resources.* (A) Every Commission-approved ISO and RTO that operates organized markets based on competitive bidding for energy imbalance, spinning reserves, supplemental reserves, reactive power and voltage control, and regulation and frequency response ancillary services (or its functional equivalent in the Commission-approved ISO's or RTO's tariff) must accept bids from demand response resources in these markets for that product on a basis comparable to any other resources, if the demand response resource meets the necessary technical requirements under the tariff and submits a bid under the Commission-approved ISO's or RTO's bidding rules at or below the market-clearing price, unless the laws or regulations of the relevant retail regulatory authority do not permit a retail customer to participate.

(B) The Commission-approved ISO or RTO must allow providers of a demand response resource to specify the following in their bids:

(1) A maximum duration in hours that the demand response resource may be dispatched;

(2) A maximum number of times that the demand response resource may be dispatched during a day; and

(3) A maximum amount of electric energy that the demand response resource may be required to provide either daily or weekly.

(ii) *Removal of deviation charges.* A Commission-approved ISO or RTO with a tariff that contains a day-ahead and a real-time market may not assess a charge to a purchaser of electric energy in its day-ahead market for purchasing less power in the real-time market during a real-time market period for which the Commission-approved ISO or RTO declares an operating reserve shortage or makes a generic request to reduce load to avoid an operating reserve shortage.

(iii) *Aggregation of retail customers.* Commission-approved ISOs or RTOs

must permit a qualified aggregator of retail customers to bid a demand response on behalf of retail customers directly into the Commission-approved ISO's or RTO's organized markets, unless the laws and regulations of the relevant electric retail regulatory authority do not permit a retail customer to participate.

(iv) *Price formation during periods of operating reserve shortage.* (A) Commission-approved ISOs and RTOs must modify their market rules to allow the market-clearing price during periods of operating reserve shortage to reach a level that rebalances supply and demand so as to maintain reliability while providing sufficient provisions for mitigating market power.

(B) A Commission-approved ISO or RTO may phase in this modification of its market rules.

(2) *Long-term power contracting in organized markets.* A Commission-approved ISO or RTO must provide a portion of its Web site for market participants to post offers to buy or sell power on a long-term basis.

(3) *Market monitoring policies.* (i) Commission-approved ISOs and RTOs must modify their tariff provisions governing their Market Monitoring Units to reflect the directives provided in Order No. [insert order number], including the following:

(A) Commission-approved ISOs and RTOs must include in their tariffs a provision to provide their Market Monitoring Units access to Commission-approved ISO and RTO market data, resources and personnel to enable the Market Monitoring Unit to carry out their functions.

(B) The tariff provision must provide the Market Monitoring Unit complete access to the Commission-approved ISO's and RTO's database of market information.

(C) The tariff provision must provide that any data created by the Market Monitoring Unit, including, but not limited to, reconfiguring of the Commission-approved ISO's and RTO's data, will be kept within the exclusive control of the Market Monitoring Unit.

(D) The Market Monitoring Unit must report to the Commission-approved ISO or RTO board of directors, with its management members removed, or to an independent committee of the Commission-approved ISO or RTO board of directors. A Commission-approved ISO and RTO that has both an internal MMU and an external MMU may permit the internal MMU to report to management and the external MMU to report to the Commission-approved ISO or RTO board of directors with its management members removed, or to an

independent committee of the Commission-approved ISO or RTO board of directors.

(E) Commission-approved ISOs and RTOs may not alter the reports generated by the Market Monitoring Unit, or dictate the conclusions reached by the Market Monitoring Unit.

(F) Commission-approved ISOs and RTOs must consolidate the core Market Monitoring Unit provisions into one section in their tariffs as provided in paragraph (g)(6) of this section.

(ii) *Functions of Market Monitoring Unit.* The Market Monitoring Unit must perform the following functions:

(A) Evaluate existing and proposed market rules, tariff provisions and market design elements for their effectiveness and recommend proposed rule and tariff changes to the Commission-approved ISO or RTO, to the Commission's Office of Energy Market Regulation staff and to other interested entities such as state commissions and market participants.

(B) Review and report on the performance of the wholesale markets to the Commission-approved ISO or RTO, the Commission, and other interested entities such as state commissions and market participants on at least a quarterly basis and submit a more comprehensive annual state of the market report. The Market Monitoring Unit may issue additional reports as necessary.

(C) Identify and notify the Commission's Office of Enforcement staff of instances in which a market participant's or the Commission-approved ISO's or RTO's behavior may require investigation, including, but not limited to, suspected rule or tariff violations, market manipulation, inappropriate dispatch, and suspected violations of Commission-approved rules and regulations.

(D) The Market Monitoring Unit, whether internal or external, may not participate in the administration of the Commission-approved ISO's or RTO's tariff, including mitigation.

(iii) *Market Monitoring Unit ethical standards.* Commission-approved ISOs and RTOs must include ethical standards for employees in their Market Monitoring Units. At a minimum, the ethical standards must include the following requirements:

(A) Market Monitoring Unit employees must have no material affiliation with any market participant or affiliate.

(B) Market Monitoring Unit employees must not serve as an officer, employee, or partner of a market participant.

(C) Market Monitoring Unit employees must have no material financial interest in any market participant or affiliate with potential exceptions for mutual funds and non-directed investments.

(D) Market Monitoring Unit employees must not engage in any market transactions other than the performance of their duties under the tariff.

(E) Market Monitoring Unit employees must not be compensated for any expert witness testimony or other commercial services to the Commission-approved ISO or RTO or to any other party in connection with any legal or regulatory proceeding or commercial transaction relating to the Commission-approved ISO or RTO or to the Commission-approved ISO or RTO markets.

(F) Market Monitoring Unit employees may not accept anything of value from a market participant in excess of a *de minimis* amount.

(G) Market Monitoring Unit employees must advise a supervisor in the event they seek employment with a market participant, and must disqualify themselves from participating in any matter that would have an effect on the financial interest of the market participant.

(4) *Offer and bid data.* (i) Unless a Commission-approved ISO or RTO obtains Commission approval for a different period, Commission-approved ISOs and RTOs must release their offer and bid data within three months.

(ii) Commission-approved ISOs and RTOs may mask the identity of market participants when releasing offer and bid data.

(5) *Responsiveness of Commission-approved ISOs and RTOs.* Commission-approved ISOs and RTOs must adopt business practices and procedures that achieve Commission-approved ISO and RTO board of directors' responsiveness to customers and other stakeholders and satisfy the following criteria:

(i) *Inclusiveness.* The practices and procedures must ensure that any customer or stakeholder affected by the operation of the Commission-approved ISO or RTO, or its representative, is permitted to communicate its views to the RTO or ISO board;

(ii) *Fairness in balancing diverse interests.* The practices and procedures must ensure that the interests of customers or other stakeholders are equitably considered and that deliberation and consideration of Commission-approved ISO and RTO issues are not dominated by any single stakeholder category;

(iii) *Representation of minority positions.* The practices and procedures must ensure that, in instances where stakeholders are not in total agreement on a particular issue, minority positions are communicated to the board of directors at the same time as majority positions; and

(iv) *Ongoing responsiveness.* The practices and procedures must provide for stakeholder input into RTO or ISO decisions as well as mechanisms to provide feedback to stakeholders to ensure that information exchange and communication continue over time.

(6) *Compliance filings.* All Commission-approved ISOs and RTOs must make a compliance filing with the Commission as described in Order No. [insert order number] under the following schedule:

(i) The compliance filing addressing the accepting of bids from demand response resources in markets for ancillary services on a basis comparable to other resources, removal of deviation charges, aggregation of retail customers, shortage pricing during periods of operating reserve shortage, long-term power contracting in organized markets, Market Monitoring Units, Commission-approved ISO and RTO board of directors' responsiveness, and reporting on the study of the need for further reforms to remove barriers to comparable treatment of demand response resources must be submitted on or before [insert date that is six months after date of publication of Final Rule in the **Federal Register**].

(ii) A public utility that is approved as a Regional Transmission Organization under § 35.34 of this part, or that is not approved but begins to operate regional markets for electric energy or ancillary services after [insert effective date of Final Rule], must comply with Order No. [insert order number] and the provisions of paragraphs (g)(1) through (g)(5) of this section before beginning operations.

**Note:** The following appendices will not appear in the Code of Federal Regulations.

#### **Appendix A: Commenter Acronyms Commenters to the ANOPR in Docket Nos. RM07-19-000 and AD07-7-000**

AARP, *et al.*—AARP; American Antitrust Institute; American Chemistry Council; American Forest & Paper Association; American Iron and Steel Institute; American Municipal Power—Ohio; American Public Power Association; Association of Businesses Advocating Tariff Equity; Citizen Power; Citizens Utility Board of Illinois; Coalition of Midwest Transmission Customers; Colorado Office of Consumer Counsel; Consumer Federation of America; Council of Industrial Boiler Owners; Democracy and Regulation;



Electricity Consumers Resource Council; Florida Industrial Power Users Group; Illinois Industrial Energy Consumers; Illinois Public Interest Research Group; Industrial Energy Consumers of America; Industrial Energy Consumers of Pennsylvania; Industrial Energy Users—Ohio; Louisiana Energy Users Group; Maryland Office of the People's Counsel; Maryland Public Interest Research Group; Missouri Industrial Energy Consumers; National Association of State Utility Consumer Advocates; NEPOOL Industrial Customer Coalition; Office of the People's Counsel of the District of Columbia; Ohio Hospital Association; Ohio Manufacturers' Association; Ohio Partners for Affordable Energy; PJM Industrial Customer Coalition; Portland Cement Association; Power in the Public Interest, Public Citizen, Inc.; Public Utility Law Project of New York, Inc.; Steel Manufacturers Association; West Virginia Energy Users Group; Wisconsin Industrial Energy Group, Inc.; and Wisconsin Paper Council.

AEP—American Electric Power Service Corporation.

Alcoa—Alcoa, Inc.

Allegheny Energy—Allegheny Power and Allegheny Energy Supply Company, LLC.

Ameren—Ameren Services Company.

American Forest—American Forest & Paper Association.

APPA—American Public Power Association.

ATC—American Transmission Company, LLC.

AWEA—American Wind Energy Association.

Blue Ridge—Blue Ridge Power Agency.

BlueStar Energy—BlueStar Energy Services, Inc.

BP Energy—BP Energy Company.

Cal DWR—California Department of Water Resources State Water Project.

CAISO—California Independent System Operator Corporation.

California Munis—California Municipal Utilities Association.

California PUC—California Public Utilities Commission.

COMPETE Coalition—171 various entities.

COMPETE, *et al.*—7-Eleven, Inc.;

Allegheny Energy; Alliance for Real Energy Options; Alliance for Retail Choice, Alliance for Retail Energy Markets; Alliance for Retail Markets; Ardmore Power Logistics; Professor Ross Baldick, IEEE Fellow, Department of Electrical and Computer Engineering, The University of Texas at Austin; Big Lots Stores, Inc.; Nora Mead Brownell, BC Consulting, former FERC Commissioner and former PaPUC Commissioner; H. Sterling Burnett, Ph.D., Senior Fellow, National Center for Policy Analysis; California Alliance for Competitive Energy Solutions; California Grocers Association; California Retailers Association; Laura Chappelle, Attorney, former Chairman, MI PSC; Colorado Independent Energy Association; Constellation Energy; Comverge, Maryland; DC Energy, LLC; David W. DeRamus, Partner, Bates White, LLC; Direct Energy Services, LLC; Richard A. Drom, Partner, Powell Goldstein LLP; Edison Mission Energy; Electric Power Supply Association; Electric

Power Generation Association; Energy Association of Pennsylvania; Energy Curtailment Specialists, Inc.; Enermetrix; Enerwise Global Technologies; Exelon Corporation; FirstEnergy Corp.; William L. Flynn, Partner, Harris Beach PLLS, former Chairman, NY PSC; John Hanger, former PaPUC Commissioner; Hess Corp.; William W. Hogan, Raymond Plank Professor of Global Energy Policy, John F. Kennedy School of Government, Harvard University; Illinois Energy Association; Independent Power Producers of New York; JC Penny; Kimball Resources, Inc.; Jerry J. Langdon, former FERC Commissioner; LS Power Associates, LP; Luminant; Macy's Inc., Midwest Independent Power Suppliers; Mirant Corporation; Elizabeth A. Moler, Exelon Corp., former Chair of FERC; National Energy Marketers Association; New England Energy Alliance; New England Power Generators Association, Inc.; Northwest and Intermountain Power Producers Coalition; NRG Energy, Inc.; Nuclear Energy Institute; PennFuture; PetSmart, Inc.; Piney Creek LP; PJM Power Providers Group; PowerGrid Systems, Inc.; PPL Corporation; Priority Power Management, Ltd.; PSEG Companies; John M. Quain, Buchanan Ingersoll & Rooney PC, former Chairman of PaPUC; Reliant Energy; Retail Energy Suppliers Association; Safeway, Inc.; School Project for Utility Rate Reduction; Sempra Energy; Shell Energy North America; Silicon Valley Leadership Group; Vernon L. Smith, Nobel Laureate, Professor of Economics and Law, Chapman University; David A. Svanda, Svanda Consulting, former MI PSC Commissioner and former President of NARUC; Glen Thomas, GT Power, former Chairman of PaPUC; Telga Corporation; Texas Competitive Power Advocates; TXU Energy; Wal-Mart Stores, Inc.; Western Power Trading Forum; and Pat Wood, III, former Chairman of FERC and the PUCT.

Comverge—Comverge, Inc. Connecticut and Massachusetts Municipals—Connecticut Municipal Electric Energy Cooperative and Massachusetts Municipal Wholesale Electric Company.

Constellation—Constellation Energy Commodities Group, Inc.; Constellation NewEnergy, Inc.; and Constellation Generation Group, LLC.

DC Energy—DC Energy, LLC.

Detroit Edison—Detroit Edison Company.

Dominion Resources—Dominion Resources Services, Inc.

Duke Energy—Duke Energy Corporation.

Dynegy—Dynegy Power Corporation.

EEI—Edison Electric Institute and Alliance of Energy Suppliers.

Energy Connect—Energy Connect, Inc. Energy Curtailment—Energy Curtailment Specialists, Inc.

EnerNOC—EnerNOC, Inc.

EPSA—The Electric Power Supply Association.

Exelon—Exelon Corporation.

FTC—Federal Trade Commission.

FirstEnergy—FirstEnergy Service Company, on behalf of FirstEnergy Solutions Corp. and the transmission and distribution owning utility subsidiaries of FirstEnergy Corp.; American Transmission Systems, Inc.; The Cleveland Electric Illuminating

Company; Jersey Central Power and Light Company; Metropolitan Edison Company; Ohio Edison Company; Pennsylvania Electric Company; Pennsylvania Power Company; and The Toledo Edison Company.

Mr. Hogan—William W. Hogan and Susan L. Pope.

Indianapolis P&L—Indianapolis Power and Light Company.

Industrial Coalitions—Coalition of Midwest Transmission Customers; NEPOOL Industrial Customer Coalition; and PJM Industrial Customer Coalition.

Industrial Consumers—Electricity Consumers Resource Council; American Iron and Steel Institute; and American Chemistry Council.

ISO-NE—ISO New England, Inc.

ISO/RTO Council—ISO/RTO Council; California Independent System Operator Corporation; ISO New England, Inc.; the Midwest Independent Transmission System Operator, Inc.; New York Independent System Operator, Inc.; PJM Interconnection, LLC; Southwest Power Pool.

ITC—International Transmission Company and Michigan Electric Transmission Company, LLC.

Integrus—Integrus Energy Services, Inc.

J. Aron, Barclays, Morgan Stanley—J. Aron & Company, Barclays Capital, and Morgan Stanley Capital Group Inc.

Joint Consumer Advocates—Ohio Consumers Counsel; District of Columbia Office of the People's Counsel; Pennsylvania Office of Consumer Advocate; Illinois Citizens Utility Board; Maryland Office of People's Counsel; and New Jersey Department of the Public Advocate, Division of Rate Counsel.

Kansas CC—Kansas Corporation Commission.

LPPC—Large Public Power Council. Massachusetts AG—Massachusetts Attorney General.

Mr. McCullough—Robert McCullough.

Midwest ISO—Midwest Independent Transmission System Operator, Inc.

Midwest ISO TOs—Midwest ISO Transmission Owners.

Mirant—Mirant Corporation.

NARUC—National Association of Regulatory Utility Commissions.

National Energy Marketers—National Energy Marketers Association.

National Grid—National Grid USA.

NEPOOL Participants—NEPOOL Participants Committee.

New England Conference—New England Conference of Public Utilities Commissioners; Connecticut Department of Public Utility Control; Massachusetts Department of Public Utilities; Massachusetts Department of Energy Resources; New Hampshire Public Utilities Commission; Rhode Island Public Utilities Commission; the Vermont Department of Public Service; and Vermont Public Service Board.

New England Power Generators—New England Power Generators Association.

New York PSC—New York State Public Service Commission.

NJBPU—New Jersey Board of Public Utilities.

NJ BPU Commissioner Bator—New Jersey Board of Public Utilities Commissioner Christine V. Bator.

North Carolina Commission—North Carolina Utilities Commission; Public Staff—North Carolina Utilities Commission; and the Attorney General of the State of North Carolina.

North Carolina Electric Membership—North Carolina Electric Membership Corporation.

Northeast Utilities—Northeast Utilities. NRECA—National Rural Electric Cooperative Association.

NRG—NRG Energy, Inc.

NSTAR—NSTAR Electric Company.

NYISO—New York Independent System Operator Corp.

NY TOs—New York Transmission Owners.

Ohio PUC—Public Utilities Commission of Ohio.

Old Dominion—Old Dominion Electric Cooperative.

OMS—Organization of MISO States.

OPSI—Organization of PJM States, Inc.

Otter Tail—Otter Tail Power Company.

Pennsylvania PUC—Pennsylvania Public Utilities Commission.

Pepeco—Pepeco Holdings, Inc.; Delmarva Power & Light Company; Atlantic City Electric Company; Connectiv Energy Supply Inc.; and Pepeco-Energy Services, Inc.

PGC—PGC Electricity Committee.

PG&E—Pacific Gas and Electric Company.

PJM—PJM Interconnection, LLC.

PJM Power Providers—PJM Power Providers Group.

PJM MMU—Independent Market Monitoring Unit of PJM.

Portland Cement—Portland Cement Association.

Portland Cement Association, *et al.*—Multiple Intervenors; PJM Industrial Customer Coalition; Connecticut Industrial Energy Consumers; Industrial Energy Users—Ohio; Mittal Steel USA, Inc.

Potomac Economics—Potomac Economics, Inc.

Power in Public Interest—Power in the Public Interest.

PPL Parties—PPL Parties.

PSEG—PSEG Companies: Public Service Electric and Gas Company; PSEG Power LLC and PSEG Energy Resources & Trade LLC.

Public Interest Organizations—Center for Energy Efficiency & Renewable Technologies; Connecticut Office of Consumer Counsel; Conservation Law Foundation; Delaware Division of the Public Advocate; Environmental Law & Policy Center; Fresh Energy, Natural Resources Defense Council; New Hampshire Office of Consumer Advocate; Office of the Ohio Consumers' Counsel; Pace Energy Project; Project for Sustainable FERC Energy Policy; Renewable Northwest Project; Union of Concerned Scientists and West Wind Wires.

Reliant—Reliant Energy, Inc.

Safeway—Safeway, Inc.

Silicon Valley Power—Silicon Valley Power.

SMUD—Sacramento Municipal Utility District.

SoCal Edison-SDG&E—Southern California Edison Company and San Diego Gas & Electric.

SPP—Southwest Power Pool, Inc.

Steel Manufacturers—Steel Manufacturers Association.

Steel Producers—Steel Producers.

Strategic Energy—Strategic Energy, LLC.

SUEZ—SUEZ Energy North America, Inc.

TAPS—Transmission Access Policy Study Group.

The Alliance—The Alliance For Retail Energy Markets.

Utility Savings—Utility Savings & Refund, LLC.

Wal-Mart—Wal-Mart Stores, Inc.

Wisconsin Industrial—Wisconsin

Industrial Energy Group.

WSPP—WSPP Inc.

Xcel—Xcel Energy Services, Inc., on behalf of Northern States Power Company; Northern States Power Company; Wisconsin, Public Service Company of Colorado; and Southwestern Public Service Company.

#### United States of America Federal Energy Regulatory Commission

Wholesale Competition in Regions With Organized Electric Markets—Docket Nos. RM07-19-000 AD07-7-000

Issued February 22, 2008.

KELLY, Commissioner, *concurring in part and dissenting in part:*

I support many of the efforts enumerated in the Notice of Proposed Rulemaking (NOPR) which requests comment on proposals to improve the operation of wholesale electric markets. I believe that it is extremely important that we ensure that wholesale markets are competitive thereby allowing the Commission to fulfill our statutory mandate to ensure adequate and reliable non-discriminatory service at just and reasonable rates. Unfortunately, I am concerned regarding the potential impact of several of the proposals related to demand response, market monitoring, and promoting regional transmission organization (RTO)/independent system operator (ISO) responsiveness.

I continue to be troubled by the NOPR's proposal in the Market Rules Governing Price Formation During Periods of Operating Reserve Shortage section. This section would attempt to stimulate demand response by allowing RTOs/ISOs to implement scarcity pricing by modifying market power mitigation rules in organized markets, such as raising energy supply offer caps and demand bid caps. I appreciate the efforts made in the NOPR to address market power associated with scarcity pricing and to ensure that there is an adequate record regarding any scarcity pricing proposal, including soliciting the views of each RTO/ISO market monitor on any proposed reform in this area. However, these positive changes in the NOPR proposal have not alleviated my concerns regarding the very real impacts on customers associated with raising energy supply offer caps and demand bid caps in emergency situations.

I believe that absent appropriate resource adequacy requirements and the necessary demand response infrastructure to give consumers the ability to respond to higher prices, it is not responsible to allow energy supply offer caps and demand bid caps to rise without regard to the impacts on consumers. I do not per se oppose scarcity pricing. However, I believe that there is a crucial timing issue that we must consider

regarding any scarcity pricing proposal. Prior to implementing scarcity pricing in any market, we must have resources in place to meet demand. One essential way to accomplish this goal is through resource adequacy requirements. If a market is resource adequate, then there will be fewer emergency situations and, when those emergencies do occur, having demand response in place will help reduce prices in times of scarcity. Therefore, resource adequacy requirements and the ability of demand response to participate in a market go hand in hand with protecting consumers from market power and thereby making scarcity pricing proposals just and reasonable.

Some may look at this as a chicken and egg debate where if we allow energy supply offer caps and demand bid caps to increase without restraint this will raise prices thereby encouraging additional generation and demand response to enter the market. On the other hand, what happens in the meantime to consumers as we allow prices to rise without restraint and we are still waiting for these theoretical incentives to building adequate generation and demand response infrastructure to kick in? We must never lose sight of the interests of consumers as we engage in this kind of philosophical debate because they will be the ones who will lose out if we miscalculate. The necessary generation and demand response infrastructure must be in place prior to allowing energy supply offer caps and demand bid caps to rise or be eliminated. Unfortunately, this is not the case. As Commission staff noted in the *2006 FERC Staff Demand Response Assessment*, advanced metering currently has low market penetration of less than six percent in the United States.<sup>293</sup> This means that consumers do not have the tools they need in order to make choices regarding rising prices and respond accordingly.

On the issue of market monitoring, I disagree with the NOPR's proposal to remove market monitors from tariff administration, particularly market power mitigation. I believe that market monitoring units (MMUs) should continue to perform mitigation. The NOPR states that the issue of removing MMUs from mitigation "proved to be the most contentious one in the entire market monitoring section."<sup>294</sup> This is for good reason. As Portland Cement noted in its comments, "The MMU's are better positioned to make determinations regarding the exercise of market power than are the RTO/ISO staff members who frequently have long standing close personal relationships with the very market participants whose actions at times need to be mitigated."<sup>295</sup> Further, I agree with Portland Cement's statement that having RTO/ISO staff mitigate creates a much greater conflict of interest than any incidental

<sup>293</sup> *Assessment of Demand Response and Advanced Metering: Staff Report*, Docket No. AD06-2-000, at 26 (2006) (2006 FERC Staff Demand Response Assessment).

<sup>294</sup> *Wholesale Competition in Regions with Organized Electric Markets*, Notice of Proposed Rulemaking, 122 FERC ¶ 61,617, at P 202 (2008).

<sup>295</sup> Portland Cement Association Aug. 16, 2007 Comments, Docket Nos. AD07-7, RM07-19, at 19.

conflict created by having the internal MMU both mitigate and report on the functioning of the markets.<sup>296</sup> The New York Independent System Operator (NYISO) also agrees that the concerns expressed in support of removing the MMU from mitigation are misplaced.<sup>297</sup> NYISO further stated that "[t]here is no reason to fear that a market monitor would hesitate to report market power problems or potential market abuses just because it was involved in implementing mitigation measures in that market."<sup>298</sup> BP Energy asserts that "shifting the mitigation responsibility to RTO staff gives rise to a much larger conflict of interest than exists with having mitigation responsibility lie with the independent MMU exclusively."<sup>299</sup> Therefore, I disagree with the NOPR's proposal to remove MMUs from mitigation.

Additionally, I would have strengthened the market monitoring section. For example, the NOPR proposes to retain existing provisions regarding the confidentiality of the progress and results of the Commission's own investigations. I believe that, subject to appropriate confidentiality limitations, the Commission should provide MMUs with information on referrals that the MMU provides to the Commission. I would also have supported requiring RTOs/ISOs to file tariff provisions to allow them to take enforcement action with respect to objectively identifiable behavior that does not subject the seller to sanctions or consequence other than those expressly approved by the Commission and set forth in the tariff and with the right of appeal, consistent with the *Policy Statement on Market Monitoring Units*.<sup>300</sup>

Further, I disagree with the NOPR's proposal to promote responsiveness of RTOs/ISOs by allowing them to adopt hybrid boards with stakeholder members. Providing for stakeholder representatives on an RTO/ISO board is inconsistent with an independent governing structure. The Commission has already spoken clearly on the importance of RTOs/ISOs being independent of market participants. Having an independent board is the cornerstone of RTO/ISO policy. Order Nos. 888<sup>301</sup> and 2000<sup>302</sup> require that an RTO/ISO be

independent from market participants in order to provide regional transmission and energy market services on a non-discriminatory basis. If an RTO or ISO adopted a hybrid board, I do not believe they could be categorized as independent. Additionally, I believe that an RTO or ISO with a hybrid board jeopardizes the ability of the Commission to apply the independent entity variation standard found in Order No. 2003 when considering modifications to such an RTO or ISO's *pro forma* Large Generator Interconnection Procedures (LGIP) and Large Generator Interconnection Agreement (LGIA).<sup>303</sup>

I also fear that a board with independent and non-independent members will suffer from a divisive atmosphere with suspicion as to whether non-independent board members were acting in the best interests of the RTO/ISO and its customers or in the best interest of the particular market participant represented by that non-independent board member. In contrast, I believe that the NOPR's proposal to encourage RTOs and ISOs to establish a stakeholder advisory committee would meet the NOPR's goal of improving RTO/ISO responsiveness without jeopardizing the fundamental independence of RTOs/ISOs. I also believe consideration should be given to the RTO/ISO mission statement as a tool to respond to any continuing stakeholder need for more RTO/ISO accountability.

Finally, I support the long-term power contracting in organized markets section of the NOPR. I agree with the NOPR's suggestion that RTOs/ISOs conduct forums on long-term contracts to gather information and facilitate the exchange of ideas, similar to the one recently held by PJM. I believe that such forums will allow for an exchange of ideas on long-term contracting concerns and potentially foster solutions to these issues. I also agree that Commission staff should perform an analysis of the level of long-term contracting in organized market regions.

Accordingly, for the reasons stated above, I concur in part and dissent in part on this NOPR.

Suede G. Kelly.

#### United States of America Federal Energy Regulatory Commission

Wholesale Competition in Regions With Organized Electric Markets—Docket Nos. RM07-19-000, AD07-7-000

Issued February 22, 2008.

WELLINGHOFF, Commissioner, *concurring*:

As the Commission states in this Notice of Proposed Rulemaking (NOPR), from the commencement of our first technical conference in this proceeding one year ago, our goal has been to identify specific reforms that can be made to optimize the efficiency of organized wholesale electric markets for

the benefit of customers and, ultimately, the consumers who pay for electricity services. This NOPR marks an important step toward that goal, and I am pleased to support its issuance.

I would like to draw attention to a few areas of this NOPR, on which I particularly encourage interested persons to submit comments.

In this NOPR, the Commission highlights the importance of demand response to the organized markets. The Commission states that demand response helps to reduce prices in competitive wholesale markets in several ways, such as by reducing generator market power and flattening an area's load profile. The Commission also recognizes that the need for, and the focus on, demand response will continue to increase.

The Commission makes several notable proposals in this NOPR related to demand response. One issue on which I encourage comments is the Commission's proposal to require each RTO and ISO to accept bids from demand response resources, on a basis comparable to any other resources, for ancillary services that are acquired in a competitive bidding process. The Commission states that this policy would increase the competitiveness of ancillary services markets, help reduce the price of ancillary services, and improve the reliability of the grid. I am interested in hearing from interested parties whether our proposals in this area are adequate to achieve those goals.

The Commission also states that we intend to direct our staff to convene a technical conference shortly after we receive comments on this NOPR to consider critical issues related to demand response, such as appropriate compensation for demand response and potential solutions to remaining barriers to comparable treatment of demand response. We also propose to require each RTO and ISO to submit a study on these critical issues within six months of the issuance of a Final Rule in this proceeding. Those studies would include proposed solutions along with a timeline for implementation. I encourage interested parties to provide comments on this approach and to identify particular issues or areas that should be addressed in these RTO and ISO studies.

In addition, I strongly encourage interested parties to comment on the Commission's proposal in this NOPR concerning market rules that govern price formation during periods of operating reserve shortage. It is important to note that these are infrequent periods when more resources, both generation and demand resources, are needed to maintain reliable electric service to consumers. I appreciate the extensive comments that we received on this issue in response to the ANOPR. I believe that this proposal in the NOPR is an improvement in several respects over the discussion in the ANOPR. Most notably, the Commission proposes to adopt requirements to ensure that proposals for pricing during periods of operating reserve shortage are designed to protect consumers against the exercise of market power and are supported by an adequate factual record. More specifically, we propose that a primary criterion for

<sup>296</sup> *Id.*

<sup>297</sup> NYISO Sept. 14, 2007 Comments, Docket Nos. AD07-7, RM07-19, at 23.

<sup>298</sup> *Id.* at 24 (citation omitted).

<sup>299</sup> BP Energy Company Sept. 14, 2007 Comments, Docket Nos. AD07-7, RM07-19, at 31.

<sup>300</sup> *Policy Statement on Market Monitoring Units*, 111 FERC ¶ 61,267, at P 5 (2005) (citation omitted).

<sup>301</sup> *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), order on reh'g, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (DC Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

<sup>302</sup> *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), order on reh'g, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (DC Cir. 2001).

<sup>303</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 26 (2003), order on reh'g, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, order on reh'g, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), order on reh'g, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (DC Cir. 2007).

approving such pricing proposals would be an adequate record demonstrating that provisions exist for mitigating market power and deterring gaming behavior, including, but not limited to, use of demand resources to discipline bidding behavior to competitive levels during periods of operating reserve shortage. I am particularly interested in receiving comments as to whether this and the other criteria proposed in this NOPR are appropriate, how the Commission should apply these criteria if we adopt them in a Final Rule, and whether there are additional criteria that we should consider in evaluating

an RTO's or ISO's proposal for pricing during a period of operating reserve shortage.

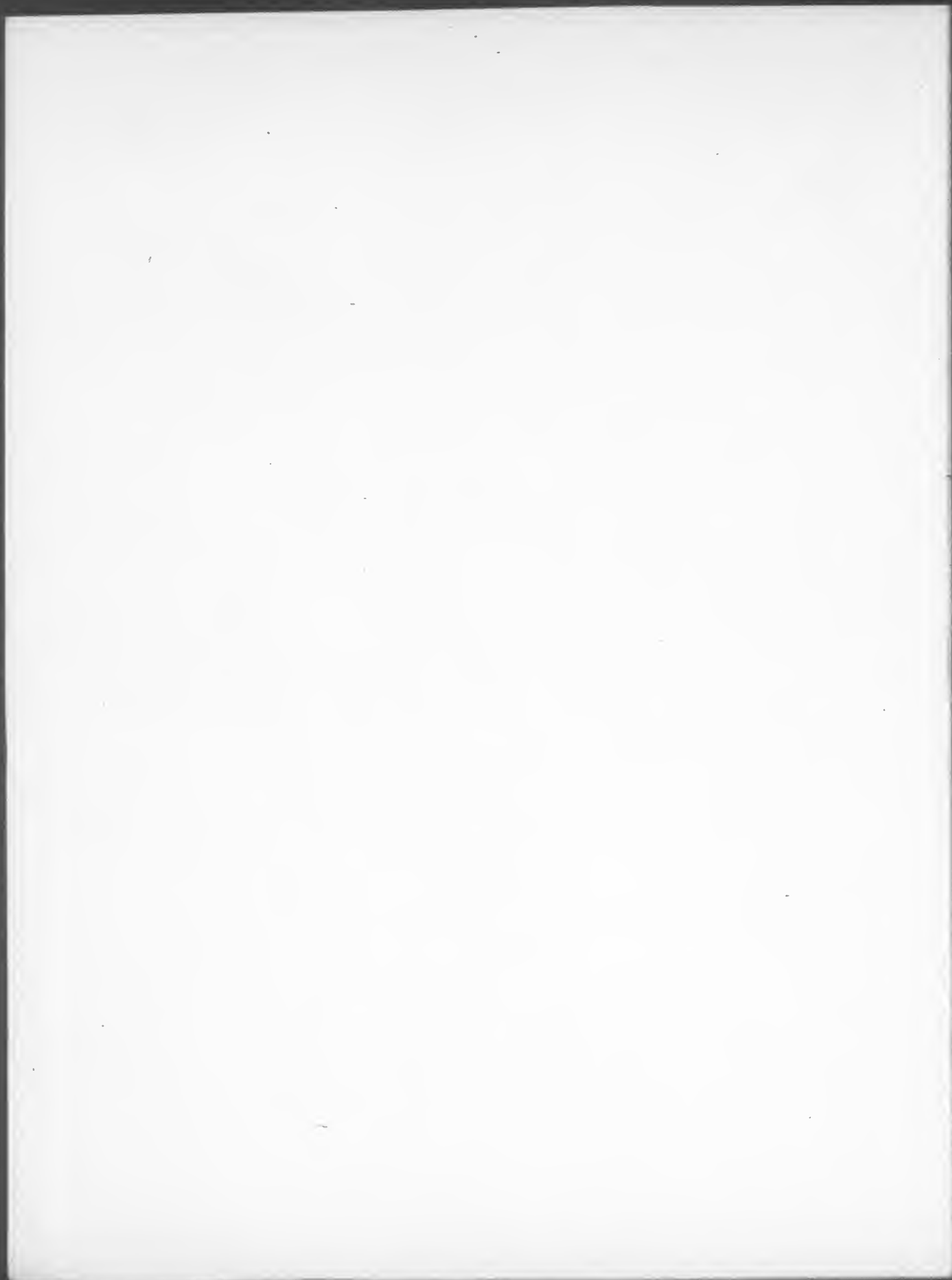
Finally, I would like to note that the Commission in this NOPR is directing each RTO or ISO to provide a forum for affected consumers to voice specific concerns (and to propose regional solutions) about market designs in its particular region, including concerns as to the value to the market of significant changes to the market rules. We are also directing our staff to convene a technical conference on two proposals that were submitted in comments in this proceeding. Through these and other steps

taken in this NOPR, it is my intention for the Commission to demonstrate how seriously we take our statement that the proposals in this NOPR do not represent our final effort to enhance the efficient functioning of competitive organized markets for the benefit of consumers.

Jon Wellinghoff,  
*Commissioner.*

[FR Doc. E8-3984 Filed 3-6-08; 8:45 am]

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# Federal Register

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Friday,  
March 7, 2008

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Part V

## Office of Management and Budget

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**Statistical Policy Directive No. 4: Release  
and Dissemination of Statistical Products  
Produced by Federal Statistical Agencies;  
Notice**

## OFFICE OF MANAGEMENT AND BUDGET

### Statistical Policy Directive No. 4: Release and Dissemination of Statistical Products Produced by Federal Statistical Agencies

**AGENCY:** Office of Management and Budget, Executive Office of the President.

**ACTION:** Notice of Final Decision.

**SUMMARY:** Under 44 U.S.C. 3504(e), the Office of Management and Budget (OMB) is issuing a new Statistical Policy Directive for the release and dissemination of statistical products produced by Federal statistical agencies. On August 1, 2007, OMB published a Notice of solicitation of comments on a draft of this directive in the *Federal Register* (72 FR 42266, August 1, 2007). A dozen respondents sent comments in response to the notice. Careful consideration was given to all comments. The disposition of the comments as well as the final directive are presented in the **SUPPLEMENTARY INFORMATION** section below.

In its role as coordinator of the Federal statistical system, 44 U.S.C. 3504(e) requires OMB, among other responsibilities, to ensure the efficiency and effectiveness of the system as well as the integrity, objectivity, impartiality, utility, and confidentiality of information collected for statistical purposes. It also requires OMB to develop and oversee the implementation of Governmentwide policies, principles, standards, and guidelines concerning the presentation and dissemination of statistical information. The Information Quality Act (Pub. L. 106-554, Division C, title V, Sec. 515, Dec. 21, 2000; 114 Stat. 2763A-153 to 2763A-154; 44 U.S.C. Section 3516 note) similarly requires OMB, as well as all other Federal agencies, to maximize the quality, objectivity, utility, and integrity of information, including statistical information, provided to the public.

To operate efficiently and effectively, our Nation relies on the flow of objective, credible statistics to support the decisions of governments, businesses, households, and other organizations. Any loss of trust in the integrity of the Federal statistical system and its products could lessen respondent cooperation with Federal statistical surveys, decrease the quality of statistical system products, and foster uncertainty about the validity of measures our Nation uses to monitor and assess its performance and progress.

To further support the quality and integrity of Federal statistical information, OMB is issuing a new Statistical Policy Directive designed to preserve and enhance the objectivity and transparency, in fact and in perception, of the processes used to release and disseminate the statistical products of Federal statistical agencies. The procedures in the directive are intended to ensure that statistical data releases adhere to data quality standards through equitable, policy-neutral, and timely release of information to the general public. Additional discussion of the directive and the directive itself may be found in the **SUPPLEMENTARY INFORMATION** section below.

**DATES:** *Effective Date:* The effective date of this Directive is April 7, 2008.

**ADDRESSES:** Please send any questions about this directive to: Katherine K. Wallman, Chief Statistician, Office of Management and Budget, 10201 New Executive Office Building, Washington, DC 20503, *telephone number:* (202) 395-3093, *FAX number:* (202) 395-7245. You may also send questions via E-mail to [DisseminationDirective@omb.eop.gov](mailto:DisseminationDirective@omb.eop.gov). Because of delays in the receipt of regular mail, electronic communications are encouraged.

**Electronic Availability:** This document is available on the Internet on the OMB Web site at [www.omb.gov/infocreg/ssp/dissemination](http://www.omb.gov/infocreg/ssp/dissemination).

**FOR FURTHER INFORMATION CONTACT:** Paul Bugg, 10201 New Executive Office Building, Washington, DC 20503, E-mail address: [pbugg@omb.eop.gov](mailto:pbugg@omb.eop.gov) with subject Dissemination Directive, *telephone number:* (202) 395-3095, *FAX number:* (202) 395-7245.

**SUPPLEMENTARY INFORMATION:** Trust in the accuracy, objectivity, and reliability of Federal statistics is essential to the ongoing and increasingly complex policy and planning needs of governmental and private users of these products. Consequently, there has been a long-standing concern about the need to maintain public confidence in the objectivity of Federal statistics. For example, in 1962, the President's Committee to Appraise Employment and Unemployment Statistics, stated:

The need to publish the information in a nonpolitical context cannot be overemphasized. \* \* \* a sharper line should be drawn between the release of the statistics and their accompanying explanation and analysis, on the one hand, and the more general type of policy-oriented comment which is a function of the official responsible for policy making, on the other.

In 1971, the Nixon Administration was widely criticized for the way it

publicly characterized some Bureau of Labor Statistics unemployment data at the time of their release. In response, the Congress instituted the monthly Joint Economic Committee hearings on the unemployment rate and OMB issued Statistical Policy Directive No. 3 to provide guidance to Executive branch agencies on the compilation and release of Principal Federal Economic Indicators. Directive No. 3 provides for the designation of statistical series that provide timely measures of economic activity as Principal Economic Indicators, and requires prompt but orderly release of such indicators. The stated purposes of Directive No. 3 are to preserve the time value of the economic indicators, strike a balance between timeliness and accuracy, provide for periodic evaluation of each indicator, prevent early access to information that may affect financial and commodity markets, and preserve the distinction between the policy-neutral release of data by statistical agencies and their interpretation by policy officials.

In 1973, the American Statistical Association—Federal Statistics Users' Conference Committee on the Integrity of Federal Statistics reported that:

Nothing could undermine the politician and implementation of his policy recommendations as much as an accumulated and intense public distrust in the statistical basis for the decisions which the policy-maker must inevitably make, or in the figures by which the results of these decisions are measured. Unless definite action is taken to maintain public confidence in Federal statistics and in the system responsible for their production, there will be growing tendencies to distrust leadership.

With respect to trust in the Federal statistical system, President George H. W. Bush stated in 1990:

It is of paramount importance to this Administration that these fundamental principles of the Federal statistical system are strictly maintained so that the accuracy and integrity of Government data are not threatened.

In 1995, the Congress reauthorized the Paperwork Reduction Act (PRA), which makes OMB responsible, among other requirements, for coordination of the Federal statistical system to ensure the integrity, objectivity, impartiality, utility, and confidentiality of information collected for statistical purposes.

In 1996, the United States was a charter subscriber to the International Monetary Fund's Special Data Dissemination Standard (SDDS), which guides over 60 member nations in the provision of their economic and financial data to the public. The elements of the SDDS for access,

integrity, and quality emphasize transparency in the compilation and dissemination of statistics. For example,

- To support ready and equal access, the SDDS prescribes (a) advance dissemination of release calendars and (b) simultaneous release to all interested parties.

- To assist users in assessing the integrity of the data disseminated under the SDDS, the SDDS requires (a) the dissemination of the terms and conditions under which official statistics are produced and disseminated; (b) the identification of internal government access to data before release; (c) the identification of ministerial commentary on the occasion of statistical release; and (d) the provision of information about revision and advance notice of major changes in methodology.

- To assist users in assessing data quality, the SDDS requires (a) the dissemination of documentation on statistical methodology and (b) the dissemination of component detail, reconciliations with related data, and statistical frameworks that make possible cross-checks and checks of reasonableness.

In December 2000, the Congress passed and the President signed into law what has come to be known as the Information Quality Act (44 U.S.C. 3516 note), which directed OMB to issue Government-wide information quality guidelines to ensure the "quality, objectivity, utility, and integrity" of all information, including statistical information, disseminated by Federal agencies.

In 2005, the National Research Council (NRC) of the National Academy of Sciences published the third edition of its *Principles and Practices for a Federal Statistical Agency*, which enumerates three principles and eleven core practices for Federal statistical agencies. The principles address: (1) Relevance to policy issues, (2) credibility among data users, and (3) trust among data providers. Among the essential core practices, the NRC lists a strong measure of independence, wide dissemination of data, and commitment to quality and professional standards of practice.

The *Principles and Practices* report states that a credible and effective statistical organization:

\* \* \* must be, and must be perceived to be, free of political interference and policy advocacy. \* \* \* Without the credibility that comes from a strong degree of independence, users may lose trust in the accuracy and objectivity of the agency's data, and data providers may become less willing to cooperate with agency requests. \* \* \* [A

statistical agency] must be impartial and avoid even the appearance that its collection, analysis, and reporting processes might be manipulated for political purposes. \* \* \*

Elements of an effective dissemination program include: A variety of avenues for data dissemination, chosen to reach as broad a public as reasonably possible; procedures for release of information that preclude actual or perceived political interference; adherence to predetermined release schedules for important indicators serves to prevent even the appearance of manipulation of release dates for political purposes.

In May 2006, the National Science Board, which is charged with serving as adviser to the President and Congress on policy matters related to science and engineering research and education, concluded that:

A clear distinction should be made between communicating professional research results and data versus the interpretation of data and results in a context that seeks to influence, through the injection of personal viewpoints, public opinion or the formulation of public policy. Delay in taking these actions may contribute to a potential loss of confidence by the American public and broader research community regarding the quality and credibility of Government sponsored scientific research results.

Moreover, in June 2006, the Government Accountability Office issued a report entitled *Data Quality: Expanded Use of Key Dissemination Practices Would Further Safeguard the Integrity of Federal Statistical Data* (GAO-06-607). This report discussed the desirability of OMB's issuing a new Statistical Policy Directive that (1) extends dissemination procedures—similar to those of its long-standing Statistical Policy Directive No. 3 on the *Compilation, Release, and Evaluation of Principal Federal Economic Indicators*—more broadly to encompass a larger set of Federal statistical products and (2) reflects the NRC's recommended practices for a Federal statistical agency.

Accordingly OMB developed a new standard, *Statistical Policy Directive No. 4, Release and Dissemination of Statistical Products Produced by Federal Statistical Agencies*, presented below, that extends the release and dissemination processes of the NRC's recommended practices and of OMB's Statistical Policy Directive No. 3, which applies only to Principal Federal Economic Indicators, to a greater range of Federal statistical products. The directive addresses concerns with equitable, policy-neutral, and timely release and dissemination of general-purpose statistical information to the public and reinforces the integrity and transparency of the processes used to produce and release the Nation's

statistical products. (This directive is not intended to address other issues relating to statistical products, such as the appropriate funding levels for statistical activities and the policy decisions regarding what kinds of data an agency should collect and maintain, as well as the corresponding intra-governmental reporting relationships.)

On August 1, 2007, OMB published in the *Federal Register* (72 FR 42266) a notice seeking comments on a draft of this directive. A dozen respondents sent comments in response to the notice. Essentially all commenters encouraged OMB to issue the directive, some as drafted and others with suggested changes designed to strengthen various provisions of the directive. After careful consideration, the draft directive was modified in response to comment and is issued as final by this notice. A general discussion of the comments as they pertain to sections of the directive and their disposition follows.

Section 1. Scope. Two comments suggested that limiting the scope to statistical products of statistical agencies and units is too restrictive, and that the scope should be expanded to include all Federal statistical products, wherever produced. In response, as noted above, the provisions of the Directive are predicated on principles and practices of Federal statistical agencies. The extension of the provisions in this directive to those statistical products that are produced by administrative and regulatory agencies would necessarily raise a variety of issues and questions that would go beyond the planned scope of this directive. As a result, the final directive remains limited to the statistical products of Federal statistical agencies.

Section 2. Statistical Products. Two comments suggested that each Federal statistical agency or unit should be required to provide to OMB annually a complete list of all statistical products it has produced or plans to produce and the tools it uses to produce them. We have not adopted this suggestion because the directive already requires that statistical agencies publish their statistical products and descriptions of their methodologies on their Internet sites.

One comment suggested adding specificity regarding the desired qualities of disseminated statistical products. We have not adopted this suggestion. The directive advises agencies to assess the needs of data users and to provide a range of products to address those needs by whatever means practicable. Given the wide variety of statistical products and their varied subject matters and uses, as well

as the fluid nature of methodological and technological advances, OMB prefers to have agencies take their lead from the individual statistical product users rather than to have OMB specify general qualities that may not fully reflect specific user needs.

Four comments raised points that have been incorporated in the final directive. The first requested clarification that not only data, but also methodologies, have limitations. The second sought clarification concerning methodological documentation requirements for compilations of statistical information collected and assembled from other statistical products. A third comment noted a subtle inconsistency in the prose in sections 2 and 6 requiring agencies to publish their statistical products on the Internet. Consequently, Section 6 has been modified to be consistent with Section 2. Finally, one comment noted that press releases should list the statistical agency that is the source of the data. Accordingly, the directive states that a statistical press release should contain the name of the statistical agency issuing the product.

Section 3. Statistical Agencies or Units. No comments were received on Section 3.

Section 4. Timing of Release. Two comments proposed revising the guidance for agencies to minimize the time between data collection and data dissemination. OMB concurs and has modified the text accordingly.

Section 5. Notification of Release. One commenter sought clarification on whether an agency's failure to publish the scheduled release of a particular statistical product might prevent the agency from releasing it. The answer is that the directive does not prevent a release in such circumstances.

Section 6. Dissemination. More than a third of all comments were related to Section 6. Comments ranged from requests for more explicit, uniform requirements for the timing of releases and pre-release access, to greater transparency for pre-release access, to more robust recognition of the need for the perceived independence of Federal statistical products. However, the decentralized nature, the varying characteristics of their subject matter concentrations, and the differing existing organizational structures of Federal statistical agencies do not lend themselves to explicit, uniform requirements. Instead, the directive makes each agency responsible for establishing its own procedures, for publishing those procedures on its Web site, and for ensuring that the published

information reflects current policy and practice.

The largest number of comments related to the press release discussion in Section 6a, Outreach to the Media. All comments agreed that a statistical press release must provide a policy-neutral description of the data and must not include policy pronouncements, but the comments differed in how to achieve this objective. A few comments noted that the draft did not explicitly identify the policy officials authorized to review the statistical press release to ensure that it does not contain policy pronouncements. Accordingly, the final directive makes clear that it is the policy officials of the issuing statistical agency's department who may review the statistical press release.

Section 7. Announcement of Changes in Data Series. No comments were received on Section 7.

Section 8. Revisions and Corrections of Data. One comment noted that Section 8 does not require agencies to actually implement data quality policy or acknowledge existing errors. Accordingly, Section 8 has been revised so that it now states that "statistical agencies must also establish and implement policies for handling unscheduled corrections due to previously unrecognized errors."

Section 9. Granting of Exceptions. One comment noted that the draft directive's language had a harsh connotation that may discourage agencies from coming forward to request exceptions. Consequently, the language in the final directive now speaks of "inconsistent with" the directive, rather than "violations of" the directive.

Accordingly, OMB hereby adopts and issues the attached final *Statistical Policy Directive No. 4, Release and Dissemination of Statistical Products Produced by Federal Statistical Agencies*.

**Susan E. Dudley,**

*Administrator, Office of Information and Regulatory Affairs.*

**Statistical Policy Directive No. 4—  
Release and Dissemination of Statistical  
Products Produced by Federal  
Statistical Agencies**

**Authority and Purpose**

This Directive provides guidance to Federal statistical agencies on the release and dissemination of statistical products. The Directive is issued under the authority of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 1104(d)), the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3504(e)), and Office of Management and Budget (OMB) policies including the

Information Quality Act guidelines (67 FR 8451–8460) and OMB Circular No. A–130. Under the Information Quality Act (Pub. L. 106–554, Division C, title V, Sec. 515, Dec. 21, 2000; 114 Stat. 2763A–153 to 2763A–154; 44 U.S.C. Section 3516 note) and associated guidelines, agencies are to maximize the quality, objectivity, utility, and integrity of information, including statistical information, provided to the public. This includes making information available on an equitable and timely basis. The procedures in this Directive are intended to ensure that statistical data releases adhere to data quality standards through equitable, policy-neutral, transparent, and timely release of information to the general public.

**Introduction**

Statistics produced by the Federal Government are used to shape policies, manage and monitor programs, identify problems and opportunities for improvement, track progress, and measure change. These statistics must meet high standards of reliability, accuracy, timeliness, and objectivity in order to provide a sound and efficient basis for decisions and actions by governments, businesses, households, and other organizations. These data must be objective and free of bias in their presentation and available to all in forms that are readily accessible and understandable.

To be collected and used efficiently, statistical products must gain and preserve the trust of the respondent and user communities; data must be collected and distributed free of any perceived or actual partisan intervention. Widespread recognition of the Federal statistical system's policy-neutral data collection and dissemination fosters such trust. This trust, in turn, engenders greater cooperation from respondents and higher quality statistics for data users.

1. Scope. This Statistical Policy Directive applies to the full range of statistical products disseminated by Federal statistical agencies or units. However, the Directive excludes coverage of the Principal Federal Economic Indicators addressed in Statistical Policy Directive No. 3, *Compilation, Release, and Evaluation of Principal Federal Economic Indicators*, which have their own established release and evaluation procedures. Unless otherwise specified in statute, statistical agencies or units are directly and solely responsible for the content, quality, and dissemination of their products. When implementing this Directive, statistical agencies must follow all relevant Statistical Policy

Directives and guidance including the principles and practices presented in OMB's Information Quality Guidelines and Statistical Policy Directives providing standards and guidelines for statistical surveys.

2. **Statistical Products.** Statistical products are, generally, information dissemination products that are published or otherwise made available for public use that describe, estimate, forecast, or analyze the characteristics of groups, customarily without identifying the persons, organizations, or individual data observations that comprise such groups. Statistical products include general-purpose tabulations, analyses, projections, forecasts, or other statistical reports. For purposes of this Directive, a "statistical press release" is an announcement to media of a statistical product release that contains the title, subject matter, release date, and Internet address of, and other available information about the statistical product, as well as the name of the statistical agency issuing the product, and may include any executive summary information or key findings section as shown in the statistical product. A statistical press release announcing or presenting statistical data is defined as a statistical product and is covered by the provisions of this Directive. Federal statistical agencies or units may issue their statistical products in printed and/or electronic form, but must provide access to them on their Internet sites. Agencies should assess the needs of data users and provide a range of products to address those needs by whatever means practicable. Information to help users interpret data accurately, including transparent descriptions of the sources and methodologies used to produce the data, must be equitably available for Federal statistical products. With the exception of compilations of statistical information collected and assembled from other statistical products, these products shall contain or reference appropriate information on the strengths and limitations of the methodologies, data sources, and data used to produce them as well as other information such as explanations of other related measures to assist users in the appropriate treatment and interpretation of the data.

3. **Statistical Agencies or Units.** As identified under OMB's implementation guidance (72 FR 33362, 33368, June 15, 2007) for the Confidential Information Protection and Statistical Efficiency Act of 2002 (Pub. L. 107-347, Title V; 116 Stat. 2962; 44 U.S.C. Section 3501 note), a Federal statistical agency is an organizational unit of the executive

branch whose activities are predominantly the collection, compilation, processing, or analysis of information for statistical purposes. Statistical purpose means the description, estimation, or analysis of the characteristics of groups, customarily without identifying the persons, organizations, or individual data observations that comprise such groups, as well as researching, developing, implementing, maintaining, or evaluating methods, administrative or technical procedures, or information resources that support such purposes. A statistical agency or unit may be labeled an administration, bureau, center, division, office, service, or similar title, so long as it is recognized as a distinct entity. When a statistical agency provides services for a separate sponsoring agency on a reimbursable basis, the provisions of this Directive normally shall apply to the sponsoring agency.

4. **Timing of Release.** The timing of the release of statistical products, including statistical press releases, regardless of physical form or characteristic, shall be the sole responsibility of the statistical agency or unit that is directly responsible for the content, quality, and dissemination of the data. Agencies should minimize the interval between the period to which the data refer and the date when the product is released to the public.

5. **Notification of Release.** Prior to the beginning of the calendar year, the releasing statistical agency shall annually provide the public with a schedule of when each regular or recurring statistical product is expected to be released during the upcoming calendar year by publishing it on its Web site. Agencies must issue any revisions to the release schedule in a timely manner on their Web sites.

6. **Dissemination.** Statistical agencies must ensure that all users have equitable and timely access to data that are disseminated to the public. If there are revisions to the data after an initial release, notification must also be given to the public about these changes in an equitable and timely manner. A statistical agency should strive for the widest, most accessible, and appropriate dissemination of its statistical products and ensure transparency in its dissemination practices by providing complete documentation of its dissemination policies on its Web site. The statistical agency is responsible for ensuring that this documentation remains accurate by reviewing and updating it regularly so that it reflects the agency's current dissemination practices.

In unusual circumstances, the requirement that all users initially have equitable and timely access to statistical products may be waived by the releasing statistical agency if the head of the agency determines that the value of a particular type of statistical product, such as health or safety information, is so time-sensitive to specific stakeholders that normal procedures to ensure equitable and timely access to all users would unduly delay the release of urgent findings to those to whom the information is critical. All such instances must be reported to OMB within 30 calendar days of the agency's waiver determination.

Agencies should use a variety of vehicles to attain a data dissemination program designed to reach data users in an equitable and timely manner. Federal statistical agencies or units may issue their statistical products in printed and/or electronic form, but must provide access to them on their Internet sites. In undertaking any dissemination of statistical products, agencies must continue to ensure that they have fulfilled their responsibilities to preserve the confidentiality and security of respondent data. When appropriate to facilitate in-depth research, and feasible in the presence of resource constraints, statistical agencies should provide public access to microdata files with secure safeguards to protect the confidentiality of individually-identifiable responses and with readily accessible documentation, metadata, or other means to facilitate user access to and manipulation of the data.

Statistical agencies are encouraged to use a variety of forums and strategies to release their statistical products. These include conferences, exhibits, presentations, workshops, list serves, the Government Printing Office, public libraries, and outreach to the media including news conferences and statistical press releases as well as media briefings to improve the media's understanding of the data and the quality and extent of media coverage of the statistics.

#### *a. Outreach to the Media*

To accelerate and/or expand the dissemination of data to the public, statistical agencies are encouraged to issue a statistical press release when releasing their products. To maintain a clear distinction between statistical data and policy interpretations of such data, the statistical press release must be produced and issued by the statistical agency and must provide a policy-neutral description of the data; it must not include policy pronouncements. To the extent that any policy



pronouncements are to be made regarding the data, those pronouncements are to be made by Federal executive policy officials, not by the statistical agency. Accordingly, these policy officials may issue separate independent statements on the data being released by the statistical agency, and policy officials of the issuing department may review the draft statistical press release to ensure that it does not include policy pronouncements.

In cases in which the statistical unit currently relies on its parent agency for the public affairs function, the statistical agency should coordinate with public affairs officials from the parent organization on the dissemination aspects of the statistical press release process, including planning and scheduling of annual release dates.

*b. Pre-Release Access to Final Statistical Products*

The purpose of pre-release access is to foster improved public understanding of the data when they are first released and the accuracy of any initial commentary about the information contained in the product. To support the goal of maximizing the public's access to informed discussions of the data when they are first released, statistical agencies may provide pre-release access to their final statistical products. A statistical product is final when the releasing statistical agency determines that the product fully meets the agency's data quality standards based on all presently available information and requires no further changes. Pre-release access to final statistical products may be provided under embargo or through secure pre-release access. The releasing statistical agency determines which final statistical products will be made available under these pre-release provisions and which method of pre-release will be employed.

*c. Embargo*

Embargo means that pre-release access is provided with the explicit

acknowledgement of the receiving party that the information cannot be further disseminated or used in any unauthorized manner before a specific date and time.

The statistical agency may grant pre-release access via an embargo under the following conditions:

1. The agency shall establish arrangements and impose conditions on the granting of an embargo that are necessary to ensure that there is no unauthorized dissemination or use.

2. The agency shall ensure that any person or organization granted access under an embargo has been fully informed of, and has acknowledged acceptance of, these conditions.

3. In all cases, pre-release access via an embargo shall precede the official release time only to the extent necessary for an orderly release of the data.

4. If an embargo is broken, the agency must release the data to the public immediately.

*d. Secure Pre-Release Access*

For some data that are particularly sensitive or move markets, statistical agency heads may choose to provide secure pre-release access. Secure pre-release access means that pre-release access is provided only within the confines of secure physical facilities with no external communications capability. When the head of a releasing statistical agency determines that secure pre-release access is required, the agency shall provide pre-release access to final statistical products only when it uses secure pre-release procedures.

7. Announcement of Changes in Data Series. Statistical agencies shall announce, in an appropriate and accessible manner as far in advance of the change as possible, significant planned changes in data collection, analysis, or estimation methods that may affect the interpretation of their data series. In the first report affected by the change, the agency must include a complete description of the change and its effects and place the description on its Internet site, if the report is not otherwise available there.

8. Revisions and Corrections of Data. For some statistical products, statistical agencies produce preliminary estimates or initial releases that will subsequently be updated and finalized. Whenever preliminary data are released, they must be identified as preliminary and the release must indicate that an updated or final revision is expected. In applicable cases, the expected date of such revisions must be included. Reference to the preliminary release and appropriate explanations of the methodology and reasons for the revisions must be provided or referenced in any updated or final releases.

Consistent with each agency's information quality guidelines, statistical agencies must also establish and implement policies for handling unscheduled corrections due to previously unrecognized errors. Agencies have an obligation to alert users as quickly as possible to any such changes, to explain corrections or revisions that result from any unscheduled corrections; and to make appropriate changes in all product formats—including statistical press releases.

9. Granting of Exceptions. Prior to any action being taken that may be inconsistent with the provisions of this Directive, the head of a releasing statistical agency shall consult with OMB's Administrator for Information and Regulatory Affairs. If the Administrator determines that the action is inconsistent with the provisions of this Directive, the head of the releasing statistical agency may apply for an exception. The Administrator may authorize exceptions to the provisions in sections 4, 5, 6, 7, and 8 of this Directive. Any agency requesting an exception must demonstrate to the satisfaction of the Administrator that the proposed exception is necessary and is consistent with the purposes of this Directive.

[FR Doc. E8-4570 Filed 3-6-08; 8:45 am]

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To make technical corrections to the Federal Insecticide, Fungicide, and Rodenticide Act. (Mar. 6, 2008; 122 Stat. 649)

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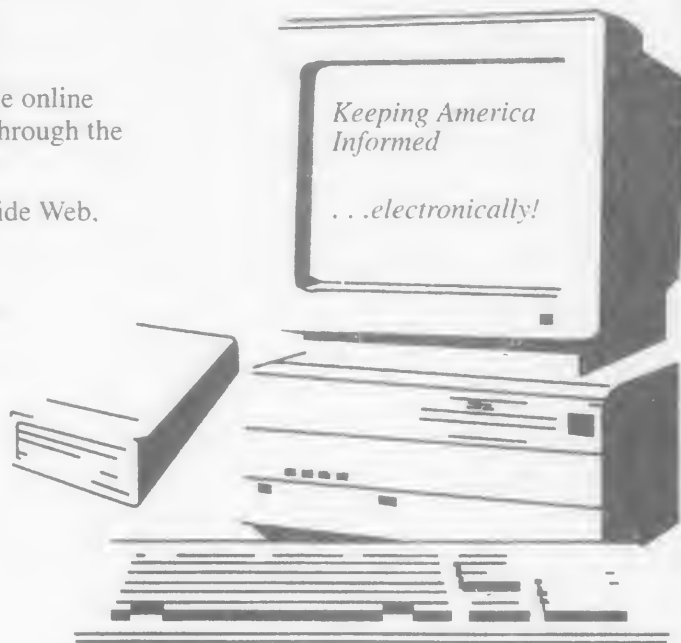
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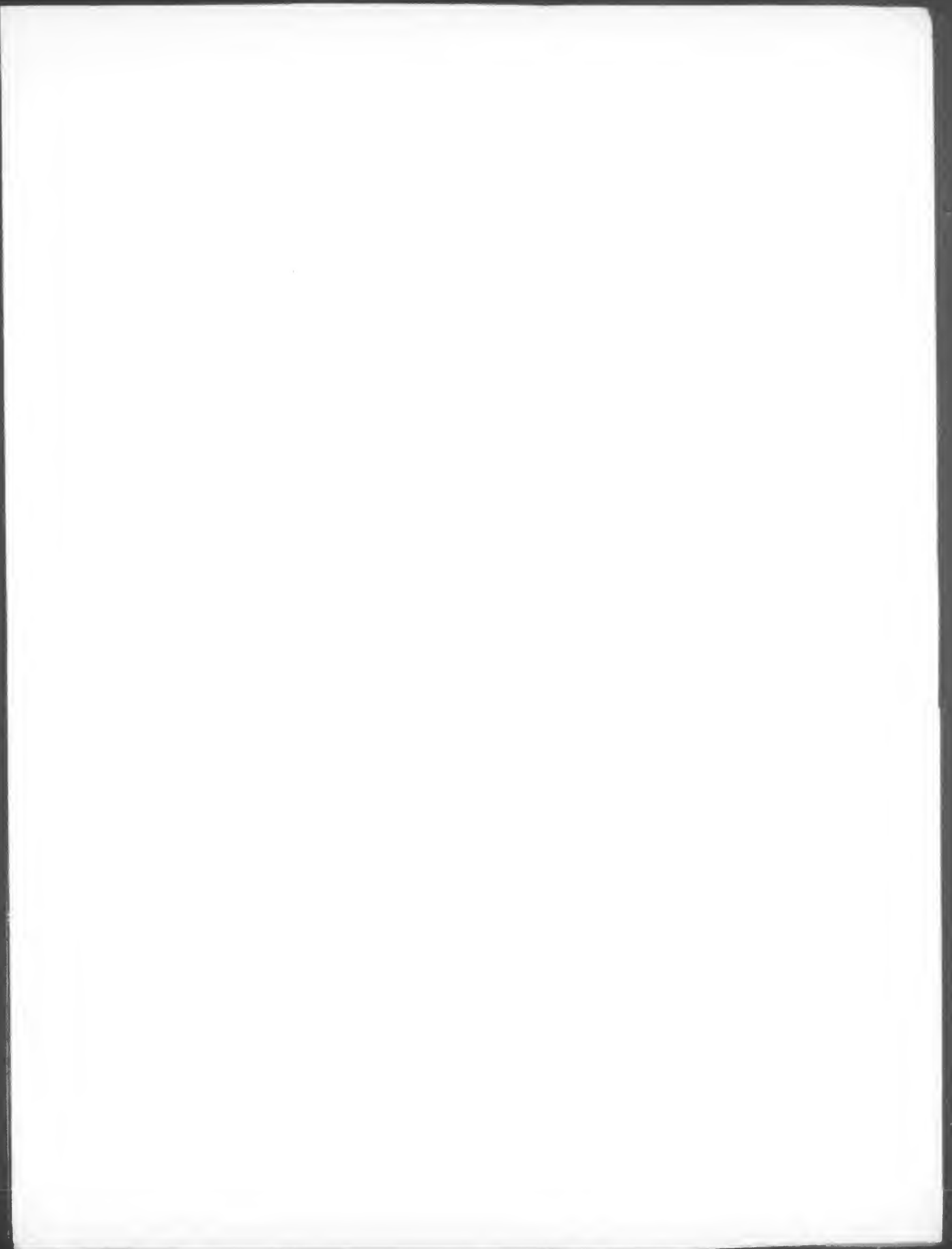
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