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

WHEN: Tuesday, January 27, 2009
9:00 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741-6008

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Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131

[Docket No. AO–14–A76, et al.; DA–07–01; AMS–DA–07–0116]

Milk in the Northeast and Other Marketing Areas; Final Decision on Proposed Amendments to Tentative Marketing Agreements and to Orders and Termination of Proceeding

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final decision and termination of proceeding.

7 CFR part	Marketing area	AO Nos.
1001	Northeast	AO–14–A76
1005	Appalachian	AO–388–A20
1006	Florida	AO–356–A41
1007	Southeast	AO–366–A49
1030	Upper Midwest	AO–361–A42
1032	Central	AO–313–A51
1033	Mideast	AO–166–A75
1124	Pacific Northwest ..	AO–368–A37
1126	Southwest	AO–231–A70
1131	Arizona	AO–271–A42

SUMMARY: We are denying proposals that would have increased Class I and Class II prices and modified the formulas used to determine Class I and II prices in all Federal milk marketing orders. This document terminates the proceeding on the five proposed amendments.

DATES: Effective December 29, 2008.

FOR FURTHER INFORMATION CONTACT: Gino Tosi, Associate Deputy Administrator for Order Formulation and Enforcement, USDA/AMS/Dairy Programs, Stop 0231–Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 720–2357, e-mail: *gino.tosi@usda.gov*.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Small Business Consideration

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information collection requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees (13 CFR 121.201). Most parties subject to a milk order are considered as a small business.

For the purposes of determining which dairy farms are "small businesses," the $750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

USDA has identified that during 2005 approximately 51,060 of the 54,652 dairy producers whose milk is pooled on Federal orders are small businesses. Small businesses represent about 93 percent of the dairy farmers who participate in the Federal milk order program.

On the processing side, during June 2005 there were approximately 350 fully regulated plants (of which 149 or 43 percent were small businesses) and 110 partially regulated plants (of which 50 or 45 percent were small businesses). In addition, there were 48 producer-handlers, of which 29 were considered small businesses for the purposes of the initial regulatory flexibility analysis, who submitted reports under the Federal milk order program during this period.

The fluid use of milk represented more than 45.0 percent of total Federal milk marketing order producer deliveries during January 2006. Almost 237 million Americans, approximately 80 percent of the total U.S. population reside within the geographical boundaries of the 10 Federal milk marketing areas.

Because this action terminates the rulemaking proceeding without amending the present rules, the economic conditions of small entities remain unchanged. Also, this action does not change reporting, record keeping, or other compliance requirements.

Preliminary Economic Analysis

The Notice of Hearing in this proceeding contained a Preliminary Economic Analysis. The analysis is available at *http://www.ams.usda.gov/dairy/hearings.htm*. For further information contact Howard McDowell, Senior Economist, USDA/AMS/Dairy Programs, Office of the Chief Economist, Room 2753, South Building, U.S. Department of Agriculture, Washington, DC 20250, (202) 720–7091, e-mail address *howard.mcdowell@usda.gov*.

Prior Documents in This Proceeding:

Notice of Hearing: Issued November 17, 2006; Published November 22, 2006 (71 FR 67489).

Statement of Consideration

A public hearing was held December 11–15, 2006, in Pittsburgh, PA, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in all marketing areas.

The hearing was called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900). The purpose of the hearing was to receive evidence with respect to the economic and marketing conditions that relate to the proposed amendments to the tentative marketing agreements and to the orders.

The hearing was held at the request of the National Milk Producers Federation (NMPF), a trade group representing dairy farmers and dairy farmer cooperatives, to consider proposals that would have increased Class I and Class

II prices and modified the formulas used to determine Class I and Class II prices. Consideration of the proposals was requested on an emergency basis.

Summary of Testimony

NMPF submitted five proposals that were addressed in this proceeding. The proposals would: (1) Increase the Federal order minimum Class I milk price by $0.77; (2) Utilize an "advanced cheese skim milk price", or (3) An "advanced butter powder skim milk price" and a modified advanced butterfat price as replacements to the advance Class III and IV skim milk prices; (4) Modify the calculation of the Class II skim price; and (5) Modify the calculation of the Class II butterfat price.

Proponents testified that dairy farmers have experienced an extended period of below-average milk prices, high production costs and low farm returns. NMPF is of the opinion that the formulas used to price milk used in Class I and II products are outdated and inadequate to ensure orderly marketing conditions. NMPF is also of the opinion that although Class I and II prices move in concert with Class III and IV prices, they do so in a way that does not properly consider the costs of supplying fluid milk to the market. NMPF supports adoption of Proposals 1–5 to compensate dairy farmers for increases in the costs borne in supplying the fluid milk needs of the market. NMPF is of the opinion that adoption of Proposals 1–5 will help maintain the appropriate relationship between class prices and dairy product prices.

Proposal 1 would increase the Federal order minimum Class I price by $0.77 while eliminating reference to the advanced Class III and Class IV skim milk prices in the Class I skim milk price formula. Proponents argue that an increase in the Class I price is necessary to reflect increased costs faced by dairy farmers in supplying the Class I market. The witness argued that the increased costs of maintaining a "Grade A" dairy farm along with marketing and transportation costs justify a $0.77 per hundredweight (cwt) increase in the Class I price. Specifically, NMPF testified that increased costs of maintaining Grade A status on dairy farms require a $0.15 per cwt increase, increased "marketing" costs require a $0.23 per cwt increase and increased "competitive factor" costs require a $0.39 per cwt increase.

Proposal 1 would replace the current Class I price mover (the higher of the Class III or Class IV price) with the higher of either:

A. Nonfat dry milk price × 8.9 − $0.63; or

B. Cheese price x 10.0 + Dry whey price × 6.1 − Butter Price × 3.9 − 1.63.

The NMPF witness stated that the costs of establishing and maintaining "Grade A" status on dairy farms have increased. The witness was of the opinion that since the Class I price is intended to compensate producers for establishing and maintaining Grade A status, increases in the costs of establishing and maintaining Grade A status should be reflected in the Class I price. The witness presented USDA Economic Research Service (ERS) data that showed a 38 percent increase in "non-feed" costs for dairy farmers, including labor and utility expenses. The NMPF witness also presented a study published by the University of Wisconsin-Madison in 1977 [1] detailing some of the costs associated with maintaining a Grade A dairy farm. The witness opined that many of the cost factors outlined in the 1977 study are the same type of costs faced by Grade A dairy farmers in 2006. The witness estimated that increases in non-feed costs of milk production including hot water, animal bedding and other supplies, justify a $0.15 increase in the Class I minimum price.

The witness also cited increases in "marketing" costs to justify increasing the Class I price. Specifically, the witness was of the opinion that the costs of assembling, balancing and transporting milk to meet minimum delivery standards have increased.

The NMPF witness stated that energy and processing costs to dairy farmer cooperative owned manufacturing plants have also increased, and should be offset by an increase in the Class I minimum price. The witness testified that supply plants often sacrifice profits in order to meet the demands of the Class I and II market. The NMPF witness added that shifts in the location of milk production and consolidation of manufacturing plants require longer hauls to Class I plants. The witness estimated that an increase in the minimum Class I price of $0.23 per cwt is necessary to offset these increased marketing costs.

The NMPF witness testified that other "competitive factor" costs have also increased. These costs reflect the amount of money that distributing plants are willing to pay to assure adequate supplies of milk. The witness stated that recent increases in over-order premiums demonstrate an increased "competitive factor," which justifies the need for an increase in the minimum Class I price. The witness testified that increasing levels of over-order premiums indicate inadequate Class I prices to attract supplies of milk to fluid distributing plants, and that while certain "load-specific" costs are best addressed by over-order premiums, other costs should be covered by the regulated minimum Class I price. The witness, relying on Market Administrator data, added that over-order premiums have increased nearly 65 percent from 1995 to 2005 in the states of Minnesota and Wisconsin. The witness was of the opinion that increases in over-order premiums justify an increase of $.39 per cwt in the minimum Class I price.

Proposals 2 and 3 detail the specific changes necessary to utilize the proposed formula in Proposal 1. Proposals 2 and 3 would implement an advanced "cheese skim milk price" per cwt, an "advanced butter-powder skim milk price" per cwt and an "advanced butterfat price" per pound to replace the current advanced Class III and Class IV skim milk prices per cwt. Proposal 2 would change the current advanced Class III skim milk pricing factor per cwt to an advanced cheese skim milk price per cwt factor. The cheese skim milk pricing factor per cwt would be determined by:

(a) Multiplying the weighted average of the 2 most recent NASS average weekly prices for block and barrel cheese by 10; multiplying the weighted average of the 2 most recent NASS average weekly survey prices for dry whey announced before the 24th day of the month times 6.1;

(b) Multiplying the weighted average of the 2 most recent NASS weekly survey prices for butter announced before the 24th day of the month times 3.9;

(c) Adding the amounts computed in paragraph a, then subtracting the amount computed in paragraph b; and

(d) Subtracting $1.44.

(e) The advanced butterfat price per pound would be determined by multiplying the weighted average of the 2 most recent NASS survey prices for butter by 1.20 and from this product subtracting $0.1307.

Proposal 3 would change the current advanced Class IV skim milk pricing factor to an advanced "butter-powder skim milk price." The advanced butter powder skim milk price per cwt would be determined by:

(a) Multiplying the weighted average of the 2 most recent NASS weekly survey prices for nonfat dry milk announced before the 24th day of the month by 8.9; and

[1] Frank, Gary G., G.A. Peterson, and Harlan Hughes. "Class I Differential: Cost of Production Justification", in *Economic Issues*, Number 8, April 1977.

(b) From the product subtracting $0.52.

Proposals 4 and 5 would adjust the way the Class II price is determined. Proposal 4 would change the manner in which the Class II skim milk price is computed. While the skim portion of milk used in Class II would continue to be announced in advance, it is proposed to be computed by:

(a) Multiplying the weighted average of the 2 most recent NASS survey prices for nonfat dry milk per pound announced before the 24th day of the month by 8.9; and

(b) From the product subtracting $0.53.

The NMPF witness testified in support of Proposal 4. The witness was of the opinion that the current Class II skim milk formula incorrectly accounts for the costs of drying condensed skim milk and encourages substitution of condensed skim milk for nonfat dry milk (NFDM) in Class II products. The witness was of the opinion that their proposed revised formula more accurately reflects the full value of NFDM derived from a hundredweight of skim milk.

Proposal 5 would modify the calculation of the Class II butterfat price. The Class II butterfat price would be determined by:

(a) Multiplying the NASS AA butter survey price multiplied by 1.20; and

(b) From the product subtracting $0.1147.

The NMPF witness testified in support of Proposal 5. The witness was of the opinion that the proposed formula would set the Class II butterfat price equal to the minimum Class I butterfat price, without applying any location differential, so the price would be uniform across the entire country. The witness stated that average butterfat tests for Class I and II use were 1.97 percent and 7.42 percent, respectively, in 2005. The witness noted that when Class I and II milk marketings were combined, their average butterfat test was 3.34 percent, close to the Federal order standard of 3.5 percent. The witness testified that milk supplies for Class I and II products are complementary, with much Class II butterfat use coming from the surplus butterfat at Class I bottling plants.

The NMPF witness was of the opinion that Class II butterfat, unlike Class II skim, cannot be substituted with Class III or IV butterfat in Class II products. The witness stated that Class III and IV butterfat can be used to produce butter, butteroil, plastic cream and anhydrous milkfat, however, these products are not viable economic substitutes for cream in Class II products. The witness noted that the lack of substitutability between Class II cream and manufactured butterfat products requires that Class II butterfat be priced at a level near the Class I butterfat price and their proposal meets that intent.

The NMPF witness offered as an exhibit a letter of support for adoption of Proposals 1–5 from the National Farmers Organization (NFO). NFO is a Capper-Volstead cooperative headquartered in Ames, Iowa. The NFO letter stated that an increase in Class I and II minimum prices is needed by dairy farmers who are continually experiencing increased fuel, feed and fertilizer costs.

The NMPF witness also offered as an exhibit a letter of support for adoption of Proposals 1–5 from Cass-Clay Creamery (Cass-Clay). Cass-Clay is a Capper-Volstead cooperative headquartered in Fargo, North Dakota. The Cass-Clay letter stated that adoption of Proposals 1–5 is necessary because Class I and II price formulas should not have to directly rely on Class III and IV prices and make allowances. According to the letter, costs to produce Class I milk have increased and should be reflected in the Class I formula. Cass-Clay added that the Class I butterfat price should equal the Class II butterfat price.

The Secretary of Agriculture for the commonwealth of Pennsylvania appeared in support of adoption of Proposals 1–5. Pennsylvania is home to 8,600 dairy farms producing over 10.6 billion pounds of milk annually. The Secretary testified that adoption of Proposals 1–5 is necessary to account for decreases in producer prices resulting from a recent decision to increase make allowances as well as increases in transportation and energy costs. The Secretary stated that Pennsylvania has lost over 2,000 dairy farms since 1997 because of low milk prices. The Secretary was of the opinion that adoption of Proposals 1–5 would help to ensure the viability of the Pennsylvania dairy industry in the future. A post-hearing brief was submitted by the Pennsylvania Farm Bureau in concurrence with the testimony of the Secretary.

A representative from Dairylea Cooperative, Inc. (Dairylea), testified in support of emergency adoption of Proposals 1–5. Dairylea is a Capper-Volstead cooperative whose milk is primarily pooled on the Northeast order. The Dairylea witness testified that Proposals 1–5 should be adopted to compensate farmers for significant increases in the costs to produce milk along with reductions in pay prices resulting from increased make allowances for manufactured dairy products.

A witness appeared on behalf of the Northeast Farm Credit Associations (NEFCA). The NEFCA represents four Farm Credit associations who collectively provide credit and other financial services to over 4,500 dairy farmers in the Northeast U.S. The witness provided analysis showing increases in the costs to produce milk. The witness testified that significant increases in labor, supplies, utilities and transportation demonstrate the need to update Federal order minimum prices.

A witness appeared on behalf of the Michigan Milk Producers Association (MMPA) in support of expedited adoption of Proposals 1–5. MMPA is a Capper-Volstead cooperative that pools milk on the Mideast order. The MMPA witness testified that the costs of servicing the needs of the Class I and II market, which include maintaining Grade A status, assembly, hauling and balancing have substantially increased since 2000. The witness testified that MMPA supported recent increases in the make allowances for manufactured dairy products and stressed the need for balancing facilities. The witness testified that the increasing costs faced by dairy farmers need to be recognized and adoption of Proposals 1–5 would accomplish that intent.

A witness appeared on behalf of United Dairymen of Arizona (UDA) in support of Proposals 1–5. UDA is a Capper-Volstead cooperative that pools milk on the Arizona order. The UDA witness testified that Proposals 1–5 represent the input and interests of dairy farmers across the U.S. The witness stated that adoption of Proposals 1–5 would compensate dairy farmers for recent increases in make allowances for manufactured dairy products. The witness added that adoption of Proposals 1–5 would also simplify the calculations of the cheese-based skim milk price and the butter-powder based skim milk price for determining Class I and II skim milk prices.

A representative from Southeast Milk, Inc. (SMI), testified in support of expedited adoption of Proposals 1–5. SMI is a Capper-Volstead cooperative headquartered in Florida. The witness testified that recent decisions to increase make allowances for manufactured dairy products will decrease the prices received by farmers. The witness also testified that producers who supply the fluid market are incurring higher costs including balancing, transportation and energy. The witness testified that adoption of Proposals 1–5 would help to

compensate producers for these increases in costs.

A witness appeared on behalf of Dairy Farmers of America (DFA) in support of the adoption of Proposals 1–5 on an expedited basis. DFA is a Capper-Volstead cooperative that pools milk on 9 of the 10 Federal milk marketing orders. The DFA witness testified that the adoption of Proposals 1–5 would more accurately reflect the cost of producing and marketing milk. The witness was of the opinion that failure to address this issue will be detrimental to DFA members.

The DFA witness testified that the adopted changes to the make allowances for manufactured products were reflective of the costs of manufacturing dairy products, especially increased energy costs. However, when Class III and IV prices are lowered, prices for Class I and II products are lowered at the same time and returns to dairy farmers decrease, noted the witness.

The DFA witness also testified that the cooperative owns and operates plants that condense milk. The witness testified that cost data from their plants is similar to those relied upon by other proponents for nonfat solids and re-hydration of nonfat dry milk. The witness testified that DFA owns and operates plants that manufacture butter and concentrated milk fat products, and the cooperative also operates a cream marketing agency. The witness testified that typically Class II manufacturers do not substitute butter or concentrated fat products for cream since cream has other milk proteins and other solids in addition to butterfat.

The DFA witness testified that the costs to provide fluid milk have risen dramatically because of increased energy costs. The witness cited the increasing distance between farms and difficulties in balancing as justification to increase Class I and II minimum prices.

Two dairy farmer members of DFA also testified in support of Proposals 1–5. Both dairy farmers testified that the adoption of Proposals 1–5 is necessary to compensate dairy farmers for increased make allowances and to recognize the increasing costs in producing milk.

A witness appeared on behalf of the Association of Dairy Cooperatives in the Northeast (ADCNE) in support of the adoption of Proposals 1–5 on an emergency basis. The ADCNE is comprised of Agrimark, Dairy Farmers of America, Dairylea, Land O' Lakes, Maryland & Virginia Milk Producers, O–AT–KA Milk Producers Cooperative, St. Albans Cooperative Creamery and Upstate Niagara Cooperative. These organizations represent a majority of the milk pooled on the Northeast order.

The ADCNE witness testified that adoption of Proposals 1–5 would update the production and marketing cost factors of the Class I and II price formulas. The witness was of the opinion that updating these factors is important in the Northeast since Federal Order 1 pools the largest volume of Class I and II milk in the Federal order system.

The ADCNE witness testified that recent increases in the make allowances for manufactured dairy products compensated dairy product manufacturers for increased production costs. The witness stated that dairy farmers are also experiencing increased costs in servicing Class I and II markets and should also be compensated through adoption of Proposals 1–5.

The ADCNE witness testified that the costs of servicing the needs of the Class I and II market in the Northeast have increased over the last 10 years. The witness stated that these costs are borne by dairy farmers and dairy farmer cooperatives and should be accounted for in Class I and II minimum prices. The witness stated that one of the largest cost increases has been transportation due to increased fuel costs along with consolidation of plants.

A witness testified on behalf of Lanco-Pennland Quality Milk Producers (Lanco) in support of Proposals 1–5. Lanco is a Capper-Volstead cooperative with members located primarily in Pennsylvania, Maryland and West Virginia. The Lanco witness testified that recent changes in the make allowances for manufactured dairy products will lower the prices that dairy farmers receive for their milk. The witness also testified that the costs in producing milk including feed and energy have increased substantially. The witness was of the opinion that adoption of Proposals 1–5 will compensate their dairy farmer members for these recent cost increases.

A post-hearing brief was submitted by the Kentucky Dairy Development Council (KDDC) in support of Proposals 1–5. The KDDC is an organization of Kentucky dairy farmers whose purpose is to increase profitability and address issues that foster the sustainability and viability of the dairy industry. The KDDC brief said that adoption of Proposals 1–5 would help maintain a direct relationship between dairy product prices and Class I and II prices. The brief explained how dairy farmers will face substantial financial hardship if Proposals 1–5 are not adopted.

A witness appearing on behalf of Nestlé USA and Dreyer's Grand Ice Cream (Nestle) testified in opposition to Proposals 1–5. Nestlé and its subsidiaries manufacture and distribute a variety of ice cream and frozen dessert products. The Nestlé witness was of the opinion that adoption of Proposals 1–5 would increase the price they pay for milk used to make Class I and II products. The witness stated that Nestlé has not experienced difficulties in attracting an adequate milk supply. The witness stated that U.S. milk production is increasing and the utilization (share) of milk in Class I and Class II products is decreasing. The witness, relying on Economic Research Service (ERS) data, stated that per capita consumption of non-flavored, whole, reduced, lowfat and nonfat milks declined by 21 percent from 1990 to 2005. The witness concluded from this information that demand for milk used in Class I and II products will only increase through innovation and marketing, not increases in the Class I and II minimum price.

The Nestlé witness testified that they have not needed to pay additional over-order premiums and have not experienced difficulties in attracting an adequate supply of milk due to the increases in costs noted by proponents. The witness testified that Nestlé is currently building a new Class I and Class II plant in Anderson, Indiana, and had been solicited by multiple potential milk suppliers.

The Nestlé witness stated that an emergency situation does not exist. The witness was of the opinion that the milk supply has been adequate nationwide for Class I and Class II needs and encouraged the Department to thoroughly examine whether Class I and Class II milk needs are not being met. The witness opined that the focus of the Federal order program is to balance and allocate milk supplies, and that increasing Class I and II prices during a period of ample supply does not meet this intent.

A witness appearing on behalf of the International Dairy Foods Association (IDFA) testified in opposition to Proposals 1–5. IDFA is a trade association that represents the nation's manufacturers, marketers, distributors and suppliers of fluid milk and dairy products. IDFA has a membership of 530 companies and is composed of 3 constituent organizations that include: the Milk Industry Foundation (MIF), the National Cheese Institute (NCI) and the International Ice Cream Association (IIAC).

The IDFA witness stressed that the proposed changes would create disorderly marketing conditions and that the data used to support the proponents' positions is flawed and

contradictory. The witness was of the opinion that there is no need to adopt Proposals 1–5 to ensure orderly marketing or a sufficient quantity of pure and wholesome milk to meet current or projected needs.

The IDFA witness said that ensuring the adequacy of the fluid milk supply is one of the fundamental purposes of the Federal order program. The IDFA witness stated that the current U.S. milk supply is adequate to meet the demands of the fluid milk market. The witness noted that total milk production is growing while fluid sales are declining. The IDFA witness said that milk production has increased in the last 30 years as a result of increased demand for manufactured dairy products, not fluid milk products. The witness, relying on ERS data, explained that milk production in the U.S. was 115.4 billion pounds in 1975 and grew to 177.0 billion pounds in 2005. The witness noted that ERS projections for 2006 showed a 4.9 billion pound increase for a total of 181.9 billion pounds of milk being produced in the U.S. As milk production grew during 1975–2005, the IDFA witness said, fluid milk product sales grew by 800 million pounds during that same time period. According to the witness, fluid sales hit a record high of 55.1 billion pounds in 1991 and have trended downward ever since. The witness concluded that with increasing production and decreasing fluid milk consumption, there is plenty of milk to serve a declining fluid market.

The IDFA witness acknowledged a Tentative Final Decision published November 22, 2006 (71 FR 67467) that updated the manufacturing allowances for Class III and Class IV products. The witness stated that those changes accomplish what the proponents are requesting by updating the factors representing the costs of processing for plants that manufacture Class III and Class IV products. The witness stated that adjusting balancing costs through Class I and Class II prices was addressed in a January 2005 decision to reject a proposal that would have covered the cost of balancing in the Northeast marketing area through marketwide service payments. The decision noted, the witness said, that opponents accurately testified that the costs of balancing were accounted for in the Class IV product price formula make allowances used for establishing the Class IV milk price.

The IDFA witness referenced an Interim Final Rule published October 25, 2006 (71 FR 62377) that addressed transportation costs in the Appalachian and Southeast marketing areas. The adopted changes, that became effective on December 1, 2006, increased the transportation credit rate, among other things, in the Appalachian and Southeast marketing areas. The witness was of the opinion that transportation credits can more effectively address pricing issues than the suggestions outlined in Proposals 1–5. The witness stated that transportation credits are preferred to changes in the Class I differentials. The witness noted that a similar set of regulations exists in the Upper Midwest marketing area to help move milk from supply plants to distributing plants.

The IDFA witness testified that adoption of Proposals 1–5 would lead to disorderly marketing conditions and referenced the Department's preliminary impact analysis to support that conclusion. The witness stated that the baseline analysis provided by the Department showed that U.S. milk production would be adequate to meet current and future demands for milk and dairy products. The witness highlighted points from the baseline analysis and said Federal order marketings would increase by over 9.6 billion pounds over the next 9 years. During that same 9 year period, the witness stated that the baseline showed only a 147 million pound increase in Class I marketings. According to the witness, the analysis prepared by the Department supports the claim that milk production over the next 9 years will exceed the needs of the Class I market.

The IDFA witness testified that the economic analysis prepared by the Department prior to the hearing neglected to analyze the impacts of Proposals 1–5 on a regional/marketing area basis. The witness said the missing information could be crucial to producers when deciding their vote in a referendum since adoption of Proposals 1–5 would create disparities between regions with different Class I utilizations. The witness noted that dairy farmers whose milk is pooled in marketing areas with low Class I and Class II utilization could experience depressed prices for their milk if Proposals 1–5 were adopted.

The IDFA witness testified that one of the initial goals of the Federal milk marketing order program was to encourage the conversion of Grade B farm operations to Grade A operations. The witness, relying on National Agricultural Statistics Service (NASS) data, testified that 98 percent of the nation's milk now comes from Grade A farms. The witness was of the opinion that since there is an adequate supply of milk for Class I needs, there is no need to provide incentives for maintaining or converting to Grade A status.

The IDFA witness testified that proponents did not provide data as to the costs of operating a Grade A dairy farm versus a Grade B dairy farm. The witness stated the most recent research on the cost difference between Grade A and Grade B farms was published in 1977. The IDFA witness said the request to update the 40 cent difference between Grade A and Grade B ignores the fact that the standards for producing Grade A and Grade B milk have narrowed over time.

The IDFA witness was also of the opinion that marketing costs, including balancing, have not increased to the levels advanced by proponents. The IDFA witness testified that proponents provided inadequate evidence regarding the actual costs of balancing and instead relied on plant cost of manufacturing data. The IDFA witness was of the opinion that this approach overlooks relevant data, for example, the decreasing seasonality in milk production since 1998.

The IDFA witness questioned the logic of requiring milk processors to pay dairy producers for post farm gate marketing costs like seasonal and daily balancing, shrinkage, administrative costs and give-up charges. The witness was of the opinion that these costs could not be addressed by increases in payments to dairy farmers, and need to come from elsewhere in the marketing channel. The witness again added that make allowances used in the Class IV price formula already account for balancing costs.

The IDFA witness presented information from the Minnesota Department of Agriculture to show that average hauling rates paid by producers in Minnesota declined between 1982 and 2003. The witness said some of the decreases in costs were probably related to subsidization of some of the costs by the buyer of the milk, and that the adoption of proposals 1–5 would not ensure that the entity bearing the cost of hauling would receive the benefit of a higher Class I price.

The IDFA witness testified that adjustments in over-order premiums serve to attract milk more efficiently than adjustments in Class I minimum prices. The witness was of the opinion that over-order premiums can quickly adjust to changing market conditions over time and regions, while it could take months or years to change the Class I minimum price.

The IDFA witness stated that the Department should also reject proposals to increase the Class II price because a greater amount of substitution of Class IV products for fresh cream would occur.

A consultant witness from Texas A&M University testified on behalf of IDFA in opposition to Proposals 1–5. The witness testified that adoption of Proposals 1–5 are unnecessary since disorderly marketing conditions are not occurring. The witness,testified that that there is no economic evidence to support a change in Class I and Class II price policies and that there is ample milk available to meet fluid milk demands. The witnesses stated that Federal milk orders were designed to help facilitate "least-cost" milk movements with a minimum of government involvement and are successful in meeting this end. The witness stated that the current dairy industry is not the same as when the AMAA was enacted, nor is it the same as when order reform occurred in the late 1990s. The dairy industry has shifted into increased regional production and larger farms resulting from higher feed costs, more complex dairy nutrition issues and more competition from nondairy products, the witness noted.

The witness said that the Department's challenge is to evaluate economic conditions relevant to Class I and Class II pricing and determine if they warrant a change in regulation. The witness stated that the issue of Class I and Class II pricing can not be adequately addressed under emergency conditions. The witness cited previous hearings such as the January 2006 Class III and Class IV make allowance hearing where 90 days notice was given before a hearing was held to consider changes. The witness also noted that a pre-hearing information session was held in preparation for the upcoming Class III and Class IV pricing hearing. Changes to Class I and Class II pricing, the witness said, should be given the same time for consideration. When ample time is given, the witness said, decision-makers can make critical decisions and rely on analysis and facts.

If Proposals 1–5 were adopted, the IDFA consultant witness said, an unintended market distortion would occur. Dairy farmers in high utilization markets would experience higher returns than dairy farmers in low utilization markets. The witness stated that adoption of the proposals would also lower Class III and Class IV prices, harming dairy farmers in the Upper Midwest region of the country.

The witness was of the opinion that it would be impossible to raise Class I and Class II prices without adversely affecting Class III and Class IV prices. The witness said that the benefits of an increased Class I price become diluted by lower Class III and Class IV prices. An additional unintended consequence for the Upper Midwest, the IDFA expert witness said, would occur if the MILC program was extended in the 2007 Farm Bill because of further price signals to increase production, ultimately lowering the Class III/IV price.

The witness stated that since 98 percent of all U.S. milk is produced on Grade A farms, the cost of conversion is no longer relevant. The witness stated that the dairy industry converted to Grade A decades ago and that all Federal order milk is produced to meet Grade A standards. The witness stated that the costs of maintaining Grade A milk is born by all classes of milk, not just Class I. The witness stated that the Department cannot determine that the costs for converting to Grade A status have increased since a study has not been done. The witness stated there has not been a study conducted since 1977 that shows the differential cost between Grade A and Grade B. The study, the witness said, was conducted by Gary G. Frank, G. A. Peterson and Harlan Hughes and titled *Class I Differential: Cost of Production Justification*. The witness said that the cost of converting to Grade A is no longer relevant and that the proponents do nothing to show that the costs of maintaining Grade A status on a dairy farm have increased.

The witness stated that proponents cite that marketing costs have increased and focus mainly on balancing and transportation costs. However, the witness said, both of those cost issues are addressed and provided for in other Federal order provisions. Balancing, the witness said, has been addressed in at least four hearings since 1980, said the witness, and has been rejected because the conclusion of all four is that balancing costs are a part of Class III and Class IV prices. The witness also stated that the costs of balancing are a component of contract services provided by cooperatives assessing over-order premiums and handling charges. The witness said that considering these costs would be double counting.

The witness also stated that there is no economic justification for relying on increased over-order premiums as a basis for increasing the Class I price. The witness said that over-order premiums reflect the value of milk used in manufacturing and the amount of money required for a manufacturing plant to give up milk for Class I uses. Some of this, the witness said, is related to the supply obligations of cooperatives. The witness said that increasing the Class I minimum price does not substitute for the function of over-order premiums and will not reduce the amount of premiums.

A witness appearing on behalf of Prairie Farms, Inc. (Prairie Farms), testified in opposition to Proposals 1–5. Prairie Farms is a cooperative that owns and operates a number of fluid milk plants that are pooled under several Federal milk marketing orders. Prairie Farms is a member of IDFA and NMPF. The Prairie Farms witness stated that the cooperative has not had any long-term problems attracting fluid milk. The witness was of the opinion that the adoption of Proposals 1–5 would create confusion and inequities in the marketplace. The witness was of the opinion that adoption of Proposals 1–5 would provide greater benefit to dairy farmers whose milk is pooled in areas of the country with higher Class I utilization than to dairy farmers whose milk is pooled in areas with lower Class I utilization. The witness testified that adoption of Proposals 1–5 would not represent the interests of all dairy farmer member cooperatives in an equitable manner.

The Prairie Farms witness stated that the Class I price should assign a value to fluid milk to account for the transportation costs from production areas to deficit areas. The witness was of the opinion that the Class I price should also reflect current market values of manufactured dairy products. The witness stated that Prairie Farms prefers the use of transportation credits, pooling standards, assembly credits and over-order premiums to attract milk for Class I use rather than increasing the Class I price. The witness said that changing the Class I differentials is unnecessary and would not serve to attract more milk to Class I handlers.

The witness testified that an increase in the Class I minimum price will raise the uniform prices received by dairy farmers, who will in turn produce more milk. More milk, the witness said, would lower Class III and Class IV prices because more milk will be used in manufactured products, eventually decreasing the uniform price. The witness stressed that farmers who pool milk in orders with lower Class I utilizations would experience greater negative impacts from the decreases in Class III and IV prices.

A witness appearing on behalf of H.P. Hood (Hood) testified in opposition to Proposals 1–5. Hood operates 14 Class I plants in the Northeast marketing area and 6 plants in the Upper Midwest marketing area. The witness was of the opinion that an adequate supply of milk is available for Class I and Class II use and adoption of Proposals 1–5 could negatively affect dairy producers located

in the Upper Midwest region of the country. The Hood witness questioned why proponents are seeking compensation for transportation costs through increases in Class I and Class II minimum prices. The witness was of the opinion that manufacturers of all classes of milk face increased transportation costs and Proposals 1–5 place an inequitable burden on Class I and II markets.

A witness appearing on behalf of Wells Dairy, Inc. (Wells), testified in opposition to Proposals 1–5. According to the witness, Wells is the world's largest family-owned dairy processor in the United States. Wells is located in Le Mars, Iowa, and their ice cream can be found throughout the United States and in 20 countries. The dairy operates five plants: A bottling plant and two ice cream plants in Iowa, a yogurt plant in Omaha, Nebraska, and an ice cream plant in St. George, Utah. The witness said that Wells' procures milk from more than 70 independent producers and many cooperatives located in South Dakota, Kansas, Nebraska and Iowa.

The Wells witness stated that they have not experienced difficulties in procuring fluid milk and that they pay their milk suppliers a premium. The witness stated that the proposed changes could reduce fluid milk consumption, increase milk production and increase regional differences in farm milk prices. The witness said the issue of pricing is regional in nature and therefore should be addressed regionally. The Wells witness added that a higher minimum Class II butterfat price could cause their plants to substitute Class IV butterfat products for Class II cream in their Class II products.

A witness appearing on behalf of Mid-West Dairymen's Company, Manitowoc Milk Producers Cooperative, Milwaukee Cooperative Milk Producers and Lakeshore Federated Dairy Cooperative (Mid-West, *et al.*) testified in opposition to Proposals 1–5. Mid-West, *et al.*, represents dairy farmers whose milk is mostly pooled on Orders 30 and 32. The Mid-West, *et al.*, witness stated that NMPF, in seeking to have Proposals 1–5 adopted, was not working in the best interest of the nation's dairy farmers. The witness was of the opinion that many of NMPF's member cooperatives did not agree with the proposals and that many of the largest NMPF members have producers in areas not regulated or pooled on Federal orders. The witness stated that the milk supply was adequately meeting Class I and Class II market needs and emergency conditions did not exist. The Mid-West, *et al.*, witness testified that the Class I price has historically been linked to manufacturing prices and the adoption of Proposals 1–5 would insulate the Class I and Class II prices from realities of marketplace changes.

The Mid-West, *et al.*, witness testified that other than assembly or transportation credits received from the pool, there is no direct incentive to ship milk for fluid use because the Class I value is shared with all pool participants. The incentive, if any, the witness said, comes from over-order premiums; the minimum Class I price does not cover any costs such as balancing and "give-up" charges.

The Mid-West *et al.*, witness testified that adoption of Proposals 1–5 will cause regional price disparities. The witness said the Upper Midwest could see a 15 cent increase while Florida could see an increase of 65 cents or more. The witness reasoned that a higher Class I price would also result in more milk production which would lead to a lower cheese price and lower mailbox prices.

A representative from Associated Milk Producers, Inc. (AMPI), testified in opposition to adoption of Proposals 1–5 on an emergency basis. AMPI is a Capper-Volstead cooperative whose members' milk is pooled on Orders 30 and 32. The AMPI witness testified that although the costs to produce and supply milk for the Class I and II market has increased, it is an insufficient reason to raise the Class I and II price at all locations. The witness testified that there is an adequate supply of milk to meet the fluid needs of the market. The witness was of the opinion that individual order regulations and over-order premiums serve to move milk when needed with fewer burdens on consumers and producers than increasing Class I and II minimum prices.

The witness testified that although increasing Class I and II minimum prices may increase proceeds to dairy farmers, dairy farmers whose milk is pooled in Federal orders with higher Class I utilizations would receive a larger increase. The witness stated that an increase in minimum prices would cause a supply response which would depress Class III and IV prices. This would turn the limited Class I benefit in a low utilization market into a net negative result, said the witness.

The witness testified that maintaining the linkage between Class III and IV prices and Class I and II prices is important. The witness added that the Federal milk marketing order program is a marketing tool, not a support price program.

A professor from the University of Wisconsin-Madison testified in opposition to adoption of Proposals 1–5. The witness testified that the disparate regional impacts that would result from adoption of Proposals 1–5 are of major concern. The witness and other colleagues from the University of Wisconsin performed an analysis on the possible impacts of the proposed changes.

The witness testified that most dairy farmers and handlers across the country have been experiencing increased energy costs. The witness testified that if Class I prices were increased it would generate an increase in the supply of milk. An increase in the supply of milk would increase the volume of milk used in Class III and IV, ultimately lowering the blend price, said the witness. These effects would be amplified, said the witness, in Federal milk orders with lower Class I utilizations.

A witness appeared on behalf of Kraft Foods (Kraft) in opposition to adoption of Proposals 1–5. Kraft is a manufacturer of mostly Class II and III products. The Kraft witness testified that adoption of Proposals 4–5 would have a negative impact on markets for Class II products. The witness stated that increasing the minimum Class II price would decrease sales of Class II products and encourage the substitution of milk powders or non-dairy based ingredients. The witness also noted that currently a change in the Class IV formulas and therefore the Class IV price would automatically change the Class II price but the NMPF proposal would sever the link.

The Kraft witness was also of the opinion that adoption of the NMPF proposals would result in benefits that are regionally disproportionate. The witness stated that increasing the minimum Class I and II prices would have a greater positive impact on the milk of producers that is pooled on orders with higher Class I utilization.

A witness appeared on behalf of Dean Foods (Dean) in opposition to adoption of Proposals 1–5 on an emergency basis. The witness stated that Dean owns and operates distributing plants that are located in or regulated by all 10 Federal milk marketing orders. The Dean witness testified that there is an adequate supply of milk to meet Class I and II demand. The witness, summarizing the economic analysis prepared by the Department for the hearing, stated that the analysis predicts government purchases of surplus nonfat dry milk absent of adoption of the NMPF proposals. The witness concluded that adoption of Proposals 1–5 would increase government outlays to purchase surplus dairy products while increasing the retail prices of Class I and II dairy products. The

witness testified that increases to Class I and II prices would decrease demand for fluid milk.

The Dean witness testified that increases in Class I and II minimum prices would not be returned to the dairy farmers that supply the Class I and II market. The witness testified that an increase in the Class I and II minimum price benefits all producers whose milk is pooled on a market, not the producers actually supplying the Class I and II market.

The Dean witness testified that adoption of Proposals 1–5 would have disparate impacts on producers depending on the Class I utilization of the order on which their milk is pooled. This could lead to opportunities for pool-riding, said the witness, which could require another round of hearings to tighten pooling standards.

The Dean witness testified that adoption of Proposals 1–5 would be a major policy shift for the Federal milk marketing order program. The witness testified that the NMPF proposals would sever the connection between Class I and II prices and Class III and IV prices. The witness predicted that adoption of the NMPF proposals could also encourage the substitution of nonfat dry milk for Class II skim milk.

A witness appeared on behalf of the Center for International Food and Agriculture Policy at Citizens Against Government Waste (CAGW). CAGW is a nonprofit organization that aims to eliminate waste and inefficiency in the Federal Government. The CAGW witness testified that adoption of Proposals 1–5 will increase the retail price of milk, reduce fluid milk consumption, increase costs to taxpayers and increase regional disparities in the prices dairy farmers receive for their milk. The witness was of the opinion that adequate amounts of milk are available to meet fluid milk demands.

A witness appearing on behalf of New York State Dairy Foods (NYSDF) and Queensboro Farm Products, Inc. (Queensboro), testified in opposition to Proposals 4 and 5. According to the witness, NYSDF is a trade organization made up of a variety of New York dairy industry participants. Queensboro, the witness said, is a proprietary handler pooled in the Northeast marketing area. Queensboro distributes Class I and Class II products to metropolitan New York City. The witness stated that NYSDF and Queensboro are concerned about possible inequities that could result from adoption of Proposals 4 and 5.

The NYSDF/Queensboro witness explained that if Proposals 4 and 5 are adopted, the price of a 50,000 pound tanker of 40 percent cream would increase $328. The witness said this would occur because the proposal would increase the difference on butterfat from 0.7 cents per pound to 2.33 cents per pound, altering the relationship between Class IV butterfat and skim prices and Class II butterfat and skim prices. The witness added that an increase in the price of milk used to manufacture Class II products could encourage customers to substitute Class II cream with butter, butter oil and anhydrous milkfat.

A witness appearing on behalf of Galloway Company (Galloway), located in Neenah, Wisconsin, testified in opposition to Proposals 4 and 5. Galloway manufactures Class II products including sweetened condensed milk, ice cream mixes and beverage bases that are used in food and beverage processing. The witness stated that the changes proposed are too complex to be properly addressed in an emergency hearing.

The Galloway witness stated that adoption of Proposals 4 and 5 would distort the relationship between Class II and Class IV prices. The witness was of the opinion that adoption of Proposals 4 and 5 would increase the Class II price to a point where their customers (ice cream and confectionary manufacturers) would substitute Class IV products or other unregulated products as ingredients. The witness presented data demonstrating decreased production of Class II bulk sweetened condensed whole and skim milk from 1995–2005. The witness attributed the reduced production to pricing disparities between Class II and IV. The witness continued that there must be a tie between Class II and Class IV price formulas to prevent disorderly marketing because manufacturers can alternate between Class II and Class IV components. The witness stated that the processes for making condensed skim milk, sweetened condensed milk and NFDM all require the same condensing processes and costs. The witness questioned why there would be a make allowance for a process in one class and a different rate for the same process in another class. The witness urged the Department to not adopt Proposals 4 and 5 and further distort the relationship between Class II and IV.

The Galloway witness stated that 52 percent of the milk pooled in Federal orders was Class I and Class II. Of that milk, the witness said that 39 percent was Class I and 13 percent was Class II. The witness stated that if the proposals are adopted, processors who use Class II ingredients will face hardships in competing with processors who use alternative ingredients. The witness also stated that producers will be negatively affected because the substitution for Class II ingredients will decrease blend prices.

Findings and Conclusions

Class I Discussion

NMPF argues that dairy farmers are experiencing increased costs in supplying fluid milk and should be compensated by an increase in the Class I price. NMPF attempts to justify an increase in the Class I price through claims that on-farm and farm to plant costs associated with Grade A milk production, transportation, balancing and "competitive costs" have recently increased. Specifically, NMPF argues that the increases in milk supply costs justify an increase of $0.77 per cwt over the current minimum Class I differential value of $1.60.

Evidence submitted at the hearing does not support claims that the costs incurred by dairy farmers in supplying fluid milk have increased to the levels advanced by NMPF. Proponents do not provide adequate data to justify that the additional costs faced by dairy farmers in supplying the needs of the Class I market have increased. Proponents do not reasonably analyze the actual differences in costs of maintaining Grade A production versus Grade B production or demonstrate the cost differences that could be expected between the two. Proponents do not analyze the actual impacts of these cost factors on the minimum level of the Class I differential borne by producers in servicing fluid milk needs, or the costs of balancing in the marketplace. Proponents also do not demonstrate how the "competitive costs" faced by fluid plants in attracting milk away from manufacturing uses have increased. Multiple opponents including dairy product manufacturers and dairy-farmer cooperatives agree that data supplied by proponents is inadequate.

The NMPF proposals would also revise the formula used to calculate the Class I price. The revised formula would "de-couple" the Class I price from the Class III or Class IV price by using a different formula. The Class I price is directly linked to the (higher of) Class III or IV price to ensure that supply and demand conditions for milk are reflected throughout all classes. All classified uses must compete for the same supply of milk. If a change is made to the Class III or IV price formulas, the change will equally affect the Class I price. Rather than maintaining this direct link, the NMPF proposal essentially "locks in" the current Class

III and IV price formulas and breaks the necessary link between Class I prices and any future changes in Class III and IV pricing formulas.

Class II Discussion

Proponents argue that the formula used to determine the Class II price does not properly account for the costs of drying and re-hydrating NFDM and encourages the substitution of NFDM for fresh skim milk in Class II products. They claim that a $0.17 per cwt increase in the Class II minimum price is necessary to reflect increased costs of drying and re-hydrating skim milk. Additionally, they proposed that the Class II butterfat price be the same as the Class I butterfat price. Proponents argue that since milk supplies for Class I and II products are complementary, and that the Class II butterfat supply is primarily from surplus butterfat at Class I bottling plants, the butterfat values should be the same. Proponents fail, however, to provide relevant data demonstrating that condensing and re-hydrating costs have actually increased to levels advanced, or a compelling argument as to why Class I and II butterfat values should be equal.

Adoption of NMPF's proposed Class II skim milk formula would also sever the relationship between Class IV and Class II product prices, just as it would to the relationship of the Class I price to Class III and IV prices. If a change was made to the Class IV price formula in future proceedings, for example, a make allowance proceeding, the change would not be reflected in the Class II price.

Rulings on Findings and Conclusions

All briefs, findings and conclusions, and the evidence in the record were considered in reaching the findings and conclusions set forth above. The petition to consider proposals that would have increased Class I and Class II prices and modified the formulas used to determine Class I and Class II prices is denied for the reasons stated in this decision.

Termination of Proceeding

At issue in this proceeding is whether the level of the Class I and II prices, and the manner in which the Class I and II prices are determined, are successful in promoting orderly marketing conditions and meeting the intent of the Agricultural Marketing Agreement Act of 1937 (AMAA). As reflected in the above Class I and Class II discussions, the record does not demonstrate that the proposed modifications to the Class I and Class II price formulas are supportable. While some evidence may indicate that dairy farmers have faced increased additional costs in supplying the needs of the fluid market, other evidence suggests that other costs may have decreased. In any case, the evidence is neither compelling nor provides a basis to make a reasoned decision for either recommending adoption or denial of the proposals. Accordingly, the proceeding is terminated.

List of Subjects in 7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131

Milk marketing orders.

The authority citation for 7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

Dated: December 19, 2008.

James E. Link,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–30697 Filed 12–23–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. APHIS–2007–0124]

Change in Disease Status of Surrey County, England, Because of Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of certain animals, meat, and other animal products into the United States by restoring Surrey County, England, to the list of regions of the world that are considered free of rinderpest and foot-and-mouth disease (FMD), and to the list of regions of the world considered free of rinderpest and FMD but subject to additional importation restrictions because of those regions' proximity to or trading relationships with FMD-affected regions. This final rule follows an interim rule that removed Surrey County, England, from those lists due to the detection of FMD in that region. Based on the results of a risk analysis concerning the FMD disease status of Surrey County, England, we have determined that Surrey County, England, can be added to the list of regions considered free of FMD. This rule relieves certain FMD-related prohibitions and restrictions on the importation of ruminants and swine and the fresh meat and other animal products of ruminants and swine into the United States from Surrey County, England.

DATES: *Effective Date:* January 8, 2009.

FOR FURTHER INFORMATION CONTACT: Dr. Chip Wells, Senior Staff Veterinarian, Regionalization Evaluation Services Import Staff, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of certain animals and animal products into the United States in order to prevent the introduction of various animal diseases, including rinderpest and foot-and-mouth disease (FMD). FMD is a severe and highly contagious viral infection affecting all cloven-hoofed animals, including cattle, deer, goats, sheep, swine, and other animals. Section 94.1 of the regulations lists regions of the world that are considered free of rinderpest and FMD. Section 94.11 lists regions of the world that the Animal and Plant Health Inspection Service (APHIS) has determined to be free of rinderpest and FMD but from which the importation of meat and other animal products into the United States is subject to additional restrictions because of those regions' proximity to or trading relationships with FMD-affected regions.

In an interim rule [1] effective and published in the **Federal Register** on January 30, 2008 (73 FR 5424–5426, Docket No. APHIS-2007-0124), we amended the regulations in § 94.1 to remove Surrey County, England, from the list of regions that are considered free of rinderpest and FMD. We also amended the regulations in § 94.11 to remove Surrey County, England, from the list of regions considered free of rinderpest and FMD but from which the importation of meat and other animal products of ruminants and swine into the United States is subject to additional restrictions. That action was necessary because, by September 30, 2007, a total of eight outbreaks of FMD in Surrey County, England, had been reported to the World Organization for Animal Health (OIE). As a result of the interim

[1] To view the interim rule and the comment we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0124.*

rule, the importation of ruminants and swine and the fresh meat and other animal products of ruminants and swine from Surrey County, England, was restricted.

Although we removed Surrey County, England, from the list of regions that are considered free of rinderpest and FMD we recognized that: (1) FMD was not known to exist in the United Kingdom outside of Surrey County, England; (2) the United Kingdom maintained strict control over the importation and movement of animals and animal products from regions of higher risk and established barriers to the spread of FMD from Surrey County, England; (3) the United Kingdom maintained a surveillance system capable of detecting FMD should the disease have been introduced into other regions of the country; and (4) the United Kingdom has the laws, policies, and infrastructure to detect, respond to, and eliminate any occurrence of FMD. We stated that we intended to reassess the situation in accordance with the standards of the OIE, and that as part of the reassessment process, we would consider all comments received regarding the interim rule.

We solicited comments on the interim rule for 60 days ending March 31, 2008. The only comment we received directed our attention to a press release from a governmental agency of the United Kingdom which announced that the OIE had restored the FMD-free status of the United Kingdom as of February 19, 2008.

On May 23, 2008, we published a notice[2] in the **Federal Register** (73 FR 30002–30003, Docket No. APHIS–2007–0124) in which we advised the public of the availability of a risk analysis that had been prepared by APHIS concerning the FMD status of Surrey County, England, and the related disease risks associated with importing ruminants and swine and the fresh meat and other animal products of ruminants and swine from Surrey County, England. The risk analysis, entitled "APHIS Risk Analysis on Importation of Foot and Mouth Disease (FMD) Virus from Surrey County, England, in the United Kingdom," examined the events that occurred during and after the outbreaks and assessed the risk associated with the resumption of imports of ruminants and swine and the fresh meat and other animal products of ruminants and swine from Surrey County, England. In the risk analysis, APHIS concluded that the risk of introducing FMD into the United States as a result of the resumption of imports of ruminants and swine and the fresh meat and other animal products of ruminants and swine from Surrey County, England, is low.

We solicited comments concerning the risk analysis for 60 days ending July 22, 2008. We received three comments by that date. The comments were from private citizens who opposed relieving restrictions on Surrey County, England. None of the commenters offered any data or substantive information to support their objections, however.

Therefore, based on the conclusions of our risk analysis and for the reasons given in this document, we are amending the regulations by restoring Surrey County, England, to the list of regions of the world that are considered free of rinderpest and FMD, and to the list of regions of the world considered free of rinderpest and FMD but subject to additional importation restrictions because of those regions' proximity to or trading relationships with FMD-affected regions.

This final rule also affirms the information contained in the interim rule concerning Executive Orders 12866 and 12988, and the Paperwork Reduction Act. Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

Regulatory Flexibility Act

The following analysis addresses the economic effects of this rule on small entities, as required by the Regulatory Flexibility Act.

FMD is a contagious viral disease of ruminants, swine, and other cloven-hoofed animals. In August 2007, FMD was confirmed in Surrey County, England, and by the end of September 2007, a total of eight outbreaks had been reported to the World Organization for Animal Health (OIE). In an interim rule published January 30, 2008, APHIS amended the regulations by removing Surrey County from the list of regions in § 94.1 that are considered free of rinderpest and FMD, and from the list of regions in § 94.11 that are considered free of rinderpest and FMD but from which the importation of meat and other animal products of ruminants and swine into the United States is subject to additional restrictions.

Since publication of the interim rule, the outbreaks have been eradicated and the United Kingdom has maintained the policies and infrastructure necessary to detect, respond to, and eliminate any recurrence of FMD. As a result, APHIS has concluded that the risk of introducing FMD into the United States with the resumption of importation from Surrey County of ruminants and swine and the fresh meat and other animal products of ruminants and swine is low.

With this rule, U.S. entities will be able to import from Surrey County any ruminant or swine or any fresh (chilled or frozen) meat or other product of any ruminant or swine, subject to the restrictions in § 94.11 and any regulatory restrictions that may apply concerning other animal diseases.

U.S. Imports of Affected Products From the United Kingdom[3]

For the 3 years 2005 to 2007, the United States imported 2.2, 1.4, and 1.5 million kilograms of fresh or frozen pork products from the United Kingdom. These imports were valued at $10.8, $7.3, and $7.3 million, respectively. Over the same period, the United States imported 6.2, 5.7, and 5.8 million kilograms of dairy products from the United Kingdom, valued at $37.7, $41.9, and $45.9 million, respectively. These annual quantities and values indicate that the prohibition on imports of ruminant and swine products from Surrey County, England, during the latter part of 2007 (following the FMD outbreak) did not appear to affect U.S. imports of pork or dairy products from the United Kingdom. Pork and pork products imported from the United Kingdom represent less than 2 percent of total U.S. pork and pork products imports, and the dairy product imports from the United Kingdom represent less than 3 percent of total U.S. dairy product imports. Other ruminant and swine products imported by the United States from the United Kingdom include wool, wool grease, hides, bovine semen, fertilizers, and animal hair.

Entities potentially affected by this final rule are importers and producers of animals and animal products. The majority of such enterprises are small entities, as defined by the Small Business Administration. For most categories of wholesale trade, the small-entity standard is not more than 100 employees. For most categories of animal production, the small-entity standard is not more than $750,000 in annual receipts.

Most businesses that could be affected by this rule are small. However, we expect the effects will be insignificant. As indicated above, U.S. imports of swine and dairy products from the United Kingdom comprise a small share of total U.S. imports of these products.

[2] To view the risk analysis document and the comments we received, go to *http://www.regulations.gov/fdmspublic/camponent/main?main=DocketDetail&d=APHIS-2007-0124.*

[3] *Source:* U.S. Department of Commerce, Bureau of the Census, as reported in the Global Trade Atlas.

Moreover, it is likely that Surrey County is the origin of only a negligible share of the United Kingdom's exports of ruminant and swine products to the United States, given the relatively small size of that county's ruminant and swine inventories. As reported by the United Kingdom's Department for Environment, Food, and Rural Affairs, only 0.6 percent of England's cattle, 0.2 percent of its swine, 0.4 percent of its sheep, and 1.4 percent of its goats were located in Surrey County in June 2007.[4]

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule restores Surrey County, England, to the list of regions of the world that are considered free of rinderpest and FMD, and to the list of regions of the world considered free of rinderpest and FMD but subject to additional importation restrictions because of those regions' proximity to or trading relationships with FMD-affected regions. We have determined that approximately 2 weeks are needed to ensure that APHIS and the Department of Homeland Security, Bureau of Customs and Border Protection, personnel at ports of entry receive official notice of this change in the regulations. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective 15 days after publication in the **Federal Register**.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

■ Accordingly, the interim rule amending 9 CFR part 94 that was published at 73 FR 5424–5426 on January 30, 2008, is adopted as a final rule with the following changes:

[4] Department for Environment, Food, and Rural Affairs (DEFRA), UK. June 2007 Agricultural and Horticultural Survey—England. *http://www.defra.gov.uk/esg/work_htm/publications/cs/farmstats_web/2_SURVEY_DATA_SEARCH/COMPLETE_DATASETS/PSM/RegCountUA_07.xls.*

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

■ 1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 94.1 [Amended]

■ 2. In § 94.1, paragraph (a)(2) is amended by removing the words "(except for Surrey County, England)".

§ 94.11 [Amended]

■ 3. In § 94.11, paragraph (a) is amended by removing the words "(except for Surrey County, England)".

Done in Washington, DC, this 16th day of December 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–30724 Filed 12–23–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0975; Directorate Identifier 2008–NE–29–AD; Amendment 39–15772; AD 2008–26–06]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Corporation (RRC) AE 3007A Series Turbofan Engines

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding emergency airworthiness directive (AD) 2008–19–51 that we sent previously to all known U.S. owners and operators of RRC AE 3007A series turbofan engines. That AD requires performing initial and repetitive eddy current inspections (ECIs) on the high-pressure turbine (HPT) stage 2 wheel for cracks. This AD continues to require those same inspections, but revises the compliance schedule for the initial inspection and specifies the affected HPT stage 2 wheels by part number (P/N). This AD results from reports of cracked HPT stage 2 wheels. We are issuing this AD to detect cracks in the HPT stage 2 wheel, which could result in a possible uncontained failure of the HPT stage 2 wheel and damage to the airplane.

DATES: Effective January 8, 2009.

We must receive any comments on this AD by February 23, 2009.

ADDRESSES: Use one of the following addresses to comment on this AD.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Contact Rolls-Royce Corporation, P.O. Box 420, Speed Code U15, Indianapolis, IN 46206–0420, e-mail: *indy.pubs.services@rolls-royce.com*, for the service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Kyri Zaroyiannis, Aerospace Engineer, Chicago Aircraft Certification Office, Small Airplane Directorate, FAA, 2300 E. Devon Ave., Des Plaines, IL 60018; e-mail: *kyri.zaroyiannis@faa.gov;* telephone (847) 294–7836; fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: On September 8, 2008, we issued emergency AD 2008–19–51, that applies to RRC AE 3007A series turbofan engines. That AD requires performing initial and repetitive ECIs on HPT stage 2 wheels that have accumulated 6,500 or more cycles-since-new (CSN). That AD resulted from reports of HPT stage 2 wheels that had cracks in the bores of the wheels. This condition, if not corrected, could result in a possible uncontained failure of the HPT stage 2 wheel, which could cause damage to the airplane.

Actions Since AD 2008–19–51 Was Issued

Since we issued that AD, we have determined that the cracks in the HPT stage 2 wheel bores are caused by a thermally-induced high stress in the disk bore which was not identified at the time of the original certification. We performed a new risk assessment for cracking in the bore of the HPT stage 2 wheel using the FAA methodology guidelines in FAA Advisory Circular 39.8 and the results of the inspections from AD 2008–19–51. The risk

assessment takes into account physical characteristics about the cracks that were not available when we issued AD 2008–19–51. This risk assessment, in combination with a sufficient number of early inspections relative to the existing AD, shows that the risk profile is not rapidly increasing, which was a concern when we issued AD 2008–19–51. Using this new information, we determined we could change the compliance requirements for the ECI while still maintaining a level of safety consistent with the intent of the original AD. We changed the new compliance schedule to an interval of 150 cycles-in-service (CIS) between wheel populations. The intervals for the wheel populations are based on CSN and they vary because of the current distribution of the affected wheels throughout the fleet. This distribution results in a compliance schedule that inspects the fleet from the highest time, highest risk wheels to the lowest time, lowest risk wheels, and allows us to control the overall risk consistent with the intent of the original AD.

We determined that a requirement to perform the ECI by a certain CIS is by itself sufficient to maintain the level of safety consistent with the intent of the original AD. Because of that determination, we no longer prohibit installing any engine that has an HPT stage 2 wheel with more than 6,500 CSN unless the wheel was inspected. Instead, we modified that requirement to apply only to HPT stage 2 wheels removed from service as a result of complying with this AD.

Finally, we specify the P/Ns for the affected HPT stage 2 wheels to ensure proper identification.

Relevant Service Information

We have reviewed and approved the technical contents of RRC Alert Service Bulletin (ASB) AE 3007A–A–72–367, dated September 5, 2008. That ASB describes procedures for ECI of the HPT stage 2 wheel on AE 3007A series engines.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other RRC AE 3007A series turbofan engines of the same type design. We are issuing this AD to detect cracks in the HPT stage 2 wheel, which could result in a possible uncontained failure of the HPT stage 2 wheel and damage to the airplane. This AD requires:

- Removing from service any engine with certain P/N HPT stage 2 wheels by the compliance time specified in Table 1 of this AD; and
- Performing an ECI on any HPT stage 2 wheel in any engine that was removed from service as a requirement of this AD before returning that HPT stage 2 wheel to service.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Interim Action

These actions are interim actions and we may take further rulemaking actions in the future.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to send us any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. FAA–2008–0975; Directorate Identifier 2008–NE–29–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

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 with FAA personnel concerning this AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

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 AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is the same as the mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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 a new airworthiness directive, Amendment 39–15772, to read as follows:

2008–26–06 Rolls-Royce Corporation (Formerly Allison Engine Company): Amendment 39–15772. Docket No. FAA–2008–0975; Directorate Identifier 2008–NE–29–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 8, 2009.

Affected ADs

(b) This AD supersedes emergency AD 2008–19–51.

Applicability

(c) This AD applies to Rolls-Royce Corporation (RRC) AE 3007A series turbofan engines with high-pressure turbine (HPT) stage 2 wheels, part numbers (P/Ns) 23065892, 23069116, 23069438, 23069592, 23074462, 23074644, 23075345, 23084520, or 23084781, installed. These engines are installed on, but not limited to, Empresa Brasileira de Aeronautica S. A. (EMBRAER) EMB–135 and EMB–145 airplanes.

Unsafe Condition

(d) This AD results from reports of cracked HPT stage 2 wheels. We are issuing this AD to detect cracks in the HPT stage 2 wheel, which could result in a possible uncontained failure of the HPT stage 2 wheel and damage to the airplane.

Compliance

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

Removing Engines From Service

(f) For engines with an HPT stage 2 wheel, P/Ns 23065892, 23069116, 23069438, 23069592, 23074462, 23074644, 23075345, 23084520, or 23084781, remove the engine from service by the cycles-in-service (CIS) specified in Table 1 of this AD.

TABLE 1—COMPLIANCE TIMES FOR ENGINE REMOVAL FOR ECI OF THE HPT STAGE 2 WHEELS

If the HPT stage 2 wheel has accumulated on the effective date of this AD:	Then remove the engine from service:
16,200 cycles-since-new (CSN) or more.	Within 150 CIS.
15,800 to 16,199 CSN	Within 300 CIS.
15,500 to 15,799 CSN	Within 450 CIS.

Installation Prohibition

(g) After the effective date of this AD, don't return to service, any HPT stage 2 wheel that was installed in any RRC AE 3007A series engine removed as a result of paragraph (f) of this AD, unless the HPT stage 2 wheel was inspected as specified in RRC Alert Service Bulletin (ASB) AE 3007A-A–72–367, dated September 5, 2008.

Alternative Methods of Compliance

(h) The Manager, Chicago Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

(i) Alternative Methods of Compliance (AMOCs) currently approved for AD 2008–19–51 will remain in effect until the effective date for this AD. After that date the AMOCs will expire.

Special Flight Permits

(j) Under 14 CFR part 39.23, we are limiting the special flight permits for this AD by restricting the flight to essential flight crew only.

Related Information

(k) Contact Kyri Zaroyiannis, Aerospace Engineer, Chicago Aircraft Certification Office, Small Airplane Directorate, FAA, 2300 E. Devon Ave., Des Plaines, IL 60018; e-mail: *kyri.zaroyiannis@faa.gov;* telephone (847) 294–7836; fax (847) 294–7834, for more information about this AD.

(l) Rolls-Royce Corporation ASB AE 3007A-A–72–367, dated September 5, 2008, contains information on performing ECIs on HPT stage 2 wheels. Contact Rolls-Royce Corporation, P.O. Box 420, Speed Code U15, Indianapolis, IN 46206–0420; e-mail: *indy.pubs.services@rolls-royce.com,* for a copy of this service information.

Material Incorporated by Reference

(m) None.

Issued in Burlington, Massachusetts, on December 12, 2008.

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E8–30051 Filed 12–23–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1138; Directorate Identifier 2008–CE–059–AD; Amendment 39–15778; AD 2008–26–12]

RIN 2120–AA64

Airworthiness Directives; Aircraft Industries a.s. (Type Certificate G60EU previously held by LETECKÉ ZÁVODY a.s. and LET Aeronautical Works) Model L 23 Super Blanik Sailplane

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

ACTION: Final rule.

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

This Airworthiness Directive (AD) is prompted by the discovery on L 23 SUPER–BLANIK sailplanes of cracks in zones where the front and aft control levers attach the connecting rod designated as "control bridge" on the relevant Illustrated Parts Catalogues (IPC). If left uncorrected cracks could propagate and lead to the breakage of the connecting rod with subsequent loss of control of the sailplane.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective January 28, 2009.

On January 28, 2009, the Director of the Federal Register approves the incorporation by reference of certain publications listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on October 29 (73 FR 64282). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> This Airworthiness Directive (AD) is prompted by the discovery on L 23 SUPER–BLANIK sailplanes of cracks in zones where the front and aft control levers attach the connecting rod designated as "control bridge" on the relevant Illustrated Parts Catalogues (IPC). If left uncorrected cracks could propagate and lead to the breakage of the connecting rod with subsequent loss of control of the sailplane.
>
> For the reasons described above, this AD requires an inspection for cracks of the control bridge and its replacement, as necessary. In addition, this AD requires an update of the aircraft Maintenance Manual (MM) to incorporate repetitive inspections of the control bridge.

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

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 105 products of U.S. registry. We also estimate that it will take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $16,800, or $160 per product.

In addition, we estimate that any necessary follow-on actions will take about 7 work-hours and require parts costing $2,000, for a cost of $2,560 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

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 the NPRM, 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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–26–12 Aircraft Industries a.s. (Type Certificate G60EU previously held by LETECKÉ ZÁVODY a.s. and LET Aeronautical Works): Amendment 39–15778; Docket No. FAA–2008–1138; Directorate Identifier 2008–CE–059–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 28, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model L 23 Super Blanik sailplanes, all serial numbers, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 27: Flight Controls.

Reason

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

This Airworthiness Directive (AD) is prompted by the discovery on L 23 SUPER–BLANIK sailplanes of cracks in zones where the front and aft control levers attach the connecting rod designated as "control bridge" on the relevant Illustrated Parts Catalogues (IPC). If left uncorrected cracks could propagate and lead to the breakage of the connecting rod with subsequent loss of control of the sailplane.

For the reasons described above, this AD requires an inspection for cracks of the control bridge and its replacement, as necessary. In addition, this AD requires an update of the aircraft Maintenance Manual (MM) to incorporate repetitive inspections of the control bridge.

Actions and Compliance

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

(1) Within the next 3 months after January 28, 2009 (the effective date of this AD) and repetitively thereafter at intervals not to exceed 12 months, visually inspect the control bridge in areas of juncture with the two control sticks for cracks. Do the inspection following paragraph A of LET Aircraft Industries, a.s. Mandatory Bulletin MB No. L23/050a, Revision No. 2, dated September 12, 2007, except use a 10X magnifier and do a dye penetrant inspection following the procedures in chapter 5, section 5, of FAA Advisory Circular AC 43.13–1B CHG 1, dated September 27, 2001.

(2) If cracks are found in the control bridge bedding during any inspection required in paragraph (f)(1) of this AD, before further flight, replace the defective control bridge bedding, Dwg. No. A740 371N, in the control bridge assembly, Dwg. No. A740 370N, following LET Aircraft Industries, a.s. Mandatory Bulletin MB No. L23/050a, Revision No. 2, dated September 12, 2007; and Appendix No. 1, "Replacement of Bearings 608 CSN 024630 at Control Bridge Dwg. No. A740 370N in a Bedding Dwg. No. A740 371N," to LET Aircraft Industries, a.s. Mandatory Bulletin MB No. L23/050a, Revision No. 2, dated September 12, 2007.

(3) Doing the replacement required in paragraph (f)(2) of this AD terminates the 12-month repetitive inspection required in paragraph (f)(1) of this AD. After the replacement required in paragraph (f)(2) of this AD, perform subsequent inspections on the new control bridge assembly according to LET Aircraft Industries, a.s. Documentation Bulletin No.: L23/020 d, dated August 6, 2007.

FAA AD Differences

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

(1) The service information requires a visual inspection with a 6X magnifier. We are requiring a dye penetrant inspection and a 10X magnifier to detect cracks that could go undetected using only a 6X magnifier.

(2) The MCAI requires updating the maintenance manuals to add repetitive inspections of the control bridge. Since the maintenance manual is only one way of establishing a maintenance program, the only way we can mandate these repetitive inspections is through an AD action. We have made these repetitive inspections part of this AD.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090. Before using any approved AMOC on any sailplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2007–0261, dated October 2, 2007; LET Aircraft Industries, a.s. Mandatory Bulletin MB No. L23/050a, Revision No. 2, dated September 12, 2007; Appendix No. 1, "Replacement of Bearings 608 CSN 024630 at Control Bridge Dwg. No. A740 370N in a Bedding Dwg. No. A740 371N," to LET Aircraft Industries, a.s. Mandatory Bulletin MB No. L23/050a, Revision No. 2, dated September 12, 2007; LET Aircraft Industries, a.s. Documentation Bulletin No.: L23/020 d, dated August 6, 2007; and FAA Advisory Circular AC 43.13–1B CHG 1, dated September 27, 2001, for related information. FAA Advisory Circular AC 43.13–1B CHG 1, dated September 27, 2001, can be found on the Internet at *http://rgl.faa.gov/.*

Material Incorporated by Reference

(i) You must use LET Aircraft Industries, a.s. Mandatory Bulletin MB No. L23/050a, Revision No. 2, dated September 12, 2007; Appendix No. 1, "Replacement of Bearings 608 CSN 024630 at Control Bridge Dwg. No. A740 370N in a Bedding Dwg. No. A740 371N," to LET Aircraft Industries, a.s. Mandatory Bulletin MB No. L23/050a, Revision No. 2, dated September 12, 2007; and LET Aircraft Industries, a.s. Documentation Bulletin No.: L23/020 d, dated August 6, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Aircraft Industries, a.s. Na Záhonech 1177, 686 04 Kunovice, Czech Republic; phone: +420–572816002; fax: +420–572816006; Internet: *http://www.let.cz/.*

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on December 16, 2008.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–30405 Filed 12–23–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1250; Directorate Identifier 2008–SW–49–AD; Amendment 39–15755; AD 2008–17–51]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters, Inc. Model MD900 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 2008–17–51, which was sent previously to all known U.S. owners and operators of MD Helicopters, Inc. (MDHI) Model MD900 helicopters by individual letters. This AD requires, before further flight, fluorescent magnetic particle inspecting the aft threads of the forward directional control cable (control cable) for a crack and replacing the control cable with an airworthy part if you find a crack. If you do not find a crack, this AD requires that you demagnetize the cable threads until you reach a certain gauss level. This AD also requires visually inspecting the aft cable attach bracket for a crack and for interference with movement of the control cable or for deformation of the aft cable attach bracket. If a crack or interference with movement of the control cable or deformation of the aft cable attach bracket exists, this AD requires replacing the bracket with an airworthy part. This AD also requires modifying the control cable conduit and the rotating cone control rod and identifying the rotating cone control rod with a certain part number. This amendment is prompted by three reports of in-flight failure of the control cable and loss of yaw control resulting in emergency landings and subsequent damage to the helicopter. The actions specified by this AD are intended to prevent loss of yaw control and subsequent loss of control of the helicopter.

DATES: January 8, 2009, to all persons except those persons to whom it was made immediately effective by Emergency AD 2008–17–51, issued on August 14, 2008, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 8, 2009.

Comments for inclusion in the Rules Docket must be received on or before February 23, 2009.

ADDRESSES: Use one of the following addresses to submit comments on this AD:

- *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.

You may get the service bulletin identified in this AD from MD Helicopters Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615, Mesa, Arizona 85215–9734, telephone 1–800–388–3378, fax 480–346–6813, or on the Web at *http://www.mdhelicopters.com*. You may purchase the American Society for Testing and Material standard from ASTM International on the Web at *http://www.astm.org/*.

Examining the Docket: You may examine the docket that contains the AD, any comments, and other information 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 Docket Operations office (telephone (800) 647–5527) is located in Room W12–140 on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Eric D. Schrieber, FAA, Los Angeles Aircraft Certification Office, Aviation Safety Engineer, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone 562–627–5348, fax 562–627–5210.

SUPPLEMENTARY INFORMATION: On August 14, 2008, we issued Emergency AD 2008–17–51 for the specified MDHI model helicopters. The Emergency AD requires fluorescent magnetic particle inspecting the aft threads of the control cable for a crack and replacing the control cable with an airworthy part if you find a crack. If you do not find a crack, the Emergency AD requires that you demagnetize the cable threads until you reach a certain gauss level. The Emergency AD also requires visually inspecting the aft cable attach bracket for a crack and for interference with movement of the control cable or for deformation of the aft cable attach bracket. If a crack or interference with movement of the control cable or deformation of the aft cable attach bracket exists, the Emergency AD requires replacing the bracket with an airworthy part. The Emergency AD also requires modifying the control cable conduit and the rotating cone control rod and identifying the rotating cone control rod with part number "900C2010582–105." The Emergency AD was prompted by three reports of in-flight failure of the control cable and loss of yaw control resulting in emergency landings and subsequent damage to the helicopter. This condition, if not corrected, could result in loss of yaw control and subsequent loss of control of the helicopter.

MDHI has issued Service Bulletin SB900–108R1, dated August 13, 2008, which describes procedures for magnetic particle inspecting and modifying the control cable and rotating cone control rod installation.

Since the unsafe condition described is likely to exist or develop on other MDHI model helicopters of the same type design, we issued Emergency AD 2008–17–51 to prevent loss of yaw control and subsequent loss of control of the helicopter. The Emergency AD requires the following, before further flight:

- Remove the rotating cone, the thruster extension, and the rotating cone control rod, and NAS1193K4CP lock device (2 parts).
- Do a fluorescent magnetic particle inspection for a crack in the aft threads of the control cable. If you find a crack, replace the control cable with an airworthy part. If you do not find a crack, demagnetize the cable threads until you reach a gauss level of +/− 3.
- Visually inspect the aft cable attach bracket for a crack. Inspect for interference with the movement of the control cable or for deformation of the aft cable attach bracket. If a crack or interference with the movement of the control cable or deformation of the aft cable attach bracket exists, replace the bracket with an airworthy part.
- Cut and modify the aft end of the control cable conduit.
- Modify the rotating cone control rod by drilling lock wire holes. Using permanent ink, identify the rotating cone control rod with part number 900C2010582–105.
- Inspect the control cable for proper adjustment.
- Install the rotating cone control rod.
- Install the thruster extension.
- Install the rotating cone. If you adjust the control cable at the attach brackets, inspect for interference with the movement of the control cable or for deformation of the aft cable attach bracket. If interference with the movement of the control cable or deformation of the aft cable attach bracket exists, replace the bracket with an airworthy part.
- Rerig the antitorque directional control system.

The actions must be done by following specified portions of the service bulletin described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, the actions described previously are required before further flight, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on August 14, 2008, to all known U.S. owners and operators of MDHI Model MD900 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to 14 CFR 39.13 to make it effective to all persons.

The FAA estimates that this AD will affect 33 helicopters of U.S. registry. It will take about 5.5 work hours to remove, modify, visually inspect, and install parts, and 2 work hours to fluorescent magnetic particle inspect the aft threads in the control cable per helicopter at an average labor rate of $80 per work hour. The kits required to modify the control cable cost about $8,603 for the entire fleet. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $28,403.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any

written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2008–1250; Directorate Identifier 2008–SW–49–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light 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 with FAA personnel concerning this AD. Using the search function of our docket Web site, you can find and read the comments to any of our dockets, including the name of the individual who sent the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Regulatory Findings

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

For the reasons discussed above, I certify that the 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 AD. See the AD docket to examine the economic evaluation.

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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2008–17–51 MD Helicopters, Inc.: Amendment 39–15755. Docket No. FAA–2008–1250; Directorate Identifier 2008–SW–49–AD.

Applicability: Model MD900 helicopters, serial numbers 900–00008 through 900–00128, with part number (P/N) 900C3010045–105 forward directional control cable (control cable), P/N 900C2010582–103 rotating cone control rod, and P/N 9000F2318021 (all dash numbers) tailboom assembly, installed, certificated in any category.

Compliance: Before further flight, unless done previously.

To prevent loss of yaw control and subsequent loss of control of the helicopter, do the following:

(a) Remove the rotating cone, the thruster extension, the rotating cone control rod, and the NAS1193K4CP lock device (2 parts). Do not reinstall the lock device. Use your hand and turn the telescopic part on the aft end of the control cable until it is fully forward on the control cable.

Note: The MDHI maintenance manuals CSP–900RMM–2, Sections 67–20–00, 29–00–00, 53–40–00; CSP–SPM, Section 20–30–00; and CSP–900IPL–4 Illustrated Parts pertain to the subject of this AD.

(b) Do a fluorescent magnetic particle inspection for a crack in the aft threads of the control cable as depicted in Figure 2 and by following MD Helicopters, Inc. (MDHI) Service Bulletin SB900–108R1, dated August 13, 2008, Section 2, Accomplishment Instructions (SB), paragraphs (5)(a) through 5(j). The inspection must be done by an inspector qualified under the guidelines established by MIL–STD–410E, ATA Specification 105, AIA–NAS–410, or an FAA-accepted equivalent for qualification standards of NDT Inspection/Evaluation Personnel. The inspector that accepts or rejects the inspected part must be certified to a Non-Destructive Testing (NDT) UT minimum Level II. The part must be inspected to the inspection facilities written procedure approved by a person certified to a Level III. For the magnetic particle examination process and qualifications, follow the American Society for Testing and Material (ASTM) E 1444–93 ε_1.

(1) If you find a crack, replace the control cable with an airworthy part.

(2) If you do not find a crack, demagnetize the cable threads by following paragraphs (6)(a) or (6)(b) of the SB until you reach a gauss level of +/−3.

(c) Visually inspect the aft cable attach bracket, depicted in Figure 3 of the SB, for a crack. Inspect for interference with the movement of the control cable or for deformation of the aft cable attach bracket by following paragraphs (9)(a) through (9)(c) of the SB. If a crack or interference with the movement of the control cable or deformation of the aft cable attach bracket exists, replace the bracket with an airworthy part.

(d) Cut and modify the aft end of the control cable conduit as depicted in Figure 4 of the SB by following paragraphs (10)(a) through (10)(g) of the SB.

(e) Modify the rotating cone control rod by drilling lock wire holes as depicted in Figure 5 of the SB by following paragraphs (11)(a) through (11)(g) of the SB. Using permanent ink, mark the rotating cone control rod with "900C2010582–105."

(f) Inspect the control cable for proper adjustment by following paragraphs (12)(a) through (12)(c), of the SB.

(g) Install the rotating cone control rod as depicted in Figure 6 of the SB by following paragraphs (13)(a) through (13)(c) of the SB. Make sure the control cable threads are past the witness hole in the rotating cone control rod.

(h) Install the thruster extension.

(i) Install the rotating cone. If you adjust the control cable at the attach brackets, inspect for interference with the movement of the control cable or for deformation of the aft cable attach bracket by following paragraph (15) of the SB. If interference with the movement of the control cable or deformation of the aft cable attach bracket exists, replace the bracket with an airworthy part.

(j) Rerig the antitorque directional control system.

(k) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Los Angeles Aircraft Certification Office, FAA, ATTN: Eric D. Schrieber, Aviation Safety Engineer, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone 562–627–5348, fax 562–627–5210, for information about previously approved alternative methods of compliance.

(l) Special flight permits will not be issued.

(m) The inspections and modification must be done by following the specified portions of MD Helicopters, Inc. Service Bulletin SB900–108R1, dated August 13, 2008. Copies of this service bulletin may be obtained from MD Helicopters Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615, Mesa, Arizona 85215–9734, telephone 1–800–388–3378, fax 480–346–6813, or on the Web at *http://www.mdhelicopters.com*. The inspection must also be done by following the magnetic particle examination process and qualifications found in American Society for Testing and Material (ASTM) E 1444–93 ε_1, approved February 15, 1993, Standard Practice for Magnetic Particle Examination. Copies of this information may be purchased from AMST International on the Web at *http://www.ostm.org/*. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.orchives.gov/federol_register/code_of_federal_regulotions/ibr_locotions.html*.

(n) This amendment becomes effective on January 8, 2009, to all persons except those persons to whom it was made immediately effective by Emergency AD 2008–17–51, issued August 14, 2008, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on November 19, 2008.

Scott A. Horn,

Acting Monoger, Rotorcraft Directorate, Aircroft Certificotion Service.

[FR Doc. E8–28367 Filed 12–23–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1085; Directorate Identifier 2008–CE–057–AD; Amendment 39–15777; AD 2008–26–11]

RIN 2120–AA64

Airworthiness Directives; Piper Aircraft, Inc. Models PA–46–350P, PA–46R–350T, and PA–46–500TP Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Piper Aircraft, Inc. (Piper) Models PA–46–350P, PA–46R–350T, and PA–46–500TP airplanes. This AD requires you to install a stall warning heat control modification kit. This AD results from ice forming on the stall vane heater during flights into icing conditions with the landing gear down. We are issuing this AD to prevent ice from forming on the stall vane, which may result in failure of the stall warning system. This failure could result in the pilot being unaware of an approaching stall situation.

DATES: This AD becomes effective on January 28, 2009.

On January 28, 2009, the Director of the **Federal Register** approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: For service information identified in this AD, contact Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; fax: (772) 978–6573; Internet: *http://www.newpiper.com/*.

To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov*. The docket number is FAA–2008–1085; Directorate Identifier 2008–CE–057–AD.

FOR FURTHER INFORMATION CONTACT: John Lee, Aerospace Engineer, Federal Aviation Administration, Aircraft Certification Office, One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, Georgia 30349; telephone: (770) 994–6736; fax: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Discussion

On October 3, 2008, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Piper Models PA–46–350P, PA–46R–350T, and PA–46–500TP airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 10, 2008 (73 FR 60201). The NPRM proposed to require you to install a stall warning heat control modification kit.

Comments

We provided the public the opportunity to participate in developing this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD affects 803 airplanes in the U.S. registry.

We estimate the following costs to do the modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1.5 work-hours × $80 per hour = $120	$95	$215	$172,645

Warranty credit may be given to the extent noted in the service bulletin.

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 AD.

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "Docket No. FAA–2008–1085; Directorate Identifier 2008–CE–057–AD" in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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. FAA amends § 39.13 by adding the following new AD:

2008–26–11 Piper Aircraft, Inc.: Amendment 39–15777; Docket No. FAA–2008–1085; Directorate Identifier 2008–CE–057–AD.

Effective Date

(a) This AD becomes effective on January 28, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the following airplane models and serial numbers that are certificated in any category:

Models	Serial Nos.
PA–46–350P	4622001 through 4622200 and 4636001 through 4636445.
PA–46R–350T	4692001 through 4692054.
PA–46–500TP	4697001 through 4697365.

Unsafe Condition

(d) This AD results from ice forming on the stall vane heater during flights into icing conditions with the landing gear down. We are issuing this AD to prevent ice from forming on the stall vane, which may result in failure of the stall warning system. This failure could result in the pilot being unaware of an approaching stall situation.

Compliance

(e) To address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
Install Stall Warning Heat Control Modification Kit, Piper part number 88452–002.	Within the next 100 hours time-in-service after January 28, 2009 (the effective date of this AD).	As specified in Piper Mandatory Service Bulletin No. 1192, dated September 15, 2008, following Drawing No. 88452, dated June 19, 2008.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Atlanta Aircraft Certification Office (ACO), 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: John Lee, Aerospace Engineer, Federal Aviation Administration, Atlanta ACO, One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, Georgia 30349; telephone: (770) 994–6736; fax: (770) 703–6097. 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.

Material Incorporated by Reference

(g) You must use Piper Mandatory Service Bulletin No. 1192, dated September 15, 2008, and Drawing No. 88452, dated June 19, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the **Federal Register** approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; fax: (772) 978–6573; Internet: *http://www.newpiper.com/*.

(3) You may review copies of the service information incorporated by reference for this AD at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the Central Region, call (816) 329–3768.

(4) You may also review copies of the service information incorporated by reference for this AD at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Kansas City, Missouri, on December 16, 2008.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–30406 Filed 12–23–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0123; Directorate Identifier 2007–NM–056–AD; Amendment 39–15763; AD 2008–25–05]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 Airplanes; Model DC–8–51, DC–8–52, DC–8–53, and DC–8–55 Airplanes; Model DC–8F–54 and DC–8F–55 Airplanes; Model DC–8–61, DC–8–62, and DC–8–63 Airplanes; Model DC–8–61F, DC–8–62F, and DC–8–63F Airplanes; Model DC–8–71, DC–8–72, and DC–8–73 Airplanes; and Model DC–8–71F, DC–8–72F, and DC–8–73F Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to all McDonnell Douglas Model DC–8 airplanes. That AD currently requires, among other things, revision of an existing program of structural inspections. This new AD requires implementation of a revised program of structural inspections of baseline structure to detect and correct fatigue cracking in order to ensure the continued airworthiness of these airplanes as they approach the manufacturer's original fatigue design life goal. This new AD also reduces the inspection threshold for certain principal structural elements. This AD results from a significant number of these airplanes approaching or exceeding the design service goal on which the initial type certification approval was predicated. We are issuing this AD to detect and correct fatigue cracking that could compromise the structural integrity of these airplanes.

DATES: This AD becomes effective January 28, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of January 28, 2009.

On February 26, 1993 (58 FR 5576, January 22, 1993), the Director of the Federal Register approved the incorporation by reference of certain other publications.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com*; Internet *https://www.myboeingfleet.com*.

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 AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dara Albouyeh, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5222; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 93–01–15, amendment 39–8469 (58 FR 5576, January 22, 1993). The existing AD applies to all McDonnell Douglas Model DC–8 airplanes. That supplemental NPRM was published in the **Federal Register** on August 29, 2008 (73 FR 50906). That supplemental NPRM proposed to continue to require, among other things, revision of an existing program of structural inspections. That supplemental NPRM also proposed to require implementation of a revised program of structural inspections of baseline structure to detect and correct fatigue cracking in order to ensure the continued airworthiness of these airplanes as they approach the manufacturer's original fatigue design life goal. That supplemental NPRM also proposed to reduce the inspection threshold for certain principal structural elements.

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been received on the NPRM or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

There are about 194 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per operator	Number of U.S.-registered airplanes	Fleet cost
Revision of maintenance inspection program (required by AD 93–01–15.	544 per operator (17 U.S. operators).	$80	$43,520, per operator	131	$739,840
Revision of maintenance program and inspections (new actions).	250 per operator (17 U.S. operators).	80	$20,000	131	340,000

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII,

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–8469 (58 FR 5576, January 22, 1993) and by adding the following new airworthiness directive (AD):

2008–25–05 McDonnell Douglas: Amendment 39–15763. Docket No. FAA–2008–0123; Directorate Identifier 2007–NM–056–AD.

Effective Date

(a) This AD becomes effective January 28, 2009.

Affected ADs

(b) This AD supersedes AD 93–01–15.

Applicability

(c) This AD applies to all McDonnell Douglas airplanes identified in Table 1 of this AD, certificated in any category.

TABLE 1—APPLICABILITY

Model
(1) DC–8–11, DC–8–12, DC–8–21, DC–8–31; DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 airplanes.
(2) DC–8–51, DC–8–52, DC–8–53, and DC–8–55 airplanes.
(3) DC–8F–54 and DC–8F–55 airplanes.
(4) DC–8–61, DC–8–62, and DC–8–63 airplanes.
(5) DC–8–61F, DC–8–62F, and DC–8–63F airplanes.
(6) DC–8–71, DC–8–72, and DC–8–73 airplanes.
(7) DC–8–71F, DC–8–72F, and DC–8–73F airplanes.

Unsafe Condition

(d) This AD results from a significant number of these airplanes approaching or exceeding the design service goal on which the initial type certification approval was predicated. We are issuing this AD to detect and correct fatigue cracking that could compromise the structural integrity of these airplanes.

Compliance

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

Certain Requirements of AD 93–01–15

Revise the FAA-Approved Maintenance Inspection Program

(f) Within 6 months after February 26, 1993 (the effective date of AD 93–01–15), incorporate a revision of the FAA-approved maintenance inspection program that provides no less than the required inspection of the Principal Structural Elements (PSEs) defined in sections 2 and 3 of Volume I of McDonnell Douglas Report No. L26–011, "DC–8 Supplemental Inspection Document (SID)," Revision 3, dated March 1991, in accordance with section 2 of Volume III–91, dated April 1991, of that document. The non-destructive inspection techniques set forth in sections 2 and 3 of Volume II, Revision 5, dated March 1991, of that SID provide acceptable methods for accomplishing the inspections required by this AD. All inspection results, negative or positive, must be reported to McDonnell Douglas, in accordance with the instructions of section 2 of Volume III–91 of the SID. Information collection requirements contained in this regulation have been approved by the OMB under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Corrective Action

(g) Cracked structure detected during the inspections required by paragraph (f) of this AD must be repaired before further flight, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

New Requirements of This AD

Revision of the Maintenance Inspection Program

(h) Within 12 months after the effective date of this AD, incorporate a revision of the FAA-approved maintenance inspection program that provides for inspection(s) of the PSEs, in accordance with Boeing Report No. L26–011, "DC–8 All Series Supplemental Inspection Document (SID)," Volume I, Revision 7, dated March 2008. Incorporation of this revision ends the requirements of paragraphs (f) and (g) of this AD.

Non-Destructive Inspections (NDIs)

(i) For all PSEs listed in Section 2 of Boeing Report No. L26–011, "DC–8 All Series Supplemental Inspection Document (SID)," Volume I, Revision 7, dated March 2008; perform an NDI for fatigue cracking of each PSE, in accordance with the NDI procedures specified in Section 2 of McDonnell Douglas Report No. L26–011, "DC–8 Supplemental Inspection Document (SID)," Volume II, Revision 8, dated January 2005, at the times specified in paragraph (i)(1), (i)(2), or (i)(3) of this AD, as applicable.

(1) For airplanes that have less than three quarters of the fatigue life threshold ($^3/_4N_{TH}$) as of the effective date of this AD: Perform the NDI for fatigue cracking at the times specified in paragraphs (i)(1)(i) and (i)(1)(ii) of this AD. After reaching the threshold (N_{TH}), repeat the inspection for that PSE at intervals not to exceed ΔNDI/2.

(i) Perform an initial NDI no earlier than one-half of the threshold ($^1/_2N_{TH}$) but before reaching three-quarters of the threshold ($^3/_4N_{TH}$), or within 60 months after the effective date of this AD, whichever occurs later.

(ii) Repeat the NDI no earlier than $^3/_4N_{TH}$ but before reaching the threshold (N_{TH}), or within 18 months after the inspection required by paragraph (i)(1)(i) of this AD, whichever occurs later.

Note 1: The DC–8 SID and this AD refer to the repetitive inspection interval as ΔNDI/2. However, the headings of the tables in section 4 of Volume I, Revision 7, dated March 2008, of the DC–8 SID refer to the repetitive inspection interval of NDI/2. The values listed under NDI/2 in the tables in section 4 of Volume I, Revision 7, dated March 2008, of the DC–8 SID are the repetitive inspection intervals, ΔNDI/2.

(2) For airplanes that have reached or exceeded three-quarters of the fatigue life threshold ($^3/_4N_{TH}$), but less than the threshold (N_{TH}), as of the effective date of this AD: Perform an NDI before reaching the threshold

(N_{TH}), or within 18 months after the effective date of this AD, whichever occurs later. Thereafter, after passing the threshold (N_{TH}), repeat the inspection for that PSE at intervals not to exceed ΔNDI/2.

(3) For airplanes that have reached or exceeded the fatigue life threshold (N_{TH}) as of the effective date of this AD: Perform an NDI within 18 months after the effective date of this AD. Thereafter, repeat the inspection for that PSE at intervals not to exceed ΔNDI/2.

Discrepant Findings

(j) If any discrepancy (*e.g.*, differences on the airplane from the NDI reference standard, such as PSEs that cannot be inspected as specified in McDonnell Douglas Report No. L26–011, "DC–8 Supplemental Inspection Document (SID)," Volume II, Revision 8, dated January 2005, or do not match rework, repair, or modification descriptions in Boeing Report No. L26–011, "DC–8 All Series Supplemental Inspection Document (SID)," Volume I, Revision 7, dated March 2008) is detected during any inspection required by paragraph (i) of this AD, do the action specified in paragraph (j)(1) or (j)(2) of this AD, as applicable.

(1) If a discrepancy is detected during any inspection done before $\frac{3}{4}N_{TH}$ or N_{TH}: The area of the PSE affected by the discrepancy must be inspected before N_{TH} or within 18 months after the discovery of the discrepancy, whichever occurs later, in accordance with a method approved by the Manager, Los Angeles ACO.

(2) If a discrepancy is detected during any inspection done after N_{TH}: The area of the PSE affected by the discrepancy must be inspected before the accumulation of an additional ΔNDI/2 or within 18 months after the discovery of the discrepancy, whichever occurs later, in accordance with a method approved by the Manager, Los Angeles ACO.

Reporting Requirements

(k) All negative or positive findings of the inspections done in accordance with paragraph (i) of this AD must be reported to Boeing at the times specified in, and in accordance with, the instructions contained in section 4 of Boeing Report No. L26–011, "DC–8 All Series Supplemental Inspection Document (SID)," Volume I, Revision 7, dated March 2008. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Corrective Actions

(l) Any cracked structure of a PSE detected during any inspection required by paragraph (i) of this AD must be repaired before further flight using a method approved in accordance with the procedures specified in paragraph (p) of this AD. Accomplish the actions described in paragraphs (l)(1), (l)(2), and (l)(3) of this AD, at the times specified.

(1) Within 18 months after repair, do a damage tolerance assessment (DTA) that defines the threshold for inspection of the repair and submit the assessment for approval.

(2) Before reaching 75 percent of the repair threshold as determined in paragraph (l)(1) of this AD, submit the inspection methods and repetitive inspection intervals for the repair for approval.

(3) Before the repair threshold, as determined in paragraph (l)(1) of this AD, incorporate the inspection method and repetitive inspection intervals into the FAA-approved structural maintenance or inspection program for the airplane.

Note 2: For the purposes of this AD, we anticipate that submissions of the DTA of the repair, if acceptable, should be approved within 6 months after submission.

Note 3: FAA Order 8110.54, "Instructions for Continued Airworthiness, Responsibilities, Requirements, and Contents" dated July 1, 2005, provides additional guidance about the approval of repairs to PSEs.

Inspection for Transferred Airplanes

(m) Before any airplane that has exceeded the fatigue life threshold (N_{TH}) can be added to an air carrier's operations specifications, a program for the accomplishment of the inspections required by this AD must be established as specified in paragraph (m)(1) or (m)(2) of this AD, as applicable.

(1) For airplanes that have been inspected in accordance with this AD: The inspection of each PSE must be done by the new operator in accordance with the previous operator's schedule and inspection method, or the new operator's schedule and inspection method, at whichever time would result in the earlier accomplishment date for that PSE inspection. The compliance time for accomplishing this inspection must be measured from the last inspection done by the previous operator. After each inspection has been done once, each subsequent inspection must be done in accordance with the new operator's schedule and inspection method.

(2) For airplanes that have not been inspected in accordance with this AD: The inspection of each PSE required by this AD must be done either before adding the airplane to the air carrier's operations specification, or in accordance with a schedule and an inspection method approved by the Manager, Los Angeles ACO. After each inspection has been done once, each subsequent inspection must be done in accordance with the new operator's schedule.

Acceptable for Compliance

(n) McDonnell Douglas Report No. MDC 91K0262, "DC–8 Aging Aircraft Repair Assessment Program Document," Revision 1, dated October 2000, provides inspection/replacement programs for certain repairs to the fuselage pressure shell. Accomplishing these repairs and inspection/replacement programs before the effective date of this AD is considered acceptable for compliance with the requirements of paragraphs (g) and (l) of this AD for repairs subject to that document.

(o) Actions done before the effective date of this AD in accordance with Boeing Report No. L26–011, "DC–8 All Series Supplemental Inspection Document (SID)," Volume I, Revision 6, dated July 2005, are acceptable for compliance with the corresponding requirements of this AD.

Alternative Methods of Compliance (AMOCs)

(p)(1) The Manager, Los Angeles ACO, FAA, ATTN: Dara Albouyeh, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5222; 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.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Los Angeles ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and 14 CFR 25.571, Amendment 45, and the approval must specifically refer to this AD.

(4) AMOCs approved previously in accordance with AD 93–01–15 are approved as AMOCs for the corresponding provisions of this AD.

Material Incorporated by Reference

(q) You must use the service information identified in Table 2 of this AD to perform the actions that are required by this AD, as applicable, unless the AD specifies otherwise.

TABLE 2—MATERIAL INCORPORATED BY REFERENCE

Service information	Revision level	Date
Boeing Report No. L26–011, "DC–8 All Series Supplemental Inspection Document (SID)," Volume I	7	March 2008.
McDonnell Douglas Report No. L26–011, "DC–8 Supplemental Inspection Document (SID)," Volume I	3	March 1991.
McDonnell Douglas Report No. L26–011, "DC–8 Supplemental Inspection Document (SID)," Volume II	8	January 2005.

TABLE 2—MATERIAL INCORPORATED BY REFERENCE—Continued

Service information	Revision level	Date
McDonnell Douglas Report No. L26–011, "DC–8 Supplemental Inspection Document (SID)," Volume III–91	Original	April 1991.

Boeing Report No. L26–011, "DC–8 All Series Supplemental Inspection Document (SID)," Volume I, Revision 7, dated March 2008, contains the following effective pages:

Pages	Revision	Date
List of Effective Pages, Pages A through C.	7	March 2008.

McDonnell Douglas Report No. L26–011, "DC–8 Supplemental Inspection Document (SID)," Volume II, Revision 8, dated January 2005, contains the following effective pages:

Pages	Revision	Date
List of Effective Pages, Pages A through L.	8	March 2008.

(1) The Director of the Federal Register approved the incorporation by reference of Boeing Report No. L26–011, "DC–8 All Series Supplemental Inspection Document (SID)," Volume I, Revision 7, dated March 2008; and McDonnell Douglas Report No. L26–011, "DC–8 Supplemental Inspection Document (SID)," Volume II, Revision 8, dated January 2005; in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On February 26, 1993 (58 FR 5576, January 22, 1993), the Director of the Federal Register approved the incorporation by reference of McDonnell Douglas Report No. L26–011, "DC–8 Supplemental Inspection Document (SID)," Volume I, Revision 3, dated March 1991; and McDonnell Douglas Report No. L26–011, "DC–8 Supplemental Inspection Document (SID)," Volume III–91, dated April 1991.

(3) Contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com*; Internet *https://www.myboeingfleet.com*.

(4) You may review copies of the service information that is incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

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

Issued in Renton, Washington, on November 26, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–29233 Filed 12–23–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1328; Directorate Identifier 2008–CE–066–AD; Amendment 39–15776; AD 2008–26–10]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company 172, 175, 177, 180, 182, 185, 188, 206, 207, 208, 210, 303, 336, and 337 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Cessna Aircraft Company (Cessna) 172, 175, 177, 180, 182, 185, 188, 206, 207, 208, 210, 303, 336, and 337 series airplanes. This AD requires you to inspect the alternate static air source selector valve to assure that the part number identification placard does not obstruct the alternate static air source selector valve port. If the part number identification placard obstructs the port, this AD also requires you to remove the placard, assure that the port is unobstructed, and report to the FAA if obstruction is found. This AD results from reports of airplanes found with alternate static air source selector valve port obstruction caused by improper installation of the part number identification placard. The actions specified by this AD are intended to prevent erroneous indications from the altimeter, airspeed, and vertical speed indicators, which could cause the pilot to react to incorrect flight information and possibly result in loss of control.

DATES: This AD becomes effective on January 5, 2009.

On January 5, 2009, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

We must receive any comments on this AD by February 23, 2009.

ADDRESSES: Use one of the following addresses to comment on this AD.

- *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.

To get the service information identified in this AD, contact Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277; telephone: (800) 423–7762 or (316) 517–6056; Internet: *http://www.cessna.com*.

To view the comments to this AD, go to *http://www.regulations.gov*. The docket number is FAA–2008–1328; Directorate Identifier 2008–CE–066–AD.

FOR FURTHER INFORMATION CONTACT: Ann Johnson, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: 316–946–4105; fax: 316–946–4107; e-mail address: *ann.johnson@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

Reports of improper installation of the part number (P/N) identification placard on P/N 2013142–18 alternate static air source selector valves prompted us to issue AD 98–01–01, Amendment 39–10286 (63 FR 3455, January 23, 1998), which applies to certain Cessna Aircraft Company (Cessna) Models 172R and 182S airplanes, and AD 2008–10–02, Amendment 39–155508 (73 FR 24168, May 2, 2008), which applies to certain Cessna 172, 175, 180, 182, 185, 206, 207, 208, 210, and 303 series airplanes.

These ADs require inspecting the alternate static air source selector valve to determine if the P/N identification placard obstructs the alternate static air source selector valve port and removing

the placard if obstruction is found. These ADs also require reporting to the FAA if obstruction is found.

These assemblies are required for flight into instrument flight rules (IFR) conditions as defined in Sec. 91.411 of the Federal Aviation Regulations (14 CFR 91.411). Use of these assemblies is optional in visual flight rules (VFR) conditions.

After issuing AD 98–01–01 and AD 2008–10–02, we received reports of 15 airplanes not previously affected by either AD with a P/N 2013142–18 installed and the alternate static air source selector valve port was found obstructed by the P/N identification placard.

We have been informed that all P/N 2013142–18 alternate static air source selector valves shipped from Cessna Parts Distribution between January 1, 1993, and March 31, 2008, may have port obstruction caused by the P/N identification placard.

This condition, if not corrected, could result in the altimeter, airspeed, and vertical speed indicators displaying erroneous indications. This could cause the pilot to react to incorrect flight information and possibly result in loss of control.

Relevant Service Information

We reviewed Cessna Single Engine Service Bulletin, SB08–34–02, Revision 1, and Cessna Caravan Service Bulletin CAB08–4, Revision 1, both dated October 6, 2008; Cessna Single Engine Service Bulletin SEB08–5 and Cessna Multi-engine Service Bulletin MEB08–6, both dated October 13, 2008.

The service information describes procedures for inspecting the alternate static air source selector valve to assure that the P/N identification placard does not obstruct the alternate static air source selector valve port.

FAA's Determination and Requirements of This AD

We are issuing this AD because we evaluated all the information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This AD requires inspecting the alternate static air source selector valve to assure that the P/N identification placard does not obstruct the alternate static air source selector valve port. If the P/N identification placard obstructs the port, this AD requires you to remove the placard, assure that the port is unobstructed, and report to the FAA if obstruction is found.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we determined that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and an opportunity for public comment. We invite you to send any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number "FAA–2008–1328; Directorate Identifier 2008–CE–066–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light 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 concerning this AD.

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

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

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

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

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

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

Examining the AD Docket

You may examine the AD docket that contains the AD, the regulatory evaluation, any comments received, and other information 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 Docket Office (telephone (800) 647–5527) is located at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding a new AD to read as follows:

2008–26–10 Cessna Aircraft Company: Amendment 39–15776; Docket No. FAA–2008–1328; Directorate Identifier 2008–CE–066–AD.

Effective Date

(a) This AD becomes effective on January 5, 2009.

Affected ADs

(b) This AD relates to AD 98–01–01, Amendment 39–10287 and AD 2008–10–02, Amendment 39–15508. These ADs can be found on the Internet at the following Web site: *http://rgl.faa.gov/*.

Applicability

(c) This AD applies to all serial numbers (S/Ns) of the airplanes listed in Table 1 of this AD, certificated in any category, that:

(1) Were initially delivered from the manufacturer between January 1, 1993, and March 31, 2008, unless the modification/rework required in AD 2008–10–02 has been done and you remain in compliance with that AD; or

(2) Have a part number (P/N) 2013142–18 installed as a replacement part anytime after January 1, 1993, unless the modification/rework required in AD 2008–10–02 has been done and you remain in compliance with that AD.

Note 1: The affected part was shipped from Cessna Parts Distribution (CPD) between January 1, 1993, and March 31, 2008.

Note 2: P/N 2013142–18 replaced P/Ns 2013142–9, –13, and –17.

TABLE 1—APPLICABLE AIRPLANE MODELS

Models		
172	F172K	177
172A	F172L	177A
172B	F172M	177B
172C	F172N	177RG
172D	F172P	F177RG
172E	FR172E	180
172F (USAF T–41A)	FR172F	180A
172G	FR172G	180B
172H (USAF T–41A)	FR172H	180C
172I	FR172J	180D
172K	FR172K	180E
172L	P172D	180F
172M	R172E (USAF T–41B), (USAF T–41C and D)	180G
172N	R172F (USAF T–41)	180H
172P	R172G (USAF T–41C or D)	180J
172Q	R172H (USAF T–41D)	180K
172R	R172J	182
172S	R172K	182A
F172D	172RG	182B
F172E	175	182C
F172F	175A	182D
F172G	175B	182E
F172H	175C	182F
182G	A185F	U206D
182H	206	U206E
182J	206H	U206F
182K	P206	U206G
182L	P206A	207
182M	P206B	207A
182N	P206C	T207
182P	P206D	T207A
182Q	P206E	208
182R	T206H	208B
182S	TP206A	210
182T	TP206B	210A
F182P	TP206C	210B
F182Q	TP206D	210C
FR182	TP206E	210D
R182	TU206A	210E
T182	TU206B	210F
T182T	TU206C	210G
TR182	TU206D	210H
185	TU206E	210J
185A	TU206F	210K
185B	TU206G	210L
185C	U206	210M
185D	U206A	210N
185E	U206B	210R
A185E	U206C	210–5 (205)
210–5A (205A)	FT337F	
T210F	M337B (USAF 02A)	
T210G	T337B	
T210H	T337C	
T210J	T337D	
T210K	T337E	
T210L	T337F	
T210M	T337H	
T210N	T337H–SP	
T210R		
T303		
336		
337		
337A (USAF 02B)		

TABLE 1—APPLICABLE AIRPLANE MODELS—Continued

337B 337C 337D 337E 337F 337G 337H F337E F337F F337G F337H FT337E		

Unsafe Condition

(e) This AD is the result of reports of improper installation of the part number identification placard on the alternate static air source selector valve. We are issuing this AD to prevent erroneous indications from the altimeter, airspeed, and vertical speed indicators, which could cause the pilot to react to incorrect flight information and possibly result in loss of control.

Compliance

(e) To address this problem, you must do the following, unless already done. A person authorized to perform maintenance as specified in 14 CFR section 43.3 of the Federal Aviation Administration Regulations (14 CFR 43.3) is required to do all the actions required in this AD.

Actions	Compliance	Procedures
(1) *For all affected airplanes that are not equipped for flight under instrument flight rules (IFR):* Inspect the alternate static air source selector valve to assure that the part number identification placard is not obstructing the port.	Within the next 100 hours time-in-service (TIS) after January 5, 2009 (the effective date of this AD) or within the next 4 months after January 5, 2009 (the effective date of this AD), whichever occurs first.	Following the procedures in Cessna Single Engine Service Bulletin SB08–34–02, Revision 1, dated October 6, 2008; Cessna Caravan Service Bulletin CAB08–4, Revision 1, dated October 6, 2008; Cessna Single Engine Service Bulletin SEB08–5, dated October 13, 2008; or Cessna Multi-engine Service Bulletin MEB08–6, dated October 13, 2008, as applicable.
(2) *For all affected airplanes that are equipped for flight under instrument flight rules (IFR):* (i) Inspect the alternate static air source selector valve to assure that the part number identification placard is not obstructing the port; or (ii) Fabricate a placard that incorporates the following words (using at least 1/8-inch letters) and install this placard on the instrument panel within the pilot's clear view: "IFR OPERATION IS PROHIBITED" and "USE OF THE ALTERNATE STATIC AIR SOURCE IS PROHIBITED."	(A) Inspect within the next 10 days after January 5, 2009 (the effective date of this AD); or (B) Install placards before further flight after January 5, 2009 (the effective date of this AD).	Following the procedures in Cessna Single Engine Service Bulletin SB08–34–02, Revision 1, dated October 6, 2008; Cessna Caravan Service Bulletin CAB08–4, Revision 1, dated October 6, 2008; Cessna Single Engine Service Bulletin SEB08–5, dated October 13, 2008; or Cessna Multi-engine Service Bulletin MEB08–6, dated October 13, 2008, as applicable.
(3) *For all affected airplanes that are equipped for flight under instrument flight rules (IFR):* If placards were installed in accordance with paragraph (e)(2)(ii) of this AD, inspect the alternate static air source selector valve to assure that the part number identification placard is not obstructing the port.	Within the next 100 hours TIS after January 5, 2009 (the effective date of this AD) or within the next 4 months after January 5, 2009 (the effective date of this AD), whichever occurs first. After doing the inspection, remove the placards installed in accordance with paragraph (e)(2)(ii) of this AD before further flight.	Following the procedures in Cessna Single Engine Service Bulletin SB08–34–02, Revision 1, dated October 6, 2008; Cessna Caravan Service Bulletin CAB08–4, Revision 1, dated October 6, 2008; Cessna Single Engine Service Bulletin SEB08–5, dated October 13, 2008; or Cessna Multi-engine Service Bulletin MEB08–6, dated October 13, 2008, as applicable.
(4) *For all affected airplanes:* If the alternate static air source selector valve port is found obstructed by the part number identification placard during the inspection required in paragraphs (e)(1), (e)(2)(i), and (e)(3) of this AD, remove the placard from the valve body, discard the placard, and assure that the port is open and unobstructed.	Before further flight after the inspection required in paragraphs (e)(1), (e)(2)(i), and (e)(3) of this AD.	Following the procedures in Cessna Single Engine Service Bulletin SB08–34–02, Revision 1, dated October 6, 2008; Cessna Caravan Service Bulletin CAB08–04, Revision 1, dated October 6, 2008; Cessna Single Engine Service Bulletin SEB08–5, dated October 13, 2008; or Cessna Multi-engine Service Bulletin MEB08–6, dated October 13, 2008, as applicable.

Actions	Compliance	Procedures
(5) *For all affected airplanes:* When a replacement valve is needed, only install a P/N 2013142–18 alternate static air source selector valve that has been inspected and the port is found free from obstruction.	As of 10 days after January 5, 2009 (the effective date of this AD).	A person authorized to perform maintenance as specified in 14 CFR section 43.3 of the Federal Aviation Administration Regulations (14 CFR 43.3) is required to do the inspection.

(f) Report to the FAA the results of the inspection required by this AD where an obstruction was found.

(1) Submit this report within 10 days after the inspection or 10 days after the effective date of this AD, whichever occurs later.

(2) Use the form in Figure 1 of this AD and submit it to FAA, Manufacturing Inspection District Office, Mid-Continent Airport, 1804 Airport Road, Room 101, Wichita, Kansas 67209; or fax to (316) 946–4189.

(3) The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and assigned OMB Control Number 2120–0056.

BILLING CODE 4910–13–P

AD 2008-26-10 INSPECTION REPORT

(REPORT ONLY IF A PART NUMBER IDENTIFICATION PLACARD IS OBSTRUCTING THE STATIC AIR SOURCE SELECTOR VALVE PORT)

1. Inspection Performed By:	*2. Phone:*
3. Airplane Model:	*4. Airplane Serial Number:*
5. Airplane Total Hours TIS:	
6. Date of AD inspection:	
*7. Inspection Results: (Note: Report **only** if a part number identification placard is obstructing static air source valve port.)*	*8. Corrective Action Taken:*

Mail report to: Wichita Manufacturing Inspection District Office, Mid-Continent Airport, 1804 Airport Road, Room 101, Wichita, Kansas, 67209; or fax to (316) 946-4189

Figure 1

BILLING CODE 4910–13–C

Alternative Methods of Compliance (AMOCs)

(g) The Manager, Wichita Aircraft Certification Office (ACO), 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: Ann Johnson, Aerospace Engineer, FAA, Wichita ACO, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: 316–946–4105; fax: 316–946–4107; e-mail address: *ann.johnson@faa.gov*. 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.

(h) AMOCs approved for AD 2008–10–02 are approved for this AD.

Material Incorporated by Reference

(i) You must use Cessna Single Engine Service Bulletin, SB08–34–02, Revision 1, dated October 6, 2008; Cessna Caravan Service Bulletin CAB08–4, Revision 1, dated October 6, 2008; Cessna Single Engine Service Bulletin SEB08–5, dated October 13, 2008; and Cessna Multi-engine Service Bulletin MEB08–6, dated October 13, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277; telephone: (800) 423–7762 or (316) 517–6056; Internet: *http://www.cessna.com*.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Kansas City, Missouri, on December 15, 2008.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–30465 Filed 12–23–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1120; Directorate Identifier 2008–CE–064–AD; Amendment 39–15767; AD 2008–26–01]

RIN 2120–AA64

Airworthiness Directives; Air Tractor, Inc. Models AT–200, AT–300, AT–400, AT–500, AT–600, and AT–800 Series Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) to supersede AD 2008–11–17, which applies to certain Air Tractor, Inc. Models AT–200, AT–300, AT–400, AT–500, AT–600, and AT–800 series airplanes. AD 2008–11–17 currently requires you to install an overturn skid plate kit or a modification to the overturn skid plate already installed. Since we issued AD 2008–11–17, the manufacturer has notified us that Model AT–401B airplanes also need a modification to the overturn skid plate. Consequently, this AD would retain the actions of AD 2008–11–17 and add the requirement to modify the overturn skid plate installed on Model AT–401B airplanes. We are issuing this AD to prevent the front and rear connections of the overturn skid plate to the airplane from breaking, which could allow foreign debris to enter the cockpit during an airplane overturn. This condition, if not corrected, could lead to pilot injury.

DATES: This AD becomes effective on January 28, 2009.

On January 28, 2009, the Director of the **Federal Register** approved the incorporation by reference of Snow Engineering Co. Service Letter #97, revised September 19, 2008, listed in this AD.

As of July 7, 2008 (73 FR 31351, June 2, 2008), the Director of the **Federal Register** approved the incorporation by reference of Snow Engineering Co. Service Letter #97, revised November 7, 2007, listed in this AD.

ADDRESSES: For service information identified in this AD, contact Air Tractor Inc., P.O. Box 485, Olney, Texas 76374; telephone: (940) 564–5616; fax: (940) 564–5612; e-mail: *airmail@airtractor.com*; Internet: *http://www.airtractor.com*.

To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov*. The docket number is FAA–2008–1120; Directorate Identifier 2008–CE–064–AD.

FOR FURTHER INFORMATION CONTACT: Andy McAnaul, Aerospace Engineer, ASW–150, FAA San Antonio MIDO–43, 10100 Reunion Pl., Ste. 650, San Antonio, Texas 78216; telephone: (210) 308–3365; fax: (210) 308–3370.

SUPPLEMENTARY INFORMATION:

Discussion

On October 14, 2008, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Air Tractor, Inc. Models AT–200, AT–300, AT–400, AT–500, AT–600, and AT–800 series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 23, 2008 (73 FR 63096). The NPRM proposed to supersede AD 2008–11–17 with a new AD that would retain the actions of AD 2008–11–17 and add the requirement to modify the overturn skid plate installed on Model AT–401B airplanes.

Comments

We provided the public the opportunity to participate in developing this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD affects 1,309 airplanes in the U.S. registry.

In determining the total cost on U.S. operators, we presume all airplanes in the U.S. fleet have an overturn skid plate installed (as required by AD 2002–25–09) and the only cost is to incorporate the modification kit P/N 11411–1–501. We estimate the following costs to do the modification of installing the overturn skid plate modification kit P/N 11411–1–501 to those planes that

currently have the overturn skid plate installed:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 work-hours × $80 per hour = $160	$42	$202	$264,418

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 AD.

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "Docket No. FAA–2008–1120; Directorate Identifier 2008–CE–064–AD" in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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 removing Airworthiness Directive (AD) 2008–11–17, Amendment 39–15540 (73 FR 31351, June 2, 2008), and adding the following new AD:

2008–26–01 Air Tractor, Inc.: Amendment 39–15767; Docket No. FAA–2008–1120; Directorate Identifier 2008–CE–064–AD.

Effective Date

(a) This AD becomes effective on January 28, 2009.

Affected ADs

(b) This AD supersedes AD 2008–11–17, Amendment 39–15540.

Applicability

(c) This AD applies to the following airplane models and serial numbers that are certificated in any category:

Group 1 models	Serial Nos.
AT–250, AT–300, AT–301, AT–302, AT–400, AT–400A, AT–401, AT–401A, AT–402, AT–402A, and AT–402B.	–0001 through –1196.
AT–501, AT–502, AT–502A, and AT–502B	–0001 through –2620.
AT–602	–0337 through –1153.
AT–802A	–0003 through –0282.

Group 2 models	Serial Nos.
AT–401B	–0952 through –1196.

Unsafe Condition

(d) Since we issued AD 2008–11–17, the manufacturer has notified us that Model AT–401B airplanes also need a modification to the overturn skid plane. Consequently, this AD retains the actions of AD 2008–11–17 and adds the requirement to modify the overturn skid plate installed on Model AT–401B airplanes. We are issuing this AD to prevent the front and rear connections of the overturn skid plate to the airplane from breaking, which could allow foreign debris to enter the cockpit during an airplane overturn. This condition, if not corrected, could lead to pilot injury.

Compliance

(e) To address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
(1) *For Group 1 airplanes:* If overturn skid plate part number (P/N) 11411–1–500 or an FAA-approved equivalent P/N is already installed then install P/N 11411–1–501 modification kit.	Within the next 180 days after July 7, 2008 (the effective date of AD 2008–11–17).	Follow Snow Engineering Co. Service Letter #97, revised November 7, 2007; or Snow Engineering Co. Service Letter #97, revised September 19, 2008.

Actions	Compliance	Procedures
(2) *For Group 1 airplanes:* If there is no overturn skid plate installed, then install overturn skid plate kit P/N 11411–1–502 or an FAA-approved equivalent part number.	Within the next 180 days after July 7, 2008 (the effective date of AD 2008–11–17).	Follow Snow Engineering Co. Service Letter #97, revised November 7, 2007; or Snow Engineering Co. Service Letter #97, revised September 19, 2008.
(3) *For Group 2 airplanes:* Install P/N 11411–1–501 modification kit.	Within the next 180 days after January 28, 2009 (the effective date of this AD).	Follow Snow Engineering Co. Service Letter #97, revised September 19, 2008.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Fort Worth Airplane Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Andy McAnaul, Aerospace Engineer, ASW–150, FAA San Antonio MIDO–43, 10100 Reunion Pl., Ste. 650, San Antonio, Texas 78216; telephone: (210) 308–3365; fax: (210) 308–3370. 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.

Material Incorporated by Reference

(h) You must use Snow Engineering Co. Service Letter #97, revised November 7, 2007; or Snow Engineering Co. Service Letter #97, revised September 19, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Snow Engineering Co. Service Letter #97, revised September 19, 2008, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On July 7, 2008 (73 FR 31351, June 2, 2008), the Director of the Federal Register approved the incorporation by reference of Snow Engineering Co. Service Letter #97, revised November 7, 2007.

(3) For service information identified in this AD, contact Air Tractor Inc., P.O. Box 485, Olney, Texas 76374; telephone: (940) 564–5616; fax: (940) 564–5612; e-mail: *airmail@airtractor.com*; Internet: *http://www.airtractor.com*.

(4) You may review copies of the service information incorporated by reference for this AD at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the Central Region, call (816) 329–3768.

(5) You may also review copies of the service information incorporated by reference for this AD at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Kansas City, Missouri, on December 9, 2008.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–29568 Filed 12–23–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0858; Directorate Identifier 2008–NM–054–AD; Amendment 39–15773; AD 2008–26–07]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 Airplanes; Model DC–8–50 Series Airplanes; Model DC–8F–54 and DC–8F–55 Airplanes; Model DC–8–60 Series Airplanes; Model DC–8–60F Series Airplanes; Model DC–8–70 Series Airplanes; and Model DC–8–70F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all McDonnell Douglas airplanes identified above. This AD requires repetitive inspections of the lower skin and stringers at stations Xw=408 and Xw=−408, and corrective actions if necessary. This AD results from reports of cracks in the skins and stringers at the end fasteners common to the stringer end fittings at stations Xw=408 and Xw=−408 wing splice joints. We are issuing this AD to detect and correct fatigue cracking in the skins and stringers at the end fasteners common to the stringer end fittings at certain station and wing splice joints, which could result in wing structure that might not sustain limit load, and consequent loss of structural integrity of the wing.

DATES: This AD is effective January 28, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 28, 2009.

ADDRESSES: 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); telephone 206–544–9990; fax 206–766–5682; e-mail *DDCS@boeing.com*; Internet *https://www.myboeingfleet.com*.

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 AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dara Albouyeh, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5222; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to all McDonnell Douglas Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 airplanes; Model DC–8–50 series airplanes; Model DC–8F–54 and DC–8F–55 airplanes; Model DC–8–60 series airplanes; Model DC–8–60F series airplanes; Model DC–8–70 series airplanes; and Model DC–8–70F series airplanes. That NPRM was published in the **Federal Register** on August 12, 2008 (73 FR 46823). That NPRM proposed to require repetitive inspections of the lower skin and stringers at stations Xw=408 and Xw=–408, and corrective actions if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received from the commenters.

Request To Review Proposed Compliance Time for Accuracy

The Air Transport Association (ATA), on behalf of its member UPS, requests that we review the compliance time specified in the NPRM against Boeing Alert Service Bulletin DC8–57A102, dated February 12, 2008 ("the service bulletin"). UPS points out that the Relevant Service Information section of the NPRM specifies a compliance time of "Before the accumulation of 20,000 total flight cycles, or within 1,500 flight cycles or 2 years after the date of the service bulletin, whichever occurs latest." UPS further points out that the compliance time specified in the service bulletin is "Before the accumulation of 20,000 total flight cycles, or within 1,500 flight cycles or 2 years after the date of the service bulletin, whichever occurs first." UPS prefers that the NPRM be revised to match the service bulletin.

We do not agree to revise the compliance time specified in this final rule. However, we find that clarification is necessary because the Relevant Service Information section of the NPRM does not accurately reflect the compliance time specified in the service bulletin.

It was our intent that the compliance time specified throughout the NPRM match the compliance time specified in the service bulletin. The Relevant Service Information section of the NPRM should have described the compliance time specified in the service bulletin as follows: "Whichever occurs later: (1) Before the accumulation of 20,000 total flight cycles; or (2) within 1,500 flight cycles or 2 years after the date of the service bulletin (whichever occurs first)." Although it is not clear in the NPRM that the grace period is the earlier of "1,500 flight cycles or 2 years * * *," it is clear that the compliance time is the later of 20,000 total flight cycles or the grace period (1,500 flight cycles or 2 years), as specified in the service bulletin.

Because paragraph (f) of the NPRM refers to paragraph 1.E., "Compliance," of the service bulletin as the appropriate source of information for the compliance time for the proposed actions, our intent was clear that the proposed compliance time for this AD match the compliance time provided in the service bulletin. No change to this final rule is necessary in this regard.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD affects 87 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Inspection	6	$80	$0	$480, per inspection cycle	87	$41,760, per inspection cycle.

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

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

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

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

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

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

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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–26–07 McDonnell Douglas: Amendment 39–15773. Docket No. FAA–2008–0858; Directorate Identifier 2008–NM–054–AD.

Effective Date

(a) This airworthiness directive (AD) is effective January 28, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all McDonnell Douglas Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, DC–8–43, DC–8–51, DC–8–52, DC–8–53, DC–8–55, DC–8F–54, DC–8F–55, DC–8–61, DC–8–62, DC–8–63, DC–8–61F, DC–8–62F, DC–8–63F, DC–8–71, DC–8–72, DC–8–73, DC–8–71F, DC–8–72F, and DC–8–73F airplanes; certificated in any category.

Unsafe Condition

(d) This AD results from reports of cracks in the skins and stringers at the end fasteners common to the stringer end fittings at stations Xw=408 and Xw= – 408 wing splice joints. We are issuing this AD to detect and correct fatigue cracking in the skins and stringers at the end fasteners common to the stringer end fittings at certain station and wing splice joints, which could result in wing structure that might not sustain limit load, and consequent loss of structural integrity of the wing.

Compliance

(e) Comply with this AD within the compliance times specified, unless already done.

Repetitive Inspections and Corrective Actions

(f) At the times specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin DC8–57A102, dated February 12, 2008 ("the service bulletin"), except as provided by paragraph (g) of this AD: Do the applicable inspections for fatigue cracking of the lower skin and stringers at stations Xw=408 and Xw= – 408, and do all applicable corrective actions, by accomplishing all applicable actions specified in the Accomplishment Instructions of the service bulletin, except as provided by paragraph (h) of this AD. Do all corrective actions before further flight, in accordance with the service bulletin. Thereafter, repeat the inspections at the applicable intervals specified in paragraph 1.E. of the service bulletin.

(g) Where Boeing Alert Service Bulletin DC8–57A102, dated February 12, 2008 ("the service bulletin"), specifies a compliance time after the date on the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

(h) If any cracking is found during any inspection required by this AD, and Boeing Alert Service Bulletin DC8–57A102, dated February 12, 2008, specifies to contact Boeing for appropriate action: Before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, ATTN: Dara Albouyeh, Aerospace Engineer, Airframe Branch, ANM–120L, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5222; 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.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Los Angeles ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and 14 CFR 25.571, Amendment 45, and the approval must specifically refer to this AD.

(4) Accomplishing the requirements of this AD is an acceptable AMOC with the requirements of paragraph (b) of AD 93–01–15, amendment 39–8469, for those areas of principal structural element 57.08.037/038.

Material Incorporated by Reference

(j) You must use Boeing Alert Service Bulletin DC8–57A102, dated February 12, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) 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); telephone 206–544–9990; fax 206–766–5682; e-mail *DDCS@boeing.com*; Internet *https://www.myboeingfleet.com*.

(3) You may review copies of the service information that is incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

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

Issued in Renton, Washington, on December 12, 2008.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–30265 Filed 12–23–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0977; Directorate Identifier 2008–NM–124–AD; Amendment 39–15775; AD 2008–26–09]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

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

ACTION: Final rule.

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

Bombardier Aerospace has completed a system safety review of the CL–600–2B19 aircraft fuel system against the new fuel tank safety standards * * *.

The assessment showed that insufficient electrical bonding between the refuel/defuel shutoff valves and the aircraft structure could occur due to the presence of a non-conductive gasket (Gask-O-Seal). In addition, it was also determined that the presence of an anodic coating on the shutoff valve electrical conduit connection fitting could affect electrical bonding. The above conditions, if not corrected, could result in arcing and potential ignition source inside the fuel tank during lightning strikes and consequent fuel tank explosion.

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective January 28, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 28, 2009.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rocco Viselli, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart

Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7331; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on September 17, 2008 (73 FR 53773). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Bombardier Aerospace has completed a system safety review of the CL–600–2B19 aircraft fuel system against the new fuel tank safety standards, introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002–043. The identified non-compliances were assessed using Transport Canada Policy Letter No. 525–001 to determine if mandatory corrective action is required.
>
> The assessment showed that insufficient electrical bonding between the refuel/defuel shutoff valves and the aircraft structure could occur due to the presence of a non-conductive gasket (Gask-O-Seal). In addition, it was also determined that the presence of an anodic coating on the shutoff valve electrical conduit connection fitting could affect electrical bonding. The above conditions, if not corrected, could result in arcing and potential ignition source inside the fuel tank during lightning strikes and consequent fuel tank explosion.
>
> To correct the unsafe condition, this directive mandates the modification of the [shutoff valves in the] refuel/defuel system.

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

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Request To Refer to New Service Bulletin Revision

Air Wisconsin Airlines Corporation (Air Wisconsin) requests that we revise paragraph (f)(1) of the NPRM to refer to Bombardier Service Bulletin 601R–28–053, Revision D, dated August 20, 2008.

We agree to change paragraph (f)(1) of this AD to refer to Bombardier Service Bulletin 601R–28–053, Revision D. We referred to Bombardier Service Bulletin 601R–28–053, Revision C, dated March 14, 2006, as the appropriate source of service information for accomplishing the actions in the NPRM. We have reviewed Bombardier Service Bulletin 601R–28–053, Revision D, and find that it is essentially the same as the prior revisions referenced in the NPRM; it differs from Bombardier Service Bulletin 601R–28–053, Revision C, by correcting a statement in the Description paragraph, removing a part number and the Interchangeability Code from the Disposition of Parts table, and having small editorial changes that do not affect its technical content. We have changed paragraph (f)(1) of this AD accordingly, and added credit for actions done according to Bombardier Service Bulletin 601R–28–053, Revision C, to paragraph (f)(2) of this AD.

Request To Supersede an Existing AD

AWAC requests that we supersede AD 2006–02–10 with this AD, as it addresses airplanes modified by Bombardier Service Bulletin 601R–28–053, dated July 12, 2004.

We disagree with this request, as this AD applies to different airplanes than AD 2006–02–10, amendment 39–14462 (71 FR 4040, January 25, 2006). That AD applies to certain airplanes modified by Bombardier Service Bulletin 601R–28–053, dated July 12, 2004, and other airplanes having serial numbers 7940 through 7988. This AD does not apply to those airplanes. We have not changed the AD in this regard.

Request for Method of Compliance for Other Airplanes

AWAC requests that airplanes modified according to AD 2006–02–10 be approved as complying with the proposed AD.

We disagree with this request. As mentioned in the prior response, AD 2006–02–10 applies to different airplanes from those specified in this AD, and are affected by different service information. Further, those airplanes are not subject to the requirements of this AD. We have not changed the AD in this regard.

Request To Give Credit for Certain Service Bulletin Revisions

AWAC requests that we give credit for actions done according to Bombardier Service Bulletin 601R–28–053, dated July 12, 2004; Revision A, dated April 21, 2005; Revision B, dated September 15, 2005; and Revision C, dated March 14, 2006. AWAC requests that we also give credit for Bombardier Service Bulletin A601R–28–064, dated April 21, 2005; Revision A, dated September 15, 2005; Revision B, dated March 14, 2006; and Revision C, dated April 19, 2006.

We partially agree with this request. Credit for actions done according to Bombardier Service Bulletin 601R–28–053, Revisions A and B, appears in paragraph (f)(2) of the AD; and, as mentioned above, we are adding credit for Bombardier Service Bulletin 601R–28–053, Revision C, to that paragraph. Airplanes on which Bombardier Service Bulletin 601R–28–053, dated July 12, 2004, has been done are not subject to this AD, so we have not given credit in the AD for Bombardier Service Bulletin 601R–28–053, dated July 12, 2004. Bombardier Service Bulletin A601R–28–064 is not a method of compliance for this AD, so no credit is given for it in this AD.

Request To Discuss Warranty Considerations in the Costs of Compliance

AWAC states that there is no discussion of warranty consideration in the service bulletin; we infer that AWAC requests warranty information in the Costs of Compliance section of the AD.

We disagree with this request. Warranty information is provided by the manufacturer, and we have not changed the AD in this regard.

Change to Costs of Compliance

Based on new information, we have reduced the estimated number of products in the Costs of Compliance section of the NPRM from 970 to 677. The estimated cost per product stays the same, while the estimated cost of this AD to U.S. operators is reduced to $2,112,917.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect about 677 products of U.S. registry. We also estimate that it will take about 26 work-hours per product to comply with the basic requirements of this AD. The

average labor rate is $80 per work-hour. Required parts will cost about $1,041 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $2,112,917, or $3,121 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 AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

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

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

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

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

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 the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–26–09 Bombardier, Inc. (Formerly Canadair): Amendment 39–15775. Docket No. FAA–2008–0977; Directorate Identifier 2008–NM–124–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 28, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category, as specified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Airplanes having serial numbers 7003 through 7067 and 7069 through 7939 that have not had the modification of the refuel/defuel shutoff valves incorporated according to the original issue of Bombardier Service Bulletin 601R–28–053, dated July 12, 2004; and,

(2) Airplanes having serial numbers 7989, 7990, and 8000 through 8034.

Subject

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

Reason

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

Bombardier Aerospace has completed a system safety review of the CL–600–2B19 aircraft fuel system against the new fuel tank safety standards, introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002–043. The identified non-compliances were assessed using Transport Canada Policy Letter No. 525–001 to determine if mandatory corrective action is required.

The assessment showed that insufficient electrical bonding between the refuel/defuel shutoff valves and the aircraft structure could occur due to the presence of a non-conductive gasket (Gask-O-Seal). In addition, it was also determined that the presence of an anodic coating on the shutoff valve electrical conduit connection fitting could affect electrical bonding. The above conditions, if not corrected, could result in arcing and potential ignition source inside the fuel tank during lightning strikes and consequent fuel tank explosion.

To correct the unsafe condition, this directive mandates the modification of the [shutoff valves in the] refuel/defuel system.

Actions and Compliance

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

(1) Within 5,000 flight hours after the effective date of this AD, modify the refuel/defuel system in the center wing fuel tank in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–28–053, Revision D, dated August 20, 2008.

(2) Modifying the refuel/defuel system is also acceptable for compliance with the requirements of paragraph (f)(1) of this AD if done before the effective date of this AD in accordance with one of the following service bulletins: Bombardier Service Bulletin 601R–28–053, Revision A, dated April 21, 2005; Revision B, dated September 15, 2005; or Revision C, dated March 14, 2006.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), 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: Rocco Viselli, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7331; fax (516) 794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the

provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Canadian Airworthiness Directive CF–2008–20, dated June 12, 2008; and Bombardier Service Bulletin 601R–28–053, Revision D, dated August 20, 2008; for related information.

Material Incorporated by Reference

(i) You must use Bombardier Service Bulletin 601R–28–053, Revision D, dated August 20, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com*; Internet *http://www.bombardier.com*.

(3) You may review copies of the service information that is incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

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

Issued in Renton, Washington, on December 14, 2008.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–30261 Filed 12–23–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0903; Directorate Identifier 2008–NM–123–AD; Amendment 39–15770; AD 2008–26–04]

RIN 2120–AA64

Airworthiness Directives; Cessna Model 560 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Cessna Model 560 airplanes. That AD currently requires installing new minimum airspeed placards to notify the flightcrew of the proper airspeeds for operating in both normal and icing conditions. That AD also requires revising the airplane flight manual to provide limitations and procedures for operating in icing conditions, for operating with anti-ice systems selected "on" independent of icing conditions, and for recognizing and recovering from inadvertent stall. That AD also provides an optional terminating action for the placard installation. This new AD requires the previously optional terminating action. This AD results from an evaluation of in-service airplanes following an accident. The evaluation indicated that some airplanes might have an improperly adjusted stall warning system. We are issuing this AD to prevent an inadvertent stall due to the inadequate stall warning margin provided by an improperly adjusted stall warning system, which could result in loss of controllability of the airplane.

DATES: This AD becomes effective January 28, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of January 28, 2009.

On November 30, 2007 (72 FR 64135, November 15, 2007), the Director of the Federal Register approved the incorporation by reference of certain other publications.

ADDRESSES: For service information identified in this AD, contact Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277–7706; telephone 316–517–6215; fax 316–517–5802; e-mail *citationpubs@cessna.textron.com*; Internet *https://www.cessnasupport.com/newlogin.html*.

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 AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Bob Busto, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4157; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2007–23–13, amendment 39–15259 (72 FR 64135, November 15, 2007). The existing AD (AD 2007–23–13) applies to certain Cessna Model 560 airplanes. That NPRM was published in the **Federal Register** on August 21, 2008 (73 FR 49359). That NPRM proposed to continue to require installing new minimum airspeed placards to notify the flightcrew of the proper airspeeds for operating in both normal and icing conditions. That NPRM also proposed to continue to require revising the airplane flight manual to provide limitations and procedures for operating in icing conditions, for operating with anti-ice systems selected "on" independent of icing conditions, and for recognizing and recovering from inadvertent stall. That NPRM also proposed to require an optional terminating action for the placard installation and after accomplishing the terminating action, removing an AFM warning.

Comments

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

Additional Concern Regarding Safety of Flight in Icing Conditions

The National Safety Review Board (NTSB) states that based on its review of the NPRM, it is pleased that the FAA has performed a fleet survey and has identified a potential source of inaccuracy in the angle-of-attack (AOA) system. Further, the NTSB states it is pleased that the FAA has proposed requirements for correcting the calibration of the AOA system and providing data regarding the calibration adjustment to the manufacturer. The NTSB concludes that these actions would ensure that the stall warning system provides an accurate stall warning based on original and secondary/icing certification flight testing.

However, the NTSB notes that the actions described in this NPRM and in AD 2007–23–13 do not address certain safety recommendations. The NTSB states it is concerned that a reduction in stall warning margin produced by thin,

rough ice accretions generated by supercooled large droplet icing conditions or icing conditions near the edge of the icing envelope can eliminate or seriously alter stall margin and the alert provided to the flightcrew, even for a properly calibrated AOA system.

The NTSB states that utilization of the super-cooled large droplet icing envelope being developed in response to NTSB Safety Recommendation A–96–54 to evaluate the stall warning margin of the Cessna Model 560 airplanes with thin, rough ice accretions on or aft of the protected surfaces, as recommended by NTSB Safety Recommendation A–07–17, would provide the best level of safety in all icing condition, and in icing conditions similar to those encountered by the Cessna Model 560 airplane involved in an accident at Pueblo, Colorado.

We acknowledge the NTSB's concerns. The unsafe condition identified in this action is an inadvertent stall due to the inadequate stall warning margin provided by an improperly adjusted stall warning system. This AD addresses that potential unsafe condition.

As noted in the NTSB comment, Safety Recommendation A–07–17 addresses the NTSB's concern with the effect of thin, rough ice accretions on the Cessna Model 560 stall warning system. We have provided to the NTSB the FAA actions responsive to the recommendation. With respect to the application of a large super-cooled large droplet icing envelope to existing airplanes, we have identified, in response to the NTSB Safety Recommendation A–07–16, actions that we have taken and plan to take to ensure the safe operation of existing airplanes equipped with pneumatic deicing boots, such as Cessna Model 560 airplanes. Updates to the NTSB are provided through established procedures.

Conclusion

We have carefully reviewed the available data, including the comment that has been submitted, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

There are about 538 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD. There are about 400 U.S. registered airplanes.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per airplane	Fleet cost
AFM Revision (required by AD 2007–23–13)	1	$80	$80	$32,000
Placard Installation (required by AD 2007–23–13)	1	80	80	32,000
Functional Test (new action)	8	80	640	256,000

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–15259 (72 FR 64135, November 15, 2007) and by adding the following new airworthiness directive (AD):

2008–26–04 Cessna Aircraft Company: Amendment 39–15770. Docket No. FAA–2008–0903; Directorate Identifier 2008–NM–123–AD.

Effective Date

(a) This AD becomes effective January 28, 2009.

Affected ADs

(b) This AD supersedes AD 2007–23–13.

Applicability

(c) This AD applies to Cessna Model 560 airplanes, certificated in any category, serial numbers (S/Ns) 560–0001 through –0538 inclusive.

Unsafe Condition

(d) This AD results from an evaluation of in-service airplanes following an accident. The evaluation indicated that some airplanes may have an improperly adjusted stall warning system. We are issuing this AD to prevent an inadvertent stall due to the inadequate stall warning margin provided by an improperly adjusted stall warning system, which could result in loss of controllability of the airplane.

Compliance

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

Restatement of Requirements of AD 2007–23–13

Airplane Flight Manual (AFM) Revision

(f) Within 14 days after November 30, 2007 (the effective date of AD 2007–23–13), revise the Operating Limitations, Normal Procedures, Emergency Procedures, and the Approach and Landing sections of the AFM to include the information in the temporary changes (TCs) identified in Table 1 of this AD, as applicable, except as required by paragraph (k) of this AD. These TCs provide limitations and procedures for operating in icing conditions, for operating with anti-ice systems selected "on" independent of icing conditions, and for recognizing and recovering from inadvertent stall. Operate the airplane according to the limitations and procedures in the applicable TCs.

Note 1: This may be done by inserting a copy of the applicable TCs into the applicable AFM. When these TCs have been included in the general revisions of the AFM, the general revisions may be inserted into the AFM (in lieu of the applicable TCs), provided the relevant information in the general revision is identical to that in the applicable TCs.

TABLE 1—CESSNA MODEL 560 TCS

Airplanes	Applicable TC
Model 560 airplanes, S/Ns 560–0001 through –0259 inclusive.	Cessna 560FM TC–R13–08, dated August 31, 2007, to the Cessna Model 560 Citation V AFM.
	Cessna 560FM TC–R13–09, dated August 31, 2007, to the Cessna Model 560 Citation V AFM.
	Cessna 560FM TC–R13–10, dated August 31, 2007, to the Cessna Model 560 Citation V AFM.
	Cessna 560FM TC–R13–12, dated August 31, 2007, to the Cessna Model 560 Citation V AFM.
	Cessna 560FM TC–R13–13, dated August 31, 2007, to the Cessna Model 560 Citation V AFM.
	Cessna 560FM TC–R13–14, dated October 2, 2007, to the Cessna Model 560 Citation V AFM.
	Cessna 560FM TC–R13–15, dated October 2, 2007, to the Cessna Model 560 Citation V AFM.
	Cessna 560FM TC–R13–16, dated October 2, 2007, to the Cessna Model 560 Citation V AFM.
	Cessna 560FM TC–R13–17, dated October 2, 2007, to the Cessna Model 560 Citation V AFM.
	Cessna 560FM TC–R13–18, dated October 2, 2007, to the Cessna Model 560 Citation V AFM.
	Cessna 560FM TC–R13–19, dated October 2, 2007, to the Cessna Model 560 Citation V AFM.
	Cessna 560FM TC–R13–20, dated October 2, 2007, to the Cessna Model 560 Citation V AFM.
Model 560 airplanes, S/Ns 560–0260 through –0538 inclusive.	Cessna 56FMA TC–R11–16, dated August 31, 2007, to the Cessna Model 560 Citation Ultra AFM.
	Cessna 56FMA TC–R11–17, dated August 31, 2007, to the Cessna Model 560 Citation Ultra AFM.
	Cessna 56FMA TC–R11–19, dated August 31, 2007, to the Cessna Model 560 Citation Ultra AFM.
	Cessna 56FMA TC–R11–20, dated August 31, 2007, to the Cessna Model 560 Citation Ultra AFM.
	Cessna 56FMA TC–R11–21, dated August 31, 2007, to the Cessna Model 560 Citation Ultra AFM.
	Cessna 56FMA TC–R11–23, dated October 2, 2007, to the Cessna Model 560 Citation Ultra AFM.
	Cessna 56FMA TC–R11–24, dated October 2, 2007, to the Cessna Model 560 Citation Ultra AFM.
	Cessna 56FMA TC–R11–25, dated October 2, 2007, to the Cessna Model 560 Citation Ultra AFM.
	Cessna 56FMA TC–R11–26, dated October 2, 2007, to the Cessna Model 560 Citation Ultra AFM.
	Cessna 56FMA TC–R11–27, dated October 2, 2007, to the Cessna Model 560 Citation Ultra AFM.
	Cessna 56FMA TC–R11–28, dated October 2, 2007, to the Cessna Model 560 Citation Ultra AFM.
	Cessna 56FMA TC–R11–29, dated October 2, 2007, to the Cessna Model 560 Citation Ultra AFM.
	Cessna 56FMA TC–R11–30, dated October 2, 2007, to the Cessna Model 560 Citation Ultra AFM.

Placard Installation

(g) Within 30 days after November 30, 2007, install new minimum airspeed placards to notify the flightcrew of the proper airspeeds for operating in normal and icing conditions, in accordance with the Accomplishment Instructions of Cessna Service Bulletin SB560–34–143, dated September 7, 2007, including Attachment and Service Bulletin Supplemental Data; or Cessna Service Bulletin SB560–34–143, Revision 1, dated November 21, 2007. As of the effective date of this AD, only Revision 1 may be used. The placards must be installed above or near the pilot and copilot altitude indicators or primary flight displays and must be in clear view of the pilot and copilot. The placards may be removed when

the actions specified in paragraphs (i) and (j) of this AD have been accomplished.

No Maintenance Transaction Report Required for Cessna Service Bulletin

(h) Although Cessna Service Bulletin SB560–34–143, dated September 7, 2007, including Attachment and Service Bulletin Supplemental Data; and Cessna Service Bulletin SB560–34–143, Revision 1, dated November 21, 2007; referred to in paragraph (g) of this AD, specify to submit a maintenance transaction report to the manufacturer, this AD does not include that requirement.

New Requirements of This AD

Terminating Action

(i) Within 6 months after the effective date of this AD, do a functional test of the angle-of-attack (AOA) system, and adjust the calibration settings of the AOA system as applicable, in accordance with Cessna Alert Service Letter ASL560–34–34 (for airplanes equipped with a single AOA system) or ASL560–34–35 (for airplanes equipped with a dual AOA system), both Revision 1, both dated October 2, 2007, both including Attachments, as applicable; or Cessna Alert Service Letter ASL560–34–34 or ASL560–34–35, both Revision 3, both dated March 6, 2008, both including Attachments, as applicable. As of the effective date of this AD, only Revision 3 may be used. Doing the functional test of the AOA system, adjusting the calibration settings of the AOA system as applicable, and submitting the AOA system test data as specified in paragraph (j) of this AD, terminates the placard installation required by paragraph (g) of this AD.

Note 2: Maintenance Manual Revision 24 of Cessna 560 Maintenance Manual 56MM has been changed to reflect the intent of the ASLs for the maintenance actions and periodic inspections of the AOA/Stall Warning System.

Reporting AOA System Test Data

(j) Submit the AOA system test data report for the functional test specified in paragraph (i) of this AD to Glenn Todd, Citation Customer Support Engineer, Department 572, P.O. Box 7706, Wichita, KS 67277–7706, e-mail: *gatodd@cessna.textron.com*, fax: 1–316–517–8500 or 1–316–206–2337. Submit the report at the applicable time specified in paragraph (j)(1) or (j)(2) of this AD. The report must include the AOA test data, the airplane serial number and registration number, and the number of landings and flight hours on the airplane. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the functional test was done after November 30, 2007: Submit the report within 30 days after doing the functional test.

(2) If the inspection was accomplished prior to November 30, 2007: Submit the report within 30 days after November 30, 2007.

Removal of Warning From the Limitations Section of the AFM

(k) For airplanes on which the actions required by paragraph (i) of this AD have been done: Within 30 days after doing the actions required by paragraph (i) of this AD or within 30 days after the effective date of this AD, whichever occurs later, revise the Limitations Section of the AFM by removing the following Warning statement:

"Warning: Stick Shaker May Not Activate Prior to Buffet/Roll-Off If Airspeed Is Reduced Below the Appropriate Minimum Speed."

No Maintenance Transaction Report Required for Cessna Service Letters

(l) Cessna Alert Service Letters ASL560–34–34 and ASL560–34–35, both Revision 1, both dated October 2, 2007, both including Attachments; and Cessna Alert Service Letters ASL560–34–34 and ASL560–34–35, both Revision 3, both dated March 6, 2008, both including Attachments; specify to submit a maintenance transaction report to the manufacturer. This AD does not include that requirement.

Actions Accomplished According to Previous Issue of Service Letters

(m) Actions accomplished before the effective date of this AD in accordance with Cessna Alert Service Letter ASL560–34–34 or ASL560–34–35, both Revision 2, both dated January 11, 2008, both including Attachments, are considered acceptable for compliance with the corresponding action specified in paragraph (i) of this AD.

Alternative Methods of Compliance (AMOCs)

(n)(1) The Manager, Wichita Aircraft Certification Office (ACO), FAA, ATTN: Bob Busto, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita ACO, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4157; fax (316) 946–4107; 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.

Material Incorporated by Reference

(o) You must use the applicable service information listed in Table 2 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise.

TABLE 2—MATERIAL INCORPORATED BY REFERENCE

Service information	Revision level	Date
Cessna Alert Service Letter ASL560–34–34, including Attachments	1	October 2, 2007.
Cessna Alert Service Letter ASL560–34–34, including Attachments	3	March 6, 2008.
Cessna Alert Service Letter ASL560–34–35, including Attachments	1	October 2, 2007.
Cessna Alert Service Letter ASL560–34–35, including Attachments	3	March 6, 2008.
Cessna Service Bulletin SB560–34–143, including Attachment and Service Bulletin Supplemental Data.	Original	September 7, 2007.
Cessna Service Bulletin SB560–34–143	1	November 21, 2007.
Cessna Temporary Change 56FMA TC–R11–16 to the Cessna Model 560 Citation Ultra Airplane Flight Manual.	Original	August 31, 2007.
Cessna Temporary Change 56FMA TC–R11–17 to the Cessna Model 560 Citation Ultra Airplane Flight Manual.	Original	August 31, 2007.
Cessna Temporary Change 56FMA TC–R11–19 to the Cessna Model 560 Citation Ultra Airplane Flight Manual.	Original	August 31, 2007.
Cessna Temporary Change 56FMA TC–R11–20 to the Cessna Model 560 Citation Ultra Airplane Flight Manual.	Original	August 31, 2007.
Cessna Temporary Change 56FMA TC–R11–21 to the Cessna Model 560 Citation Ultra Airplane Flight Manual.	Original	August 31, 2007.
Cessna Temporary Change 56FMA TC–R11–23 to the Cessna Model 560 Citation Ultra Airplane Flight Manual.	Original	October 2, 2007.
Cessna Temporary Change 56FMA TC–R11–24 to the Cessna Model 560 Citation Ultra Airplane Flight Manual.	Original	October 2, 2007.
Cessna Temporary Change 56FMA TC–R11–25 to the Cessna Model 560 Citation Ultra Airplane Flight Manual.	Original	October 2, 2007.

TABLE 2—MATERIAL INCORPORATED BY REFERENCE—Continued

Service information	Revision level	Date
Cessna Temporary Change 56FMA TC–R11–26 to the Cessna Model 560 Citation Ultra Airplane Flight Manual.	Original	October 2, 2007.
Cessna Temporary Change 56FMA TC–R11–27 to the Cessna Model 560 Citation Ultra Airplane Flight Manual.	Original	October 2, 2007.
Cessna Temporary Change 56FMA TC–R11–28 to the Cessna Model 560 Citation Ultra Airplane Flight Manual.	Original	October 2, 2007.
Cessna Temporary Change 56FMA TC–R11–29 to the Cessna Model 560 Citation Ultra Airplane Flight Manual.	Original	October 2, 2007.
Cessna Temporary Change 56FMA TC–R11–30 to the Cessna Model 560 Citation Ultra Airplane Flight Manual.	Original	October 2, 2007.
Cessna Temporary Change 560FM TC–R13–08 to the Cessna Model 560 Citation V Airplane Flight Manual.	Original	August 31, 2007.
Cessna Temporary Change 560FM TC–R13–09 to the Cessna Model 560 Citation V Airplane Flight Manual.	Original	August 31, 2007.
Cessna Temporary Change 560FM TC–R13–10 to the Cessna Model 560 Citation V Airplane Flight Manual.	Original	August 31, 2007.
Cessna Temporary Change 560FM TC–R13–12 to the Cessna Model 560 Citation V Airplane Flight Manual.	Original	August 31, 2007.
Cessna Temporary Change 560FM TC–R13–13 to the Cessna Model 560 Citation V Airplane Flight Manual.	Original	August 31, 2007.
Cessna Temporary Change 560FM TC–R13–14 to the Cessna Model 560 Citation V Airplane Flight Manual.	Original	October 2, 2007.
Cessna Temporary Change 560FM TC–R13–15 to the Cessna Model 560 Citation V Airplane Flight Manual.	Original	October 2, 2007.
Cessna Temporary Change 560FM TC–R13–16 to the Cessna Model 560 Citation V Airplane Flight Manual.	Original	October 2, 2007.
Cessna Temporary Change 560FM TC–R13–17 to the Cessna Model 560 Citation V Airplane Flight Manual.	Original	October 2, 2007.
Cessna Temporary Change 560FM TC–R13–18 to the Cessna Model 560 Citation V Airplane Flight Manual.	Original	October 2, 2007.
Cessna Temporary Change 560FM TC–R13–19 to the Cessna Model 560 Citation V Airplane Flight Manual.	Original	October 2, 2007.
Cessna Temporary Change 560FM TC–R13–20 to the Cessna Model 560 Citation V Airplane Flight Manual.	Original	October 2, 2007.

(1) The Director of the Federal Register approved the incorporation by reference of the service information listed in Table 3 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

TABLE 3—NEW MATERIAL INCORPORATED BY REFERENCE

Service information	Revision level	Date
Cessna Alert Service Letter ASL560–34–34, including Attachments	3	March 6, 2008.
Cessna Alert Service Letter ASL560–34–35, including Attachments	3	March 6, 2008.
Cessna Service Bulletin SB560–34–143	1	November 21, 2007.

(2) On November 30, 2007 (72 FR 64135, November 15, 2007), the Director of the Federal Register approved the incorporation by reference of the service information listed in Table 4 of this AD.

TABLE 4—MATERIAL PREVIOUSLY INCORPORATED BY REFERENCE

Service information	Revision level	Date
Cessna Alert Service Letter ASL560–34–34, including Attachments	1	October 2, 2007.
Cessna Alert Service Letter ASL560–34–35, including Attachments	1	October 2, 2007.
Cessna Service Bulletin SB560–34–143, including Attachment and Service Bulletin Supplemental Data.	Original	September 7, 2007.
Cessna Temporary Change 56FMA TC–R11–16 to the Cessna Model 560 Citation Ultra Airplane Flight Manual.	Original	August 31, 2007.
Cessna Temporary Change 56FMA TC–R11–17 to the Cessna Model 560 Citation Ultra Airplane Flight Manual.	Original	August 31, 2007.
Cessna Temporary Change 56FMA TC–R11–19 to the Cessna Model 560 Citation Ultra Airplane Flight Manual.	Original	August 31, 2007.
Cessna Temporary Change 56FMA TC–R11–20 to the Cessna Model 560 Citation Ultra Airplane Flight Manual.	Original	August 31, 2007.

TABLE 4—MATERIAL PREVIOUSLY INCORPORATED BY REFERENCE—Continued

Service information	Revision level	Date
Cessna Temporary Change 56FMA TC–R11–21 to the Cessna Model 560 Citation Ultra Airplane Flight Manual.	Original	August 31, 2007.
Cessna Temporary Change 56FMA TC–R11–23 to the Cessna Model 560 Citation Ultra Airplane Flight Manual.	Original	October 2, 2007.
Cessna Temporary Change 56FMA TC–R11–24 to the Cessna Model 560 Citation Ultra Airplane Flight Manual.	Original	October 2, 2007.
Cessna Temporary Change 56FMA TC–R11–25 to the Cessna Model 560 Citation Ultra Airplane Flight Manual.	Original	October 2, 2007.
Cessna Temporary Change 56FMA TC–R11–26 to the Cessna Model 560 Citation Ultra Airplane Flight Manual.	Original	October 2, 2007.
Cessna Temporary Change 56FMA TC–R11–27 to the Cessna Model 560 Citation Ultra Airplane Flight Manual.	Original	October 2, 2007.
Cessna Temporary Change 56FMA TC–R11–28 to the Cessna Model 560 Citation Ultra Airplane Flight Manual.	Original	October 2, 2007.
Cessna Temporary Change 56FMA TC–R11–29 to the Cessna Model 560 Citation Ultra Airplane Flight Manual.	Original	October 2, 2007.
Cessna Temporary Change 56FMA TC–R11–30 to the Cessna Model 560 Citation Ultra Airplane Flight Manual.	Original	October 2, 2007.
Cessna Temporary Change 560FM TC–R13–08 to the Cessna Model 560 Citation V Airplane Flight Manual.	Original	August 31, 2007.
Cessna Temporary Change 560FM TC–R13–09 to the Cessna Model 560 Citation V Airplane Flight Manual.	Original	August 31, 2007.
Cessna Temporary Change 560FM TC–R13–10 to the Cessna Model 560 Citation V Airplane Flight Manual.	Original	August 31, 2007.
Cessna Temporary Change 560FM TC–R13–12 to the Cessna Model 560 Citation V Airplane Flight Manual.	Original	August 31, 2007.
Cessna Temporary Change 560FM TC–R13–13 to the Cessna Model 560 Citation V Airplane Flight Manual.	Original	August 31, 2007.
Cessna Temporary Change 560FM TC–R13–14 to the Cessna Model 560 Citation V Airplane Flight Manual.	Original	October 2, 2007.
Cessna Temporary Change 560FM TC–R13–15 to the Cessna Model 560 Citation V Airplane Flight Manual.	Original	October 2, 2007.
Cessna Temporary Change 560FM TC–R13–16 to the Cessna Model 560 Citation V Airplane Flight Manual.	Original	October 2, 2007.
Cessna Temporary Change 560FM TC–R13–17 to the Cessna Model 560 Citation V Airplane Flight Manual.	Original	October 2, 2007.
Cessna Temporary Change 560FM TC–R13–18 to the Cessna Model 560 Citation V Airplane Flight Manual.	Original	October 2, 2007.
Cessna Temporary Change 560FM TC–R13–19 to the Cessna Model 560 Citation V Airplane Flight Manual.	Original	October 2, 2007.
Cessna Temporary Change 560FM TC–R13–20 to the Cessna Model 560 Citation V Airplane Flight Manual.	Original	October 2, 2007.

(3) Contact Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277; telephone 316–517–6215; fax 316–517–5802; e-mail *citationpubs@cessna.textron.com*; Internet *https://www.cessnasupport.com/newlogin.html*; for a copy of this service information.

(4) You may review copies of the service information that are incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

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

Issued in Renton, Washington, on December 11, 2008.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–30125 Filed 12–23–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1044; Directorate Identifier 2008–NM–095–AD; Amendment 39–15774; AD 2008–26–08]

RIN 2120–AA64

Airworthiness Directives; Saab AB, Saab Aerosystems Model 340A (SAAB/SF340A) and SAAB 340B Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI)

originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

> Several landing gear emergency extension valves have been found seized * * *. This condition, if not corrected, could result in malfunctioning of the landing gear release during an operational emergency. .
> * * * * *
> This malfunction could cause failure of the landing gear to extend and lock in the extended position, which could result in a gear up landing and reduced controllability of the airplane on the ground. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective January 28, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 28, 2009.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on September 30, 2008 (73 FR 56765). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Several landing gear emergency extension valves have been found seized when performing checks according to the SAAB 340 Maintenance Review Board (MRB) Report, Section F (Airworthiness Limitation Section) task number 323106. The valves have seized due to lack of internal lubrication. This condition, if not corrected, could result in malfunctioning of the landing gear release during an operational emergency.
>
> Because the valve lubrication performance is dependant on calendar time since last valve operation, SAAB has revised the check to cycle the emergency release handle 5 times and amended the interval in MRB section F from 5,000 FH [flight hours] to every 2 years.
>
> For the reasons described above, this Airworthiness Directive (AD) requires a functional check [for discrepancies (*e.g.*, landing gear does not extend, does not lock in down position)] of the landing gear emergency extension valve at the newly established intervals.
>
> Malfunction of the landing gear release could cause failure of the landing gear to extend and lock in the extended position, which could result in a gear up landing and reduced controllability of the airplane on the ground. The corrective action for any discrepancy that is found is repair using a method approved by either the FAA or the European Aviation Safety Agency (or its delegated agent). You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect about 218 products of U.S. registry. We also estimate that it will take about 4 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $69,760, or $320 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 AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

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 the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator,

the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–26–08 Saab AB, Saab Aerosystems: Amendment 39–15774. Docket No. FAA–2008–1044; Directorate Identifier 2008–NM–095–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 28, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Saab AB, Saab Aerosystems Model 340A (SAAB/SF340A) and SAAB 340B airplanes, all serial numbers, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing Gear.

Reason

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

Several landing gear emergency extension valves have been found seized when performing checks according to the SAAB 340 Maintenance Review Board (MRB) Report, Section F (Airworthiness Limitation Section) task number 323106. The valves have seized due to lack of internal lubrication. This condition, if not corrected, could result in malfunctioning of the landing gear release during an operational emergency.

Because the valve lubrication performance is dependant on calendar time since last valve operation, SAAB has revised the check to cycle the emergency release handle 5 times and amended the interval in MRB section F from 5,000 FH [flight hours] to every 2 years.

For the reasons described above, this Airworthiness Directive (AD) requires a functional check [for discrepancies, (e.g., landing gear does not extend, does not lock in down position)] of the landing gear emergency extension valve at the newly established intervals.

Malfunction of the landing gear release could cause failure of the landing gear to extend and lock in the extended position, which could result in a gear up landing and reduced controllability of the airplane on the ground. The corrective action for any discrepancy that is found is repair using a method approved by either the FAA or the European Aviation Safety Agency (EASA) (or its delegated agent).

Actions and Compliance

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

(1) Within 6 months after the effective date of this AD, do a functional check of the landing gear emergency extension valve in accordance with the Accomplishment Instructions of SAAB Service Bulletin 340–32–136, dated January 9, 2008. Repeat the functional check thereafter at intervals not to exceed 24 months.

(2) If any discrepancy is found during any functional check required by paragraph (f)(1) of this AD, before further flight, repair using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA (or its delegated agent).

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: Although the MCAI includes a note that allows the option of the repetitive inspections (functional checks) to be accomplished in accordance with SAAB 340 Maintenance Review Board Report, Section F, Revision 6, Task Number 323106, this AD does not include that option. That document is not yet available.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2008–0054, dated March 5, 2008; and SAAB Service Bulletin 340–32–136, dated January 9, 2008; for related information.

Material Incorporated by Reference

(i) You must use SAAB Service Bulletin 340–32–136, dated January 9, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Saab Aircraft AB, SAAB Aerosystems, SE–581 88, Linkping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; e-mail *saab2000.techsupport@saabgroup.com*; Internet *http://www.saabgroup.com*.

(3) You may review copies of the service information that is incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

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

Issued in Renton, Washington, on December 12, 2008.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–30262 Filed 12–23–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 198

Aviation Insurance

CFR Correction

In title 14 of the Code of Federal Regulations, parts 140 to 199, revised as of January 1, 2008, on page 316, in § 198.3, in paragraph (a), revise the reference "§ 198.19" to read "§ 198.1".

[FR Doc. E8–30838 Filed 12–23–08; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 573

Food Additives Permitted in Feed and Drinking Water of Animals

CFR Correction

In title 21 of the Code of Federal Regulations, parts 500 to 599, revised as of April 1, 2008, on pages 551 and 552, in § 573.640, in paragraphs (b)(4)(i) and (b)(4)(ii), before the words "at the National Archives and Records

Administration (NARA)", insert the words "available for inspection".

[FR Doc. E8–30840 Filed 12–23–08; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 924

[FHWA Docket No. FHWA–2008–0009]

RIN 2125–AF25

Highway Safety Improvement Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to revise Part 924 to incorporate changes to the Highway Safety Improvement Program (HSIP) that resulted from the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), as well as to reflect changes in the overall program that have evolved since the FHWA originally published 23 CFR Part 924.

DATES: *Effective Date:* This final rule is effective January 23, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Erin Kenley, Office of Safety, (202) 366–8556; or Raymond Cuprill, Office of the Chief Counsel, (202) 366–0791, Federal Highway Administration, 1200 New Jersey Ave., SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., *e.t.*, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

This document, the notice of proposed rulemaking (NPRM), and all comments received may be viewed online through *http://www.regulations.gov.* Electronic submission and retrieval help and guidelines are available on the Web site. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara.*

Background

On April 24, 2008, at 73 FR 22092, the FHWA published a NPRM proposing to revise the regulations in 23 CFR Part 924 Highway Safety Improvement Program. The NPRM was published to incorporate the new statutory requirements of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) and to provide State and local safety partners with information on the purpose, definitions, policy, program structure, planning, implementation, evaluation, and reporting of HSIP.

Summary of Comments

The FHWA received 15 letters submitted to the docket containing approximately 100 individual comments. Comments were received from State departments of transportation (DOTs), a county department of public works, private industry, and the American Automobile Association (AAA). The FHWA has reviewed and analyzed all the comments received. The significant comments and summaries of the FHWA's analyses and determinations are discussed below.

Section 924.1 Purpose

The FHWA received one comment from the Arkansas State Highway Commission requesting clarification of FHWA's proposal to add evaluation to the list of components of a comprehensive HSIP, since evaluation already exists under the current HSIP. While evaluation has always been a requirement of the HSIP, the FHWA includes this change to emphasize that evaluation is a critical element of the program. The FHWA believes that explicitly adding evaluation to section 924.1 makes this section consistent with the rest of the regulation and corrects an omission of the word "evaluation" from the existing regulation.

Section 924.3 Definitions

The FHWA received 14 comments from State DOTs and the AAA regarding some of the proposed definitions in this section. In particular, the Michigan and North Dakota State DOTs, as well as the Maryland State Highway Administration (SHA), expressed concern with the definition of "highway safety improvement project," because they believed the definition required Strategic Highway Safety Plans (SHSP) to include specific projects. It is not the FHWA's intent for SHSPs to be project specific; therefore, FHWA revises the definition in the final rule to indicate that a highway safety improvement project is "consistent with" the State SHSP, rather than "described in" the SHSP. In addition, the Illinois, Minnesota, and Arizona DOTs and the AAA commented about the list of example projects included within the definition of "highway safety improvement project." Because the project list is consistent with 23 U.S.C. 148, and the intent is to keep the definition of eligible projects broad, rather than imply that it is an exhaustive list, the FHWA retains the list of projects as proposed in the NPRM. However, the FHWA does incorporate a minor revision to the definition of "highway safety improvement project," project type 10, elimination of a roadside obstacle, to also include roadside hazards. This addresses comments by the Arizona DOT, who suggested that improvement of roadside slopes be included in this project type. The FHWA believes that "roadside hazards" is more general and addresses Arizona DOT's comment, while also being broad enough to cover other hazards. In addition, the FHWA removes the word "installation" from project type 21 in the final rule to be consistent with the language used in 23 U.S.C. 148. The AAA suggested that the term "crash rate," as described in the definition of "high risk rural roads," should include vehicle miles traveled, and a reference to fatalities and serious injuries, for consistency with the serious injury definition in the statutory language. The FHWA recognizes that not all crash rates are recorded with respect to vehicle miles travelled, and FHWA's desire is to allow States flexibility with how crash rates are defined. The definition for "high risk rural roads" is consistent with the 23 U.S.C. 148 definition in its reference to fatalities and incapacitating injuries. The Illinois DOT agreed with FHWA's proposed definition of "high risk rural roads" and suggested expanding the definition to include "locations on such roads that display similar roadway characteristics to warrant systematic safety improvements." The FHWA is adopting the proposed definition without the suggested expansion because it is more consistent with the requirements of 23 U.S.C. 148, and the suggested expansion of the definition would extend the application of the rule beyond its statutory authority. This would need to be addressed in future legislation. The definitions for "high risk rural roads," "highway safety improvement program," "safety projects under any other section," and "strategic highway safety plan," which are based on the definitions in 23 U.S.C. 148(a), remain unchanged in the final rule. The definition of "highway safety improvement project" in the final rule reflects a slight editorial change as discussed above.

The FHWA incorporates a minor editorial revision to the definition for "road safety audit" in the final rule to

clarify that the audit teams that perform road safety audits are multidisciplinary teams. The FHWA also incorporates minor editorial changes in the final rule definition for "safety data" to correspond with similar changes in section 924.9. In the NPRM, the FHWA proposed including case or citation adjudication and injury data to the list of types of safety data; however, several State DOTs, including Arkansas, Michigan, and Oregon indicated that they currently do not have access to all of that data. While the FHWA believes that case or citation adjudication and injury data are elements of an ideal safety data system, the FHWA removes those items in order to prevent the list of safety data from appearing exhaustive.

The FHWA incorporates the definitions for the following terms into the final rule, unchanged from what was proposed in the NPRM: "Highway-rail grade crossing protective devices," "integrated interoperable emergency communication equipment," "interoperable emergency communications system," "operational improvements," "public road," "hazard index formula," "public grade crossing," "safety stakeholder," "serious injury," and "transparency report." These terms are used in the text of the regulations. The AAA suggested that the definition for "hazard index formula" was overly broad; however, the FHWA believes that the proposed definition provides sufficient Federal level regulatory requirements while also allowing States the appropriate flexibility to incorporate States' methodologies. The Minnesota DOT agreed with the definition of "public grade crossing," commenting that it provided a clearer definition than was previously available.

The Illinois DOT suggested removing pedestrian and bicycle facilities from the existing definition of "highway" in Part 924; however, the FHWA leaves the definition unchanged because these types of facilities are eligible for HSIP funding and therefore must be included in the definition. The Arizona DOT suggested adding a definition for the word "safety"; however, the FHWA believes that the definitions and other provisions of the final rule provide sufficient information on the safety projects it covers and therefore a definition of "safety" is not necessary.

Section 924.5 Policy

While the Washington State DOT and the San Diego County Department of Public Works agreed with the proposed revisions to the policy statement in section 924.5(a), the Oregon and North Dakota DOTs submitted comments about the specific wording. The North Dakota DOT requested clarification of the phrase "evaluate on a continuing basis" and suggested the phrase "all public roads" would include roads outside of the State's authority. The Oregon DOT commented that the proposed objective of "decreasing the potential for crashes" is not specifically addressed in SAFETEA–LU and that the overall objective of significantly reducing fatalities and serious injuries should be emphasized. As a result of these comments, the FHWA revises the text in section 924.5(a) of the final rule to indicate that States shall "* * * evaluate on an annual basis a HSIP that has the overall objective of significantly reducing the occurrence of and the potential for fatalities and serious injuries resulting from crashes on all public roads." The FHWA believes that this policy complements the systematic improvement characteristics of the SHSP and supports States in implementing safety countermeasures that target crash types rather that just high crash locations. The FHWA encourages States to fund projects that will have the largest impact on safety regardless of who owns and maintains the road.

In the NPRM, the FHWA proposed adding two additional paragraphs (b) and (c) to this section to provide information about highway safety improvement project eligibility, and to encourage agencies to use HSIP funding for projects that maximize opportunities to advance safety, and to indicate the period of availability for the funds. While the Washington State DOT supported the proposed language in section 924.5(b) emphasizing that States consider safety projects that maximize opportunities to advance safety by addressing locations and treatments with the highest potential for future crash reduction, Michigan and Illinois DOT and Maryland SHA expressed concern with the proposed language. Michigan DOT suggested that, in practice, it is very difficult to implement low cost treatment projects (as suggested in the NPRM) using Federal funding because of the requirement that such projects be competitively bid. The Maryland SHA also commented that these projects would be difficult to fund due to the policy requirement that the activity address locations and treatments with the highest potential for future crash reduction. The FHWA understands these concerns, and as a result, removes the phrase, "* * * by addressing locations and treatments with the highest potential for crash reduction" from the statement in the final rule. In response to Illinois DOT's concern that the proposed language in section 924.5(b) suggests prioritization of projects, the FHWA clarifies that this statement does not require prioritization, rather the intent is that the program should fund projects that are considered priority projects, which are projects with maximum lifesaving potential.

Paragraph (b) reiterates that safety projects under any other section are eligible activities only when a State meets the requirements of 23 U.S.C. 148(e) to use or flex 10 percent of the amount apportioned under 23 U.S.C. 104(b)(5) for a fiscal year. This excludes minor activities that are incidental to a specific highway safety improvement project. The FHWA received a comment from the Maryland SHA stating that flexing the 10 percent of the funds apportioned under 23 U.S.C. 104(b)(5) into behavioral programs should be made easier for the States and the FHWA division offices. The FHWA believes that this regulation provides States with the maximum flexibility allowed under current law for implementing the 10 percent flexibility provision and that granting additional flexibility would exceed statutory authority, and therefore, it is outside of the scope of this rulemaking.

The FHWA received comments from the Illinois, Minnesota, and Oregon DOTs supporting the addition of paragraph (c) to this section. The paragraph clarifies that improvements to safety features that are routinely provided as part of broader Federal-aid projects should be funded by the same source as the broader project. The Florida, Michigan, and North Dakota DOTs commented that the proposed language would limit their abilities to dual-fund or split-fund projects. The FHWA emphasizes that this statement does not prohibit dual or split funding, rather it encourages use of other funding sources for safety improvements. States should consider safety in all infrastructure improvements and funding those improvements through all sources possible, not just through dedicated safety funding. States also should consider using HSIP funds for cost effective, high-impact projects in order to use available funding as efficiently and effectively as possible.

Finally, the FHWA adds a new paragraph (d) to this section to explain that eligibility for Federal funding of projects for traffic control devices under this Part is subject to a State and/or local jurisdiction's substantial conformance with the National Manual on Uniform Traffic Control Devices

(MUTCD) or FHWA-approved State MUTCDs and supplements in accordance with Part 655, Subpart F, of this title. While the FHWA neglected to include this in the NPRM, the FHWA adds this paragraph in the final rule to clarify that traffic control devices that are installed using HSIP funding must be MUTCD compliant. This is not a new requirement.

The purpose of this policy section is to support States in implementing safety countermeasures that target crash types rather that just high crash locations.

Section 924.7 Program Structure

The FHWA received comments from Maryland SHA and Michigan DOT agreeing with the addition of paragraph (a), which requires that the HSIP in each State include a data-driven SHSP and resulting implementation through all roadway improvement projects, in addition to highway safety improvement projects. The language requires that the HSIP include projects for construction and operational improvements on high risk rural roads and the elimination of hazards at railway-highway grade crossings.

The FHWA received comments from Maryland SHA and the North Dakota DOT opposed to proposed modifications of the existing language that require that each State's HSIP include processes for the evaluation of the SHSP, HSIP, and highway safety improvement projects. Both suggested that evaluation on a programmatic level, rather than project specific level, be allowed. The FHWA agrees that evaluation should be based on a programmatic level, and removes the requirement in paragraph (a) for each State to have a process for evaluating highway safety improvement projects as a process requirement from this section, as well as from other related sections in the regulation.

The FHWA received comments from the South Dakota DOT opposing the language that requires FHWA approval of the State's processes for the planning, implementation, and evaluation of the HSIP and SHSP, as well as the requirement for States to develop the processes cooperatively with officials of the various units of local governments. In both cases, South Dakota suggested revising the language to read "in consultation with." In the first instance, the FHWA agrees with the suggested change and has revised the language to read, "These processes shall be developed by the States in consultation with the FHWA Division Administrator in accordance with this section." However, in the second instance, because the role of various units of local governments is different from the role of the FHWA the word "cooperatively" was not changed to "in consultation."

Section 924.9 Planning

The FHWA revises this section in order to provide more information to States regarding the planning process for HSIPs. The FHWA reorganizes this section and adds more detail regarding individual elements of the planning process from what appears in the existing regulation.

The five main elements that the planning process of the HSIP States shall incorporate are:

(1) A process for collecting and maintaining a record of crash, roadway, traffic, and vehicle data on all public roads, including the characteristics of both highway and train traffic for railway-highway grade crossings;

(2) A process for advancing the State's capabilities for safety data collection and analysis;

(3) A process for analyzing available safety data;

(4) A process for conducting engineering studies (such as road safety audits and other safety assessments or reviews) of hazardous locations, sections, and elements to develop highway safety improvement projects; and

(5) A process for establishing priorities for implementing highway safety improvement projects.

Maryland SHA agreed that each State should have a procedure to monitor crashes on State and local highway systems such as to identify those locations having extraordinary frequencies; however, they were concerned that the requirements of this section would be interpreted as requiring that there be a single process or system in the State to identify, analyze, and prioritize crash locations. The FHWA believes that local jurisdictions may have and use data systems of their choice and does not require that a single process or system be used. However, the capabilities of the processes or systems that are used by the State must adhere to the requirements in 23 U.S.C. 148.

While the first of the five elements resembles the first planning component in existing Part 924, the final rule includes collecting and maintaining a record of crash, roadway, traffic, and vehicle data on all public roads. In the NPRM, the FHWA proposed including case or citation adjudication and injury data to the list of items to be collected and maintained; however, several State DOTs, including Arkansas, Michigan, and Oregon, indicated that they currently do not have access to all of that data. While the FHWA believes that case or citation adjudication and injury data are elements of an ideal safety data system, the FHWA removes the requirement for those data sources in order to prevent the list of safety data from appearing exhaustive. The FHWA incorporates this change to bring additional data sources into the planning process and to encourage States to make their databases more comprehensive. The requirement for comprehensive databases is also consistent with 23 U.S.C. 148 and 408.

The FHWA proposed paragraph (2) to advance States' improvement of capabilities for data collection and analysis, including the improvement of the timeliness, accuracy, completeness, uniformity, integration, and accessibility of safety data or traffic records. The Arizona DOT suggested adding comprehensiveness, efficiency, and consistency to the safety data qualifiers, with "consistency" replacing "uniformity." However, FHWA's desire is to be consistent with 23 U.S.C. 148 and 408 and list the desirable qualities of data, and, therefore, declines to incorporate the suggested change.

The FHWA expands paragraph (3) [formerly paragraph (2) of the existing regulation] to provide more detailed information regarding the processes involved in developing a data-driven program. The revision to this section also provides four paragraphs with additional information on the components of a data-driven program that States must develop. These components include:

(i) Developing a HSIP in accordance with 23 U.S.C. 148(c)(2) that identifies highway safety improvement projects on the basis of crash experience, crash potential, or other data supported means as identified by the State and establishes the relative severity of those locations, considers the relative hazard of public railway-highway grade crossings based on a hazard index formula; and that analyzes the results achieved by highway safety improvement projects in setting priorities for future projects. The FHWA revises the wording in the final rule based on comments from North Dakota and Colorado DOTs, as well as the Maryland SHA. The North Dakota DOT and Maryland SHA suggested that identifying safety improvement projects on the basis of crash experience is not broad enough and addressing a common system crash type should be allowed. As a result, the FHWA revises section (a)(3)(i)(A) to include "other data supported means as identified by the State." The FHWA includes this item to require that the States develop a data-driven program where projects and priorities are based on crash data, crash

severity, and other relevant safety information. In section 924.9(a)(3)(i)(B), the Maryland SHA questioned whether the use of a hazard index formula for public railway-highway grade crossings would have an impact on safety. The FHWA believes that some means of ranking and prioritizing railway-highway crossing locations for improvements continues to be needed, and required by 23 U.S.C. 130, and a hazard index formula serves this purpose. The FHWA reminds agencies that FHWA provides guidance and technical support to States including recommendations on hazard index formulas and best practices. States have the flexibility to use the DOT formula or a State-developed and validated formula. As a result, States have the ability to develop a hazard index formula that has a positive impact on safety. Section 924.9(a)(3)(i)(C) requires that States use information from their evaluation processes to set priorities for future projects. The Colorado and North Dakota DOT, as well as the Maryland SHA, had comments regarding the interpretation of the proposed language. As a result, the FHWA revises the wording in the final rule to indicate that the information from the evaluation process is to be used where appropriate in setting priorities for future projects. It is the FHWA's intent for evaluation information to be considered, but not as the sole source for data. In addition, the FHWA desires evaluation on a programmatic level and revises the language in the final rule by replacing the term "highway safety improvement project" with "highway safety improvement program." Finally, the FHWA emphasizes that the evaluation process does not require States to create accident modification factors or crash reduction factors; rather, States must establish an evaluation process and use the information as another source of data for future project prioritization. Such information can be very useful in helping the State determine the effectiveness of countermeasures.

(ii) Developing and maintaining a data-driven SHSP in consultation with safety stakeholders that makes effective use of crash data, addresses engineering, management, operation, education, enforcement, and emergency services, and considers safety needs on all public roads. In addition, the SHSP should identify key emphasis areas, adopt performance-based goals, priorities for implementation and a process for evaluation, and obtain approval by the Governor of the State, or a responsible State agency that is delegated by the Governor of the State. The process by which the State develops the SHSP shall be approved by the FHWA Division Administrator. The elements in this section implement the statutory requirements of 23 U.S.C. 148. The Maryland SHA and the Oregon and South Dakota DOTs each submitted comments about interpreting some of the language in this portion of the regulation. In particular, Maryland SHA and Oregon DOT thought that the proposed language in item (F) implied that the program of HSIP projects had to be listed in the SHSP. The FHWA reiterates that item (F) does not require that the program of HSIP projects be listed in the SHSP, rather the SHSP is to describe a program of projects, technologies, or strategies. Maryland SHA commented that item (G), related to performance-based goals, needed to be cognizant of the work being done by National Highway Traffic Safety Administration (NHTSA) on performance measures and that this regulation should not require States to use specific measures until there is a national consensus on such measures. The FHWA reiterates that item (G) does not require specific measures be used, only that the measures that are used be consistent among other types of safety plans in the State. The consistency of performance measures is an existing requirement of 23 U.S.C. 148. Further, FHWA believes that NHTSA's report on "Traffic Safety Performance Measures for States and Federal Agencies" [1] will not adversely affect this regulation because performance measures described in the report cover the major areas common to many State SHSPs, and States will set the specific goals for the core outcome measures. To clarify the term "low cost," the FHWA replaces the term with the word "cost effective" in item (H). Items (M) and (N) involve approvals by the Governor of a State and the FHWA Division Administrator, respectively. Consistent with stewardship and oversight responsibilities, and with 23 U.S.C. 315, FHWA has the authority to approve the processes that a State uses to administer a federally funded program. While the FHWA revises the reference to process approval in Section 924.7(b) to be "in consultation with," process approval for the SHSP development still remains a requirement.

(iii) Developing a High Risk Rural Roads program using safety data that identifies eligible locations on State and non-State owned roads, and analyzes the highway safety problem to diagnose safety concerns, identify potential countermeasures, make project selections, and prioritize high risk rural roads projects. The elements in this section also implement the statutory requirements of 23 U.S.C. 148. While the San Diego County Department of Public Works agreed with this section, the Illinois DOT suggested that this requirement may require additional staffing and funding for their agency. Since this is already a statutory requirement under 23 U.S.C. 148, FHWA does not make any revisions to the language in the final rule.

(iv) Developing a Railway-Highway Grade Crossing Program. This item is contained in existing Part 924; however, the FHWA incorporates minor edits to clarify the content. Similar to their comment on Section 924.9(a)(3)(i)(B), the Maryland SHA suggested that the use of a hazard index formula for public railway-highway grade crossings would not be valid in their State. As stated above in Section 924.9(a)(3)(i)(B), the FHWA believes that some means of ranking and prioritizing railway-highway crossing locations for improvements is necessary (and required by 23 U.S.C. 130), and a hazard index formula serves this purpose.

The final rule expands paragraph (4) [formerly paragraph (3)] to include road safety audits and other safety assessments or reviews of hazardous locations as processes that may be used to develop highway safety improvement projects. The FHWA incorporates this change because road safety audits and other types of assessments and reviews, as suggested in comments by Minnesota and North Dakota DOTs, are valuable tools that have been developed to aid practitioners in enhancing highway/road safety.

The FHWA expands paragraph (5) [formerly paragraph (4)] to include additional language on the process for establishing priorities for implementing highway safety improvement projects to include consideration of the strategies in the SHSP, correction and prevention of hazardous conditions, and integration of safety in the transportation planning process in 23 CFR 450, including the statewide, and metropolitan where applicable, long-range plans, the Statewide Transportation Planning Improvement Program and the Metropolitan Transportation Improvement Program, where applicable. This additional information incorporates more key elements into the planning process and is designed to tie transportation systems planning to the

[1] NHTSA's report, "Traffic Safety Performance Measures for States and Federal Agencies" can be viewed at the following Web site: *http://www.nhtsa.dot.gov/portal/nhtsa_static_file_downloader.jsp?file=/staticfiles/DOT/NHTSA/Traffic%20Injury%20Control/Articles/Associated%20Files/811025.pdf.*

SHSP. Referencing 23 U.S.C. 134 and 135 reinforces the link between transportation planning and safety. This safety requirement was introduced in the Transportation Equity Act for the 21st Century (TEA–21) and is included in 23 U.S.C. 135(c)(1)(B). The Maryland SHA expressed concern over the selection of safety projects based solely or primarily on the potential reduction in fatalities and serious injuries; however, the FHWA emphasizes that the regulation does not dictate that projects be selected solely or primarily on the potential to reduce fatalities and serious injuries. This is just one of the six factors to be considered. The FHWA also relocates the last three sentences of former paragraph (4) in the existing regulation to subparagraph (3)(iv), because the sentences relate to Railway-Highway Grade Crossings.

The FHWA also relocates existing paragraph (b) regarding Railway-Highway grade crossings to subparagraph (a)(3)(iv)(D) in order to place all Railway-Highway Grade Crossing planning items in one area.

The FHWA expands paragraph (b) [formerly paragraph (c)] to include references to 23 U.S.C. 130, 133, 148, and 505. As part of this change, the final rule clarifies that funds made available through 23 U.S.C. 104(f) may be used to fund safety planning in metropolitan areas. While the Minnesota DOT suggested adding language about financing of safety planning to include rural areas, the FHWA retains the language in the final rule as proposed. The funding already includes rural areas, since outside of the metropolitan area specification, all other areas, including rural, are eligible for these funding resources.

The FHWA adds a new paragraph (c) to specify that highway safety improvement projects shall be carried out as part of the Statewide and Metropolitan Transportation Improvement Planning Processes consistent with the requirements of 23 U.S.C. 134 and 135 and 23 CFR part 450. The FHWA includes this item to incorporate the statutory requirements of section 148 and to link safety to the transportation planning process.

Section 924.11 Implementation

In the NPRM, the FHWA proposed to incorporate an editorial change to paragraph (a) and to relocate the reference to procedures set forth in 23 CFR Part 630, Subpart A to be a new paragraph (i). The Maryland SHA expressed concern that the scheduling requirement in paragraph (a) impedes the implementation of low-cost improvement projects and other safety projects that can or should be undertaken quickly and simply. The Maryland SHA also suggested that this paragraph (a) and the last paragraph (i), along with the scheduling requirements under section 924.9 and other requirements in the rule make the HSIP more complex and burdensome than it should be. The FHWA believes that the scheduling components do not impede implementation of low-cost improvement projects. However, FHWA clarifies paragraph (a) by simplifying it to state that the HSIP shall be implemented in accordance with the requirements of section 924.9 of this part. In response to the comments, the FHWA also deletes the reference to scheduling in paragraph (i). The FHWA also corrects the reference in paragraph (i) to 23 CFR part 630 Subpart A to include its correct title: Preconstruction Procedures: Project Authorization and Agreements.

The FHWA modifies paragraph (d) [formerly paragraph (c)] to clarify the requirements for the use of funds set aside pursuant to 23 U.S.C. 130(e) for railway-highway grade crossings. The FHWA includes the reference to 23 U.S.C. 130(f) for funds that must be made available for the installation of grade crossing protective devices. The FHWA also includes reference to the special rule described in 23 U.S.C. 130(c)(2) because of the amendments made by section 101(1) of the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572, 1575). In addition, the FHWA includes a reference to 23 U.S.C. 130(k), which specifies that no more than 2 percent of these apportioned funds may be used by the State for compilation and analysis of safety data in support of the annual report to the FHWA Division Administrator required by section 924.15(a)(2) of this part. The Minnesota DOT supports the reference to 23 U.S.C. 130(k) in this paragraph.

Paragraph (h) describes that the Federal share of the cost for most highway safety improvement projects carried out with funds apportioned to a State under 23 U.S.C. 104(b)(5) shall be a maximum of 90 percent. The insertion of the word "maximum" in the final rule is in response to a comment from the North Dakota DOT suggesting that projects using the funding should be allowed to use "up to 90 percent," rather than "shall be 90 percent." In accordance with 23 U.S.C. 120(a) or (b), the Federal share may be increased to a maximum of 95 percent by the sliding scale rates for States with a large percentage of Federal lands. Projects such as roundabouts, traffic control signalization, safety rest areas, pavement markings, or installation of traffic signs, traffic lights, guardrails, impact attenuators, concrete barrier end treatments, breakaway utility poles, or priority control systems for emergency vehicles or transit vehicles at signalized intersections may be funded at up to a 100 percent Federal share, except not more than 10 percent of the sums apportioned under 23 U.S.C. 104 for any fiscal year shall be used at this Federal share rate. In addition, for railway-highway grade crossings, the Federal share may amount up to 100 percent for projects for signing, pavement markings, active warning devices and crossing closures, subject to the 10 percent limitation for funds apportioned under 23 U.S.C. 104 in a fiscal year. The Illinois and Minnesota DOTs agreed with the proposed changes, particularly enabling States to use Federal funds up to 100 percent on certain items. The FHWA advises States that this is not a new provision, rather it reiterates existing language in 23 U.S.C. 120(c).

Section 924.13 Evaluation

The FHWA revises this section to clearly describe the evaluation process of the HSIP, the information that is to be used, and the mechanisms to be used for financing evaluations. The Maryland SHA provided comments that apply to this section, as well as others in the NPRM, expressing concern over the need to evaluate the effectiveness of HSIP projects in addition to the overall HSIP and SHSP. As in the other sections, FHWA revises the final rule language in this section, deleting the requirement to evaluate the effectiveness of individual highway safety improvement projects. The regulation does require an overall program evaluation. The intent is to determine if the process produces effective projects and an effective program. The Maryland SHA indicated that its comments related to developing accident modification factors, performance factors, and implementing low-cost safety improvements in section 924.9(a)(3)(i)(C) applied to this section as well. Those comments are discussed in that section.

In paragraph (a) regarding the evaluation process, the FHWA proposed to require the States to evaluate the overall HSIP and the SHSP. Within paragraph (a), the FHWA restructured the existing paragraphs (a)(1) through (a)(3) into two paragraphs. Paragraph (a)(1) requires that the evaluation include a process to analyze and assess the results achieved by the HSIP in reducing the number of crashes, fatalities and serious injuries, or potential crashes, and in reaching the

performance goals identified in section 924.9(a)(3)(ii)(G). In the NPRM, the FHWA proposed to provide more specifics about the evaluation process, especially as it related to individual projects. However, the FHWA removes that language (paragraphs (i) through (iii)) in the final rule based on comments from the Illinois, North Dakota, and Colorado DOTs stating that the specifications were too specific for programmatic reviews. The FHWA also includes a new subparagraph (a)(2) in the final rule to require that States have a process to evaluate the overall SHSP on a regular basis as determined by each State and in consultation with the FHWA to: (i) Ensure the accuracy and currency of the safety data; (ii) identify factors that affect the priority of emphasis areas, strategies, and proposed improvements; and (iii) identify issues that demonstrate a need to revise or otherwise update the SHSP. The FHWA includes this evaluation of the SHSP because the strategies in the SHSP must be periodically assessed to ensure continued progress in reducing fatalities and serious injuries. In addition, evaluation of the SHSP is a requirement in 23 U.S.C. 148(c). The San Diego County Department of Public Works expressed support for this language; however, the AAA felt that the criteria should be expanded to require more sophisticated evaluation analysis. The FHWA believes that the States should have the flexibility to choose their analysis methods.

Section 924.15 Reporting

The FHWA expands paragraph (a) of this section in order to specify the requirements for States to submit annual reports. The language in the final rule reflects comments regarding this section, as well as revisions related to other sections in the regulation. Specifically, in paragraph (a), the FHWA had proposed in the NPRM that the reporting period would be the previous July 1 through June 30. However, the Arkansas, Illinois, Michigan, Minnesota, and Oregon DOTs, as well as Maryland SHA, expressed concern over the dates of the reporting period, primarily due to the time needed to gather the appropriate data from various sources. As a result, the FHWA revises the reporting period in the final rule to be "for the period of the previous year," thereby allowing States to use the most recent reporting year that best suits their needs, while still submitting reports to the FHWA Division Administrator by August 31. These reports include: (1) A report with a defined reporting period describing the progress being made to implement the State HSIP; (2) a report describing progress being made to implement railway-highway grade crossing improvements and assess their effectiveness; and (3) a transparency report describing not less than 5 percent of a State's highway locations exhibiting the most severe safety needs. Based on comments from the Oregon, Illinois, and North Dakota DOTs, the FHWA revises the language in the final rule related to the HSIP report to clarify what is needed to describe the progress in implementing projects and evaluating the effectiveness of the improvements. As part of these changes in the final rule, the FHWA deletes the language proposed in section 924.15(a)(1)(iii) in the NPRM because it applied to the previous detailed requirements for project evaluation in section 924.13(a)(1)(i)–(iii), which have also been deleted. The FHWA received comments from Colorado DOT and Maryland SHA opposed to the transparency report, or at least requesting that the requirements of the report be minimized to reduce the effort needed for States to prepare the report. However, because the 5 percent transparency report is required by 23 U.S.C. 148, the FHWA keeps the requirements in this section. As suggested by Oregon DOT, the transparency report should also include potential remedies to those hazardous locations identified, as well as estimates of costs associated with the remedies and impediments to implementation. The FHWA adds this information to the language in the final rule in order to incorporate all of the requirements from 23 U.S.C. 148 regarding the transparency report in this regulation. The Illinois DOT noted that making the transparency report compatible with the requirements of 29 U.S.C. 794(d), Section 508 of the Rehabilitation Act may be an added cost. The FHWA believes that States will be able to provide the reports without incurring significant additional costs. The FHWA requires that the States submit their transparency reports in a manner that is Section 508 complaint so that such reports are accessible to all members of the public, including persons with disabilities. The AAA supported making the transparency report available to the public and even recommended that all of the annual HSIP reports be made public. However, at this time, the existing statute only requires that the transparency report be made available in a format accessible by the public.

Rulemaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review) and U.S. DOT Regulatory Policies and Procedures

The FHWA has determined that this action will not be a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of U.S. Department of Transportation regulatory policies and procedures. These changes are not anticipated to adversely affect, in any material way, any sector of the economy. The changes in Part 924 incorporate provisions outlined in 23 U.S.C. 148 and provide additional information regarding the purpose, definitions, policy, program structure, planning, implementation, evaluation, and reporting of HSIPs. The FHWA believes that this policy for the development, implementation, and evaluation of a comprehensive HSIP in each State will greatly improve roadway safety. These changes will not create a serious inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of these changes on small entities and has determined that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This final rule will not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48, March 22, 1995). To the extent the revisions will require expenditures by the State and local governments for the planning, implementation, evaluation, and reporting of the HSIPs and Federal-aid projects, these activities will not be Unfunded Mandates because these activities are reimbursable. This action will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $128.1 million or more in any one year (2 U.S.C. 1532) period to comply with these changes.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and the FHWA has determined that this action

will not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this rulemaking will not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that it will not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

The FHWA has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The FHWA has determined that it is not a significant energy action under that order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. Since this action does require States to write reports, the FHWA requested approval from OMB under the provisions of the PRA. The FHWA received approval from OMB through March 31, 2010. The OMB control number is 2125–0025.

Executive Order 12988 (Civil Justice Reform)

This action 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.

Executive Order 13045 (Protection of Children)

The FHWA has analyzed this action under Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks. The FHWA certifies that this action would not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

The FHWA does not anticipate that this action would affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that it would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 924

Highway safety, Highways and roads, Motor vehicles, Railroads, Railroad safety, Safety, Transportation.

Issued on: December 11, 2008.

Thomas J. Madison, Jr.,

Federal Highways Administrator.

■ *In consideration of the foregoing, the FHWA revises part 924 to read as follows:*

PART 924—HIGHWAY SAFETY IMPROVEMENT PROGRAM

Sec.

Authority: 23 U.S.C. 104(b)(5), 130, 148, 315, and 402; 49 CFR 1.48(b).

§ 924.1 Purpose.

The purpose of this regulation is to set forth policy for the development, implementation, and evaluation of a comprehensive highway safety improvement program (HSIP) in each State.

§ 924.3 Definitions.

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) are applicable to this part. In addition, the following definitions apply:

Hazard index formula means any safety or crash prediction formula used for determining the relative likelihood of hazardous conditions at railway-highway grade crossings, taking into consideration weighted factors, and severity of crashes.

High risk rural road means any roadway functionally classified as a rural major or minor collector or a rural local road—

(1) On which the crash rate for fatalities and incapacitating injuries exceeds the statewide average for those functional classes of roadway; or

(2) That will likely have increases in traffic volume that are likely to create a crash rate for fatalities and incapacitating injuries that exceeds the statewide average for those functional classes of roadway.

Highway means,

(1) A road, street, and parkway;

(2) A right-of-way, bridge, railroad-highway crossing, tunnel, drainage structure, sign, guardrail, and protective structure, in connection with a highway; and

(3) A portion of any interstate or international bridge or tunnel and the approaches thereto, the cost of which is assumed by a State transportation department, including such facilities as may be required by the United States Customs and Immigration Services in connection with the operation of an international bridge or tunnel; and

(4) Those facilities specifically provided for the accommodation and protection of pedestrians and bicyclists.

Highway-rail grade crossing protective devices means those traffic control devices in the Manual on Uniform Traffic Control Devices specified for use at such crossings; and system components associated with such traffic control devices, such as track circuit improvements and interconnections with highway traffic signals.

Highway safety improvement program means the program carried out under 23 U.S.C. 130 and 148.

Highway safety improvement project means a project consistent with the State strategic highway safety plan (SHSP) that corrects or improves a

hazardous road location or feature, or addresses a highway safety problem. Projects include, but are not limited to, the following:

(1) An intersection safety improvement.

(2) Pavement and shoulder widening (including addition of a passing lane to remedy an unsafe condition).

(3) Installation of rumble strips or other warning devices, if the rumble strips or other warning devices do not adversely affect the safety or mobility of bicyclists, pedestrians and persons with disabilities.

(4) Installation of a skid-resistant surface at an intersection or other location with a high frequency of crashes.

(5) An improvement for pedestrian or bicyclist safety or for the safety of persons with disabilities.

(6) Construction of any project for the elimination of hazards at a railway-highway crossing that is eligible for funding under 23 U.S.C. 130, including the separation or protection of grades at railway-highway crossings.

(7) Construction of a railway-highway crossing safety feature, including installation of highway-rail grade crossing protective devices.

(8) The conduct of an effective traffic enforcement activity at a railway-highway crossing.

(9) Construction of a traffic calming feature.

(10) Elimination of a roadside obstacle or roadside hazard.

(11) Improvement of highway signage and pavement markings.

(12) Installation of a priority control system for emergency vehicles at signalized intersections.

(13) Installation of a traffic control or other warning device at a location with high crash potential.

(14) Transportation safety planning.

(15) Improvement in the collection and analysis of safety data.

(16) Planning integrated interoperable emergency communications equipment, operational activities, or traffic enforcement activities (including law enforcement assistance) relating to work zone safety.

(17) Installation of guardrails, barriers (including barriers between construction work zones and traffic lanes for the safety of road users and workers), and crash attenuators.

(18) The addition or retrofitting of structures or other measures to eliminate or reduce crashes involving vehicles and wildlife.

(19) Installation and maintenance of signs (including fluorescent yellow-green signs) at pedestrian-bicycle crossings and in school zones.

(21) Construction and operational improvements on high risk rural roads.

(22) Conducting road safety audits.

Integrated interoperable emergency communication equipment means equipment that supports an interoperable emergency communications system.

Interoperable emergency communications system means a network of hardware and software that allows emergency response providers and relevant Federal, State, and local government agencies to communicate with each other as necessary through a dedicated public safety network utilizing information technology systems and radio communications systems, and to exchange voice, data, or video with one another on demand, in real time, as necessary.

Operational improvements means a capital improvement for installation of traffic surveillance and control equipment; computerized signal systems; motorist information systems; integrated traffic control systems; incident management programs; transportation demand management facilities, strategies, and programs; and such other capital improvements to public roads as the Secretary may designate by regulation.

Public grade crossing means a railway-highway grade crossing where the roadway is under the jurisdiction of and maintained by a public authority and open to public travel. All roadway approaches must be under the jurisdiction of the public roadway authority, and no roadway approach may be on private property.

Public road means any highway, road, or street under the jurisdiction of and maintained by a public authority and open to public travel.

Road Safety Audit means a formal safety performance examination of an existing or future road or intersection by an independent multidisciplinary audit team.

Safety data includes, but is not limited to, crash, roadway, traffic, and vehicle data on all public roads including, for railway-highway grade crossings, the characteristics of both highway and train traffic.

Safety projects under any other section means safety projects eligible for funding under Title 23, United States Code, including projects to promote safety awareness, public education, and projects to enforce highway safety laws.

Safety stakeholder means

(1) A highway safety representative of the Governor of the State;

(2) Regional transportation planning organizations and metropolitan planning organizations, if any;

(3) Representatives of major modes of transportation;

(4) State and local traffic enforcement officials;

(5) Persons responsible for administering section 130 at the State level;

(6) Representatives conducting Operation Lifesaver;

(7) Representatives conducting a motor carrier safety program under section 31102, 31106, or 31309 of title 49;

(8) Motor vehicle administration agencies; and

(9) Includes, but is not limited to, local, State, and Federal transportation agencies and tribal governments.

Serious injury means an incapacitating injury or any injury, other than a fatal injury, which prevents the injured person from walking, driving, or normally continuing the activities the person was capable of performing before the injury occurred.

State means any one of the 50 States and the District of Columbia.

Strategic highway safety plan means a comprehensive, data-driven safety plan developed, implemented, and evaluated in accordance with 23 U.S.C. 148.

Transparency report means the report submitted to the Secretary annually under 23 U.S.C. 148(c)(1)(D) and in accordance with § 924.15 of this part that describes, in a clearly understandable fashion, not less than 5 percent of locations determined by the State as exhibiting the most severe safety needs; and contains an assessment of potential remedies to hazardous locations identified; estimated costs associated with those remedies; and impediments to implementation other than cost associated with those remedies.

§ 924.5 Policy.

(a) Each State shall develop, implement, and evaluate on an annual basis a HSIP that has the overall objective of significantly reducing the occurrence of and the potential for fatalities and serious injuries resulting from crashes on all public roads.

(b) Under 23 U.S.C. 148(a)(3), a variety of highway safety improvement projects are eligible for funding through the HSIP. In order for an eligible improvement to be funded with HSIP funds, States shall first consider whether the activity maximizes opportunities to advance safety. States shall fund safety projects or activities that are most likely to reduce the number of, or potential for, fatalities and serious injuries. Safety projects under any other section, and funded with 23 U.S.C. 148 funds, are only eligible

activities when a State is eligible to use up to 10 percent of the amount apportioned under 23 U.S.C. 104(b)(5) for a fiscal year in accordance with 23 U.S.C. 148(e). This excludes minor activities that are incidental to a specific highway safety improvement project.

(c) Other Federal-aid funds are eligible to support and leverage the safety program. Improvements to safety features that are routinely provided as part of a broader Federal-aid project should be funded from the same source as the broader project. States should address the full scope of their safety needs and opportunities on all roadway categories by using other funding sources such as Interstate Maintenance (IM), Surface Transportation Program (STP), National Highway System (NHS), and Equity Bonus (EB) funds in addition to HSIP funds.

(d) Eligibility for Federal funding of projects for traffic control devices under this Part is subject to a State and/or local jurisdiction's substantial conformance with National MUTCD or FHWA approved State MUTCDs and supplements in accordance with part 655, Subpart F, of this title.

§ 924.7 Program structure.

(a) The HSIP shall include a data-driven SHSP and the resulting implementation through highway safety improvement projects. The HSIP includes construction and operational improvements on high risk rural roads, and elimination of hazards at railway-highway grade crossings.

(b) The HSIP shall include processes for the planning, implementation, and evaluation of the HSIP and SHSP. These processes shall be developed by the States in consultation with the FHWA Division Administrator in accordance with this section. Where appropriate, the processes shall be developed cooperatively with officials of the various units of local and tribal governments. The processes may incorporate a range of procedures appropriate for the administration of an effective HSIP on individual highway systems, portions of highway systems, and in local political subdivisions, and when combined, shall cover all public roads in the State.

§ 924.9 Planning.

(a) The HSIP planning process shall incorporate:

(1) A process for collecting and maintaining a record of crash, roadway, traffic and vehicle data on all public roads including for railway-highway grade crossings inventory data that includes, but is not limited to, the characteristics of both highway and train traffic.

(2) A process for advancing the State's capabilities for safety data collection and analysis by improving the timeliness, accuracy, completeness, uniformity, integration, and accessibility of the State's safety data or traffic records.

(3) A process for analyzing available safety data to:

(i) Develop a HSIP in accordance with 23 U.S.C. 148(c)(2) that:

(A) Identifies highway safety improvement projects on the basis of crash experience, crash potential, or other data supported means as identified by the State, and establishes the relative severity of those locations;

(B) Considers the relative hazard of public railway-highway grade crossings based on a hazard index formula; and

(C) Establishes an evaluation process to analyze and assess results achieved by the HSIP and uses this information, where appropriate, in setting priorities for future projects.

(ii) Develop and maintain a data-driven SHSP that:

(A) Is developed after consultation with safety stakeholders;

(B) Makes effective use of State, regional, and local crash data and determines priorities through crash data analysis;

(C) Addresses engineering, management, operation, education, enforcement, and emergency services;

(D) Considers safety needs of all public roads;

(E) Adopts a strategic safety goal;

(F) Identifies key emphasis areas and describes a program of projects, technologies, or strategies to reduce or eliminate highway safety hazards;

(G) Adopts performance-based goals, coordinated with other State highway safety programs, that address behavioral and infrastructure safety problems and opportunities on all public roads and all users, and focuses resources on areas of greatest need and the potential for the highest rate of return on the investment of HSIP funds;

(H) Identifies strategies, technologies, and countermeasures that significantly reduce highway fatalities and serious injuries in the key emphasis areas giving high priority to cost effective and proven countermeasures;

(I) Determines priorities for implementation;

(J) Is consistent, as appropriate, with safety-related goals, priorities, and projects in the long-range statewide transportation plan and the statewide transportation improvement program and the relevant metropolitan long-range transportation plans and transportation improvement programs that are developed as specified in 23 U.S.C. 134, 135 and 402; and 23 CFR part 450;

(K) Documents the process used to develop the plan;

(L) Proposes a process for implementation and evaluation of the plan;

(M) Is approved by the Governor of the State or a responsible State agency official that is delegated by the Governor of the State; and

(N) Has been developed using a process approved by the FHWA Division Administrator.

(iii) Develop a High Risk Rural Roads program using safety data that identifies eligible locations on State and non-State owned roads as defined in § 924.3, and analyzes the highway safety problem to identify safety concerns, identify potential countermeasures, select projects, and prioritize high risk rural roads projects on all public roads.

(iv) Develop a Railway-Highway Grade Crossing program that:

(A) Considers the relative hazard of public railway-highway grade crossings based on a hazard index formula;

(B) Includes onsite inspection of public grade crossings;

(C) Considers the potential danger to large numbers of people at public grade crossings used on a regular basis by passenger trains, school buses, transit buses, pedestrians, bicyclists, or by trains and/or motor vehicles carrying hazardous materials; and

(D) Results in a program of safety improvement projects at railway-highway grade crossings giving special emphasis to the statutory requirement that all public crossings be provided with standard signing and markings.

(4) A process for conducting engineering studies (such as roadway safety audits and other safety assessments or reviews) of hazardous locations, sections, and elements to develop highway safety improvement projects.

(5) A process for establishing priorities for implementing highway safety improvement projects considering:

(i) The potential reduction in the number of fatalities and serious injuries;

(ii) The cost effectiveness of the projects and the resources available;

(iii) The priorities in the SHSP;

(iv) The correction and prevention of hazardous conditions;

(v) Other safety data-driven criteria as appropriate in each State; and

(vi) Integration with the statewide transportation planning process and statewide transportation improvement program, and metropolitan

transportation planning process and transportation improvement program where applicable, in 23 CFR part 450.

(b) The planning process of the HSIP may be financed with funds made available through 23 U.S.C. 130, 133, 148, 402, and 505 and, where applicable in metropolitan planning areas, through 23 U.S.C. 104(f).

(c) Highway safety improvement projects shall be carried out as part of the Statewide and Metropolitan Transportation Planning Process consistent with the requirements of 23 U.S.C. 134 and 135, and 23 CFR part 450.

§ 924.11 Implementation.

(a) The HSIP shall be implemented in accordance with the requirements of § 924.9 of this part.

(b) A State is eligible to use up to 10 percent of the amount apportioned under 23 U.S.C. 104(b)(5) for each fiscal year to carry out safety projects under any other section, consistent with the SHSP and as defined in 23 U.S.C. 148(a)(4), if the State can certify that it has met infrastructure safety needs relating to railway-highway grade crossings and highway safety improvement projects for a given fiscal year. In order for a State to obtain approval:

(1) A State must submit a written request for approval to the FHWA Division Administrator for each year that a State certifies that the requirements have been met before a State may use these funds to carry out safety projects under any other section; and

(2) A State must submit a written request that describes how the certification was made, the activities that will be funded, how the activities are consistent with the SHSP, and the dollar amount the State estimates will be used.

(c) If a State has funds set aside from 23 U.S.C. 104(b)(5) for construction and operational improvements on high risk rural roads, in accordance with 23 U.S.C. 148(a)(1), such funds:

(1) Shall be used for safety projects that address priority high risk rural roads as determined by the State.

(2) Shall only be used for construction and operational improvements on high risk rural roads and the planning, preliminary engineering, and roadway safety audits related to specific high risk rural roads improvements.

(3) May also be used for other highway safety improvement projects if the State certifies that it has met all infrastructure safety needs for construction and operational improvements on high risk rural roads for a given fiscal year.

(d) Funds set aside pursuant to 23 U.S.C. 148 for apportionment under the 23 U.S.C. 130(f) Railway-Highway Grade Crossing Program, are to be used to implement railway-highway grade crossing safety projects on any public road. At least 50 percent of the funds apportioned under 23 U.S.C. 130(f) must be made available for the installation of highway-rail grade crossing protective devices. The railroad share, if any, of the cost of grade crossing improvements shall be determined in accordance with 23 CFR part 646, Subpart B (Railroad-Highway Projects). If a State demonstrates to the satisfaction of the FHWA Division Administrator that the State has met its needs for installation of protective devices at railway-highway grade crossings the State may use funds made available under 23 U.S.C. 130 for highway safety improvement program purposes. In addition, up to 2 percent of the section 130 funds apportioned to a State may be used for compilation and analysis of safety data for the annual report to the FHWA Division Administrator required under § 924.15(a)(2) on the progress being made to implement the railway-highway grade crossing program.

(e) Highway safety improvement projects may also be implemented with other funds apportioned under 23 U.S.C. 104(b) subject to the eligibility requirements applicable to each program.

(f) Award of contracts for highway safety improvement projects shall be in accordance with 23 CFR part 635 and part 636, where applicable, for highway construction projects, 23 CFR part 172 for engineering and design services contracts related to highway construction projects, or 49 CFR part 18 for non-highway construction projects.

(g) All safety projects funded under 23 U.S.C. 104(b)(5), including safety projects under any other section, shall be accounted for in the statewide transportation improvement program and reported on annually in accordance with § 924.15.

(h) The Federal share of the cost for most highway safety improvement projects carried out with funds apportioned to a State under 23 U.S.C. 104(b)(5) shall be a maximum of 90 percent. In accordance with 23 U.S.C. 120(a) or (b), the Federal share may be increased to a maximum of 95 percent by the sliding scale rates for States with a large percentage of Federal lands. In accordance with 23 U.S.C. 120(c), projects such as roundabouts, traffic control signalization, safety rest areas, pavement markings, or installation of traffic signs, traffic lights, guardrails, impact attenuators, concrete barrier end treatments, breakaway utility poles, or priority control systems for emergency vehicles or transit vehicles at signalized intersections may be funded at up to 100 percent Federal share, except not more than 10 percent of the sums apportioned under 23 U.S.C. 104 for any fiscal year shall be used at this Federal share rate. In addition, for railway-highway grade crossings, the Federal share may amount up to 100 percent for projects for signing, pavement markings, active warning devices, and crossing closures, subject to the 10 percent limitation for funds apportioned under 23 U.S.C. 104 in a fiscal year.

(i) The implementation of the HSIP in each State shall include a process for implementing highway safety improvement projects in accordance with the procedures set forth in 23 CFR part 630, Subpart A (Preconstruction Procedures: Project Authorization and Agreements).

§ 924.13 Evaluation.

(a) The HSIP evaluation process shall include the evaluation of the overall HSIP and the SHSP. It shall:

(1) Include a process to analyze and assess the results achieved by the HSIP in reducing the number of crashes, fatalities and serious injuries, or potential crashes, and in reaching the performance goals identified in § 924.9(a)(3)(ii)(G).

(2) Include a process to evaluate the overall SHSP on a regular basis as determined by the State and in consultation with the FHWA to:

(i) Ensure the accuracy and currency of the safety data;

(ii) Identify factors that affect the priority of emphasis areas, strategies, and proposed improvements; and

(iii) Identify issues that demonstrate a need to revise or otherwise update the SHSP.

(b) The information resulting from the process developed in § 924.13(a)(1) shall be used:

(1) For developing basic source data in the planning process in accordance with § 924.9(a)(1);

(2) For setting priorities for highway safety improvement projects;

(3) For assessing the overall effectiveness of the HSIP; and

(4) For reporting required by § 924.15.

(c) The evaluation process may be financed with funds made available under 23 U.S.C. 104(b)(1), (3), and (5), 105, 402, and 505, and for metropolitan planning areas, 23 U.S.C. 104(f).

§ 924.15 Reporting.

(a) For the period of the previous year, each State shall submit to the FHWA

Division Administrator no later than August 31 of each year the following reports related to the HSIP in accordance with 23 U.S.C. 148(g):

(1) A report with a defined one year reporting period describing the progress being made to implement the State HSIP that:

(i) Describes the progress in implementing the projects, including the funds available, and the number and general listing of the types of projects initiated. The general listing of the projects initiated shall be structured to identify how the projects relate to the State SHSP and to the State's safety goals and objectives. The report shall also provide a clear description of the project selection process;

(ii) Assesses the effectiveness of the improvements. This section shall: Provide a demonstration of the overall effectiveness of the HSIP; include figures showing the general highway safety trends in the State by number and by rate; and describe the extent to which improvements contributed to performance goals, including reducing the number of roadway crashes leading to fatalities and serious injuries.

(iii) Describes the High Risk Rural Roads program, providing basic program implementation information, methods used to identify high risk rural roads, information assessing the High Risk Rural Roads program projects, and a summary of the overall High Risk Rural Roads program effectiveness.

(2) A report describing progress being made to implement railway-highway grade crossing improvements in accordance with 23 U.S.C. 130(g), and the effectiveness of these improvements.

(3) A transparency report describing not less than 5 percent of a State's highway locations exhibiting the most severe safety needs that:

(i) Identifies potential remedies to those hazardous locations; estimates costs associated with the remedies; and identifies impediments to implementation other than cost associated with those remedies;

(ii) Emphasizes fatality and serious injury data;

(iii) At a minimum, uses the most recent three to five years of crash data;

(iv) Identifies the data years used and describes the extent of coverage of all public roads included in the data analysis;

(v) Identifies the methodology used to determine how the locations were selected; and

(vi) Is compatible with the requirements of 29 U.S.C. 794(d), Section 508 of the Rehabilitation Act.

(b) The preparation of the State's annual reports may be financed with funds made available through 23 U.S.C. 104(b)(1), (3), and (5), 105, 402, and 505, and for metropolitan planning areas, 23 U.S.C. 104(f).

[FR Doc. E8–30168 Filed 12–23–08; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9434]

RIN 1545–BC88

Creditor Continuity of Interest; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to final regulations (TD 9434) that were published in the **Federal Register** on Friday, December 12, 2008 (73 FR75566) providing guidance regarding when and to what extent creditors of a corporation will be treated as proprietors of the corporation in determining whether continuity of interest ("COI") is preserved in a potential reorganization. These final regulations are necessary to provide clarity to parties engaging in reorganizations of insolvent corporations, both inside and outside of bankruptcy. These final regulations affect corporations, their creditors, and their shareholders.

DATES: *Effective Date:* This correction is effective December 24, 2008 and is applicable on December 12, 2008.

FOR FURTHER INFORMATION CONTACT: Jean Brenner (202) 622–7790, Douglas Bates (202) 622–7550, or Bruce Decker (202) 622–7550 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this document are under section 368 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9434) contains an error that may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

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 1.368–1(e)(6)(ii)(A) is amended by revising the last sentence as follows:

§ 1.368–1 Purpose and scope of exception to reorganization exchanges.

(e) * * *

(6) * * *

(ii) * * *

(A) * * * When only one class (or one set of equal classes) of creditors receives issuing corporation stock in exchange for a creditor's proprietary interest in the target corporation, such stock will be counted for measuring continuity of interest provided that the stock issued by the issuing corporation is not de minimis in relation to the total consideration received by the insolvent target corporation, its shareholders, and its creditors.

* * * * *

LaNita Van Dyke,
Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. E8–30716 Filed 12–23–08; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9434]

RIN 1545–BC88

Creditor Continuity of Interest; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations (TD 9434) that were published in the **Federal Register** on Friday, December 12, 2008 (73 FR 75566) providing guidance regarding when and to what extent creditors of a corporation will be treated as proprietors of the corporation in determining whether continuity of interest ("COI") is preserved in a potential reorganization. These final

regulations are necessary to provide clarity to parties engaging in reorganizations of insolvent corporations, both inside and outside of bankruptcy. These final regulations affect corporations, their creditors, and their shareholders.

DATES: *Effective Date:* This correction is effective December 24, 2008, and is applicable on December 12, 2008.

FOR FURTHER INFORMATION CONTACT: Jean Brenner (202) 622–7790, Douglas Bates (202) 622–7550, or Bruce Decker (202) 622–7550 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this document are under section 368 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9434) contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 9434), which was the subject of FR Doc. E8–29271, is corrected as follows:

On page 75566, column 3, in the preamble, under the paragraph heading "Explanation of Provisions", second paragraph of the column, line 13, the language "amount of acquiring corporation stock" is corrected to read "amount of issuing corporation stock".

LaNita Van Dyke,

Chief, Publications and Regulations, Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. E8–30717 Filed 12–23–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–112–FOR; OSM–2008–0024]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving two proposed amendments to the West Virginia regulatory program related to the State's cumulative hydrologic impact assessment (CHIA) process and regarding material damage to the hydrologic balance. The West Virginia Department of Environmental Protection (WVDEP) proposed to delete its existing definition of "cumulative impact." The WVDEP also proposed to amend its regulation outlining CHIA requirements by adding a sentence defining "material damage to the hydrologic balance outside the permit area." We are approving both proposed amendments.

DATES: *Effective Date:* December 24, 2008.

FOR FURTHER INFORMATION CONTACT: Roger Calhoun, Director, Charleston Field Office, Office of Surface Mining, 1027 Virginia Street East, Charleston, West Virginia 25301.Telephone: 304–347–7158, e-mail: *rcalhoun@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program

Section 503(a) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act), 30 U.S.C. 1253(a), permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia regulatory program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval in the January 21, 1981, **Federal Register** (46 FR 5915).

You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Submission of the Amendments

A. Previous Submittal of the Amendments

In 2001, West Virginia House Bill 2663 was enacted as State law which, among other things, deleted the definition of cumulative impact at West Virginia Code of State Regulations (CSR) 38–2–2.39 and added a sentence defining material damage to the hydrologic balance outside the permit area to CSR 38–2–3.22.e. The latter provision contains CHIA requirements that WVDEP must follow when processing permit applications for surface coal mining operations. By letter dated May 2, 2001, West Virginia submitted the proposed revisions as amendments to its permanent regulatory program (Administrative Record Number WV–1209). OSM approved both changes, along with several other proposed program amendments, on December 1, 2003 (68 FR 67035) (Administrative Record Number WV–1379).

On January 30, 2004, the Ohio River Valley Environmental Coalition, Inc., Hominy Creek Preservation Association, Inc., and the Citizens Coal Council filed a complaint and petition for judicial review of these two decisions with the United States District Court for the Southern District of West Virginia (Administrative Record Number WV–1382). On September 30, 2005, the United States District Court for the Southern District of West Virginia vacated both of OSM's decisions of December 1, 2003, at issue in the case and remanded the matter to the Secretary for further proceedings consistent with the court's decision. *Ohio River Valley Environmental Coalition* v. *Norton*, 2005 U.S. Dist. LEXIS 22265 (S.D. W.Va. 2005). (Administrative Record Number WV–1439).

In response to the court's decision of September 30, 2005, OSM notified the State on November 1, 2005, that its definition of material damage was not approved and could not be implemented. OSM also stated that the deletion of the definition of cumulative impact was not approved and directed the State to take action to add it back into the program. On November 22, 2005, the United States District Court for the Southern District of West Virginia amended its earlier decision. *Ohio River Valley Environmental Coalition* v. *Norton*, No. 3:04–0084 (S.D. W.Va. Nov. 22, 2005) (amended judgment order). In the amended decision, the court directed the Secretary to instruct the State that it may not implement the new language nor delete language from the State's program, and that the State must enforce only the State program approved by OSM prior to the amendments.

By letter dated January 5, 2006, OSM notified the State that the court's amended judgment order makes it clear

that the definition of "cumulative impact" at CSR 38–2–2.39 remains part of the approved West Virginia program and must be implemented by the State, and that the definition of "material damage" is not approved and cannot be implemented (Administrative Record Number WV–1456).

On December 12, 2006, the U.S. Court of Appeals for the Fourth Circuit affirmed the District Court's ruling of September 30, 2005, to vacate and remand OSM's approval of West Virginia's amendments. *Ohio River Valley Environmental Coalition* v. *Kempthorne,* 473 F.3d 94 (4th Cir. 2006). (Administrative Record Number WV–1479). The court ruled that OSM's decisions on proposed State program amendments are subject to the rulemaking procedures set forth in Section 553 of the Administrative Procedures Act, 5 U.S.C. 553. The court also stated that OSM's failure to properly analyze and explain its decision to approve the State's program amendment rendered that action arbitrary and capricious.

In its decision, the U.S. Court of Appeals for the Fourth Circuit noted that OSM "based the decision to approve the deletion of the 'cumulative impact' definition exclusively on the absence of a corresponding definition in the Federal regulations, ignoring any actual effect the change might have on West Virginia's program." The court went on to state that "OSM acknowledged that the change may have weakened the program" but then failed to explain how such a change "is nevertheless consistent with SMCRA's minimum requirements." The court then concluded that "SMCRA requires OSM to find not only that the amended program contains counterparts to all Federal regulations, but also that it is no less stringent than SMCRA and no less effective than the Federal regulations in meeting SMCRA's requirements." 473 F.3d at 103.

In addressing OSM's approval of the proposed addition of a sentence to the State's CHIA requirements that defined "material damage to the hydrologic balance outside the permit area", the court stated that "the added definition made West Virginia's proposed program different than the nationwide program. OSM's obligation is to analyze that different feature and explain whether and why the added provision renders the amended State program more, less, or equally effective compared to federal requirements. At a minimum, it must address the potential affect of the amendment on the State program and provide a reasoned analysis of its decision to approve it." *Id.*

It is with the guidance provided by the court in mind that OSM has conducted this review of these two proposed amendments.

B. Current Submittal of the Amendments

By letter dated March 22, 2007 (Administrative Record Number WV–1485), West Virginia re-submitted amendments to its program under SMCRA. The amendments propose to delete the definition of "cumulative impact," and to add a sentence defining "material damage to the hydrologic balance outside the permit area."

In its March 22, 2007, re-submittal letter, West Virginia provided a description of each of the proposed amendments, an explanation of why it considers its new material damage definition no less stringent than SMCRA, an explanation on the application of the material damage definition, a comparison of the material damage and cumulative impact definitions, and a discussion of the plaintiff's arguments in *OVEC* v. *Kempthorne, supra.* The letter concluded with a constitutional argument in support of approval. Enclosures to the letter included a copy of the State's Requirements Governing Water Quality Standards at 47 CSR 2 and a copy of the decision in *Ohio River Valley Environmental Coalition, Inc. (OVEC), et al.,* v. *Callaghan, et al., Civil Action No. 3:00–0058,* (S.D. W.Va. 2001). However, the letter made it clear that the enclosures were being supplied for informational purposes only and that West Virginia was not seeking OSM approval of the water quality standards document, which had been approved by the U.S. Environmental Protection Agency (EPA).

West Virginia proposed the following revisions to its approved regulatory program:

1. CSR 38–2–2.39 Definition of "cumulative impact"

The following definition is proposed for deletion from the West Virginia program: Cumulative impact means the hydrologic impact that results from the accumulation of flows from all coal mining sites to common channels or aquifers in a cumulative impact area. Individual mines within a given cumulative impact area may be in full compliance with effluent standards and all other regulatory requirements, but as a result of the co-mingling of their off-site flows, there is a cumulative impact. The Act does not prohibit cumulative impacts but does emphasize that they be minimized. When the magnitude of cumulative impact exceeds threshold limits or ranges as predetermined by the Division [WVDEP], they constitute material damage.

2. CSR 38–2–3.22.e Cumulative Hydrologic Impact Assessment

This existing provision, which contains the mandate for the WVDEP to prepare a CHIA for each permit application, is proposed to be revised by adding a new sentence that defines material damage to the hydrologic balance outside the permit area. The proposed sentence reads as follows:

Material damage to the hydrologic balance outside the permit area[s] means any long term or permanent change in the hydrologic balance caused by surface mining operation(s) which has a significant adverse impact on the capability of the affected water resource(s) to support existing conditions and uses.

As amended, CSR 38–2-3.22.e would read as follows:

The Director [Secretary] shall perform a separate CHIA for the cumulative impact area of each permit application. This evaluation shall be sufficient to determine whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area. Material damage to the hydrologic balance outside the permit area[s] means any long term or permanent change in the hydrologic balance caused by surface mining operation(s) which has a significant adverse impact on the capability of the affected water resource(s) to support existing conditions and uses.

We announced receipt of West Virginia's proposed amendments in the May 17, 2007, **Federal Register** (72 FR 27782). In that notice, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendments. The May 17, 2007, proposed rule provides a background on previous submissions of this amendment as well as the current submission. The public comment period ended on June 18, 2007. We did not hold a public hearing or a public meeting because no one requested one.

We received written comments from Geo-Hydro, Inc., (Administrative Record Number WV–1496); a private citizen (Administrative Record Number WV–1498); a combined set of comments on behalf of the Hominy Creek Preservation Association, Inc., Ohio River Valley Environmental Coalition, Inc., and West Virginia Highlands Conservancy, Inc. (Administrative Record Number WV–1495). We also received comments from two Federal agencies: The United States Department of the Interior Fish and

Wildlife Service, West Virginia Field Office (Administrative Record Number WV–1491) and the United States Environmental Protection Agency, Region III (Administrative Record Number WV–1497).

III. OSM's Findings

As noted by the Fourth Circuit, "[r]eview of a State program amendment utilizes the same criteria applicable to approval or disapproval of a State program in the first instance. 30 CFR 732.17(h)(10)." 473 F.3d at 98. Consequently, the Secretary must find the altered State program to be no less stringent than SMCRA and no less effective than the Federal regulations in meeting SMCRA's requirements in order to approve it. Further, the court made clear that in applying those standards, OSM must do more than simply compare whether State regulations still contain counterparts to relevant Federal requirements, (or, in the case of an addition, that there is no Federal counterpart and no other Federal requirements that would conflict with the proposed addition), but it also must examine how each proposed change would affect program implementation in order to determine that the program will remain no less effective than Federal regulations in meeting the requirements of SMCRA.

A. General Discussion—Prevention of Material Damage to the Hydrologic Balance Outside the Permit Area

Because each of the proposed amendments before us relate to the term "prevent material damage to the hydrologic balance outside the permit area", it is important to understand the context for that term in SMCRA and the Secretary's regulations in order to determine whether either or both of the amendments West Virginia has proposed will render its program less effective than Federal regulations. This is particularly important in this case because of interpretations and positions presented by the plaintiffs in the prior litigation discussed above as well as comments on this rulemaking discussed below.

The term "material damage to the hydrologic balance outside the permit area" occurs only once in SMCRA at Section 510(b)(3), which states "the assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance specified in Section 507(b) has been made by the regulatory authority and the proposed operation thereof has been designed to prevent material damage to the hydrologic balance outside the permit area."

The same phrase occurs in four separate contexts in the Secretary's regulations for surface and underground mining operations. The first, as in SMCRA, is in the context of a written finding that the regulatory authority perform an assessment and determine that "the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area" as required by 30 CFR 773.15(e). In addition, a finding is required by the regulatory authority as contained in 30 CFR 780.21(g) and 784.14(f), which states in relevant part "The CHIA shall be sufficient to determine, for the purposes of permit approval, whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area."

The second context, with slight modification, is as a permit application requirement for the applicant to provide a Hydrologic Reclamation Plan as mandated by 30 CFR 780.21(h) and 784.14(g), which states in relevant part that the plan "shall contain the steps to be taken during mining and reclamation through bond release to minimize disturbances to the hydrologic balance within the permit and adjacent areas; to prevent material damage outside the permit area." Third, the phrase is used in the context of a performance standard in 30 CFR 816.41(a) and 817.41(a), which requires that mining and reclamation activities be conducted "to prevent material damage to the hydrologic balance outside the permit area." The fourth context relates to monitoring requirements and is contained in that same paragraph. It authorizes the regulatory authority to "require additional preventive, remedial, or monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented." The Federal regulations at 30 CFR 816.41(c) and (e) /817.41(c) and (e) authorize the regulatory authority to modify the monitoring requirements, including parameters and frequency, if the monitoring data demonstrates that the operation has "prevented material damage to the hydrologic balance outside the permit area."

These requirements, when taken together, clearly show that (1) the regulatory authority must make a written finding that the operation is designed to prevent material damage to the hydrologic balance outside the permit area before the permit can be issued; (2) a permit application must include a plan that shows the operation has been designed to prevent such damage; (3) the operation must be conducted to prevent such damage; and (4) the water monitoring requirements are used to determine whether or not such damage is occurring.

The Federal regulatory framework outlined above demonstrates that the parameters for material damage must be reflected in the hydrologic monitoring requirements. This relationship between water monitoring and material damage detection is confirmed by the fact that, for groundwater, monitoring of an aquifer may be waived upon a demonstration that it does not significantly ensure the hydrologic balance within the cumulative impact area in accordance with 30 CFR 780.21(i)(2) and 784.14(h)(2). The ground and surface-water monitoring requirements at 30 CFR 780.21(i) and (j) and 784.14(h) and (i) state that the plan shall provide for monitoring of parameters that relate to the suitability of the water resource "for current and approved postmining land uses" and the objectives of the hydrologic reclamation plan. Minimum parameters that must be monitored are also specified separately for ground and surface water. Thus, the Federal regulations provide minimum parameters for measuring material damage.

Material damage thresholds or standards for those parameters are not specified. However, 30 CFR 816.42 and 817.42 mandate that discharges from mining operations be in compliance with applicable State and Federal water quality laws and the effluent limitations promulgated by EPA at 40 CFR part 434, which apply to some of the parameters for which monitoring is mandated in 30 CFR 780.21 and 784.14. In accordance with 30 CFR 773.15(e), a permit cannot be issued without a written finding that the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area. In addition, 30 CFR 780.21(h) and 784.14(g) require that the application contain steps to be taken during mining and reclamation and through bond release to meet applicable State and Federal water quality laws and regulations. Thus, EPA's effluent limitations at 40 CFR Part 434 may constitute reasonable material damage criteria for some of the parameters specified in monitoring requirements. This relationship is discussed in the September 26, 1983 preamble requirement for the regulatory authority to make a material damage finding as follows: "OSM has not established fixed criteria, except for those established at 30 CFR 816.42 and 817.42 related to compliance with water-quality standards and effluent limitations."

With this background in mind, we have evaluated each of the proposed amendments to the West Virginia program in relation to Federal requirements for preventing damage to the hydrologic balance outside the permit area.

B. Specific WVDEP Amendment Language and Interpretation

1. West Virginia's Cumulative Impact Definition

The West Virginia program was conditionally approved in January 1981 based upon Federal regulations in existence at that time. None of the conditions on that approval related to the CHIA process or requirements to prevent material damage to the hydrologic balance outside the permit area. However, when OSM revised its hydrologic balance regulations on September 26, 1983, (48 FR 43956), among other things, a definition of "cumulative impact area" was added. On August 19, 1986, OSM notified West Virginia through a 30 CFR Part 732 letter, as clarified on December 18, 1987 (Administrative Record Numbers WV–711 and WV–748) that, among other changes unrelated to this rulemaking, West Virginia must amend its program to add a definition of "cumulative impact area" to bring its program into compliance with the revised 1983 Federal rules. In responding to those requirements, West Virginia submitted proposed emergency and legislative rules in August 1988 that contained a definition of "cumulative impact", as well as the mandated definition of "cumulative impact area" (Administrative Record Numbers WV–760 and WV–766).

On May 23, 1990, OSM published a **Federal Register** notice announcing the approval of several State program amendments, which included West Virginia's definitions of cumulative impact and cumulative impact area at Finding 2.10 (55 FR 21309). OSM found that although the Federal regulations do not specifically define cumulative impact, the Federal requirements at 30 CFR 780.21(g) and 784.14(f) contain provisions regarding the cumulative impact of mining on the hydrologic balance which form the basis for the State's definition. Furthermore, the State's definition of cumulative impact area is identical to the corresponding Federal definition at 30 CFR 701.5. Therefore, we found that CSR 38–2-2.38 and 38–2-2.39 of the proposed State regulations were not inconsistent with the Federal regulations at 30 CFR 701.5, 780.21(g) and 784.14(f).

2. Effect of Deleting the Definition of Cumulative Impact

The definition of the term cumulative impact that is proposed for deletion from the WVDEP program is:

Cumulative impact means the hydrologic impact that results from the accumulation of flows from all coal mining sites to common channels or aquifers in a cumulative impact area. Individual mines within a given cumulative impact area may be in full compliance with effluent standards and all other regulatory requirements, but as a result of the co-mingling of their off-site flows, there is a cumulative impact. The Act does not prohibit cumulative impacts but does emphasize that they be minimized. When the magnitude of cumulative impact exceeds threshold limits or ranges as predetermined by the Division [WVDEP], they constitute material damage.

As previously noted, neither SMCRA nor the Federal regulations have a corresponding definition of "cumulative impact" and West Virginia added this definition in 1988 on its own volition. Therefore, on its face, removal of this definition would leave the State program consistent with Federal regulations. However, in accordance with the decision of the Circuit Court, OSM must also evaluate the effect the proposed removal of the cumulative impact definition will have on State program implementation in order to assure that any such effect will not render that program less effective than the Federal regulations at meeting the purposes of SMCRA.

Much of the controversy surrounding the proposed removal of West Virginia's cumulative impact definition has focused on the last sentence, which essentially defines material damage in terms quite different than the proposed definition of material damage to hydrologic balance outside the permit area that is discussed later in this notice. The discussion here only focuses upon the effect of removing the definition of cumulative impact with its definition of material damage contained in the last sentence.

First, the definition proposed for removal from the West Virginia program defines material damage in the context of cumulative impacts. This is in contrast to SMCRA and the Secretary's regulations, which state that the proposed operation must be designed to prevent material damage. WVDEP makes this point, on page four of its letter accompanying the submittal, by stating that the focus of the material damage finding required by 30 CFR 780.21(g) and section 510(b)(3) of SMCRA is more limited than the scope of the full CHIA analysis of which it is a part. The CHIA is to assess the impacts of all anticipated mining in the cumulative impact area, while the material damage finding only deals with whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area. This distinction is also noted in the preamble to OSM's Permanent Regulatory Program published on March 13, 1979,(44 FR 14902–15309) at page 15101 which, in explaining the CHIA requirement then at 30 CFR 786.19(c), states "Section 510(b)(3) of the Act requires that the regulatory authority assess the probable cumulative impact on the hydrologic balance of all mining anticipated in an area. In addition, it must also find, prior to approval, that a proposed operation will minimize damage to the hydrologic balance outside the permit area."

When OSM modified its CHIA requirements, it made clear that the CHIA must be sufficient to make the required finding that material damage will be prevented outside the permit area. The preamble to those changes, published on September 26, 1983, (48 FR at 43972–3) discussing 30 CFR 780.21(g), states that the CHIA need not result in judgments balancing current coal development and possible future development. It also states that "the final rule allows a 'first come first served' analysis with each subsequent operation being based upon its potential for material damage with respect to any preceding operations." OSM further noted in that same preamble that "If any material damage would result to the hydrologic balance from the cumulative impacts of a newly proposed operation and any previously permitted operation, the new operation could not be permitted * * *" *Id. At 43857.*

Each permit must establish a cumulative impact area as set forth at 30 CFR 780.21(c) and 784.14(c). The West Virginia definition of cumulative impact area at CSR 38–2–2.39, and the Federal definition at 30 CFR 701.5 are virtually the same and mean: the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and groundwater systems. Anticipated mining shall include the entire projected lives through bond releases of (a) the proposed operation, (b) all existing operations, (c) any operation for which a permit application has been submitted to the Secretary/Regulatory Authority, and (d) all operations required to meet diligent development requirements for leased Federal coal for

which there is actual mine development information available. Therefore, while the West Virginia definition proposed for removal requires prevention of material damage from cumulative impacts rather than from the proposed operation as required by SMCRA and the Federal regulations, this is a distinction without a practical difference. In any case, whether the definition is removed or not, the West Virginia program still requires that the proposed operation be designed to prevent material damage to hydrologic balance outside the permit area as required by SMCRA and Federal regulations. The State's obligation and responsibility to properly prepare a CHIA and to make the finding regarding material damage on a case by case basis as required by SMCRA remains an integral component of the West Virginia program even without this definition.

Second, the final sentence of the definition proposed for removal states that "When the magnitude of cumulative impact exceeds threshold limits or ranges as predetermined by the Division, they constitute material damage." It is debatable whether this sentence mandates (as some argue) that the Division predetermine threshold limits or ranges for all material damage parameters or only mandates that, where the Division has, in fact, predetermined threshold limits or ranges, exceeding them constitutes material damage. OSM stated in the preamble to the 1983 hydrology regulations at page 43973 that "OSM agrees that the regulatory authorities should establish criteria to measure material damage for the purposes of the CHIAs." However, the CHIA regulation does not mandate that States do so. This is in sharp contrast to 30 CFR 816.116 (a)(1) for revegetation success standards, also finalized in September 1983, where OSM mandated that regulatory authorities must select standards for success and sampling techniques for evaluating vegetation success and include them in the approved regulatory program (OSM removed the requirement for OSM's prior approval of these success standards and sampling techniques on August 30, 2006, (71 FR 51684, 51688–51695, 51705–51706)). Instead, the hydrology regulations provide general guidance to regulatory authorities in the water monitoring requirements at 30 CFR 780.21 and 784.14, as discussed above. Further, in the 25 years since the hydrology rules were revised, OSM has not put States on notice, under 30 CFR Part 732, of an obligation to establish material damage criteria or that 30 CFR 816.42 or 817.42 must be used for such criteria. The only mandate imposed on States as a result of the 1983 hydrology revised rules was the 1986 mandate under 30 CFR Part 732 that they each must establish a definition of "cumulative impact area" consistent with the new Federal definition added in 1983.

In 1997, some 14 years after revising the CHIA and material damage requirements discussed above, OSM issued a National policy statement on acid mine drainage (AMD) in which it stated "Regulatory authorities should establish criteria to measure and assess material damage. Material damage guidelines, to be applied on a case-by-case basis, are necessary to effectively assess the adequacy of mining and reclamation plans in addressing AMD prevention." The policy goes on to state that "surface and groundwater monitoring data should be evaluated against established material damage criteria." In response to comments on the policy, OSM stated that:

Section 510(b)(3) of SMCRA requires regulatory authorities to determine whether proposed operations have been designed to prevent material damage to the hydrologic balance outside the permit area. This provision inherently requires the use of guidelines or criteria, since even case-by-case determinations require the application of some type of damage threshold and impact measures." And "* * * the policy is consistent with the Act, its implementing regulations, and their preambles in that it encourages States to develop material damage guidelines but does not establish national criteria or guidelines. Instead of establishing rigid guidelines to implement this policy, the regulatory authority could develop a flexible list of factors to consider in establishing thresholds and assessing material damage on a case-by-case basis."

The water monitoring requirements at 30 CFR 780.21 and 784.14 separately mandate minimum parameters for surface and groundwater that relate to both water quality and quantity. Some of those relate to AMD. It is apparent from the above discussion that, while regulatory authorities are expected to provide material damage guidelines, they have considerable flexibility in doing so. Even with the deletion of the current definition of "cumulative impact," West Virginia is still obligated to establish criteria for determining what constitutes material damage to the hydrologic balance outside the permit area consistent with the Federal requirements, as discussed above.

Based upon the foregoing discussion, we find that approving the State's proposed amendment to delete its definition of "cumulative impact" at CSR 38–2–2.39 would have no adverse effect on the WVDEP's ability or obligation under its approved program to assess and determine whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

In addition, we find, as discussed below, that this deletion is further ameliorated by the addition of a new definition of "material damage to the hydrologic balance."

Furthermore, we find that the deletion of the definition does not make the State program less effective than the hydrologic protection requirements set forth in the Federal regulations nor less stringent than those in SMCRA, and its removal can be approved.

3. Effect of Adding a Definition of Material Damage

West Virginia is proposing to add a sentence to its CHIA requirements at CSR 38–2–3.22.e that would define material damage to the hydrologic balance outside the permit area. It reads as follows:

Material damage to the hydrologic balance outside the permit areas means any long term or permanent change in the hydrologic balance caused by surface mining operation(s) which has a significant adverse impact on the capability of the affected water resource(s) to support existing conditions and uses.

The question before us is whether West Virginia's proposed addition of a sentence defining material damage to the hydrologic balance outside the permit area to its CHIA requirements would leave the State program no less stringent than SMCRA and no less effective than Federal regulations in achieving the purposes of SMCRA. Since neither SMCRA nor the Federal regulations define material damage or require that States define the term as part of their approved programs, at issue before us is whether the definition proposed by West Virginia limits the reach of material damage in a way that reduces the effectiveness of its program so that it would be less effective than Federal rules in achieving the purposes of SMCRA.

In light of that framework, there are three aspects of the proposed definition that must be considered in evaluating whether it can be approved. These are: (1) *Long term or permanent* change, (2) *significant* adverse impact, and (3) *capability* of the affected water resources to support *existing conditions* and *uses* (emphasis added).

These three facets of the proposed definition can be viewed as giving meaning to "material" as it modifies damage. As part of its explanation for its proposed definition, West Virginia focuses on "material," both in its plain meaning and its use in other SMCRA contexts for the phrase "material damage," e.g. subsidence damage and protection of alluvial valley floors. Just as West Virginia is proposing here, the word "significant" in the Federal regulatory definitions appears to be relevant in applying material damage in both of those cases. Further, the word "significant" is used in 30 CFR 780.21 and 784.14 related to groundwater monitoring in determining whether a particular aquifer needs to be monitored. Since material damage certainly implies something more than minor damage and it is a word that OSM has used in Federal regulations for material damage in other contexts, the use of "significant" by West Virginia in this definition is not on its face unreasonable.

In discussing how the phrase "support existing conditions and uses" would be applied, West Virginia states that it effectively requires the State to consider the water quality standards it has promulgated under its Clean Water Act that have been approved by EPA. "By definition, 'water quality standards' means the 'combination of water uses to be protected and the water quality to be maintained' by the rules setting forth those standards." West Virginia also notes that "water quality criteria" is also a defined term that references designated uses, as well as existing uses as specifically provided by the proposed definition. Designated use specifies how the water can be used, such as warm water fishery or primary contact recreation. States are required by the Clean Water Act to assign one or more uses to each of its waters. These uses must be taken into consideration by the State when approving a proposed mining operation. West Virginia then states that, under the proposed definition, in order to assure that mining will not result in a long term or permanent change in the hydrologic balance which has a significant adverse impact on the capability of a receiving stream to support its uses, a proposed mining operation must be designed so as to consistently comply with the water quality standards for the designated uses for the receiving stream. West Virginia further notes it does not intend to consider every pollutant for which a water quality standard has been promulgated. Instead, consideration will be limited to standards for those parameters which, based upon its experience with other mining operations in the area and the geochemical data required in the application, have the potential to have an impact on water quality if the application is granted.

The Federal water monitoring requirements at 30 CFR 780.21 and 784.14, which, as discussed above are linked to detecting material damage, state that current and approved postmining land use should be considered in establishing parameters to be monitored for both surface and groundwater. West Virginia's proposed link of material damage to existing water uses is not inconsistent with that concept, particularly with its explanation of how it would be applied since water quality standards established under the Clean Water Act are linked to both existing and designated uses. We do note that those standards do not extend to surface water quantity or to ground water quality or quantity. Therefore, there are additional material damage criteria for which the State must consider how it will determine material damage. However, the proposed definition does not limit West Virginia's authority or obligation to do so. By including its Water Quality Standards with the amendment, we understand that West Virginia intends to apply the requirements set forth at CSR 46–1–1 *et seq.* when determining when material damage to the hydrologic balance has occurred.

In regard to the issue of long-term or permanent change, West Virginia states that, while the operation must be designed to consistently comply with applicable standards, isolated or random exceedance of water quality standards will not be regarded as material damage. The idea that material damage to the hydrologic balance is linked to long-term trends rather than an isolated spike in relation to threshold levels or ranges is consistent with the requirement that monitoring data need only be submitted every three months and gives reasonable meaning to "material" damage. While OSM recognizes that there have been a few individual events of enormous magnitude and impact that would certainly qualify as material damage to the hydrologic balance outside the permit area, there are numerous performance standards that could be cited in enforcement actions in such cases to mandate corrective measures under approved State programs. Further, OSM does not view the proposed State definition as limiting West Virginia's ability to cite the State counterpart (CSR 38–2–14.5) to 30 CFR 816.41(a) and 817.41(a) for causing material damage to the hydrologic balance outside the permit area in such cases. OSM believes that all of these issues related to the material damage finding should be addressed by the regulatory authority on a case-by-case basis as mining permit applications are reviewed and approved, in concert with the CHIA. In reviewing West Virginia's proposed material damage definition, OSM finds that it does provide reasonable guidance on what would constitute material damage to the hydrologic balance outside the permit area without imposing limitations on the reach of that phrase that would make the West Virginia program less effective than the Federal regulations at achieving the purposes of SMCRA.

West Virginia has stated that it intends to implement its proposed definition in a manner that provides objective criteria for determining whether a proposed operation is designed to prevent material damage to the hydrologic balance outside the permit area. Further, it has stated that it would do so in a manner that gives reasonable meaning to the phrase "material" while providing consistent application understandable to all parties. Therefore, OSM finds that the proposed new definition of material damage at CSR 38–2–3.22.e is no less stringent than SMCRA and no less effective than Federal regulations in achieving the purposes of the Act and it can be approved. This finding is based upon West Virginia implementing this new definition consistent with its explanation provided with the proposed amendment as summarized above and consistent with the intent of SMCRA as discussed in this notice. Should we later find that this definition is not being implemented in a manner consistent with the above discussion, OSM may revisit this finding.

IV. Summary and Disposition of Comments

We received written comments from Geo-Hydro, Inc. (Administrative Record Number WV–1496); a private citizen (Administrative Record Number WV–1498); a combined set of comments on behalf of the Hominy Creek Preservation Association, Inc., Ohio River Valley Environmental Coalition, Inc., and West Virginia Highlands Conservancy, Inc. (Administrative Record Number WV–1495). We also received comments from two Federal agencies; the United States Department of the Interior Fish and Wildlife Service, West Virginia Field Office (Administrative Record Number WV–1491) and the United States Environmental Protection Agency,

Region III (Administrative Record Number WV–1497).

Public Comments

Extensive comments were received from Walton D. Morris, Jr. on behalf of Hominy Creek Preservation Association, Inc., Ohio River Valley Environmental Coalition, Inc. (OVEC), and West Virginia Highlands Conservancy, Inc. OSM will refer to these comments collectively as those of OVEC.

OVEC contends that OSM's publication of a proposed rule "which merely invites public comment on West Virginia's resubmission documents falls short of the requirement which the Administrative Procedure Act (APA), 5 U.S.C. 553, imposes on the agency * * *". In support of this comment, OVEC lists several alleged deficiencies in the proposed amendment, all of which, according to OVEC, were noted by "courts". In addition the WVDEP's new explanatory letter "does not have the force of law and therefore does not cure the defects in the proposed amendments which led the reviewing courts to strike down OSM's approval decision", according to OVEC. "Specifically", OVEC argues, "there remains no definition in the proposed amendments of 'long-term change' or 'significant adverse impact.' There are no regulatory provisions or other provisions with the force of law that indicate 'how the regulatory authority propose[s] to measure such an impact or determine when it would occur;'" Finally, OVEC contends that, "[i]f OSM proposes to re-approve these very same proposed program amendments, the agency has an obligation first to inform the public of the basis on which it proposes to do so", and "to perform and present the analysis which the reviewing courts found missing from the agency's earlier program approval decision and to request further public comment on that analysis."

First, we note that the Fourth Circuit, unlike the District Court, did not point to any alleged deficiencies in the amendments themselves, such as the failure to define certain terms. Rather, its decision was based on OSM's failure to determine, based upon a thorough analysis, whether the amendments rendered the State's program less stringent than SMCRA and less effective than the Federal regulations. 473 F.3d at 103. Thus, we disagree with OVEC that either OSM or the State is obligated to "cure the defects in the text of the proposed amendments" by way of explanation in the proposed rule.

Second, we disagree with OVEC's assertion that we are obliged to "inform the public of the basis" for our proposed re-approval of the amendments, because this assertion proceeds from the false premise that OSM's proposed rule proposes approval of the amendments. To the contrary, our proposed rule merely announces receipt of the amendments as required by 30 CFR 732.17, and asks for public and agency comment on the question of whether the amendments can be approved. At the proposed rule stage, we take no position as to whether an amendment should be approved; therefore, we are not required to provide an analysis in the proposed rule that advocates approval.

This approach is fully consistent with the APA as described by the Fourth Circuit in this case wherein the court stated "An agency engaged in rulemaking pursuant to APA 553 must 'follow [] a three-step process—issuance of a notice of proposed rulemaking, followed by receipt and consideration of comments on the proposal, followed by promulgation of a final rule that incorporates a statement of basis and purpose.'" 473 F.3d at 102 (quoting Kenneth Culp Davis & Richard J. Pierce, Jr., *administrative Law Treatise* 7.4 (3rd ed. 1994)). The Court goes on to note that the agency followed that process in concluding that the Secretary was engaged in rulemaking pursuant to APA Section 553.

Each of OVEC's comments on the proposed rule suffers from a fundamental misinterpretation of the requirements of Section 553 of the Administrative Procedure Act, 5 U.S.C. 553. With respect to proposed rules, the APA merely requires that the reviewing agency include "either the terms or substance of the proposed rule or a description of the subjects and issues involved." *Cat Run Coal Co.* v. *Babbitt,* 932 F. Supp. 772, 777 (S.D. W.Va. 1996) (quoting 5 U.S.C. 553(b)(3)). "The notice must be 'sufficiently descriptive to provide interested parties with a fair opportunity to comment and to participate in the rule making'." 932 F. Supp. at 777 (quoting *Chocolate Mfrs. Ass'n of U.S.* v. *Block,* 755 F.2d 1098, 1104 (4th Cir. 1985) (citations omitted).

In our May 17, 2007, proposed rule, we set forth the full text of the amendment, which includes the deletion of the "cumulative impact" definition, as well as the addition of a definition of "material damage", in CSR 38–2–3.22.e. Next, we presented, in considerable detail, the WVDEP's explanation of how the "material damage" definition will be interpreted and employed in the context of a permitting review. Finally, we included the WVDEP's rationale for removing the definition of "cumulative impact". 72 FR 27782, 27784–5 (May 17, 2007).

Together, the text and explanatory narrative accompanying it satisfy the APA's requirement that the proposed rule include "the terms or substance of the proposed rule or a description of the subjects and issues involved." 5 U.S.C. 553(b)(3). Indeed, our proposed rule surpasses the APA's mandate, since it includes both a description of the proposed amendments' "terms" and "substance", as well as a "description of the subjects and issues involved." As such, the proposed rule is sufficient to ensure that the public and other interested parties will have a fair opportunity to comment and to participate in the rulemaking process.

In addition OVEC provides three primary reasons why OSM should disapprove the proposed program amendments. These reasons are summarized below along with OSM's responses.

I. WVDEP's explanatory letter lacks the force of law, is inconsistent with both the text of pertinent West Virginia Statutes and Regulations and with WVDEP's prior explanations of the proposed amendments; and thus does not provide a rationale basis for evaluating or approving the amendments.

OVEC comments that the explanation provided by WVDEP in support of the proposed amendments is inconsistent with previous explanations provided by the agency, is inconsistent with statutory and regulatory texts regarding water quality statutes, and is inconsistent with the testimony of the WVDEP in a deposition with regard to what constitutes material damage. In addition, OVEC states that OSM should require WVDEP to furnish an opinion of the Attorney General of West Virginia that the "* * * legal interpretations set forth in the explanatory letter are correct, both with respect to the proposed amendments and the water quality statutes and regulations which WVDEP invokes, and that the letter has the force of law."

Before addressing OVEC's specific comments under this heading, it is important to note that 30 CFR 732.17 does not require a State to submit an explanation or rationale as a part of submitting proposed program amendments. The extent to which OSM has relied upon material other than the language of proposed amendments themselves in relation to Federal requirements in reaching its decision is described above in the findings section. While we found the State's explanation useful, the extent to which we have relied on it in reaching our decision is limited to the extent we have referenced it in the findings section above. The

understanding upon which our approval is based is explained in the findings section and largely relies, as discussed, upon the reach of Federal requirements. Further, OSM has two decisions before it. While OVEC's comments treat these decisions as one without delineating which decision it is commenting on, there is generally more discussion of the material damage definition that is proposed for addition to the West Virginia program.

OVEC's sole basis for claiming inconsistency between the WVDEP's July 1, 2003, clarification and its March 22, 2007, letter is that the former document stated that the amendments "set forth some objective criteria" for determining material damage, while the latter document argues that the material damage determination must be a "qualitative, rather than a quantitative," judgment.

However, OVEC fails to note that in its 2007 letter, the WVDEP also contends that the new material damage standard is more objective than its predecessor, since it clearly requires the determination to be based on the ability of the proposed mining operation to comply with water quality standards, whereas the old "cumulative impact" definition referred to undefined "threshold limits and ranges." Thus, in both its 2003 and 2007 explanations of the amendments, the WVDEP contends that the new definition of material damage adds objectivity to the determination. The State did acknowledge in 2007 that the new definition does not adhere to a mathematically precise formula for producing a finding of material damage; however, a lack of mathematical precision does not equal a lack of objectivity. West Virginia states that water quality standards will be used to determine whether an operation has been designed to prevent material damage to the hydrologic balance outside the permit area since the new definition references use and the State's water quality standards are set to protect existing and designated uses. Thus, material damage determinations, though made on a case-by-case basis, will be objective in nature. For these same reasons, we disagree with OVEC that the WVDEP's 2007 explanation somehow attempts to thwart the West Virginia Legislature's intent "to set forth some objective criteria" for material damage determinations.

OVEC asserts that the State's March 22, 2007, letter contains erroneous interpretations of West Virginia's water quality statutes and regulations. First of all, OSM's decision to approve both of these amendments is unaffected by any disputes between OVEC and West Virginia over the proper interpretation of West Virginia's water quality statutes and regulations. The basis for our decisions to approve both of these proposed amendments is explained above under the findings section. The SMCRA mandate that proposed mines be designed to prevent material damage to the hydrologic balance is not a vehicle for using SMCRA to enforce CWA requirements.

Further, disputes over a State's proposal to revise its program requirements related to preventing material damage to the hydrologic balance under SMCRA are not a proper vehicle for resolving or addressing disputes over how the State's CWA requirements should be interpreted. In short, this dispute is not relevant to our decisions because those decisions are not based upon any particular interpretation of the State's CWA application. Having said that, OVEC's argument herein appears to rest on its assertion that a single, isolated violation of any such water quality law or regulations constitutes material damage. However, OVEC cites no law or regulation supporting this argument. To the contrary, as discussed above, States have considerable discretion in establishing their CHIA process and establishing criteria for making the required material damage finding, including the extent to which they utilize CWA standards or criteria in doing so. Moreover, the WVDEP's letter does not purport to carry the force of law, and we do not accord it such weight. In any event, there is no Federal regulatory requirement for OSM to request an Attorney General's opinion to accompany a state program amendment.

Finally, we acknowledge an apparent inconsistency between the March 22, 2007, letter and the WVDEP employee's deposition testimony with regard to what constitutes "material damage". We have given the preponderance of weight to the March 22, 2007, letter, since it is subsequent to the deposition testimony, which was given in 2003, and, more important, because it was offered in support of this re-submission and was signed by the head of the agency. Regardless of anything submitted by the WVDEP, however, the ultimate burden is on OSM to determine whether these amendments are no less stringent than SMCRA and no less effective than the implementing Federal regulations. We have met that burden.

II. The proposed amendments would render the West Virginia Program inconsistent with the Federal requirement that regulatory authorities define material damage in terms of predetermined limits and ranges for specific hydrologic parameters.

OVEC comments that the proposed amendments are inconsistent with SMCRA and less effective than the Federal regulations because they "* * * fail to establish * * * usable criterion for determining material damage to the hydrologic balance outside the permit area."

As discussed extensively above, OVEC vastly overstates the Federal mandate. No such mandate is contained in SMCRA or the Federal regulations and no other State or Federal program contains, as part of its regulations, the definition that West Virginia proposes to remove. While OSM stated in the preamble to the 1983 hydrology regulations (48 FR 43973) "* * * that the RA's should establish criteria to measure material damage for the purposes of CHIA's," it did not establish a regulatory mandate that States do so nor require OSM approval of such criteria. The only mandate imposed on States as a result of the 1983 hydrology revised rules was the 1986 mandate under Part 732 that they each must establish a definition of "cumulative impact area" consistent with the new Federal definition at 30 CFR 701.5 added in 1983. With that said, OSM is approving the proposed amendments with the understanding that the State will determine on a case-by-case basis meaningful objective material damage criteria in order to make the finding regarding material damage required by 30 CFR 773.15(e).

OVEC comments further on this issue that "* * * regulatory authorities must include pertinent, applicable numeric water quality standards and effluent limitations in a set of predetermined material damage criteria contained in the CHIA for each proposed surface and coal mining operation." In addition OVEC is concerned that WVDEP would only consider a stream materially damaged if the stream were "completely sterilized" or a use "destroyed". In addition, there were concerns raised about the WVDEP position that a "minor" exceedance of water quality standards would not constitute material damage.

OSM disagrees with the statement that effluent limitations and water quality standards constitute predetermined material damage criteria. OVEC is under the misguided impression that 30 CFR 816.42 and 817.42 establish fixed material damage criteria for coal mining operations. While the plain language of these regulations require discharges of water from mining operations to be in compliance with applicable State and

Federal water quality laws and regulations as well as the EPA effluent limitations for coal mining operations, there is no assertion that discharges that violate such laws and regulations somehow automatically constitute material damage to the hydrologic balance. Obviously discharges that do not comply with either the effluent limitations or water quality standards should be considered performance standard violations by the regulatory agency, but whether such discharges constitute material damage to the hydrologic balance is another issue entirely. OSM believes that a discharge of any magnitude or duration into a stream that results in the loss of an existing or designated use is not an acceptable impact to the hydrologic balance from SMCRA regulated coal mining operations, even if the discharge does not violate effluent limitations or water quality standards. Clearly the discharge does not have to reach the severity necessary to result in the total destruction of a stream in order to constitute material damage. On the other hand, one single minor violation of effluent limitations could easily occur and result in no detectible impact to a receiving stream's existing or designated use.

OVEC further elaborates on this issue to the extent that "WVDEP proposes to rewrite West Virginia's pertinent, applicable water quality standards to adopt more lenient pollutant limits, etc. * * *." OVEC makes this leap as a result of its previous erroneous conclusion that SMCRA mandates the use of water quality standards and effluent limits for coal mining operations as predetermined material damage criteria. The water quality standards and effluent limits are established by State and Federal law pursuant to the CWA. As provided by section 702(a)(3), nothing in SMCRA, or a State program amendment approved by OSM, can alter or modify these standards or limits. OSM cannot, in its approval of a State program amendment, alter existing CWA laws in any State. Indeed, OSM does not agree that WVDEP is proposing to rewrite any CWA laws through these State program amendments. OSM agrees with WVDEP as addressed in the previous comment response that water quality standards and coal mining effluent limits do not constitute predetermined material damage criteria unless the State, at its discretion, decides to apply them that way. Our approval of these two amendments is not based upon the State deciding to do so.

OVEC comments that the WVDEP amendment does not guarantee that new mining operations will be prevented from discharging additional pollutants into streams listed as impaired pursuant to Section 303(d) of the Clean Water Act, nor does the amendment prevent WVDEP from allowing permits to discharge into waters for which no TMDL has been prepared. In addition OVEC requests that "* * * OSM investigate the situation (issuing permits allowing discharges into 303(d) listed streams for which there is no TMDL) as part of its evaluation of these proposed amendments."

Allegations of improper implementation of a State's CWA program are beyond the scope of review for a State SMCRA program amendment. However, when considering material damage impacts, it is certainly appropriate for a State to consider the fact that 303(d) listed streams (i.e., those already impaired) are in need of restoration and a reduction of pollutant loadings in order to achieve their designated use. OSM, in cooperation with other agencies and local watershed groups, expends millions of dollars through the abandoned mine land program to restore streams biologically impaired from abandoned coal mines. These efforts would be meaningless if current mine operators are allowed to discharge pollutants into these impaired waters that would offset restoration efforts. Thus, there is value in using State water quality criteria (both numeric and narrative standards) in such a manner that existing and designated uses are protected, and to ensure that impaired streams are not further degraded as a result of SMCRA regulated mining activities. On the other hand, we do not construe Federal material damage requirements as mandating, where there is a choice between discharging in compliance with effluent standards into a 303(d) impaired stream or discharging into a high quality pristine stream, that the discharge must go into the high quality stream. In short, SMCRA material damage requirements should not be construed as a mechanism for enforcing CWA TMDL requirements through SMCRA. OSM believes that protecting the hydrologic balance from material damage requires a comprehensive analytical approach, considering both short-term (during mining and reclamation) and long-term (those that are projected to extend beyond the release of reclamation performance bonds) impacts.

III. Approval of the proposed amendments would impair or preclude effective citizen participation in the administration and enforcement of the West Virginia Program.

The commenter asserts that the amendments replace predetermined, quantitative material damage criteria with a vague, subjective definition that would surely confound any citizen's effort to independently detect or prove a violation of the standard. The cost and restricted availability of experts whom a citizen would necessarily have to retain in any attempt to prove a violation of such an amorphous standard would fatally chill public participation in its enforcement.

OSM disagrees with this comment. Neither of the amendments that the State is proposing effect in any way the public participation provisions of the approved West Virginia program. In addition, it should be noted that with every permit application filed, the public has the opportunity to provide comment and input regarding the proposed application. In addition, once the application is approved, the public has another opportunity for review through the administrative review process under the State counterpart to 30 CFR 775.11. Further, as discussed repeatedly above, OVEC's comments represent a serious mischaracterization of the two amendments.

There are also a few other aspects of OVEC's comments that warrant a response. The background section seriously mischaracterizes Federal CHIA and material damage requirements. The draft CHIA guidelines that OSM released in 1985 quoted from in the comments are just that—draft. They have never been finalized and certainly do not represent an agency position enforceable by regulation, including the State program amendment process. Further, the introduction to the draft guidelines states clearly that they were only intended as technical guidance and should not be construed as enforceable standards. Contrary to OVEC's assertion, OSM did not approve the 1993 West Virginia CHIA handbook nor has OSM considered the handbook, or revisions to it, as requiring OSM approval. Finally, OSM has considered OVEC's request for a delay in the effective date of any decision. The benefits of making this decision effective immediately are no different than with other State program amendments that OSM processes. By regulation in 30 CFR part 732, OSM has limited time to process proposed State program amendments. OSM often, as in this case, has difficulty meeting those time frames. Delaying the effective date would only exacerbate the problem in meeting the regulatory time frame, and making sure that State program requirements are consistent with Federal requirements as required

by SMCRA. Therefore, this rule will be effective immediately upon publication.

Additional comments were also received from Charles H. Norris, on behalf of Hominy Creek Preservation Association, Inc. (HCPA), Ohio Valley Environmental Coalition, Inc, and West Virginia Highlands Conservancy, Inc. OSM will refer to these comments collectively as those of HCPA.

HCPA commented regarding a quality review panel established for the purpose of assessing the performance of the West Virginia State regulatory authority with respect to cumulative hydrologic impact assessment (CHIA). HCPA commented that the study indicated that "The CHIA's for eleven of the twelve permits that the panel reviewed failed to define conditions that would constitute material damage for the cumulative impact area for each permit." OSM participated in this same study of the WVDEP CHIA process. The study's report was finalized in February of 2007, and concluded, among other things, that WVDEP did not establish material damage limits in its CHIA process. The commenter went on to state that "* * * the almost universal failure to define objective criteria for material damage constituted a recurring, fatal flaw in the CHIAs * * *". OSM acknowledges that WVDEP needs to improve its application of CHIA requirements as noted in the 2007 report. Those basic conclusions are unaffected by the amendments approved here. We find this to be more related to the technical implementation of the program than to its regulatory obligations addressed in this decision. OSM finds that allowing the State to amend the program to allow a definition that the WVDEP believes more correctly aligns with its Clean Water Act will create a more stable regulatory platform for consistent application of regulatory requirements. As part of its oversight process, OSM will continue to monitor WVDEP's progress in addressing the findings noted in the 2007 CHIA report.

HCPA indicated its concern that WVDEP had not specifically addressed other aspects of the hydrologic balance beyond surface water quality such as "* * * material damage to stream flow * * *", and "* * * material damage with respect to the other elements of the hydrologic balance; surface water quantity, groundwater quantity, and groundwater quality."

While OSM embraces the applicability of water quality standards as a component of a comprehensive approach to protect and restore surface waters, as discussed in the finding section above, other water criteria must also be factored into the consideration of material damage. The approval of these two amendments today is based upon that understanding. As the commenter points out various other elements of the hydrologic balance "* * * surface water quantity, groundwater quantity, and groundwater quality * * *" must also be assessed with regard to the specific material damage criteria necessary to assure protection of existing and foreseeable uses of these water resources.

Federal Agency Comments

Under Federal regulations at 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on April 27, 2007, regarding the amendments from various Federal agencies with an actual or potential interest in the West Virginia program (Administrative Record No. 1488). The results of this consultation are presented below.

U.S. Fish and Wildlife Service (USFWS) provided comments on May 29, 2007, on the proposed amendments to the West Virginia program. The USFWS expressed its concern with the WVDEP interpretation and application of water quality standards relative to its proposed definition of material damage. Specifically, the USFWS is concerned with the cumulative impacts of minor exceedances of the water quality standards. It is also concerned with the allowable one-time events on certain aquatic populations such as fish and mussels. All discharges from mining operations must be made in compliance with the applicable water quality standards and effluent standards. Discharges that violate these standards are subject to the enforcement provisions of the State program. Multiple discharges resulting in violations over time, even if they do not materially damage a stream, are not to be taken lightly by either a mine operator or the State RA. Pursuant to 30 CFR 843.13, the State could suspend or revoke a permit when a pattern of violations is found to exist. In addition, OSM does not consider the amendments approved today as limiting the State's authority or obligation to consider whether a significant individual event caused or may cause material damage to the hydrologic balance outside the permit area.

The USFWS also recommended retention of the definition of cumulative impact, while suggesting the definition be revised to expand its applicability to the water quality standards. OSM has decided to approve West Virginia's request to remove the existing definition as it has been effectively replaced by the new definition of material damage in the West Virginia program, and the desired outcome can be achieved through the appropriate interpretation and application of the State's existing definitions of CIA and CHIA, along with the approved definition of material damage. In addition, WVDEP has stated in its submission that it intends to "* * * consider the water quality standards it has promulgated * * * as part of the material damage inquiry under the surface mining law." OSM is approving this amendment with the understanding that the State will utilize its water quality standards as a means of protecting streams from mining related material damage. However, the material damage finding is not limited to water quality standards, and therefore OSM does not desire that States adopt a definition that could be interpreted so narrowly as to only focus on water quality standards. OSM anticipates that the material damage finding will be used to address impacts to other water resources, such as surface water quantity and groundwater quantity and quality, as discussed in this decision. OSM believes that the approved WVDEP program includes all of the necessary hydrologic requirements within the existing law and regulations, and that the program will be implemented in a manner consistent with the intent of SMCRA and the Federal regulations with regard to preventing material damage to the hydrologic balance outside the permit area.

Environmental Protection Agency (EPA) Concurrence and Comments

Under Federal regulations at 30 CFR 732.17(h)(11)(i) and (ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). On April 27, 2007 we requested concurrence and comments on the amendment from EPA (Administrative Record No. WV 1487).

EPA provided comments on June 21, 2007, and stated that the proposed amendment may be subject to interpretations that could be inconsistent with the CWA. It is not clear to which of the two proposed amendments EPA was referring. However, nothing in either of these amendments would affect or interfere with the State's implementation of the CWA. To the contrary, we believe they will improve coordination. OSM finds that WVDEP has stated its intent in such a manner that the new definition of material damage will not jeopardize the obligation of mining operations to be

conducted in compliance with the applicable water quality standards and effluent standards as required by 30 CFR 816/817.42 or the State counterpart at CSR 38–2–14.5b. Nothing in our approval of this program amendment affords any variance from compliance with the CWA or any provisions of SMCRA. With respect to deleting the definition of cumulative impact, OSM finds that the State's existing regulations, together with the proposed definition of material damage, provide comparable protection. All mining operations must be designed to minimize impacts to the hydrologic balance within the permit area and adjacent areas pursuant to 30 CFR 816/817.41 (a) and CSR 38–2–14.5. Using a cumulative impact area based upon information provided by the applicant or other agencies as required by 30 CFR 780.21(g), 784.14(f) and CSR 38–2–3.22d and .e, the State must evaluate the cumulative hydrologic impacts of all anticipated mining upon surface and ground water systems so as to prevent material damage to the hydrologic balance outside the permit area. By definition, this evaluation must take into account the combined impacts of all mining and anticipated mining in the cumulative impact area as required by 30 CFR 701.5 and CSR 38–2–2.39. The CHIA determines cumulative impact and specifies if material damage is expected to occur; therefore deleting the proposed definition of cumulative impact does not make the West Virginia program inconsistent with the requirements of SMCRA.

EPA, while expressing its concerns as outlined above, concurred with the proposed revisions, with the understanding that all coal mining operations would be conducted in full compliance with all relevant provisions of the CWA. EPA provided its concurrence based on the understanding that 30 U.S.C. 1292 requires that the proposed State amendments must be construed and implemented consistent with the CWA, NPDES regulations and other relevant environmental statutes.

V. OSM's Decisions

A. Decision on Deletion of Definition of Cumulative Impact

OSM has reviewed the corresponding changes in regulations, the relevant existing regulations, and the current interpretation of the proposed regulations as provided by the State. OSM finds that the WVDEP has the authority to require proper preparation of PHCs and CHIAs and to establish realistic delineations of cumulative impact areas under its existing regulations without relying on the current definition of cumulative impact. The revision to delete the definition of cumulative impact, as it applies to the applicability of the West Virginia program, is no less stringent than SMCRA and is no less effective than the Federal regulations; therefore the proposed deletion of the definition is approved.

B. Decision on the Proposed Definition of Material Damage

OSM finds that the proposed definition of "material damage" and OSM's corresponding interpretation of its applicability to the approved program as stated in this notice, is no less stringent than SMCRA, and no less effective than the Federal regulations; therefore the proposed definition, as further described in this notice, is approved.

To implement these decisions, we are amending the Federal regulations at 30 CFR Part 948 which codify decisions concerning the West Virginia program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that a State program demonstrate that such State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by Section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of Subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under Sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Government

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The basis for this determination is that our decision is on a State Regulatory program and does not involve a Federal Regulation Involving Indian Lands.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of Section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule 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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the West Virginia submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the West Virginia submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 18, 2008.

Brent Wahlquist,

Director.

■ For the reasons set out in the preamble, 30 CFR part 948 is amended as set forth below:

PART 948—WEST VIRGINIA

■ 1. The authority citation for part 948 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 3. Section 948.15 is amended by adding a new entry in the table in chronological order by "Date of final publication" to read as follows:

§ 948.15 Approval of West Virginia regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
March 22, 2007	December 24, 2008	CSR 38–2–2.39 (deletion of cumulative impact definition). CSR 38–2–3.22.e (approval of material damage to the hydrologic balance definition).

[FR Doc. E8–30720 Filed 12–23–08; 8:45 am]
BILLING CODE 4310–05–P

POSTAL SERVICE

39 CFR Parts 1–11

Bylaws of the Board of Governors

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Board of Governors of the United States Postal Service has adopted a considerable number of amendments to its Bylaws, set forth in subchapter A, parts 1 through 11, of title 39 of the Code of Federal Regulations. These amendments implement changes in the authority, responsibilities, and procedures of the Board made necessary by the Postal Accountability and Enhancement Act of 2006 (PAEA), Public Law 109–435. The Postal Service hereby publishes this final rule revising subchapter A to reflect the changes in the Board's Bylaws.

DATES: *Effective Date:* December 24, 2008.

FOR FURTHER INFORMATION CONTACT: Julie S. Moore, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000; (202) 268–4800, or Christopher T. Klepac, (202) 268–3006.

SUPPLEMENTARY INFORMATION: This document revises subchapter A, incorporating parts 1 through 11 of 39 CFR, to reflect numerous changes to the Bylaws of the Postal Service's Board of Governors necessitated by the enactment of the Postal Accountability and Enhancement Act of 2006 (PAEA), Public Law 109–435. A large number of these changes are editorial or technical in nature, and do not alter the authority, responsibilities, or procedures of the Board. Others reflect substantive changes in these matters, particularly with reference to the establishment of postal rates and fees under the new legislation. For the convenience of the user, subchapter A has been republished in its entirety, as revised by the Board of Governors. The following section-by-section analysis identifies the new or modified provisions of revised subchapter A.

Section-by-Section Analysis

Part 1—Postal Policy (Article I)

The authority citation for part 1 has been updated to reflect changes under Public Law 109–435.

Section 1.1 Establishment of the U.S. Postal Service

Language has been added to this section to reflect the enactment of

Public Law 109–435. Minor editorial changes have been made for enhanced clarity and other purposes.

Section 1.2 Delegation of Authority

This section is unchanged.

Part 2—General and Technical Provisions (Article II)

The authority citation for part 2 has been updated to reflect changes under Public Law 109–435.

Section 2.1 Office of the Board of Governors

This section contains minor editorial changes for enhanced clarity and other purposes.

Section 2.2 Agent for Receipt of Process

This section is unchanged.

Section 2.3 Offices

This section is unchanged.

Section 2.4 Seal

Subsection (b) of this section has been modified to correct a reference to 39 CFR.

Section 2.5 Authority

This section is unchanged.

Section 2.6 Severability, Amendment, Repeal, and Waiver of Bylaws

This section is unchanged.

Part 3—Board of Governors (Article III)

The table of contents for part 3 has been revised by changing the title of section 3.1, and adding new sections 3.9 and 3.10. The authority citation for part 3 has been updated to reflect changes under Public Law 109–435.

Section 3.1 Composition and Responsibilities of Board

This section has been given a new title.

Section 3.2 Compensation of Board

The statutory citation in this section has been updated.

Section 3.3 Matters Reserved for Decision by the Board

This section has been revised and reorganized to reflect the functions of the Board of Governors, as modified by Public Law 109–435. Language has been added concerning the authority of the Board with regard to the establishment of service standards under 39 U.S.C. 3691, as well as borrowing or the issuance of obligations under 39 U.S.C. 2011. Duplicative or obsolete language has been removed with regard to separate approval of Postal Service Five-Year Capital Investment Plans, requests under former law for recommended decisions in changes in postal rates or the mail classification schedule, and the effective dates of final decisions on such changes. In addition, this section contains numerous minor editorial changes for enhanced clarity and other purposes.

Section 3.4 Matters Reserved for Decision by the Governors

This section has been revised and reorganized to reflect the functions reserved to the Governors, as modified by Public Law 109–435. Language has been added concerning the authority of the Governors with regard to establishing rates and classes of competitive products under 39 U.S.C. 3632, adjusting rates and fees for market-dominant products under 39 U.S.C. 3622, requesting the Postal Regulatory Commission (PRC) to change the lists of market-dominant and competitive products under 39 U.S.C. 3642, requesting the PRC for an expedited adjustment of rates due to extraordinary circumstances under 39 U.S.C. 3622, taking actions with regard to the Inspector General of the Postal Service under 39 U.S.C. 202(e) or 5 U.S.C. App. 8G(f)(3)(A), and establishing the price for the breast cancer research special postal stamp under 39 U.S.C. 414 and any semipostal stamp under 39 U.S.C. 416. Obsolete language has been removed with regard to actions under former law concerning approval or adjustment of the Postal Rate Commission's budget, actions under former law on the recommended decisions of the Postal Rate Commission, and concurrence with the Postmaster General in the removal or transfer of the Chief Postal Inspector. In addition, this section contains numerous minor editorial changes for enhanced clarity and other purposes.

Section 3.5 Delegation of Authority by the Board

This section is unchanged.

Section 3.6 Information Furnished to Board—Financial And Operating Reports

This section contains minor changes in format for enhanced clarity and other purposes.

Section 3.7 Information Furnished to Board—Program Review

This section has been revised to remove obsolete language concerning separate approval of Postal Service Five-Year Capital Investment Plans. In addition, this section contains numerous minor editorial changes for enhanced clarity and other purposes.

Section 3.8 Information Furnished to Board—Special Reports

Language has been added to subsection (b) to enhance reporting to the Board on major litigation or regulatory activities significantly impacting the Postal Service or involving a new, novel, or potentially controversial issue. New subsection (f) has been added to require reporting on major or significant financial, operational and compliance reports or studies the Postal Service is required by statute or law to prepare.

Section 3.9 Establishment of Rates and Classes of Competitive Products of General Applicability

This new section relates to the authority of the Governors under 39 U.S.C. 3632 concerning changes in rates or classes of competitive products of general applicability.

Section 3.10 Establishment of Rates and Classes of Competitive Products Not of General Applicability

This new section relates to the authority of the Governors under 39 U.S.C. 3632 concerning changes in rates or classes of competitive products not of general applicability.

Part 4—Officials (Article IV)

Part 4 has been given a new title, and the authority citation for part 4 has been updated to reflect changes under Public Law 109–435.

Section 4.1 Chairman

Language has been added to subsection (a)(2) to allow the Chairman of the Board to designate a vice chairman of any committee established by the Board. Subsection (c) has been added to provide that upon the election of a new Chairman of the Board, the immediate past Chairman shall become Chairman Pro Tempore of the Board, with certain specified duties.

Section 4.2 Vice Chairman

This section is unchanged.

Section 4.3 Postmaster General

This section has been modified to reflect the enactment of 39 U.S.C. 3686, and contains minor editorial changes for enhanced clarity and other purposes.

Section 4.4 Deputy Postmaster General

This section has been modified to reflect the enactment of 39 U.S.C. 3686, and contains minor editorial changes for enhanced clarity and other purposes.

Section 4.5 Assistant Postmasters General, General Counsel, Judicial Officer, Chief Postal Inspector

This section is unchanged.

Section 4.6 Secretary of the Board

This section is unchanged.

Part 5—Committees (Article V)

The authority citation for part 5 has been updated to reflect changes under Public Law 109–435.

Section 5.1 Establishment and Appointment

Language has been added to allow the Chairman of the Board to designate a vice chairman of any committee established by the Board.

Section 5.2 Committee Procedure

This section is unchanged.

Part 6—Meetings (Article VI)

The authority citation for part 6 has been updated to reflect changes under Public Law 109–435.

Section 6.1 Regular Meetings, Annual Meeting

This section contains minor editorial changes for enhanced clarity and other purposes.

Section 6.2 Special Meetings

This section has been modified to require the "earliest practicable notice" of a special meeting called by the Chairman of the Board. This section also contains minor editorial changes for enhanced clarity and other purposes.

Section 6.3 Notice of Meetings

This section has been modified to establish procedures for providing e-mail notice of meetings. This section also contains minor editorial changes for enhanced clarity and other purposes.

Section 6.4 Attendance by Conference Telephone Call

This section has been modified to clarify the Board's policy concerning attendance at regularly scheduled meetings by conference telephone call.

Section 6.5 Minutes of Meetings

This section contains minor editorial changes for enhanced clarity and other purposes.

Section 6.6 Quorum and Voting

This section has been revised to reflect quorum and voting requirements established under Public Law 109–435. As revised, subsection (f) addresses the votes required to establish rates or classes of competitive products, and subsection (g) applies to votes to remove the Inspector General for cause. Obsolete language has been removed with regard to actions under former law concerning adjustment of the total budget of the Postal Rate Commission, as well as actions under former law to approve, allow under protest, reject, or modify a recommended decision of the Postal Rate Commission. This section also contains minor editorial changes for enhanced clarity and other purposes.

Part 7—Public Observation (Article VII)

The authority citation for part 7 has been updated to reflect changes under Public Law 109–435.

Section 7.1 Definitions

This section is unchanged.

Section 7.2 Open Meetings

This section contains minor editorial changes for enhanced clarity and other purposes.

Section 7.3 Exceptions

This section contains minor editorial changes for enhanced clarity and other purposes.

Section 7.4 Procedure for Closing a Meeting

This section in unchanged.

Section 7.5 Public Notice of Meetings, Subsequent Changes

This section contains minor editorial changes for enhanced clarity and other purposes.

Section 7.6 Certification and Transcripts of Closed Meetings

This section contains minor editorial changes for enhanced clarity and other purposes.

Section 7.7 Enforcement

This section is unchanged.

Section 7.8 Open meetings, Freedom of Information, and Privacy of Information

This section contains minor editorial changes for enhanced clarity and other purposes.

Part 8 [Reserved]

Part 8 remains reserved.

Part 9 [Reserved]

Part 9, which formerly dealt with the policy under previous law concerning communications with the Governors of the Postal Service while rate and classification proceedings were pending, has been removed and reserved.

Part 10—Rules of Conduct for Postal Service Governors (Article X)

The title of part 10 has been modified, and the authority citation for part 10 has been updated to reflect changes under Public Law 109–435.

Section 10.1 Applicability

This section contains minor editorial changes for enhanced clarity and other purposes.

Section 10.2 Advisory Service

This section contains minor editorial changes for enhanced clarity and other purposes.

Section 10.3 Post-Employment Activities

This section contains minor editorial changes for enhanced clarity and other purposes.

Section 10.4 Financial Disclosure Reports

This section is unchanged.

Part 11—Advisory Boards (Article XI)

The authority citation for part 11 has been updated to reflect changes under Public Law 109–435.

Section 11.1 Establishment

This section is unchanged.

List of Subjects in 39 CFR Parts 1–11

Administrative practice and procedure, Organization and functions (Government agencies), Postal Service.

■ Subchapter A of 39 CFR is revised as follows:

Subchapter A—The Board of Governors of the U.S. Postal Service Bylaws of the Board of Governors

PART 1—POSTAL POLICY (ARTICLE I)

Sec.

Authority: 39 U.S.C. 101, 202, 205, 401(2), 402, 403.

§ 1.1 Establishment of the U.S. Postal Service.

The U.S. Postal Service is established under the provisions of the Postal Reorganization Act (the Reorganization Act) of 1970, Public Law 91–375, 84 Stat. 719, as amended by the Postal Accountability and Enhancement Act of 2006 (PAEA), Public Law 109–435, 120 Stat. 3198, as an independent establishment of the executive branch of the Government of the United States, under the direction of a Board of Governors, with the Postmaster General as its chief executive officer. The Board of Governors of the Postal Service (the

Board) directs the exercise of its powers through management that is expected to be honest, efficient, economical, and mindful of the competitive business environment in which the Postal Service operates. The Board consists of nine Governors appointed by the President, by and with the advice and consent of the Senate, to represent the public interest generally, together with the Postmaster General and Deputy Postmaster General.

§ 1.2 Delegation of authority.

Except for powers, duties, or obligations specifically vested in the Governors by law, the Board may delegate its authority to the Postmaster General under such terms, conditions, and limitations, including the power of redelegation, as it finds desirable. The bylaws of the Board are the framework of the system through which the Board monitors the exercise of the authority it has delegated, measures progress toward the goals it has set, and shapes the policies to guide the future development of the Postal Service. Delegations of authority do not relieve the Board of full responsibility for carrying out its duties and functions, and are revocable by the Governors in their exclusive judgment.

PART 2—GENERAL AND TECHNICAL PROVISIONS (ARTICLE II)

Sec.

Authority: 39 U.S.C. 202, 203, 205(c), 207, 401(2); 5 U.S.C. 552b(f), (g).

§ 2.1 Office of the Board of Governors.

There shall be located in Washington, DC an Office of the Board of Governors of the United States Postal Service. It shall be the function of this Office to provide staff support for the Board, as directed by the Chairman of the Board, to enable the Board to carry out effectively its duties and responsibilities.

§ 2.2 Agent for receipt of process.

The General Counsel of the Postal Service shall act as agent for the receipt of legal process against the Postal Service, and as agent for the receipt of legal process against the Board of Governors or a member of the Board, in his or her official capacity, and all other officers and employees of the Postal Service to the extent that the process arises out of the official functions of those officers and employees. The General Counsel shall also issue public certifications concerning closed meetings of the Board as appropriate under 5 U.S.C. 552b(f).

§ 2.3 Offices.

The principal office of the Postal Service is located in Washington, DC, with such regional and other offices and places of business as the Postmaster General establishes from time to time, or the business of the Postal Service requires.

§ 2.4 Seal.

(a) The Seal of the Postal Service is filed by the Board in the Office of the Secretary of State, and is required by 39 U.S.C. 207 to be judicially noticed. The Seal shall be in the custody of the General Counsel, who shall affix it to all commissions of officers of the Postal Service, and use it to authenticate records of the Postal Service and for other official purposes. The following describes the Seal adopted for the Postal Service:

(1) A stylized bald eagle is poised for flight, facing to the viewer's right, above two horizontal bars between which are the words "U.S. MAIL", surrounded by a square border with rounded corners consisting of the words "UNITED STATES POSTAL SERVICE" on the left, top, and right, and consisting of nine five-pointed stars on the base.

(2) The color representation of the Seal shows, a white field on which the bald eagle appears in dark blue, the words "U.S. MAIL" in black, the bar above the words in red, the bar below in blue, and the entire border consisting of the words "UNITED STATES POSTAL SERVICE" and stars in ochre.

(b) The location and description of the Postal Service emblem is described at 39 CFR 221.7.

§ 2.5 Authority.

These bylaws are adopted by the Board under the authority conferred upon the Postal Service by 39 U.S.C. 401(2) and 5 U.S.C. 552b(g).

§ 2.6 Severability, amendment, repeal, and waiver of bylaws.

The invalidity of any provision of these bylaws does not affect the validity of the remaining provisions, and for this purpose these bylaws are severable. The Board may amend or repeal these bylaws at any special or regular meeting, provided that each member of the Board has received a written notice containing a statement of the proposed amendment or repeal at least 5 days before the meeting. The members of the Board may waive the 5 days' notice or the operation of any other provision of these bylaws by unanimous consent, if that action is not prohibited by law. The Secretary shall submit the text of any amendment to these bylaws for publication in the **Federal Register** as soon as practicable after the amendment is adopted by the Board.

PART 3—BOARD OF GOVERNORS (ARTICLE III)

Sec.

Authority: 39 U.S.C. 202, 203, 205, 401 (2), (10), 402, 404(b), 414, 416, 1003, 2005, 2011, 2802–2804, 3013, 3622, 3632, 3642, 3652, 3654, 3691; 5 U.S.C. 552b(g), (j); 5 U.S.C. App.; Pub. L. 107–67, 115 Stat. 514 (2001).

§ 3.1 Composition and responsibilities of Board.

The composition of the Board is described in 39 U.S.C. 202. The Board directs the exercise of the powers of the Postal Service, reviews the practices and policies of the Postal Service, and directs and controls the expenditures of the Postal Service. Consistent with the broad delegation of authority to the Postmaster General in § 3.5 of these bylaws, and except for those powers, duties, or obligations which are specifically vested by statute in the Governors, as distinguished from the Board of Governors, the Board accomplishes its purposes by monitoring the operations and performance of the Postal Service, and

by establishing basic objectives, broad policies, and long-range goals for the Postal Service.

§ 3.2 Compensation of Board.

Section 202(a)(1) of title 39 provides for the compensation of the Governors and for reimbursement for travel and reasonable expenses incurred in attending Board meetings. Compensation is provided for not more than 42 days of meetings per year.

§ 3.3 Matters reserved for decision by the Board.

The following matters are reserved for decision by the Board of Governors:

(a) Adoption of, and amendments to, the bylaws of the Board.

(b) (1) Approval of the annual Postal Service Finance Plan;

(2) Approval of the annual Postal Service Operating Plan;

(3) Approval of the annual Postal Service Capital Plan.

(c) Approval of the annual financial statements of the Postal Service following receipt of the annual report of the Postal Service's independent, certified public accounting firm.

(d) Authorization of the Postal Service, in consultation with the Postal Regulatory Commission, to establish service standards under 39 U.S.C. 3691.

(e) Authorization of the Postal Service to request that the Postal Regulatory Commission submit an advisory opinion on a proposed change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis.

(f) Approval of any use of the authority of the Postal Service to borrow money under 39 U.S.C. 2005 and 39 U.S.C. 2011, except for short-term borrowings, having maturities of one year or less, assumed in the normal course of business.

(g) Approval of the terms and conditions of each series of obligations issued by the Postal Service under 39 U.S.C. 2005 and 39 U.S.C. 2011, including the time and manner of sale and the underwriting arrangements, except for short-term borrowings, having maturities of one year or less, assumed in the normal course of business.

(h) Approval of any use of the authority of the Postal Service to require the Secretary of the Treasury to purchase Postal Service obligations under 39 U.S.C. 2006(b), or to request the Secretary of the Treasury to pledge the full faith and credit of the Government of the United States for the payment of principal and interest on Postal Service obligations under 39 U.S.C. 2006(c).

(i) Determination of the number of officers, described in 39 U.S.C. 204 as Assistant Postmasters General, whether so denominated or not, as the Board authorizes by resolution.

(j) Compensation and benefits of officers of the Postal Service whose positions are included in Level II of the Postal Career Executive Service.

(k) Approval of official statements adopting major policy positions or departing from established major policy positions, and of official positions on legislative proposals having a major impact on the Postal Service.

(l) Approval of all major policy positions taken with the Department of Justice on petitioning the Supreme Court of the United States for writs of certiorari.

(m) Approval and transmittal to the President and the Congress of the annual report of the Postmaster General under 39 U.S.C. 2402.

(n) Approval and transmittal to the Congress of the annual report of the Board under 5 U.S.C. 552b(j).

(o) Approval of the annual comprehensive statement of the Postal Service to Congress under 39 U.S.C. 2401(e).

(p) Approval and transmittal to the Congress of the semi-annual report of the Postmaster General under 39 U.S.C. 3013, summarizing the investigative activities of the Postal Service.

(q) Approval and transmittal to the President and the Congress of the Postal Service's strategic plan pursuant to the Government Performance and Results Act of 1993, 39 U.S.C. 2802; approval of the Postal Service annual performance plan under 39 U.S.C. 2803 and the Postal Service program performance report under 39 U.S.C. 2804, which are included in the comprehensive statement under 39 U.S.C. 2401.

(r) All other matters that the Board may consider appropriate to reserve for its decision.

§ 3.4 Matters reserved for decision by the Governors.

The following matters are reserved for decision by the Governors:

(a) Appointment, pay, term of service, and removal of the Postmaster General, 39 U.S.C. 202(c).

(b) Appointment, term of service, and removal of the Deputy Postmaster General (by the Governors and the Postmaster General, 39 U.S.C. 202(d)); pay of the Deputy Postmaster General, 39 U.S.C. 202(d).

(c) Election of the Chairman, 39 U.S.C. 202(a)(1), and Vice Chairman of the Board of Governors.

(d) Establishment of rates and classes of competitive products of both general and not of general applicability under 39 U.S.C. 3632 in accordance with the procedures set out in sections 3.9 and 3.10 of these bylaws.

(e) Authorization of the Postal Service to adjust the rates and fees for market dominant products under 39 U.S.C. 3622.

(f) Authorization of the Postal Service to request that the Postal Regulatory Commission, under 39 U.S.C. 3642, change the lists of market dominant and competitive products by adding a product, removing a product, or transferring a product.

(g) Authorization of the Postal Service to file a notice with the Postal Regulatory Commission of substantive modifications to the product descriptions in the Mail Classification Schedule.

(h) Authorization of the Postal Service to file a request with the Postal Regulatory Commission for adjustment of rates on an expedited basis due to extraordinary or exceptional circumstances, as provided in 39 U.S.C. 3622(d)(1)(E).

(i) Appointment and removal of the Inspector General under 39 U.S.C. 202(e).

(j) Exercise of the authority of the Governors under 5 U.S.C. App. 8G(f)(3)(A).

(k) The Governors shall meet annually in closed session to discuss compensation and benefits, term of service, and appointment/removal of the Board Secretary and other necessary staff.

(l) Transmittal to the Congress of the semi-annual report of the Inspector General under section 5 of the Inspector General Act.

(m) Establishment of the price of the breast cancer research special postage stamp under 39 U.S.C. 414 and any semipostal stamp under 39 U.S.C. 416.

(n) Selection of an independent, certified public accounting firm to certify the accuracy of Postal Service financial statements as required by 39 U.S.C. 2008(e).

§ 3.5 Delegation of authority by Board.

As authorized by 39 U.S.C. 402, these bylaws delegate to the Postmaster General the authority to exercise the powers of the Postal Service to the extent that this delegation of authority does not conflict with powers reserved to the Governors or to the Board by law, these bylaws, or resolutions adopted by the Board. Any of the powers delegated to the Postmaster General by these bylaws may be redelegated by the Postmaster General to any officer, employee, or agency of the Postal Service.

§ 3.6 Information furnished to Board—financial and operating reports.

(a) To enable the Board to monitor the performance of the Postal Service during the most recent accounting periods for which data are available, postal management shall furnish the Board (on a monthly basis) financial and operating statements for the fiscal year to date, addressing the following categories:

(1) Mail volume by class;

(2) Income and expense by principal categories;

(3) Balance sheet information;

(4) service quality measurements;

(5) productivity measurements (reflecting workload and resource utilization); and

(6) changes in postal costs.

(b) These statements shall include, where applicable, comparable figures for the previous year and the current year's plan.

§ 3.7 Information furnished to Board—program review.

(a) To enable the Board to review the Postal Service operating program, postal management shall furnish the Board information on all aspects of the Postal Service budget plan, including:

(1) The tentative and final annual budgets submitted to the Office of Management and Budget and the Congress, and amendments to the budget;

(2) Five-year plans, annual operating and investment plans, and significant departures from estimates upon which the plans were based;

(3) The need for rate adjustments and the progress of any pending matters before the Postal Regulatory Commission and related litigation; and

(4) Debt financing needs, including a review of all borrowings of the Postal Service from the U.S. Treasury and private sources.

(b) To enable the Board to review the effectiveness of the Postal Service's equal employment opportunity program, performance data relating to this program shall be furnished to the Board at least quarterly. These data shall be categorized in such manner as the Board, from time to time, specifies.

(c) Postal management shall also regularly furnish the Board information regarding major programs for improving postal service or reducing the cost of postal operations.

(d) Management shall furnish to the Board: information regarding any significant, new program, policy, major modification or initiative; any plan to offer a significant, new or unique product or system implementation; or any significant, new project not related directly to the core business function of the Postal Service. This information shall be provided to the Board in advance of entering into any agreement in furtherance of such project. For the purposes of this paragraph, "significant" means a project anticipated to have a notable or conspicuous impact on corporate visibility or the operating budget (including increases in expense amounts) or the capital investment budget. The notification requirement of this paragraph governs applicable projects regardless of the level of expenditure or potential liability involved.

§ 3.8 Information furnished to Board—special reports.

To insure that the Board receives significant information of developments meriting its attention, postal management shall bring to the Board's attention the following matters:

(a) Major developments in personnel areas, including but not limited to equal employment opportunity, career development and training, and grade and salary structures.

(b) Major litigation activities. Postal management shall also notify the Board in a timely manner whenever it proposes to seek review by any United States Court of Appeals of an adverse judicial or regulatory decision significantly impacting the Postal Service or involving a new, novel, or potentially controversial issue.

(c) Any significant changes proposed in the Postal Service's system of accounts or methods of accounting.

(d) Matters of special importance, including but not limited to important research and development initiatives, major changes in Postal Service organization or structure, major law enforcement activities, and other matters having a significant impact upon the relationship of the Postal Service with its employees, with any major branch of Government, or with the general public.

(e) Information concerning any proposed grant of unique or exclusive licenses to use Postal Service intellectual properties (other than patents and technical data rights), or any proposed joint venture involving the use of such property.

(f) Major or significant financial, operational and compliance reports or studies the Postal Service is required by statute or regulation to prepare.

(g) Other matters having important policy implications.

§ 3.9 Establishment of rates and classes of competitive products of general applicability.

This section relates to changes in rates or classes of competitive products of general applicability.

(a) Prior to establishing changes in rates or classes of competitive products of general applicability, postal management shall furnish to the Governors the following:

(1) The proposed rate and classification changes; and

(2) Management analysis demonstrating compliance with the standards of 39 U.S.C. 3633(a).

(b) Pursuant to § 6.6(f) of these bylaws, the Governors shall issue a written decision on any changes in rates or classes of competitive products of general applicability, which shall include a statement as to when the decision becomes effective.

(c) The Secretary shall certify that the vote of the Governors met the condition set forth in section 6.6(f) of these bylaws.

(d) The Secretary shall cause the decision of the Governors and its attached analysis, along with the record of the Governors' proceedings in connection with such decision, to be published in the **Federal Register** at least 30 days before the effective date of the changes in rates or classes of competitive products of general applicability. The record of the proceedings of the Governors consists of the certification by the Secretary of the vote of the Governors.

§ 3.10. Establishment of rates and classes of competitive products not of general applicability.

This section relates to changes in rates and classes of competitive products not of general applicability.

(a) Prior to establishing rates or classes of competitive products not of general applicability, postal management shall furnish to the Governors the following:

(1) The proposed changes in rates or ranges of rates, along with the proposed changes in classes; and

(2) Management analysis demonstrating compliance with the standards of 39 U.S.C. 3633(a).

(b) Pursuant to § 6.6(f) of these bylaws, the Governors shall issue a written decision on any changes in rates or classes of competitive products not of general applicability, which shall include a statement as to when the decision becomes effective.

(c) The Secretary shall certify that the vote of the Governors met the condition set forth in § 6.6(f) of these bylaws.

(d) The Secretary shall cause any decision of the Governors under this

section, along with the record of any proceedings of the Governors, and any supporting documentation required by 39 CFR Part 3015, to be filed with the Postal Regulatory Commission. The record of the proceedings of the Governors consists of the certification by the Secretary of the vote of the Governors.

(e) Postal management is authorized to conclude agreements with customers concerning any rates or classes of competitive products not of general applicability, provided that any such rates are within the range, or such classes are within the scope, of a decision of the Governors then in effect.

PART 4—OFFICIALS (ARTICLE IV)

Sec.
4.1 Chairman.
4.2 Vice Chairman.
4.3 Postmaster General.
4.4 Deputy Postmaster General.
4.5 Assistant Postmasters General, General Counsel, Judicial Officer, Chief Postal Inspector.
4.6 Secretary of the Board.

Authority: 39 U.S.C. 202–205, 401(2), (10), 402, 1003, 3013, 3686.

§ 4.1 Chairman.

(a) The Chairman of the Board of Governors is elected by the Governors from among the members of the Board. The Chairman:

(1) Shall preside at all regular and special meetings of the Board, and shall set the agenda for such meetings;

(2) Shall select and appoint the chairman, vice chairman (if any), and members of any committee properly established by the Board;

(3) Serves a term that commences upon election and expires at the end of the first annual meeting following the meeting at which he or she was elected.

(b) If the Postmaster General is elected Chairman of the Board, the Governors shall also elect one of their number to preside during proceedings dealing with matters upon which only the Governors may vote.

(c)(1) Upon the election of a new Chairman of the Board, the immediate past Chairman shall become Chairman Pro Tempore of the Board, to preside during the absence of the Chairman and Vice Chairman at any meeting of the Board during the year or years following the immediate past Chairman's tenure as Chairman and until another Chairman has been elected.

(2) The Chairman Pro Tempore shall, at the request of the Chairman or Vice-Chairman, serve as the representative of the Board of Governors at conferences, trade shows, ceremonial functions and other meetings important to Postal Service business.

§ 4.2 Vice Chairman.

The Vice Chairman is elected by the Governors from among the members of the Board and shall perform the duties and exercise the powers of the Chairman during the Chairman's absence or disability. The Vice Chairman serves a term that commences upon election and expires at the end of the first annual meeting following the meeting at which he or she was elected.

§ 4.3 Postmaster General.

The appointment and role of the Postmaster General are described at 39 U.S.C. 202(c), 203. The Governors set the compensation and benefits of the Postmaster General by resolution, subject to 39 U.S.C. 1003(a) and 3686.

§ 4.4 Deputy Postmaster General.

The appointment and role of the Deputy Postmaster General are described at 39 U.S.C. 202(d), 203. The Deputy Postmaster General shall act as Postmaster General during the Postmaster General's absence or disability, and when a vacancy exists in the office of Postmaster General. The Governors set the compensation and benefits of the Deputy Postmaster General, subject to 39 U.S.C. 1003(a) and 3686.

§ 4.5 Assistant Postmasters General, General Counsel, Judicial Officer, Chief Postal Inspector.

There are within the Postal Service a General Counsel, a Judicial Officer, a Chief Postal Inspector, and such number of officers, described in 39 U.S.C. 204 as Assistant Postmasters General, whether so denominated or not, as the Board authorizes by resolution. These officers are appointed by, and serve at the pleasure of, the Postmaster General. The Chief Postal Inspector shall report to, and be under the general supervision of, the Postmaster General. The Postmaster General shall promptly notify the Governors and both Houses of Congress in writing if he or she removes the Chief Postal Inspector or transfers the Chief Postal Inspector to another position or location within the Postal Service, and shall include in any such notification the reasons for such removal or transfer.

§ 4.6 Secretary of the Board.

The Secretary of the Board of Governors is appointed by the Governors and serves at the pleasure of the Governors. The Secretary shall be responsible for carrying out the functions of the Office of the Board of Governors, under the direction of the Chairman of the Board. The Secretary shall also issue notices of meetings of the Board and its committees, keep minutes of these meetings, and take steps necessary for compliance with all statutes and regulations dealing with public observation of meetings. The Secretary shall perform all those duties incident to this office, including those duties assigned by the Board or by the Chairman of the Board. The Chairman may designate such assistant secretaries as may be necessary to perform any of the duties of the Secretary.

PART 5—COMMITTEES (ARTICLE V)

Sec.
5.1 Establishment and appointment.
5.2 Committee procedure.

Authority: 39 U.S.C. 202, 203, 204, 205, 401(2), (10), 1003.

§ 5.1 Establishment and appointment.

From time to time the Board may establish by resolution special and standing committees of one or more members of the Board. The Board shall specify, in the resolution establishing any committee, whether the committee is authorized to submit recommendations or preliminary decisions to the Board, to conduct hearings for the Board, or otherwise to take action on behalf of the Board. Each committee may exercise only those duties, functions, and powers prescribed from time to time by the Board, and the Board may affirm, alter, or revoke any action of any committee. Each member of the Board may have access to all of the information and records of any committee at any time. The Chairman of the Board shall appoint the chairman, vice chairman (if any), and members of each committee, who serve terms which expire at the end of each annual meeting. Each committee chairman may assign responsibilities to members of the committee that are considered appropriate. The committee chairman, or the chairman's designee, shall preside at all meetings of the committee.

§ 5.2 Committee procedure.

Each committee establishes its own rules of procedure, consistent with these bylaws, and meets as provided in its rules. A majority of the members of a committee constitute a quorum.

PART 6—MEETINGS (ARTICLE VI)

Sec
6.1 Regular meetings, annual meeting.
6.2 Special meetings.
6.3 Notice of meetings.
6.4 Attendance by conference telephone call.
6.5 Minutes of meetings.
6.6 Quorum and voting.

Authority: 39 U.S.C. 202, 205, 401(2), (10), 1003, 3622, 3632; 5 U.S.C. 552b(e), (g).

§ 6.1 Regular meetings, annual meeting.

The Board shall meet regularly on a schedule established by the Board. The first regular meeting of each calendar year is designated as the annual meeting. Consistent with the provisions of §§ 6.6 and 7.5 of these bylaws, the time or place of a regular or annual meeting may be varied by recorded vote, with the earliest practicable notice to the Secretary. The Secretary shall distribute to the members an agenda setting forth the proposed subject matter for any regular or annual meeting in advance of the meeting.

§ 6.2 Special meetings.

Consistent with the provisions of §§ 6.6 and 7.5 of these bylaws, the Chairman may call a special meeting of the Board at any place in the United States, with the earliest practicable notice to the other members of the Board and to the Secretary, specifying the time, date, place, and subject matter of the meeting. Consistent with the provisions of §§ 6.6 and 7.5 of these bylaws, by recorded vote a majority of the members of the Board may call a special meeting of the Board at any place in the United States, with the earliest practicable notice to the other members of the Board and to the Secretary, specifying the time, date, place and subject matter of the meeting.

§ 6.3 Notice of meetings.

The Chairman or the members of the Board may give the notice required under § 6.1 or § 6.2 of these bylaws in oral, written, or e-mail form. Oral notice to a member may be delivered by telephone and is sufficient if made to the member personally or to a responsible person in the member's home or office. Any oral notice to a member must be subsequently confirmed by written or e-mail notice. Written notice to a member may be delivered by mail addressed to the member's mailing address of record filed with the Secretary. Notice by e-mail may be addressed to the member's e-mail address of record filed with the Secretary. Except for written or e-mail notice confirming a previous oral notice, a written or e-mail notice must be sent in sufficient time to reach the address of record at least 2 days before the meeting date under normal delivery conditions. A member waives notice of any meeting by attending the meeting, and may otherwise waive notice of any meeting at any time. No notice—whether oral, written, or e-mail—to the Secretary is sufficient until actually received by the Secretary. The Secretary may not waive notice of any meeting.

§ 6.4 Attendance by conference telephone call.

For regularly scheduled meetings of the Board, members are expected to attend in person. Unless prohibited by law or by these bylaws, however, a member of the Board, under exceptional circumstances, may participate in a meeting of the Board by conference telephone or similar communications equipment which enables all persons participating in the meeting to hear each other and which permits full compliance with the provisions of these bylaws concerning public observation of meetings. Attendance at a meeting by this method constitutes presence at the meeting and a member of the Board may be paid for his or her participation provided such meeting addresses substantive, as opposed to procedural or administrative, matters on which the Board has decisionmaking authority.

§ 6.5 Minutes of meetings.

The Secretary shall preserve the minutes of Board meetings prepared under § 4.6 of these bylaws. After the minutes of any meeting are approved by the Board, the Secretary shall promptly make available to the public, in the Corporate Communications Department at Postal Service Headquarters, or in another place easily accessible to the public, copies of the minutes, except for those portions which contain information inappropriate for public disclosure under 5 U.S.C. 552(b) or 39 U.S.C. 410(c).

§ 6.6 Quorum and voting.

As provided by 39 U.S.C. 205(c), the Board acts by resolution upon a majority vote of those members who attend a meeting in person or by teleconference. No proxies are allowed in any vote of the members of the Board. Any 6 members constitute a quorum for the transaction of business by the Board, except:

(a) In the appointment or removal of the Postmaster General, and in setting the compensation and benefits of the Postmaster General and Deputy Postmaster General, 39 U.S.C. 205(c)(1) requires a favorable vote of an absolute majority of the Governors in office;

(b) In the appointment or removal of the Deputy Postmaster General, 39 U.S.C. 205(c)(2) requires a favorable vote of an absolute majority of the Governors in office and the Postmaster General;

(c) In the appointment, removal, or in the setting of the compensation and benefits of the Secretary, Assistant Secretary, or other necessary staff, a favorable vote of an absolute majority of the Governors in office is required;

(d) In the determination to close a portion of a meeting or to withhold information concerning a meeting, 5 U.S.C. 552b(d)(1) requires a vote of a majority of the entire membership of the Board; and

(e) In the decision to call a meeting with less than a week's notice, 5 U.S.C. 552b(e)(1) requires a vote of a majority of the members of the Board. In the decision to change the subject matter of a meeting, or the determination to open or close a meeting, 5 U.S.C. 552b(e)(2) requires a vote of a majority of the entire membership of the Board.

(f) In establishing rates or classes of competitive products of both general and not of general applicability in §§ 3.9 and 3.10 of these bylaws, 39 U.S.C. 3632(a) requires the concurrence of a majority of all of the Governors then holding office.

(g) In removing the Inspector General for cause, 39 U.S.C. 202(e) requires the written concurrence of at least 7 Governors.

PART 7—PUBLIC OBSERVATION (ARTICLE VII)

Sec.

Authority: 39 U.S.C. 410; 5 U.S.C. 552b(a)–(m).

§ 7.1 Definitions.

For purposes of §§ 7.2 through 7.8 of these bylaws:

(a) The term *Board* means the Board of Governors, and any subdivision or committee of the Board authorized to take action on behalf of the Board.

(b) The term *meeting* means the deliberations of at least the number of individual members required to take action on behalf of the Board under § 5.2 or § 6.6 of these bylaws, where such deliberations determine or result in the joint conduct or disposition of the official business of the Board. The term "meeting" does not include any procedural deliberations required or permitted by §§ 6.1, 6.2, 7.4, or 7.5 of these bylaws.

§ 7.2 Open meetings.

(a) It is the policy of the United States, established in section 2 of the

Government in the Sunshine Act, Public Law 94–409, 90 Stat. 1241, that the public is entitled to the fullest practicable information regarding the decisionmaking processes of the Federal Government. The Postal Service is charged to provide the public with this information while protecting the rights of individuals and the ability of the Government to carry out its responsibilities. Accordingly, except as specifically permitted by statute, every portion of every meeting of the Board of Governors is open to public observation.

(b) Except as provided in § 7.3 of these bylaws, every portion of every meeting of the Board is open to public observation. Members of the Board may not jointly conduct or dispose of business of the Board without complying with §§ 7.2 through 7.8 of these bylaws. Members of the public may obtain access to documents considered at meetings to the extent provided in the regulations of the Postal Service concerning the release of information.

(c) Without the permission of a majority of the Board, no person may participate in, film, televise, or broadcast any portion of any meeting of the Board. Any person may electronically record or photograph a meeting, as long as that action does not tend to impede or disturb the members of the Board in the performance of their duties, or members of the public while attempting to attend or observe a meeting of the Board. The rules and penalties of 39 CFR Part 232, concerning conduct on postal property, apply with regard to meetings of the Board.

§ 7.3 Exceptions.

Section 7.2 of these bylaws does not apply to a portion of a meeting, and §§ 7.4 and 7.5 do not apply to information concerning the meeting which otherwise would be required to be disclosed to the public, if the Board properly determines that the public interest does not require otherwise, and that such portion of the meeting or the disclosure of such information is likely to:

(a) Disclose matters that are:

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy, and

(2) In fact properly classified under that Executive order;

(b) Relate solely to the internal personnel rules and practices of the Postal Service, including the Postal Service position in negotiations or consultations with employee organizations.

(c) Disclose matters specifically exempted from disclosure by statute (other than the Freedom of Information Act, 5 U.S.C. 552), provided that the statute:

(1) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(2) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential, such as market information pertinent to Postal Service borrowing or investments, technical or patent information related to postal mechanization, or commercial information related to purchases of real estate;

(e) Involve accusing any person of a crime, or formally censuring any person;

(f) Disclose information of a personal nature, such as personal or medical data regarding any individual if disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in those records, but only to the extent that the production of those records or information would:

(1) Interfere with enforcement proceedings,

(2) Deprive a person of a right to a fair trial or an impartial adjudication,

(3) Constitute an unwarranted invasion of personal privacy,

(4) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(5) Disclose investigative techniques and procedures, or

(6) Endanger the life or physical safety of law enforcement personnel;

(h) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(i) Disclose information the premature disclosure of which would be likely significantly to frustrate implementation of a proposed action of the Board, such as information relating to the negotiation of a labor contract or proposed Postal Service procurement activity, except that this provision does not apply in any instance where:

(1) The Postal Service has already disclosed to the public the content or nature of the proposed action, or

(2) The Postal Service is required by law to make such disclosure on its own initiative before taking final action on the proposal; or

(j) Specifically concern the issuance of a subpoena by the Postal Service, or the participation of the Postal Service in a civil action or proceeding, such as a postal rate or classification proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Postal Service of a particular case of formal adjudication under the procedures of 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

§ 7.4 Procedure for closing a meeting.

(a) A majority of the entire membership of the Board may vote to close a portion of a meeting or to withhold information concerning a meeting under the provisions of § 7.3 of these bylaws. The members shall take a separate vote with respect to each meeting a portion of which is proposed to be closed to the public, or with respect to any information which is proposed to be withheld, and shall make every reasonable effort to take any such vote at least 8 days before the date of the meeting involved. The members may take a single vote with respect to a series of meetings, portions of which are proposed to be closed to the public, or with respect to information concerning the series, so long as each portion of a meeting in the series involves the same particular matters, and no portion of any meeting is scheduled to be held more than 30 days after the initial portion of the first meeting in the series.

(b) Whenever any person whose interest may be directly affected by a portion of a meeting requests that the Board close that portion to the public for any of the reasons referred to in § 7.3(e), (f), or (g) of these bylaws, upon request of any one of its members the Board shall vote by recorded vote whether to close that portion of the meeting.

(c) The Secretary shall record the vote of each member participating in a vote under paragraph (a) or (b) of this section. Within 1 day of any vote under paragraph (a) or (b) of this section, the Secretary shall make publicly available a written copy of the vote showing the vote of each member on the question. If a portion of a meeting is to be closed to the public, the Secretary shall, within 1 day of the vote, make publicly available a full written explanation of the action

closing the portion, together with a list of all persons expected to attend the meeting and their affiliation.

§ 7.5 Public notice of meetings, subsequent changes.

(a) At least one week before any meeting of the Board, the Secretary shall publicly announce the time, date, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by the Board to respond to requests for information about the meeting.

(b) By a recorded vote, a majority of the members of the Board may determine that the business of the Board requires a meeting to be called with less than a week's notice. At the earliest practicable time, the Secretary shall publicly announce the time, date, place, and subject matter of the meeting, and whether it is to be open or closed to the public.

(c) Following the public announcement required by paragraphs (a) or (b) of this section:

(1) As provided in § 6.1 of these bylaws, the Board may change the time or place of a meeting. At the earliest practicable time, the Secretary shall publicly announce the change.

(2) A majority of the entire membership of the Board may change the subject matter of a meeting, or the determination to open or close a meeting to the public, if it determines by a recorded vote that the change is required by the business of the Board and that no earlier announcement of the change was possible. At the earliest practicable time, the Secretary shall publicly announce the change, and the vote of each member upon the change.

(d) Immediately following each public announcement required under paragraphs (a), (b), or (c) of this section, the Secretary shall submit for publication in the **Federal Register** a notice of the time, date, place, and subject matter of the meeting, whether the meeting is open or closed, any change in the preceding, and the name and phone number of the official designated by the Board to respond to requests for information about the meeting. The Secretary shall also submit the announcement and information to the Corporate Communications Department for dissemination to the public.

§ 7.6 Certification and transcripts of closed meetings.

(a) At the beginning of every meeting or portion of a meeting closed under § 7.3(a) through (j) of these bylaws, the General Counsel shall publicly certify that, in his or her opinion, the meeting or portion of the meeting may be closed to the public, stating each relevant exemptive provision. The Secretary shall retain this certification, together with a statement from the officer presiding at the meeting which sets forth the time and place of the meeting, and the persons present.

(b) The Secretary shall arrange for a complete transcript or electronic recording adequate to record fully the proceedings to be made of each meeting or portion of a meeting of the Board which is closed to the public. The Secretary shall maintain a complete verbatim copy of the transcript, or a complete electronic recording of each meeting or portion of a meeting closed to the public for at least 2 years after the meeting, or for 1 year after the conclusion of any Postal Service proceeding with respect to which the meeting was held, whichever occurs later.

(c) Except for those items of discussion or testimony which the Board, by a majority vote of those members who are present, determines to contain information which may be withheld under § 7.3 of these bylaws, the Secretary shall promptly make available to the public, in the Corporate Communications Department at Postal Service Headquarters, or in another place easily accessible to the public, the transcript or electronic recording of a closed meeting, including the testimony of any witnesses received at the meeting. The Secretary shall furnish a copy of this transcript, or a transcription of this electronic recording disclosing the identity of each speaker, to any person at the actual cost of duplication or transcription.

§ 7.7 Enforcement.

(a) Under 5 U.S.C. 552b(g), any person may bring a proceeding in the United States Court of Appeals for the District of Columbia to set aside any provisions of these bylaws which are not in accord with the requirements of 5 U.S.C. 552b (a)–(f) and to require the promulgation of provisions that are in accord with those requirements.

(b) Under 5 U.S.C. 552b(h) any person may bring a civil action against the Board in an appropriate U.S. District Court to obtain judicial review of the alleged failure of the Board to comply with 5 U.S.C. 552b(a)–(f). The burden is on the Board to sustain its action. The court may grant appropriate equitable relief, including enjoining future violations, or ordering the Board to make public information improperly withheld from the public.

(c) Under 5 U.S.C. 552b(i) the court may assess against any party reasonable attorney fees and other litigation costs reasonably incurred by any other party who substantially prevails, except that the court may assess costs against the plaintiff only if the court finds that he initiated the suit primarily for frivolous or dilatory purposes.

§ 7.8 Open meetings, Freedom of Information, and Privacy of Information.

The provisions of 5 U.S.C. 552b(c)(1)–(10), enacted by Public Law 94–409, the Government in the Sunshine Act, govern in the case of any request under the Freedom of Information Act, 5 U.S.C. 552, to copy or to inspect the transcripts or electronic recordings described in § 7.6 of these bylaws. Nothing in 5 U.S.C. 552b authorizes the Board to withhold from any individual any record, including the transcripts or electronic recordings described in § 7.6 of these bylaws, to which the individual may otherwise have access under 5 U.S.C. 552a, enacted by the Privacy Act of 1974, Public Law 93–579.

PART 8—[RESERVED]

PART 9—[RESERVED]

PART 10—RULES OF CONDUCT FOR POSTAL SERVICE GOVERNORS (ARTICLE X)

Sec.
10.1 Applicability.
10.2 Advisory service.
10.3 Post-employment activities.
10.4 Financial disclosure reports.

Authority: 39 U.S.C. 401(2), (10).

§ 10.1 Applicability.

This part contains rules of conduct for the members of the Board of Governors of the United States Postal Service. As special employees within the meaning of 18 U.S.C. 202(a), the members of the Board are also subject to the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635, and Postal Service regulations supplemental thereto, 5 CFR part 7001.

§ 10.2 Advisory service.

(a) The General Counsel is the Ethical Conduct Officer of the Postal Service and the Designated Agency Ethics Official for purposes of the Ethics in Government Act, as amended, and the implementing regulations of the Office of Government Ethics, including 5 CFR part 2638.

(b) A Governor may obtain advice and guidance on questions of conflicts of interest, and may request any ruling provided for by either the Standards of Ethical Conduct for Employees of the

Executive Branch, or the Postal Service regulations supplemental thereto, from the General Counsel or a designated assistant.

(c) If the General Counsel determines that a Governor is engaged in activity which involves a violation of federal statute or regulation, including the ethical conduct regulations contained in 5 CFR parts 2635 and 7001, or conduct which creates the appearance of such a violation, he or she shall bring this to the attention of the Governor or shall notify the Chairman of the Board of Governors, or the Vice Chairman, as appropriate.

§ 10.3 Post-employment activities.

Governors are subject to the restrictions on the post-employment activities of special Government employees imposed by 18 U.S.C. 207. Guidance concerning post-employment restrictions applicable to Governors may be obtained in accordance with section 10.2(b).

§ 10.4 Financial disclosure reports.

(a) *Requirement of submission of reports.* At the time of their nomination, Governors complete a financial disclosure report which, under the practice of the Senate Governmental Affairs Committee, is kept confidential. Because the Director of the Office of Government Ethics has ruled that Governors who do not perform the duties of their office for more than 60 days in any calendar year are not required to file financial disclosure reports that are open to the public, Governors file non-public reports annually, in accordance with this section. A Governor who performs the duties of his or her office for more than 60 days in a particular calendar year is required to file a public report in accordance with 5 CFR 2634.204(c).

(b) *Person with whom reports should be filed and time for filing.* (1) A Governor shall file a financial disclosure report with the General Counsel on or before May 15 of each year when the Governor has been in office for more than 60 consecutive calendar days during the previous year.

(2) The General Counsel may, for good cause shown, grant to a Governor an extension of up to 45 days. An additional extension of up to 45 days may be granted by the Director of the Office of Government Ethics for good cause shown.

(c) *Information required to be reported.* Each report shall be a full and complete statement, on the form prescribed by the General Counsel and the Office of Government Ethics and in accordance with instructions issued by him or her. The form currently in use is Standard Form 278.

(d) *Reviewing reports.* (1) Financial disclosure reports filed in accordance with the provisions of this section shall, within 60 days after the date of filing, be reviewed by the General Counsel who shall either approve the report, or make an initial determination that a conflict or appearance thereof exists. If the General Counsel determines initially that a conflict or the appearance of a conflict exists, he or she shall inform the Governor of his determination.

(2) If the General Counsel considers that additional information is needed to complete the report or to allow an adequate review to be conducted, he or she shall request the reporting Governor to furnish that information by a specified date.

(3) The General Counsel shall refer to the Chairman of the Board of Governors or the Vice Chairman the name of any Governor he or she has reasonable cause to believe has wrongfully failed to file a report or has falsified or wrongfully failed to report required information.

(e) *Custody of and public access to reports.* (1) *Retention of reports.* Each report filed with the General Counsel shall be retained by him or her for a period of six years. After the six-year period, the report shall be destroyed unless needed in connection with an investigation then pending.

(2) *Confidentiality of reports.* Unless a public report is required by this section, the financial disclosure reports filed by Governors shall not be made public.

PART 11—ADVISORY BOARDS (ARTICLE XI)

Authority: 39 U.S.C. 202, 205, 401(2), (10), 402, 403.

§ 11.1 Establishment.

The Board of Governors may create such advisory boards as it may deem appropriate and may appoint persons to serve thereon or may delegate such latter authority to the Postmaster General.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. E8–30020 Filed 12–23–08; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 3

[EPA–HQ–OEI–2003–0001; FRL–8757–2]

Extension of Cross–Media Electronic Reporting Rule Deadline for Authorized Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending the Final Cross-Media Electronic Reporting Rule (CROMERR) deadline for authorized programs (states, tribes, or local governments) with existing electronic document receiving systems to submit an application for EPA approval to revise or modify their authorized programs. This action will extend the current October 13, 2008, deadline until January 13, 2010.

DATES: This rule is effective on December 24, 2008.

ADDRESSES: The public record for this rulemaking has been established under Docket ID No. EPA–HQ–OEI–2003–0001, and may be accessed online at *http://www.regulations.gov*. Docket materials are also available in hard copy at the CROMERR Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue, 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 CROMERR Docket is (202) 566–1752.

For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

FOR FURTHER INFORMATION CONTACT: Evi Huffer, Office of Environmental Information (2823T), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; (202) 566–1697; *huffer.evi@epa.gov*, or David Schwarz, Office of Environmental Information (2823T), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; (202) 566–1704; *schwarz.david@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. What Does This Rule Do?

This rule provides temporary regulatory relief to states, tribes, and local governments with "authorized programs" as defined in 40 Code of Federal Regulations (CFR) 3.3. Any such authorized program that operates an

"existing electronic document receiving system" as defined in 40 CFR 3.3 will have an additional 15 months to submit an application to revise or modify its authorized program to meet the requirements of 40 CFR Part 3. Specifically, this final rule amends 40 CFR 3.1000(a)(3) by extending the October 13, 2008, deadline to January 13, 2010.

II. Why Is EPA Taking This Action?

EPA published a notice of proposed rulemaking on October 17, 2008 (73 FR 61773). As discussed in that proposal, after setting the current deadline, EPA learned that some states and local agencies currently working to comply with CROMERR have experienced an unanticipated delay in the completion of necessary upgrades to their electronic document receiving systems. EPA believes it is appropriate to extend the submission deadline for applications related to existing systems by an additional 15 months.

III. Response to Comments

EPA received two comments on the proposed rule. The comments opposed the extension of the application deadline on the basis that the extension would prevent enforcement of environmental laws. The commenters stated that states, tribes, and local governments have had sufficient time to submit applications. One commenter noted that those states who were not able to meet the October 13, 2008 deadline could apply for case-by-case extensions.

EPA's Response:

EPA disagrees that the extension will prevent enforcement of environmental laws. As noted in both comments, CROMERR does not require that states comply with CROMERR by the deadline, but rather directs them to submit an application to EPA. The mere submission of an application under CROMERR does not materially impact the enforceability of environmental programs. In the three years since CROMERR was issued, EPA has been working closely with states, tribes, and local governments. While some states and local agencies submitted their applications before the deadline, other states and local agencies have been working on completing the necessary upgrades to their electronic document receiving systems before submitting their application. EPA believes that requiring states, tribes, and local agencies to file an incomplete or inadequate application just to meet a regulatory deadline would be a waste of resources, both for EPA and the state, tribe, or local agency. Further, some states, tribes, or local agencies may not qualify for the CROMERR case-by-case extension because it applies only where the "state, tribe, or local government needs additional time to make legislative or regulatory changes. * * *" EPA believes extension of the deadline until January 13, 2010, appropriately balances the purposes of the CROMERR standards and the legitimate need of states, tribes, and local governments to have additional time to complete the necessary upgrades to their systems and submit complete applications.

IV. Does This Action Apply to Me?

This action will affect states, tribes, and local governments that have an authorized program as defined in 40 CFR 3.3 and also have an existing electronic document receiving system, as defined in 40 CFR 3.3. For purposes of this rulemaking, the term "state" includes the District of Columbia and the United States territories, as specified in the applicable statutes. That is, the term "state" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of Northern Marina Islands, and the Trust Territory of the Pacific Islands, depending on the statute.

Category	Examples of affected entities
Local government	Publicly owned treatment works, owners and operators of treatment works treating domestic sewage, local and regional air boards, local and regional waste management authorities, and municipal and other drinking water authorities.
Tribe and State governments	States, tribes or territories that administer any federal environmental programs delegated, authorized, or approved by EPA under Title 40 of the CFR.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. 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.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This action merely extends the current due date for submitting applications under CROMERR for authorized programs with existing electronic document receiving systems, and imposes no additional requirements. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (40 CFR Part 3) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2025–0003, EPA ICR number 2002.04. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR Part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative 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 this final rule on small entities, a small entity is defined as: (1) A small business that meets the definition for small businesses based on SBA size standards at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000 (Under the RFA definition, States and tribal governments are not considered small governmental jurisdictions.); 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 possibility of economic impacts of today's final rule on small entities, I certify that this

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

This final rule merely extends the current regulatory schedule for submitting applications under CROMERR for authorized programs with existing electronic document receiving systems. EPA has therefore concluded that today's final rule will relieve regulatory burden for all affected small entities.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, tribe, or local governments or the private sector. This action merely extends the current due date for submitting applications under CROMERR for authorized programs with existing electronic document receiving systems, and imposes no additional requirements. EPA has determined that this rule does not contain a federal mandate that may result in expenditures of $100 million or more for states, tribes, and local governments, in the aggregate, or the private sector in any one year. Thus, today's action is not subject to the requirements of sections 202 and 205 of UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action merely extends the current due date for submitting applications under CROMERR for authorized programs with existing electronic document receiving systems, and imposes no additional requirements.

E. Executive Order 13132: Federalism

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

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action merely extends the current due date for submitting applications under CROMERR for authorized programs with existing electronic document receiving systems, and imposes no additional requirements. Thus, Executive Order 13132 does not apply to this rule.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law. This action merely extends the current due date for submitting applications under CROMERR for authorized programs with existing electronic document receiving systems, and imposes no additional requirements. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Children's Health Protection

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation.

This final rule is not subject to Executive Order 13045 because it is not an economically significant action as defined by Executive Order 12866 and it does not establish an environmental standard intended to mitigate health or safety risks. This action merely extends the current regulatory schedule for submitting applications under CROMERR for authorized programs with existing electronic document receiving systems, and imposes no additional requirements.

H. Executive Order 13211: Energy Effects

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 standards bodies. The NTTAA directs EPA to provide Congress, through OMB, with explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Today's action does not involve technical standards. EPA's compliance with section 12(d) of the National Technology Transfer and Advancement Act of 1995 (Public Law 104–113, section 12(d) (15 U.S.C. 272 note)) has been addressed in the preamble of the underlying final rule (70 FR 59848, October 13, 2007).

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This final rule merely extends the current regulatory schedule for submitting applications under CROMERR for authorized programs with existing electronic document receiving systems.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is publishedin the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will become effective on December 24, 2008.

List of Subjects in 40 CFR Part 3

Environmental protection, Conflict of interests, Electronic records, Electronic reporting requirements, Electronic reports, Intergovernmental relations.

Dated: December 19, 2008.

Stephen L. Johnson,

Administrator.

■ Therefore, title 40 chapter I of the Code of Federal Regulations is amended as follows:

PART 3—ELECTRONIC REPORTING

■ 1. The authority citation for Part 3 continues to read as follows:

Authority: 7 U.S.C. 136 to 136y; 15 U.S.C. 2601 to 2692; 33 U.S.C. 1251 to 1387; 33 U.S.C. 1401 to 1445; 33 U.S.C. 2701 to 2761; 42 U.S.C. 300f to 300j–26; 42 U.S.C. 4852d; 42 U.S.C. 6901–6992k; 42 U.S.C. 7401 to 7671q; 42 U.S.C. 9601 to 9675; 42 U.S.C. 11001 to 11050; 15 U.S.C. 7001; 44 U.S.C. 3504 to 3506.

Subpart D—Electronic Reporting Under EPA-Authorized State, Tribe, and Local Programs

■ 2. Section 3.1000 is amended by revising paragraph (a)(3) to read as follows:

§ 3.1000 How does a state, tribe, or local government revise or modify its authorized program to allow electronic reporting?

(a) * * *

(3) *Programs already receiving electronic documents under an authorized program:* A state, tribe, or local government with an existing electronic document receiving system for an authorized program must submit an application to revise or modify such authorized program in compliance with paragraph (a)(1) of this section no later than January 13, 2010. On a case-by-case basis, this deadline may be extended by the Administrator, upon request of the state, tribe, or local government, where the Administrator determines that the state, tribe, or local government needs additional time to make legislative or regulatory changes in order to meet the requirements of this part.

* * * * *

[FR Doc. E8–30680 Filed 12–23–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 59

[EPA–HQ–OAR–2006–0971; FRL–8757–1]

RIN 2060–AP33

National Volatile Organic Compound Emission Standards for Aerosol Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; withdrawal of direct final rule.

SUMMARY: EPA published a direct final rule and parallel proposal on November 7, 2008 (73 FR 66184) to amend the national volatile organic compound (VOC) emission standards for aerosol coatings, which EPA promulgated on March 24, 2008 (73 FR 15604), by extending the compliance date and changing the submittal date for initial notification reports. Because we received an adverse comment during the comment period on the direct final rule and parallel proposal, in this action we are both withdrawing the direct final rule and issuing a final rule based on the notice of proposed rulemaking after considering the comment.

DATES: This final rule revision is effective on December 24, 2008. The withdrawal of the direct final rule published on November 7, 2008 (73 FR 66184) is effective on December 24, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2006–0971. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available (*e.g.*, Confidential Business Information (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 form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Docket ID No. EPA–HQ–OAR–2006–0971, Public Reading Room, 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 Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. J. Kaye Whitfield, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (E143–03), Research Triangle Park, NC 27711; telephone number (919) 541–2509; facsimile number (919) 541–3470; e-mail address: *whitfield.kaye@epa.gov*.

SUPPLEMENTARY INFORMATION: On November 7, 2008, EPA published a direct final rule and parallel proposal (73 FR 66184) to amend the national VOC emission standards for aerosol coatings (73 FR 15604). In today's action, we withdraw the direct final rule, respond to the comment received, and issue a final rule based on the November 7, 2008, notice of proposed rulemaking.

We stated in the direct final rule that if we received adverse comments by December 8, 2008, the direct final rule would not take effect and we would

publish a timely withdrawal in the **Federal Register**. We subsequently received an adverse comment on the direct final rule and are withdrawing it. As stated in the direct final rule and the parallel proposed rule, we will not institute a second comment period on this action.

Concurrent with the direct final rule, we published a separate notice of proposed rulemaking to provide for the contingency of adverse comments on the direct final rule (73 FR 66184). With today's action, we are issuing a final rule based on the notice of proposed rulemaking and are addressing the comment received.

Judicial Review. Under Section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by February 23, 2009. Under CAA section 307(d)(7)(B), only an objection to the final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under CAA section 307(b)(2), any requirements established by the final action may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides a mechanism for EPA to convene a proceeding for reconsideration, "if the person raising the objection can demonstrate to the Administrator that it was impracticable to raise such objection within the period for public comment or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the rule." Any person seeking to make such a demonstration to EPA should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section and the Director of the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344–A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20004.

I. What Action Is EPA Taking?

In today's action, EPA is withdrawing the direct final rule published on November 7, 2008 (73 FR 66184) and taking final action on the proposed rule on national VOC emission standards for aerosol coatings, published on November 7, 2008 (73 FR 66209).

First, because we received an adverse comment on the direct final rule and parallel proposal, the direct final rule is being withdrawn.

Second, after considering the adverse comment, we are taking final action on the proposed rule published on November 7, 2008 (73 FR 66209). The adverse comment was submitted by the Harris County (Texas) Public Health and Environmental Services. The commenter asserted that the action was unclear, and that the commenter was unable to discern whether the proposed rule would improve or adequately protect public health. EPA disagrees with the commenter's assertion that the action was not fully explained in the November 7, 2008, notice (73 FR 66184). The direct final rule clearly stated that the rule would only amend the national VOC emission standards for aerosol coatings (73 FR 15604, March 24, 2008) in two respects: (1) By moving the compliance date from January 1, 2009, to July 1, 2009; and (2) by making initial notification reports due on the compliance date, as opposed to 90 days in advance of the compliance date. There were no substantive changes to the levels of control afforded by the March 24, 2008, rule. Therefore, this rule maintains the same level of protection of the public health as the March 24, 2008, rule.

In today's action, we are taking final action on the parallel proposed rule published November 7, 2008 (73 FR 66184), as follows. First, today's action will move the applicability and initial compliance date for aerosol coatings, as specified in sections 59.501(c) and 59.502(a) from January 1, 2009, to July 1, 2009. Second, initial notification reports required under sections 59.501(f)(3)(i), 59.511(b) and 59.511(e) will be due on the compliance date, as opposed to 90 days in advance of the compliance date. These changes are necessary to allow EPA time to conduct rulemaking to add compounds (and their associated reactivity factors) that are currently used in aerosol coatings but were not included on the list in Table 2 of the rule as promulgated on March 24, 2008; and to allow regulated entities sufficient time to develop initial notification reports based on the revised tables. Furthermore, making initial notification reports due on the compliance date will result in the aerosol coatings rule being more consistent with the requirements of other 40 CFR part 59 rules, thereby increasing clarity and avoiding confusion on the part of regulated entities. Finally, as discussed above, the rule as modified by today's action makes no substantive changes to the levels of control afforded by the March 24, 2008, rule.

II. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

B. Paperwork Reduction Act

This action does not impose any new information collection burden because it does not add any new information collection requirements; it only moves dates by which regulated entities are required to submit information and otherwise comply with the rule. No additional information collection is necessary for this action. However, OMB has previously approved the information collection requirements contained in the existing regulations (73 FR 15604) under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0617. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative 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 rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule will not impose any requirements on small entities. We have

determined that small businesses will not incur any adverse impacts because this action does not create any new requirements or burdens; it only moves the dates by which persons are required to submit information and otherwise comply with the rule. No costs are associated with these amendments.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or Tribal governments or the private sector. The action imposes no enforceable duty on any State, local or Tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. As noted above, this rule does not create any new requirements or burdens; it extends the date by which regulated entities must be in compliance.

E. Executive Order 13132: Federalism

EO 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 EO to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in EO 13132. The CAA establishes the relationship between the Federal Government and the States, and this action does not impact that relationship. The final rule requirements will not supersede State regulations that are more stringent. Thus, EO 13132 does not apply to this rule.

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

This action does not have Tribal implications, as specified in EO 13175 (65 FR 67249, November 9, 2000). The final regulatory action does not have a substantial direct effect on one or more Indian tribes, in that this action imposes no regulatory burdens on tribes. Thus, EO 13175 does not apply to this action.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it is based solely on technology performance.

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

This action is not subject to EO 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

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

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

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EO 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action extends the compliance date of the rule from January 1, 2009, to July 1, 2009, and does not relax the control measures on sources regulated by the rule.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective December 24, 2008.

List of Subjects in 40 CFR Part 59

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

Dated: December 19, 2008.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, part 59 of title 40 of the Code of Federal Regulations is amended as follows:

PART 59—[AMENDED]

■ 1. The authority citation for part 59 continues to read as follows:

Authority: 42 U.S.C 7414 and 7511b(e).

Subpart E—[Amended]

■ 2. Section 59.501 is amended by revising the first sentence of paragraph (c) and the first sentence of paragraph (f)(3)(i) to read as follows:

§ 59.501 Am I subject to this subpart?

* * * * *

(c) Except as provided in paragraph (e) of this section, the provisions of this subpart apply to aerosol coatings manufactured on or after July 1, 2009, for sale or distribution in the United States.* * *

* * * * *

(f) * * *

(3) * * *

(i) You must submit an initial notification no later than the compliance date stated in § 59.502(a), or on or before the date that you start manufacturing aerosol coating products that are sold in the United States, whichever is later. * * *

* * * * *

■ 3. Section 59.502 is amended by revising paragraph (a) to read as follows:

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

(a) Except as provided in § 59.509 and paragraphs (b) and (c) of this section, you must be in compliance with all provisions of this subpart by July 1, 2009.

* * * * *

■ 4. Section 59.511 is amended by revising the first sentence of paragraph (b) introductory text and the first sentence of paragraph (e) introductory text to read as follows:

§ 59.511 What notifications and reports must I submit?

* * * * *

(b) You must submit an initial notification no later than the compliance date stated in § 59.502, or on or before the date that you first manufacture, distribute, or import aerosol coatings, whichever is later. * * *

* * * * *

(e) If you claim the exemption under § 59.501(e), you must submit an initial notification no later than the compliance date stated in 59.502(a), or on or before the date that you first manufacture aerosol coatings, whichever is later. * * *

* * * * *

[FR Doc. E8–30699 Filed 12–23–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 88

RIN 0991–AB46

Office of Global Health Affairs; Regulation on the Organizational Integrity of Entities That Are Implementing Programs and Activities Under the Leadership Act

AGENCY: Office of Global Health Affairs, U.S. Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: The Office of Global Health Affairs within the U.S. Department of Health and Human Services ("HHS") is issuing this final rule to clarify that recipients of HHS funds to implement HIV/AIDS programs and activities under the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003 (the "Leadership Act"), Public Law 108–25 (May 27, 2003), that are required to have a policy opposing prostitution and sex trafficking, and must submit certification of this policy with the grant or contract application, may, consistent with this policy requirement, maintain an affiliation with organizations that do not have such a policy, provided such affiliations do not threaten the integrity of the government's programs and its message opposing prostitution and sex trafficking. The rule describes the separation that must exist between a recipient of HHS HIV/AIDS funds that has a policy opposing prostitution and sex trafficking, as required under section 301(f) of the Leadership Act, 22 U.S.C. 7631(f), and another organization that engages in activities that are not consistent with a policy opposing prostitution and sex trafficking.

DATES: This rule is effective January 20, 2009.

FOR FURTHER INFORMATION CONTACT: Jeanne Monahan, Office of Global Health Affairs, Hubert H. Humphrey Building, Room 639H, 200 Independence Avenue, SW., Washington, DC 20201, Tel: 202.690.6174, E-mail: *Jeanne.monahan@hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. It is critical to the effectiveness of the Leadership Act, and to the U.S. Government's foreign policy that underlies this effort, that organizations that receive Leadership Act funds maintain the integrity of the Leadership Act programs and activities they implement, and not confuse the U.S. Government's message opposing prostitution and sex trafficking by holding positions that conflict with this policy.

On April 17, 2008, HHS published in the **Federal Register** (73 FR 20900), a Notice of Proposed Rulemaking ("NPRM") regarding the requirement expressed in 22 U.S.C. 7631(f), which provides that organizations that are receiving Leadership Act funds must have a policy explicitly opposing prostitution and sex trafficking. Specifically, the NPRM described the legal, financial, and organizational separation that must exist between entities that receive grants, contracts, or cooperative agreements from HHS under the Leadership Act and another organization that engages in activities that are not consistent with a policy opposing prostitution and sex trafficking.

A Notice of Correction of Proposed Rule to correct a technical error in the NPRM was published in the **Federal Register** (73 FR 29096). Although the public comment period initially closed on May 19, 2008, a Notice of Reopening of the Comment Period was published in the **Federal Register** (73 FR 36293), and the final date to submit comments on the NPRM was July 28, 2008.

This final rule is designed to provide additional clarity for contracting and grant officers, contracting officers' technical representatives, program officials and implementing partners (*e.g.*, grantees, contractors) of HHS regarding the application of language in Notices of Availability, Requests for Proposals, and other documents pertaining to the policy requirement expressed in 22 U.S.C. 7631(f). This final rule clarifies that the Government's organizational partners that have a policy opposing prostitution and sex trafficking may, consistent with this policy requirement, maintain an affiliation with organizations that do not have such a policy, provided such affiliations do not threaten the integrity of the Government's programs and its message opposing prostitution and sex trafficking, as specified in this final rule. To maintain program integrity, adequate separation, as outlined in this final rule, is required between an organization that expresses views on prostitution and sex trafficking contrary to the Government's message and any federally funded partner organization. Examples of activities inconsistent with a policy

opposing prostitution and sex trafficking include, but are not limited, to advocating for the legalization of the institution of prostitution or organizing or unionizing prostituted people for the purpose of advocating for the legalization of prostitution.

This final rule applies to funds used by HHS to implement HIV/AIDS programs and activities under the Leadership Act. The rule includes certification language that organizations must provide to receive grants, cooperative agreements, contracts, and other funding instruments made available by HHS.

All recipients that receive funds directly from HHS ("prime recipients") must certify compliance with the final rule prior to actual receipt of such funds, in a written statement addressed to the HHS agency's grants or contract officer. The certifications by prime recipients are prerequisites to payment by HHS of any U.S. Government funds in connection with an award under the Leadership Act.

All recipients must insert provisions to implement the applicable parts of this final rule in all sub-agreements under their awards. These provisions must be express terms and conditions of the sub-agreement, must acknowledge that compliance with this final rule is a prerequisite to the receipt and expenditure of U.S. Government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement, prior to the end of its term.

Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient that relate to the organization's compliance with this final rule.

Nothing in this rule is intended to affect relevant prohibitions on Federal Government funding under other applicable Federal laws.

II. Discussion of the Final Rule

These sections discuss the final rule by defining the terms relevant to this final rule and discussing the requirements that must be satisfied by organizations that receive Leadership Act funds.

Section 88.1 Definitions

This section defines the terms that are pertinent to this rule. Specifically, we include the following definitions:

"*Commercial Sex Act*" means any sex act on account of which anything of value is given to or received by any person.

"*Prime Recipients*" are contractors, grantees, applicants or awardees that receive Leadership Act funds for HIV/AIDS programs directly from HHS.

"*Prostitution*" means procuring or providing any commercial sex act.

"*Recipients*" are contractors, grantees, applicants or awardees that receive Leadership Act funds for HIV/AIDS programs directly or indirectly from HHS. Recipients include both prime recipients and sub-recipients.

"*Sex Trafficking*" means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

"*Sub-Recipients*" are contractors, grantees, applicants or awardees that receive Leadership Act funds for HIV/AIDS programs from other recipients rather than directly from HHS.

Section 88.2 Objective Integrity of Recipients

This section of the final rule describes the separation that must exist between a recipient of funds from HHS to implement HIV/AIDS programs under the Leadership Act and another organization that engages in activities that are not consistent with a policy opposing prostitution and sex trafficking, as required under section 301(f) of the Leadership Act.

Paragraph (a) sets forth criteria for establishing the objective integrity and independence that a recipient must have from another organization that engages in activities inconsistent with a policy opposing prostitution and sex trafficking.

The criteria for organizational integrity and independence in this final rule is modeled on criteria upheld as facially constitutional by the U.S. Court of Appeals for the Second Circuit in *Velazquez* v. *Legal Services Corp.*, 164 F.3d 757, 767 (2d Cir. 1999), and *Brooklyn Legal Services Corp.* v. *Legal Services Corp.*, 462 F.3d 219, 229–33 (2d Cir. 2006), cases involving similar organization-wide limitations applied to recipients of Federal funding.

This final rule clarifies that an organization affiliated with a recipient of Leadership Act funds need not have a policy explicitly opposing prostitution and sex trafficking for the recipient to maintain compliance with the policy requirement. The affiliated organization's position on these issues will have no effect on the recipient's eligibility for Leadership Act funds, so long as the recipient satisfies the criteria for objective integrity and independence detailed in this final rule. By ensuring adequate separation between the recipient and affiliate, these criteria guard against a public perception that the affiliate's views on prostitution and sex trafficking may be attributed to the recipient, and thus to the Government, thereby avoiding the risk of confusing the Government's message opposing prostitution and sex trafficking. In addition, the separation also guards against a public perception that resources between affiliate and recipient are fungible, and thus Government funds could inadvertently subsidize other activities inconsistent with a policy opposing prostitution and sex trafficking.

Under Paragraph (b) of this section, an organization is eligible to receive from HHS Federal funds made available under the Leadership Act only if it has provided the certifications required by section 88.3.

Section 88.3 Certifications

This section of the rule describes the certifications required to receive Leadership Act funding from HHS.

The certifications section contains an Organizational Integrity Certification, located at section 88.3(d)(1), in which a recipient of Leadership Act funds administered by an HHS agency certifies it has objective integrity and independence from any organization that engages in activities inconsistent with a policy opposing prostitution and sex trafficking.

The certification section also contains Acknowledgement and Sub-Recipient Compliance Certifications at section 88.3(d)(2) and (3). These require each recipient to acknowledge that its provision of the certifications is a prerequisite to receiving Federal funds, that the Federal Government can stop or withdraw those funds if HHS finds a certification to have been inaccurate or to have become inaccurate, and that the prime recipient will ensure all its sub-recipients provide the required certifications. A sub-recipient must provide the same certifications as those provided by the prime recipient. Paragraph (e) contains information regarding requirements for the renewal of the certifications. HHS requires each recipient to provide renewed certifications each Federal Fiscal Year, in alignment with the award cycle. Additionally, current recipients, as of the effective date of the regulation, must file a certification upon any extension, amendment, or modification of the funding instrument that extends the term of such instrument or adds additional funds to it.

III. Response to Public Comments

In response to the proposed rule, the Office of Global Health Affairs received five written comments from Members of

Congress, a university law school, non-governmental organizations involved in public health and advocacy, and other organizations. The following is a summary of the comments and the responses from the HHS Office of Global Health Affairs:

Comment: Several commenters argue that the proposed rule did not address the merits of the underlying policy requirement expressed in the Leadership Act, which provides that organizations that are receiving Leadership Act funds must have a policy explicitly opposing prostitution and sex trafficking. They state that the policy requirement in the Leadership Act runs contrary to best practices in public health efforts to stem the spread of HIV/AIDS and human trafficking, and the regulation appears to prohibit organizations receiving Leadership Act funds from participating in prevention programs that use strategies that involve those engaged in prostitution and sex trafficking.

Response: The objective of the rule is to clarify that recipients of HHS HIV/AIDS funds that have adopted a policy opposing prostitution and sex trafficking may, consistent with this policy requirement, maintain an affiliation with other organizations that do not have such a policy, provided such affiliations do not threaten the integrity of the Government's programs and its message opposing prostitution and sex trafficking. In doing so, the rule describes the legal, financial, and organizational separation that must exist between these recipients of HHS funds and other organizations that engage in activities that are not consistent with a policy opposing prostitution and sex trafficking. The rule is not designed to address the merits of the policy requirement in the Leadership Act. Moreover, the rule does not prevent an organization from providing prevention, care and treatment to marginalized populations. In fact, most Leadership Act funds are going expressly for those purposes. Organizations around the world that receive Leadership Act funds, including those with extensive experience working directly with prostituted people, have stated they are in compliance with the requirement that they must have a policy opposing prostitution and sex trafficking.

Comment: Several commenters note that the regulation does not define "activities inconsistent with a policy opposing prostitution and sex trafficking." They state that the language of the regulation is vague and that there is confusion in the field about permissible activities. The commenters note that the broadness of the language of the rule increases the possibility that organizations will curtail effective programs for fear of being seen as supporting or promoting prostitution.

Response: As stated above, the purpose of the rule is to describe the degree of separation that must exist between recipients of HHS HIV/AIDS funds, who must have a policy opposing prostitution and sex trafficking, and other organizations who do not have such a policy, in order to preserve the integrity of the Government's message opposing prostitution and sex trafficking. The purpose of the rule is not to define activities that are inconsistent with a policy opposing prostitution and sex trafficking. As stated above, the rule does not prevent recipients of Leadership Act funds from providing prevention, care and treatment programs to marginalized populations, and organizations around the world that receive Leadership Act funds, including those with extensive experience working directly with prostituted people, have stated that they have a policy opposing prostitution and sex trafficking.

Comment: One commenter notes that the regulation does not define "affiliate." The commenter writes that there are no limitations on organizations that might be considered affiliates. The commenter notes that the speech and activities of affiliate organizations will be scrutinized to a high degree, and that cooperation between non-governmental organizations ("NGOs") will be discouraged.

Response: The Office of Global Health Affairs has determined that the term "affiliate" is not necessary to the rule, as the objective of the rule is to describe the degree of separation that must exist between recipients of Leadership Act funds and any other organizations that do not have a policy opposing prostitution and sex trafficking, regardless of whether these other organizations are technically defined as "affiliates" of the recipient. Consequently, the HHS Office of Global Health Affairs has deleted the term "affiliate" from the rule. Further, the separation requirements are designed to ensure the U.S. Government's message opposing prostitution and sex trafficking is not confused or diluted. Organizations may still cooperate with each other, provided that, if they receive Leadership Act funds for HIV/AIDS programs, they also have a policy opposing sex trafficking and prostitution, and remain sufficiently separate from organizations that do not have such a policy.

Comment: Several commenters note that the level of separation required by the rule is unnecessary. The commenters state that the level of separation currently applied to faith-based organizations would be sufficient for recipients of HIV/AIDS funding. The commenters also claim that the rule is inconsistent with HHS's previous conclusion that, in the context of faith-based organizations, separation requirements of this sort are excessive.

Response: The policy requirement in the Leadership Act is not analogous to the Federal Government's partnership with faith-based organizations. The Constitution of the United States requires the Government to be neutral on matters of faith and religion. However, the Constitution does not require the Government to be neutral on prostitution and sex trafficking. The United States is free to adopt policies that favor or disfavor activities related to prostitution and sex trafficking. In the Leadership Act, Congress chose to establish a policy that requires funding recipients to have a policy against prostitution and sex trafficking, which is inherently different from the neutrality the U.S. Government must exhibit towards faith-based organizations. The U.S. Government has found prostitution and sex trafficking to be degrading and harmful to those involved, and therefore a stronger separation standard is required than is established for faith-based organizations.

This clearer form of separation is necessary to ensure that the U.S. Government policy against prostitution and sex trafficking is clear and not confused with a contrary policy held by a grantee or contractor.

Comment: Several commenters argue that the regulation requires recipients to achieve a level of separation from affiliates that will be an undue burden on NGOs, and defies Congress' intent to promote efficiency in foreign aid. The commenters note that the level of separation required for recipients of HIV/AIDS funding is so stringent that recipients will not be able to set up affiliates. They note that having separate personnel and management factors will create lengthy delays in working in developing countries. They also claim that the separation requirements will harm the recipients' ability to raise money.

Response: The burden and cost of the rule is unlikely to be significant for organizations that are receiving Leadership Act funds because the policy requirement has been in place for a number of years. Since 2004, over 18 billion dollars have supported HIV/AIDS prevention, care, and treatment programs, and these groups have stated

their compliance with section 301(f) of the Leadership Act. The rule does not alter the policy requirement. Rather, it clarifies that a recipient of Leadership Act funds may maintain an affiliation with an organization that does not have a policy opposing prostitution and sex trafficking if the two organizations are sufficiently separate.

Comment: One commenter states that the policy undermines Congress' desire to promote public/private partnerships in the delivery of HIV/AIDS services. The commenter claims that recipients will find it dangerous, and in some cases illegal, to work with other NGOs. The commenter notes that the separation requirements will force recipients to increase administrative costs, and will undercut organizations' ability to raise funds both from the Government and from the private sector.

Response: The intent of the rule is not to prevent public/private partnerships, but to more clearly define the organizations that can enter into those partnerships and receive funding under the Leadership Act. The cost of the rule is unlikely to be significant for organizations receiving Leadership Act funds. Since 2004, HHS has required recipients of Leadership Act funds to certify their compliance with section 301(f) of the Leadership Act, and on July 23, 2007, the Office of Global Health Affairs issued a "Guidance on Organizational Integrity," similar to this final regulation. The Office of Global Health Affairs instructed HHS agencies to disseminate the guidance to their contractors and grantees that receive funding under the Leadership Act, and provided means for the public to comment on the guidance, including whether the guidance is economically significant under definitions provided by the Office of Management and Budget ("OMB"). The Office of Global Health Affairs has received no comments on the guidance.

Regulatory Flexibility Act

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. Since enactment of the policy requirement in the Leadership Act, HHS has required its contract solicitations and grant announcements for Leadership Act funding to include a section regarding "Prostitution and Related Activities."

Executive Order 12866—Regulatory Planning and Review

HHS has drafted and reviewed this regulation in accordance with Executive Order 12866, section 1(b), Principles of Regulation. HHS has determined this rule is a "significant regulatory action" under Executive Order 12866, section 3(f)(4), Regulatory Planning and Review, because it raises novel legal or policy issues that arise out of legal mandates and the President's priorities, and, accordingly, the Office of Management and Budget has reviewed it.

The benefits of this rule are that the limitations on promoting or advocating the legalization or the practice of prostitution and sex trafficking will (1) help further the U.S. Government's strategy to reduce sexual exploitation that fuels the spread of HIV/AIDS and opportunistic infections, such as tuberculosis and malaria, and (2) demonstrate the U.S. Government's opposition to prostitution and sex trafficking.

The cost of this rule is unlikely to be significant, according to cost estimations, approximately $7337.10 in total. Since 2004, HHS has required recipients of Leadership Act funds to certify their compliance with section 301(f) of the Leadership Act. Further, the Office of Global Health Affairs issued a guidance, similar to this final rule, on July 23, 2007. The Office of Global Health Affairs instructed HHS agencies to disseminate the guidance to their contractors and grantees that receive funding under the Leadership Act, and provided means for the public to comment on the guidance, including whether the guidance is economically significant under definitions provided by OMB. The Office of Global Health Affairs has received no comments on the guidance.

Executive Order 13132—Federalism

Executive Order 13132 on Federalism requires Federal Departments and agencies to consult with State and local Government officials in the development of regulatory policies with implications for Federalism. This rule does not have Federalism implications for State or local Governments, as defined in the Executive Order.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered Federal Department or agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that could result in the expenditure by State, local, and tribal Governments, in the aggregate, or by the private sector, of $100 million or more in any one year. HHS has determined that this rule would not impose a mandate that will result in the expenditure by State, local, and Tribal Governments, in the aggregate, or by the private sector, of more than $100 million in any one year.

Assessment of Federal Regulation and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal Departments and agencies to determine whether a final policy or regulation could affect family well-being. If the determination is affirmative, then the Department or agency must prepare an impact assessment to address criteria specified in the law. This rule will not have an impact on family well-being, as defined in this legislation.

Paperwork Reduction Act

To obtain or retain Leadership Act funding, HHS will require recipients to submit certifications. The title of the information collection is "Certification Regarding the Organizational Integrity of Entities Implementing Leadership Act Programs and Activities." The documents are necessary to ensure that recipients of Leadership Act funding have objective integrity and independence from any organizations that engage in activities inconsistent with a policy opposing prostitution and sex trafficking.

HHS estimates that 555 respondents will prepare documents to validate that recipients have objective integrity and independence from organizations that engage in activities inconsistent with policies opposing prostitution and sex trafficking. HHS also estimates that the average cost per hour will be $26.44, with ½ hour estimated time burden per response. In total, the estimated burden cost is approximately $7337.10.

HHS therefore estimates annual aggregate burden to collect the information as follows:

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Average cost per hour	Total burden hours	Total burden cost
Certifications	555	1	.5	$26.44	277.5	$7,337.10

During the Notice of Revised Rulemaking (NPRM) process, HHS accepted comments from the public, in accordance with the Paperwork Reduction Act of 1995. HHS will submit this information collection to the Office of Management and Budget (OMB) for regular approval.

Affected parties do not have to comply with the information collection requirements in the final rule until the Department of Health and Human Services publishes in the **Federal Register** the control numbers assigned by the Office of Management and Budget (OMB). Publication of the control numbers notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 45 CFR Part 88

Administrative practice and procedure, Federal aid programs, Grant programs, Grants administration.

Dated: September 26, 2008.

William R. Steiger,

Director, Office of Global Health Affairs.

Approved: October 22, 2008.

Michael O. Leavitt,

Secretary of Health and Human Services.

Editorial Note: This document was received in the Office of the Federal Register on Friday, December 19, 2008.

■ For the reasons stated in the preamble, the Office of Global Health Affairs amends 45 CFR subtitle A to add Part 88 as follows:

PART 88–ORGANIZATIONAL INTEGRITY OF ENTITIES IMPLEMENTING PROGRAMS AND ACTIVITIES UNDER THE LEADERSHIP ACT

Sec.

Authority: 22 U.S.C. 7631(f) and 5 U.S.C. 301.

§ 88.1 Definitions.

■ For the purposes of this part:

Commercial Sex Act means any sex act on account of which anything of value is given to or received by any person.

Prime Recipients are contractors, grantees, applicants or awardees who receive Leadership Act funds for HIV/AIDS programs directly from HHS.

Prostitution means procuring or providing any commercial sex act.

Recipients are contractors, grantees, applicants or awardees who receive Leadership Act funds for HIV/AIDS programs directly or indirectly from HHS. Recipients include both prime recipients and sub-recipients.

Sex Trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

Sub-Recipients are contractors, grantees, applicants or awardees, other than prime recipients, who receive Leadership Act funds for HIV/AIDS programs from other recipients rather than directly from HHS.

§ 88.2 Organizational integrity of recipients.

(a) A recipient must have objective integrity and independence from any organization that engages in activities inconsistent with a policy opposing prostitution and sex trafficking. A recipient will be found to have objective integrity and independence from such an organization if:

(1) The organization is a legally separate entity;

(2) The organization receives no transfer of Leadership Act funds, and Leadership Act funds do not subsidize activities inconsistent with a policy opposing prostitution and sex trafficking; and

(3) The recipient is physically and financially separate from the organization. Mere bookkeeping separation of Leadership Act funds from other funds is not sufficient. HHS will determine, on a case-by-case basis and based on the totality of the facts, whether sufficient physical and financial separation exists. The presence or absence of any one or more factors will not be determinative. Factors relevant to this determination shall include, but will not be limited to, the following:

(i) The existence of separate personnel, management, and governance;

(ii) The existence of separate accounts, accounting records, and timekeeping records;

(iii) The degree of separation from facilities, equipment and supplies used by the organization to conduct activities inconsistent with a policy opposing prostitution and sex trafficking, and the extent of such activities by the organization;

(iv) The extent to which signs and other forms of identification that distinguish the recipient from the organization are present, and signs and materials that could be associated with the organization or activities inconsistent with a policy opposing prostitution and sex trafficking are absent; and

(v) The extent to which HHS, the U.S. Government and the project name are protected from public association with the organization and its activities inconsistent with a policy opposing prostitution and sex trafficking in materials such as publications, conferences and press or public statements.

(b) An organization is ineligible to receive any Leadership Act funds unless it has provided the certifications required by § 88.3.

§ 88.3 Certifications.

(a) HHS agencies shall include the certification requirements for any grant, cooperative agreement, contract, or other funding instrument in the public announcement of the availability of the grant, cooperative agreement, contract, or other funding instrument.

(b) Unless the recipient is otherwise excepted, a person authorized to bind the recipient shall execute the certifications for the grant, cooperative agreement, contract, or other funding instrument.

(c) A prime recipient must submit its certifications to the grant or contract officer of the HHS agency that will award funds. A sub-recipient must provide its certifications to the prime recipient. The prime recipient will submit certifications from its sub-recipients when requested to do so by the HHS grant or contract officer.

(d) The certifications shall state as follows:

(1) Organizational Integrity Certification: "I hereby certify that [name of recipient], a recipient of the funds made available through this [grant, cooperative agreement, contract, or other funding instrument], has objective integrity and independence from any organization that engages in activities inconsistent with a policy opposing prostitution and sex trafficking."

(2) Acknowledgement Certification: "I further certify that the recipient acknowledges that these certifications are a prerequisite to receipt of U.S. Government funds in connection with this [grant, cooperative agreement, contract, or other funding instrument], and that any violation of these certifications shall be grounds for termination by HHS in accordance with the Federal Acquisition Regulations, Part 49 for contracts, 45 CFR Parts 74 or 92 for grants and cooperative agreements, as well as any other remedies as provided by law."

(3) Sub-Recipient Compliance Certification: "I further certify that the recipient will include these identical certification requirements in any [grant, cooperative agreement, contract, or other funding instrument] to a sub-recipient of funds made available under this [grant, cooperative agreement, contract, or other funding instrument], and will require such sub-recipient to provide the same certifications that the recipient provided."

(e) Prime recipients and sub-recipients of funds must file a renewed certification each Fiscal Year, in alignment with the award cycle. Prime recipients and sub-recipients that are already recipients as of the effective date of this regulation must file a certification upon any extension, amendment, or modification of the grant, cooperative agreement, contract, or other funding instrument that extends the term of such instrument, or adds additional funds to it.

[FR Doc. E8–30686 Filed 12–19–08; 4:15 pm]
BILLING CODE 4150–28–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 192

[Docket No. PHMSA–2005–21305]

RIN 2137–AE26

Pipeline Safety: Polyamide–11 (PA–11) Plastic Pipe Design Pressures

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the design factor and design pressure limits for natural gas pipelines made from new Polyamide–11 (PA–11) thermoplastic pipe. Together, these two changes in the regulations allow pipeline operators to operate certain pipelines constructed of new PA–11 pipe at higher operating pressures than is currently allowed for other plastic pipe materials.

DATES: This final rule takes effect January 23, 2009.

FOR FURTHER INFORMATION CONTACT: Richard Sanders at (405) 954–7214, or by e-mail at *Richard.Sanders@dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

PHMSA published a Notice of Proposed Rulemaking (NPRM) (73 FR 1307; January 8, 2008) proposing to increase the design factor and corresponding operating pressure limitations for natural gas pipelines made from new Polyamide–11 (PA–11) thermoplastic pipe. PHMSA initiated this rulemaking in response to several petitions submitted by Arkema, Inc. (Arkema), a manufacturer of PA–11 pipe. In October 2004, Arkema submitted two petitions to PHMSA requesting we revise 49 CFR 192.121 and 192.123. The first petition requested an increase in the design factor from 0.32 to 0.40 in the plastic pipe design formula in § 192.121 for new PA–11 plastic pipe. The second petition requested an increase in the design pressure limitation in § 192.123 from 100 psig (689 kPa) to 200 psig (1379 kPa) for new 2-inch IPS [1] PA–11 plastic pipe. The design factor and design pressure limitations for all other plastic pipe would remain unchanged.

On June 22, 2005, PHMSA published a notice in the **Federal Register** (70 FR 36093) seeking comments on the Arkema petitions. Following public comments and recommendations from PHMSA staff, on April 6, 2006, Arkema submitted amended petitions proposing various additional requirements and safety controls on the use of PA–11 pipe. Arkema again proposed an increase in the design factor in § 192.121 from 0.32 to 0.40 for new PA–11 pipe, but proposed two new conditions: (1) The minimum wall thickness for pipe of a given diameter must be SDR [2]–11 or thicker; and (2) the rapid crack propagation (RCP) characteristics of each new pipe design involving a new diameter or thicker wall must be measured using accepted industry standard test methods.

Likewise, Arkema proposed that we amend § 192.123 to allow the use of PA–11 pipe at a maximum design pressure of up to 200 psig (1379 kPa) for SDR–11 pipe, but broadened its request to include pipe at diameters of up to 4-inch IPS. This request was based on the availability of complete PA–11 piping systems; results from a three-year research program by the Gas Technology Institute; and the successful testing of exhumed samples of PA–11 pipe that had been installed and operated under Federal and State waivers. Finally, Arkema supported a commenter's recommendation to reduce the risk of excavation-related damage by requiring that PA–11 pipe be buried with warning tapes or other devices designed to alert excavators to the presence of a high pressure gas line.

PHMSA is adopting the amendments as proposed in the NPRM with four exceptions:

(1) We are adding the term "copper tubing size (CTS)" to clarify that pipeline operators may use copper tube size pipe as well as iron pipe size pipe.

(2) We are adding the term "thicker pipe wall" to clarify that "SDR–11 or greater" means pipe with thicker pipe wall.

(3) We are clarifying that the use of arithmetic interpolation to determine a design pressure rating at a specified temperature (i.e., "S" in the plastic pipe design formula in § 192.121) will not be allowed for PA–11 pipe. Arkema did not request that we permit such an

[1] IPS means Iron Pipe Size, while CTS means copper tube size. These are recognized pipe size standards that refer to a nominal pipe diameter, not to the actual inside diameter (ID) or outside diameter (OD) of a pipe. IPS is generally used for pipe sizes 2 inches or greater; CTS is generally used for pipe sizes 2 inches or less.

[2] SDR (standard dimension ratio) means the ratio of a pipe's average specified outside diameter to the minimum specified wall thickness of the pipe. For any given pipe diameter, the higher the SDR, the thinner the pipe wall. Typical SDRs are specified in industry standards developed by the American National Standards Institute (ANSI).

interpolation for PA–11, and nothing in the record would support it.

(4) Finally, for reasons set forth in the following sections, we are not requiring that pipe with design pressures above 100 psig (689 kPa) be buried with a warning tape or other device designed to warn an excavator of the presence of a high pressure gas line.

This final rule amends our existing plastic pipe design formula in § 192.121 to cover pipelines made from new 4-inch IPS (or CTS) or less, SDR–11 or greater (i.e., thicker pipe wall) PA–11 pipe with a design factor of up to 0.40 and increases the design pressure limitation in § 192.123 to 200 psig (1379 kPa) for these same pipelines. The design factor for all other plastic pipes remains as prescribed in the existing regulations. These rule changes are effective January 23, 2009.

Disposition of Public Comments

On June 22, 2005, PHMSA published a notice in the **Federal Register** (70 FR 36093) seeking comments on the Arkema petitions. We received comments from two operators of PA–11 trial systems, one local gas distribution company, the Gas Piping Technology Committee, the American Gas Association (AGA), the Illinois Commerce Commission, two plastic pipe fitting manufacturers and a plastics pipe consultant. These comments are discussed in full in the NPRM for this rule published in the **Federal Register** on January 8, 2008.

PHMSA received 13 sets of comments on the NPRM from 10 commenters, including industry trade groups, natural gas distribution utility companies, plastic pipe consultants, and the original petitioner. Of the 10 commenters, all but one expressed support for the proposed increases in design pressure limit and design factor. Of the nine commenters in support of the proposed amendments, four supported increases in the design factor and design pressure limit but opposed the proposed amendment to § 192.123(f)(4) regarding the mandatory burial of a warning tape. The single commenter opposed to all of the proposed amendments sent two separate comments, one of which does not pertain to the rulemaking in question.

The supporting comments cited laboratory tests results from the Gas Research Institute (formerly the Gas Technology Institute) and performance during field tests under waivers as evidence that PA–11 pipe can be operated at the proposed limits without compromising public safety. Two of the supporting commenters noted they were currently operating PA–11 pipelines under waivers. Supporting commenters also cited cost advantages, including efficiencies in installation and maintenance, in using PA–11 material rather than metal for gas distribution pipelines.

Four commenters that otherwise supported the proposed changes in design factor and design pressure limits objected to the proposal to require buried warning tapes or other devices. In general, opposing comments characterized the requirements as unnecessary, impractical, or overly burdensome. Commenters cited the technical difficulty of burying the warning tape and expressed concern that confusion over the rule's application could undermine the effectiveness of any new warning. These commenters contended that the amendment would cause confusion because the regulation would apply to PA–11 pipe operating above 100 psig (689 kPa) but not to other plastic and metallic pipe operating above 100 psig (689 kPa)s. Others urged the strengthening of existing requirements for damage prevention programs and excavator awareness training as a better alternative for reducing excavation-related risk. One commenter also suggested the proposed warning tape requirement would be better included in § 192.321(e) "Installation of Plastic Pipe," and that it should not apply to a pipeline installed within a casing or a sleeve. Because we are not adopting the proposed requirement in any form, we need not consider whether the operative text would better fit in a different section of the regulations. One commenter, Sempra Energy Utilities (Sempra), representing Southern California Gas Company and San Diego Gas and Electric, opposed all of the proposed amendments. Sempura cited four reasons for its opposition, as follows:

1. Discrepancies between Resin Formulations, Hydrostatic Design Basis (HDB) and Field Performance Data.

During the field trials Arkema discovered its new formula for the PA–11 pipe, which was designed to reduce heavy metals in its products and waste streams, caused an unexpected oxidation problem. Once Arkema identified the cause of the problem, it eliminated the problematic element, moving the formula closer to an earlier one with a proven track record. Arkema also performed analyses and studies, including tests of the Nicor Gas pipeline operated under a waiver, to determine if the same "accelerated degradation mechanism" was at work in the newest formula and determined it was not.

Sempra argued this new information should require additional testing to establish the HDB of the material. Arkema responded that it received the PPI TR4 HDB [Plastics Pipe Institute, Technical Report, TR–4, *Recommended Hydrostatic Strengths and Design Stresses for Thermoplastic Pipe and Fittings Compounds*] listing after due consideration of the data by the Hydrostatic Stress Board and that this data included HDB equivalency testing at an independent International Organization for Standardization certified laboratory. Two respected plastic pipe consultants also responded that HDB testing is not intended to find issues such as the oxidation problem and that changes to the pigment formulation have no effect on the HDB as determined by ASTM D2837 [ASTM International Standard D2837, *Test Method for Obtaining Hydrostatic Design Basis for Thermoplastic Pipe Materials or Pressure Design Basis for Thermoplastic Pipe Products.*] PHMSA is satisfied that Arkema has resolved the oxidation problem and that the HDB of the PA–11 material has been properly established.

2. Advanced Approach for Determining Design Factor for Plastic Materials.

Sempra stated that there is research underway to develop a technically sound approach to increase the design factor from 0.32 to 0.40 for PE [polyethylene] pipes without adversely compromising system integrity and overall safety. Sempra stated that a material must demonstrate an ample balance between its long-term strength and long-term in-service stresses acting on the piping system Sempra added that testing must be performed to simulate additional stresses acting on the pipe (such as point loads, excessive bending strain, compaction, earth loading, etc.) to validate safe operations at increased pressures and that no test or field trial data has been provided to demonstrate that this is true for PA–11. Arkema responded that combined loading tests are not relevant to PA–11 because extensive laboratory testing intended to identify slow crack growth (SCG) has shown that PA–11 is highly resistant to SCG. Arkema added that SCG has never been observed in PA–11. A respected plastic pipe consultant also responded that the testing suggested by Sempra is appropriate for PE material but not for PA–11 materials because PA–11 does not fail by SCG. Based on the extensive laboratory research, field research and the field trial experience, and the opinions of plastic pipe experts, PHMSA accepts that PA–11 is not likely to fail due to SCG and that additional

combined loading testing is not warranted.

3. Clarification of Regulatory Requirements at Increased Operating Pressures.

Sempra suggested that PHMSA provide additional clarification regarding the integrity management (IM) requirements that would apply to a PA–11 pipeline at the proposed higher operating pressures and stresses. PHMSA does not agree that such a clarification is necessary. The IM regulations in 49 CFR part 192, subpart O are not based on the type of plastic material. While PHMSA acknowledges that operators of PA–11 pipelines must address specific IM requirements, the same can be said of PE and other plastic pipelines. We expect pipeline operators to consider all relevant risk factors, including pipe materials and operating pressures, in developing and implementing their IM plans. Among other resources, PHMSA's IM Web site and frequently asked questions (FAQ) are available to assist operators in addressing PA–11-specific IM issues that may arise. We also offer written interpretations of the code to help clarify specific issues. In any case, Sempra or any other interested person could petition PHMSA for a change of the IM regulations in accordance with 49 CFR 190.331, if it believes the IM regulations are insufficient to address PA–11 pipelines. On the current record, no such showing has been offered.

4. Possible Misapplication of Stresses to HDB Ratio.

Sempra pointed out an incorrect mathematical correlation in the NPRM and believed that it undermined the rational for the rulemaking. We acknowledge the error but do not agree that it undermines the rationale for this rulemaking. The simplified correlation was not offered or relied upon by Arkema. PHMSA did not intend this correlation to establish the maximum pressure limitation for plastic pipe as Sempra asserts, and our analysis in this rulemaking does not depend on the comparison. The final rule is amply supported by the data and analysis offered by the petitioner and other commenters and by PHMSA's technical review, and is reinforced by the overwhelming support for this rule in the plastic pipe industry.

Technical Advisory Committee

The proposal adopted in this final rule was presented and approved by PHMSA's Technical Pipeline Safety Standards Committee (TPSSC) at its June 10, 2008 public meeting in Washington, DC. At this meeting, PHMSA briefed the TPSSC on the proposed PA–11 rule and explained the extensive laboratory and field testing that the manufacturer had undertaken. Moreover, PHMSA discussed the NPRM comments, including the opposition to the proposed requirement to bury a warning tape. Several of the TPSSC members expressed support for the proposed rule without the requirement for the warning tape. The committee members expressed the same concerns with warning tape as the public commenters, particularly with respect to the possible confusion such a requirement could cause excavators because the regulation would only apply to PA–11 pipe operating above 100 psig (689 kPa). After careful consideration, the TPSSC voted unanimously to find the NPRM and supporting regulatory evaluation, with the elimination of the proposed warning tape requirement, technically feasible, reasonable, practicable, and cost-effective. A transcript of the meeting is available in Docket ID PHMSA–2005–21305.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Policies and Procedures

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735) and, therefore, was not reviewed by the Office of Management and Budget. The final rule is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

Installing PA–11 is not mandated; it is optional. PHMSA believes operators may choose to install PA–11 pipe, rather than some other type of pipe, only if it is the most cost-effective alternative available. Consequently, PHMSA anticipates that the benefits of this final rule will equal or exceed its costs. Any gas transmission operators with (or installing) pipelines in class 3 or 4 locations could potentially be affected by this final rule. Furthermore, all gas distribution operators could potentially be affected by this final rule. In total, PHMSA estimates that the rule could potentially affect 1,450 gas transmission and gas gathering operators and 1,450 gas distribution system operators.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), PHMSA must consider whether this rulemaking action would have a significant economic impact on a substantial number of small entities. PHMSA estimates that this final rule could potentially affect as many as 479 transmission system and gas gathering operators and 1,131 gas distribution system operators that qualify as small businesses under the criteria established for these industries by the Small Business Administration.

The final rule mandates no action by gas pipeline operators. Rather, it provides operators with an option to use PA–11 pipe in certain pipeline systems. We expect operators to select among authorized pipe materials based on economic, operational, or other considerations. Consequently, the economic burden of the final rule on these potentially affected gas pipeline operators is expected to be minimal. Therefore, based on this information showing that any economic impact of this rule on small entities will be minimal, I certify under section 605 of the Regulatory Flexibility Act that this regulation will not have a significant impact on a substantial number of small entities.

Executive Order 13175

PHMSA has analyzed this final rule according to the principles and criteria in Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Because this final rule will not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

Paperwork Reduction Act

This final rule does not impose any new information collection requirements.

Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million, adjusted for inflation, or more in any one year to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the proposed rulemaking.

National Environmental Policy Act

PHMSA has analyzed this final rule for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and has determined the final rule may produce minor beneficial impacts on the quality of the human environment due primarily to a potential reduction in corrosion-related leaks if PA–11 pipe is used instead of steel pipe. We have determined there will be no significant environmental impacts associated with this final rule.

Executive Order 13132

PHMSA has analyzed this final rule according to Executive Order 13132 ("Federalism"). The final rule does not have a substantial direct effect on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. This final rule does not impose substantial direct compliance costs on State and local governments. This final rule would not preempt state law for intrastate pipelines. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Executive Order 13211

Transporting gas impacts the nation's available energy supply. However, this final rule is not a "significant energy action" under Executive Order 13211. It is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, the Administrator of the Office of Information and Regulatory Affairs has not identified this rulemaking as a significant energy action.

List of Subjects in 49 CFR Part 192

Gas, Natural gas, Pipelines, Pipeline safety.

■ For the reasons provided in the preamble, PHMSA amends 49 CFR Part 192 as follows:

PART 192—TRANSPORTATION OF NATURAL GAS AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

■ 1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, 60116, and 60118; and 49 CFR 1.53.

■ 2. Revise § 192.121 to read as follows:

§ 192.121 Design of plastic pipe.

Subject to the limitations of § 192.123, the design pressure for plastic pipe is determined by either of the following formulas:

$$P = 2S \frac{t}{(D - t)} (DF)$$

$$P = \frac{2S}{(SDR - 1)} (DF)$$

Where:

P = Design pressure, gauge, psig (kPa).

S = For thermoplastic pipe, the HDB is determined in accordance with the listed specification at a temperature equal to 73F° (23C°), 100 °F (38 °C), 120 °F (49 °C), or 140 °F (60 °C). In the absence of an HDB established at the specified temperature, the HDB of a higher temperature may be used in determining a design pressure rating at the specified temperature by arithmetic interpolation using the procedure in Part D.2 of PPI TR–3/2004, *HDB/PDB/SDB/MRS Policies* (incorporated by reference, see § 192.7). For reinforced thermosetting plastic pipe, 11,000 psig (75,842 kPa). [Note: Arithmetic interpolation is not allowed for PA–11 pipe.]

t = Specified wall thickness, inches (mm).

D = Specified outside diameter, inches (mm).

SDR = Standard dimension ratio, the ratio of the average specified outside diameter to the minimum specified wall thickness, corresponding to a value from a common numbering system that was derived from the American National Standards Institute preferred number series 10.

D F = 0.32 or

= 0.40 for nominal pipe size (IPS or CTS) 4-inch or less, SDR–11 or greater (*i.e.* thicker pipe wall), PA–11 pipe produced after January 23, 2009.

■ Amend § 192.123 by revising paragraph (a) introductory text and adding a new paragraph (f) to read as follows:

§ 192.123 Design limitations for plastic pipe.

(a) Except as provided in paragraph (e) and paragraph (f) of this section, the design pressure may not exceed a gauge pressure of 100 psig (689 kPa) for plastic pipe used in:

* * * * *

(f) The design pressure for polyamide-11 (PA–11) pipe produced after January 23, 2009 may exceed a gauge pressure of 100 psig (689 kPa) provided that:

(1) The design pressure does not exceed 200 psig (1379 kPa);

(2) The pipe size is nominal pipe size (IPS or CTS) 4-inch or less; and

(3) The pipe has a standard dimension ratio of SDR–11 or greater (*i.e.*, thicker pipe wall).

Issued in Washington, DC, on December 17, 2008.

Carl T. Johnson,

Administrator.

[FR Doc. E8–30637 Filed 12–23–08; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 080723890–81590–02]

RIN 0648–AX03

Atlantic Highly Migratory Species; Atlantic Commercial Shark Management Measures

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

ACTION: Final rule; fishing season notification.

SUMMARY: This final rule establishes the annual quotas for the 2009 fishing season for sandbar sharks, non–sandbar large coastal sharks (LCS), small coastal sharks (SCS), and pelagic sharks managed under Amendment 2 to the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP). This final rule also establishes the opening date for the commercial Atlantic shark fisheries. This action is expected to have minimal negative impacts on commercial fishermen in the Atlantic commercial shark fishery as only a small overharvest occurred in the porbeagle shark fishery in 2008.

DATES: This final rule is effective on January 23, 2009. The 2009 Atlantic commercial shark fishing season and quotas are provided in Table 1 under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Highly Migratory Species Management Division, 1315 East–West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster–Geisz by phone: 301–713–2347, or by fax: 301–713–1917, or Jackie Wilson by phone: 240–338–3936.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic shark fishery is managed under the authority of the Magnuson–Stevens Fishery Conservation and Management Act (Magnuson–Stevens Act). The regulations outlined in the 2006 Consolidated HMS FMP and its amendments are implemented at 50 CFR part 635.

On June 24, 2008, NMFS published a final rule (73 FR 35778, corrected at 73 FR 40658, July 15, 2008) implementing Amendment 2 to the 2006 Consolidated HMS FMP. That final rule established annual base quotas for SCS and pelagic

sharks and adjusted base annual quotas for non–sandbar LCS and sandbar sharks through December 31, 2012, to account for large overharvests that occurred in 2007. That final rule also established accounting measures for under– and overharvests for future years' adjusted quota calculations and redefined the regions in the shark fishery.

As a result of that final rule, the Atlantic shark annual base quotas and adjusted base annual quotas apply to all areas of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea, with the exception of non–sandbar LCS quota outside of the shark research fishery. The non–sandbar LCS adjusted base annual quota outside the research fishery is split between the Atlantic Ocean and Gulf of Mexico. The boundary delineating these two regions is a line beginning on the east coast of Florida at the mainland at 25°20.4′ N. lat, proceeding due east. Any water and land to the south and west of that boundary is considered, for the purposes of quota monitoring and setting of quotas, to be within the Gulf of Mexico region. Any water and land to the north and east of that boundary, for the purposes of quota monitoring and setting of quotas, is considered to be within the Atlantic region.

The June 2008 final rule established a process of issuing a proposed and final rule for notification of fishing season and quotas. On October 27, 2008, NMFS published a proposed rule (73 FR 63668) announcing the fishing season for 2009 and the 2009 proposed quotas based on shark landings information as of September 15, 2008. One comment from the public was received on the proposed rule. This final rule serves as notification of the 2009 fishing season and 2009 quotas, based on shark landings updates as of November 15, 2008, pursuant to 50 CFR 635.27(b)(1)(vii). This action does not change the annual base and adjusted base annual commercial quotas as established under Amendment 2 to the 2006 Consolidated HMS FMP and its June 24, 2008 final rule.

Response to Comments

Comments on the October 27, 2008 proposed rule (73 FR 63668) received during the public comment period are summarized below, together with NMFS's responses.

Comment 1: Fishermen are not reporting accurate landings, so NMFS does not have accurate records for determining the next year's fishing quotas. NMFS should include an extra 40 percent in the landings to account for underreporting of catch by fishermen. Sandbar sharks are vanishing due the lack of management measures to protect this species.

Response: NMFS relies on HMS dealer reports to monitor the shark quotas. However, NMFS also has scientific observer data from the shark research fishery that can be used to assess the accuracy of reported landings in dealer reports. In the future, as NMFS gathers more information in the shark research fishery, NMFS can determine whether or not underreporting is occurring and the appropriate approach to account for underreporting, as necessary. NMFS also uses scientific observer data in the stock assessments to verify, among other things, disposition of discards, interactions with protected resources, and fishing practices within the commercial shark fisheries. Through the NMFS observer program data, assessment scientists are able to account for non–reported mortality, such as sharks used for bait and dead discards of sharks.

NMFS implemented the final rule for Amendment 2 to the 2006 Consolidated HMS FMP on July 24, 2008 (73 FR 35778, June 24, 2008, corrected at 73 FR 40658, July 15, 2008). This final rule put in place a rebuilding plan for sandbar sharks, which includes a reduced quota for sandbar sharks that accounts for mortality of sandbar sharks in other fisheries as well as the directed shark fishery to ensure that the level of mortality for sandbar sharks remains below the total allowable catch recommended by the latest LCS stock assessment. This, in addition to other measures implemented under Amendment 2 to the 2006 Consolidated HMS FMP, such as the establishment of a shark research fishery and the requirement that all sharks be offloaded with their fins naturally attached, will help rebuild this species.

Changes from the Proposed Rule

1. At the time the proposed rule published, shark landings updates (through September 15, 2008) indicated there were no overharvests for any of the shark species/complexes in the 2008 fishing year. Thus, the proposed 2009 shark quotas were the annual base quotas and adjusted base annual quotas established in Amendment 2 to the 2006 Consolidated HMS FMP. However, on November 18, 2008, NMFS closed the porbeagle shark fishery as it had reached 116 percent (2.0 mt dw; 4,349 lb dw) of its quota. As of November 15, 2008, 2.0 mt dw were landed, which exceeds the 1.7 mt dw (3,748 lb dw) annual base porbeagle shark quota. Therefore, the 2009 annual commercial porbeagle quota will be reduced by 0.3 mt dw (601 lb dw) to account for this overharvest (1.7 mt dw annual base quota − 2.0 mt dw of 2008 landings = −0.3 mt dw overharvest). The 2009 adjusted annual commercial porbeagle quota will be 1.4 mt dw (3,147 lb dw) (1.7 mt dw annual base quota − 0.3 mt dw 2008 overage = 1.4 mt dw 2009 adjusted annual quota).

Available Quotas

The calculations and details for establishing the individual shark species/complexes quotas are described in the proposed rule (73 FR 63668, October 27, 2008) and are not repeated here. The quotas for the 2009 Atlantic commercial shark fishing season by species and species group are summarized in Table 1. If any additional quotas are exceeded between November 15, 2008 (the landings update used in this final rule), and December 31, 2008 (the end of the fishing season), the available 2009 quotas will be adjusted accordingly in a separate notice per 635.27(b)(1)(vii)(A), which states that overharvests will be adjusted for in the following fishing season. However, NMFS does not expect additional overharvests for the 2008 fishing year because there has not been a traditional shark fishery this late in the season in the past and because of the reduced trip limits imposed with the implementation of Amendment 2 to the 2006 Consolidated HMS FMP. Catch rates are also expected to decline as water temperatures decrease in the winter months and many shark species move farther offshore.

Currently, blacknose sharks, within the SCS complex, and sandbar sharks have been determined to be overfished with overfishing occurring. Porbeagle sharks have been determined to be overfished. Blue sharks and pelagic sharks other than porbeagle or blue sharks have an unknown stock status. In 2006 blacktip sharks in the Gulf of Mexico region were determined to not be overfished with no overfishing occurring. However, blacktip sharks currently are managed in the non–sandbar LCS complex for the Atlantic and Gulf of Mexico regions, the status of which has been determined to be unknown. Therefore, since the individual species, complexes, and species within a complex have all been determined to be either overfished, overfished with overfishing occurring, or unknown, no underharvests from the 2008 Atlantic commercial shark fishing season will be applied to the 2009 annual base quotas or adjusted base annual quotas. Thus, with the exception of porbeagle sharks, the 2009 quotas will be equal to the base annual quotas

for SCS, blue sharks, and pelagic sharks other than porbeagle or blue sharks and the adjusted base annual quotas for sandbar sharks and non–sandbar LCS as established under Amendment 2 to the 2006 Consolidated HMS FMP.

TABLE 1. 2009 QUOTAS FOR NON–SANDBAR LCS, SANDBAR SHARKS, SCS, BLUE SHARKS, PORBEAGLE SHARKS, AND PELAGIC SHARKS OTHER THAN PORBEAGLE OR BLUE SHARKS FOR THE 2009 COMMERCIAL SHARK FISHING SEASON. THE 2009 COMMERCIAL SHARK FISHING SEASON WILL OPEN ON JANUARY 23, 2009.

Species Group	Region	2008 Base Annual Quota	2008 Landings[2]	Overharvest	2009 Annual Quota
Non–Sandbar Large Coastal Sharks[1]	Gulf of Mexico	390.5 (860,896 lb dw)	268.4 (591,682 lb dw)	–	390.5 (860,896 lb dw)
	Atlantic	187.8 (414,024 lb dw)	127 (279,998 lb dw)	–	187.8 (414,024 lb dw)
Non–Sandbar LCS Research Quota[1]	No regional quotas	37.5 (82,673 lb dw)	5.9 (13,106.7 lb dw)	–	37.5 (82,673 lb dw)
Sandbar Research Quota[1]		87.9 (193,784 lb dw)	63.3 (139,583 lb dw)	–	87.9 (193,784 lb dw)
Small Coastal Sharks		454 (1,000,888 lb dw)	245.5 (541,120 lb dw)	–	454 (1,000,888 lb dw)
Blue Sharks		273 (601,856 lb dw)	1.5 (3,212 lb dw	–	273 (601,856 lb dw)
Porbeagle Sharks		1.7 (3,748 lb dw)	2 (4,349 lb dw)	0.3 (601 lb dw)	1.4 (3,147 lb dw)
Pelagic Sharks Other Than Porbeagle or Blue		488 (1,075,856 lb dw)	101 (222,774 lb dw)	–	488 (1,075,856 lb dw)

[1]Annual base quotas for these species/complexes are the quotas being implemented from July 24, 2008, until December 31, 2012.
[2]Landings are from January 1, 2008, until November 15, 2008, and are subject to change.
[3]All quotas and landings are dressed weight (dw), in metric tons (mt), unless specified otherwise.

1. 2009 Quotas for Non–Sandbar LCS and Sandbar Sharks Within the Shark Research Fishery

Since no overharvests of the non–sandbar LCS and sandbar shark quotas within the shark research fishery occurred during the 2008 fishing year, pursuant to Amendment 2 to the 2006 Consolidated HMS FMP, the 2009 adjusted base annual quotas within the shark research fishery will be 37.5 mt dw (82,673 lb dw) for non–sandbar LCS and 87.9 mt dw (193,784 lb dw) for sandbar sharks.

2. 2009 Quotas for the Non–Sandbar LCS in the Gulf of Mexico Region

Since no overharvests of the non–sandbar LCS quota for the Gulf of Mexico region occurred during the 2008 fishing year, pursuant to Amendment 2 to the 2006 Consolidated HMS FMP, the 2009 adjusted base annual quota for non–sandbar LCS in the Gulf of Mexico region will be 390.5 mt dw (860,896 lb dw).

3. 2009 Quotas for the Non–Sandbar LCS in the Atlantic Region

Since no overharvests of the non–sandbar LCS quota for the Atlantic region occurred during the 2008 fishing year, pursuant to Amendment 2 to the 2006 Consolidated HMS FMP, the 2009 adjusted base annual quota for non–sandbar LCS in the Atlantic region will be 187.8 mt dw (414,024 lb dw).

4. 2009 Quotas for SCS and Pelagic Sharks

Since no overharvests of small coastal sharks, blue sharks, and pelagic sharks other than porbeagle or blue sharks occurred during the 2008 fishing year, pursuant to Amendment 2 to the 2006 Consolidated HMS FMP, the 2009 annual base quotas for small coastal sharks, blue sharks, and pelagic sharks other than porbeagle or blue sharks will be 454 mt dw (1,000,888 lb dw), 273 mt dw (601,856 lb dw), and 488 mt dw (1,075,856 lb dw), respectively.

However, as of November 15, 2008, reported landings of porbeagle sharks was 2.0 mt dw (4,349 lb dw) (116 percent of the 2008 1.7 mt dw (3,748 lb dw) annual base quota). Therefore, to date, an overharvest of 0.3 mt dw (601 lb dw) occurred during the 2008 fishing season (1.7 mt dw annual base quota − 2.0 mt dw 2008 landings = –0.3 mt dw of overharvest). Per 50 CFR 635.27(b)(1)(vii)(A), if the available quota is exceeded in any fishing season, NMFS will deduct an amount equivalent to the overharvest(s) from the following fishing season or, depending on the level of overharvest(s), NMFS may deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing seasons to a maximum of five years. Given the small overharvest of 0.3 mt dw (601 lb dw) in 2008 (16 percent of the annual base porbeagle quota), NMFS will deduct the entire 2008 overharvest from the 2009 annual base commercial porbeagle quota. This results in a 2009 adjusted annual commercial porbeagle quota of 1.4 mt dw (3,147 lb dw) (1.7 mt dw annual base quota − 0.3 mt dw 2008 overage = 1.4 mt dw 2009 adjusted annual quota).

Fishing Season Notification for the 2009 Atlantic Commercial Shark Fishing Season

The 2009 Atlantic commercial shark fishing season for non–sandbar LCS, sandbar sharks, SCS, blue sharks, porbeagle sharks, and pelagic sharks other than porbeagle and blue sharks in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, will open on January 23, 2009. The fishery will remain open until December 31, 2009, unless NMFS calculates that the fishing season landings for sandbar shark, non–sandbar LCS, SCS, blue shark, porbeagle shark, or pelagic sharks other than porbeagle or blue sharks has reached, or is projected to reach, 80 percent of the available

quota. At that time, consistent with 50 CFR 635.28(b)(2), NMFS will file for publication with the Office of the **Federal Register** a notice of closure for that shark species group and/or region that will be effective no fewer than 5 days from date of filing. From the effective date and time of the closure until NMFS announces, via a notice in the **Federal Register**, that additional quota is available and the season is reopened, the fishery for the shark species group and, for non–sandbar LCS, region would remain closed, even across fishing years, consistent with 50 CFR 635.28(b)(2).

Classification

This final rule is published under the authority of the Magnuson–Stevens Act, 16 U.S.C. 1801 *et seq*. Consistent with 50 CFR 635.27(b)(1)(vii), the purpose of this action is to adjust the Atlantic shark annual quotas based on over– and/or underharvests from the 2008 commercial shark fishing season. This final rule will not increase the overall quotas or landings for non–sandbar LCS, sandbar sharks, SCS, blue, porbeagle, or pelagic sharks other than porbeagle or blue sharks, and is not expected to increase fishing effort or protected species interactions.

On June 24, 2008, NMFS published a final rule (73 FR 35778, corrected at 73 FR 40658 on July 15, 2008) for Amendment 2 to the 2006 Consolidated HMS FMP that established adjusted base annual quotas for non–sandbar LCS and sandbar sharks. The final rule also established annual base quotas for SCS, porbeagle sharks, blue sharks, and pelagic sharks other than porbeagle or blue sharks. A final regulatory flexibility analysis (FRFA) conducted for the final rule for Amendment 2 to the Consolidated HMS FMP indicated that, as of October 2007, there were approximately 231 directed commercial shark permit holders, 296 incidental commercial shark permit holders, and 269 Atlantic shark dealer permit holders, all of which are considered small entities according to the Small Business Administration's standard for defining a small entity. As of November 2008, there were approximately 221 directed commercial shark permit holders, 285 incidental commercial shark permit holders, and 108 commercial shark dealers. The FRFA concluded that the economic impacts on these small entities, resulting from adjusting the quotas for under– or overharvests in subsequent years via proposed and final rulemaking, were expected to be minimal.

This final rule will not change the adjusted base annual non–sandbar LCS and sandbar shark quotas or the annual base quotas for SCS, blue, porbeagle, or pelagic sharks other than porbeagle or blue sharks established in the final rule for Amendment 2 to the 2006 Consolidated HMS FMP nor will it implement any new management measures not previously considered, and it is not expected to increase fishing effort or protected species interactions. This final rule will adjust the quotas for each species/species complex based on any overharvests from the 2008 Atlantic commercial shark fishing season consistent with 50 CFR 635.27(b)(1)(vii). Since the individual species, complexes, and species within a complex have all been determined to be either overfished, overfished with overfishing occurring, or unknown, no underharvests from the 2008 Atlantic commercial shark fishing season will be applied to the 2009 annual quotas or adjusted base quotas.

As of November 15, 2008, reported landings of porbeagle sharks was 2.0 mt dw (4,349 lb dw) (116 percent of the 2008 annual base quota of 1.7 mt dw (3,748 lb dw)). Therefore, an overharvest of 0.3 mt dw (601 lb dw) occurred during the 2008 fishing season. Per 50 CFR 635.27(b)(1)(vii)(A), NMFS will deduct an amount equivalent to the overharvest(s) from the following fishing season or, depending on the level of overharvest(s), NMFS may deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing seasons to a maximum of five years. This results in a 2009 adjusted annual commercial porbeagle quota of 1.4 mt dw (3,147 lb dw) (1.7 mt dw annual base quota − 0.3 mt dw 2008 overage = 1.4 mt dw 2009 adjusted annual quota). Based on 2007 ex–vessel prices of $0.66 per pound for porbeagle flesh and $13.84 per pound for fins, this will result in net economic impact of –$793.37 during the 2009 fishing season as the 2009 annual base commercial porbeagle quota will be reduced by 601 lb dw (0.3 mt dw) to account for the 2008 overharvest ($0.66 per pound x 570.9 pounds of porbeagle flesh + $13.84 per pound for fins x 30.1 pounds of porbeagle fins [assuming 5 percent of the dressed weight is fin weight] = $793.37). The net economic impact of approximately –$793.37 represents a small fraction of the overall gross revenues for the Atlantic commercial shark fishery (approximately $8.1 million in 2006) and does not represent a significant negative economic impact.

Since the other individual species/complexes' 2009 quotas will be the same as those implemented in the final rule for Amendment 2 to the 2006 Consolidated HMS FMP, there are no expected economic impacts to fishermen other than those already analyzed in Amendment 2 to the 2006 Consolidated HMS FMP. Thus, the Chief Counsel for Regulation at the Department of Commerce certified at the proposed rule stage to the Chief Counsel for Advocacy at the Small Business Administration that this action would not have a significant economic impact on a substantial number of small entities beyond those considered in Amendment 2 to the 2006 Consolidated HMS FMP and its final rule (73 FR 35778, corrected at 73 FR 40658). NMFS provided prior notice and an opportunity for public comment on the proposed rule (73 FR 63668, October 27, 2008) to establish the 2009 Atlantic commercial shark quotas and fishing season.

This final rule has been determined to be not significant for purposed of Executive Order 12866.

Dated: December 18, 2008.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E8–30711 Filed 12–23–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 060824226–6322–02]

RIN 0648–AX46

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures; Inseason Adjustments

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

ACTION: Final rule; inseason adjustments to biennial groundfish management measures; request for comments.

SUMMARY: This final rule announces inseason changes to management measures in the commercial Pacific Coast groundfish fisheries. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), are intended to allow fisheries to access more abundant groundfish stocks while

protecting overfished and depleted stocks.

DATES: Effective 0001 hours (local time) January 1, 2009. Comments on this final rule must be received no later than 5 p.m., local time on January 23, 2009.

ADDRESSES: You may submit comments, identified by RIN 0648–AX46 by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*.
- Fax: 206–526–6736, Attn: Gretchen Arentzen
- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, Attn: Gretchen Arentzen.

Instructions: 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 (for example, name, address, etc.) 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 (enter "N/A" in the required fields, if you with to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Gretchen Arentzen (Northwest Region, NMFS), phone: 206–526–6147, fax: 206–526–6736 and e-mail *gretchen.arentzen@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is accessible via the Internet at *http://www.gpoaccess.gov/fr/index.html*. Background information and documents are available at the Pacific Fishery Management Council's website at *http://www.pcouncil.org/*.

Background

The Pacific Coast Groundfish FMP and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subpart G, regulate fishing for over 90 species of groundfish off the coasts of Washington, Oregon, and California. Groundfish specifications and management measures are developed by the Pacific Fishery Management Council (Council), and are implemented by NMFS. A proposed rule to implement the 2007–2008 specifications and management measures for the Pacific Coast groundfish fishery and Amendment 16–4 of the FMP was published on September 29, 2006 (71 FR 57764). The final rule to implement the 2007–2008 specifications and management measures for the Pacific Coast Groundfish Fishery was published on December 29, 2006 (71 FR 78638). These specifications and management measures are codified in the CFR (50 CFR part 660, subpart G). The final rule was subsequently amended on: March 20, 2007 (71 FR 13043); April 18, 2007 (72 FR 19390); July 5, 2007 (72 FR 36617); August 3, 2007 (72 FR 43193); September 18, 2007 (72 FR 53165); October 4, 2007 (72 FR 56664); December 4, 2007 (72 FR 68097); December 18, 2007 (72 FR 71583); April 18, 2008 (73 FR 21057); May 9, 2008 (73 FR 26325); July 24, 2008 (73 FR 43139); October 7, 2008 (73 FR 58499), October 14, 2008 (73 FR 60642); and December 1, 2008 (73 FR 72740).

In June 2008, the Council recommended, and NMFS is working to implement, specifications and management measures for the 2009–2010 biennium. Given the complexity of the biennial specifications and management measures, the need for EIS-related public review periods, and competing workloads, NMFS did not have enough time to publish a proposed rule, receive public comments, and implement a final rule by January 1, 2009. The Groundfish specifications and management measures are in effect until they are replaced; they do not expire on their own. Therefore, the current ABCs and OYs are in effect. Unless new management measures are in place by January 1, 2009, management measures that were in place for January February 2008 would remain in effect for January and February 2009. NMFS and the Council, therefore, developed management measures, to be implemented through a routine inseason adjustment, based on the most recent fishery information, to manage within the current OYs. All of the fishery mortality during January and February will be taken into account during the rest of the year, and will count toward the ABCs and OYs ultimately adopted for 2009.

The Council considered the most recent 2008 fishery information, relative to 2008 specifications, and recommended inseason modifications appropriate for January-February 2009 to start 2009 fisheries in a manner that would keep catches below 2008 OYs, but would allow additional harvest opportunities for species with catches tracking below projections during the 2008 fishery. The Council also considered that under both the current yelloweye rockfish rebuilding plan and the proposed 2009–2010 specifications the yelloweye rockfish OY in 2009 would be lower than in 2008. Therefore the Council recommended inseason adjustments to fishery management measures that would prevent mortality in January and February that could risk exceeding the lower 2009 yelloweye rockfish OY.

No changes to fishery specifications, including acceptable biological catches (ABCs), optimum yields (OYs), and harvest guidelines (HGs) are made by inseason action, therefore the 2009 fishing year will begin with the same specifications that were in effect at the start of the 2008 fishing year. No changes to management measures are being made for fisheries that are closed or have extremely small amounts of fishing effort during the months of January and February, particularly recreational fisheries off Washington, Oregon and California; however, the titles for trip limit tables that are not being revised by this inseason action are re-titled to reflect their ongoing effectiveness.

Thus, changes to current groundfish management measures implemented by this action were recommended by the Council, in consultation with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, at its November 2–7, 2008, meeting in San Diego, California. The Council recommended adjustments to January and February 2009 groundfish management measures to respond to updated fishery information. Management measures are designed to meet the Pacific Coast Groundfish FMP objective of achieving, to the extent possible, but not exceeding, OYs of target species, while fostering the rebuilding of overfished stocks by remaining within their rebuilding OYs.

Limited Entry Non-Whiting Trawl Fishery Management Measures

At their November 2–7, 2008, meeting, the Council received new data and analyses on the catch of groundfish in the limited entry trawl fishery. The Council's recommendations for revising January-February 2009 non-whiting trawl fishery management measures provide additional harvest opportunities in some areas for target species with 2008 catches tracking behind projections, and reduce harvest opportunities for petrale sole as a precautionary measure to prevent the higher than expected catches of petrale sole that occurred in period 1 of 2008.

The Council considered increases to trip limits for sablefish, shortspine thornyheads, and Dover sole, and the

potential impacts on overall catch levels and overfished species. The most recently available information as of October 31, 2008, indicates that: 84 percent (2,356 mt out of the 2,810 mt OY) of the sablefish OY; 70 percent (1,148 mt out of the 1,634 mt OY) of the shortspine thornyhead OY north of 34°27.00 N. lat.; and 65 percent (10,708 mt out of the 16,500 mt OY) of the coastwide Dover sole OY, have been taken through November 4, 2008. These projections are below the anticipated catch projections through October, and starting the 2009 trawl fishery under 2008 cumulative limits is projected to prevent the fishery from attaining the OYs for these species, as the most recently available information indicates was likely in 2008.

Increases in cumulative limits in the limited entry trawl fishery were considered coastwide for all trawl gear types, except the selective flatfish trawl fishery north of 40 10.00' N. lat. Increases in selective flatfish trawl cumulative limits were not considered due to the associated projected increase in impacts to canary rockfish, which must be managed to the 2008 harvest specifications, and a canary rockfish OY of 44 mt. Canary rockfish are primarily encountered in the nearshore area, and selective flatfish trawl gear is required to prosecute the groundfish fishery in that shoreward area of the trawl RCA north of 40° 10.00' N. lat.

Increases in cumulative limits in the limited entry trawl fishery were considered coastwide for all target species with 2008 catches tracking below their respective 2008 OYs. However, providing additional fishing opportunities for some of these species was not possible, due to the associated increase in impacts to canary rockfish, and the need to manage the fishery within the 2008 harvest specifications for canary rockfish.

Increases to sablefish, shortspine thornyhead, and Dover sole cumulative limits are expected to increase overall catch levels compared to the 2008 season, but those increases are predicted to be within the continuing 2008 OYs for these species in the 2009 fishery, and are not expected to result in greater than projected overfished species impacts in the 2009 fishery.

Therefore, the Council recommended and NMFS is implementing the following trip limit changes for the limited entry trawl fishery: (1) North of 40° 10.00' N. lat., increase sablefish limits using large and small footrope gear from 14,000 lb (6,350 kg) per 2 months to 18,000 lb (8,165 kg) per 2 months during period 1 (January-February); (2) between 40° 10.00' N. lat. and 38° N. lat., increase sablefish limits from 14,000 lb (6,350 kg) per two months to 20,000 lb (9,072 kg) per two months during period 1 (January-February); (3) increase shortspine thornyhead limits for all gear types, except for selective flatfish trawl gear north of 40° 10.00' N. lat., from 12,000 lb (5,443 kg) per two months to 17,000 lb (7,711 kg) per two months during period 1 (January-February); and (4) increase Dover sole limits for all gear types, except for selective flatfish trawl gear north of 40° 10.00' N. lat., from 80,000 lb (36,287 kg) per two months to 110,000 lb (49,895 kg) per two months during period 1 (January-February).

During the months of January and February 2008, catches of petrale sole in the limited entry trawl fishery were higher than expected, and approximately 40 percent of the 2008 petrale sole OY was taken during those two months, primarily north of 40° 10.00' N. lat. In response to projections that the 2008 petrale sole OY could be exceeded if the higher than projected catches continued throughout 2008, the Council recommended, and NMFS implemented, precautionary reductions in petrale sole cumulative limits in August 2008 (73 FR 43139, July 24, 2008). The higher than projected catches did not continue, so cumulative limits for petrale sole were raised incrementally toward the end of the year to allow catches to approach but not exceed the 2008 petrale sole OY (73 FR 60642, October 14, 2008; 73 FR 72740, December 1, 2008). In considering inseason adjustments for the beginning of the 2009 fishery, the Council took into account the high petrale catches observed in period 1 of 2008, and recommended decreasing petrale sole cumulative limits in period 1 2009 for some gear types, as a precautionary measure. Decreases in petrale sole cumulative trip limits were analyzed for vessels using large and small footrope trawl gear north of 40° 10.00' N. lat. Changes in cumulative limits for vessels using selective flatfish trawl gear north of 40° 10.00' N. lat. and all trawl gears South of 40° 10.00' N. lat. were considered, but not recommended by the Council due to the need to keep canary rockfish impacts within the 2008 canary rockfish OY.

Based on these analyses above, the Council recommended and NMFS is implementing a decrease in the limited entry trawl fishery cumulative limits, during Period 1, effective January 1: for petrale sole taken with large and small footrope gears north of 40° 10.00' N. lat. from 40,000 lb (8,144 kg) per two months to 25,000 lb (11,340 kg) per two months.

Limited Entry Fixed Gear and Open Access Fishery Management Measures

The 2008 yelloweye rockfish OY is 20 mt. This inseason action only modifies management measures for the beginning of 2009, and does not propose to change specifications. However, the status quo rebuilding plan adopted in the Pacific Coast Groundfish Fishery Management Plan (FMP) Amendment 16–4 (70 FR 78638, December 29, 2006) specifies a harvest rate ramp-down strategy that would decrease the yelloweye rockfish OY to 17 mt in 2009. Therefore, this inseason action modifies management measures for fisheries that will have impacts on yelloweye rockfish in January-February 2009. Limited entry and open access fixed gear fisheries have the highest commercial yelloweye rockfish impacts, and operate early in the calendar year, unlike recreational fisheries, which occur later. Leaving the same management measures in place from January-February 2009 that were in effect during that time period in 2008 would risk higher yelloweye rockfish impacts than could be accommodated under the lower 2009 yelloweye rockfish OY.

The Council considered the most recently available analysis of observer data from the West Coast Groundfish Observer Program, which indicates higher bycatch rates of yelloweye rockfish in limited entry and open access fixed gear fisheries in some areas seaward and shoreward of the non-trawl RCA north of 40° 10.00' N. lat. To reduce early 2009 fishery impacts on yelloweye rockfish, the Council considered expanding the non-trawl RCA to encompass these areas of higher yelloweye rockfish bycatch, to minimize the risk of more severe restrictions later in 2009 to keep total mortality of yelloweye rockfish below the 2009 yelloweye rockfish OY of 17 mt.

Based on the analysis described above, the Council recommended and NMFS is implementing an expansion of the non-trawl RCA as follows: (1) a shift in the seaward boundary of the non-trawl RCA from the boundary line approximating the 100–fm (183–m) depth contour to the boundary line approximating the 125–fm (229–m) depth contour between Cascade Head (45° 03.83' N. lat.) and Cape Blanco (42° 50.00' N. lat.); and (2) a shift in the shoreward boundary of the non-trawl RCA from the boundary line approximating the 30–fm (55–m) depth contour to the boundary line approximating the 20–fm (37–m) depth contour between Cape Blanco (42° 50.00' N. lat.) and 40° 10.00' N. lat.

Classification

These actions are taken under the authority of 50 CFR 660.370(c) and are exempt from review under Executive Order 12866.

These actions are taken under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and are in accordance with 50 CFR part 660, the regulations implementing the FMP. These actions are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, Northwest Region, NMFS, (see **ADDRESSES**) during business hours.

For the following reasons, NMFS finds good cause to waive prior public notice and comment on the revisions to groundfish management measures under 5 U.S.C. 553(b) because notice and comment would be impracticable and contrary to the public interest. Also for the same reasons, NMFS finds good cause to waive part of the 30–day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), so that this final rule may become effective January 1, 2009.

The recently available data upon which these recommendations were based was provided to the Council, and the Council made its recommendations, at its November 2–7, 2008, meeting in San Diego, California. The Council recommended that these changes be implemented on or as close as possible to January 1, 2009. There was not sufficient time after that meeting to draft this document and undergo proposed and final rulemaking before these actions need to be in effect. For the actions to be implemented in this final rule, affording the time necessary for prior notice and opportunity for public comment would prevent the Agency from managing fisheries using the best available science to approach without exceeding the OYs for federally managed species and to rebuild overfished stocks in accordance with the FMP rebuilding plans and applicable laws. The adjustments to management measures in this document affect commercial fisheries off Washington, Oregon, and California. These adjustments to management measures must be implemented in a timely manner, by January 1, 2008, to: allow fishermen an opportunity to harvest higher cumulative limits in the beginning of 2009 for stocks that had lower than expected catches in the 2008 fishery, relative to 2008 harvest specifications; reduce catches of petrale sole as a precautionary measure early in the 2009 fishery, based on fishery information indicating that catches early in the 2008 fishery were higher than expected; and to reduce impacts on yelloweye rockfish in early 2009 so that additional restrictions on fisheries that encounter yelloweye rockfish will not have to be made later in the year.

Increases to the sablefish, shortspine thornyhead, and Dover sole cumulative limits in the limited entry trawl fishery relieve a restriction by allowing fishermen increased opportunities to harvest available healthy stocks while staying within the OYs for these species. These changes must be implemented in a timely manner by January 1, 2009, so that fishermen are allowed increased opportunities to harvest available healthy stocks and meet the objective of the Pacific Coast Groundfish FMP to allow fisheries to approach but not exceed, OYs. It would be contrary to the public interest to wait to implement these changes until after public notice and comment, because making this regulatory change by January 1 allows additional harvest in fisheries that are important to coastal communities.

Reductions to petrale sole cumulative limits in the limited entry trawl fishery are needed to prevent higher than expected catches in January-February 2009, and to allow for fishing opportunities for healthy target species to be extended as long as practicable through the fishing year. These changes must be implemented in a timely manner by January 1, 2009, to meet the objective of the Pacific Coast Groundfish FMP to allow fisheries to approach, but not exceed, OYs. It would be contrary to the public interest to wait to implement these changes until after public notice and comment, because making this regulatory change by January 1 will minimize the risk of more severe fishery restrictions later in 2009.

Changes to the non-trawl RCA boundaries are needed to reduce fishery impacts on yelloweye rockfish, a bycatch species primarily encountered in non-trawl fisheries, and to keep 2009 total mortality of yelloweye rockfish within the rebuilding targets for yelloweye rockfish. Failing to make these changes in a timely manner by January 1, 2009, would risk exceeding the 2009 yelloweye rockfish rebuilding plan OY of 17 mt.

Allowing the January February 2008 management measures to be in place during January February 2009 could jeopardize managers' ability: to keep 2009 landings within proposed rebuilding targets for some overfished species; and to provide for year-round harvest opportunities for healthy stocks. Delaying these changes would keep management measures in place that are not based on the best available data which could deny fishermen access to available harvest. Such delay would impair achievement of the Pacific Coast Groundfish FMP objectives of providing for year-round harvest opportunities, extending fishing opportunities as long as practicable during the fishing year, or staying within OYs.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian Fisheries.

Dated: December 17, 2008.

Emily H. Menashes,

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

■ For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

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

■ 2. Tables 3 (North), 3 (South), 4 (North), 4 (South), 5 (North), and 5 (South) to part 660, subpart G are revised to read as follows:

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Table 3 (North) to Part 660, Subpart G – Trip Limits for Limited Entry Trawl Gear North of 40°10' N. Lat.

Other Limits and Requirements Apply – Read § 660.301 - § 660.399 before using this table 010109

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
1	North of 48°10.00' N. lat.	shore - modified 200 fm [7/]	shore - 200 fm	shore - 150 fm			shore - modified 200 fm [7/]
2	48°10.00' N. lat. - 46°38.17' N. lat.	75 fm - modified 200 fm [7/]	60 fm - 200 fm	60 fm - 150 fm		75 fm - 150 fm	75 fm - modified 200 fm [7/]
3	46°38.17' N. lat. - 46°16.00' N. lat		60 fm - 200 fm		60 fm - 150 fm		
4	46°16.00' N. lat. - 45°46.00' N. lat.		75 fm - 200 fm	75 fm - 150 fm		75 fm - 200 fm	
5	45°46.00' N. lat. - 43°20.83' N. lat.		75 fm - 200 fm				
6	43°20.83' N. lat. - 42°40.50' N. lat.	shore - modified 200 fm [7/]	shore - 200fm				shore - modified 200 fm [7/]
7	42°40.50' N. lat. - 40°10.00' N. lat.	75 fm - modified 200 fm [7/]	75 fm - 200 fm	60 fm - 200 fm		75 fm - 200 fm	75 fm - modified 200 fm 7/
	Selective flatfish trawl gear is required shoreward of the RCA; all trawl gear (large footrope, selective flatfish trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope trawl gear is prohibited shoreward of the RCA. Midwater trawl gear is permitted only for vessels participating in the primary whiting season.						
	See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
8	Minor slope rockfish[2/] & Darkblotched rockfish	1,500 lb/ 2 months					
9	Pacific ocean perch	1,500 lb/ 2 months					
10	DTS complex						
11	Sablefish						
12	large & small footrope gear	18,000 lb/ 2 months	14,000 lb/ 2 months	19,000 lb/ 2 months	24,000 lb/ 2 months		19,000 lb/ 2 months
13	selective flatfish trawl gear	5,000 lb/ 2 months			7,000 lb/ 2months		
14	multiple bottom trawl gear [8/]	5,000 lb/ 2 months			7,000 lb/ 2months		
15	Longspine thornyhead						
16	large & small footrope gear	25,000 lb/ 2 months					
17	selective flatfish trawl gear	3,000 lb/ 2 months					
18	multiple bottom trawl gear [8/]	3,000 lb/ 2 months					
19	Shortspine thornyhead						
20	large & small footrope gear	17,000 lb/ 2 months	12,000 lb/ 2 months	25,000 lb/ 2 months			
21	selective flatfish trawl gear	3,000 lb/ 2 months					
22	multiple bottom trawl gear [8/]	3,000 lb/ 2 months					
23	Dover sole						
24	large & small footrope gear	110,000 lb/ 2 months	80,000 lb/ 2 months				90,000 lb/ 2 months
25	selective flatfish trawl gear	40,000 lb/ 2 months	50,000 lb/ 2 months	40,000 lb/ 2 months	50,000 lb/ 2 months		
26	multiple bottom trawl gear [8/]	40,000 lb/ 2 months	50,000 lb/ 2 months	40,000 lb/ 2 months	50,000 lb/ 2 months		

TABLE 3 (North)

Table 3 (North). Continued

27	**Whiting**						
28	midwater trawl	Before the primary whiting season: CLOSED. – During the primary season: mid-water trawl permitted in the RCA. See §660.373 for season and trip limit details. – After the primary whiting season: CLOSED.					
29	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. – After the primary whiting season: 10,000 lb/trip.					
30	**Flatfish** (except Dover sole)						
31	Arrowtooth flounder						
32	large & small footrope gear	150,000 lb/ 2 months					
33	selective flatfish trawl gear	10,000 lb/ 2 months					
34	multiple bottom trawl gear [8/]	10,000 lb/ 2 months					
35	Other flatfish [3/], English sole, starry flounder, & Petrale sole						
36	large & small footrope gear for Other flatfish [3/], English sole, & starry flounder	110,000 lb/ 2 months	110,000 lb/ 2 months, no more than 30,000 lb/ 2 months of which may be petrale sole.	110,000 lb/ 2 months, no more than 20,000 lb/ 2 months of which may be petrale sole.			110,000 lb/ 2 months
37	large & small footrope gear for Petrale sole	25,000 lb/ 2 months					60,000 lb/ 2 months
38	selective flatfish trawl gear for Other flatfish [3/] English sole, & starry flounder	70,000 lb/ 2 months, no more than 10,000 lb/ 2 months of which may be petrale sole	70,000 lb/ 2 months, no more than 18,000 lb/ 2 months of which may be petrale sole.	50,000 lb/ 2 months, no more than 18,000 lb/ 2 months of which may be petrale sole.	80,000 lb/ 2 months, no more than 18,000 lb/ 2 months of which may be petrale sole	80,000 lb/ 2 months, no more than 16,000 lb/ 2 months of which may be petrale sole.	80,000 lb/ 2 months, no more than 10,000 lb/ 2 months of which may be petrale sole.
39	selective flatfish trawl gear for Petrale sole						
40	multiple bottom trawl gear [8/]	70,000 lb/ 2 months, no more than 10,000 lb/ 2 months of which may be petrale sole.	70,000 lb/ 2 months, no more than 18,000 lb/ 2 months of which may be petrale sole.	50,000 lb/ 2 months, no more than 18,000 lb/ 2 months of which may be petrale sole.	80,000 lb/ 2 months, no more than 18,000 lb/ 2 months of which may be petrale sole	80,000 lb/ 2 months, no more than 16,000 lb/ 2 months of which may be petrale sole.	80,000 lb/ 2 months, no more than 10,000 lb/ 2 months of which may be petrale sole.
41	**Minor shelf rockfish [1/], Shortbelly, Widow & Yelloweye rockfish**						
42	midwater trawl for Widow rockfish	Before the primary whiting season: CLOSED. – During primary whiting season: In trips of at least 10,000 lb of whiting, combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month. Mid-water trawl permitted in the RCA. See §660.373 for primary whiting season and trip limit details. – After the primary whiting season: CLOSED.					
43	large & small footrope gear	300 lb/ 2 months					
44	selective flatfish trawl gear	300 lb/ month		1,000 lb/ month, no more than 200 lb/ month of which may be yelloweye rockfish			300 lb/ month
45	multiple bottom trawl gear [8/]	300 lb/ month		300 lb/ 2 months, no more than 200 lb/ month of which may be yelloweye rockfish			300 lb/ month

TABLE 3 (North) con't

Table 3 (North). Continued

46	**Canary rockfish**				
47	large & small footrope gear	CLOSED			
48	selective flatfish trawl gear	100 lb/ month	300 lb/ month	100 lb/ month	
49	multiple bottom trawl gear [8/]	CLOSED			
50	**Yellowtail**				
51	midwater trawl	Before the primary whiting season: CLOSED. – During primary whiting season. In trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month. Mid-water trawl permitted in the RCA. See §660.373 for primary whiting season and trip limit details – After the primary whiting season: CLOSED.			
52	large & small footrope gear	300 lb/ 2 months			
53	selective flatfish trawl gear	2,000 lb/ 2 months			
54	multiple bottom trawl gear [8/]	300 lb/ 2 months			
55	**Minor nearshore rockfish & Black rockfish**				
56	large & small footrope gear	CLOSED			
57	selective flatfish trawl gear	300 lb/ month			
58	multiple bottom trawl gear [8/]	CLOSED			
59	**Lingcod** [4/]				
60	large & small footrope gear	1,200 lb/ 2 months	4,000 lb/ 2 months		
61	selective flatfish trawl gear		1,200 lb/2 months		
62	multiple bottom trawl gear [8/]				
63	**Pacific cod**	30,000 lb/ 2 months	70,000 lb/ 2 months		30,000 lb/ 2 months
64	**Spiny dogfish**	200,000 lb/ 2 months	150,000 lb/ 2 months	100,000 lb/ 2 months	
65	**Other Fish** [5/]	Not limited			

TABLE 3 (North) con't

1/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish.
2/ Splitnose rockfish is included in the trip limits for minor slope rockfish.
3/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
4/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
5/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling Cabezon is included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at §§ 660.391-660.394.
7/ The "modified 200 fm" line is modified to exclude certain petrale sole areas from the RCA.
8/ If a vessel has both selective flatfish gear and large or small footrope gear on board during a cumulative limit period (either simultaneously or successively), the most restrictive cumulative limit for any gear on board during the cumulative limit period applies for the entire cumulative limit period.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3 (South) to Part 660, Subpart G -- Trip Limits for Limited Entry Trawl Gear South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table

010109

	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[6]:						
South of 40°10' N. lat.	100 fm - 150 fm[7]					
All trawl gear (large footrope, selective flatfish trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope trawl gear is prohibited shoreward of the RCA. Midwater trawl gear is permitted only for vessels participating in the primary whiting season.						
See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
Minor slope rockfish[2] & Darkblotched rockfish						
40°10' - 38° N. lat.	15,000 lb/ 2 months					
South of 38° N. lat	55,000 lb/ 2 months					
Splitnose						
40°10' - 38° N. lat.	15,000 lb/ 2 months			10,000 lb/ 2 months		15,000 lb/ 2 months
South of 38° N. lat.	40,000 lb/ 2 months					
DTS complex						
Sablefish						
40°10' - 38° N. lat.	20,000 lb/ 2 months	14,000 lb/ 2 months	19,000 lb/ 2 months	24,000 lb/ 2 months		19,000 lb/ 2 months
South of 38° N. lat	14,000 lb/ 2 months		19,000 lb/ 2 months	24,000 lb/ 2 months		19,000 lb/ 2 months
Longspine thornyhead	25,000 lb/ 2 months					
Shortspine thornyhead	17,000 lb/ 2 months	12,000 lb/ 2 months	25,000 lb/ 2 months			
Dover sole	110,000 lb/ 2 months	80,000 lb/ 2 months				90,000 lb/ 2 months
Flatfish (except Dover sole)						
Other flatfish[3], English sole, & starry flounder	110,000 lb/ 2 months	110,000 lb/ 2 months, no more than 30,000 lb/ 2 months of which may be petrale sole.				110,000 lb/ 2 months
Petrale sole	50,000 lb/ 2 months					75,000 lb/ 2 months
Arrowtooth flounder	10,000 lb/ 2 months					
Whiting						
midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.373 for season and trip limit details. -- After the primary whiting season: CLOSED.					
large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.					

TABLE 3 (South)

Table 3 (South). Continued

22	**Minor shelf rockfish[1/], Chilipepper, Shortbelly, Widow, & Yelloweye rockfish**				
23	large footrope or midwater trawl for Minor shelf rockfish & Shortbelly	300 lb/ month			
24	large footrope or midwater trawl for Chilipepper	2,000 lb/ 2 months	12,000 lb/ 2 months	8,000 lb/ 2 months	
25	large footrope or midwater trawl for Widow & Yelloweye	CLOSED			
26	small footrope trawl for Minor Shelf, Shortbelly, Widow & Yelloweye	300 lb/ month			
27	small footrope trawl for Chilipepper	2,000 lb/ 2 months			5,000 lb/ 2 months
28	**Bocaccio**				
29	large footrope or midwater trawl	300 lb/ 2 months			
30	small footrope trawl	CLOSED			
31	**Canary rockfish**				
32	large footrope or midwater trawl	CLOSED			
33	small footrope trawl	100 lb/ month	300 lb/ month	100 lb/ month	
34	**Cowcod**	CLOSED			
35	**Minor nearshore rockfish & Black rockfish**				
36	large footrope or midwater trawl	CLOSED			
37	small footrope trawl	300 lb/ month			
38	**Lingcod[4/]**				
39	large footrope or midwater trawl	1,200 lb/ 2 months	4,000 lb/ 2 months		
40	small footrope trawl		1,200 lb/ 2 months		
41	**Pacific cod**	30,000 lb/ 2 months	70,000 lb/ 2 months		30,000 lb/ 2 months
42	**Spiny dogfish**	200,000 lb/ 2 months	150,000 lb/ 2 months	100,000 lb/ 2 months	
43	**Other Fish[5/] & Cabezon**	Not limited			

TABLE 3 (South) con't

1/ Yellowtail is included in the trip limits for minor shelf rockfish.
2/ POP is included in the trip limits for minor slope rockfish
3/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
4/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
5/ Other fish are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling.
6/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at §§ 660.391-660.394.
7/ South of 34°27' N lat., the RCA is 100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 4 (North) to Part 660, Subpart G -- Trip Limits for Limited Entry Fixed Gear North of 40°10' N. Lat.

Other Limits and Requirements Apply – Read § 660.301 - § 660.399 before using this table 010109

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
1	North of 46°16' N. lat.	shoreline - 100 fm					
2	46°16' N lat - 45°03.83' N. lat.	30 fm - 100 fm					
3	45°03.83' N. lat - 42°50' N lat.	30 fm - 125 fm	30 fm - 100 fm				
4	42°50' N. lat. - 40°10' N. lat	20 fm - 100 fm	30 fm - 100 fm				
	See § 660.370 and § 660.382 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (Including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
5	Minor slope rockfish[2/] & Darkblotched rockfish	4,000 lb/ 2 months					
6	Pacific ocean perch	1,800 lb/ 2 months					
7	Sablefish	300 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 5,000 lb/ 2 months			500 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 5,000 lb/ 2 months		500 lb/ day, or 1 landing per week of up to 1,500 lb, not to exceed 6,500 lb/ 2 months
8	Longspine thornyhead	10,000 lb/ 2 months					
9	Shortspine thornyhead	2,000 lb/ 2 months					
10	Dover sole	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
11	Arrowtooth flounder						
12	Petrale sole						
13	English sole						
14	Starry flounder						
15	Other flatfish[1/]						
16	Whiting	10,000 lb/ trip					
17	Minor shelf rockfish[2/], Shortbelly, Widow, & Yellowtail rockfish	200 lb/ month					
18	Canary rockfish	CLOSED					
19	Yelloweye rockfish	CLOSED					
20	Minor nearshore rockfish & Black rockfish						
21	North of 42° N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[3/]					
22	42° - 40°10' N. lat.	6,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[3/]					
23	Lingcod[4/]	CLOSED		800 lb/ 2 months		400 lb/ month	CLOSED
24	Pacific cod	1,000 lb/ 2 months					
25	Spiny dogfish	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
26	Other fish[5/]	Not limited					

TABLE 4 (North)

1/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
2/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.
3/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.
4/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length south of 42° N. lat.
5/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."

Table 4 (South) to Part 660, Subpart G -- Trip Limits for Limited Entry Fixed Gear South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table 12/01/08

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[5/]:						
1	40°10' - 34°27' N lat.	30 fm - 150 fm					
2	South of 34°27' N lat.	60 fm - 150 fm (also applies around islands)					
	See § 660.370 and § 660.382 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California						
3	**Minor slope rockfish[2/] & Darkblotched rockfish**	40,000 lb/ 2 months					
4	**Splitnose**	40,000 lb/ 2 months					
5	**Sablefish**						
6	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 5,000 lb/ 2 months			500 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 5,000 lb/ 2 months		500 lb/ day, or 1 landing per week of up to 1,500 lb, not to exceed 6,500 lb/ 2 months
7	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb					
8	**Longspine thornyhead**	10,000 lb / 2 months					
9	**Shortspine thornyhead**						
10	40°10' - 34°27' N. lat.	2,000 lb/ 2 months					
11	South of 34°27' N lat.	3,000 lb/ 2 months					
12	**Dover sole**	5,000 lb/ month South of 42° N lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs					
13	**Arrowtooth flounder**						
14	**Petrale sole**						
15	**English sole**						
16	**Starry flounder**						
17	**Other flatfish[1/]**						
18	**Whiting**	10,000 lb/ trip					
19	**Minor shelf rockfish[2/], Shortbelly, Widow rockfish, and Bocaccio (including Chilipepper between 40°10' - 34°27' N. lat.)**						
20	40°10' - 34°27' N. lat.	Minor shelf rockfish, shortbelly, widow rockfish, bocaccio & chilipepper: 2,500 lb/ 2 months, of which no more than 500 lb/ 2 months may be any species other than chilipepper.					
21	South of 34°27' N lat.	3,000 lb/ 2 months	CLOSED		3,000 lb/ 2 months		
22	**Chilipepper rockfish**						
23	40°10' - 34°27' N. lat.	Chilipepper included under minor shelf rockfish, shortbelly, widow and bocaccio limits - - See above					
24	South of 34°27' N. lat.	2,000 lb/ 2 months, this opportunity only available seaward of the nontrawl RCA					
25	**Canary rockfish**	CLOSED					
26	**Yelloweye rockfish**	CLOSED					
27	**Cowcod**	CLOSED					
28	**Bocaccio**						
29	40°10' - 34°27' N. lat.	Bocaccio included under Minor shelf rockfish, shortbelly, widow & chilipepper limits -- See above					
30	South of 34°27' N. lat.	300 lb/ 2 months	CLOSED		300 lb/ 2 months		

TABLE 4 (South)

Table 4 (South). Continued

31	**Minor nearshore rockfish & Black rockfish**							
32	Shallow nearshore	600 lb/ 2 months	CLOSED	800 lb/ 2 months	900 lb/ 2 months	800 lb/ 2 months	600 lb/ 2 months	
33	Deeper nearshore							
34	40°10' - 34°27' N. lat	700 lb/ 2 months	CLOSED	700 lb/ 2 months		600 lb/ 2 months	700 lb/ 2 months	
35	South of 34°27' N. lat.	500 lb/ 2 months		600 lb/ 2 months				
36	California scorpionfish	600 lb/ 2 months	CLOSED	600 lb/ 2 months	800 lb/ 2 months		600 lb/ 2 months	
37	**Lingcod**[3/]	CLOSED		800 lb/ 2 months			400 lb/ month	CLOSED
38	**Pacific cod**	1,000 lb/ 2 months						
39	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months			
40	**Other fish**[4/] **& Cabezon**	Not limited						

TABLE 4 (South)

1/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
2/ POP is included in the trip limits for minor slope rockfish. Yellowtail is included in the trip limits for minor shelf rockfish.
3/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
4/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling.
5/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at §§ 660.391-660.394, except that the 20-fm depth contour off California is defined by the depth contour and not coordinates.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 5 (North) to Part 660, Subpart G -- Trip Limits for Open Access Gears North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table 010109

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
1	North of 46°16' N lat	shoreline - 100 fm					
2	46°16' N. lat. - 45°03.83' N. lat.	30 fm - 100 fm					
3	45°03.83' N. lat. - 42°50' N. lat.	30 fm - 125 fm	30 fm - 100 fm				
4	42°50' N. lat. - 40°10' N. lat.	20 fm - 100 fm	30 fm - 100 fm				
	See § 660.370 and § 660.383 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
5	**Minor slope rockfish[1/] & Darkblotched rockfish**	Per trip, no more than 25% of weight of the sablefish landed					
6	**Pacific ocean perch**	100 lb/ month					
7	**Sablefish**	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months		300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,200 lb/ 2 months			
8	**Thornyheads**	CLOSED					
9	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs					
10	**Arrowtooth flounder**						
11	**Petrale sole**						
12	**English sole**						
13	**Starry flounder**						
14	**Other flatfish[2/]**						
15	**Whiting**	300 lb/ month					
16	**Minor shelf rockfish[1/], Shortbelly, Widow, & Yellowtail rockfish**	200 lb/ month					
17	**Canary rockfish**	CLOSED					
18	**Yelloweye rockfish**	CLOSED					
19	**Minor nearshore rockfish & Black rockfish**						
20	North of 42° N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish 3/					
21	42° - 40°10' N. lat.	6,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish 3/					
22	**Lingcod[4/]**	CLOSED		400 lb/ month			CLOSED
23	**Pacific cod**	1,000 lb/ 2 months					
24	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
25	**Other Fish[5/]**	Not limited					

TABLE 5 (North)

Table 5 (North). Continued

26	**PINK SHRIMP NON-GROUNDFISH TRAWL** *(not subject to RCAs)*	
27	North	**Effective April 1 - October 31:** Groundfish 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month, canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.
28	**SALMON TROLL**	
29	North	Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lbs of salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 200 lb per month combined limit for minor shelf rockfish, widow rockfish and yellowtail rockfish, and not in addition to that limit. All groundfish species are subject to the open access limits, seasons and RCA restrictions listed in the table above.

TABLE 5 (North) con't

1/ Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for minor shelf rockfish. Splitnose rockfish is included in the trip limits for minor slope rockfish.
2/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
3/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.
4/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length south of 42° N. lat.
5/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at §§ 660.391-660.394.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 5 (South) to Part 660, Subpart G -- Trip Limits for Open Access Gears South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table 12/01/08

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[5/]:						
1	40°10' - 34°27' N. lat	30 fm - 150 fm					
2	South of 34°27' N. lat	60 fm - 150 fm (also applies around islands)					
	See § 660.370 and § 660.383 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
3	**Minor slope rockfish[1/] & Darkblotched rockfish**						
4	40°10' - 38° N. lat.	Per trip, no more than 25% of weight of the sablefish landed					
5	South of 38° N. lat.	10,000 lb/ 2 months					
6	**Splitnose**	200 lb/ month					
7	**Sablefish**						
8	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months		300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,200 lb/ 2 months			
9	South of 36° N. lat	300 lb/ day, or 1 landing per week of up to 700 lb			300 lb/ day, or 1 landing per week of up to 700 lb, not to exceed 1,000 lb/ 1 month	300 lb/ day, or 1 landing per week of up to 700 lb, not to exceed 2,100 lb/ 2 months	
10	**Thornyheads**						
11	40°10' - 34°27' N. lat.	CLOSED					
12	South of 34°27' N. lat	50 lb/ day, no more than 1,000 lb/ 2 months					
13	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
14	**Arrowtooth flounder**						
15	**Petrale sole**						
16	**English sole**						
17	**Starry flounder**						
18	**Other flatfish[2/]**						
19	**Whiting**	300 lb/ month					
20	**Minor shelf rockfish[1/], Shortbelly, Widow & Chilipepper rockfish**						
21	40°10' - 34°27' N. lat.	300 lb/ 2 months	CLOSED	200 lb/ 2 months		300 lb/ 2 months	
22	South of 34°27' N. lat	750 lb/ 2 months		750 lb/ 2 months			1,000 lb/ 2 months
23	**Canary rockfish**	CLOSED					
24	**Yelloweye rockfish**	CLOSED					
25	**Cowcod**	CLOSED					
26	**Bocaccio**						
27	40°10' - 34°27' N. lat	200 lb/ 2 months	CLOSED	100 lb/ 2 months		200 lb/ 2 months	
28	South of 34°27' N. lat	100 lb/ 2 months		100 lb/ 2 months			

TABLE 5 (South)

Table 5 (South). Continued

TABLE 5 (South) con't

29	**Minor nearshore rockfish & Black rockfish**						
30	Shallow nearshore	600 lb/ 2 months	CLOSED	800 lb/ 2 months	900 lb/ 2 months	800 lb/ 2 months	600 lb/ 2 months
31	Deeper nearshore						
32	40°10' - 34°27' N. lat.	700 lb/ 2 months	CLOSED	700 lb/ 2 months		600 lb/ 2 months	700 lb/ 2 months
33	South of 34°27' N. lat.	500 lb/ 2 months		600 lb/ 2 months			
34	California scorpionfish	600 lb/ 2 months	CLOSED	600 lb/ 2 months	800 lb/ 2 months		600 lb/ 2 months
35	**Lingcod**[3/]	CLOSED		400 lb/ month			CLOSED
36	**Pacific cod**	1,000 lb/ 2 months					
37	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
38	**Other Fish**[4/] **& Cabezon**	Not limited					
39	**RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL**						
40	**NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut, Sea Cucumber & Ridgeback Prawn:**						
41	40°10' - 38° N. lat.	100 fm - modified 200 fm[6/]	100 fm - 150 fm				100 fm - modified 200 fm[6/]
42	38° - 34°27' N. lat.	100 fm - 150 fm					
43	South of 34°27' N. lat.	100 fm - 150 fm along the mainland coast, shoreline - 150 fm around islands					
44		Groundfish: 300 lb/trip. Trip limits in this table also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57.50' N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 31)					
45	**PINK SHRIMP NON-GROUNDFISH TRAWL GEAR** *(not subject to RCAs)*						
46	South	**Effective April 1 - October 31:** Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit), sablefish 2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed					

1/ Yellowtail rockfish is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.
2/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
3/ The size limit for lingcod is 24 inches (61 cm) total length.
4/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, monds, grenadiers, and kelp greenling.
5/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at §§ 660.391-660.394, except that the 20-fm depth contour off California is defined by the depth contour and not coordinates.
6/ The "modified 200 fm" line is modified to exclude certain petrale sole areas from the RCA.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

[FR Doc. E8–30575 Filed 12–23–08; 8:45 am]
BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 73, No. 248
Wednesday, December 24, 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.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Parts 2411 and 2417

Testimony by FLRA Employees and Production of Official Records in Legal Proceedings

AGENCY: Federal Labor Relations Authority.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Labor Relations Authority (FLRA) seeks public comment on a proposed rule that would set out procedures for requesters to follow when making demands on or requests to an employee of the FLRA, the General Counsel of the FLRA (General Counsel) or the Federal Service Impasses Panel (Panel) to produce official records or provide testimony relating to official information in connection with a civil legal proceeding in which the FLRA is not named as a party. The rule would establish procedures to respond to such demands and requests in an orderly and consistent manner. The proposed rule will promote uniformity in decisions, protect confidential information, provide guidance to requesters, and reduce the potential for both inappropriate disclosures of official information and wasteful allocation of agency resources.

DATES: Comments must be received on or before January 23, 2009.

ADDRESSES: Mail or deliver comments to the Office of the Executive Director, Federal Labor Relations Authority, 1400 K Street, NW., Fourth Floor, Washington, DC 20424. Comments may also be e-mailed to *FLRAexecutivedirector@flra.gov*.

FOR FURTHER INFORMATION CONTACT: Rosa M. Koppel, 202–219–7907, Solicitor, at *rkoppel@flra.gov*.

SUPPLEMENTARY INFORMATION: The FLRA proposes to amend and relocate to a new Part 2417 current § 2411.11. The current regulations prohibit employees from producing documents or giving testimony in response to a subpoena or other request without the written consent of the FLRA, the General Counsel or the Panel, as appropriate. Under the current regulations, any employee served with a subpoena or request who is not given the requisite written consent is instructed to move to have the subpoena invalidated "on the ground that the evidence sought is privileged against disclosure by this rule." This approach incorrectly treats the regulations as though they create a privilege against disclosure.

The FLRA proposes to amend the regulations to set out specific procedures that must be followed by persons who submit demands or requests for non-public FLRA information. The proposed new Part 2417 also sets out factors that the FLRA will consider when deliberating on demands or requests for non-public FLRA information. Non-public information, as that term is used in this proposal, is information, confidential or otherwise, not available to the public pursuant to the Freedom of Information Act. Responding to such demands and requests may result in a significant disruption of an FLRA employee's work schedule and possibly involve the FLRA in issues unrelated to its responsibilities. In order to resolve these problems, many agencies have issued regulations, similar to the proposed regulations, governing the circumstances and manner in which an employee may respond to demands for testimony or for the production of documents. The United States Supreme Court upheld this type of regulation in *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).

This rule applies to a range of matters in any civil legal proceeding in which the FLRA is not a named party. It also applies to former and current FLRA employees (as well as to FLRA consultants and advisors). Former FLRA employees are prohibited from testifying about specific matters for which they had responsibility during their active employment unless permitted to testify as provided in the regulations. They would not be prohibited from testifying about general matters unconnected with the specific FLRA matters for which they had responsibility.

This rule will ensure a more efficient use of the FLRA's resources, minimize the possibility of involving the FLRA in issues unrelated to its responsibilities, promote uniformity in responding to such subpoenas and requests, and maintain the impartiality of the FLRA in matters that are in dispute between other parties. It will also serve the FLRA's interest in protecting sensitive, confidential, and privileged information and records that are generated in fulfillment of the FLRA's statutory responsibilities.

The charges for witnesses are the same as those provided in Federal courts; and the fees related to production of records are the same as those charged under the FOIA. The charges for time spent by an employee to prepare for testimony and for searches, copying, and certification of records by the FLRA are authorized under 31 U.S.C. 9701, which permits an agency to charge for services or things of value that are provided by the agency.

This rule is internal and procedural rather than substantive. It does not create a right to obtain official records or the official testimony of an FLRA employee nor does it create any additional right or privilege not already available to FLRA to deny any demand or request for testimony or documents. Failure to comply with the procedures set out in these regulations would be a basis for denying a demand or request submitted to the FLRA.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FLRA has determined that this regulation, as amended, will not have a significant impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule change will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This action is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the

economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act of 1995

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

List of Subjects in 5 CFR Parts 2411 and 2417

Administrative practice and procedure; Government employees.

For the reasons stated in the preamble, the Federal Labor Relations Authority proposes to amend 5 CFR part 2411 and add part 2417 as set forth below:

PART 2411—AVAILABILITY OF OFFICIAL INFORMATION

1. The authority citation for part 2411 continues to read as follows:

Authority: 5 U.S.C. 552.

2. Section 2411.11 is removed.

3. Section 2411.12 is redesignated as § 2411.11.

4. Part 2417 is added to read as follows:

PART 2417—TESTIMONY BY EMPLOYEES RELATING TO OFFICIAL INFORMATION AND PRODUCTION OF OFFICIAL RECORDS IN LEGAL PROCEEDINGS

Subpart A—General Provisions

Sec.

Subpart B—Demands or Requests for Testimony and Production of Documents

Subpart C—Schedule of Fees

Subpart D—Penalties

Authority: 5 U.S.C. 7105; 31 U.S.C. 9701; 44 U.S.C. 3101–3107.

Subpart A—General Provisions

§ 2417.101 Scope and purpose.

(a) These regulations establish policy, assign responsibilities and prescribe procedures with respect to:

(1) The production or disclosure of official information or records by employees, members, advisors, and consultants of the Federal Labor Relations Authority, the General Counsel of the Federal Labor Relations Authority or the Federal Service Impasses Panel; and

(2) the testimony of current and former employees, members, advisors, and consultants of the Authority, the General Counsel or the Panel relating to official information, official duties or official records, in connection with civil federal or state litigation in which the Authority, the General Counsel or the Panel is not a party.

(b) The FLRA intends these provisions to:

(1) Conserve the time of employees for conducting official business;

(2) Minimize the involvement of employees in issues unrelated to the mission of the FLRA;

(3) Maintain the impartiality of employees in disputes between private litigants; and

(4) Protect sensitive, confidential information and the deliberative processes of the FLRA.

(c) In providing for these requirements, the FLRA does not waive the sovereign immunity of the United States.

(d) This part provides guidance for the internal operations of the FLRA. It does not create any right or benefit, substantive or procedural, that a party may rely upon in any legal proceeding against the United States.

§ 2417.102 Applicability.

This part applies to demands and requests to current and former employees, members, advisors, and consultants for factual or expert testimony relating to official information or official duties or for production of official records or information, in civil legal proceedings in which the Authority, the General Counsel or the Panel is not a named party. This part does not apply to:

(a) Demands upon or requests for an employee to testify as to facts or events that are unrelated to his or her official duties or that are unrelated to the functions of the Authority, the General Counsel or the Panel;

(b) Demands upon or requests for a former employee to testify as to matters in which the former employee was not directly or materially involved while at the Authority, the General Counsel or the Panel;

(c) Requests for the release of records under the Freedom of Information Act, 5 U.S.C. 552, or the Privacy Act, 5 U.S.C. 552a;

(d) Congressional demands and requests for testimony, records or information; or

(e) Demands or requests for testimony, records or information by any Federal, state or local agency in furtherance of an ongoing investigation of possible violations of criminal law.

§ 2417.103 Definitions.

The following definitions apply to this part.

(a) *Demand* means an order, subpoena, or other command of a court or other competent authority for the production, disclosure, or release of records or for the appearance and testimony of an employee in a civil legal proceeding.

(b) *Legal proceeding* means any matter before a court of law, administrative board or tribunal, commission, administrative law judge, hearing officer or other body that conducts a civil legal or administrative proceeding. Legal proceeding includes all phases of litigation.

(c) *Employee* means:

(i) Any current or former employee or member of the Authority, the General Counsel or the Federal Service Impasses Panel;

(ii) Any other individual hired through contractual agreement by or on behalf of the Authority or who has performed or is performing services under such an agreement for the Authority; and

(iii) Any individual who served or is serving in any consulting or advisory capacity to the Authority whether formal or informal.

This definition does not include:

Persons who are no longer employed by the Authority, the General Counsel or the Panel and who agree to testify about general matters, matters available to the public or matters with which they had no specific involvement or responsibility during their employment with the Authority, the General Counsel or the Panel.

(d) *Records or official records and information* means:

All information in the custody and control of the Authority, the General Counsel or the Panel, relating to information in the custody and control thereof, or acquired by an employee

while in the performance of his or her official duties or because of his or her official status, while the individual was employed by or on behalf of the Authority, the General Counsel or the Panel.

(e) *Request* means any informal request, by whatever method, for the production of records and information or for testimony which has not been ordered by a court or other competent authority

(f) *Testimony* means any written or oral statements, including depositions, answers to interrogatories, affidavits, declarations, interviews, and statements made by an individual in connection with a legal proceeding.

Subpart B—Demands or Requests for Testimony and Production of Documents

§ 2417.201 General prohibition.

No employee of the Authority, the General Counsel or the Panel may produce official records and information or provide any testimony relating to official information in response to a demand or request without the prior, written approval of the Chairman of the FLRA or the Chairman's designee.

§ 2417.202 Factors the FLRA will consider.

The Chairman or the Chairman's designee, in his or her sole discretion, may grant an employee permission to testify on matters relating to official information, or produce official records and information, in response to a demand or request. Among the relevant factors that the Chairman may consider in making this decision are whether:

(a) The purposes of this part are met;

(b) Allowing such testimony or production of records would be necessary to prevent a miscarriage of justice;

(c) Allowing such testimony or production of records would assist or hinder the FLRA in performing its statutory duties;

(d) Allowing such testimony or production of records would be in the best interest of the FLRA;

(e) The records or testimony can be obtained from other sources;

(f) The demand or request is unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rules of procedure governing the case or matter in which the demand or request arose;

(g) Disclosure would violate a statute, Executive Order or regulation;

(h) Disclosure would reveal confidential, sensitive, or privileged information, trade secrets or similar, confidential or financial information, otherwise protected information, or information which would otherwise be inappropriate for release;

(i) Disclosure would impede or interfere with an ongoing law enforcement investigation or proceeding, or compromise constitutional rights or national security interests;

(j) Disclosure would result in the FLRA appearing to favor one litigant over another;

(k) The request was served before the demand;

(l) A substantial Government interest is implicated;

(m) The demand or request is within the authority of the party making it; and

(n) The demand or request is sufficiently specific to be answered.

(o) Any other factor deemed relevant under the circumstances of the particular request.

§ 2417.203 Filing requirements for litigants seeking documents or testimony.

A litigant must comply with the following requirements when filing a request for official records and information or testimony under part 2417. A request should be filed before a demand.

(a) The request must be in writing and must be submitted to the Office of the Solicitor;

(b) The written request must contain the following information;

(1) The caption of the legal proceeding, docket number, and name and address of the court or other authority involved;

(2) A copy of the complaint or equivalent document setting forth the assertions in the case and any other pleading or document necessary to show relevance;

(3) A list of categories of records sought, a detailed description of how the information sought is relevant to the issues in the legal proceeding, and a specific description of the substance of the testimony or records sought;

(4) A statement as to how the need for the information outweighs any need to maintain the confidentiality of the information and outweighs the burden on the FLRA to produce the records or provide testimony;

(5) A statement indicating that the information sought is not available from another source, from other persons or entities or from the testimony of someone other than an employee, such as a retained expert;

(6) If testimony is requested, the intended use of the testimony, and a showing that no document could be provided and used in lieu of testimony;

(7) A description of all prior decisions, orders or pending motions in the case that bear upon the relevance of the requested records or testimony;

(8) The name, address, and telephone number of counsel to each party in the case; and

(9) An estimate of the amount of time that the requester and other parties will require for each employee for time spent by the employee to prepare for testimony, in travel, and for attendance in the legal proceeding.

(c) The Office of the Solicitor reserves the right to require additional information to complete the request where appropriate.

(d) The request should be submitted at least 30 days before the date that records or testimony is required. Requests submitted in less than 30 days before records or testimony is required must be accompanied by a written explanation stating the reasons for the late request and the reasons for expedited processing.

(e) Failure to cooperate in good faith to enable the FLRA to make an informed decision may serve as the basis for a determination not to comply with the request.

(f) The request should state that the requester will provide a copy of the employee's statement free of charge and that the requester will permit the FLRA to have a representative present during the employee's testimony.

§ 2417.204 Where to submit a request.

(a) Requests or demands for official records or information or testimony under this part must be served on the Office of the Solicitor at the following address: Suite 201, 1400 K Street, NW., Washington, DC 20424–0001; telephone: (202) 218–7999; fax: (202) 343–1007.

The request must be sent by mail, fax, or e-mail and clearly marked "Part 2417 Request for Testimony or Official Records in Legal Proceedings."

(b) A person requesting public FLRA information and non-public FLRA information under this part may submit a combined request for both to the Office of the Solicitor. If a requester decides to submit a combined request under this section, the FLRA will process the combined request under this part and not under part 2411 (FOIA).

§ 2417.205 Consideration of requests or demands.

(a) After receiving service of a request or demand for testimony, the FLRA will review the request and, in accordance with the provisions of this part, determine whether, or under what conditions, to authorize the employee to testify on matters relating to official information and/or produce official records and information.

(b) Absent exigent circumstances, the FLRA will issue a determination within 30 days from the date the request is received.

(c) The FLRA may grant a waiver of any procedure described by this part where a waiver is considered necessary to promote a significant interest of the FLRA or the United States or for other good cause.

(d) *Certification (authentication) of copies of records.* The FLRA may certify that records are true copies in order to facilitate their use as evidence. If a requester seeks certification, the requester must request certified copies from the Solicitor at least 30 days before the date they will be needed.

§ 2417.206 Final determination.

The Chairman of the FLRA, or the Chairman's designee, makes the final determination on demands or requests to employees thereof for production of official records and information or testimony in litigation in which the FLRA is not a party. All final determinations are within the sole discretion of the Chairman or the Chairman's designee. The Chairman or designee will notify the requester and, when appropriate, the court or other competent authority of the final determination, the reasons for the grant or denial of the request, and any conditions that may be imposed on the release of records or information, or on the testimony of an employee. This final determination exhausts administrative remedies for discovery of the information.

§ 2417.207 Restrictions that apply to testimony.

(a) Conditions or restrictions may be imposed on the testimony of employees including, for example:

(1) Limiting the areas of testimony;

(2) Requiring the requester and other parties to the legal proceeding to agree that the transcript of the testimony will be kept under seal;

(3) Requiring that the transcript will be used or made available only in the particular legal proceeding for which testimony was requested. The requester may also be required to provide a copy of the transcript of testimony at the requester's expense.

(b) The employee's written declaration may be provided in lieu of testimony.

(c) If authorized to testify pursuant to this part, an employee may testify as to facts within his or her personal knowledge, but, unless specifically authorized to do so by the Chairman or the Chairman's designee, the employee shall not:

(1) Disclose confidential or privileged information; or

(2) For a current employee, testify as an expert or opinion witness with regard to any matter arising out of the employee's official duties or the functions of the FLRA unless testimony is being given on behalf of the United States (see also 5 CFR 2635.805).

(d) The scheduling of an employee's testimony, including the amount of time that the employee will be made available for testimony, will be subject to the approval of the Chairman or the Chairman's designee.

§ 2417.208 Restrictions that apply to released records.

(a) The Chairman or the Chairman's designee may impose conditions or restrictions on the release of official records and information, including the requirement that parties to the proceeding obtain a protective order or execute a confidentiality agreement to limit access and any further disclosure. The terms of the protective order or of a confidentiality agreement must be acceptable to the Chairman or the Chairman's designee. In cases where protective orders or confidentiality agreements have already been executed, the Chairman or the Chairman's designee may condition the release of official records and information on an amendment to the existing protective order or confidentiality agreement.

(b) If the Chairman or the Chairman's designee so determines, original records may be presented for examination in response to a request, but they may not be presented as evidence or otherwise used in a manner by which they could lose their identity as official records, nor may they be marked or altered. In lieu of the original records, certified copies may be presented for evidentiary purposes.

§ 2417.209 Procedure when a decision is not made prior to the time a response is required.

If a response to a demand or request is required before the Chairman or the Chairman's designee can make the determination referred to in § 2417.206, the Chairman or the Chairman's designee, when necessary, will provide the court or other competent authority with a copy of this part, inform the court or other competent authority that the request is being reviewed, provide an estimate as to when a decision will be made, and seek a stay of the demand or request pending a final determination.

§ 2417.210 Procedure in the event of an adverse ruling.

If the court or other competent authority fails to stay a demand or request, the employee upon whom the demand or request is made, unless otherwise advised by the Chairman or the Chairman's designee, will appear, if necessary, at the stated time and place, produce a copy of this part, state that the employee has been advised by counsel not to provide the requested testimony or produce documents, and respectfully decline to comply with the demand or request, citing *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).

Subpart C—Schedule of Fees

§ 2417.301 Fees.

(a) *Generally.* The Chairman or the Chairman's designee may condition the production of records or appearance for testimony upon advance payment of a reasonable estimate of the costs thereto.

(b) *Fees for records.* Fees for producing records will include fees for searching, reviewing, and duplicating records, costs of employee time spent in reviewing the request, and expenses generated by materials and equipment used to search for, produce, and copy the responsive information. These fees and costs will be calculated and charged as are like fees and costs arising from requests made pursuant to the Freedom of Information Act regulations in Part 2411.

(c) *Witness fees.* Fees for attendance by a witness will include fees, expenses, and allowances prescribed by the court's rules. If no such fees are prescribed, witness fees will be determined based upon the rule of the Federal district court closest to the location where the witness will appear and on 28 U.S.C. 1821, as applicable. Such fees will include cost of time spent by the witness to prepare for testimony, in travel and for attendance in the legal proceeding, plus travel costs.

(d) *Payment of fees.* A requester must pay witness fees for current employees and any record certification fees by submitting to the Office of the Solicitor a check or money order for the appropriate amount made payable to the Treasury of the United States. In the case of testimony of former employees, the requester must pay applicable fees directly to the former employee in accordance with 28 U.S.C. 1821 or other applicable statutes.

(e) *Waiver or reduction of fees.* The Chairman or the Chairman's designee, in his or her sole discretion, may, upon a showing of reasonable cause, waive or reduce any fees in connection with the

testimony, production, or certification of records.

(f) *De minimis fees.* Fees will not be assessed if the total charge would be $10.00 or less.

Subpart D—Penalties

§ 2417.401 Penalties.

(a) An employee who discloses official records or information or gives testimony relating to official information, except as expressly authorized by the Chairman or the Chairman's designee, or as ordered by a Federal court after the FLRA has had the opportunity to be heard, may face the penalties provided in 18 U.S.C. 641 and other applicable laws. Additionally, former employees are subject to the restrictions and penalties of 18 U.S.C. 207 and 216.

(b) A current employee who testifies or produces official records and information in violation of this part may be subject to disciplinary action.

Dated: December 16, 2008.

Rosa M. Koppel,

Solicitor, Federal Labor Relations Authority.

[FR Doc. E8–30299 Filed 12–23–08; 8:45 am]

BILLING CODE 6727–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. AO–85–A10; AMS–FV–07–0132; FV08–905–1]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Recommended Decision and Opportunity To File Written Exceptions to Proposed Amendments to Marketing Agreement 84 and Order No. 905

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and opportunity to file exceptions.

SUMMARY: This is a recommended decision regarding proposed amendments to Marketing Agreement No. 84 and Order No. 905 (order), which regulate the handling of oranges, grapefruit, tangerines, and tangelos (citrus) grown in Florida. Four amendments were proposed by the Citrus Administrative Committee (committee), which is responsible for local administration of the order. These proposed amendments would modify committee representation by cooperative entities, allow substitute alternates to temporarily represent absent members at committee meetings, authorize the committee to conduct meetings by telephone or other means of communication, and authorize the committee to conduct research and promotion programs, including paid advertising, for fresh Florida citrus. The proposals are intended to improve the operation and administration of the order. This recommended decision invites written exceptions on the proposed amendments.

DATES: Written exceptions must be filed by January 23, 2009.

ADDRESSES: Written exceptions should be filed with the Hearing Clerk, U.S. Department of Agriculture, Room 1081–S, Washington, DC 20250–9200, Fax: (202) 720–9776 or via the Internet at *http://www.regulations.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. Comments will be made available for public inspection in the Office of the Hearing Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Room 385, Portland, Oregon 97204; Telephone: (503) 326–2724, Fax: (503) 326–7440, or E-mail: *Melissa.Schmaedick@usda.gov*; or Laurel May, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Laurel.May@usda.gov*.

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

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on January 24, 2008, and published in the January 29, 2008, issue of the **Federal Register** (73 FR 5130).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed amendments to Marketing Agreement No. 84 and Order 905 regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, and the opportunity to file written exceptions thereto. Copies of this decision can be obtained from Melissa Schmaedick, whose address is listed above.

This recommended decision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The proposed amendments are based on the record of a public hearing held February 12, 2008, in Winter Haven, Florida. Notice of this hearing was published in the **Federal Register** on January 29, 2008 (73 FR 5130). The notice of hearing contained four proposals submitted by the committee.

The proposed amendments were recommended by the committee following deliberations at a public meeting on May 29, 2007, and were submitted to the Agricultural Marketing Service (AMS) on August 16, 2007. After reviewing the recommendation and other information submitted by the committee, AMS determined to proceed with the formal rulemaking process and schedule the matter for hearing.

The committee's proposed amendments to the order would: (1) Modify committee representation by cooperative entities; (2) allow substitute alternates to temporarily represent absent members at committee meetings; (3) authorize the committee to conduct meetings by telephone or other means of communication; and (4) add authority for research and promotion programs, including paid advertising, for fresh Florida citrus.

The Department of Agriculture (USDA) also proposed to make such changes to the order as may be necessary, if any of the proposed changes are adopted, so that all of the order's provisions conform to the effectuated amendments.

Eight industry witnesses testified at the hearing. The witnesses represented citrus producers and handlers in the production area, as well as the committee, and they all supported the recommended changes. The witnesses emphasized the need to modernize committee representation and administration as well as equip the industry with additional tools to address the specific research and promotion needs of fresh Florida citrus.

Witnesses offered testimony supporting the recommendation to reduce required committee representation from three each to two each for producers and handlers affiliated with cooperative marketing organizations. According to testimony, this would better reflect the current composition of the fresh Florida citrus industry.

Witnesses testified in support of allowing substitute alternates to temporarily serve at committee meetings when both a member and his or her alternate are unable to attend. This would facilitate attaining a quorum and prevent delays in committee decision making.

Witnesses also advocated adding authority to conduct committee meetings via telephone or other means of communication technology. Such authority would improve committee efficiencies and encourage greater participation by members throughout the production area.

Finally, witness testimony supported adding authority to conduct research and promotion activities. This would enable the committee to sponsor programs specific to the needs of the fresh citrus industry.

At the conclusion of the hearing, the Administrative Law Judge established a deadline of March 31, 2008, for interested persons to file proposed findings and conclusions or written arguments and briefs based on the evidence received at the hearing. No briefs were filed.

Material Issues

The material issues presented on the record of hearing are as follows:

(1) Whether to amend the order by reducing the number of required cooperative producer and handler seats on the committee from three each to two each;

(2) Whether to amend the order to authorize substitute alternates to temporarily represent absent members and alternates to meet quorum requirements at committee meetings;

(3) Whether to amend the order to authorize the committee to conduct meetings via telephone or other means of communication technology; and

(4) Whether to amend the order by authorizing the committee to establish and conduct research and production activities, including paid advertising.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof.

Material Issue Number 1—Cooperative Representation

Sections 905.22, Nominations, and 905.23, Selection, of the order should be amended to reduce the required number of committee seats held by producers and handlers affiliated with cooperative marketing organizations from three each to two each.

The committee is comprised of 18 members, of whom nine are producers, eight are handlers, and one is a non-industry public member. The current committee structure allocates the nine producer seats between four producer districts and requires that at least three producer members represent cooperatives. The order's provisions also require that at least three of the eight handler members represent cooperatives. Witnesses testified that this membership allocation was appropriate in the past, but no longer appropriately reflects the industry's composition. Therefore, witnesses supported reducing the required number of committee producer and handler seats held by cooperative representatives from three each to two each to better reflect the composition of the modern Florida fresh citrus industry.

Witnesses described various types of fresh citrus cooperatives that exist to serve members: Producer, marketing and "full service" cooperatives. Producer cooperatives provide production services to members. Marketing cooperatives market and ship members' fruit. Full service cooperatives offer production, harvest, packing, and marketing services for members.

Witnesses explained that there were numerous citrus cooperatives at the time the order was promulgated, and the committee's original structure was designed to accurately represent the interests of cooperative organizations during committee deliberations. However, over time, the number of cooperative organizations within the industry has declined. Today there are fewer cooperatives, and those that remain handle a smaller proportion of the industry's total shipments.

For example, according to witnesses, there were twenty marketing cooperatives during the 1998–99 fiscal period, and they shipped approximately 33 percent of Florida's fresh citrus. By 2006–07, only ten marketing cooperatives, shipping approximately 22 percent of the fresh citrus, remained. Witnesses explained that while there has been a consolidation of fresh citrus shippers throughout the industry, the consolidation has been relatively greatest among cooperative marketing entities. According to witnesses, the numbers of producer cooperatives and full service cooperatives have declined also. Witnesses testified that there was broad support from cooperative organizations for the proposed amendment.

Record evidence supports reducing the number of required cooperative seats on the committee. This amendment would restructure the committee so that proportionately fewer members would be required to represent cooperative organizations, reflective of current industry composition.

Citing recent changes in industry makeup, witnesses stated that they would like to include additional language under this proposal that would allow them to review industry composition every three years and recommend appropriate adjustments to committee apportionment with respect to cooperative affiliation through informal rulemaking. However, the committee did not provide proposed order language for a modification to Proposal 1 at the hearing when requested and the matter was not pursued. Therefore, Proposal 1 is being considered by USDA as it was written in the Notice of Hearing for this rulemaking.

No testimony opposing the proposed amendment was given at the hearing. For the reasons stated above, it is recommended that §§ 905.22, Nomination, and 905.23, Selection, be amended to reduce the required number of committee seats held by producers and handlers affiliated with cooperative marketing organizations from three to two as proposed in Proposal 1.

Material Issue Number 2—Substitute Alternates

Section 905.29 of the order should be amended to provide that if both a member and his or her respective alternate are unable to attend a committee meeting, such member may designate another alternate to act in his or her place in order to obtain a quorum. Further, it should be provided that any such alternate member represent the same group affiliation as the absent member. If the member is unable to designate such an alternate, the committee members present may designate such alternate.

As originally published in the **Federal Register** notice of hearing (73 FR 513; January 29, 2008), this proposed amendment specified that in addition to representing the same group affiliation (producer or handler) a substitute alternate should be from the same district as the absent member and

alternate. However, the committee proposed a modification at the hearing so that a substitute alternate did not have to be from the same district. Witnesses explained that substitutes with the same group affiliation would adequately represent the views of absent members. There was no testimony in opposition to this modification. Further, as provided in § 905.114 of the regulations issued under the order, one producer district is currently allocated only one member seat and one alternate member seat on the committee. In this case, if a substitute alternate could only be drawn from the absent member's district there would be no pool from which to designate a temporary alternate.

As mentioned under Material Issue Number 1, the committee is comprised 18 members, and each member has an alternate that serves in the member's stead if the member is absent. The order specifies that ten committee members constitute a quorum. For most committee actions, ten concurring votes, including five producer votes, are required for approval. There is no provision for a situation in which neither a member nor that member's alternate are available to attend meetings.

Witnesses explained that travel distance and scheduling conflicts occasionally prevent committee members and their alternates from attending meetings. Witnesses testified that these unexpected absences have led to meeting cancellations in the past because quorum requirements could not be met. According to witness testimony, cancelled meetings mean delays in conducting committee business and are costly in terms of travel time and expense.

The committee proposed that § 905.29 be amended to allow available alternates to temporarily represent absent members if the members and their respective alternates are unable to attend a meeting. Witnesses explained that all alternates have the necessary background to be able to serve on short notice if necessary. According to the record, all members and alternates receive meeting agendas and background information about upcoming meeting topics prior to the meetings. The committee also posts this information on its website. Additionally, many alternates have served previously as members or alternates and are knowledgeable about the issues that come before the committee. According to witnesses, a number of alternate producer and handler members reside in the two areas where meetings are most often held, and could be contacted on short notice if necessary to obtain a quorum. Witnesses testified that allowing substitute alternates to serve at meetings would ensure that quorum requirements can be met and that committee business is conducted in a timely manner.

Finally, witnesses testified that members should be allowed to select their own substitutes whenever possible because the members would be able to select substitutes who they feel would best represent their views during meeting deliberations and voting. However, witnesses acknowledged that in some cases members might be unable to designate substitutes prior to a meeting. In those situations, the committee should be authorized to designate substitutes with the same group affiliation at the meeting if necessary to meet quorum requirements.

No testimony or evidence opposing this proposal was provided at the hearing. For the reasons stated above, it is recommended that § 905.29, Inability of members to serve, be amended, as modified at the hearing, to specify that if neither a member nor his or her respective alternate is able to attend a committee meeting, the member may designate another alternate of the same affiliation (producer or handler) to represent him or her at the meeting. Further, the committee may designate an alternate to substitute for an absent member if the member is unable to designate a substitute alternate prior to the meeting.

Material Issue Number 3—Telephone Meetings

Section 905.34, Procedure of committees, should be amended to authorize the committee to conduct committee meetings by telephone and other means of communication.

Under the order, the committee is authorized to make recommendations regarding the administration of its programs to the Secretary. Ten members of the committee constitute a quorum, and ten concurring votes, including those of five producers, are required for approval of most committee actions. Currently, § 905.34 of the order authorizes the committee to cast votes by telephone in emergency situations. The committee is required to fully explain any proposition presented for telephone votes to each member or alternate acting for a member. The order requires all votes cast by phone to be confirmed in writing and specifies that two dissenting votes will prevent the adoption of a proposition voted upon by telephone.

The committee proposed that the order be amended to authorize the committee to conduct any of its meetings by telephone or other means of communication. According to the record, holding regular business meetings via teleconference or videoconference has become common practice within other citrus industry organizations, and witnesses supported the proposal to authorize the committee to conduct its meetings using modern technology as well. Witnesses at the hearing testified that using the authorized telephone voting authority during past emergencies has worked well for the committee, and believe that similar benefits would derive from the authority to conduct business meetings through alternative means of communication.

According to the witnesses, authority to conduct business meetings via telephone or other means of communication would allow the committee to respond more quickly to urgent matters. Meetings could be scheduled on a timelier basis because the need for participants to plan for long-distance travel would be reduced. Witnesses testified that holding business meetings by telephone or other means of communication would also be expected to improve committee efficiency, save members travel time and expense, encourage greater industry participation, make meetings more accessible to people with disabilities, promote openness of meeting proceedings, and allow the industry to build consensus through continuing discussions on certain topics. Proponents pointed out that new communications technologies, such as videoconferencing and web conferencing, continue to be developed, and that it is the committee's intent that all such communication methods be included in the scope of this proposal.

Witnesses stated that if the proposal authorizing the committee to conduct research and promotion programs as discussed under Material Issue Number 4 below is adopted, the committee and its subcommittees would be likely to hold many more meetings as the new programs are developed. Witnesses believe that this increased meeting frequency could be handled most efficiently through the use of telephone or other communications technologies. Additionally, witnesses believe that more people would be encouraged to participate in the development of the new programs.

The hearing record shows that the committee intends to continue holding assembled meetings to deliberate matters such as its annual budget of expenses. Witnesses stated that the committee's intent would be to reserve

most controversial discussions for assembled meetings. However, proponents recognized that some emergency situations could involve controversial issues and decisions regarding those issues might have to be made during telephone meetings.

Currently, the order requires that all votes cast during an assembled meeting be cast in person and that votes cast by telephone be confirmed in writing. Under the proposed amendment, votes cast at meetings held via telephone or other means of communication would continue to require written confirmation. Witnesses stated that, in addition to current written confirmation, facsimiles and emails would be considered acceptable forms of written confirmation of a member's vote.

Witnesses anticipated that if this proposal were implemented, situations could arise where some members participate in assembled meetings by telephone or other means of communication. In situations where part of the meeting members are assembled and part of the meeting members join via communications technology, votes cast by those members not physically present at the assembled meeting location would not be considered as cast in person.

Finally, if the proposed amendment is adopted, the same quorum and voting requirements specified for assembled committee meetings would apply to meetings held by any other means.

No testimony opposing this proposal was presented at the hearing. For the reasons stated above, it is recommended that § 905.34, Procedure of committees, be amended to provide that the committee may conduct meetings via telephone or any other means of communication in addition to assembled meetings. Moreover, it is recommended that some members may participate in assembled meetings via telephone or other means of communication provided that any votes cast at assembled meetings other than in person be confirmed in writing.

Material Issue Number 4—Research and Promotion

A new § 905.54, providing authority to establish and conduct research and promotion programs, including paid advertising, should be added to the order.

The Act lists under 5 U.S.C. 608c(I) specific commodities for which paid advertising may be conducted under marketing order programs. Citrus is included in that list.

Currently, the order does not provide authority for the committee to recommend or conduct research or promotion projects. This proposed amendment would authorize the committee to recommend, conduct, and fund approved production research and market research and promotion programs, including paid advertising, to address the specific needs of fresh citrus growers and handlers.

The Florida citrus industry as a whole conducts a number of research and promotion programs. Some of the citrus production and marketing problems addressed through these programs are shared by all segments of the industry. But many challenges are unique to the fresh citrus industry. Currently, research and promotion for fresh citrus is encapsulated within the programs of the larger industry, which has a processing orientation since approximately 90 percent of all Florida citrus produced is used for processing. The fresh citrus industry believes that research and promotion programs established under the order might better address their unique needs and that the committee should be authorized to recommend and conduct such programs.

Witnesses identified issues facing the fresh citrus industry and described how authority to conduct research and promotional programs would help them address those issues specifically. Witnesses testified that research to improve fresh citrus production and handling practices could benefit the industry by reducing the incidence and spread of bacterial canker.

The record shows that there has been a decline in fresh Florida citrus production in recent years. According to evidence presented at the hearing, bearing acreage of Florida grapefruit has decreased by more than 50 percent of the 1996–97 total of 139,200 acres. Consequently, grapefruit production has mirrored the loss of acreage, with drops from the previous 5-year average of 69 percent in 2004–05 and 53 percent in 2005–06, due to hurricane damage. At the time of the hearing, witnesses expected that there would be a further drop in production of approximately 10 percent between the 2006–07 and 2007–08 crops due to disease. Similar declines were described for Florida orange production. Bearing acreage has trended downward from a total of 609,200 acres in 1996–97 to 475,900 acres in 2006–07. Yields also declined in the same period, from 18.05 tons per acre to 12.20 tons per acre. Total production during the same ten seasons decreased from 10,980,000 tons to 5,805,000 tons. According to witnesses, some of that loss is attributable to hurricane damage, but much is also due to removal of diseased trees. Data was also presented at the hearing to show that bearing acreage of Florida tangerines and tangelos has declined from 40,000 acres in 1997–98 to 21,000 acres in 2006–07. Total utilized tangerine and tangelo production for that span of years decreased from 375,000 tons to 275,000 tons.

In 1997–98, 43 percent of Florida grapefruit, 4.5 percent of Florida oranges, and 54 percent of Florida tangerines were utilized in the fresh market. By comparison, fresh utilization for those crops in 2006–07 was 40 percent of grapefruit, 5 percent of oranges, and 60 percent of tangerines and tangelos. Although the percentage of the crops utilized for fresh market has not changed considerably over that time period, the decreases in total production make less fruit available for fresh market utilization. According to witnesses, packing houses are not packing at full capacity because there is a shortage of fruit acceptable for the fresh market. As described above, some of the shortage may be due to losses from hurricane damage. But much may be attributed to diseases. Production research is needed to develop disease resistant citrus varieties and better disease management strategies to improve fresh citrus yields and increase returns to producers and handlers.

According to witness testimony, competition in the global market means that fresh Florida citrus must meet market demands for cosmetically acceptable fruit. One witness suggested that production research focused on improved windbreak systems could reduce cosmetic scarring as well as the spread of bacterial canker. Witnesses also mentioned the need for development of new varieties of fruit that would be not only disease resistant, but easier to peel and seedless, in response to consumer demands.

Witnesses testified that Florida's share of U.S. fresh citrus sales has declined in recent years. Evidence provided at the hearing shows that Florida's share of fresh U.S. grapefruit shipments is down from 72 percent in 1997–98 to 64 percent in 2006–07. Florida's share of U.S. tangerine and tangelo shipments has decreased from 72 percent in 1997–98 to 65 percent in 2006–07. Percentages for fresh Florida orange shipments have remained fairly consistent over the same 10-year period, generally around 20 percent of the U.S. total. Witnesses believe there is a need for the fresh Florida citrus industry to sponsor consumer research and market development programs that would revitalize that sector.

Witnesses advocated providing the industry with necessary tools to

strengthen grower returns and enhance demand while elevating consumer awareness and appreciation of fresh Florida citrus.

Addition of the authority to conduct research and promotion programs would merely authorize the committee to recommend such programs and, following USDA approval, to plan and conduct such activities. As mentioned above, research and promotion programs for the broader Florida citrus industry is currently conducted through the Florida Department of Citrus and other industry organizations. Funding for those programs comes from fees collected by those entities. Witnesses at the hearing testified that projects addressing the specific needs of the fresh industry would shift to the committee. Funding for the committee's projects would come from the collection of assessments from handlers of fresh Florida citrus, as authorized under the order with funding for other projects to remain with the other entities. Therefore, witnesses believed that total costs to handlers would not be significantly different from their current total industry assessments.

Supporters of the proposed amendment emphasized that stakeholders in the fresh citrus industry should be the ones to determine which programs would best meet the industry's needs. One witness representing the committee said that if the proposed amendment is adopted, the committee would likely establish two varietal subcommittees for oranges/specialty crops and grapefruit to consider and recommend research and promotion projects to benefit the different types of fresh citrus grown in the production area. For example, most of Florida's fresh grapefruit shipments are to export markets, while only a limited percentage of fresh oranges and tangerines are exported. Market development projects could be planned that would enhance the marketing of each different crop. The varietal subcommittees would help ensure that the market differences between the varieties are recognized and addressed in any research and promotion programs that might be established as a result of this additional authority.

According to witness testimony, many Florida citrus producers and handlers grow and/or ship more than one type of citrus, such as oranges and tangerines. Most also provide fruit for both the processing and fresh markets. Witnesses offering testimony at the hearing represented this group of diversified Florida citrus producers and handlers. Each was supportive of this proposal and testified that the Florida citrus industry as a whole was supportive of the committee's efforts to undertake responsibility for fresh citrus research and promotion programs.

The committee's proposal included provision language that would require the committee to report on the status and accomplishments of its research and promotion programs annually. Similarly, contracting parties working on such projects with the committee would be required to file and maintain complete project reports and make them available to the committee.

No testimony opposing this proposal was provided at the hearing. For the reasons stated above, it is recommended that a new § 905.54 be added to the order to provide authority to establish and conduct production research projects, marketing research and development projects, and marketing promotion programs, including paid advertising, to enhance the production and marketing of fresh Florida citrus. Additionally, the section should require that the committee provide annual project status reports to its members and to USDA, Moreover, contractors should be required to file and maintain project reports and records and make them available to the committee and USDA.

Conforming Changes

AMS also proposed to make such changes as may be necessary to the order to conform to any amendment that may result from the hearing. Amendments to § 905.22 Nominations, as described under Material Issue 1, would replace the word "he" in the first sentence of paragraph (a)(2) to "he or she." As conforming changes in § 905.22, AMS recommends replacing the word "he" in the second sentence of paragraph (a)(2) with "he and she", and replacing the word "his" in the last sentence of paragraph (b)(2) with the words "his or her."

Small Business Considerations

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit.

Small agricultural service firms, which include handlers regulated under the order, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000. Small agricultural producers have been defined as those with annual receipts of less than $750,000.

There are approximately 48 handlers of fresh citrus subject to regulation under the order and approximately 7,700 producers of fresh citrus in the regulated area. Information provided at the hearing indicates that over 90 percent of the handlers would be considered small agricultural service firms. Hearing testimony also suggests that the majority of producers would also be considered small entities according to the SBA's definition.

The order regulates the handling of fresh citrus grown in the state of Florida. Total bearing citrus acreage has declined from a peak of approximately 800,000 acres in 1996–97 to about 550,000 acres in 2006–07, largely due to hurricane damage and the removal of diseased citrus trees. Approximately 7.236 million tons of citrus were produced in Florida during the 2006–07 season—a decline of approximately 6 million tons compared to the 1996–97 season. According to evidence provided at the hearing, approximately 10 percent of Florida citrus is used in the fresh market, while the remainder is used in the production of processed juice products. Generally, 40 percent of Florida's fresh citrus is shipped to export markets, including the Pacific Rim countries, Europe, and Canada.

Under the order, outgoing quality regulations are established for fresh citrus shipments, and statistical information is collected. Program activities administered by the committee are designed to support large and small citrus producers and handlers. The 18-member committee is comprised of both producer and handler representatives from the production area, as well as a public member. Committee meetings where regulatory recommendations and other decisions are made are open to the public. All members are able to participate in committee deliberations, and each committee member has an equal vote. Others in attendance at meetings are also allowed to express their views.

After discussions within the citrus industry, the committee considered developing its own research and marketing promotion programs focusing on fresh Florida citrus. An amendment study subcommittee was formed to explore this idea and other possible order revisions. The subcommittee

developed a list of proposed amendments to the order, which was then presented to the committee and shared with other industry organizations. The proposed amendments were also posted on the committee's Web site for review by the Florida citrus industry at large.

The committee met to review and discuss the subcommittee's proposals at its meeting on May 29, 2007. At that time, the committee voted unanimously to support the four proposed amendments that were forwarded to AMS.

The proposed amendments are intended to provide the committee and the industry with additional flexibility in administering the order and producing and marketing fresh Florida citrus. Record evidence indicates that the proposals are intended to benefit all producers and handlers under the order, regardless of size.

All grower and handler witnesses supported the proposed amendments at the hearing. Some witnesses commented on the implications of implementing specific marketing, research, and development programs. In that context, witnesses stated that they expected the benefits to producers and handlers to outweigh any potential costs.

A description of the proposed amendments and their anticipated economic impact on small and large entities is discussed below.

Proposal 1—Cooperative Representation

Proposal 1 would amend the order by reducing the required number of cooperative producer and cooperative handler seats on the committee from three each to two each.

At the time the order was promulgated, there were numerous cooperative entities in the industry. The committee's original structure was designed to afford proportional representation for cooperative producers and handlers on the committee. The shrinking number of cooperatives entities, especially cooperative marketing entities, over time has prompted the committee to evaluate the appropriateness of the current committee structure. The committee believes that reducing the number of required cooperative seats on the committee would better reflect the current composition of the industry. The reduction would ensure that the interests of all large and small producers and handlers, whether independent or members of cooperatives, are represented appropriately during committee deliberations. Adoption of the proposed amendment would have no economic impact on producers or handlers of any size.

Proposal 2—Substitute Alternates

Proposal 2 would amend the order by allowing members who are unable to attend committee meetings to designate available alternates to represent them if their own alternates are also unavailable in order to achieve a quorum. If members are unable to designate substitute alternates, the committee could designate substitutes at the meeting if necessary to secure a quorum. Under current order provisions, only a member's respective alternate may represent the member if the member is unable to attend a meeting. There is no provision for a situation in which both the member and his or her alternate are unavailable for a meeting. In the past, meetings have been cancelled at the last minute because attendance was insufficient to meet quorum requirements.

If implemented, the proposed amendment would allow alternates not otherwise representing absent members to represent other members at committee meetings in order to secure a quorum. This would help ensure that quorum requirements could be met and that committee business could be addressed in a timely manner. This amendment would have no adverse economic impact on producers or handlers of any size.

Proposal Number 3—Telephone Meetings

Proposal 3 would amend the order by adding authority to conduct committee meetings by telephone or other means of communication. Currently, the committee is limited to meeting in person, with provision for emergency voting by telephone. This amendment would give the committee greater flexibility in scheduling meetings and would be consistent with current practices in other citrus industry settings.

Witnesses stated that using modern communication technology would allow the committee to respond more quickly to urgent industry needs and would provide greater access to meetings by members and other industry participants. Greater meeting flexibility would make it easier for the committee to hold additional meetings where there is a need for lengthier discussion and consensus building. The quorum and voting requirements specified for assembled meetings would also apply to meetings held via telephone or teleconference. The votes of members participating by telephone or other means of communication would be confirmed in writing. Faxes and emails would be considered acceptable forms of written vote confirmation by the committee.

This amendment is expected to benefit producers and handlers of all sizes by improving committee efficiencies, encouraging greater participation in industry deliberations and is not expected to result in any significant increased costs to producers or handlers.

Proposal Number 4—Research and Promotion

Proposal 4 would amend the order by adding authority to establish research and promotion programs. If this authority was implemented, the committee would be able to address the specific needs of the Florida fresh citrus industry by recommending, conducting, and funding research projects and promotional programs, including paid advertising, that focus on the production, handling, and marketing of fresh citrus.

Witnesses testified that the committee's assessment rate would increase to cover the costs of any newly authorized research and promotion projects, and that there may be an offset by decreases in payments by the industry to fund projects through other entities. Any increased assessment costs would be based on the volume of fresh citrus shipped by each handler. Therefore, any increased costs would be applied proportionately to all handlers.

Witnesses testified that the benefits expected to accrue to producers and handlers following implementation of this amendment would outweigh the costs. Witnesses advocated the establishment of production research programs that would assist with the development of new varieties and post-harvest handling methods to improve the marketability of fresh Florida citrus. Witnesses expect that marketing programs specific to fresh citrus would increase consumer demand and sales, which would in turn increase returns to producers and handlers. There was unanimous support for this proposal from witnesses at the hearing.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments to the order on small entities. The record evidence is that implementation of the proposals to reallocate membership seats, authorize the use of substitute alternates, and authorize use of modern communication technology at meetings would have little or no impact on producers and handlers. Adding authority to conduct research and

promotion programs would result in additional costs being imposed on handlers once implemented. Evidence provided at the hearing shows that committee expenses, and therefore handler assessments, would increase with the implementation of the proposal to authorize research and promotion programs. However, the record indicates that there may be an offset by decreases in payments to other industry entities now conducting research. Improved production and marketing strategies developed under the authorized programs would be expected to outweigh any additional costs to the Florida fresh citrus industry. In addition, any increased costs would be proportional to a handler's size and would not unduly or disproportionately impact small entities.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. These amendments are intended to improve the operation and administration of the order and to assist in the marketing of fresh Florida citrus.

Committee meetings regarding these proposals, as well as the hearing date and location, were widely publicized throughout the citrus industry, and all interested persons were invited to attend the meetings and the hearing and to participate in committee deliberations on all issues. All committee meetings and the hearing were public forums and all entities, both large and small, were able to express views on these issues. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

Paperwork Reduction Act

Current information collection requirements for Part 905 are approved by the Office of Management and Budget (OMB), under OMB Number 0581–0189—"Generic OMB Fruit Crops." No changes in these requirements are anticipated as a result of this proceeding. Should any such changes become necessary, they would be submitted to OMB for approval.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

Civil Justice Reform

The amendments to Marketing Order No. 905 proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposal.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United Sates in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of the entry of the ruling.

Rulings on Briefs of Interested Persons

Briefs and proposed findings and conclusions based on the record evidence were solicited in this proceeding. No briefs were filed.

General Findings

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing agreement and order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(1) The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulates the handling of fresh citrus grown in the production area (Florida) in the same manner as, and is applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing order upon which a hearing has been held;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of fresh citrus grown in the production area; and

(5) All handling of fresh citrus grown in the production area as defined in the marketing agreement and order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because these proposed changes have already been widely publicized and the committee and industry would like to avail themselves of the opportunity to implement the changes as soon as possible. All written exceptions timely received will be considered and a grower referendum will be conducted before any of these proposals are implemented.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR Part 905 is proposed to be amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Amend § 905.22 by revising paragraphs (a)(2) and (b)(2) to read as follows:

§ 905.22 Nominations.

(a) * * *

(1) * * *

(2) Each nominee shall be a producer in the district from which he or she is nominated. In voting for nominees, each producer shall be entitled to cast one vote for each nominee in each of the districts in which he or she is a

producer. At least two of the nominees and their alternates so nominated shall be affiliated with a bona fide cooperative marketing organization.

(b) * * *

(1) * * *

(2) Nomination of at least two members and their alternates shall be made by bona fide cooperative marketing organizations which are handlers. Nominations for not more than six members and their alternates shall be made by handlers who are not so affiliated. In voting for nominees, each handler or his or her authorized representative shall be entitled to cast one vote, which shall be weighted by the volume of fruit by such handler during the then current fiscal period.

3. Revise § 905.23 to read as follows:

§ 905.23 Selection.

(a) From the nominations made pursuant to § 905.22(a) or from other qualified persons, the Secretary shall select one member and one alternate member to represent District 2 and two members and two alternate members each to represent Districts 1, 3, 4, and 5 or such other number of members and alternate members from each district as may be prescribed pursuant to § 905.14. At least two such members and their alternates shall be affiliated with bona fide cooperative marketing organizations.

(b) From the nominations made pursuant to § 905.22(b) or from other qualified persons, the Secretary shall select at least two members and their alternates to represent bona fide cooperative marketing organizations which are handlers, and the remaining members and their alternates to represent handlers who are not so affiliated.

4. In § 905.29, redesignate paragraph (b) as paragraph (c), and add a new paragraph (b) to read as follows:

§ 905.29 Inability of members to serve.

* * * * *

(b) If both a member and his or her respective alternate are unable to attend a committee meeting, such member may designate another alternate to act in his or her place in order to obtain a quorum: *Provided*, That such alternate member represents the same group affiliation as the absent member. If the member is unable to designate such an alternate, the committee members present may designate such alternate.

* * * * *

5. Revise paragraph (c) of § 905.34 to read as follows:

§ 905.34 Procedure of committees.

* * * * *

(c) The committee may provide for meeting by telephone, telegraph, or other means of communication, and any vote cast at such a meeting shall be promptly confirmed in writing: *Provided*, That if any assembled meeting is held, all votes shall be cast in person.

* * * * *

6. Add a new § 905.54 to read as follows:

§ 905.54 Marketing, research and development.

The committee may, with the approval of the Secretary, establish, or provide for the establishment of, projects including production research, marketing research and development projects, and marketing promotion including paid advertising, designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of fruit. The expenses of such projects shall be paid by funds collected pursuant to § 905.41. Upon conclusion of each project, but at least annually, the committee shall summarize the program status and accomplishments to its members and the Secretary. A similar report to the committee shall be required of any contracting party on any project carried out under this section. Also, for each project, the contracting party shall be required to maintain records of money received and expenditures, and such shall be available to the committee and the Secretary.

Dated: December 19, 2008.

James E. Link,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–30670 Filed 12–23–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–1114; Airspace Docket No. 08–AGL–17]

RIN 2120–AA66

Proposed Establishment of Low Altitude Area Navigation Route (T-Route); Rockford, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish a low altitude Area Navigation (RNAV) route, designated T–265, in the Chicago/Rockford International Airport, IL, terminal area. T-routes are low altitude Air Traffic Service routes, based on RNAV, for use by aircraft that have instrument flight rules (IFR) approved Global Positioning System (GPS)/Global Navigation Satellite System (GNSS) equipment. This action would enhance safety and improve the efficient use of the navigable airspace in the Chicago/Rockford International Airport, IL, terminal area west of Chicago, IL.

DATES: Comments must be received on or before February 9, 2009.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2008–1114 and Airspace Docket No. 08–AGL–17 at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2008–1114 and Airspace Docket No. 08–AGL–17) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2008–1114 and Airspace Docket No. 08–AGL–17." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/* .

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, Air Traffic Organization, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to establish a low altitude RNAV route in the Chicago/Rockford International Airport, IL, terminal area. The route, designated as T–265, would be depicted on the appropriate IFR En Route Low Altitude charts. This T-route is only intended for use by GPS/GNSS-equipped aircraft and is being proposed to enhance safety and to facilitate the more flexible and efficient use of the navigable airspace for en route IFR operations transitioning through the Chicago/Rockford International terminal airspace area west of Chicago, IL.

Low altitude RNAV routes are published in paragraph 6011 of FAA Order 7400.9S signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in14 CFR 71.1. The low altitude RNAV routes listed in this document will be published subsequently in the Order.

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

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes a low altitude Area Navigation route (T-Route) at Rockford, IL.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures," paragraph 311a, 311b, and 311k. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, and effective October 31, 2008, is amended as follows:

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–265 KELSI to VEENA [New]

KELSI, IL	WP	(lat. 41°26′20″N., long. 88°59′29″W.)
SIMMN, IL.	WP	(lat. 41°58′50″N., long. 88°52′42″W.)
BULLZ, IL	WP	(lat. 42°27′27″N., long. 88°46′17″W.)
VEENA, WI.	WP	(lat. 42°42′18″N., long. 88°18′14″W.)

* * * * *

Issued in Washington, DC, on December 12, 2008.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. E8–30636 Filed 12–23–08; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–2719; MB Docket No. 08–132; RM–11464]

Television Broadcasting Services; Clovis, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a channel substitution proposed by Barrington Amarillo License LLC ("Barrington"), the licensee of KVIH–TV, analog channel 12, and permittee of KVIH–DT, post-transition DTV channel 20, Clovis, New Mexico. Barrington requests the substitution of

its current analog channel, channel 12, for post-transition use at Clovis.

DATES: Comments must be filed on or before January 8, 2009, and reply comments on or before January 20, 2009.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Robert M. Sherman, Esq., Covington & Burling LLP, 1201 Pennsylvania Avenue, NW., Washington, DC 20004–2401.

FOR FURTHER INFORMATION CONTACT: Joyce L. Bernstein, *joyce.bernstein@fcc.gov,* Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 08–132, adopted December 16, 2008, and released December 17, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.622 [Amended]

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under New Mexico, is amended by adding DTV channel 12 and removing DTV channel 20 at Clovis.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–30693 Filed 12–23–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648–AW64

Fisheries of the Caribbean, Gulf of Mexico and South Atlantic; Snapper–Grouper Fishery off the Southern Atlantic States; Amendment 16

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

ACTION: Notice of Availability of Amendment 16 to the South Atlantic Snapper-Grouper Fishery Management Plan; request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) has submitted Amendment 16 to the Fishery Management Plan (FMP) for the Snapper–Grouper Fishery of the South Atlantic Region (Amendment 16) for review, approval, and implementation by NMFS. Amendment 16 was developed to address overfishing and other management issues in the snapper-grouper fishery. Amendment 16 would establish management reference points and specify interim allocations for the commercial and recreational sectors for gag and vermilion snapper, as well as implement management measures which would be applied to the commercial and recreational sectors of the snapper-grouper fishery. These management measures include: a four-month spawning season closure of the recreational and commercial shallow water grouper fisheries; a five-month closure of the recreational vermilion snapper fishery; commercial quotas for gag and vermilion snapper; a reduced recreational grouper aggregate bag limit (including tilefish) and vermilion snapper bag limit; and a requirement to use dehooking and venting tools to reduce bycatch mortality of snapper-grouper species.

DATES: Comments must be received no later than 5 p.m., eastern time, on February 23, 2009.

ADDRESSES: Comments on Amendment 16, identified by 0648–AW64, may be sent to either of the following addresses:

- Electronic submissions: Submit all electronic public comments via the Federal rule-making portal: *www.regulations.gov*
- Mail: John McGovern, NMFS, Southeast Regional Office, 263 13th Ave. South, St. Petersburg, FL 33701
- Fax: (727) 824–8308 Attn: John McGovern

Instructions: All comments received are a part of the public record and will generally be posted to *www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) 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 PDF file formats only. Copies of Amendment 16, which includes a final environmental impact statement, a regulatory impact review, a regulatory flexibility analysis, and a fishery impact statement are available from the South Atlantic Fishery Management Council, 4055 Faber Place, Suite 201, North Charleston, SC 29405; telephone 843–571–4366; fax 843–769–4520; e–mail *safmc@safmc.net.*

FOR FURTHER INFORMATION CONTACT: John McGovern, telephone: 727–824–5305;

fax: 727–824–5308; e–mail: *John.McGovern@noaa.gov*.

SUPPLEMENTARY INFORMATION: The South Atlantic snapper-grouper fishery is managed under the Snapper-Grouper FMP of the South Atlantic Region (Snapper-Grouper FMP). The Snapper-Grouper FMP was prepared by the Council and implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Background

South Atlantic stocks of gag, vermilion snapper, red grouper and black grouper are classified as experiencing overfishing, and gag is classified as approaching an overfished condition. The proposed amendment would implement new management measures designed to address overfishing of these species and to protect all shallow-water grouper species (gag, black grouper, red grouper, scamp, rock hind, red hind, coney, graysby, yellowfin grouper, red grouper, yellowmouth grouper, and tiger grouper) during their spawning season. Also, the amendment would authorize NMFS' Southeast Regional Administrator to adjust vermilion snapper management measures to achieve optimum yield (OY) in the fishery based on the results of the recently completed stock assessment.

The amendment includes alternatives that specify interim allocations between the commercial and recreational sectors for the gag and vermilion snapper fisheries. This amendment also would implement new management reference points for gag and vermilion snapper, including maximum sustainable yield and OY, which reflect current scientific information as provided by the assessments and approved by the Council's Scientific and Statistical Committee. In addition, Amendment 16 includes alternatives that would establish a four-month spawning season closure of the recreational and commercial shallow-water grouper fisheries, a five-month closure of the recreational vermilion snapper fishery, specify commercial quotas for gag and vermilion snapper, reduce the recreational grouper aggregate bag limit (including tilefish) and the vermilion snapper bag limit, and require the use of venting tools and dehooking devices to reduce bycatch mortality of incidentally caught snapper-grouper species.

Procedural Aspects of Amendment 16

The Council has submitted Amendment 16 for Secretarial review, approval and implementation. NMFS' decision to approve, partially approve or disapprove Amendment 16 will be based, in part, on consideration of comments, recommendations, and information received during the comment period on this notice of availability (NOA). A proposed rule will be published in the **Federal Register** for public comment. After considering public comment on the NOA, and consistency with Magnuson-Stevens Act and other applicable laws, NMFS will publish a notice of agency action in the **Federal Register** announcing the Agency's decision to approve, partially approve or disapprove Amendment 16, and the associated rationale. If approved, the provisions of Amendment 16 would be specified in a final rule published in the **Federal Register.**

Consideration of Public Comments

Public comments received by 5 p.m. eastern time on February 23, 2009 will be considered by NMFS in the approval/disapproval decision regarding Amendment 16.

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

Dated: December 19, 2008.

Alan D. Risenhoover,

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

[FR Doc. E8–30714 Filed 12–23–08; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 73, No. 248
Wednesday, December 24, 2008

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

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2008–0038]

The National Advisory Committee on Meat and Poultry Inspection; Nominations for Membership

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture (USDA) is soliciting nominations for membership on the National Advisory Committee on Meat and Poultry Inspection (NACMPI). The full Committee consists of 16–18 members, and each person selected is expected to serve a 2-year term.

DATES: The names of the nominees and their typed curricula vitae or resumes must be postmarked no later than January 23, 2009.

ADDRESSES: Nominations should be submitted by e-mail to *NACMPI@fsis.usda.gov,* or by mail to Mr. Alfred V. Almanza, Administrator, Food Safety and Inspection Service (FSIS), USDA, in care of Faye Smith, Room 1175–South Building, 1400 Independence Avenue, SW., Washington, DC 20250–3700, or by fax to (202) 720–5704.

FOR FURTHER INFORMATION CONTACT: Faye Smith, Public Affairs Specialist, Congressional and Public Affairs Office, FSIS, telephone (202) 205–3826; Fax (202) 720–5704; e-mail *faye.smith@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Federal Advisory Committee Act, 5 U.S.C. app. 2, USDA is seeking nominees for membership on the National Advisory Committee on Meat and Poultry Inspection. The Committee provides advice and recommendations to the Secretary on meat and poultry inspection programs, pursuant to sections 7(c), 24, 301(a)(3), and 301(c) of the Federal Meat Inspection Act, 21 U.S.C. 607(c), 624, 645, 661(a)(3), and 661(c), and to sections 5(a)(3), 5(c), 8(b), and 11(e) of the Poultry Products Inspection Act, 21 U.S.C. 454(a)(3), 454(c), 457(b), and 460(e). Nominations for membership are being sought from persons representing industry, academia, State and local government officials, public health organizations, and consumers and consumer organizations.

Nomination materials including the names of the nominees and their typed curricula vitae or resumes, must be submitted to the person listed in the **ADDRESSES** section of this notice. Form AD–755, Advisory Committee Membership Background Information, is available on-line in Word and PDF format at *http://www.fsis.usda.gov/About_FSIS/NACMPI_Nominations/index.asp.*

Appointments to the Committee will be made by the Secretary. To ensure that recommendations of the Committee take into account the needs of the diverse groups served by the Department, membership will include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities. It is anticipated that the Committee will meet at least twice annually.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2008_Notices_Index/.* FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/.* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on December 19, 2008.

Alfred V. Almanza,

Administrator.

[FR Doc. E8–30673 Filed 12–23–08; 8:45 am]
BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Announcement for the 2009 U.S. Forest Service Urban and Community Forestry Challenge Cost Share Grant Program.

SUMMARY: The National Urban and Community Foresty Advisory Council, (NUCFAC), is charged, by law, to provide recommendations to the Secretary of Agriculture on urban forestry related issues and opportunities. Part of the Council's role is to recommend the criteria for the U.S. Forest Service's Urban and Community Forestry, (U&CF) Challenge Cost Share Grant Program.

NUCFAC has revised their criteria for the U.S. Forest Service's U&CF Challenge Cost Share Grant Program for 2009. The new U&CF Challenge Cost Share Grant Program will be solicited in two categories: Innovation grants and Best Practices grants. At total anticipated amount of one million dollars will be divided in half between the two categories.

Innovation Grants

Innovation grants, are to focus on one of the Council's identified priority issues confronting the UC&F

community: Energy Conservation, Climate Change and Public Health.

NUCFAC will seek proposals from organizations and partnerships that demonstrate the reach, resources and expertise needed to deliver meaningful, replicable results. As much as $500,000 would be available in 2009 for one or more Innovation Grants.

2009 Best Practices Grants

- Smaller grants will be funded up to $50,000 per application for organizations that can implement, demonstrate, and disseminate replicable approaches to: Make best practices/latest science in urban forestry accessible to practitioners;
- Nurture networks of urban forestry practitioners within existing conservation, organizations, professional societies, social networks, and Internet communities; and
- Address other challenges to the U&CF community.

DATES: Applications are available electronically at the following Web site, *http://www.grants.gov*, due by 11:59 p.m., February 17, 2009.

Those that do not have access to a computer may request a hardcopy of the application and instructions by contacting Nancy Stremple at the address below.

ADDRESSES: Written comments concerning this announcement should be addressed to Nancy Stremple, Executive Staff to National Urban and Community Forestry Advisory Council, 201 14th St., SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151. Comments may also be sent via e-mail to *nstremple@fs.fed.us*, or via facsimile to 202–690–5792.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at 201 14th St., SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151. Visitors are encouraged to call ahead to 202–205–1054 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Nancy Stremple, Executive Staff or Robert Prather, Staff Assistant to National Urban and Community Forestry Advisory Council, 201 14th St., SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151, phone 202–205–1054.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The 2009 U.S. Forest Service Urban and Community Forestry Challenge Cost Share Grant instructions and application are posted on *http://www.grants.gov*. The instructions only will be posted on the NUCFAC and U.S. Forest Service Web sites at: *http://www.treelink.org/nucfac* and *http://www.fs.fed.us/ucf/nucfac*.

If interested applicants are not already registered in grants.gov, they are encouraged to register now. The process may take up to two weeks to collect the required information.

Dated: December 18, 2008.

Robin L. Thompson,

Associate Deputy Chief, State and Private Forestry.

[FR Doc. E8–30657 Filed 12–23–08; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Fee Sites; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Northern Region, USDA Forest Service.

ACTION: Notice of New Fee Sites.

SUMMARY: Pending public comments and feedback received through the BLM Resource Advisory Council (BLM RAC) review and recommendation process, the following National Forests and National Grasslands in the Northern Region propose to begin charging new fees at the following recreation sites: The Beaverhead Deerlodge National Forest will begin charging new fees for overnight camping at Pintler Campground ($5/night) with an additional vehicle fee of $3/vehicle; East Fork Campground ($8/night) with an additional vehicle fee of $3/vehicle; North Van Houten Campground ($9/night) with an additional vehicle fee of $3/vehicle; South Van Houten Campground ($9/night) with an additional vehicle fee of $3/vehicle Twin Lakes Campground ($9/night) with an additional vehicle fee of $3/vehicle; for day use at Canyon Creek Day Use Site ($4/site), and for the overnight rental at Long Tom Cabin ($40/night); and at Springhill Cabin ($50/night). Bitterroot National Forest will begin charging new fees for overnight camping at Blodgett Campground ($8/night); for day use at Willoughby Group Site ($50); for the overnight rental of Lost Horse Cabin ($50/night); and Boulder Point Lookout ($35/night). The Clearwater National Forest will begin charging new fees for the overnight rental of Wendover Cabin ($40/night). The Custer National Forest will begin charging new fees for overnight camping at Jimmy Joe Campground ($10/night) with an extra vehicle fee of $5/night; Palisades Campground ($10/night) with an extra vehicle fee of $5/night; M K Campground ($10/night) with an extra vehicle fee of $5/night; and Initial Creek Campground ($10/night) with an extra vehicle fee of $5/night. The Dakota Prairie Grasslands will begin charging new fees for overnight camping at Burning Coal Vein Campground ($10/night). The Idaho Panhandle National Forest will begin charging new fees for overnight camping at Cedar Creek Campground ($8/night) with an extra vehicle fee of $2/night; Telichpah Campground ($8/night) with an additional vehicle fee of $2/night; Tripod Point Campground ($5/night); Distillery Bay Campground ($5/night); Bottle Bay Campground ($5/night); and Teacher Bay Campground ($5/night). The Idaho Panhandle National Forest will also begin charging a dump station fee of $3 at Upper Landing Dump Station for each tank downloaded. The Nez Perce National Forest will begin charging new fees for the overnight rental of Sourdough Lookout ($30/night); Moore's Station Cabin ($50/night); Elk Mountain Cabin ($35/night); Selway Falls Cabin ($50/night); Burnt Knob Lookout ($25/night); Square Mountain Lookout ($25/night); and Indian Hill Cabin ($35/night). Rentals of other cabins and lookouts throughout the Northern Region have shown that the public appreciates and enjoys the availability of historic rental cabins and lookouts as well as campgrounds and group camping sites. Funds from the cabin rentals, campgrounds, group camping site, day use site and dump station will be used for the continued operation and maintenance of recreation sites.

DATES: Pending additional public comment and BLM Resource Advisory Committee review and recommendation regarding charging new fees at these proposed sites, the cabins, lookouts, campgrounds, group camping site, group use day use site, day use site and RV dump station could become available as early as June 24, 2009. Additionally, fee pricing may be adjusted per the proposed Region One Regional Recreation Fee schedule, per public and BLM RAC comments on the framework and fee pricing schedule, which will also go through Federal Register notice, regional and local

public comment, and BLM RAC review and recommendation.

ADDRESSES: Comments regarding these new proposed fee sites may be sent directly to the respective Forest or Grassland: Forest Supervisor, Beaverhead-Deerlodge National Forest, 420 Barrett Street, Dillon, MT 59725–3572; Forest Supervisor, Bitterroot National Forest, 1801 North First Street, Hamilton, MT 59840; Forest Supervisor, Clearwater National Forest, 12730 Highway 12, Orofino, ID 83544; Forest Supervisor, Custer National Forest, 1310 Main Street, Billings, MT 59105; Grasslands Supervisor, Dakota Prairie Grasslands, 240 W. Century Avenue, Bismark, ND 58503; Forest Supervisor, Idaho Panhandle National Forest, 3815 Schreiber Way, Coeur d'Alene, ID 83815; Forest Supervisor, Nez Perce National Forest, 104 Airport Road, Grangeville, ID 83530.

FOR FURTHER INFORMATION CONTACT: Joni Packard, Northern Region Recreation Fee Program Coordinator, 406–329–3586.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. The intent of this notice is to give the public an opportunity to comment if they have concerns or questions about new fees.

The Northern Region currently offers over 150 other cabin rentals, including guard stations and fire lookouts, 208 fee campgrounds and 268 non-fee (free) campgrounds. Many sites are often fully booked throughout their rental season. Local public comments have shown that people desire having these sorts of recreation experiences on these National Forests and Grasslands. The fees proposed are based on amenities offered and local comparable markets and are both reasonable and acceptable for these sorts of unique recreation experience.

People wanting to rent these cabins, lookouts, campgrounds and group camping sites will need to do so through the National Recreation Reservation Service (NRRS), at *http://www.recreation.gov* or by calling 1–877–444–6777. The National Recreation Reservation Service charges a $9 fee for reservations made on-line and a $10 fee for reservations made by phone.

Dated: December 18, 2008.

Thomas Tidwell,

Regional Forester, Northern Region.

[FR Doc. E8–30652 Filed 12–23–08; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's intention to request an extension for a currently approved information collection in support of the program for the 1890 Land Grant Institutions Rural Entrepreneurial Outreach and Development Initiative Program.

DATES: Comments on this notice must be received by February 23, 2009 to be considered.

FOR FURTHER INFORMATION CONTACT: Mr. Edgar L. Lewis, Program Manager, Rural Development, USDA, STOP 3252, Room 4221, 1400 Independence Avenue, SW., Washington, DC 20250–3252. Telephone: (202) 690–3407, e-mail: *edgar.lewis@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: *Title:* 1890 Land Grant Institutions Rural Entrepreneurial Outreach and Development Initiative Program.

OMB Number: 0570–0041.

Expiration Date of Approval: May 31, 2009.

Type of Request: Extension of a currently approved information collection.

Abstract: The collection of this information will allow the Agency to determine the eligibility of the applicants; determine the specific purpose for which the funds will be utilized; determine the timeframes or dates by which activities surrounding the use of funds will be accomplished; determine the feasibility of the project; and to evaluate applicants' experience in managing similar activities.

Without the collection of this information, there would be no basis on which to award funds.

Estimate of Burden: Public reporting burden for this collection is estimated to average 15 minutes to 15 hours per response.

Respondents: Only 1890 Land Grant Institutions of Higher Education and Tuskegee University.

Estimated Number of Respondents: 18.

Estimated Number of Responses per Respondent: 17.

Estimated Number of Responses: 297.

Estimated Total Annual Burden on Respondents: 804 hours.

Copies of this information collected can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch: (202) 692–0043.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of Rural Development, including whether the information will have practical utility; (b) the accuracy of Rural Development's estimate of the burden to collect the required information, including the validity of the strategy used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments on the paperwork burden may be sent to Cheryl Thompson, Regulations and Paperwork Management Branch, Rural Development, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: December 18, 2008.

Ben Anderson,

Administrator, Rural Business-Cooperative Service.

[FR Doc. E8–30668 Filed 12–23–08; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Announcement of Solicitation of Applications and Grant Application Deadlines

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Solicitation of Applications.

SUMMARY: The United States Department of Agriculture (USDA) Rural Development administers rural utilities programs through the Rural Utilities Service. USDA Rural Development announces its Distance Learning and Telemedicine (DLT) grant program application window for Fiscal Year (FY) 2009 subject to the availability of funding. This notice is being issued prior to passage of a final appropriations

act to allow potential applicants time to submit proposals and give the Agency time to process applications within the current fiscal year. USDA Rural Development will publish a subsequent notice identifying the amount received in the final appropriations act, if any. Expenses incurred in developing applications will be at the applicant's risk. For FY 2008, Congress appropriated approximately $30 million.

In addition to announcing the application window, the Agency announces the minimum and maximum amounts for DLT grants applicable for the fiscal year. Finally, the Agency notes that the Food, Conservation, and Energy Act of 2008, in order to clearly establish that libraries are eligible to be recipients of DLT Loans and Grants, expressly added the category of libraries under Sec. 2333 (c)(1) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. Sec. 950aaa-2(a)(1)). This confirms longstanding Agency policy of considering libraries to be eligible entities under the DLT Program.

DATES: You may submit completed applications for grants on paper or electronically according to the following deadlines:

- Paper copies must be postmarked and mailed, shipped, or sent overnight no later than March 24, 2009 to be eligible for FY 2009 grant funding. Late or incomplete applications will not be eligible for FY 2009 grant funding.
- Electronic copies must be received by March 24, 2009 to be eligible for FY 2009 grant funding. Late or incomplete applications will not be eligible for FY 2009 grant funding.

ADDRESSES: Copies of the FY 2009 application guides and materials for the DLT grant program may be obtained at the following sources: (1) The DLT Web site: *http://www.usda.gov/rus/telecom/dlt/dlt.htm*, and (2) Contacting the DLT Program at 202–720–0413.

Paper applications are to be submitted to the USDA Rural Development, Telecommunications Program, 1400 Independence Ave., SW., Room 2845, STOP 1550, Washington, DC 20250–1550. Applications should be marked "Attention: Director, Advanced Services Division."

Electronic applications may be submitted through Grants.gov. Information on how to submit applications electronically is available on the Grants.gov Web site (*http://www.grants.gov*). Applicants must successfully pre-register with Grants.gov to use the electronic applications option. Application information may be downloaded from Grants.gov without preregistration.

FOR FURTHER INFORMATION CONTACT: Director, Advanced Services Division, Telecommunications Programs, USDA Rural Development. Telephone: 202–720–0413, fax: 202–720–1051.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Utilities Service (RUS).

Funding Opportunity Title: Distance Learning and Telemedicine Grants.

Announcement Type: Initial announcement.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.855.

Dates: You may submit completed applications for grants on paper or electronically according to the following deadlines:

- Paper copies must be postmarked and mailed, shipped, or sent overnight no later than March 24, 2009 to be eligible for FY 2009 grant funding. Late or incomplete applications are not eligible for FY 2009 grant funding.
- Electronic copies must be received by March 24, 2009 to be eligible for FY 2009 grant funding. Late or incomplete applications are not eligible for FY 2009 grant funding.

Items in Supplementary Information

I. Funding Opportunity: Brief introduction to the DLT program.

II. Minimum and Maximum Application Amounts: Projected Available Funding.

III. Eligibility Information: Who is eligible, what kinds of projects are eligible, what criteria determine basic eligibility.

IV. Application and Submission Information: Where to get application materials, what constitutes a completed application, how and where to submit applications, deadlines, items that are eligible.

V. Application Review Information: Considerations and preferences, scoring criteria, review standards, selection information.

VI. Award Administration Information: Award notice information, award recipient reporting requirements.

VII. Agency Contacts: Web, phone. fax, e-mail, contact name.

I. Funding Opportunity

Distance learning and telemedicine grants are specifically designed to provide access to education, training and health care resources for people in rural America. The Distance Learning and Telemedicine (DLT) Program provides financial assistance to encourage and improve telemedicine services and distance learning services in rural areas through the use of telecommunications, computer networks, and related advanced technologies to be used by students, teachers, medical professionals, and rural residents.

The grants, which are awarded through a competitive process, may be used to fund telecommunications-enabled information, audio and video equipment and related advanced technologies which extend educational and medical applications into rural locations. Grants are made for projects where the benefit is primarily delivered to end users that are not at the same location as the source of the education or health care service.

As in years past, the FY 2009 grant application guide has been changed to reflect recent changes in technology and application trends. Details of changes from the FY 2008 application guide are highlighted throughout this Notice and are described in full in the FY 2009 application guide. All applicants must carefully review and exactly follow the FY 2009 application guide and sample materials when compiling a DLT grant application.

II. Maximum and Minimum Amount of Applications

The Administrator has determined the maximum amount of an application for a 100% grant in FY 2009 is $500,000 and the minimum amount of a grant is $50,000.

The Agency will make awards and execute documents appropriate to the project after an appropriations bill has been enacted for FY 2009 and prior to any advance of funds to successful applicants.

DLT grants cannot be renewed. Award documents specify the term of each award. The Agency will make awards and execute documents appropriate to the project prior to any advance of funds to successful applicants. Applications to enlarge existing projects are welcomed (100% grant applications must be submitted during the application window) and will be evaluated as new applications.

III. Eligibility Information

A. Who is eligible for grants? (See 7 CFR 1703.103.)

1. Only entities legally organized as one of the following are eligible for DLT financial assistance:

a. An incorporated organization or partnership,

b. An Indian tribe or tribal organization, as defined in 25U.S.C. 450b (b) and (c),

c. A state or local unit of government,

d. A consortium, as defined in 7 CFR 1703.102, or

e. Other legal entity, including a private corporation organized on a for-profit or not-for-profit basis.

2. Individuals are not eligible for DLT program financial assistance directly.

3. Electric and telecommunications borrowers under the Rural Electrification Act of 1936 (7 U.S.C. 950aaa *et seq.*) are not eligible for grants.

B. What are the basic eligibility requirements for a project?

1. Required matching contributions for grants: See 7 CFR 1703.125(g) and the FY 2009 application guide for information on required matching contributions.

a. Grant applicants must demonstrate matching contributions, in cash or in kind (new, non-depreciated items), of at least fifteen (15) percent of the total amount of financial assistance requested. Matching contributions must be used for eligible purposes of DLT grant assistance (see 7 CFR 1703.121, paragraphs IV.G.1.b of this Notice and the FY 2009 application guide).

b. Greater amounts of eligible matching contributions may increase an applicant's score (see 7 CFR 1703.126(b)(4), paragraph V.B.2.d of this notice, and the FY 2009 application guide).

c. Applications that do not provide evidence of the required fifteen percent match will be declared ineligible and returned. See paragraphs IV.G.1.c and V.B.2.d of this Notice, and the FY 2009 application guide for specific information on documentation of matching contributions.

d. Applications that do not document all matching contributions in form and substance satisfactory to the Agency as described in the application guide are subject to budgetary adjustment by the Agency, which may result in rejection of an application as ineligible due to insufficient match.

3. The DLT grant program is designed to flow the benefits of distance learning and telemedicine to residents of rural America (see 7 CFR 1703.103(a)(2)). Therefore, in order to be eligible, applicants must:

a. Operate a rural community facility; or

b. Deliver distance learning or telemedicine services to entities that operate a rural community facility or to residents of rural areas, at rates calculated to ensure that the benefit of the financial assistance is passed through to such entities or to residents of rural areas.

4. Rurality.

a. All projects proposed for DLT grant assistance must meet a minimum rurality threshold, to ensure that benefits from the projects flow to rural residents. The minimum eligibility score is 20 points. Please see Section IV of this notice, 7 CFR 1703.126(a)(2), and the FY 2009 application guide for an explanation of the rurality scoring and eligibility criterion.

b. Each application must apply the following criteria to each of its end-user sites, and hubs that are also proposed as end-user sites, in order to determine a rurality score. The rurality score is the average of all end-user sites' rurality scores.

Criterion	Character	Population	DLT points
Exceptionally Rural Area	Area not within an Urbanized Area or Urban Cluster	≤5000	45
Rural Area	Area in an Urban Cluster	> 5000 and ≤ 10,000	30
Mid-Rural Area	Area in an Urban Cluster	>10,000 and ≤ 20,000	15
Urban Area	Area in an Urbanized Area or Urban Cluster	> 20,000	0

c. The rurality score is one of the competitive scoring criteria applied to grant applications.

4. Projects located in areas covered by the Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*) are not eligible for financial assistance from the DLT Program. Please see 7 CFR 1703.123(a)(11), 7 CFR 1703.132(a)(5), and 7 CFR 1703.142(b)(3).

C. See Section IV of this Notice and the FY 2009 application guide for a discussion of the items that make up a complete application. For requirements of completed applications you may also refer to 7 CFR 1703.125 for grant applications. The FY 2009 application guide provides specific, detailed instructions for each item that constitutes a complete application. The Agency strongly emphasizes the importance of including every required item (as explained in the FY 2009 application guide) and strongly encourages applicants to follow the instructions carefully, using the examples and illustrations in the FY 2009 application guide. Applications which do not include all items that determine project eligibility and applicant eligibility by the application deadline will be returned as ineligible. Scoring and eligibility information will not be solicited or considered by the Agency after the application deadline. Applications that do not include all items necessary for scoring will be scored as is. Please see the FY 2009 application guide for a full discussion of each required item and for samples and illustrations.

IV. Application and Submission Information

A. *Where to get application information.* FY 2009 application guides, copies of necessary forms and samples, and the DLT Program regulation are available from these sources:

1. The Internet: *http://www.usda.gov/rus/telecom/dlt/dlt.htm.*

2. The DLT Program for paper copies of these materials: 202–720–0413.

B. *What's new for FY 2009?*

1. As in FY 2008, applicants are again reminded that end user sites are rural facilities. See 7 CFR 1703.102, Definitions, "End User" and "End User Site". We have experienced an increase in the number of applications which attempt to include urban educational and medical facilities as end user sites. Urban facilities can serve as hub sites, but not end user sites. For projects with non-fixed end user sites, only those end user sites outside urban areas can be funded. The FY 2009 application guide contains clarifying language to elaborate on this provision of the regulation.

2. If a grant application includes a site that is included in any other DLT grant application for FY 2009, or a site that has been included in any DLT grant funded in FY 2008 or FY 2007, the application should contain a detailed explanation of the related applications or grants. The Agency must make a nonduplication finding for each grant approved, and apparent but unexplained duplication of funding for a site can prevent such a finding.

C. *What constitutes a completed application?*

1. For DLT Grants:

a. Detailed information on each item in the table in paragraph IV.C.1.f. of this Notice can be found in the sections of the DLT Program regulation listed in the table, and the DLT grant application guide. Applicants are strongly encouraged to read and apply both the regulation and the applications guide, which elaborates and explains the regulation.

(1). When the table refers to a narrative, it means a written statement, description or other written material prepared by the applicant, for which no form exists. The Agency recognizes that each project is unique and requests narratives to allow applicants to explain their request for financial assistance.

(2). When documentation is requested, it means letters, certifications, legal documents or other third-party documentation that provide evidence that the applicant meets the listed requirement. For example, to confirm Enterprise Zone (EZ) designations, applicants use printouts from the official USDA Web site. Leveraging documentation generally will be letters of commitment from the funding sources. In-kind matches must be items purchased after the application deadline date that are essential to the project and documentation from the donor must demonstrate the relationship of each item to the project's function. Evidence of legal existence is sometimes proven by submitting articles of incorporation. None of the foregoing examples is intended to limit the types of documentation that must be submitted to fulfill a requirement. DLT Program regulations and the application guide provide specific guidance on each of the items in the table.

b. The DLT application guide and ancillary materials provide all necessary sample forms and worksheets.

c. While the table in paragraph IV.C.1.f of this Notice includes all items of a completed application, the Agency may ask for additional or clarifying information for applications which, as submitted by the deadline, appear to clearly demonstrate that they meet eligibility requirements. The Agency will not solicit or accept eligibility or scoring information submitted after the application deadline.

d. Submit the required application items in the order provided in the FY 2009 application guide. The FY 2009 application guide specifies the format and order of all required items. Applications that are not assembled and tabbed in the order specified prevent timely determination of eligibility. Given the high volume of program interest, incorrectly assembled applications, and applications with inconsistency among submitted copies, will be returned as ineligible.

e. *DUNS Number.* As required by the OMB, all applicants for grants must supply a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying. The Standard Form 424 (SF–424) contains a field for you to use when supplying your DUNS number. Obtaining a DUNS number costs nothing and requires a short telephone call to Dun and Bradstreet. Please see *http://www.grants.gov/applicants/request_duns_number.jsp* for more information on how to obtain a DUNS number or how to verify your organization's number.

f. Compliance with other federal statutes. The applicant must provide evidence of compliance with other federal statutes and regulations, including, but not limited to the following:

(i) 7 CFR part 15, subpart A—Nondiscrimination in Federally Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964.

(ii) 7 CFR part 3015—Uniform Federal Assistance Regulations.

(iii) 7 CFR part 3017—Governmentwide Debarment and Suspension (Non-procurement).

(iv) 7 CFR part 3018—New Restrictions on Lobbying.

(v) 7 CFR part 3021—Governmentwide Requirements for Drug-Free Workplace.

g. *Table of Required Elements of a Completed Grant Application.*

Application item	Required items	
	Grants (7 CFR 1703.125 and CFR 1703.126)	Comment
SF–424 (Application for Federal Assistance form)	Yes	*Completely* filled out.
Site Worksheet	Yes	Agency worksheet.
Survey on Ensuring Equal Opportunity for Applicants	Optional	OMB Form.
Evidence of Legal Authority to Contract with the Government	Yes	Documentation.
Evidence of Legal Existence	Yes	Documentation.
Executive Summary	Yes	Narrative.
Telecommunications System Plan and Scope of Work	Yes	Narrative & documentation such as maps and diagrams.
Budget	Yes	Agency Worksheets with documentation.
Financial Information/Sustainability	Yes	Narrative.
Statement of Experience	Yes	Narrative 3-page, single-spaced limit.
Rurality Worksheet	Yes	Agency worksheet with documentation.
National School Lunch Program (NSLP) Worksheet	Yes	Agency worksheet with documentation.
Leveraging Evidence and Funding Commitments from all Sources	Yes	Agency worksheet and source documentation.
EZ/EC or Champion Communities designation	Yes	Documentation.
Request for Additional NSLP	Optional	Agency Worksheet and narrative.
Need for and Benefits derived from Project	Yes	Narrative & documentation.
Innovativeness of the Project	Yes	Narrative & documentation.
Cost Effectiveness of Project	Yes	Narrative & documentation.
Consultation with the USDA State Director, Rural Development, and evidence that application conforms to State Strategic Plan, if any.	Yes	Documentation.
Certifications:		
Equal Opportunity and Nondiscrimination	Yes	Recommend using Agency's sample form.
Architectural Barriers	Yes	Recommend using Agency's sample form.
Flood Hazard Area Precautions	Yes	Recommend using Agency's sample form.
Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.	Yes	Recommend using Agency's sample form.
Drug-Free Workplace	Yes	Recommend using Agency's sample form.

Application item	Required items	
	Grants (7 CFR 1703.125 and CFR 1703.126)	Comment
Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.	Yes	Recommend using Agency's sample form.
Lobbying for Contracts, Grants, Loans, and Cooperative Agreements	Yes	Recommend using Agency's sample form.
Non Duplication of Services	Yes	Recommend using Agency's sample form.
Environmental Impact/Historic Preservation Certification	Yes	Recommend using Agency's sample form.

D. *How many copies of an application are required?*

1. Applications submitted on paper.

a. Submit the original application and two (2) copies to USDA Rural Development.

b. Submit one (1) additional copy to the state government single point of contact (SPOC) (if one has been designated) at the same time as you submit the application to the Agency. See *http://www.whitehouse.gov/omb/grants/spoc.html* for an updated listing of State government single points of contact.

2. Electronically submitted applications. Grant applications may be submitted electronically. Please carefully read the FY 2009 application guide for guidance on submitting an electronic application. In particular, we ask that you identify and number each page in the same way you would a paper application so that we can assemble them as you intended.

a. The additional paper copies are not necessary if you submit the application electronically through Grants.gov.

b. Submit one (1) copy to the state government single point of contact (if one has been designated) at the same time as you submit the application to the Agency. See *http://www.whitehouse.gov/omb/grants/spoc.html* for an updated listing of State government single points of contact.

E. *How and where to submit an application.* Grant applications may be submitted on paper or electronically.

1. Submitting applications on paper.

a. Address paper applications to the Telecommunications Program, USDA Rural Development, United States Department of Agriculture, 1400 Independence Ave., SW., Room 2845, STOP 1550, Washington, DC 20250–1550. Applications should be marked "Attention: Director, Advanced Services Division."

b. Paper grant applications must show proof of mailing or shipping by the deadline consisting of one of the following:

(i) A legibly dated U.S. Postal Service (USPS) postmark;

(ii) A legible mail receipt with the date of mailing stamped by the USPS; or

(iii) A dated shipping label, invoice, or receipt from a commercial carrier.

c. Due to screening procedures at the Department of Agriculture, packages arriving via regular mail through the USPS are irradiated, which can damage the contents and delay delivery to the DLT Program. USDA Rural Development encourages applicants to consider the impact of this procedure in selecting their application delivery method.

2. Electronically submitted applications.

a. Applications will not be accepted via fax or electronic mail.

b. Electronic applications for grants will be accepted if submitted through the Federal government's Grants.gov initiative at *http://www.grants.gov.*

c. How to use Grants.gov.

(i) Grants.gov contains full instructions on all required passwords, credentialing and software.

(ii) Central Contractor Registry. Submitting an application through Grants.gov requires that you list your organization in the Central Contractor Registry (CCR). Setting up a CCR listing takes up to five business days, so the Agency strongly recommends that you obtain your organization's DUNS number and CCR listing well in advance of the deadline specified in this notice.

(iii) Credentialing and authorization of applicants. Grants.gov will also require some credentialing and online authentication procedures. These procedures may take several business days to complete, further emphasizing the need for early action by applicants to complete the sign-up, credentialing and authorization procedures at Grants.gov before you submit an application at that Web site.

(iv) Some or all of the CCR and Grants.gov registration, credentialing and authorizations require updates. If you have previously registered at Grants.gov to submit applications electronically, please ensure that your registration, credentialing and authorizations are up to date well in advance of the grant application deadline.

d. USDA Rural Development encourages applicants who wish to apply through Grants.gov to submit their applications in advance of the deadlines.

e. If a system problem occurs or you have technical difficulties with an electronic application, please use the customer support resources available at the Grants.gov Web site.

F. Deadlines.

1. Paper grant applications must be postmarked and mailed, shipped, or sent overnight no later than March 24, 2009, to be eligible for FY 2009 grant funding. Late applications, applications which do not include proof of mailing or shipping as described in paragraph IV.E.b., and incomplete applications are not eligible for FY 2009 grant funding.

2. Electronic grant applications must be received by March 24, 2009, to be eligible for FY 2009 funding. Late or incomplete applications will not be eligible for FY 2009 grant funding.

F. *Intergovernmental Review.* The DLT grant program is subject to Executive Order 12372, "Intergovernmental Review of Federal Programs." As stated in paragraph IV.D.1. of this Notice, a copy of a DLT grant application must be submitted to the state single point of contact if one has been designated. Please see *http://www.whitehouse.gov/omb/grants/spoc.html* to determine whether your state has a single point of contact.

G. *Funding Restrictions.*

1. Eligible purposes.

a. For grants, rural end-user sites may receive financial assistance; hub sites (rural or non-rural) may also receive financial assistance if they are necessary to provide DLT services to end-user sites. Please see the application guide and 7 CFR 1703.101(h).

b. To fulfill the policy goals laid out for the DLT Program in 7 CFR 1703.101, the following table lists purposes for financial assistance and whether each purpose is generally considered to be eligible for the form of financial

assistance. Please consult the FY 2009 application guide and the regulations (7 CFR 1703.102 for definitions, in combination with the portions of the regulation cited in the table) for detailed requirements for the items in the table. Rural Development strongly recommends that applicants exclude ineligible items from the grant and match portions of grant application budgets. However, some items ineligible for funding or matching contributions may be vital to the project. Rural Development encourages applicants to document those costs in the application's budget. Please see the FY 2009 application guide for a recommended budget format, and detailed budget compilation instructions.

	Grants
Lease or purchase of eligible DLT equipment and facilities.	Yes, equip. only.
Acquire instructional programming.	Yes.
Technical assistance, develop instructional programming, engineering or environmental studies.	Yes, up to 10% of the grant.
Medical or education equipment or facilities necessary to the project.	Yes.
Vehicles using distance learning or telemedicine technology to deliver services.	No.
Teacher-student links located at the same facility.	No.
Links between medical professionals located at the same facility.	No.
Site development or building alteration.	No.
Land of building purchase	No.
Building Construction	No.
Acquiring telecommunications transmission facilities.	No.
Internet services, telecommunications services or other forms of connectivity.	No.
Salaries, wages, benefits for medical or educational personnel.	No.
Salaries or administrative expenses of applicant or project.	No.
Recurring project costs or operating expenses.	No, (equipment & facility leases are not recurring project costs).
Internet services, telecom services, and other forms of connectivity.	No.
Equipment to be owned by the LEC or other telecommunications service provider, if the provider is the applicant.	No.
Duplicative distance learning or telemedicine services.	No.
Any project that for its success, depends on additional DLT financial assistance or other financial assistance that is not assured.	No.
Application Preparation Costs	No.
Other project costs not in regulation.	No.
Cost of facilities providing distance learning broadcasting. (amount).	No.
Reimburse applicants of others for costs incurred prior to USDA RURAL DEVELOPMENT receipt of completed application.	No.

c. *Discounts.* The DLT Program regulation has long stated that manufacturers' and service providers' discounts are not eligible matches. The Agency will not consider as eligible any proposed match from a vendor, manufacturer, or service provider whose products or services will be used in the DLT project as described in the application. In recent years, the Agency has noted a trend of vendors, manufacturers and other service providers offering their own products and services as in-kind matches for a project when their products or services will also be purchased with either grant or cash match funds for that project. Such activity is a discount and is therefore not an eligible match. Similarly, if a vendor, manufacturer or other service provider proposes a cash match (or any in-kind match) when their products or services will be purchased with grant or match funds, such activity is a discount and is not an eligible match. The Agency actively discourages such matching proposals and will adjust budgets as necessary to remove any such matches, which may reduce an application's score or result in the application's ineligibility due to insufficient match.

2. *Eligible Equipment & Facilities.* Please see the FY 2009 application guide supplies a wealth of information and examples of eligible and ineligible items. In addition, see 7 CFR 1703.102 for definitions of eligible equipment, eligible facilities and telecommunications transmission facilities as used in the table above.

3. *Apportioning budget items.* Many DLT applications propose to use items for a blend of specific DLT eligible project purposes and other purposes. Rural Development will now fund such items, if the applicants attribute the proportion (by percentage of use) of the costs of each item to the project's DLT purpose or to other purposes to enable consideration for a grant of the portion of the item that is for DLT usage. See the FY 2009 application guide for detailed information on how to apportion use and apportioning illustrations.

V. Application Review Information

A. *Special considerations or preferences.*

1. American Samoa, Guam, Virgin Islands, and Northern Mariana Islands applications are exempt from the matching requirement up to a match amount of $200,000 (see 48 U.S.C. 1469a; 91 Stat. 1164).

2. 7 CFR 1703.112 directs that Rural Development Telecommunications Borrowers receive expedited consideration of a loan application or advance under the Rural Electrification Act of 1936 (7 U.S.C. 901–950aa, et seq.) if the loan funds in question are to be used in conjunction with a DLT grant (See 7 CFR 1737 for loans and 7 CFR 1744 for advances).

B. *Criteria.*

1. Grant application scoring criteria (total possible points: 225). See 7 CFR 1703.125 for the items that will be reviewed during scoring, and 7 CFR 1703.126 for scoring criteria.

2. Grant applications are scored competitively subject to the criteria listed below.

a. Rurality of the proposed service area (up to 45 points).

b. Percentage of students eligible for the NSLP in the proposed service area (objectively demonstrates economic need of the area) (up to 35 points).

c. Leveraging resources above the required matching level (up to 35 points). Please see paragraph III.B of this Notice for a brief explanation of matching contributions.

d. Project overlap with Empowerment Zone, Enterprise Communities or Champion Communities designations (up to 15 points).

e. Need for services proposed in the application, and the benefits that will be derived if the application receives a grant (up to 55 points).

(i) Up to 10 of the possible 55 possible points are to recognize economic need not reflected in the project's National School Lunch Program (NSLP) score, and can be earned only by applications whose overall NSLP eligibility is less than 50%. To be eligible to receive points under this, the application must include an affirmative request for consideration of the possible 10 points, and compelling documentation of

reasons why the NSLP eligibility percentage does not represent the economic need of the proposed project beneficiaries.

(ii) Up to 45 of the 55 possible points under this criterion are available to all applicants. Points are awarded based on the required narrative crafted by the applicant. Rural Development encourages applicants to carefully read the cited portions of the Program regulation and the FY 2009 application guide for full discussions of this criterion.

f. Level of innovation demonstrated by the project (up to 15 points).

g. System cost-effectiveness (up to 35 points).

C. *Grant Review standards.*

1. In addition to the scoring criteria that rank applications against each other, the Agency evaluates grant applications for possible awards on the following items, according to 7 CFR 1703.127:

a. Financial feasibility.

b. Technical considerations. If the application contains flaws that would prevent the successful implementation, operation or sustainability of a project, the Agency will not award a grant.

c. Other aspects of proposals that contain inadequacies that would undermine the ability of the project to comply with the policies of the DLT Program.

2. Applications which do not include all items that determine project eligibility and applicant eligibility by the application deadline will be returned as ineligible. Applications that do not include all items necessary for scoring will be scored as is. Please see the FY 2009 application guide for a full discussion of each required item and for samples and illustrations. The Agency will not solicit or consider eligibility or scoring information submitted after the application deadline.

3. The FY 2009 grant application guide specifies the format and order of all required items. Applications that are not assembled and tabbed in the order specified and incorrectly assembled applications will be returned as ineligible.

4. Most DLT grant projects contain numerous project sites. The Agency requires that site information be consistent throughout an application. Sites must be referred to by the same designation throughout all parts of an application. The Agency has provided a site worksheet that requests the necessary information, and can be used as a guide by applicants. Rural Development strongly recommends that applicants complete the site worksheet, listing all requested information for each site. Applications without consistent site information will be returned as ineligible.

5. DLT grant applications which have non-fixed end-user sites, such as ambulance and home health care services, are now scored using a simplified scoring method that finds the relative rurality of the applicant's service area. See the FY 2009 application guide for specific guidance on this method of scoring. When an application contains non-fixed sites, it must be scored using the non-fixed site scoring method.

D. *Selection Process.*

1. Grants. Applications are ranked by final score, and by application purpose (education or medical). Rural Development selects applications based on those rankings, subject to the availability of funds. USDA Rural Development may allocate grant awards between medical and educational purposes, but is not required to do so. In addition, Rural Development has the authority to limit the number of applications selected in any one state, or for one project, during a fiscal year. See 7 CFR 1703.127.

VI. Award Administration Information

A. *Award Notices.*

Rural Development generally notifies applicants whose projects are selected for awards by faxing an award letter. Rural Development follows the award letter with an agreement that contains all the terms and conditions for the grant. Rural Development recognizes that each funded project is unique, and therefore may attach conditions to different projects' award documents. An applicant must execute and return the agreement, accompanied by any additional items required by the agreement, within the number of days shown in the selection notice letter.

B. *Administrative and National Policy Requirements:* The items listed in Section IV of this notice, and the DLT Program regulation, FY 2009 application guide and accompanying materials implement the appropriate administrative and national policy requirements.

C. *Reporting.*

1. *Performance reporting.* All recipients of DLT financial assistance must provide annual performance activity reports to Rural Development until the project is complete and the funds are expended. A final performance report is also required; the final report may serve as the last annual report. The final report must include an evaluation of the success of the project in meeting DLT Program objectives. See 7 CFR 1703.107.

2. *Financial reporting.* All recipients of DLT financial assistance must provide an annual audit, beginning with the first year a portion of the financial assistance is expended. Audits are governed by United States Department of Agriculture audit regulations. Please see 7 CFR 1703.108.

3. *Record Keeping and Accounting.* The grant contract will contain provisions relating to record keeping and accounting requirements.

VII. Agency Contacts

A. *Web site: http://www.usda.gov/rus/telecom/dlt/dlt.htm.* The DLT Web site maintains up-to-date resources and contact information for DLT programs.

B. *Phone:* 202–720–0413.

C. *Fax:* 202–720–1051.

D. *E-mail: dltinfo@usda.gov.*

E. *Main point of contact:* Director, Advanced Services Division, Telecommunications Program, USDA Rural Development.

Dated: December 18, 2008.

Curtis M. Anderson,

Deputy Administrator, Rural Utilities Service.

[FR Doc. E8–30759 Filed 12–23–08; 8:45 am]

BILLING CODE 3410–15–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Appointments to Performance Review Board for Senior Executive Service

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Appointment of Performance Review Board for Senior Executive Service.

SUMMARY: The Committee for Purchase from People Who Are Blind or Severely Disabled (Committee) has announced the following appointments to the Committee Performance Review Board.

The following individuals are appointed as members of the Committee Performance Review Board responsible for making recommendations to the appointing and awarding authorities on performance appraisal ratings and performance awards for Senior Executive Service employees:

Perry E. Anthony, Ph.D., Deputy Commissioner, Rehabilitation Services Administration, Department of Education.

James E. House, Director, Office of Small and Disadvantaged Business Utilization, Department of Agriculture.

Paul M. Laird, Assistant Director, Industries, Education and Vocational

Training and Chief Operating Officer/FPI, Department of Justice.

All appointments are made pursuant to Section 4314 of Chapter 43 of Title 5 of the United States Code.

DATES: *Effective Date:* December 24, 2008.

FOR FURTHER INFORMATION CONTACT: Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@abilityone.gov.*

Kimberly M. Zeich,

Deputy Executive Director.

[FR Doc. E8–30626 Filed 12–23–08; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

(Docket 71–2008)

Foreign–Trade Zone 65 -- Panama City, Florida, Application for Expansion

An application has been submitted to the Foreign–Trade Zones (FTZ) Board (the Board) by the Panama City Port Authority, grantee of FTZ 65, requesting authority to expand its existing zone to include additional sites within and adjacent to the Panama City, Florida Customs and Border Protection port of entry. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on December 16, 2008.

FTZ 65 was approved by the Board on January 16, 1981 (Board Order 171, 46 FR 8072, 1/26/81) and expanded on March 3, 1987 (Board Order 343, 52 FR 7634, 3/12/87).

The general–purpose zone project currently consists of three sites (558 acres) in the Panama City area: *Site 1* (125 acres) -- the Panama City Industrial Park located on St. Andrew Bay and the intra–coastal waterway in Panama City; *Site 2* (174 acres) -- the Hugh Nelson Industrial Park located off of Highway 390 in Panama City; and, *Site 3* (259 acres) -- the Bay Industrial Park located northeast of the intersection of Highway 231 and Highway 167 in Bay County.

The applicant is now requesting authority to expand the general–purpose zone to include two additional sites as follows: *Proposed Site 4* (78 acres) -- within the 130–acre Tommy R. McDonald Industrial Park, located at Industrial Drive and Commerce Avenue in Chipley (Washington County); and, *Proposed Site 5* (214 acres) the Washington County Industrial park, located north of Highway 90 at the intersection of Highway 273 and North Boulevard in Chipley (Washington County). The applicant is also requesting authority to expand existing *Site 3* to include the adjacent Bay Intermodal Park (251 acres), located at Highway 231 and Commerce Boulevard in Panama City. Proposed Site 4 is owned by the City of Chipley as well as various private companies, proposed Site 5 is owned by Washington County and the City of Chipley, and the acreage to be included in the proposed expansion of Site 3 is owned by the applicant. The sites will be used primarily for warehousing and distribution activities. No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case–by-case basis.

In accordance with the Board's regulations, Christopher Kemp of the FTZ staff is designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address listed below. The closing period for their receipt is February 23, 2009. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to March 9, 2009.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations: The Panama City Port Authority, 5321 West Highway 98, Panama City, FL 32401; and, Office of the Executive Secretary, Foreign–Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, D.C. 20230.

For further information, contact Christopher Kemp at christopher_kemp@ita.doc.gov or (202) 482–0862.

Dated: December 16, 2008.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–30689 Filed 12–23–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Docket 72–2008

Foreign–Trade Zone 26 Atlanta, GA, Request for Manufacturing Authority, Kia Motors Manufacturing Georgia, Inc. (Motor Vehicles)

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the Georgia Foreign–Trade Zone, Inc., grantee of FTZ 26, pursuant to Section 400.28(a)(2) of the Board's regulations (15 CFR Part 400), requesting authority on behalf of Kia Motors Manufacturing Georgia, Inc. (KMMG), to produce light–duty passenger vehicles under FTZ procedures within FTZ 26. It was formally filed on December 16, 2008.

The KMMG plant (635 acres/2.4 million sq.ft.) is to be located at 7777 Kia Parkway in West Point (Troup County), Georgia (FTZ 26, Site T2). The facility, currently under construction, will be used to produce sedans, sport utility vehicles, and minivans for export and the domestic market. At full capacity, the facility (about 2,500 employees) will manufacture up to approximately 300,000 vehicles annually. Components to be purchased from abroad (representing up to 30% of total material inputs, by value) would include: oils, hydraulic fluids, pipe/tube of plastics, paint, plastic knobs, flexible rubber tubes/hoses, self–adhesive plastic or polyurethane sheets/foil/film, labels, tape, rubber belts, tires, gaskets, seals, floor mats, carpet sets, safety glass, mirrors, pipe fittings, stranded wire of steel and copper, pins, hangers, brake cables, body parts, trim parts, articles of base metals, doors, fasteners, cotter pins, helical springs, catalytic converters, locks and keys, spark–ignition and diesel engines, engine parts, pumps, compressors, air conditioner components, filters, valves, parts of steering systems, steering wheels, hubs and flanges, universal joints, clutches, half/drive shafts, transmissions and parts of transmissions, torque converters, differentials, bearings and parts thereof, compasses, thermostats, motors, batteries, ignition parts, electrical parts, lighting equipment, horns, windshield wipers, audio/video components, speakers, antennas, wiring harnesses, seats, seat belts, airbag modules/inflators, brake components, wheels, wheel locks, lug nuts, lug wrenches, suspension components, radiators, flat–rolled steel mill products (steel mill products subject to AD/CVD orders will be admitted in domestic (duty–paid)

status), exhaust systems, hinges, torque converters, pneumatic dampeners, speedometers, tachometers, voltmeters, flow meters, regulators/controllers, windshields, glass windows, resistors, relays, starters, electrical components, clocks, spark plugs, and switches (duty rate range: free 9.0%).

FTZ procedures could exempt KMMG from customs duty payments on foreign components used in export production (estimated to be 10% of plant shipments). On its domestic sales, KMMG would be able to choose the duty rate that applies to finished passenger vehicles (2.5%) for the foreign inputs noted above that have higher rates. Certain logistical/supply chain management savings would also be realized through FTZ procedures. Customs duties also could possibly be deferred or reduced on foreign status production equipment. The application indicates that the savings from FTZ procedures would help improve the facility's international competitiveness.

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

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following address: Office of the Executive Secretary, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230–0002. The closing period for receipt of comments is February 23, 2009. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to March 9, 2009.

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, 75 Fifth Street, N.W., Suite 1055, Atlanta, Georgia 30308; and, Office of the Executive Secretary, Foreign–Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230–0002. For further information, contact Pierre Duy at pierre_duy@ita.doc.gov, or (202) 482–1378.

Dated: December 17, 2008.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–30684 Filed 12–23–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1592]

Grant of Authority for Subzone Status; The Apparel Group (Apparel Distribution); Lewisville, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Dallas/Fort Worth International Airport Board, grantee of Foreign-Trade Zone 39, has made application for authority to establish special-purpose subzone status at the apparel warehousing and distribution facility of The Apparel Group in Lewisville, Texas (Docket 9–2008, filed 2–19–2008);

Whereas, notice inviting public comment was given in the **Federal Register** (73 FR 10420, 2–27–2008); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby grants authority for subzone status for activity related to apparel warehousing and distribution at The Apparel Group's facility located in Lewisville, Texas (Subzone 39J), as described in the application and **Federal Register** notice, and subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 4th day of December 2008.

David M. Spooner,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–30683 Filed 12–23–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Allocation of Tariff Rate Quotas (TRQ) on the Import of Certain Worsted Wool Fabrics for Calendar Year 2009

AGENCY: Department of Commerce, International Trade Administration.

ACTION: Notice of allocation of 2009 worsted wool fabric tariff rate quota.

SUMMARY: The Department of Commerce (Department) has determined the allocation for Calendar Year 2009 of imports of certain worsted wool fabrics under tariff rate quotas established by Title V of the Trade and Development Act of 2000 (Public Law No. 106-200), as amended by the Trade Act of 2002 (Public Law 107-210) and the Miscellaneous Trade Act of 2004 (Public law 108-249), and the Pension Protection Act of 2006 (Public Law 109-280). The companies that are being provided an allocation are listed below.

FOR FURTHER INFORMATION CONTACT: Robert Carrigg, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-2573.

SUPPLEMENTARY INFORMATION:

BACKGROUND:

Title V of the Trade and Development Act of 2000 as amended by the Trade Act of 2002, the Miscellaneous Trade Act of 2004 and the Pension Protection Act of 2006, creates two tariff rate quotas, providing for temporary reductions in the import duties on two categories of worsted wool fabrics suitable for use in making suits, suit-type jackets, or trousers. For worsted wool fabric with average fiber diameters greater than 18.5 microns (Harmonized Tariff Schedule of the United States (HTSUS) heading 9902.51.11), the reduction in duty is limited to 5,500,000 square meters in 2009. For worsted wool fabric with average fiber diameters of 18.5 microns or less (HTSUS heading 9902.51.15), the reduction is limited to 5,000,000 square meters in 2009. The Miscellaneous Trade Act of 2004 requires the President to ensure that

such fabrics are fairly allocated to persons (including firms, corporations, or other legal entities) who cut and sew men's and boys' worsted wool suits and suit-like jackets and trousers in the United States and who apply for an allocation based on the amount of such suits cut and sewn during the prior calendar year. Presidential Proclamation 7383, of December 1, 2000, authorized the Secretary of Commerce to allocate the quantity of worsted wool fabric imports under the tariff rate quotas.

The Miscellaneous Trade Act also authorized Commerce to allocate a new HTS category, HTS 9902.51.16. This HTS refers to worsted wool fabric with average fiber diameter of 18.5 microns or less. The amendment further provides that HTS 9902.51.16 is for the benefit of persons (including firms, corporations, or other legal entities) who weave worsted wool fabric in the United States. For HTS 9902.51.16, the reduction in duty is limited to 2,000,000 square meters in 2009.

On January 22, 2001 the Department published interim regulations establishing procedures for applying for, and determining, such allocations (66 FR6459, 15 CFR 335). These interim regulations were adopted, without change, as a final rule published on October 24, 2005 (70 FR 61363). On September 4, 2008, the Department published a notice in the Federal Register (73 FR 51630) soliciting applications for an allocation of the 2009 tariff rate quotas with a closing date of October 6, 2008. The Department received timely applications for the HTS 9902.51.11 tariff rate quota from 8 firms. The Department received timely applications for the HTS 9902.51.15 tariff rate quota from 12 firms. The Department received timely applications for the HTS 9902.51.16 tariff rate quota from 1 firm. All applicants were determined eligible for an allocation. Most applicants submitted data on a business confidential basis. As allocations to firms were determined on the basis of this data, the Department considers individual firm allocations to be business confidential.

FIRMS THAT RECEIVED ALLOCATIONS: HTS 9902.51.11, FABRICS, OF WORSTED WOOL, WITH AVERAGE FIBER DIAMETER GREATER THAN 18.5 MICRON, CERTIFIED BY THE IMPORTER AS SUITABLE FOR USE IN MAKING SUITS, SUIT-TYPE JACKETS, OR TROUSERS (PROVIDED FOR IN SUBHEADING 5112.11.60 AND 5112.19.95).

Amount allocated: 5,500,000 square meters.

Companies Receiving Allocation:

FIRMS THAT RECEIVED ALLOCATIONS: HTS 9902.51.11, FABRICS, OF WORSTED WOOL, WITH AVERAGE FIBER DIAMETER GREATER THAN 18.5 MICRON, CERTIFIED BY THE IMPORTER AS SUITABLE FOR USE IN MAKING SUITS, SUIT-TYPE JACKETS, OR TROUSERS (PROVIDED FOR IN SUBHEADING 5112.11.60 AND 5112.19.95).—Continued

Amount allocated: 5,500,000 square meters.

Adrian Jules LTD-Rochester, NY
Hartmarx Corporation--Chicago, IL
Hugo Boss Cleveland, Inc-Brooklyn, OH
JA Apparel Corp.--New York, NY
John H. Daniel Co.--Knoxville, TN
Saint Laurie Ltd--New York, NY
Sewell Clothing Company, Inc.--Bremen, GA
The Tom James Co.--Franklin, TN

HTS 9902.51.15, FABRICS, OF WORSTED WOOL, WITH AVERAGE FIBER DIAMETER OF 18.5 MICRON OR LESS, CERTIFIED BY THE IMPORTER AS SUITABLE FOR USE IN MAKING SUITS, SUIT-TYPE JACKETS, OR TROUSERS (PROVIDED FOR IN SUBHEADING 5112.11.30 AND 5112.19.60).

Amount allocated: 5,000,000 square meters.

Companies Receiving Allocation:

Adrian Jules LTD-Rochester, NY
Elevee Custom Clothing--Van Nuys, CA
Retail Brand Alliance, Inc. d/b/a Brooks Brothers--New York, NY
Hartmarx Corporation--Chicago, IL
Hugo Boss Cleveland, Inc.-Brooklyn, OH
JA Apparel Corp.--New York, NY
John H. Daniel Co.--Knoxville, TN
Martin Greenfield--Brooklyn, NY
Saint Laurie Ltd--New York, NY
Sewell Clothing Company, Inc.--Bremen, GA
Southwick Clothing L.L.C.--Lawrence, MA
The Tom James Co.--Franklin, TN

HTS 9902.51.16, FABRICS, OF WORSTED WOOL, WITH AVERAGE FIBER DIAMETER OF 18.5 MICRON OR LESS, CERTIFIED BY THE IMPORTER AS SUITABLE FOR USE IN MAKING MEN'S AND BOY'S SUITS (PROVIDED FOR IN SUBHEADING 5112.11.30 AND 5112.19.60).

Amount allocated: 2,000,000 square meters.

Company Receiving Allocation:

Warren Corporation.-Stafford Springs, CT

Dated: December 18, 2008.

Janet E. Heinzen,

Acting Deputy Assistant Secretary for Textiles, Apparel and Consumer Goods Industries, Department of Commerce.

[FR Doc. E8–30692 Filed 12–23–08; 8:45 am]

BILLING CODE 3510–DS

DEPARTMENT OF COMMERCE

International Trade Administration

(A–580–810)

Certain Welded Stainless Steel Pipes from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain welded stainless steel pipes (WSSP) from the Republic of Korea (Korea) for the period of review (POR) December 1, 2006 through November 30, 2007. The review covers one respondent, SeAH Steel Corporation (SeAH).

The Department preliminarily determines that SeAH made sales to the United States at less than normal value (NV). If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on entries of SeAH's merchandise during the POR. The preliminary results are listed below in the section titled "Preliminary Results of Review."

EFFECTIVE DATE: December 24, 2008.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith or 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) 482–5255 or (202) 482–3782, respectively.

Background

The Department published the antidumping duty order on WSSP from Korea on December 30, 1992. *See Antidumping Duty Order and Clarification of Final Determination: Certain Welded Stainless Steel Pipes From Korea*, 57 FR 62301 (December 30, 1992).[1] On December 3, 2007, the Department published an "Opportunity To Request Administrative Review" of the antidumping duty order on WSSP from Korea. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity*

[1] The final determination was subsequently amended. *See Notice of Amended Final Determination and Antidumping Duty Order: Certain Welded Stainless Steel Pipe From the Republic of Korea*, 60 FR 10064 (February 23, 1995) (*Amended Final Determination and Order*).

To Request Administrative Review, 72 FR 67889 (December 3, 2007).

On December 28, 2008, the Department received a request for review of SeAH from Bristol Metals LLC, an interested party and one of the original petitioners. On January 28, 2008, the Department published, in the **Federal Register**, the notice of initiation of the administrative review of the antidumping duty order on WSSP from Korea for SeAH. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 73 FR 4829 (January 28, 2008).

On February 29, 2008, the Department issued sections A through E of the questionnaire to SeAH. SeAH timely submitted its section A response on April 4, 2008, and its sections B through D responses on April 22, 2008. The Department issued supplemental questionnaires on May 22, 2008; August 7, 2008; October 6, 2008; and November 10, 2008 and SeAH responded on June 18, 2008; September 4, 2008; October 21, 2008; and November 25, 2008, respectively.

On August 19, 2008, the Department, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(h)(2), extended the deadline for the preliminary results of this antidumping duty administrative review by 107 days from September 1, 2008 until no later than December 17, 2008. *See Welded ASTM A–312 Stainless Steel Pipe from South Korea: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 48374 (August 19, 2008).

Period of Review

This review covers the period December 1, 2006 through November 30, 2007.

Scope of the Order

The merchandise subject to the antidumping duty order is welded austenitic stainless steel pipe that meets the standards and specifications set forth by the American Society for Testing and Materials (ASTM) for the welded form of chromium–nickel pipe designated ASTM A–312. The merchandise covered by the scope of the order also includes austenitic welded stainless steel pipes made according to the standards of other nations which are comparable to ASTM A–312.

WSSP is produced by forming stainless steel flat–rolled products into a tubular configuration and welding along the seam. WSSP is a commodity product generally used as a conduit to transmit liquids or gases. Major applications for steel pipe include, but are not limited to, digester lines, blow lines, pharmaceutical lines, petrochemical stock lines, brewery process and transport lines, general food processing lines, automotive paint lines, and paper process machines. Imports of WSSP are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7306.40.5005, 7306.40.5015, 7306.40.5040, 7306.40.5065, and 7306.40.5085. Although these subheadings include both pipes and tubes, the scope of the antidumping duty order is limited to welded austenitic stainless steel pipes. The HTSUS subheadings are provided for convenience and customs purposes. However, the written description of the scope of the order is dispositive.

Less Than Normal Value Analysis

To determine whether sales of subject merchandise to the United States were made at less than NV, we compared the constructed export price (CEP) to NV, as described in the "U.S. Price" and "Normal Value" sections of this notice, below, in accordance with section 777A(d)(2) of the Act.

Product Comparisons

In accordance with section 771(16)(A) of the Act, we considered all products produced by the respondent that are covered by the description in the "Scope of the Order" section, above, and that were sold in the home market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. In accordance with sections 771(16)(B) and (C) of the Act, where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis of the characteristics listed in Appendix V of the Department's antidumping questionnaire. We preliminarily determine that product codes reported by SeAH do not result in comparisons of the most similar products. Therefore, for these preliminary results, we have recoded one of the product characteristics to yield more appropriate product comparisons of the most similar products between the home market and the U.S. market. For a more detailed discussion, *see Analysis Memorandum for SeAH Steel Corporation: Preliminary Results of Administrative Review* (*SeAH Preliminary Analysis Memorandum*), dated concurrently with this notice, which is on file in the Central Records Unit of the main Department of Commerce building, Room 1117.

Date of Sale

The Department's regulations state that "{i}n identifying the date of sale for the subject merchandise or foreign like product, the Secretary will normally use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of the sale." *See* 19 CFR 351.401(i). We examined the questionnaire responses and the sales documentation placed on the record by SeAH and determined that for the home market, invoice date is the appropriate basis for date of sale. We note that SeAH reported that it issues the invoice on shipment date, so these two dates are the same.

In the U.S. market, SeAH reported as date of sale the earlier of shipment or invoice date. According to SeAH, its U.S. subsidiary, Pusan Pipe America (PPA), prepares the commercial invoice after SeAH advises PPA that the merchandise is ready for shipment from SeAH to the customer. We preliminarily determine that shipment date may precede invoice date based upon the way in which SeAH described the sales process. Therefore, for U.S. sales, in accordance with the Department's practice, whenever shipment date precedes invoice date, we used shipment date as date of sale. *See e.g., Stainless Steel Sheet and Strip in Coils from the Republic of Korea; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 18074, 18079–18080 (April 10, 2006), unchanged in *Stainless Steel Sheet and Strip in Coils From the Republic of Korea; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 72 FR 4486 (January 31, 2007); and *Certain Steel Concrete Reinforcing Bars from Turkey; Final Results of Antidumping Duty Administrative Review and New Shipper Review and Determination Not to Revoke in Part*, 72 FR 62630 (November 6, 2007) and accompanying Issues and Decision Memorandum at Issue 2 ("it is appropriate to use the earlier of shipment or invoice date as Colakolgu's and Habas' U.S. date of sale in the instant review, consistent with the date–of-sale methodology established in the previous review").

U.S. Price

Pursuant to section 772(b) of the Act, for sales to the United States, we preliminarily determine that all of

SeAH's U.S. sales are CEP sales because all sales of subject merchandise to the United States were made by PPA, SeAH's U.S. sales subsidiary, to an unaffiliated customer in the United States. We based CEP on the packed prices charged to the first unaffiliated customer in the United States and the applicable terms of sale. *See* SeAH's April 4, 2008 section A response.

The Department calculated PPA's starting price as its gross unit price to its unaffiliated U.S. customers, making adjustments, where necessary, for billing adjustments, pursuant to section 772(c)(1) of the Act. Where applicable, the Department made deductions for movement expenses (foreign inland freight, foreign inland brokerage, ocean freight, marine insurance, U.S. harbor maintenance charges and merchandise processing fees) in accordance with section 772(c)(2) of the Act and 19 CFR 351.401(e). In accordance with sections 772(d)(1) and (2) of the Act, we also deducted, where applicable, U.S. direct selling expenses, including warranty and credit expenses, indirect selling expenses, and inventory carrying costs incurred in the United States and in Korea, where such costs were associated with economic activities in the United States. We also deducted CEP profit in accordance with section 772(d)(3) of the Act.

Normal Value

In accordance with section 773(a)(1)(B)(i) of the Act, we have based NV on the price at which the foreign like product was first sold for consumption in the home market, in the usual commercial quantities, in the ordinary course of trade, and, to the extent practicable, at the same level of trade (LOT) as the CEP sale. *See* "Level of Trade/Constructed Export Price Offset" section, below. After testing home market viability and whether home market sales were at below–cost prices, we calculated NV for SeAH as discussed in the following sections.

Home Market Viability

In accordance with section 773(a)(1) of the Act, to determine whether there was sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared SeAH's volume of home market sales of foreign like product to the volume of U.S. sales of subject merchandise. Pursuant to section 773(a)(1) of the Act and 19 CFR 351.404(b), because the volume of SeAH's home market sales of foreign like product was greater than five percent of the volume of U.S. sales of the subject merchandise, we determine that the home market is viable. Therefore, we used home market sales as the basis for NV in accordance with section 773(a)(1) of the Act.

Cost of Production (COP) Analysis

In the most recently completed administrative review of the antidumping duty order on WSSP from Korea, the Department determined that SeAH sold foreign–like product in its home market at prices below the cost of producing the product and excluded such sales from the calculation of NV. *See Certain Welded ASTM A–312 Stainless Steel Pipe from Korea: Preliminary Results of Antidumping Duty Administrative Review*, 64 FR 72645, 72647 (December 28, 1999), unchanged in *Certain Welded ASTM A–312 Stainless Steel Pipe From the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 65 FR 30071 (May 10, 2000). Therefore, in accordance with section 773(b)(2)(A)(ii) of the Act, the Department determined that there are reasonable grounds to believe or suspect that, during the current POR, SeAH sold the foreign like product at prices below the cost of producing the product and instituted a below cost inquiry regarding SeAH's sales in the home market.

We calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for selling, general and administrative expenses (SG&A), interest expenses, and home market packing costs, pursuant to section 773(b)(3) of the Act. We relied on the COP data submitted by SeAH in its October 21, 2008 supplemental section D response, except where noted. During the POR, SeAH purchased hot–rolled stainless steel coil from its Korean affiliate, POSCO. Hot–rolled stainless steel coil is considered a major input to the production of circular WSSP. In accordance with 19 CFR 351.407(b), we tested the affiliated transactions using all three elements of the major input rule (*i.e.*, transfer price, COP, and market price), where available.

For these preliminary results, we evaluated the transfer price between SeAH and its affiliated hot–rolled stainless steel coil supplier on a grade–specific basis. For one of the grades of hot–rolled stainless steel coil that SeAH purchased during the POR, all three elements of the major input analysis were available. This grade of hot–rolled stainless steel coil accounted for the majority of volume of hot–rolled stainless steel coil that SeAH purchased from POSCO during the POR. As such, we find these purchases provide a reasonable basis for the Department to measure the preferential treatment, if any, given to SeAH for purchases of hot–rolled stainless steel coil during the POR. Therefore, we adjusted the reported costs to reflect the higher of transfer prices, COP, or market prices of hot–rolled stainless steel coil, where all three elements of the major input were available. *See Memorandum from Gina Lee to Neal Halper, Director, Office of Accounting, Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – SeAH Steel Corporation (COP Preliminary Analysis Memorandum)*, dated concurrently with this notice.

For the other grades of stainless steel hot–rolled coil for which market prices were not available, the Department has constructed market prices in order to perform the major input analysis, consistent with its practice. *See, e.g., Certain Polyester Staple Fiber from Korea: Final Results of the 2005–2006 Antidumping Duty Administrative Review*, 72 FR 69663 (December 10, 2007) and accompanying Issues and Decision Memorandum at Comment 5, and *Certain Hot–Rolled Carbon Steel Flat Products from Thailand: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 27802 (May 17, 2007) and accompanying Issues and Decision Memorandum at Comment 3. In the instant case we have applied the results of our analysis of the grade for which market prices were available to those grades for which market prices were not available. We also find this approach to be reasonable because the grade for which market prices are available constitutes the majority of hot–rolled stainless steel coil purchased by SeAH from its affiliate. As such, these purchases provide a reasonable basis to determine the amount usually reflected in the sales of the major input in the market under consideration.

Furthermore, we analyzed the market prices and affiliated supplier's COP for hot–rolled stainless steel coil, and found that the prices and COPs changed significantly during the POR. Therefore, we have performed the major input analysis using quarterly COP and price averages. For a detailed discussion, see COP Preliminary Analysis Memorandum.

For the preliminary results, we relied on general and administrative and financial expense rates reported in SeAH's October 21, 2008 supplemental section D response. *See COP Preliminary Analysis Memorandum.*

Test Of Home Market Sales Prices

To determine whether SeAH's home market sales had been made at prices below the COP, we computed weighted–average COPs during the POR, and compared the weighted–average COP figures to home market sales prices of the foreign like product as required under section 773(b) of the Act. On a product–specific basis, we compared the COP to the home market prices, net of billing adjustments, any applicable movement charges, selling expenses and packing expenses.

Results of COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether, within an extended period of time, such sales were made in substantial quantities, and whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. Where less than 20 percent of the respondent's home market sales of a given model were at prices below the COP, we did not disregard any below–cost sales of that model because we determined that the below–cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of the respondent's home market sales of a given model were at prices less than the COP, we disregarded the below–cost sales because: (1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of prices to the weighted–average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

Home Market Price

For those product comparisons for which there were home market sales of like product in the ordinary course of trade, we based NV on home market prices to unaffiliated parties, in accordance with sections 773(a)(1)(A) and (B) of the Act. 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 and 19 CFR 351.411. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product. *See* section 771(16) of the Act. We preliminarily determine that the product codes that SeAH reported for the model matching criteria do not result in comparisons of the most similar products. Therefore, for these preliminary results, we have recoded one of the product characteristics to yield more appropriate product comparisons of the most similar products in the home market and the U.S. market. *See SeAH Preliminary Analysis Memorandum* for a detailed description of the revisions made by the Department.

When comparing SeAH's home market sales to its CEP sales, the Department calculated SeAH's NV based on its gross unit price to customers in its home market. Pursuant to section 773(a)(6)(B)(ii) of the Act, we made deductions for movement expenses (*i.e.*, inland freight), when appropriate. In accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c), we deducted home market direct selling expenses (*i.e.*, credit and warranty expenses). In accordance with sections 773(a)(6)(A) and (B) of the Act, we deducted home market packing costs and added U.S. packing costs.

We used constructed value (CV) as the basis for NV for sales for which there were no usable contemporaneous sales of the foreign like product in the home market, in accordance with section 773(a)(4) of the Act. We relied on the COP data submitted by SeAH in its October 21, 2008 supplemental section D response, except where noted. In accordance with section 773(e) of the Act, we calculated CV based on the sum of SeAH's material and fabrication costs, SG&A expenses, profit and packing costs. We calculated the COP component of CV as described above in the "Cost of Production (COP) Analysis" section above. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the home market.

Level of Trade/Constructed Export Price Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determined NV based on sales made in the comparison market at the same LOT as the CEP sales. The NV LOT is based on the starting price of the sales in the comparison market. In *Micron Technology, Inc. v. U.S.*, 243 F.3d 1301, 1315 (Fed. Cir. 2001) (*Micron Tech.*), the Court of Appeals for the Federal Circuit held that the statute unambiguously requires the Department to remove the selling activities set forth in section 772(d) of the Act from the CEP starting price prior to performing its LOT analysis. As such, for CEP sales, the U.S. LOT is based on the starting price of the sales, as adjusted under section 772(d) of the Act.

To determine whether NV sales are at a different LOT than the CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at different LOTs, and the difference in LOTs affects price comparability, as manifested in a pattern of consistent price differences, we make an LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See, e.g., 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).

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.* 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 channel of distribution),[2] including selling functions,[3] 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 CEP and comparison market sales (*i.e.*, NV based on either home market or third country prices), we consider the starting prices

[2] The marketing process in the United States and in the comparison markets begins with the producer and extends to the sale to the final user or consumer. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of the respondent to properly determine where in the chain of distribution the sale occurs.

[3] Selling functions associated with a particular chain of distribution help us to evaluate the LOTs 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, technical service, freight and delivery, and inventory maintenance.

before any adjustments. Consistent with *Micron Tech.*, 243 F.3d at 1315, the Department will adjust the U.S. LOT, pursuant to section 772(d) of the Act, prior to performing the LOT analysis, as articulated by 19 CFR 351.412.

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 CEP sales, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing CEP sales to 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.

In determining whether separate LOTs exist, we obtained information from SeAH regarding the marketing stages for the reported U.S. and home market sales, including a description of the selling activities performed for each channel of distribution. Generally, if the reported LOTs are the same, the functions and activities of the seller at each level should be similar. Conversely, if a party reports that LOTs are different for different groups of sales, the selling functions and activities of the seller for each group should be dissimilar.

In the current review, SeAH reported two channels of distribution in the home market. Sales in the home market were mostly made directly from SeAH to unrelated end–users and distributors. The information provided by SeaH in its April 4, 2008 section A response and in its June 18, 2008 supplemental section A response shows that the selling functions performed by SeAH in both home market channels of distribution were identical. As such, we preliminarily find that all of SeAH's sales in the home market were made at one LOT.

SeAH reported one channel of distribution for its sales made through PPA, its affiliated reseller in the United States. Therefore, we preliminarily find that SeAH made its U.S. sales at one LOT. SeAH claimed that once adjustments for PPA's activities for U.S. sales are made, pursuant to section 772(d) of the Act, the LOT in the U.S. market is less advanced than the home market LOT.

To determine whether NV is at a different LOT than the U.S. transactions, the Department compared SeAH's selling activities for the home market with those for the U.S. market. *See* SeAH's April 4, 2008 section A response at Exhibit A–16 and SeAH's June 18, 2008 section A response at Exhibit A–35. In accordance with *Micron Tech.*, we removed the selling activities set forth in section 772(d) of the Act from the U.S. LOT prior to performing the LOT analysis. *See SeAH's Preliminary Analysis Memorandum.* After removing the appropriate selling activities, we compared the U.S. LOT to the home market LOT. Based on our analysis, we preliminarily find that the U.S. sales are at a less advanced LOT than the home market sales. The Department's complete analysis relies on SeAH's business proprietary information and is provided in *SeAH's Preliminary Analysis Memorandum* at Attachment III.

Therefore, because the sales in the home market are being made at a more advanced LOT than the sales to the United States, an LOT adjustment is appropriate for the home market sales in this review. However, as SeAH sold only through one LOT in the home market, there is not sufficient data to evaluate whether an LOT adjustment is warranted. Therefore, we made a CEP offset in accordance with section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). This offset is equal to the amount of indirect selling expenses and inventory carrying costs incurred in the comparison market up to but not exceeding the sum of indirect selling expenses and inventory carrying costs from the U.S. price in accordance with section 772(d)(1)(D) of the Act.

Currency Conversion

In accordance with section 773A of the Act, we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. *See http://www.ia.ita.doc.gov/exchange/index.html. See also* 19 CFR 351.415.

Preliminary Results of Review

As a result of this review, we preliminarily find that the following weighted–average dumping margin exists:

Manufacturer/Exporter	Margin
SeAH Steel Corporation	4.10 %

Cash Deposits

The following cash deposit rates will be effective with respect to all shipments of subject merchandise entered, or withdrawn from warehouse for consumption, on or after the publication date of the final results, as provided for by section 751(a)(1) of the Act: (1) for SeAH, the cash deposit rate will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will be the company–specific rate established for the most recent period for the manufacturer of the merchandise; (3) if the exporter is not a firm covered in this review, a prior review, or the less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the manufacturer of the subject merchandise is a firm covered by this review, a prior review, or the LTFV investigation, the cash deposit rate will continue to be the rate for all other manufacturers or exporters, which is 7.00 percent as established in the *Amended Final Determination and Order.* These deposit rates, when imposed, shall remain in effect until further notice.

Duty Assessment

Upon publication of the final results of this review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), the Department calculates an assessment rate for each importer of the subject merchandise for each respondent. In accordance with 19 CFR 351.212(b)(1), we will calculate importer–specific assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales and the total entered value of the examined sales. These rates will be assessed uniformly on all entries of the respective importers made during the POR if these preliminary results are adopted in the final results of review. 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.

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) (*Assessment Policy Notice*). This clarification applies to entries of subject merchandise during the POR produced by companies included in the final results of review for which the reviewed companies did not know that the merchandise it sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediary involved in the transaction. *See Assessment Policy*

Notice for a full discussion of this clarification.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to any party to the proceeding the calculations performed in connection with these preliminary results within five days after the date of public announcement of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Unless extended by the Department, case briefs are to be submitted within 30 days after the date of the publication of this notice, and rebuttal briefs, limited to arguments raised in the case briefs, are to be submitted no later than five days after the time limit for filing case briefs. *See* 19 CFR 351.309(c) and (d). Parties who submit arguments in this proceeding are requested to submit with the argument: 1) a statement of the issues; 2) a brief summary of the argument; and 3) a table of authorities. *See* 19 CFR 309(c)(2). Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Pursuant to 19 CFR 351.310(c), 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 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 raised. Issues raised in the hearing will be limited to those raised in the respective case briefs. Unless the Department specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. *See* 19 CFR 351.310(d)(1). Parties will be notified of the time and location of the hearing, if scheduled.

The Department will issue the final results of this administrative review within 120 days after the publication of this notice, unless extended. *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

Notification of 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.

The preliminary results of this administrative review and this notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 17, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–30690 Filed 12–23–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

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

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department received a request to revoke one antidumping duty order in part.

DATES: *Effective Date:* December 24, 2008.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC20230, telephone: (202) 482–4697.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b) (2007), for administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates. The Department also received a timely request to revoke in part the antidumping duty order on Fresh Garlic from the People's Republic of China with respect to one exporter.

Notice of No Sales

Under 19 CFR 351.213(d)(3), the Department may rescind a review where there are no exports, sales, or entries of subject merchandise during the respective period of review listed below. If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review, it should notify the Department within 30 days of publication of this notice in the **Federal Register**. The Department will consider rescinding the review only if the producer or exporter, as appropriate, submits a properly filed and timely statement certifying that it had no exports, sales, or entries of subject merchandise during the period of review. All submissions must be made in accordance with 19 CFR 351.303 and are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act). Six copies of the submission should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy of each request must be served on every party on the Department's service list.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews, 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 release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of this initiation notice and to make our decision regarding respondent selection within 20 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within 10 calendar days of publication of this **Federal Register** notice.

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.

All firms listed below that wish to qualify for separate-rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate-rate application or certification, as described below. For these administrative reviews, 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/nme.nme-sep-rate.html* on the date of publication of this **Federal Register** notice. 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 30 calendar days after publication of this **Federal Register** notice. 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/nme.nme-sep-rate.html* on the date of publication of this **Federal Register** notice. 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 60 calendar days of publication of this **Federal Register** notice. 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.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than November 30, 2009.

Antidumping duty proceedings	Period to be reviewed
MEXICO: Circular Welded Non-Alloy Steel Pipe and Tube A–201–805	11/1/07—10/31/08.
Hylsa, S.A. de C.V.	
Mueller Comercial de Mexico, S. de R.L. de C.V.	
Niples del Norte, S.A. de C.V.	
Productos Laminados de Aceros, S.A. de C.V.	
Tuberías Procasa S.A. de C.V.	
PYTCO, S.A. de C.V.	
Tuberia Nacional, S.A. de C.V.	
Ternium Mexico, S.A. de C.V.	
REPUBLIC OF KOREA: Circular Welded Non-Alloy Steel Pipe A–580–809	11/1/07—10/31/08.
SeAH Steel Corporation.	
Hyundai HYSCO.	
Husteel Co., Ltd.	
Daewoo International Corporation.	
Miju Steel Making Co.	
Samsun Steel Co., Ltd.	
Kukje Steel Co., Ltd.	
Nexteel Co., Ltd.	
MSteel Co., Ltd.	
Kumkang Industrial Co., Ltd.	
Histeel Co., Ltd.	
Hyundai Corporation.	
Dongbu Steel Co., Ltd.	
Dong-A Steel Co., Ltd.	
Korea Iron & Steel Co., Ltd.	
Union Pipe Manufacturing Co., Ltd.	
Union Steel Co., Ltd.	
Tianjin Huanbohai Import & Export Co.	
Huludao Steel Pipe Industrial Co., Ltd.	
Huludao City Steel Pipe.	
Benxi Northern Steel Pipes Co.	
Tianjin Shuangjie Steel Pipe Co.	
A-JU Besteel Co., Ltd.	
THAILAND: Certain Hot-Rolled Carbon Steel Flat Products A–549–817	11/1/07—10/31/08.
G J Steel Public Company Limited (formerly Nakornthai Strip Mill Public Company Limited).	
G Steel Public Company Limited.	
THE PEOPLE'S REPUBLIC OF CHINA: Certain Hot-Rolled Carbon Steel Flat Products [1] A–570–865.	11/1/07—10/31/08.
Shanghai Baosteel International Economic & Trading Co., Ltd.	
Baoshan Iron and Steel Co., Ltd.	
Baosteel Group Corporation.	

Antidumping duty proceedings	Period to be reviewed
Shanghai Baosteel Group Corporation.	
Baosteel Group International Trade Corp.	
Angang Steel Company, Ltd.	
Angang Group International Trade Corporation.	
New Iron and Steel Co., Ltd.	
Angang Group Hong Kong Co., Ltd.	
Anshan Iron & Steel Group (and all affiliated entities).	
THE PEOPLE'S REPUBLIC OF CHINA: Certain Cut-to-Length Carbon Steel Plate[2] A–570–849.	11/1/07—10/31/08.
Anshan Iron & Steel Group (AISCO/Anshan International/Sincerely Asia Ltd.).	
Baoshan (Bao/Baoshan International Trade Corp./Bao Steel Metals Trading Corp., Shanghai Baosteel Group Corporation and Baoshan Iron and Steel Co., Ltd., Shanghai Pudong Steel & Iron Co.).	
Baosteel Group.	
Hunan Valin Xiangtan Iron & Steel Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Fresh Garlic[3] A–570–831	11/1/07—10/31/08.
American Pioneer Shipping.	
Anhui Dongqian Foods Ltd.	
Anqiu Friend Food Co., Ltd.	
Anqiu Haoshun Trade Co., Ltd.	
APS Qingdao.	
Chengwu County Yuanxiang Industry & Commerce Co., Ltd.	
Chiping Shengkang Foodstuff Co., Ltd.	
Hangzhou Guanyu Foods Co., Ltd.	
Henan Weite.	
Heze Ever-Best International Trade Co., Ltd. (f/k/a Shandong Heze International Trade and Developing Company).	
Hongqiao International Logistics Co.	
IT Logistics Qingdao Branch.	
Jinan Solar Summit International Co., Ltd.	
Jinan Yipin Corporation Ltd.	
Jining Highton Trading Co., Ltd.	
Jining Trans-High Trading Co., Ltd.	
Jining Yongjia Trade Co., Ltd.	
Jinxian County Huaguang Food Import & Export Co., Ltd.	
Jinxiang Dacheng Food Co., Ltd.	
Jinxiang Dongyun Freezing Storage Co., Ltd. (a/k/a Jinxiang Eastward Shipping Import and Export Limited Company).	
Jinxiang Hejia Co., Ltd.	
Jinxiang Jinma Fruits Vegetables Products Co., Ltd.	
Jinxiang Shanyang Freezing Storage Co., Ltd.	
Jinxiang Tianheng Trade Co., Ltd.	
Jinxiang Tianma Freezing Storage Co., Ltd.	
Juye Homestead Fruits and Vegetables Co., Ltd.	
Laizhou Xubin Fruits and Vegetables.	
Linyi City Heding District Jiuli Foodstuff Co.	
Ningjin Ruifeng Foodstuff Co., Ltd.	
Qingdao Lianghe International Trade Co., Ltd.	
Qingdao Saturn International Trade Co., Ltd.	
Qingdao Tiantaixing Foods Co., Ltd.	
Qingdao Winner Foods Co., Ltd.	
Qingdao Xintianfeng Foods Co., Ltd.	
Qingdao Yuankang International.	
Qufu Dongbao Import & Export Trade Co., Ltd.	
Samyoung America (Shanghai) Inc.	
Shandong Chengshun Farm Produce Trading Co., Ltd.	
Shandong Chenhe Int'l Trading Co., Ltd.	
Shandong Dongsheng Eastsun Foods Co., Ltd.	
Shandong Garlic Company.	
Shandong Jinxiang Zhengyang Import & Export Co., Ltd.	
Shandong Sanxing Food Co., Ltd.	
Shandong Xingda Foodstuffs Group Co., Ltd.	
Shandong Yipin Agro (Group) Co., Ltd.	
Shanghai Ever Rich Trade Company.	
Shanghai LJ International Trading Co., Ltd.	
Shenzhen Fanhui Import & Export Co., Ltd.	
Shenzhen Greening Trading Co., Ltd.	
Shenzhen Xinboda Industrial Co., Ltd.	
T&S International, LLC.	
Taian Eastsun Foods Co., Ltd.	
Taiyan Ziyang Food Co., Ltd.	
Weifang Chenglong Import & Export Co., Ltd.	
Weifang Hongqiao International Logistic Co., Ltd.	
Weifang Naike Foodstuffs Co., Ltd.	

Antidumping duty proceedings	Period to be reviewed
Weifang Shennong Foodstuff Co., Ltd. WSSF Corporation (Weifang). Xiamen Huamin Import Export Company. You Shi Li International Trading Co., Ltd. Zhangzhou Xiangcheng Rainbow Greenland Food Co., Ltd. Zhengzhou Harmoni Spice Co., Ltd. Zhengzhou Yuanli Trading Co., Ltd.	

[1] If one of the above-named companies does not qualify for a separate rate, all other exporters of certain hot-rolled carbon steel flat products from the People's Republic of China who 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 exporters are a part.

[2] If one of the above-named companies does not qualify for a separate rate, all other exporters of certain cut-to-length carbon steel plate from the People's Republic of China who 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 exporters are a part.

[3] If one of the above-named companies does not qualify for a separate rate, all other exporters of Fresh Garlic from the People's Republic of China who 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 exporters are a part.

Countervailing Duty Proceedings

None.

Suspension Agreements

None.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States*, 291 F.3d 806 (Fed. Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: December 18, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E8–30682 Filed 12–23–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XM36

Marine Mammals; File No. 1058–1733

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

ACTION: Notice; receipt of application for amendment.

SUMMARY: Notice is hereby given that Mark Baumgartner, Ph.D., MS #33, Woods Hole Oceanographic Institute, Woods Hole, Massachusetts, 02543, has requested an modification to scientific research Permit No. 1058–1733.

DATES: Written, telefaxed, or e-mail comments must be received on or before January 23, 2009.

ADDRESSES: The amendment request and related documents are available for review by selecting "Records Open for Public Comment" from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov/index.cfm*, and then selecting File No. 1058–1733 from the list of available applications. These documents also are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521 and

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978)281–9300; fax (978)281–9333.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1058–1733.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Kristy Beard, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 1058–1733 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit No. 1058–1733, issued on June 27, 2007 (72 FR 36429), authorizes the permit holder to examine baleen whale foraging and diving behaviors in the Southern Ocean as well as to determine the overlap of diving behaviors with the vertical structure of fixed fishing gear in the North Atlantic Ocean. In the Southern Ocean, researchers may closely approach humpback (*Megaptera novaeangliae*), blue (*Balaenoptera musculus*), fin (*B. physalus*), sei (*B. borealis*), and Antarctic minke (*B. bonaerensis*) whales during vessel surveys for photo-identification,

behavioral observation, suction-cup tagging, tracking, and incidental harassment. In the North Atlantic, researchers may closely approach up to 324 of each species of humpback, fin, and sei whales annually during vessel surveys for photo-identification, behavioral observation, tracking, and incidental harassment. Of these animals, up to 108 of each species may be suction-cup tagged annually during surveys.

The permit holder requests an amendment to the permit to authorize the close vessel approach of up to 90 animals of each of the following species annually for suction-cup tagging: North Atlantic right (*Eubalaena glacialis*), North Pacific right (*E. japonica*), blue, and Eastern gray whales (*Eschrichtius robustus*) and up to 180 bowhead whales (*Balaena mysticetus*) in North Pacific, Arctic and/or North Atlantic waters. Dr. Baumgartner also requests to closely approach up to 45 animals each of the following species annually for satellite tagging using dermal attachments: North Pacific right, and Eastern gray whales and North Atlantic right, blue, humpback, fin, and sei whales and up to 180 bowhead whales in North Atlantic, North Pacific and/or Arctic waters. Dr. Baumgartner could incidentally harass up to 800 animals of each species during close vessel approaches annually. This research will provide a better understanding of large whale distribution and foraging ecology by gathering data on predator-prey relationships, diving behavior, day vs. night behavior, and acoustic behavior. The amendment would be valid until the permit expires on May 31, 2012.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: December 18, 2008.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–30713 Filed 12–23–08; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Entry of Shipments of Cotton, Wool, and Man-Made Fiber Apparel in Excess of 2008 Agreement Limits

December 19, 2008

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Directive to Commissioner, Customs and Border Protection.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended, Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1857).

In the letter to the Commissioner of U.S. Customs and Border Protection published below, U.S. Customs and Border Protection is directed to implement staged entry limits for China for shipments in excess of 2008 agreement limits.

In a **Federal Register** Notice published on June 16, 2008 (73 FR 33992), the Committee for the Implementation of Textile Agreements (CITA) advised the public that any overshipments of the 2008 limits of the U.S. - China Bilateral Textile Agreement would be subject to staged entry procedures laid out in the notice.

The procedures laid out below apply only in cases of overshipments of the 2008 agreed quota limits for China.

For all shipments exported in 2008 that exceed the applicable 2008 agreed quota limits for China, entry will not be permitted until February 1, 2009. From February 1 through February 28, 2009, entry will be permitted to goods in an amount equal to 5 percent of the applicable 2008 base quota limit. For each succeeding month, beginning on the first day of the month and extending through the last day of the month, entry will be permitted to goods in an amount equal to 5 percent of the applicable base 2008 quota limit, until all shipments in excess of the quota limits have been entered.

The 5 percent staged entry limits described above are published in the following letter to the Commissioner of U.S. Customs and Border Protection.

Janet E. Heinzen,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 19, 2008.

Commissioner,
U.S. Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive provides instructions on permitting entry to goods shipped in excess of 2008 quota limits for China

For all shipments exported in 2008 that exceed the applicable 2008 agreed quota limits for China, you are directed to deny entry until February 1, 2009, subject to the following procedure. From February 1, through February 28, 2009, you are directed to permit entry to goods in an amount equal to 5 percent of the applicable 2008 base quota limit. For each succeeding month, beginning on the first day of the month and extending through the last day of the month, you are directed to permit entry to goods in an amount equal to 5 percent of the applicable base 2008 quota limit, until all shipments in excess of the quota limits have been entered.

The monthly 5 percent staged entry limits described above are listed below:

Category	5 percent of base limit
332/432/632-T (plus baby socks) [1]..	4,252,922 dozen pair, of which not more than 4,043,310 dozen pair shall be in categories 332/432/632-B (plus baby socks) [2].
347/348	1,272,148 dozen.
352/652	1,225,759 dozen.

[1] Categories 332/432/632-T: baby socks: only HTS numbers 6111.20.6050, 6111.30.5050 and 6111.90.5050; within Category 632: only HTS number 6115.10.4000, 6115.10.5500, 6115.30.9010, 6115.96.6020, 6115.96.9020, 6115.99.1420, and 6115.99.1920.

[2] Categories 332/432/632-B: baby socks: only HTS numbers 6111.10.6050, 6111.30.5050 and 6111.90.5050; within Category 632: only HTS numbers 6115.10.4000, 6115.10.5500, 6115.96.6020, 6115.96.9020, 6115.99.1420, and 6115.99.1920.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Janet E. Heinzen,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E8–30691 Filed 12–23–08; 8:45 am]

BILLING CODE 3510–DS

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Finding

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality regulations (40 CFR parts 1500–1508), implementing procedural provisions of NEPA, and Executive Order (EO) 12114, Environmental Effects Abroad of Major Federal Actions, the Department of the Navy (DON) gives notice that a combined Finding of No Significant Impact (FONSI)/Finding of No Significant Harm (FONSH) has been issued and is available for the January 2009 USS Dwight D. Eisenhower Carrier Strike Group Composite Training Exercise (IKE CSG COMPTUEX).

DATES: The effective date of the finding is December 18, 2008.

ADDRESSES: Electronic copies of the combined FONSI/FONSH are available for public viewing or downloading at *http://www.navydocuments.com.*

FOR FURTHER INFORMATION CONTACT: Commander, Second Fleet Public Affairs, Commander Phillips; telephone: 757–443–9822 or *http://www.navydocuments.com.*

SUPPLEMENTARY INFORMATION: The IKE CSG COMPTUEX is a major U.S Navy Atlantic Fleet training exercise proposed to occur in January 2009. The purpose of this exercise is to certify U.S. Naval forces as combat-ready. Specific training activities associated with the IKE CSG COMPTUEX include air-to-ground (ATG) bombing, Combat Search and Rescue (CSAR), Maritime Operations, Inert Naval Gunfire, Fast Attack Craft/Fast Inshore Attack Craft (FAC/FIAC), and Anti-Submarine Warfare (ASW).

The FONSI is based on analysis contained in a Comprehensive Environmental Assessment (EA) addressing potential impacts associated with land-based training for Major Atlantic Fleet Training Exercises on the East and Gulf Coasts of the U.S. (February 2006). The FONSH is based on environmental analysis contained in a Comprehensive Overseas Environmental Assessment (OEA) (February 2006) and a Supplement to the Comprehensive OEA (SOEA) for environmental impacts associated with U.S. Navy major exercise training in offshore operating areas along the East and Gulf Coasts of the U.S. (April 2008). Environmental concerns addressed in the EA include land use, community facilities, coastal zone management, socioeconomics, cultural resources, airspace, air quality, noise, geology, soils, water resources, biological resources, munitions and hazardous materials management, and safety. Both the EA and OEA addressed potential impacts to the ocean physical environment, fish and essential fish habitat, sea turtles, marine mammals, seabirds, migratory birds, endangered and threatened species, socioeconomics, and cultural resources. The SOEA analysis included the use of MFA sonar during the January 2009 IKE CSG COMPTUEX.

This action includes mitigation measures to reduce impacts to a level that is less than significant. In accordance with the Major Atlantic Fleet Training Exercise EA, OEA and SOEA, and an evaluation of the nature, scope, and intensity of the proposed action, the Navy finds the January 2009 IKE CSG COMPTUEX will not significantly impact or harm the environment. Therefore, an Environmental Impact Statement or Overseas Environmental Impact Statement is not required.

Dated: December 19, 2008.

T. M. Cruz,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E8–30671 Filed 12–23–08; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Office of Safe and Drug-Free Schools; Overview Information; Foundations for Learning; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

Catalog of Federal Domestic Assistance (CFDA) Number: 84.215H.

Dates: Applications Available: December 24, 2008.

Deadline for Transmittal of Applications: February 24, 2009.

Deadline for Intergovernmental Review: April 27, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: This program supports projects to help eligible children become ready for school.

Priority: In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from section 5542 of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (ESEA), 20 U.S.C. 7269a.

Absolute Priority: For FY 2009 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is: Grants to local educational agencies (LEAs), local councils, community-based organizations (CBOs), including faith-based organizations, and other public and nonprofit private entities, or a combination of such entities, to assist eligible children to become ready for school.

To be eligible for funding, a project must propose one or more of the following:

(1) To deliver services to eligible children and their families that foster eligible children's emotional, behavioral, and social development.

(2) To coordinate and facilitate access by eligible children and their families to the services available through community resources, including mental health, physical health, substance abuse, educational, domestic violence prevention, child welfare, and social services.

(3) To provide ancillary services such as transportation or child care in order to facilitate the delivery of any other authorized services or activities.

(4) To develop or enhance early childhood community partnerships and build toward a community system of care that brings together child-serving agencies or organizations to provide individualized supports for eligible children and their families.

(5) To evaluate the success of strategies and services provided pursuant to the grant in promoting young children's successful entry to school and to maintain data systems required for effective evaluations.

(6) To pay for the expenses of administering the grant activities, including assessment of children's eligibility for services.

Program Authority: 20 U.S.C. 7269a.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, 99, and 299.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration's budget request for FY 2009 does not include funds for this program. However, we are inviting

applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards later in FY 2009 and FY 2010 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $200,000–$300,000.

Estimated Average Size of Awards: $245,500.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 18 months.

III. Eligibility Information

1. *Eligible Applicants:* (1) LEAs, including charter schools that are considered LEAs under State law; (2) local councils; (3) CBOs, including faith-based organizations; (4) other public or nonprofit private entities; or (5) a combination of such entities.

2.a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements in accordance with section 5541(i) of the ESEA.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.ed.gov/programs/learningfoundations/applicant.html.* To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.215H.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

3. *Submission Dates and Times:*

Applications Available: December 24, 2008.

Deadline for Transmittal of Applications: February 24, 2009.

Applications for grants under this program may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV.6.

Other Submission Requirements of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: April 27, 2009.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:*

Limitations on Use of Funds

(1) Grant funds may be used only to pay for services that cannot be paid for using other Federal, State, or local public resources or through private insurance.

(2) A grantee may not use more than three percent of the amount of the grant to pay the expenses of administering the authorized activities, including assessment of children's eligibility for services (20 U.S.C. 7269a).

We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:*

Applications for grants under this program may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

We are participating as a partner in the Governmentwide Grants.gov Apply site. Foundations for Learning, CFDA number 84.215H, is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for Foundations for Learning at *http://www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.215, not 84.215H).

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*

• To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) Registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3–Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.215H), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.215H), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in

Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this program are in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. You must also submit an interim progress report twelve months after the award date. This report should provide the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the Foundations for Learning grants program: (1) The percentage of eligible children served by the grant attaining measurable gains in emotional, behavioral, and social development; and (2) the percentage of eligible children and their families served by the grant receiving individualized support from child-serving agencies or organizations.

Note that in applying the selection criteria to be used in this competition for "Quality of project services" and "Quality of the project evaluation," the Secretary will take into consideration the extent to which the applicant demonstrates a strong capacity to provide reliable data on these indicators.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Dana Carr, U.S. Department of Education, 400 Maryland Avenue, SW., room 10096, PCP, Washington, DC 20202–6450. Telephone: (202) 245–7868 or by e-mail: *dana.carr@ed.gov.* If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: December 19, 2008.

Deborah A. Price,

Assistant Deputy Secretary for Safe and Drug-Free Schools.

[FR Doc. E8–30706 Filed 12–23–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Disability Rehabilitation Research Projects (DRRPs)

Notice inviting applications for new awards for fiscal year (FY) 2009.

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.133A–3 and 84.133A–4.

Note: This notice invites applications for two separate competitions. For key dates, contact person information, and funding information regarding each of the two competitions, see the chart in the *Award Information* section of this notice.

Dates: Applications Available: See chart.

Date of Pre-Application Meeting: See chart.

Deadline for Transmittal of Applications: See chart.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the DRRP program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, by developing methods, procedures, and rehabilitation technologies that advance a wide range of independent living and employment outcomes for individuals with disabilities, especially individuals with the most severe disabilities. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: Research, training, demonstration, development, dissemination, utilization, and technical assistance.

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b).

Additional information on the DRRP program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#DRRP.*

Priorities: NIDRR has established three separate priorities for the two competitions announced in this notice. The General DRRP Requirements priority, which applies to all DRRP competitions, is from the notice of final

priorities (NFP) for the Disability and Rehabilitation Research Projects and Centers Program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). The remaining two priorities are from the NFP for the Disability and Rehabilitation Research Projects and Centers Program, published elsewhere in this issue of the **Federal Register**.

Absolute Priorities: For FY 2009, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), for each competition (designated by CFDA number in the following chart), we consider only applications that meet both the General DRRP Requirements priority and the absolute priority designated for that competition.

These priorities are:

Absolute priority	Corresponding competition CFDA number
General DRRP Requirements	84.133A–3 and 84.133A–4
Research and Technical Assistance Center on Vocational Rehabilitation Program Management	84.133A–3
Center on the Effective Delivery of Rehabilitation Technology by State Vocational Rehabilitation Agencies to Improve Employment Outcomes	84.133A–4

Note: The full text of each of these priorities is included in the notice of final priorities published elsewhere in this issue of the **Federal Register** and in the applicable application package.

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). (d) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $7,650,000 for new awards for this program for FY 2009. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Average Size of Awards: See chart.

Maximum Award: See chart.

Estimated Number of Awards: See chart.

Project Period: See chart.

DISABILITY REHABILITATION RESEARCH PROJECTS APPLICATION NOTICE FOR FISCAL YEAR 2009

CFDA number and name	Applications available	Deadline for transmittal of applications	Date of pre-application meeting	Estimated average size of awards	Maximum award*	Estimated number of awards	Project period	Contact person
84.133A–3 Research and Technical Assistance Center on Vocational Rehabilitation Program Management.	12/24/08	02/23/09	1/13/09	$1,495,000	$1,500,000*	1	Up to 60 mos	Donna Nangle (202) 245–7462 Rm 6029.
84.133A–4 Center on the Effective Delivery of Rehabilitation Technology by State Vocational Rehabilitation Agencies to Improve Employment Outcomes.	12/24/08	02/23/09	1/13/09	495,000	500,000*	1	Up to 60 mos	Donna Nangle (202) 245–7462 Rm 6029.

*We will reject any application that proposes a budget exceeding the maximum award for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Note: The Department is not bound by any estimates in this notice.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* Cost sharing is required by 34 CFR 350.62(a)(3)(i) and will be negotiated at the time of the grant award.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/*

edpubs.html or at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify these competitions as follows: CFDA number 84.133A–3 or 84.133A–4.

Individuals with disabilities can obtain a copy of the applicable application package in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the applicable application package for these competitions.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 125 pages, using the following standards:

- A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. Single spacing may be used for titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- *Use one of the following fonts:* Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative section (Part III).

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and narrative budget justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. Submission Dates and Times:

Applications Available: See chart.

Pre-Application Meeting: Interested parties are invited to participate in any of the pre-application meetings held for the competitions announced in this notice and to receive information and technical assistance through individual consultation with NIDRR staff. The dates for each of the competitions' pre-application meetings are listed in the chart in the *Award Information* section in this notice. Interested parties may participate in these meetings by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services on the dates listed in the chart between 1 p.m. and 3 p.m., Washington, DC time. For each meeting, NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m. on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in any of these meetings via conference call or for an individual consultation, contact Donna Nangle, U.S. Department of Education, Potomac Center Plaza (PCP), room 6029, 550 12th Street, SW., Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *Donna.Nangle@ed.gov*.

Deadline for Transmittal of Applications: See chart.

Applications for grants under this program may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV.6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this program may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

We are participating as a partner in the Governmentwide Grants.gov Apply site. The Disability Rehabilitation Research Projects competitions, CFDA numbers 84.133A–3 and 84.133A–4, are included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at *http://www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Disability Rehabilitation Research Projects competitions—CFDA numbers 84.133A–3 and 84.133A–4 at *http://www.Grants.gov*. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.*, search for 84.133, not 84.133A–3 or 84.133A–4).

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

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• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).

• If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA number 84.133A–3 or 84.133A–4), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education,

Application Control Center, Attention: (CFDA number 84.133A–3 or 84.133A–4), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for these competitions are from 34 CFR 350.54 and are listed in the application package.

2. *Review and Selection Process:* Additional factors we consider in selecting an application for an award are as follows:

The Secretary is interested in outcomes-oriented research or development projects that use rigorous scientific methodologies. To address this interest, applicants are encouraged to articulate goals, objectives, and expected outcomes for the proposed research or development activities. Proposals should describe how results and planned outputs are expected to contribute to advances in knowledge, improvements in policy and practice, and public benefits for individuals with disabilities. Applicants should propose projects that are designed to be consistent with these goals. We encourage applicants to include in their application a description of how results will measure progress towards achievement of anticipated outcomes (including a discussion of measures of effectiveness), the mechanisms that will be used to evaluate outcomes associated with specific problems or issues, and how the proposed activities will support new intervention approaches and strategies. Submission of the information identified in this section V.2. *Review and Selection Process* is voluntary, except where required by the selection criteria listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

Note: NIDRR will provide information by letter to grantees on how and when to submit the final performance report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The percentage of newly-awarded NIDRR projects that are multi-site, collaborative, controlled studies of interventions and programs.
- The number of accomplishments (*e.g.*, new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new grants that include studies funded by NIDRR that assess the effectiveness of interventions, programs, and devices using rigorous and appropriate methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) in support of these performance measures.

Updates on the Government Performance and Results Act of 1993 (GPRA) indicators, revisions, and methods appear on the NIDRR Program Review Web site: *http://www.neweditions.net/pr/commonfiles/pmconcepts.htm.*

Grantees should consult this site on a regular basis to obtain details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6029, PCP, Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *Donnna.Nangle@ed.gov.*

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the applicable application package in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll-free, at 1–800–877–8339.

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Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: December 19, 2008.

Tracy R. Justesen,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E8–30707 Filed 12–23–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research—Disability and Rehabilitation Research Projects and Centers Program—Disability Rehabilitation Research Projects (DRRPs)

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priorities for DRRPs.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces two priorities for the Disability and Rehabilitation Research Projects and Centers Program administered by the National Institute on Disability and Rehabilitation Research (NIDRR). The Assistant Secretary may use one or more of these priorities for competitions in fiscal year (FY) 2009 and later years. We take this action to focus research attention on areas of national need. We intend these priorities to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: *Effective Date:* These priorities are effective January 23, 2009.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6029, Potomac Center Plaza (PCP), Washington, DC 20202–2700. Telephone: (202) 245–7462 or by e-mail: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Disability and Rehabilitation Research Projects (DRRP) Program

The purpose of the DRRP Program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, by developing methods, procedures, and rehabilitation technologies that advance a wide range of independent living and employment outcomes for individuals with disabilities, especially individuals with the most severe disabilities. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: Research, development, demonstration, training, dissemination, utilization, and technical assistance.

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b). In addition, NIDRR intends to require all DRRP applicants to meet the requirements of the *General Disability and Rehabilitation Research Projects (DRRP) Requirements* priority that it published in a notice of final priorities in the **Federal Register** on April 28, 2006 (71 FR 25472).

Additional information on the DRRP Program can be found at: *http://www.ed.gov/rschstat/research/pubs/resprogram.html#DRRP.*

We published a notice of proposed priorities (NPP) for NIDRR's Disability and Rehabilitation Research Projects and Centers Program in the **Federal Register** on May 30, 2008 (73 FR 31078). The NPP included background statements that described our rationale for the two priorities proposed in that notice.

There are differences between the NPP and this notice of final priorities (NFP) as discussed in the following section.

In this NFP, we are announcing two final priorities for DRRPs. These final priorities are:

- Priority 1—Research and Technical Assistance Center on Vocational Rehabilitation Program Management.
- Priority 2—Center on the Effective Delivery of Rehabilitation Technology by State Vocational Rehabilitation Agencies to Improve Employment Outcomes.

Analysis of Comments and Changes

In response to our invitation in the NPP, one party submitted comments on the proposed priorities for the DRRPs. An analysis of the comments and of any changes in the priorities since publication of the NPP follows.

Generally, we do not address technical and other minor changes, or suggested changes the law does not authorize us to make under the applicable statutory authority. In addition, we do not address general comments that raised concerns not directly related to the proposed priorities.

Priority 1—Research and Technical Assistance Center on Vocational Rehabilitation Program Management

Comment: One commenter recommended that this Center be required to have an advisory panel.

Discussion: We agree and will make the change requested by the commenter.

Changes: We have added language requiring the Center to establish an advisory committee comprised of individuals who are knowledgeable about VR program management practices including researchers, State VR agency representatives, VR providers, State Rehabilitation Council representatives, employers, individuals with disabilities, and parents of individuals with disabilities. Further we have added language stating the advisory committee must be designed to provide guidance to the Center on its research and technical assistance activities.

Comment: One commenter recommended that the Center be required to provide State VR agencies with information about costs associated with implementing new State vocational rehabilitation (VR) agency program management practices or policies that the Center develops.

Discussion: We agree that cost information could be critical, for example, in helping States make decisions regarding whether or how to implement the Center's management model or its components, and that cost effectiveness should be considered in identifying effective practices and in developing the management model. However, we note that the cost of implementing any particular policy or practice is likely to vary substantially from one State VR agency to another because of differences among the State VR agencies (*e.g.*, in the number of personnel, type of training needed, size and type of client population, size of agency) and the contexts in which each State agency operates (*e.g.*, location of agency in State government, whether the State is primarily urban or rural).

Changes: We have added language requiring that the Center consider cost-effectiveness in identifying effective practices and in developing the management model and include information, to the extent possible, on the cost of the model and its components in the technical assistance

materials to be developed for the use of State VR agencies.

Comment: One commenter recommended that the Center be required to establish criteria for identifying best VR program management practices.

Discussion: NIDRR agrees with this suggestion and will require that applicants propose, in their applications, the specific criteria they will use to identify effective VR program management practices.

Changes: We have modified paragraph (a) of the priority to require applicants to propose, in their applications, the specific criteria they will use to identify effective VR program management practices.

Comment: One commenter noted that each State VR agency faces unique budgetary and service delivery challenges. This commenter noted that the Center must take into account these program differences and establish criteria for selecting partner agencies that are designed to ensure a representative cross-section of VR programs.

Discussion: The requirement that the Center collaborate with 5 to 10 State VR agencies will help to ensure that VR program management models developed by the Center are responsive to the needs of programs with widely varying budgets and unique service delivery contexts. However, in the interest of maximizing the utility and relevance of the VR Program Management Model to be developed by the Center (under paragraph (b) of the priority), we agree that the States selected must be reasonably diverse.

Changes: We have added language requiring that the methods and criteria for selecting Partner State VR Agencies provide for diversity, to the extent possible, in the size, location, and type of State agency.

Comment: One commenter recommended that the 5 to 10 State VR agencies that serve as partners in the Center's activities be compensated by the Center.

Discussion: NIDRR allows applicants to determine how they will ensure the active collaboration of partner entities. Nothing in this priority would prevent an applicant from proposing to compensate the 5 to 10 Partner State VR Agencies. NIDRR will rely on the peer review process to evaluate the quality, feasibility, and costs of a proposed Center's collaborative efforts.

Changes: None.

Comment: One commenter recommended that the Center should coordinate with the Council of State Administrators of Vocational Rehabilitation (CSAVR) when selecting Partner State VR Agencies. This commenter also recommended that the Center work with CSAVR on an ongoing basis.

Discussion: The priority requires that applicants describe the methods and criteria they will use to recruit and select Partner State VR Agencies for collaboration and partnership. Applicants are free to coordinate with CSAVR as part of this effort to select and recruit State VR partners. However, NIDRR has no basis for requiring that all applicants propose such a partnership. Similarly, applicants are free to propose ongoing collaboration and partnership with CSAVR, though NIDRR has no basis for requiring all applicants to do so. NIDRR will rely on the peer review process to determine the quality of the selection process for Partner State VR Agencies.

Changes: None.

Comment: One commenter recommended that NIDRR impose minimum qualifications for Center applicants, including knowledge of people with disabilities and employment of people with disabilities; support letters from State VR agencies; a track record of effective service delivery; a history of providing quality training and technical assistance to States; and expertise in evaluating State-level programs.

Discussion: NIDRR recognizes the importance of the qualifications suggested by the commenter. However, NIDRR has no regulatory or statutory basis for requiring that applicants meet these specific minimum qualifications. NIDRR utilizes expert peer review panels, which apply established selection criteria to assess the qualifications and expertise of proposed project personnel. NIDRR utilizes peer review criteria from 34 CFR 350.54(n) to rate the relevant expertise of proposed project staff. For example, one criterion requires peer reviewers to rate the extent to which key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities (34 CFR 350.54(n)(3)(i)). Other criteria require peer reviewers to rate the extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas (34 CFR 350.54(n)(3)(iii)) and the extent to which key personnel have up-to-date knowledge from research or effective practice in the subject area covered in the priority (34 CFR 350.54(n)(3)(v)). These criteria are designed to ensure that applicants have the capacity to carry out the project.

Changes: None.

Priority 2—Center on the Effective Delivery of Rehabilitation Technology by State Vocational Rehabilitation Agencies to Improve Employment Outcomes

Comment: One commenter recommended that State Assistive Technology (AT) programs should be on the Center's advisory committee and that the Center should work closely with such programs.

Discussion: NIDRR agrees with the commenter's suggestion and has changed the priority accordingly.

Changes: We have modified the priority to require that the Center include a representative of State AT programs on its advisory committee. We have also changed the priority to require that the Center consult with its NIDRR Project Officer to coordinate its efforts with State AT programs.

Comment: One commenter recommended that the Center be required to provide information about the costs associated with implementing new practices or policies that support the effective use of rehabilitation technology that the Center identifies.

Discussion: We agree that cost information could be critical, for example, in helping States make decisions regarding whether or how to implement any given policy or practice identified by the Center, and that cost effectiveness should be a consideration in identifying effective practices. However, we note that the cost of implementing any particular policy or practice is likely to vary substantially from one State VR agency to another because of differences among State VR agencies (e.g., in the number of personnel, type of training needed, size and type of client population, size of agency) and the context in which each State agency operates (e.g., location of agency in State government, whether the State is primarily urban or rural).

Changes: We have added language requiring that the Center consider cost-effectiveness in identifying effective practices and to include information on the costs of practices, to the extent possible, in exemplars, tools, and guidance developed for the use of State VR agencies.

Note: This notice does not solicit applications. In any year in which we choose to use these priorities, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priorities as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive preference priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive preference priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

This NFP is in concert with President George W. Bush's New Freedom Initiative (NFI) and NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). Background information on the NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/infocus/newfreedom*

The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html*

Through the implementation of the NFI and the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Priority 1—Research and Technical Assistance Center on Vocational Rehabilitation Program Management

The Assistant Secretary for Special Education and Rehabilitative Services announces a priority to establish, under the Disability and Rehabilitation Research Program (DRRP), a Research and Technical Assistance Center on Vocational Rehabilitation Program Management (Center). The Center must conduct research to develop a model of vocational rehabilitation (VR) program management, which must include a focus on quality assurance, strategic planning, and human resource management. The Center must then develop and test the model, and use it as the basis for training and technical assistance (TA) to improve management practices within individual State VR agencies.

Under this priority, the Center must be designed to contribute to the following outcomes:

(a) New knowledge of effective VR program management. The Center must contribute to this outcome by identifying effective VR program management practices, including at a minimum, practices in the areas of quality assurance, strategic planning, and human resource management. (Applicants must propose, in their applications, the specific criteria they will use to identify effective VR program management practices, including consideration of their cost effectiveness.) The Center's work in this area must be designed to result in knowledge that could be used to assist State VR agencies in the following:

Quality Assurance

- Develop methodologies to ensure that performance data are accurate and analyses of the data are sound;
- Implement effective quality assurance processes;
- Implement effective fiscal planning and accountability mechanisms;

Strategic Planning

- Develop agency goals and strategies, and evaluate progress made toward achieving these goals;
- Develop key performance measures and use performance data for program improvement;

Human Resource Management

- Implement effective employee training, staff development, and career development; and
- Implement effective leadership development and succession planning.

(b) A new evidence-based model of effective VR program management (VR Program Management Model). The Center must contribute to this outcome by partnering with approximately 5 to 10 State VR agencies to develop a VR Program Management Model that, to the maximum extent possible, is informed by evidence of the effectiveness of specific management practices, including cost effectiveness. Applicants must describe in their applications the methods and criteria they will use to recruit and select State VR agencies with which they will partner (Partner State VR Agencies) for this activity. At a minimum, such methods and criteria must provide for diversity, to the extent possible, in the size, location, and type of State VR agencies to be selected. NIDRR will review and approve the final selection of Partner State VR Agencies. The Center must work with the Partner State VR Agencies to identify, describe, and document the components of the VR Program Management Model, which must include, at a minimum, quality assurance, strategic planning, and human resource management components.

(c) Enhanced VR program management through implementation of the VR Program Management Model. The Center must contribute to this outcome by developing exemplars, tools, and guidance that other State VR agencies (i.e., State VR agencies that are not Partner State VR Agencies) can use to implement the VR Program Management Model within their unique contexts, including information on the costs of implementing the management model and its components, to the extent possible. The Center must provide training and TA to individual State VR agencies to facilitate the implementation of some or all of the components of the VR Program Management Model, depending on the unique needs of the agency's VR program.

In addition, the Center must—

- Establish an advisory committee comprised of individuals who are knowledgeable about VR program management practices including researchers, State VR agency representatives, VR providers, State Rehabilitation Council representatives, employers, individuals with disabilities, and parents of individuals with disabilities. This advisory committee must be designed to provide guidance to the Center on its research and TA activities;
- Disseminate TA materials that it has developed on program management topics under paragraph (c) of this priority to other projects that provide TA to State VR agencies (e.g., the Technical Assistance and Continuing Education (TACE) projects that the Rehabilitation Services Administration (RSA) funded in FY 2008 and FY 2009 under title III of the Rehabilitation Act of 1973, as amended (Act);
- Coordinate TA with all entities that comprise the national VR TA network, including: The TACE projects; the IL-Net Training and Technical Assistance projects for centers for independent living and statewide independent living councils funded by RSA under title VII of the Rehabilitation Act of 1973, as amended (Act); the national VR TA center that RSA funded in FY 2008 under section 12 of the Act; and NIDRR's Rehabilitation Research and Training Centers focused on employment. Coordination is intended to ensure consistency of TA provided nationally on VR program management; and

• Each year, after year one of the project period, plan to present findings at a three-day national conference of State VR administrators to be held in Washington, DC.

Priority 2—Center on the Effective Delivery of Rehabilitation Technology by State Vocational Rehabilitation Agencies To Improve Employment Outcomes

The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for a Disability and Rehabilitation Research Project (DRRP) to serve as the Center on the Effective Delivery of Rehabilitation Technology by State Vocational Rehabilitation Agencies to Improve Employment Outcomes (Center). The Center must conduct research to identify the policies, procedures, and practices that result in the effective delivery of rehabilitation technology (RT), as defined in 34 CFR 361.5(b)(45), by employment and training programs to assist individuals with disabilities to achieve employment outcomes, as defined in 34 CFR 361.5(b)(16). Under this priority, the Center must be designed to contribute to the following outcomes:

(a) New knowledge regarding models of effective RT service delivery. The Center must contribute to this outcome by identifying existing employment and training programs, including programs administered by State VR agencies, that effectively deliver RT services to assist individuals with disabilities achieve employment outcomes. Applicants must describe in their applications the methods and criteria they will use to identify and select the model employment and training programs. NIDRR will review and approve the final selection of the employment and training programs. The Center must work with the selected programs to identify, describe, and document the policies, procedures, and practices that result in effective RT service delivery, including information on the costs of implementing such policies, procedures, and practices, to the extent possible.

(b) New knowledge of the systemic supports necessary for the effective delivery of RT services. The Center must contribute to this outcome by conducting research to identify the policies and practices of employment and training programs, including but not limited to those operated by State VR agencies, that support the effective use of RT to help individuals with disabilities achieve and maintain employment outcomes. The Center's work in this area must be designed to result in knowledge that assists employment and training programs to—

• Identify and assess the quality and effectiveness, including cost-effectiveness, of their policies and practices related to the delivery of RT services;

• Change existing policies or develop new policies that are specifically designed to improve the delivery of RT services;

• Implement effective strategies to improve practices to support the delivery of RT services; and

• Develop and implement methodologies to collect data on the impact of RT services on employment outcomes.

(c) Enhanced knowledge of effective RT service delivery among administrators of State VR agencies and other employment and training programs for individuals with disabilities. The Center must contribute to this outcome by using the knowledge gained from the activities described in paragraphs (a) and (b) of this priority to develop exemplars, tools, and guidance that State VR agencies can use to change existing policies or develop new policies and practices within their unique contexts, including information on the costs of implementing such policies and practices, to the extent possible. The Center must disseminate these materials to State VR agencies and other employment and training programs for individuals with disabilities.

In addition, the Center must—

• In consultation with its NIDRR Project Officer, coordinate the Center's dissemination and outreach efforts with relevant programs. These programs include the Research and Technical Assistance Center on Vocational Rehabilitation Program Management that NIDRR intends to fund in FY 2009; the regionally based Technical Assistance and Continuing Education (TACE) projects that the Rehabilitation Services Administration (RSA) funded in FY 2008 and FY 2009 under title III of the Rehabilitation Act of 1973, as amended (Act); the IL-Net Training and Technical Assistance projects for centers for independent living and statewide independent living councils funded by RSA under title VII of the Act; the national VR TA center that RSA funded in FY 2008 under section 12 of the Act; NIDRR's Rehabilitation Research and Training Centers (RRTCs) focused on employment; the NIDRR network of Knowledge Translation grantees; the Department's Office of Special Education Programs' Technical Assistance and Dissemination Network and Technical Assistance Communities of Practice; State Assistive Technology (AT) programs; the Department's Office of Vocational and Adult Education's National Research Center for Career and Technical Education; and programs sponsored through the U.S. Department of Labor's Office of Disability Employment Policy. The Center must coordinate with these entities, as appropriate, to disseminate the exemplars, tools, guidance, and knowledge developed through activities conducted under paragraphs (a), (b), and (c) of this priority to State VR agencies, employers, individuals with disabilities, and other entities that serve or employ individuals with disabilities;

• Share the exemplars, tools, guidance, and knowledge developed through activities conducted under paragraphs (a), (b), and (c) of this priority with appropriate RSA and NIDRR research and dissemination centers, including the National Center for the Dissemination of Disability Research, the Research Utilization Support and Help Project, and the Center for International Rehabilitation Research Information and Exchange; and

• Establish an advisory committee comprised of individuals who are knowledgeable about RT including researchers, State VR agency representatives, VR providers, State AT program representatives, employers, transition planners, secondary and postsecondary educators, individuals with disabilities, and parents of individuals with disabilities. This advisory committee must be designed to provide guidance to the Center on its research and TA activities.

• Each year after year one of the project period, plan to present findings at a three-day national conference of State VR administrators to be held in Washington, DC.

Executive Order 12866

This NFP has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with this NFP are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this NFP, we have determined that the benefits of the final priorities justify the costs.

Summary of potential costs and benefits:

The benefits of the Disability and Rehabilitation Research Projects and Centers Program have been well established over the years in that similar projects have been completed successfully. These final priorities will generate new knowledge and technologies through research, development, dissemination, utilization, and technical assistance projects.

Another benefit of these final priorities is that the establishment of new DRRPs will support the President's NFI and will improve the lives of individuals with disabilities. The new DRRPs will generate, disseminate, and promote the use of new information that will improve the options for individuals with disabilities to perform regular activities in the community.

Applicable Program Regulations: 34 CFR part 350.

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(Catalog of Federal Domestic Assistance Number 84.133A Disability Rehabilitation Research Projects)

Program Authority: 29 U.S.C. 762(g) and 764(a).

Dated: December 19, 2008.

Tracy R. Justesen,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E8–30702 Filed 12–23–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Conservation Program: Data Collection and Estimated Future Unit Sales of Five Lamp Types

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of data availability.

SUMMARY: The Department of Energy (DOE) is informing the public of its collection of historical data and creation of spreadsheet models to provide a benchmark estimate future unit sales of five lamp types (i.e., rough service lamps, vibration service lamps, 3-way incandescent lamps, 2,601–3,300 lumen general service incandescent lamps, and shatter resistant lamps). Relating to this activity, DOE prepared and is making available on its Web site: (1) a report that summarizes the methodology and presents the benchmark estimate of future unit sales for the five lamp types and (2) the spreadsheet model used to generate that estimate based on their respective historical annual growth rates. Both the report and the spreadsheet are available at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/five_lamp_types.html.*

FOR FURTHER INFORMATION CONTACT: Send requests for additional information to Mrs. Linda Graves, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–1851. E-mail: *Linda.Graves@ee.doe.gov.* In the Office of General Counsel, contact Ms. Francine Pinto, U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507. E-mail: *Francine.Pinto@hq.doe.gov.*

Discussion

Section 321(a)(3)(B) of Energy Independence and Security Act of 2007 (EISA 2007) amends section 325(l) of EPCA by adding paragraph (4)(B) that generally directs DOE in consultation with the National Electrical Manufacturers Association (NEMA) to (1) collect historical unit sales [1] data for each of the five lamp types (i.e., rough service lamps, vibration service lamps, 3-way incandescent lamps, 2,601–3,300 lumen general service incandescent lamps, and shatter-resistant lamps) and (2) construct a spreadsheet model for each of the five lamp types based on coincident economic indicators that closely match the historical annual growth rates of each lamp type to provide a neutral comparison benchmark estimate of future unit sales. (42 U.S.C. 6295(l)(4)(B).) These estimates of future unit sales for each of the five lamp types constitute a neutral comparison benchmark against which DOE will later compare actual unit sales data starting with calendar 2010. (42 U.S.C. 6295(l)(4)(C).)

DOE worked in consultation with NEMA to collect actual data for unit sales of each of the five lamp types for calendar years 1990 through 2006. DOE also constructed a model for each type of lamp that is based on the historical annual growth rate of the lamps which provides a benchmark estimate of future unit sales for each of the five lamp types. DOE has posted on its Web page [2] (1) a report that summarizes the methodology and presents the benchmark estimate of future unit sales and (2) a spreadsheet model that was used to estimate future unit sales for the five lamp types based on the historical annual growth rates for each.

The report defines each of the five lamp types, presents the historical data that was provided by NEMA, discusses the methodology followed in analyzing that data to generate the estimated future unit sales, and presents the results for the five lamp types. The report also discusses the regulatory provisions in the statute for each of the five lamp types that would be enacted if the unit sales of one of these lamp types exceeded the benchmark estimate in any given year by 100 percent (i.e., double the benchmark estimate level).

The spreadsheet contains the five models constructed for each of the lamp types, in compliance with section 325(l)(4)(B)(ii) of EPCA. These models closely match the historical annual growth rate of each lamp type and generate an estimate of future unit sales based on those trends. This future unit sales estimate constitutes the neutral comparison benchmark against which DOE will later conduct comparisons.

Issued in Washington, DC, on December 18, 2008.

John F. Mizroch,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E8–30608 Filed 12–23–08; 8:45 am]

BILLING CODE 6450–01–P

[1] In this analysis, DOE uses (and intends to continue to use) manufacturer shipments as a surrogate for unit sales. This assumption presumes that retailer inventories remain constant from year to year. DOE believes this is a reasonable assumption because the markets for these five lamp types have existed for many years, enabling manufacturers and retailers to establish appropriate inventory levels that reflect market demand. Furthermore, in the long-run, unit sales could not increase in any one year without manufacturer shipments increasing either that year or the following one. In either case, increasing unit sales must eventually result in increasing manufacturer shipments.

[2] The address for the Web page is given in the **SUMMARY** portion of this Notice.

DEPARTMENT OF ENERGY

Notice of Additional Public Hearing for the Draft Global Nuclear Energy Partnership Programmatic Environmental Impact Statement

AGENCY: Office of Nuclear Energy, U.S. Department of Energy.

ACTION: Notice of additional public hearing.

SUMMARY: On October 17, 2008, DOE published a Notice of Availability and Public Hearings (73 FR 61845) for *the Draft Global Nuclear Energy Partnership Programmatic Environmental Impact Statement* (Draft GNEP PEIS, DOE/EIS–0396). That notice commenced a 60-day public comment period and provided the schedule for 13 public hearings to receive comments on the Draft GNEP PEIS. On December 10, 2008, DOE announced an extension of the public comment period by 90 days, *i.e.*, through March 16, 2009 (73 FR 75087). Today, DOE announces that an additional public hearing on the Draft GNEP PEIS will be conducted beginning at 7 p.m. on January 12, 2009, in the Town of Pahrump in Nye County, NV.

FOR FURTHER INFORMATION CONTACT: Please direct questions regarding the additional public hearing, requests for additional information, or requests for copies of the Draft GNEP PEIS, to Mr. Francis Schwartz, GNEP PEIS Document Manager, Office of Nuclear Energy (NE–5), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Questions also may be telephoned, toll free, to 1–866–645–7803.

For general information regarding the DOE NEPA process contact: Ms. Carol M. 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. Additional information regarding DOE NEPA activities and access to many of DOE's NEPA documents are available on the DOE NEPA Web site at *http://www.gc.energy.gov/NEPA.*

SUPPLEMENTARY INFORMATION: On October 17, 2008, DOE published a Notice of Availability and Public Hearings (73 FR 61845) for *the Draft Global Nuclear Energy Partnership Programmatic Environmental Impact Statement* (Draft GNEP PEIS, DOE/EIS–0396). That notice commenced a 60-day public comment period and provided the schedule for 13 public hearings to receive comments on the Draft GNEP PEIS. On December 10, 2008, DOE announced an extension of the public comment period by 90 days, *i.e.*, through March 16, 2009 (73 FR 75087). DOE will consider comments received after this date to the extent practicable as it prepares the Final GNEP PEIS. Today, DOE announces an additional public hearing on the Draft GNEP PEIS to be held on January 12, 2009, at the Bob Ruud Community Center, 150 North Highway 160 in the Town of Pahrump in Nye County, NV.

An Open House will begin at 6 p.m., during which DOE officials will be available to discuss the Draft GNEP PEIS and answer questions. The public hearing will begin at 7 p.m. with a presentation by a DOE official followed by the receipt of oral comments from interested members of the public. Individuals who would like to present comments orally at the hearing must register upon arrival at the hearing. DOE will allot two to five minutes, depending upon the number of speakers, to each individual wishing to speak so as to ensure that as many people as possible have the opportunity to speak. More time may be allotted by the hearing moderator as circumstances allow.

Written comments on the Draft GNEP PEIS should be submitted to Mr. Francis Schwartz, GNEP PEIS Document Manager, Office of Nuclear Energy (NE–5), U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, by facsimile to 866–489–1891, or electronically through *www.regulations.gov*. Please mark correspondence "Draft GNEP PEIS Comments." Additional information on GNEP may be found at *http://www.gnep.energy.gov.*

The Draft GNEP PEIS and supporting references are available on the Internet at *http://www.gnep.energy.gov* and will be available in the public reading room at: Nuclear Waste Repository Project Office, 1210 E. Basin Road, Suite #6, Pahrump, NV 89060, Phone: 775–727–7727.

In addition, the Draft GNEP PEIS is available on the Internet at *www.regulations.gov* and on the DOE NEPA Web site at *http://www.gc.energy.gov/NEPA.*

Issued in Washington, DC, on December 17, 2008.

Dennis R. Spurgeon,

Assistant Secretary for Nuclear Energy.

[FR Doc. E8–30656 Filed 12–23–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

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), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, January 28, 2009, 5 p.m.

ADDRESSES: Atomic Testing Museum, 755 East Flamingo Road, Las Vegas, Nevada 89119.

FOR FURTHER INFORMATION CONTACT: Denise Rupp, Board Administrator, 232 Energy Way, M/S 505, North Las Vegas, Nevada 89030. Phone: (702) 657–9088; Fax (702) 295–5300 or E-mail: *ntscab@nv.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. DOE Presentation: Transuranic (TRU) Waste Update.
2. Sub-Committee Reports:

A. Environmental Management Public Information Review Effort Committee.

B. Outreach Committee.

C. Transportation/Waste Committee.

D. Underground Test Area Committee.

3. DOE Nevada Site Office Environmental Management Update.

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 presentations pertaining to agenda items should contact Denise Rupp at the telephone number listed above. The request 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 to Denise Rupp at the address listed above or at the following Web site: *http://www.ntscab.com/MeetingMinutes.htm.*

Issued at Washington, DC on December 18, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–30654 Filed 12–23–08; 8:45 am]

BILLING CODE 6450–01–P

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. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Monday, January 26, 2009, 1 p.m.–5 p.m.; Tuesday, January 27, 2009, 8:30 a.m.–4 p.m.

ADDRESSES: The Crowne Plaza Hotel, 130 Shipyard Drive, Hilton Head Island, South Carolina 29928.

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, January 26, 2009

1 p.m. Combined Committee Session.

5 p.m. Adjourn.

Tuesday, January 27, 2009

8:30 a.m. Approval of Minutes, Agency Updates, Public Comment Session, Chair and Facilitator Updates, Nuclear Materials Committee Report, Waste Management Committee Report, Public Comment Session.

12 p.m. Lunch Break.

1 p.m. Strategic and Legacy Management Committee Report, Facility Disposition and Site Remediation Committee Report, Administrative Committee Report, 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, January 26, 2009.

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 December 19, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–30655 Filed 12–23–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–29–000]

CenterPoint Energy Gas Transmission Company; Notice of Amendment Application

December 17, 2008.

On December 5, 2008, CenterPoint Energy Gas Transmission Company (CEGT), pursuant to section 7(c) of the Natural Gas Act, as amended, and part 157 of the Federal Energy Regulatory Commission's (Commission) regulations, filed to amend its certificate. CEGT's application seeks authorization to install additional compressors at the Westdale and Vernon compressor stations located in Red River and Jackson Parishes, LA, respectively. The requested amendment (Phase IV) would increase Line CP capacity to 1.87 Bcf/d.

Questions concerning this application should be directed to Lawrence O. Thomas, Director—Rate & Regulatory, CEGT, P.O. Box 21734, Shreveport, Louisiana 71151, or by calling (318) 429–2804.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

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 date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 16, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–30618 Filed 12–23–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No.: 13301–001]

Town of Afton; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

December 17, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* small hydroelectric exemption.

b. *Project No.:* 13301–001.

c. *Date filed:* November 25, 2008.

d. *Applicant:* Town of Afton.

e. *Name of Project:* Town of Afton Culinary Water System Hydroelectric Project.

f. *Location:* In Swift Creek Canyon, near the town of Afton, Lincoln County, Wyoming. The project would occupy 10.5 acres of federal land managed by the Forest Service within the Bridger-Teton National Forest.

g. *Filed Pursuant to:* Public utility Regulatory Policies Act 1978, 16 U.S.C. 2705, 2708.

h. *Applicant Contact:* Town of Afton, James K. Sanderson, 416 Washington Street, P.O. Box 310, Afton, WY 83110, or Brent L. Smith, Symbiotics, LLC, P.O. Box 535, Rigby, ID 83402, (208) 745–0834.

i. *FERC Contact:* Gaylord Hoisington, (202) 502–6032 or *gaylord.hoisington@ferc.gov.*

j. *Cooperating agencies:* 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 item l 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. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of this notice, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* February 17, 2009.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

m. The application is not ready for environmental analysis at this time.

n. The Town of Afton Culinary Water System Hydroelectric Project consist of: (1) An existing underground intermittent spring (Periodic Springs) that provides the town's water; (2) an existing 97,000 gallon buried concrete surge tank; (3) an existing 16,775-foot-long, 18-inch-diameter iron ductile pipe; (3) construction of a new 30-foot-high by 20-foot-square powerhouse containing a 225 kilowatt Pelton impulse turbine and generator; and (4) other appurtenances. The project is estimated to generate an average of 1,272,463 kilowatt-hours annually.

Water flow from the spring is piped to a 97,000 gallon buried concrete surge tank. From the surge tank, the water flows through a 16,775-foot-long pipe to an existing water treatment facility. The original water treatment plan design incorporated a bifurcation of the 18-inch pipe before it reached the treatment plant. It is at this bifurcation that a proposed 18-inch pipe will be fitted that will divert up to 12-cubic-foot-per-second (cfs) (design capacity of the turbine unit) to the proposed power house and Pelton turbine and generator. Upon exiting the turbine the water will flow through a new chlorination system and into the existing 1 million gallon water storage tank and used as need by the town. The power from the project will be used on site to operate the water treatment plant and other electrical needs at the plant.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *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 item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Wyoming State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36, CFR, at § 800.4.

q. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule and procedure will be made as appropriate.

Request Additional Information—February 25, 2009.

Issue Acceptance letter—March 1, 2009.

Issue scoping document 1—June 30, 2009.

Issue ready for environmental analysis—August 1, 2009.

Issue environmental analysis—October 1, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–30565 Filed 12–23–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL09–23–000]

Welch Motel, Inc.; Welch Oil Inc.; Boondocks USA Truck Stop; Bob Welch; Complainants v. Midland Power Cooperative; Corn Belt Power Cooperative; Respondents; Notice of Complaint

December 17, 2008.

Take notice that on December 17, 2008, pursuant to section 206 of the Rules and Practice and Procedure, 18 CFR 385.206, Welch Motel, Inc., Welch Oil, Inc., Boondocks USA Truck Stop, and Bob Welch (Complainants) filed a formal complaint against Midland

Power Cooperative and Corn Belt Power Cooperative (Respondents) requesting that the Commission issue an order to (a) Allow the Complainants to enter into a contract to consume all of the electric energy and capacity generated by their wind turbine at 3065 220th St. Williams, Iowa 50271–7518 before drawing power from Midland Power Cooperative; (b) require Midland Power Cooperative to program its electric meter in such a way that Complainants are not billed for electricity until Complainants have consumed all of their electric energy from their wind turbine or; (c) in the alternative, if the Commission fails to act within 90 days, to be allowed to enter into any court whether federal or state, for the enforcement of the Public Utility Regulatory Policies Act.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 6, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–30563 Filed 12–23–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF08–34–000]

Questar Overthrust Pipeline Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Point of Rocks and Rock Springs Compression Expansion Project and Request for Comments on Environmental Issues

December 17, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will identify and address the potential environmental impacts that could result from the construction and operation of the Point of Rocks and Rock Springs Compression Expansion Project (Compression Expansion Project) planned by Questar Overthrust Pipeline Company (Overthrust). The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help determine which issues need to be evaluated in the EA. Please note that the scoping period will close on January 23, 2009. Details on how to submit comments are provided in the Public Participation section of this notice.

This notice is being sent to affected landowners; federal, state, and local government agencies; elected officials; Native American groups; other interested parties; and local libraries and newspapers. State and local government representatives are asked to notify their constituents of this planned project and to encourage them to comment on their areas of concern.

As a landowner receiving this notice, you may be contacted by an Overthrust representative about the acquisition of an easement to construct, operate, and maintain the project facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the FERC, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with federal or state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Project

The planned project consists of construction and operation of a new Point of Rocks Compressor Station and expansion of Overthrust's existing Rock Springs Compressor Station, all in Sweetwater County, Wyoming. Overthrust would install one 16,000-horsepower compressor unit at each station. The planned facilities would provide an additional 320,000 dekatherms per day of capacity from Opal, Wyoming, eastward to an interconnect with the Rockies Express Pipeline system at Wamsutter, Wyoming.

The existing Rock Springs Compressor Station is sited on 5.9 acres of land administered by the Bureau of Land Management (BLM), Rock Springs Field Office. Here, the new compressor unit would be installed within an existing compressor building. Construction at the Rock Springs Compressor Station would take place entirely within the existing fenced station site. The Point of Rocks Compressor Station would be located on a 550-foot by 600-foot site, totaling 7.6 acres on property owned by the BLM and one private landowner. Anadarko Land Corporation owns about 70 percent of the 7.6 acres and the BLM, Rock Springs Field Office manages the remaining 30 percent of the planned site. About 1,000 feet of an existing 10-foot-wide dirt road would be improved in order to provide access to the new compressor station.

The general location of the planned facilities is shown in appendix A.[1]

[1] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices are available on the Commission's Web site at the "eLibrary" link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the "Additional Information" section of this notice. Copies of the appendices were sent to all those receiving this notice in the mail. Requests for

The EA Process

We [2] are preparing this EA to comply with the National Environmental Policy Act of 1969 (NEPA) which requires the Commission to take into account the environmental impact that could result if it authorizes Overthrust's proposal. By this notice, we are also asking federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. Agencies that would like to request cooperating status should follow the instructions for filing comments provided below.

NEPA also requires the FERC to discover and address concerns the public may have about the proposal. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, we are requesting public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

The EA will discuss impacts that could occur as a result of the construction and operation of the project under these general headings:

- Geology and Soils.
- Land Use and Visual Quality.
- Cultural Resources.
- Vegetation and Wildlife (Including Threatened and Endangered Species).
- Air Quality and Noise.
- Reliability and Safety.

We will also evaluate possible alternatives to the project or portions of the project, where necessary, and make recommendations on how to lessen or avoid impacts on the various resources.

Our independent analysis of the issues will be presented in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies; public interest groups; Native American groups; interested individuals; local newspapers and libraries; and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the "Public Participation" section below.

detailed maps of the planned facilities should be made directly to Overthrust.

[2] "We," "us," and "our" refer to the environmental staff of the FERC's Office of Energy Projects.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects of the proposal, reasonable alternatives, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC, on or before January 23, 2009.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances, please reference the project docket number with your submission. The docket number can be found on the front of this notice. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at (202) 502–8258 or *eFiling@ferc.gov*.

(1) You may file your comments electronically by using the *Quick Comment* feature, which is located on the Commission's Internet Web site at *http://www.ferc.gov* under the link to *Documents and Filings*. A Quick Comment is an easy method for interested persons to submit text-only comments on a project.

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's Internet Web site at *http://www.ferc.gov* under the link to *Documents and Filings*. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on "*Sign up*" or "*eRegister.*" You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing."

(3) You may file your comments with the Commission via mail by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

- Label one copy of the comments for the attention of Gas Branch 1, PJ–11.1, and
- Reference Docket No. PF08–34–000 on the original and both copies.

Environmental Mailing List

As described above, we may publish and distribute the EA for comment. If the EA is published and you are interested in receiving it, please return the Environmental Mailing List Form (appendix B). All individuals who either return the Environmental Mailing List Form or provide written scoping comments will remain on our environmental mailing list for this project. If you do not return the Environmental Mailing List Form or file comments, you will be taken off the mailing list.

Additional Information

Once Overthrust formally files its application with the Commission, you may want to become an official party to the proceeding known as an "intervenor." Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the "e-filing" link on the Commission's Web site. Please note that you may not request intervenor status at this time. You must wait until a formal application is filed with the Commission.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the "eLibrary" link. Click on the eLibrary link, then on "General Search" and enter the docket number excluding the last three digits (*i.e.*, PF08–34) in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Finally, any public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information. You can also request

additional information by calling Overthrust at 1–800–366–8532.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–30566 Filed 12–23–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL09–20–000]

Northeast Utilities Service Company; NSTAR Electric Company; Notice of Filing

December 17, 2008.

Take notice that on December 12, 2008, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207), Northeast Utilities Service Company and NSTAR Electric Company (collectively, Petitioners) filed a petition for declaratory order requesting that the Commission determine whether Petitioners may enter into a proposed bilateral transmission service agreement under which H.Q. Energy Services Inc. would sell firm transmission service over a new, participant-funded, Direct Current transmission tie line connecting New England with the Hydro-Quebec system.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 12, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–30562 Filed 12–23–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–200–007]

Public Service Company of New Mexico; Notice of Filing

December 17, 2008.

Take notice that on December 11, 2008, Public Service Company of New Mexico submitted an amendment to the Agreement regarding Parking and Lending Activities jointly filed with the Commission Trial Staff on September 17, 2004 in compliance with the Commission's November 14, 2008, Order Denying Rehearing. *Modesto Irrigation District*, 125 FERC ¶ 61,173 (2008).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 2, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–30561 Filed 12–23–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR09–8–000]

Washington Gas Light Company; Notice of Compliance Filing

December 17, 2008.

Take notice that on December 9, 2008, Washington Gas Light Company (Washington Gas) filed a cost, throughput, and revenue study to comply with the Commission's May 4, 2006 Order issued in Docket No. PR06–11–000 approving the rates charged by Washington Gas for firm interstate transportation service from its facilities in Virginia to Mountaineer Gas Company's facilities located in West Virginia. Washington Gas requests that the existing maximum rates for firm interstate transportation service remain in effect.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest

date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 30, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–30617 Filed 12–23–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR09–9–000]

Northwest Natural Gas Company; Notice of Petition for Rate Approval

December 17, 2008.

Take notice that on December 11, 2008, Northwest Natural Gas Company (NW Natural) filed pursuant to section 9 of the Natural Gas Act and sections 284.224 and 284.123(b)(2) of the Commission's regulations, a petition requesting that the Commission approve NW Natural's revised depreciation rates for firm and interruptible storage and related transportation services. NW Natural does not propose to make any changes to its existing maximum rates approved by letter order, dated August 22, 2008, in Docket No. PR08–19–000.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time Tuesday, December 30, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–30560 Filed 12–23–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Project Nos. 13123–000; 12509–001]

Eagle Crest Energy Company; Notice of Scoping Meetings and Site Visit

December 17, 2008.

a. *Type of Filing:* Notice of Intent to File a License Application; Pre-Application Document; and Request to Use the Traditional Licensing Process.

b. *Project Nos.:* 13123–000 and 12509–001[1].

c. *Dated Filed:* October 16, 2008.

d. *Submitted By:* Eagle Crest Energy Company (Eagle Crest).

e. *Name of Project:* Eagle Mountain Pumped Storage Project.

f. *Location:* The Eagle Mountain Project would be located at two depleted mining pits in the Eagle Mountain Mine in Riverside County, California, near the town of Desert Center, California.

g. *Filed Pursuant to:* 18 CFR Part 5 of the Commission's Regulations.

h. *Applicant Contact:* Arthur Lowe, Eagle Crest Energy Company, 1 El Paso, Suite 204, Palm Desert, California 92260.

i. *FERC Contact:* Kim Nguyen (202) 502–6105 or e-mail *kim.nguyen@ferc.gov*.

j. Eagle Crest filed Pre-Application Document (PAD) and draft License Application (LA) for the Eagle Mountain Pumped Storage Project, including proposed process plan and schedule, with the Commission pursuant to 18 CFR 5.6 of the Commission's regulations.

k. Copies of the PAD, draft LA, and Scoping Document 1 (SD1) 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* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. The applicant maintains a project Web site with meeting information *http://www.eaglemountainenergy.net*.

Register online at *http://ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to these or other pending projects. For assistance, contact FERC Online Support.

l. With this notice, we are soliciting comments on SD1. In addition, all comments on the PAD, draft LA, and SD1, study requests, requests for cooperating agency status, and all communications to Commission staff related to the merits of the potential applications (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 relevant to the Eagle Mountain Hydroelectric Project must include on the first page, the project name and number (P–13123–000), and bear the heading, as appropriate, "Comments on Scoping

[1] Previously, the project was given FERC Project No. 12509–001. Upon issuance of a new preliminary permit on August 13, 2008, the project was given FERC Project No. 13123–000.

Document 1." Any individual or entity interested in commenting on SD1 must do so no later than 60 days from receipt of this notice.

Comments on SD1 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 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-filing" link.

m. At this time, Commission staff intends to prepare an Environmental Impact Statement for the project, in accordance with the National Environmental Policy Act.

n. *Scoping Meetings.*

We will hold two scoping meetings for each project at the times and places noted below. The daytime meetings will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meetings are primarily for receiving input from the public. We invite all interested individuals, organizations, Indian tribes, and agencies to attend one or all 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: January 16, 2009.

Time: 9 a.m.

Location: University of California at Riverside, Palm Desert Graduate Center, 75–080 Frank Sinatra Drive, Room B114/117, Palm Desert, California 92211.

Evening Scoping Meeting

Date: January 15, 2009.

Time: 7 p.m.

Location: University of California at Riverside, Palm Desert Graduate Center, 75–080 Frank Sinatra Drive, Room B200, Palm Desert, California 92211.

SD1, which outlines the subject areas to be addressed in the environmental document, has been mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 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 k. Depending on the extent of comments received, a Scoping Document 2 (SD2) may or may not be issued.

Site Visit

The applicant will conduct a site visit of the project on January 15, 2009 at 9 a.m. Those wishing to participate in the site visit should meet at the University of California at Riverside, Palm Desert Graduate Center, 75–080 Frank Sinatra Drive, Room B200, Palm Desert, California. To appropriately accommodate persons interested in attending the site visit, participants should contact Andrea Oliver with Eagle Crest at (760) 346–4900 or e-mail at *aoliver@eaglecrestenergy.com* by January 8, 2009.

Scoping Meeting Objectives

At the scoping meetings, staff will: (1) Present the proposed list of issues to be addressed in the EA; (2) review and discuss existing conditions and resource agency 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 requests by 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 and draft LA in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD, draft LA, and SD1 are included in item k of this notice.

Scoping Meeting Procedures

The scoping meetings will be recorded by a stenographer and will become part of the formal Commission records for the projects.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–30564 Filed 12–23–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PR08–28–000; PR08–28–001]

Calpine Texas Pipeline, L.P.; Notice of Offer of Settlement and Notice of Shortened Comment Period

December 17, 2008.

Take notice that on December 10, 2008, Calpine Texas Pipeline, L.P. filed a Stipulation and Agreement of Settlement (Settlement) in the above-docketed proceeding. Included in its filing was a request to shorten the period for filing initial and reply comments in response to the Settlement.

Because no protests were filed in this docket and the Commission Staff supports the Settlement, we are shortening the date for filing initial comments to and including December 22, 2008. Reply comments should be filed on or before December 29, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–30616 Filed 12–23–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004;FRL–8396–3]

Access to Confidential Business Information by Guident Technologies Inc. and Science Applications International Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor Guident of Herndon, VA and subcontractor Science Applications International Corporation (SAIC) of McLean, VA, to access information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data will occur no sooner than December 31, 2008.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Scott M. Sherlock, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8257; fax number: (202) 564–8251; e-mail address: *sherlock.scott@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to you if are conducting, or may be required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA). 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 technical person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2003–0004. All documents in the docket are listed in the docket's index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket Facility is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr.*

II. What Action is the Agency Taking?

Under Contract Number (GS–35F–0799M, Order Number EP09D000005), contractor Guident of 198 Van Buren Street, Suite 120, Herndon, VA and its subcontractor SAIC of 8301 Greensboro Drive, McLean, VA will assist the Office of Pollution Prevention and Toxics (OPPT) in designing and developing graphical user interface screens, which will be transferred from the developmental environment to EPA's Confidential Business environment. This will enable users to input data into tables/databases in the Confidential Business area via the input screens.

In accordance with 40 CFR 2.306(j), EPA has determined that under Contract Number (GS–35F–0799M, Order Number EP09D000005), Guident and its subcontractor will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. Guident and its subcontractor personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide Guident and its subcontractor access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters.

Guident and its subcontractor will be authorized access to TSCA CBI at EPA Headquarters provided they comply with the provisions of the EPA *TSCA CBI Protection Manual.*

Access to TSCA data, including CBI, will continue until October 30, 2009. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

Guident and its subcontractor personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Confidential business information.

Dated: December 15, 2008.

Todd S. Holderman,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E8–30203 Filed 12–23–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2008–0868; FRL–8395–4]

Agency Information Collection Activities; Proposed Collection; Comment Request; Health and Safety Data Reporting, Submission of Lists and Copies of Health and Safety Studies; EPA ICR No. 0575.12, OMB Control No. 2070–0004

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR, entitled: "Health and Safety Data Reporting, Submission of Lists and Copies of Health and Safety Studies" and identified by EPA ICR No. 0575.12 and OMB Control No. 2070–0004, is scheduled to expire on July 31, 2009. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection.

DATES: Comments must be received on or before February 23, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2008–0868, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPPT Document Control Office (DCO), EPA East, Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2008–0868. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2008–0868. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://*

www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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 docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Gerry Brown, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8086; fax number: (202) 564–4765; e-mail address: *brown.gerry@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates 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.

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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline identified under **DATES**.

8. 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.

III. What Information Collection Activity or ICR Does this Action Apply to?

Affected entities: Entities potentially affected by this ICR are companies that manufacture, process, import, or distribute in commerce chemical substances or mixtures.

Title: Health and Safety Data Reporting, Submission of Lists and Copies of Health and Safety Studies.

ICR numbers: EPA ICR No. 0575.12, OMB Control No. 2070–0004.

ICR status: This ICR is currently scheduled to expire on July 31, 2009. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 8(d) of the Toxic Substances Control Act (TSCA) and 40 CFR part 716 require manufacturers and processors of chemicals to submit lists and copies of health and safety studies relating to the health and/or environmental effects of certain chemical substances and mixtures. In order to comply with the reporting requirements of section 8(d), respondents must search their records to identify any health and safety studies in their possession, copy and process relevant studies, list studies that are currently in progress, and submit this information to EPA.

EPA uses this information to construct a complete picture of the

known effects of the chemicals in question, leading to determinations by EPA of whether additional testing of the chemicals is required. The information enables EPA to base its testing decisions on the most complete information available and to avoid demands for testing that may be duplicative. EPA will use information obtained via this collection to support its investigation of the risks posed by chemicals and, in particular, to support its decisions on whether to require industry to test chemicals under section 4 of TSCA.

Responses to the collection of information are mandatory (see 40 CFR part 716). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to range between 1.1 and 22 hours per response, depending upon the nature of each respondent's reporting responsibility. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 6.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 6.8

Estimated total annual burden hours: 456 hours.

Estimated total annual costs: $28,030. This includes an estimated burden cost of $28,030 and an estimated cost of $0 for capital investment or maintenance and operational costs.

IV. Are There Changes in the Estimates from the Last Approval?

There is a decrease of 822 hours (from 1,278 hours to 456 hours) in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This decrease reflects reductions in EPA's estimates as to the number of chemicals likely to be added to the TSCA section 8(b) list of chemicals in the next three years. The change is an adjustment.

V. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: December 15, 2008.

James B. Gulliford,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. E8–30498 Filed 12–23–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2008–0717; FRL–8393–3]

Agency Information Collection Activities; Proposed Collection; Comment Request; Pressed Wood Manufacturing Industry Survey; EPA ICR No. 2328.01, OMB Control No. 2070–new

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request for a new Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is entitled: "Pressed Wood Manufacturing Industry Survey" and is identified by EPA ICR No. 2328.01 and OMB Control No. 2070–new. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection.

DATES: Comments must be received on or before February 23, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2008–0717, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPPT Document Control Office (DCO), EPA East, Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2008–0717. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2008–0717. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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 docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

For technical information contact: William Silagi, Economics, Exposure and Technology Division (7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8788; fax number: (202) 564–8893; e-mail address: *silagi.willaim@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates 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.

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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline identified under **DATES**.

8. 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.

III. What Information Collection Activity or ICR Does this Action Apply to?

Affected entities: Entities potentially affected by this ICR are facilities engaged in the manufacturing of pressed wood products, including glued-laminated timber (glulam beams), hardboard, hardwood plywood (both veneer and composite core), laminated veneer lumber, medium density fiberboard, oriented strandboard (including waferboard), oriented strand lumber, particleboard, and softwood plywood. The North American Industrial Classification System (NAICS) codes associated with industries most likely affected by this information collection are:

- Hardwood veneer and plywood manufacturing (NAICS code 321211).
- Softwood veneer and plywood manufacturing (NAICS code 321212).
- Engineered wood member (except truss) manufacturing (NAICS code 321213).
- Reconstituted wood product manufacturing (NAICS code 321219).

Facilities with other primary NAICS codes may also be affected if they engage in pressed wood manufacturing as a secondary activity.

Title: Pressed Wood Manufacturing Industry Survey.

ICR numbers: EPA ICR No. 2328.01, OMB Control No. 2070–new.

ICR status: This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Pressed wood is an engineered wood product made from wood veneers, particles, or wood fibers bonded together with an adhesive under heat and pressure. Pressed wood includes fiberboard, glued laminated timber, hardboard, laminated veneer lumber, medium density fiberboard, oriented strand board, parallel strand lumber, particleboard, hardwood and softwood plywood, prefabricated I-joists, and waferboard. Resins serve to bind together raw wood materials, such as wood shavings, flakes, wafers, chips, particles, veneers, fibers, strands, or sawdust, to form the pressed wood product. There are several types of formaldehyde-based resins, as well as alternative resins that are not formaldehyde-based. Formaldehyde emissions are a concern because formaldehyde is both an irritant and a probable human carcinogen.

EPA has initiated a proceeding to investigate whether and what type of regulatory or other action might be appropriate to protect against risks posed by formaldehyde emitted from pressed wood products as stated in the **Federal Register** document entitled Formaldehyde Emissions from Composite Wood Products; Disposition of TSCA Section 21 Petition (73 FR 36504, June 27, 2008) (FRL–8371–5). As part of this investigation, EPA seeks to survey U.S. pressed wood manufacturers. EPA plans to collect information on the categories and volume of pressed wood manufactured; the types of resins used in the manufacturing process; the formaldehyde emissions levels from the pressed wood; recent or planned changes to reduce formaldehyde emissions and the resulting costs; and any issues that may affect the ability to reduce formaldehyde emissions. The survey will be sent to all U.S. pressed wood manufacturers identified by EPA (i.e., it will be a census).

Many pressed wood manufacturers are expected to modify their production processes in the coming years in response to factors including the growing demand for green building products, implementation of a California Air Resources Board (CARB) rule to control formaldehyde emissions, and European and Japanese standards for formaldehyde emissions from pressed wood. The information collected through the survey will allow EPA to predict a future baseline for the types of resins that will be used in pressed wood, and the levels of formaldehyde that will be emitted from them. EPA will also use this information to assess the incremental benefits and costs of potential actions at the national level on formaldehyde emissions from pressed wood products. This information is necessary to inform Agency decisionmaking about the need for and scope of regulatory or other actions to protect against risks posed by formaldehyde emitted from pressed wood products.

EPA will use the information obtained through this industry survey (along with information submitted in response to EPA's Advanced Notice of Proposed Rulemaking (ANPR) for Formaldehyde Emissions from Pressed Wood Products, which published in the **Federal Register** on December 3, 2008 (73 FR 73620) (FRL–8386–3), and other data sources) to develop an industry profile, and to assess the costs and benefits of potential federal actions regarding formaldehyde emissions from pressed wood products. EPA anticipates receiving useful information through the ANPR process, but it does not expect to receive the detailed plant level data that will be collected from across the pressed wood industry by this survey. EPA believes that the public comments on the ANPR will be informative, but will not provide information in sufficient depth, breadth, and uniformity to substitute for this survey.

This survey asks for readily obtainable information, e.g., information known or easily accessed by technical, managerial, or supervisory employees of the plant who are responsible for manufacturing, processing, technical services, or marketing. The plant does not have to generate new information to complete the survey. For example, the survey asks for information on formaldehyde emission levels from pressed wood products. If the plant has not already tested its products for formaldehyde emissions, it does not need to test them in order to respond to this survey.

EPA will request that all U.S. pressed wood manufacturers voluntarily complete the survey. If EPA does not achieve a sufficient survey response rate to accurately characterize the industry, EPA will consider whether to exercise the authority available to it under the Toxic Substances Control Act (TSCA) section 11(c), 15 U.S.C. 2610(c). TSCA section 11(c) provides EPA with the authority to issue subpoenas requiring the production of reports, papers, documents, answers to questions, and other information that the Administrator deems necessary. EPA could potentially use its TSCA section 11(c) authority to issue subpoenas requiring recipients (i.e., non-respondents) to complete and return the survey.

Respondents may elect to claim certain submitted information as CBI if there is a legitimate need to do so as described in EPA's regulations at 40 CFR part 2. These claims will be handled according to EPA procedures described in the regulation at 40 CFR part 2. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14, 15 U.S.C. 2613, and the regulation at 40 CFR part 2. EPA has a well-established system to prevent unauthorized disclosure of TSCA CBI, including procedures for access, tracking, photocopying, storing, and transmitting TSCA CBI.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 19.6 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 343.

Frequency of response: One time.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 6,723 hours.

Estimated total annual costs: $375,242. This cost is due to reporting burden and not capital investment or maintenance and operational costs.

IV. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: December 15, 2008.

James B. Gulliford,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. E8–30499 Filed 12–23–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2008–0816; FRL–8390–3]

Agency Information Collection Activities; Proposed Collection; Comment Request; Voluntary Children's Chemical Evaluation Program (VCCEP); EPA ICR No. 2055.03, OMB Control No. 2070–0165

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR, entitled: "Voluntary Children's Chemical Evaluation Program (VCCEP)" and identified by EPA ICR No. 2055.03 and OMB Control No. 2070–0165, is scheduled to expire on July 31, 2009. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection.

DATES: Comments must be received on or before February 23, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2008–0816, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPPT Document Control Office (DCO), EPA East, Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2008–0816. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2008–0816. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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 docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Catherine Roman, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8172; fax number: (202) 564–4755; e-mail address: *roman.catherine@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates 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.
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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline identified under **DATES**.

8. 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.

III. What Information Collection Activity or ICR Does this Action Apply to?

Affected entities: Entities potentially affected by this ICR are manufacturers or importers of certain chemicals who have volunteered to sponsor chemicals in the VCCEP.

Title: Voluntary Children's Chemical Evaluation Program (VCCEP).

ICR numbers: EPA ICR No. 2055.03, OMB Control No. 2070–0165.

ICR status: This ICR is currently scheduled to expire on July 31, 2009. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: VCCEP is a voluntary program intended to provide data to enable the public to understand the potential health risks to children associated with certain chemical exposures. EPA has asked companies that manufacture and/or import 20 chemicals that have been found in human tissues and the environment to volunteer to sponsor their evaluation in VCCEP. VCCEP consists of three tiers that a sponsor may commit to separately. As part of their sponsorship, companies submit commitment letters, collect and/or develop health effects and exposure information on their chemical(s), integrate that information in a risk assessment, and develop a "Data Needs Assessment." The Data Needs Assessment discusses the need for additional data, which could be provided by the next tier, to fully characterize the risks the chemical may pose to children.

The information submitted by the sponsor will be evaluated by a group of scientific experts with extensive, relevant experience in toxicity testing and exposure evaluations, a Peer Consultation Group. This group will forward its opinions to EPA and the sponsor(s) concerning the adequacy of the assessments and the need for development of any additional information to fully assess risks to children. EPA will consider the opinions of the Peer Consultation Group and announce whether additional higher tier information is needed. Sponsors and the public will have an opportunity to comment on EPA's decision concerning data needs. EPA will consider these comments and issue a final decision. If the final decision is that additional information is needed, sponsors will be asked to volunteer to provide the next tier of information. If additional information is not needed, the risk communication and, if necessary, risk management phases of the program will be initiated.

Responses to the collection of information are voluntary. Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in the Toxic Substances Control Act (TSCA) section 14 and 40 CFR part 2.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 225 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 32.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 2.5.

Estimated total annual burden hours: 112,456 hours.

Estimated total annual costs: $10,900,000. This includes an estimated burden cost of $10,900,000 and an estimated cost of $0 for capital investment or maintenance and operational costs.

IV. Are There Changes in the Estimates from the Last Approval?

There is an increase of 6,200 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This increase reflects EPA's changes in estimates and assumptions made since the previous VCCEP ICR due to the inclusion of Chemical Assessment and Management Program (ChAMP) chemicals in the program as well as the recent inclusion of VCCEP participant surveys. The change is an adjustment.

V. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: December 15, 2008.

James B. Gulliford,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. E8–30520 Filed 12–23–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8756–8]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Consent Decree; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree to address a lawsuit filed by Rocky Mountain Clean Air Action and WildEarth Guardians (collectively "Plaintiffs") in the United States District Court for the District of Columbia: *Rocky Mountain Clean Air Action, et al.* v. *Johnson,* No. 08–1422 (D. D.C.). Plaintiffs filed a deadline suit to compel the Administrator to respond to an administrative petition seeking EPA's objection to a CAA Title V operating permit issued by the Colorado Department of Public Health and Environment, Air Pollution Control Division to the CEMEX, Inc. cement plant near Lyons, Colorado ("CEMEX"). Under the terms of the proposed consent decree, EPA has agreed to respond to the petition by April 20, 2009.

DATES: Written comments on the proposed consent decree must be received by *January 23, 2009.*

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2008–0909, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov*; by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Amy Huang Branning, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–1744; fax number (202) 564–5603; e-mail address: *branning.amy@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

This proposed consent decree would resolve a lawsuit seeking a response to an administrative petition to object to a CAA Title V permit issued by the Colorado Department of Public Health and Environment, Air Pollution Control Division to the CEMEX, Inc. cement plant near Lyons, Colorado ("CEMEX"). Under the proposed consent decree, EPA has agreed to respond to the petition by April 20, 2009. In addition, the proposed consent decree states that within ten (10) business days EPA shall provide plaintiffs with a signed version of the decision and within fifteen (15) business days EPA shall deliver notice of such action on the CEMEX permit to the Office of the Federal Register for prompt publication.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment submitted, that consent to this consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How Can I Get a Copy of the Consent Decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2008–0909) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center 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.

An electronic version of the public docket is available through *http://www.regulations.gov.* You may use the *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *http://www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access"

system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov*, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: December 18, 2008.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. E8–30677 Filed 12–23–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8756–5]

Control of Emissions From New and In-use Highway Vehicles and Engines: Approval of New Scheduled Maintenance for Exhaust Recirculation Valves in Certain Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that EPA has granted an engine manufacturer a new and limited variation in the emission-related scheduled maintenance interval for the exhaust gas recirculation (EGR) valve for some heavy duty engine families for model years 2007–2009. Diesel EGR valve cleaning is considered critical emission-related maintenance.

FOR FURTHER INFORMATION CONTACT: Laura Baker, Compliance and Innovative Strategies Division, U.S. Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, Michigan 48105. Telephone: (734) 214–4592. E-mail Address: *baker.laura@epa.gov*.

SUPPLEMENTARY INFORMATION: The Agency adopted new emission standards for complete heavy-duty vehicles fueled by gasoline, methanol gas, and liquefied petroleum gas fuels in 2001. (66 FR 5002: January 18, 2001; 40 CFR 86.1816–08). The new standards have stimulated new emission control technologies, including new NO_X absorption technology for heavy-duty vehicles which are still subject to the emission-related scheduled maintenance intervals.

However, under § 86.1834–01(b)(7)(ii) a manufacturer may request EPA approval for any new scheduled maintenance the manufacturer wishes to recommend. "New scheduled maintenance" is maintenance which did not exist prior to the 1980 model year. A manufacturer's request must include (1) Detailed evidence, supportive data, and other substantiation as well as (2) a subject maintenance category (i.e., emission-related or non-emission-related, critical or non-critical) recommendation and (3) the suggested emission maintenance interval.

EPA received information from Cummins Power Generation Incorporated (Cummins), a heavy duty engine manufacturer, indicating that it was technologically necessary to perform cleaning and maintenance to the EGR valve more frequently than 100,000 miles, as is prescribed in 40 CFR 86.1834–01(b)(3)(vi)(H), to meet the emission standards. In part, this minimum service interval is included in the regulations to ensure that the control of emissions is not compromised by a manufacturer's overly frequent scheduling of emission-related maintenance.

The Agency received information from Cummins indicating that its NO_X aftertreatment system, which utilizes cooled EGR and a NO_X adsorber catalyst, a technology that did not exist prior to 1980, and thus "new." The information received from Cummins indicates that the EGR valve requires cleaning to maintain the performance of NO_X adsorption technology for emission compliance. Sulfur regeneration requires a net rich air/fuel mixture which can produce significant amounts of unburned hydrocarbon and carbon in the exhaust gas. These unburned hydrocarbons (soot) can adhere to engine components including the EGR valve which ultimately affects engine and emission performance. Therefore the EGR valve requires cleaning maintenance to remove the soot build-up prior to the 100,000 mile maintenance interval prescribed in 40 CFR 86.1834–01(b)(3)(vi)(H).

An EGR valve is defined as a critical emission-related component under 40 CFR 86.1834(b)(6)(i)(D) and thus the scheduled maintenance must have a reasonable likelihood of being performed while in use, according to § 86.1834(b)(6)(ii). To this effect, Cummins has equipped all vehicles covered by this approval with a messaging system alerting drivers to "Perform Service" as well as providing vehicles with on-board diagnostic (OBD) systems to detect when required maintenance has not been performed and illuminate an independent check engine light.

Therefore, EPA has approved the 67,500 mile service emission maintenance interval as suggested by Cummins. However, the Agency has limited this approval to the 2007–2009 model years due to the expectation that EGR valve related technologies compatible to NO_X adsorption technology will be developed by the 2010 model year.

Dated: December 16, 2008.

Robert J. Meyers,

Principal Deputy Assistant Administrator, Office of Air and Radiation.

[FR Doc. E8–30681 Filed 12–23–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2008–0645; FRL–8756–7]

RIN 2050–ZA04

Notice of Data Availability on Spent Oil Shale From Above Ground Retorting Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Data Availability.

SUMMARY: The Agency recognizes that there may have been some uncertainty regarding the Bevill status of spent oil shale from above ground retorting operations. This notice reiterates that spent oil shale from the above ground retorting of oil shale is not a Bevill waste excluded from regulation under Subtitle C of the Resource Conservation and Recovery Act (RCRA). However, the fact that such material is not excluded from regulation as Bevill waste does not mean that it is regulated under Subtitle C of RCRA. In fact, the notice summarizes, for comment, available analytical data on the characteristics of spent shale from oil shale above ground retorting operations (especially leachate characteristics), which indicate that this material is unlikely to exhibit a hazardous characteristic under Subtitle C of RCRA. This Notice does not reopen any prior EPA rulemakings which address the Bevill status of wastes from the extraction, beneficiation, or processing of ores and minerals.

DATES: Submit comments on or before January 23, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2008–0645 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Comments may be sent by electronic mail (e-mail) to rcra-docket@epa.gov Attention Docket ID No. EPA–HQ–RCRA–2008–0645.
- *Fax:* Comments may be faxed to 202–566–9744. Attention Docket ID No. EPA–HQ–RCRA–2008–0645.

• *Mail:* Send two copies of your comments to Notice of Data Availability on Spent Oil Shale from Above Ground Retorting Operations, Environmental Protection Agency, Mailcode: 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Attention Docket ID No. EPA–HQ–RCRA–2008–0645.

• *Hand Delivery:* Deliver two copies of your comments to the Notice of Data Availability on Spent Oil Shale from Above Ground Retorting Operations Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Attention Docket ID No. EPA–HQ–RCRA–2008–0645. 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–RCRA–2008–0645. 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 that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. 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 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 the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://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 *http://www.regulations.gov* or in hard copy at the Notice of Data Availability on Spent Oil Shale from Above Ground Retorting Operations Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–0270. 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.

FOR FURTHER INFORMATION CONTACT: Stephen Hoffman, Office of Solid Waste (5306P), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002, telephone (703) 308–8413, e-mail: *hoffman.stephen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. What Should I Consider as I Prepare My Comments for EPA?

1. *Tips for Preparing Your Comments.* When submitting comments, remember to:

• Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

• 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.

• Explain why you agree or disagree. Suggest alternatives and substitute language for your requested changes.

• Describe any assumptions and provide any technical information and/or data that you used. Provide as much detail as possible.

• If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

• Provide specific examples to illustrate your concerns, and suggest alternatives.

• Explain your views as clearly and in as much detail as possible.

• Make sure to submit your comments by the comment period deadline identified.

2. *Docket Copying Costs.* The first 100-copied pages are free. Thereafter, the charge for making copies of Docket materials is 15 cents per page.

II. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through *http://www.regulations.gov* or by e-mail. Send or deliver information identified as CBI only to the following address: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–RCRA–2008–0645. 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). Information so marked will not be disclosed, except in accordance with 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 contact: LaShan Haynes, Office of Solid Waste (5305P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002, telephone (703) 605–0516, e-mail address: *haynes.lashan@epa.gov*.

III. Oil Shale Retorting Wastes

A. Background

The Energy Policy Act of 2005 directed the Bureau of Land Management (BLM) to manage oil shale and tar sands development on public lands on three tracks:

• Research development and demonstration (RD&D) leasing;

• A programmatic Environmental Impact Statement (PEIS); and

• Regulations for commercial leasing.

In 2006, BLM issued Environmental Assessments for oil shale Research and

Development projects located in Colorado and Utah. In 2007, BLM issued its oil shale and tar sands PEIS. Given the fact that BLM has already issued RD&D leases in Colorado and Utah and the PEIS, we believe it is appropriate to discuss and provide a clear statement as to the regulatory status of spent oil shale from above ground retorting operations since it is likely that commercial development will occur in the near future.

1. What Is Oil Shale?

BLM defines oil shale [1] as fine-grained sedimentary rock containing: (1) Organic matter which was derived chiefly from aquatic organisms or waxy spores or pollen grains, which is only slightly soluble in ordinary petroleum solvents, and of which a large proportion is distillable into synthetic petroleum, and (2) Inorganic matter, which may contain other minerals. This term is applicable to any argillaceous, carbonate, or siliceous sedimentary rock which, through destructive distillation, will yield synthetic petroleum.

2. What Is Kerogen?

BLM defines kerogen as the hydrocarbon in oil shale. Kerogen is a pyrobitumen, and oil is formed from kerogen by heating. It consists chiefly of low forms of plant life; chemically it is a complex mixture of large organic molecules, containing hydrogen, carbon, oxygen, nitrogen, and sulfur. Kerogen is the chief source of oil in oil shale.

3. Where Is Oil Shale Located in the United States?

Nearly 62% of the world's potentially recoverable oil shale resources are concentrated in the United States. The largest of the deposits is found in the Green River formation in northwestern Colorado, northeastern Utah and southwestern Wyoming. The richest and most easily recoverable deposits are located in the Piceance Creek Basin in western Colorado and the Uinta Basin in eastern Utah.[2] There are less productive oil shale deposits in the eastern United States.

4. What Is Above Ground Retorting?

Organic kerogen within the oil shale rock can be heated to form synthetic gas and petroleum known as shale oil. The transformation of kerogen to oils occurs in a process called retorting which requires heating of the rock. There are various above ground retort designs that have differing operating temperatures ranging from lower temperatures of approximately 600–700 degrees Fahrenheit (F) to higher temperature designs usually operating at 900 to 1200 degrees F. Most aboveground retorts are closed metal vessels where the oil shale is placed and internally or externally heated. When sufficient heat is applied to oil shale, gases and oil are released from the oil shale. The heating of oil shale to produce shale oil is classified by EPA as retorting. See 54 FR 36619.

After retorting, shale oil is removed. The spent oil shale, a waste of this process, is generally disposed of in aboveground disposal units or is placed back into mined-out voids.

A recent study of oil shale production by the Congressional Research Service entitled, *Oil Shale: History, Incentives, and Policy* (April 13, 2006 RL33359), states, "Oil derived from shale has been referred to as a synthetic crude oil and thus closely associated with synthetic fuel production."

5. What Is an Oil Shale Cleaning and Upgrade Facility?

Shale oil flowing out of aboveground retorting units must be cleaned of contaminants or be "upgraded" to make a range of products. Shale oil "cleaning" often involves the removal of sulfur. Shale oil upgrading generally includes additional processing equivalent to crude oil hydrocracking (required to convert oil shale distillates to gasoline). Upgrading also removes arsenic and nitrogen using hydrotreating.

A one million ton per day (tpd) upgrade facility can generate over 3,000 metric tons per year (tpy) of spent catalysts, treatment chemicals, sludges and byproduct wastes. Upgrade wastes may include 5,400 tpy of spent hydrotreater guard bed catalyst containing 20 percent arsenic and 7,200 tpy [3] of API separator bottoms.

Wastes from oil shale upgrade operations are not exempt from the hazardous waste requirements under the Bevill exemption (40 CFR 261.4(b)(7)), and unlike spent oil shale generated by above ground retorting operations discussed below, may, in some cases, exhibit a hazardous characteristic. EPA is not addressing or seeking comment on those wastes, which are of much smaller volume relative to the spent oil shale.

B. Bevill Status of Spent Oil Shale

One purpose of this notice is to make a clear statement on the Bevill status of spent oil shale wastes from aboveground retorting of oil shale. A history of the Bevill rulemakings can be found at 54 FR 15317, April 17, 1989. The Agency is not seeking comment on this discussion since this position has been in effect since the promulgation of the Mining Waste Exclusion final rules (see 54 FR 36592, September 1, 1989, 55 FR 2322, January 23, 1990, and 56 FR 27300, June 13, 1991). Nor is EPA seeking to reopen, or otherwise reconsider, the regulatory status of oil shale retort wastes. Consequently, the Agency will not respond to any comments that raise questions or concerns about this background discussion. In summary, EPA has determined that spent oil shale waste from aboveground retorting of oil shale is not Bevill-exempt. However, as discussed in subsection C below, EPA believes it is very unlikely that such waste would exhibit a hazardous characteristic and thus, would not be subject to regulation under Subtitle C of RCRA.

Specifically, on October 21, 1980, Congress enacted Pub. L. 96–482, which included various amendments to RCRA Section 8002, such as subsection (p), which required the Administrator to study the adverse effects on human health and the environment, if any, of waste from the disposal and utilization of "solid waste from the extraction, beneficiation, and processing of ores . and minerals, including phosphate rock and overburden from the mining of uranium ore," and submit a Report to Congress on its findings by October 21, 1983. 42 U.S.C. 6982(p). Also, as part of these amendments, Congress enacted RCRA section 3001(b)(3), which established a temporary exemption for such wastes, pending the completion of EPA's Report to Congress and a Regulatory Determination on whether the wastes warranted regulation as hazardous wastes under RCRA Subtitle C. 42 U.S.C. 6921(b)(3)(A)(ii) and (C).

The Agency issued its Report to Congress, *Wastes from the Extraction and Beneficiation of Metallic Ores, Phosphate Rock, Asbestos, Overburden from Uranium Mining, and Oil Shale* (EPA/530–SW–85–033), in December 1985. The report's findings on wastes from the mining and processing of oil shale are summarized in Appendix A of this report and were entitled, "Summary of Major Wastes from the Mining and Processing of Oil Shale." This appendix did not identify spent oil shale as potentially hazardous under the RCRA

[1] U.S. Bureau of Land Management, Draft Oil Shale and Tar Sands Resource Management Plan Amendments to Address Land Use Allocations in Colorado, Utah, and Wyoming and Programmatic Environmental Impact Statement, December 2007.

[2] USGS Geology and Resources of some World Oil Shale Deposits 2005, Rand Corporation Oil Shale Deposits in the U.S. for USDOE NETL 2005.

[3] USEPA 1985 Report to Congress, Wastes from the Extraction and Beneficiation of Metallic Ores, Phosphate Rock, Asbestos, Overburden from Uranium Mining, and Oil Shale, EPA/530–SW–85–033.

hazardous waste regulations. It also stated that spent oil shale did not have an ignitability characteristic.

Based on the 1985 Report to Congress, the Agency issued the, *Regulatory Determination for Wastes from the Extraction and Beneficiation of Ores and Minerals* (51 FR 24497), on July 3, 1986. This determination concluded that wastes from the extraction and beneficiation of ores and minerals should not be regulated under RCRA Subtitle C at that time. In making this Regulatory Determination, the Agency did not specifically mention wastes from the retorting of oil shale.

On April 17, 1989, EPA proposed a rule (54 FR 15316), which for the first time addressed the Court decision in *Environmental Defense Fund* v. *EPA* (852 F.2d 1316 (D.C. Cir. 1988), cert. denied, 109 S. Ct. 1120 (1989)), mandating that the Agency clarify the line between extraction/beneficiation and mineral processing. In the preamble to the proposed rule (at 54 FR 15342), after review of nominated waste streams, the Agency presented its preliminary conclusions as to (1) Whether the wastes fell within the categories of extraction/beneficiation or mineral processing; (2) whether those wastes derived from mineral processing activities might qualify as Bevill-exempt; and (3) the rationale for the determination. Table 1 at 54 FR 15343 indicated the Agency's preliminary conclusion that oil shale retorting wastes were not mineral processing wastes, but were beneficiation wastes.

On September 1, 1989, EPA finalized the first Bevill rule (54 FR 36592) making significant changes to the April 1989 proposal. Among other things, EPA promulgated a definition of beneficiation waste that listed certain specific processes as beneficiation processes, and made it clear that processes that did not fit these categories were not beneficiation processes. The 24 enumerated beneficiation processes[4] did not include shale oil retorting. That is, spent oil shale from retorting operations does not meet the definition of any of these 24 categories, and therefore, is not a Bevill-exempt beneficiation waste.[5] Because spent oil shale does not meet these definitions, it is therefore not a Bevill-exempt beneficiation waste.

Because spent oil shale from above ground oil shale retorting operations are not Bevill exempt, they are not exempt from regulation under Subtitle C of RCRA. As stated in 40 CFR 262.11, "A person who generates a solid waste, as defined in 40 CFR 261.2, must determine if that waste is a hazardous waste * * *." The generator must determine if the waste is listed as a hazardous waste in Subpart D of 40 CFR 261, and/or whether the waste exhibits any hazardous waste characteristic identified in Subpart C of 40 CFR 261, either by testing the waste, or by applying knowledge of the waste.[6] The information presented in Section C below will be useful to generators in making such a determination.

C. Is Spent Oil Shale a Hazardous Waste?

Spent oil shale from above ground oil shale retorting operations is not listed as a hazardous waste. Further the Agency does not believe that such material is likely to exhibit a hazardous characteristic. In this section, EPA is presenting data that have been identified and can be used by generators, along with any other data that they are aware of, as part of their hazardous waste determination. Specifically, EPA is seeking comment on these data. Based on the data EPA has evaluated and described in this notice, EPA believes spent oil shale generated by above ground retorting operations is very unlikely to exhibit a hazardous waste characteristic. Accordingly, EPA believes that it is very unlikely that such material is a hazardous waste under Subtitle C of RCRA.

1. Toxicity Characteristics—Metals

The purpose of this section is to summarize the research that was conducted since the mid-1980's that evaluates the chemical characteristics of spent oil shale from aboveground retorting operations. EPA has placed into the docket reports which assess the total chemical concentrations and leaching characteristics of spent oil shale.[7]

Most of the early research included leachate analyses using the Extraction Procedure (EP) Toxicity Test first noted in the **Federal Register** in 1978 (see SW 846 Method 1310). That test was superseded by the Toxicity Characteristic Leachate Procedure (TCLP) in June 1991 (see SW 846 Method 1311). The Agency conducted a review of these test methods to determine if the Agency could continue to use test results that relied upon EP toxicity data when assessing whether spent oil shale could be characteristically hazardous. Specifically, the Agency reviewed the 1991 EPA and U.S. Army Engineer Waterways Experiment Station report entitled, *A Comparative Evaluation of Two Extraction Procedures: The TCLP and The EP,* by R. Mark Bricka, Teresa T. Holmes, and M. John Cullinane, Jr. The researchers found that when the TCLP extraction fluid 2 was used for the extraction of metal contaminants, the EP and TCLP produced similar results. It is likely that TCLP extraction fluid 2 would be used in the analysis of spent oil shale because of its moderate to high alkalinity. Therefore, the Agency believes that research which analyzed spent oil shale using the EP test is useful in evaluating whether spent oil shale is likely to be hazardous under the current characteristic regulations. These EP test results supplement the available TCLP information.

Before presenting the specific data, we would note that the leaching characteristics of spent oil shale are dependent on the origin of the shale, the retorting process, and the conditions under which the spent oil shale is managed. There are two types of processed shale—carbonaceous and burned. Carbonaceous processed oil shales are produced by indirect retorting which does not burn the residual oil on the shale, while burned processed shale is produced by direct heating and in-situ retorting. The Agency's evaluation of past research indicates that most spent oil shale, regardless of the retort technology (with internal operating temperatures in the retort ranging from 900 degrees F to greater than 1200 degrees F) generates leachate which is significantly below TCLP limits.

[4] The 24 categories of beneficiation activities are: Crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water and/or carbon dioxide; roasting, autoclaving, and/or chlorination in preparation for leaching (except where the roasting (and/or autoclaving and/or chlorination)/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat, tank, and in situ leaching.

[5] In March 1989, the Office of Solid Waste issued a memorandum to EPA Region VIII regarding the Bevill status of spent oil shale at the Parachute Creek oil shale project. The memo stated, among other things, that the retort process at Parachute Creek is a beneficiation process, and as such, wastes from it are subject to the Bevill exclusion. While the Agency has not withdrawn or revised the memorandum, the September 1, 1989 final rule superseded it since spent oil shale from above ground retorting operations does not meet any of the processes or activities that the rule defines as beneficiation.

[6] For more information regarding requirements for hazardous waste generators, see 40 CFR 262 and *Hazardous Waste Generator Requirements* at *http://www.epa.gov/epaoswer/osw/gen_trans/tool.pdf.*

[7] EPA is also interested in the public identifying other related studies/reports which evaluate the leachate and other characteristics of spent oil shale.

Results From Previous Research and Studies

In 1983, USGS issued Open File Report 83–378, entitled, *Chemical and Mineral Composition Data on Oil Shale and Retorted Oil Shale Wastes from Rulison, Colorado.* This study assessed the chemical composition of spent oil shale generated at the U.S. BOM's oil shale retort test facility. The spent oil shale analyzed in this study was stored in open piles, outside, for approximately 50 years. Samples were analyzed for total metal concentrations (at ppm). No EP or TCLP analyses of the samples were undertaken; however, total analyses can be used to show that it is physically impossible for a material to fail the toxicity characteristic—because even in the very unlikely event that 100% of the hazardous substance leached, it would still not exceed the toxicity characteristic (or TC) levels. In fact, EPA has identified totals analysis as an acceptable method of testing for the TC, if it is conservatively assumed that 100% of the total constituent concentration will leach from the waste.[8] The study results below show that it is highly unlikely that spent oil shale is characteristically hazardous.

Element	Totals (mg/kg)	RCRA limit (mg/L)	Calculated maximum possible leachate (mg/L)
Arsenic	60	5.0	3
Barium	740	100	37
Cadmium	3	1.0	0.15
Chromium	27	5.0	1.35
Lead	30	5.0	1.5
Mercury	not analyzed	0.2	.....
Selenium	not analyzed	1.0	.....
Silver	not analyzed	5.0	.....

A May 1986 study entitled, *Assessment of Solid Waste Characteristics and Control Technology for Oil Shale Retorting,* by Ashok Agarwal, Monsanto for USEPA, EPA 60017–86–019 evaluated the leaching characteristics from simulated retorted oil shale wetted with simulated process water using the EP toxicity test. This study used simulated retorted shale from the Union B process, which is a good indicator of wastes from higher temperature above ground retorts. This study shows that spent oil shale would not be classified as characteristically hazardous and supports the findings of the USGS 1983 study. The study noted on Table 1.2–4:

Element	RCRA limit (mg/L)	EP test results* (mg/L)
Arsenic	5.0	0.07
Barium	100	<2.7
Cadmium	1.0	not analyzed
Chromium	5.0	<0.05
Lead	5.0	<0.0005
Mercury	0.2	<0.0005
Selenium	1.0	<0.0005
Silver	5.0	<0.02

*While Agarwal (1986) did not report the sampling methodology, QA/QC, or pH in the final EP extract, these results are much lower than the hazardous characteristic and it is very unlikely to expect that results would be materially different had the spent shale undergone TCLP analyses.

Another EP leachate study, *Leaching and Hydraulic Properties of Retorted Oil Shale Including Effects from Codisposal of Wastewater, Colorado State University for EPA/ORD, 1986* examined spent oil shale from different retort processes using oil shale from Colorado, Pennsylvania, and Kentucky (data from this study is replicated in "Assessment of Solid Waste Characteristics and Control Technology for Oil Shale Retorting," Monsanto Company for EPA/ORD, 1986). EP toxicity results from spent shale generated from deposits in Colorado, Pennsylvania, and Kentucky are provided in the Table below.

This study notes that spent oil shale from these sources do not generate leachate levels that exceeds the RCRA EP toxicity characteristic levels. The study shows, however, that retorted oil shale leachate has the potential to leach non-hazardous constituents, such as sulfates, nitrates and total dissolved solids (TDS).

		EP test results (mg/L)					
	Units	Rio Blanco Colorado	Hammerville Pennsylvania	Rocky Flats Colorado	Anvil Points Colorado	Kentucky	RCRA TC limit
Retort Process	.....	Lurgi		Tosco	Paraho	Hytort	
Grain Size	mm	0.1–5.0			0.420–3.327		
Density	kg/m^3	2700–2760		2600	2589–2633	1700	
Aluminum	mg/L	<0.02	<0.02	<0.02	3.6	0.44	
Arsenic	mg/L	0.019	0.047	<0.01	0.010	0.010	5.0
Barium	mg/L	0.130	0.180	0.780	0.915	0.210	100.0
Beryllium	mg/L	<0.0005	0.0026	0.0045	<0.0005	<0.0005	
Boron	mg/L	0.520	1.470	0.640	0.333	0.340	
Cadmium	mg/L	0.004	0.002	0.003	<0.001	0.013	1.0
Calcium	mg/L	964	1479	1872	724	319	

[8] See memo from Michael Shapiro to Charlie Norwood on May 25, 2000, which can be found at *http://yosemite.epa.gov/osw/rcra.nsf/0c994248c239947e85256d090071175f/66b5c5da87d218b285256a4100635b78!OpenDocument.* It is important to note that totals concentrations can be used to show that a waste is non-hazardous, but they can not be used to show that a waste is hazardous. EPA does not presume a waste is TC hazardous if 1/20th of the total constituent concentrations in the waste exceed TC regulatory levels, because it would be an unusual situation for 100% of the material to leach from a solid.

		EP test results (mg/L)					
	Units	Rio Blanco Colorado	Hammerville Pennsylvania	Rocky Flats Colorado	Anvil Points Colorado	Kentucky	RCRA TC limit
Chromium	mg/L	<0.005	<0.005	0.007	<0.10	<0.005	5.0
Chlorides	mg/L	7.1	18.9	22.2	28.8	8.95	
Copper	mg/L	0.032	0.009	0.014	0.019	0.023	1.3
Iron	mg/L	<0.005	<0.005	<0.005	0.020	0.078	
Lead	mg/L	<0.01	<0.01	<0.01	<0.010	0.01	5.0
Magnesium	mg/L	290	430	81	484	85	
Manganese	mg/L	0.110	0.090	1.260	0.016	8.98	
Mercury	mg/L	<0.001	<0.001	0.075	<0.001	<0.001	0.2
Molybdenum	mg/L	<0.05	<0.05	<0.05	<0.05	<0.05	
Nickel	mg/L	0.012	<0.005	0.055	<0.05	0.971	
Nitrate	mg/L	1.53	0.53	2.0	1.75	2.3	
Phosphorous	mg/L	0.4	0.7	0.6	0.49	0.4	
Potassium	mg/L	3.2	11.0	3.9	6.5	22	
Selenium	mg/L	<0.02	<0.02	<0.02	<0.02	<0.02	1.0
Silver	mg/L	0.002	<0.002	0.002	<0.002	0.003	5.0
Sodium	mg/L	43	55	131	37	11	
Sulfate	mg/L	684	880	229	220	97	
Zinc	mg/L	0.138	0.010	0.078	<0.001	0.477	
TDS	mg/L	5690	8520	8180	6220	1740	
pH		8.06	8.67	7.72	9.27	4.94	

DOE conducted a study that presented TCLP analysis of raw and retorted shale as part of the preliminary clean up of the Western Research Institute North Site Facility, which had been commissioned to conduct energy studies in 1968. Test oil shale retorting was conducted at this site using a wide variety of pilot retort technologies. Results of this analysis were published in a study entitled, *Volume 1 Phase 1 of the North Site Cleanup Topical Report by Susan Sorini and Norm Merriam March 1994 (DOE/MC/30126–3843)*. Two laboratories were used to test composite samples of spent oil shale from three different sources onsite, and the paired results are shown in the table below. This study notes that retorted oil shale did not exceed TCLP limits, by orders of magnitude, for any of the TCLP metals (see table below).

		TCLP Results (mg/L)					
	RCRA limit	Spent oil shale-1 WRI	Spent oil shale-1 SVL	Spent oil shale-2 WRI	Spent oil shale-2 SVL	Spent oil shale pile WRI	Spent oil shale pile SVL
Arsenic	5.0	<0.10	<0.04	<0.10	<0.04	<0.10	<0.04
Barium	100	0.14	0.17	0.20	0.22	0.10	0.09
Cadmium	1.0	<0.01	<0.002	<0.01	<0.002	<0.01	<0.002
Chromium	5.0	<0.008	<0.003	<0.008	<0.003	<0.008	0.005
Lead	5.0	<0.10	<0.04	<0.10	<0.04	<0.10	<0.04
Mercury	0.2	<0.002	<0.0002	<0.002	<0.0002	<0.002	<0.0002
Selenium	1.0	<0.10	<0.04	<0.10	<0.04	<0.10	<0.04
Silver	5.0	<0.02	<0.002	<0.02	<0.002	<0.02	<0.002

WRI—Western Research Institute.
SVL—SVL Analytical is tne inorganic CLP laboratory that was used in phase I to verify WRI's analytical results.

Another study involving TCLP analyses of spent oil shale is found in the 1995 article in *Fuel* (vol. 74, no. 9) by Michael Mensinger and Jeffery Budiman entitled, *Physical and Thermal Properties and Leaching Characteristics of a Hydroretorted Beneficiated Eastern Oil Shale in Different Processing Stages*. This study evaluated the TCLP characteristics of retorted eastern oil shale and concluded that none of the spent oil shale exhibited the TC. Analytical results of hydroretorted, hydroretorted and combusted, and hydroretroted and agglomerated Alabama oil shale are as follows:

	Mensinger and Budiman (1995) TCLP test results (mg/L)			
Element	RCRA limit	Hydroretorted	Hydroretorted & combusted	Hydroretorted & agglomerate
Arsenic	5.0	0.081	0.078	0.0069
Barium	100	0.082	0.034	0.085
Cadmium	1.0	<0.02	<0.02	0.12
Chromium	5.0	<0.05	<0.05	<0.05
Lead	5.0	<0.2	<0.2	<0.2
Mercury	0.2	<0.005	<0.001	<0.001
Selenium	1.0	0.096	0.026	<0.013

Element	Mensinger and Budiman (1995) TCLP test results (mg/L)			
	RCRA limit	Hydroretorted	Hydroretorted & combusted	Hydroretorted & agglomerate
Silver	5.0	<0.05	<0.05	<0.05

This study noted that silver, lead and mercury did not leach above the detection limit, selenium was <10 percent of the TCLP limit, while all other metals leached at levels that were <2 percent of the TCLP limit.

BLM also conducted a series of studies in 2005 to determine how to effectively clean up spent oil shale piles at the Anvil Points facility. A report titled, *Final Draft Engineering/Cost Analysis for Waste Shale and Impoundments at U.S. Navy Oil Reserve 1 & 3 March 2005,* presented the results of TCLP analyses of the spent oil shale piles. The spent oil shale analyzed in this study was generated between 1947 and 1982. This study noted that eight inorganic constituents (arsenic, barium, beryllium, chromium, copper, magnesium, sodium, and vanadium) were detected at concentrations exceeding three times background (Dynamac 1998). The spent oil shale had no detectable volatile organic compounds (VOCs), phthalates were detected at concentrations less than the practical quantification limit, and high molecular weight hydrocarbons were detected at concentrations in the 1.3 to 2.6 milligrams per kilogram (mg/kg) range. In addition to testing the spent oil shale samples using the TCLP, they were also tested for the other hazardous characteristics—that is corrosivity, ignitability, and reactivity; however, the report did not provide these results. Page 3–12 of this report concluded that none of the 28 retorted oil shale samples exceeded TCLP limits for metals. Results of these analyses are noted below:

Element	RCRA limit (mg/L)	Minimum leachate results (mg/L)	Maximum leachate results (mg/L)
Arsenic	5.0	not detected	2.70E–05 J
Barium	100	2.37E–06 B	3.91E–03
Cadmium	1.0	not detected	2.32E–05
Chromium	5.0	not detected	1.28E–04
Lead	5.0	2.19E–06 JB	1.30E–04 JB
Mercury	0.2	not detected	not detected
Selenium	1.0	not detected	4.60E–05 J
Silver	5.0	not detected	4.72E–06 J

J—Estimated value below practical quantification limit but above method detection limit.
B—Analyte detected in method blank.

Because the detection limit was not noted in the report, total concentration data are shown in the table below, along with the calculated theoretical maximum leachate concentrations, to provide further information regarding the potential for spent oil shale to exhibit the TC. All calculated leachate values are below the RCRA hazardous characteristic limits.

Element	Totals (mg/kg)	Calculated leachate (mg/L)	RCRA limit (mg/L)
Arsenic	74.0	3.70	5.0
Barium	568	28.4	100
Cadmium	0.375J	0.019	1.0
Chromium	33.5	1.68	5.0
Lead	42.2	2.11	5.0
Mercury	0.0562	0.003	0.2
Selenium	4.88	0.244	1.0
Silver	0.494J	0.025	5.0

2. Ignitability

A 1984 report on a study on the auto-oxidation potential of raw and retorted oil shale (Research Triangle Institute for EPA, July 1984) noted that retorted (i.e., spent) oil shale is unlikely to present a spontaneous combustion hazard. The oil shale investigated in this study includes retorted oil shale from the Paraho, TOSCO II, Hytort, and Lurgi processes and a mixture of retorted oil shale, raw shale "fines," and sulfur from the Union B process. Appendix A of the 1985 Report to Congress noted at A–6 that raw shale fines and/or spent shales, if not properly disposed, may auto-oxidize resulting in autoignition. However, the 1985 RTC also noted that retorted oil shale appears to be less reactive than raw shale fines. The Ashok Agarwal, Monsanto for USEPA EPA, May 1986 study, *Assessment of Solid Waste Characteristics and Control Technology for Oil Shale Retorting,* supports EPA's 1985 conclusion that spontaneous combustion of retorted oil shale is only a concern assuming improper disposal with other wastes. Based on the reports noted above, the Agency believes that spent oil shale does not present an environmental concern due to ignitability.

3. Corrosivity

The majority of research on the environmental effects of spent oil shale has focused on the potential leaching of metals into ground and surface waters. There is, however, limited information assessing whether spent oil shale could be corrosive. Review of the BLM studies

noted above, which assessed spent oil shale disposed of at Anvil Points for over thirty years, and discussed in the report, *Final Draft Engineering/Cost Analysis for Waste Shale and Impoundments at U.S. Navy Oil Reserve 1 & 3 March 2005*, indicates that spent oil shale samples did not exhibit the corrosivity characteristic when tested for the hazardous characteristic of corrosivity. Also, because oil shale undergoing above ground retorting is subject to high heat where destructive distillation occurs and results in most organics and hydrogen being removed, it is not likely from a chemical standpoint that spent oil shale could be corrosive.

4. Reactivity

Based on the review of the literature noted above, the Agency has not found any information that identifies spent oil shale as potentially reactive. Review of the BLM Anvil Points studies do not indicate that spent oil shale disposed of in piles over long periods of time ever became reactive. Based on our review of the data noted above, it is not likely from a chemical standpoint that spent oil shale could be reactive.

D. Conclusion

The regulatory status of spent oil shale, from above ground retorting operations was determined as part of the 1989 final Bevill rulemaking. Spent oil shale from above ground oil shale operations is not Bevill-exempt. The Agency believes this NODA's clear statement will have little practical effect, because it believes—based on the data described in this notice—that spent oil shale from above ground retorting operations are very unlikely to be hazardous under RCRA Subtitle C. EPA seeks additional data relevant to this conclusion and seeks comment on the data presented that supports our conclusion.

Dated: December 17, 2008.

Susan Parker Bodine,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. E8–30698 Filed 12–23–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0037 FRL–8392–6]

Chitin/Chitosan, Farnesol/Nerolidol and Nosema locustae Final Registration Review Decision; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's final registration review decisions for the pesticides Chitin/Chitosan (case 6063), Farnesol/Nerolidol (case 6061) and Nosema locustae (case 4104). Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, that the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

ADDRESSES: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: For information about the biopesticides included in this document, contact the specific Regulatory contact, as identified in the Table in Unit II.A. for the pesticide of interest. The mailing address and additional contact information is Biopesticides and Pollution Prevention Division, (7511P); Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8712; fax number: (703) 308–7026.

For general questions on the registration review program, contact, Kevin Costello, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5026; fax number: (703) 308–8090; e-mail address: *costello.kevin@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may 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**.

II. Background

A. What Action is the Agency Taking?

This notice announces the final registration decisions for Chitin/Chitosan, Farnesol/Nerolidol and Nosema locustae cases as shown in the following Table.

TABLE – REGISTRATION REVIEW DOCKETS – FINAL DECISIONS

Registration Review Case Name and Number	Pesticide Docket ID Number	Regulatory Contact name, Phone Number, E-mail Address
Chitin/Chitosan; Case 6063	EPA–HQ–OPP–2007–0566	Chris Pfeifer (703) 308–0031 *pfeifer.chris@epa.gov*

TABLE – REGISTRATION REVIEW DOCKETS – FINAL DECISIONS—Continued

Registration Review Case Name and Number	Pesticide Docket ID Number	Regulatory Contact name, Phone Number, E-mail Address
Farnesol/Nerolidol; Case 6061	EPA–HQ–OPP–2007–0569	Russell Jones (703) 308–5071 *jones.russell@epa.gov*
Nosema locustae; Case 4104	EPA–HQ–OPP–2007–0997	Jeannine Kausch (703) 3477–8920 *kausch.jeannine@epa.gov*

The dockets for registration review of these pesticide cases include the final registration review decision documents as well as other relevant documents related to the registration review of the subject cases. Proposed registration review decisions were posted to the docket and public comments were requested. During the respective 60 day comment periods, no public comments were received. Background on the registration review program is provided at: *http://www.epa.gov/oppsrrd1/registration_review/*. Quick links to earlier documents related to the registration review of this pesticide are provided at: *http://www.epa.gov/oppsrrd1/registration_review/reg_review_status.htm*.

B. What is the Agency's Authority for Taking this Action?

FIFRA Section 3(g) and 40 CFR 155.58(c) provide authority for this action. A registration review decision is the Agency's determination whether a pesticide meets, or does not meet the standard for registration in FIFRA. Proposed registration review decisions were posted to the docket for the above cases and public comments were requested. During the respective 60 day comment periods, no public comments were received for the Chitin/Chitosan, Farnesol/Nerolidol or Nosema locustae cases. The final decisions that are subject to this notice continue to be supported by the rationales included in the proposed registration review decisions for each case. The documents in the subject registration review dockets describe the Agency's rationale for issuing these final decisions for the Chitin/Chitosan, Farnesol/Nerolidol or Nosema locustae cases. No risk mitigation measures are required or specified in the final decisions for these registration review cases and no labeling changes are required as a result of these final decisions.

List of Subjects

Environmental protection, registration review, pesticides, and pests.

Dated: December 12, 2008.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E8–30496 Filed 12–23–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–1070; FRL–8391–4]

L-Latic Acid Registration Review Final Work Plan and Proposed Registration Review Decision; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Final Work Plan and Proposed Registration Review Decision for the pesticides case L-Latic Acid, and opens a public comment period on the proposed registration review decision. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, that the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

DATES: Comments must be received on or before February 23, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) numbers EPA–HQ–OPP–2008–0383 for L-Latic Acid by one of the following methods:

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

Instructions: Direct your comments to docket ID number and the regulatory contact listed under Table 1 for the case you are submitting a comment. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form

of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: For information about the pesticide included in this document, contact the specific Chemical Review Manager as identified in the table in Unit II.

For general questions on the registration review program, contact Kevin Costello, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5026; fax number: (703) 308–8090; e-mail address: *costello.kevin@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may 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. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

This notice opens a 60–day public comment period on the subject proposed registration review decision. The Agency is proposing registration a review decision for the pesticide case shown in the following Table.

TABLE 1.—REGISTRATION REVIEW DOCKETS – PROPOSED FINAL DECISIONS

Registration Review Case Name and Number	Pesticide Docket ID Number	Regulatory Contact name, Phone Number, E-mail Address
L-Latic Acid; Case 6062	EPA–HQ–OPP–2008–0383	Andrew Bryceland; (703) 305–6928; *bryceland.andrew@epa.gov*

The docket for registration review of this pesticide case includes earlier documents related to the registration review of the subject case. For example, the review opened with the posting of a Summary Document, containing a Preliminary Work Plan (PWP), for public comment. Because no comments were received, and because the Agency required no further risk assessments to complete registration review of this case, the Final Work Plan and Proposed Decision were combined into a single document. The documents in the initial docket described the Agency's rationale for not conducting new risk assessments for the registration review of L-Latic Acid. This proposed registration review decision now included in the docket continue to be supported by those rationales included in documents in the initial docket. Following public comment, the Agency will issue a final registration review decision for this case.

The registration review program is being conducted under congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. Section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended in 1996 required EPA to establish by regulation procedures for reviewing pesticide registrations, originally with a goal of reviewing each pesticide's registration every 15 years to ensure that a pesticide continues to meet the FIFRA standard for registration. The Agency's final rule to implement this program was issued in August 2006 and became effective in

October 2006 and appears at 40 CFR 155.40. The Pesticide Registration Improvement Act of 2003 ("PRIA") was amended and extended in September 2007. FIFRA as amended by PRIA in 2007 requires EPA to complete registration review decisions by October 1, 2022 for all pesticides registered as of October 1, 2007. The registration review final rule provides for a minimum 60–day public comment period for all proposed registration review decisions.

This comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the proposed decision. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Docket for L-Latic Acid. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. The Agency will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and www.regulations.gov. The final registration review decisions will explain the effect that any comments have had on the decisions.

Background on the registration review program is provided at: *http://www.epa.gov/oppsrrd1/registration_review/*. Quick links to earlier documents related to the registration review of this pesticide are provided at: *http://www.epa.gov/oppsrrd1/registration_review/reg_review_status.htm/*.

B. What is the Agency's Authority for Taking this Action?

FIFRA Section 3(g) and 40 CFR 155.40 provide authority for this action.

List of Subjects

Environmental protection, Registration review, Pesticides and pests, L-Latic Acid.

Dated: December 4, 2008.

Janet L. Andersen,

Director, Biopesticide and Pollution Prevention Division, Office of Pesticide Programs

[FR Doc. E8–30380 Filed 12–23–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0489;FRL–8396–5]

FIFRA Scientific Advisory Panel; Notice of Public Meeting; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: EPA issued a notice in the **Federal Register** of December 10, 2008, concerning a 3–day meeting of the FIFRA Scientific Advisory Panel to consider and review a set of scientific issues being considered by the Agency pertaining an Evaluation of the Resistance Risks from Using a Seed Mix Refuge with Pioneer's Optimum® AcreMax™ 1 Corn Rootworm-Protected Corn. This document is being issued to correct an error in the dates for the meeting.

FOR FURTHER INFORMATION CONTACT: Joseph E. Bailey, Designated Federal Official, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–2045; e-mail address: *bailey.joseph@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the original notice a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0489. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr*.

II. What Does this Correction Do?

FR Doc. E8–29114 published in the **Federal Register** of December 10, 2008 (73 FR 75099) (FRL–8392–7) is corrected as follows:

1. On page 75099, in the first column, under **DATES**, the first paragraph should read as follows:

The meeting will be held on Monday, February 23, 2009 from 1:30 p.m. to approximately 5 p.m.; on Tuesday, February 24, 2009 from 8:30 a.m. to approximately 5 p.m.; and on Wednesday, February 25, 2009 from 8:30 a.m. to approximately 12 noon (eastern time).

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 17, 2008.

Michael L. Goodis,

Acting Director, Office of Science Coordination and Policy.

[FR Doc. E8–30492 Filed 12–23–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0607;FRL–8396–1]

Pesticide Product Registration Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application to register the pesticide product n-Tetradecyl Acetate Technical Pheromone containing an active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: Andrew Bryceland, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6928; e-mail address: *bryceland.andrew@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0607. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are also available for public inspection. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Such requests should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr*.

II. Did EPA Approve the Application?

The Agency approved the application after considering all required data on risks associated with the proposed use of n-tetradecyl acetate, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of n-tetradecyl acetate when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

III. Approved Application

EPA issued a notice, published in the **Federal Register** of August 27, 2008 (73 FR 50613–50614) (FRL–8373–8), which announced that BASF Corporation, P.O. Box 13528, Research Triangle Park, NC, 27709, had submitted an application to register the pesticide product, n-Tetradecyl Acetate Technical Pheromone, Straight Chain Lepidopteran Pheromone (EPA File Symbol 7969-EIE), containing n-tetradecyl acetate at 99.56%. This product was not previously registered.

The application was approved on December 4, 2008, as n-Tetradecyl Acetate Technical Pheromone (EPA Registration Number 7969–282 for manufacturing use. (A. Bryceland).

List of Subjects

Environmental protection, Chemicals, Pests and pesticides.

Dated: December 12, 2008.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E8–30494 Filed 12–23–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0877; FRL–8395–7]

Petition to Revoke all Tolerances and Cancel all Registrations for the Pesticide 2,4-Dichlorophenoxyacetic Acid; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is seeking public comment on a November 6, 2008, petition from the Natural Resources Defense Council (NRDC), requesting that the Agency revoke all tolerances and cancel all registrations for the pesticide 2,4-dichlorophenoxyacetic acid (2,4-D). The petitioner, NRDC, requests this action to obtain what they believe would be proper application of the safety standards of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), section 408, as amended by the Food Quality Protection Act (FQPA) of 1996.

DATES: Comments must be received on or before February 23, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2008–0877, by one of the following methods:

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2008–0877. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

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

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Cathryn O'Connell, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0136; fax number: (703) 308–7070; e-mail address: *oconnell.cathryn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Since others also may 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. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

EPA requests public comment during the next 60 days on a petition (available under docket ID number EPA–HQ–OPP–2008–0877) received from the NRDC requesting that the Agency revoke all tolerances (maximum legal residue limits) and cancel all registrations for the pesticide 2,4-D. The petitioner, NRDC, claims that EPA cannot make a finding that there is a reasonable certainty of no harm from dietary residues of 2,4-D and, therefore, that the Agency must revoke all tolerances established under section 408 of FFDCA, as amended by FQPA.

As a part of the petition, NRDC claims that the Agency did not consider the full spectrum of potential human health effects associated with 2,4-D in connection with EPA's reassessment of the existing 2,4-D tolerances, and EPA's environmental risk assessment including:

1. Information on the endocrine disrupting effects of 2,4-D.

2. Information on the neurotoxicity related to 2,4-D exposure.

3. Information that products containing 2,4-D are mutagenic.

4. Data showing that dermal absorption of 2,4-D is enhanced by alcohol consumption, sunscreen, and DEET which the EPA's exposure assessment failed to include.

5. Information about adverse developmental effects at doses below those included in EPA's risk assessment for exposure of infants to 2,4-D in breast milk.

EPA's risk assessment of 2,4-D and findings on whether the tolerances for 2,4-D comply with the safety standard in FFDCA section 408, as amended by FQPA, are contained in the Reregistration Eligibility Decision (RED) document for 2,4-D which is available on EPA's pesticide webpage at *http://www.epa.gov/pesticides/reregistration/status.htm*. Docket materials for this pesticide are available in the electronic docket at *http://www.regulations.gov*; risk assessment and related documents for this pesticide can be found under docket ID number EPA–HQ–OPP–2004–0167.

B. What is the Agency's Authority for Taking this Action?

This action is taken under the authority of FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3).

List of Subjects

Environmental protection, 2,4-dichlorophenoxyacetic acid, 2,4-D, Natural Resources Defense Council, pesticides and pests.

Dated: December 16, 2008.

Margaret J. Rice,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E8–30527 Filed 12–23–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0994; FRL–8391–9]

Registration Review; Atonik Docket Opened for Review and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established registration review dockets for the pesticides listed in the table in Unit III.A. With this document, EPA is opening the public comment period for these registration reviews. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Registration review dockets contain information that will assist the public in understanding the types of information and issues that the Agency may consider during the course of registration reviews. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment. This document also announces the Agency's intent not to open a registration review docket for Ampelomyces quisqualis and for Candia oleophila]. These pesticides do not currently have any actively registered pesticide products and are not, therefore, scheduled for review under the registration review program.

DATES: Comments must be received on or before February 23, 2009.

ADDRESSES: Submit your comments identified by the docket identification (ID) number for the specific pesticide of interest provided in the table in Unit III.A., by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

• *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket ID numbers listed in the table in Unit III.A. for the pesticides you are commenting on. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: *For pesticide specific information contact:* The Regulatory Action Leader (RAL)] identified in the table in Unit III.A. for the pesticide of interest.

For general information contact: Kevin Costello, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5026; fax number: (703) 308–8090; e-mail address: *costello.kevin @epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farmworker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may 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. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in

accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide(s) discussed in this document, compared to the general population.

II. Authority

EPA is initiating its reviews of the pesticides identified in this document pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA section 3(a), a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

III. Registration Reviews

A. What Action is the Agency Taking?

As directed by FIFRA section 3(g), EPA is reviewing the pesticide registrations identified in the table in this unit to assure that they continue to satisfy the FIFRA standard for registration—that is, they can still be used without unreasonable adverse effects on human health or the environment. A pesticide's registration review begins when the Agency establishes a docket for the pesticide's registration review case and opens the docket for public review and comment. At present, EPA is opening registration review dockets for the cases identified in the following table.

TABLE—REGISTRATION REVIEW DOCKETS OPENING

Registration Review Case Name and Number	Docket ID Number	RAL, Telephone Number, E-mail Address
Atonick; Case 6067	EPA–HQ–OPP–2008–0832	Driss Benmhend *703–308–9525* *benmhend.driss@epa.gov*

EPA is also announcing that it will not be opening a docket for Ampelomyces quisqualis and for Candia oleophila because these pesticides are not included in any products actively registered under FIFRA section 3.

Ampelomyces quisqualis isolate M-10: This active ingredient was registered by Ecogen Inc. in June 1994 and voluntarily cancelled on October 15, 2004 at the registrants request due to non-payment of maintenance fee (69 FR 62676, October 27, 2004)(FRL–7683–7). The exemption from tolerance of residues of Ampelomyces quisqualis isolate M-10 on all raw agricultural commodities (RACs) was reassessed on July 18, 2002 and met the FQPA 1996 Safety standard (40 CFR 180.1131, 59 FR 33437, June 29, 1994). However, there is no registrant for the active ingredient at this time.

Candida oleophila isolate I-182: This active ingredient was registered by Ecogen Inc. in February 1995 and voluntarily cancelled on July 24, 1996 at the registrants request due to non-payment of maintenance fee (61 FR 39964, July 31, 1996)(FRL–5383–7). The exemption from tolerance of residues of Candida oleophila isolate I-182 on all RACs was reassessed on May 10, 2002 and met the FQPA 1996 Safety standard (40 CFR 180.1144, 60 FR 11033, March 1, 1995)(FRL–4938–1). However, there is no registrant for the active ingredient at this time.

The Agency will take separate actions to cancel any remaining FIFRA section 24(c) Special Local Needs registrations with this active ingredient and to propose revocation of any affected tolerances that are not supported for import purposes only.

B. Docket Content

1. *Review dockets.* The registration review dockets contain information that the Agency may consider in the course of the registration review. The Agency may include information from its files including, but not limited to, the following information:

- An overview of the registration review case status.
- A list of current product registrations and registrants.
- **Federal Register** notices regarding any pending registration actions.
- **Federal Register** notices regarding current or pending tolerances.
- Risk assessments.
- Bibliographies concerning current registrations.
- Summaries of incident data.
- Any other pertinent data or information.

Each docket contains a document summarizing what the Agency currently knows about the pesticide case and a preliminary work plan for anticipated data and assessment needs. Additional documents provide more detailed information. During this public comment period, the Agency is asking that interested persons identify any additional information they believe the Agency should consider during the

registration reviews of these pesticides. The Agency identifies in each docket the areas where public comment is specifically requested, though comment in any area is welcome.

2. *Other related information.* More information on these cases, including the active ingredients for each case, may be located in the registration review schedule on the Agency's website at *http://www.epa.gov/oppsrrd1/registration_review/schedule.htm.* Information on the Agency's registration review program and its implementing regulation may be seen at *http://www.epa.gov/oppsrrd1/registration_review.*

3. *Information submission requirements.* Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

• To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.

• The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.

• Submitters must clearly identify the source of any submitted data or information.

• Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

• As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 12, 2008.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E8–30497 Filed 12–23–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0955; FRL–8394–5]

Rodenticides; Notice of Receipt of Request to Voluntarily Cancel 22 Rodenticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by the registrants to voluntarily cancel the registrations of 22 rodenticide products containing the active ingredients bromadiolone, bromethalin, cholecalciferol, difenacoum, diphacinone (and its sodium salt), warfarin (and its sodium salt), and zinc phosphide. The request would terminate the 22 rodenticide products listed in Table 1. EPA intends to grant these requests with an effective date of June 4, 2011 at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the request or unless a registrant withdraws its request within this period. If EPA grants the cancellation requests as anticipated, any sale or distribution of products listed in this notice after June 4, 2011 will be permitted only if such sale or distribution, is consistent with the terms as described in the final order.

DATES: Comments must be received on or before June 22, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0955, by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

• *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0955. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov,* select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. Although listed in the index, some information is not publicly available, *e.g.* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the

electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Rusty Wasem, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6979; fax number: (703) 308–7070; e-mail address: *wasem.russell@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may 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. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background on the Receipt of Requests to Cancel Registrations

This notice announces receipt by EPA of written requests from ADM Alliance Nutrition Inc., Bacon Products Company Inc., Bell Laboratories Inc., Kittrich Corporation, Motomco Limited, Scimetrics Limited Corporation, Value Gardens Supply LLC, and Woodstream Corporation, registrants of rodenticide products, to cancel the product registrations listed in Table 1. Diphacinone (and its sodium salts), and warfarin (and its sodium salts) are first generation anticoagulant rodenticides. Bromadiolone and difenacoum are second generation anticoagulant rodenticides. Bromethalin, cholecalciferol and zinc phosphide are non-anticoagulant rodenticides. These requests will result in the termination of the listed rodenticide products registered in the United States. The received cancellation requests do not represent the termination of all rodenticide products containing the active ingredients diphacinone, warfarin, bromadiolone, difenacoum, bromethalin, cholecalciferol, and zinc phosphide. Many of the rodenticide registrants requesting product cancellations as well as other rodenticide registrants not requesting product cancellations have informed the Agency they intend to submit amended labels for rodenticide products incorporating all of the risk mitigation measures required by the Risk Mitigation Decision for Ten Rodenticides of 2008.

Unless comments are received to the contrary, the Agency intends to make the cancellation effective June 4, 2011, and to allow the requesting registrants to continue to produce, sell and distribute these rodenticide products through the cancellation date of June 4, 2011. EPA intends to allow persons other than the registrant to distribute, sell and use existing stocks of the cancelled products after June 4, 2011 until depleted.

III. What Action is the Agency Taking?

This notice announces receipt by EPA of requests from registrants to cancel specific rodenticide products registrations. The affected products and the registrants making the request are identified in Table 1 and Table 2 of this unit.

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation or use termination. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

EPA will provide a 180–day comment period on the proposed cancellation requests.

Unless the request is withdrawn by the registrant within 180 days of publication of this notice, or if the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued canceling the affected registrations

TABLE 1—RODENTICIDE PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Name	Company Name
Cholecalciferol (PC Code 202901)		
3240-28	Rampage Mouse Seed	Motomco Ltd.
3240-42	Rampage Rat & Mouse Bait	Motomco Ltd.
12455-57	Quintox Mouse Seed	Bell Laboratories, Inc.
Bromadiolone (PC Code 112001)		
12455-68	Contrac Mouse Bait Station	Bell Laboratories, Inc.
12455-103	Contrac Bait Trays	Bell Laboratories, Inc.
12455-104	Contract Mouse Control Kit	Bell Laboratories, Inc.
Bromethalin (PC Code 112802)		
12455-100	Fastrac Mouse Seed PLACE PAC	Bell Laboratories, Inc.
47629-10	Bromethalin Manufacturing Concentrate	Woodstream Corp.
Diphacinone (PC Code 067701)		
3487-26	Eagles-14 Diphacinone Rat Bait	Bacon Products Company, Inc.
11885-12	Master Mix Blue Death-D Rat & Mouse Bait	Adm Alliance Nutrition, Inc.
11885-15	Master Mix Blue Death-D Rat & Mouse Bait Hide-A-Pack	ADM Alliance Nutrition, Inc.
12455-67	Ditrac Mouse Bait Station	Bell Laboratories, Inc.
Diphacinone, sodium salt (PC Code 067705)		
3240-17	Motomco Water Soluble Diphacinone Rodenticide Concentrate Ki	Motomco Ltd.
Warfarin (PC Code 086002)		
3487-19	Eagles-7 Rat Bait	Bacon Products Company, Inc.
5887-51	Black Leaf Warf Pellets	Value Gardens Supply, LLC
5887-98	Black Leaf Warf Pellets Mouse Killer	Value Gardens Supply, LLC
12455-15	Warfarin Rat and Mouse Bait	Bell Laboratories, Inc.
62577-7	Echols Mouse & Rat Pellets	Kittrich Corp.
72500-7	Kaput Mouse Blocks	Scimetrics, Ltd. Corp.
Warfarin, sodium salt (PC Code 086003)		
12455-22	Liqua-Tox Liquid Concentrate	Bell Laboratories, Inc.
Zinc phosphide (PC Code 088601)		
12455-59	ZP Rodent Bait Place Pac	Bell Laboratories, Inc.
12455-85	Mole and Gopher Bait	Bell Laboratories, Inc.

Table 2 of this unit includes the name and address of record for the registrants of the products listed in Table 1.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company name and address
3240	Motomco Ltd. 3699 Kinsman Blvd. Madison, WI 53704
12455	Bell Laboratories 3699 Kinsman Blvd. Madison, WI 53704
47629	Woodstream Corp. 69 N. Locust St. PO Box 324 Lititz, PA 17543
3487	Bacon Products Corp. PO Box 22187 Chattanooga, TN 37422
11185	ADM Alliance Nutrition, Inc. PO Box C1 Quincy, IL 62305
5887	Value Gardens Supply LLC 9100 W. Bloomington Fwy. Ste. 113 Bloomington, MN 55431
62577	Kittrich Corp. 4940 Top Line Dr. Dallas, TX 75247
72500	Scimetrics Ltd. Corp. C/O Regwest Co. LLC 30856 Rocky Rd. Greeley, CO 80631

IV. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

V. Procedures for Withdrawal of Request and Considerations for Reregistration of Rodenticides

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before June 22, 2009. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action.

If the request for voluntary cancellation is granted as discussed above, the Agency intends to issue a cancellation order that will allow persons other than the registrant to continue to sell and/or use existing stocks of cancelled products until such stocks are exhausted, provided that such use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled product. The order will specifically prohibit any use of existing stocks that is not consistent with such previously approved labeling. If, as the Agency currently intends, the final cancellation order contains the existing stocks provision just described, the order will be sent only to the affected registrants of the cancelled products. If the Agency determines that the final cancellation order should contain existing stocks provisions different than the ones just described, the Agency will publish the cancellation order in the **Federal Register**.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 15, 2008.

Steven Bradbury,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E8–30495 Filed 12–23–08; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 011075–070.

Title: Central America Discussion Agreement.

Parties: APL Co. PTE Ltd.; Crowley Liner Services, Inc.; Dole Ocean Cargo Express; Great White Fleet; King Ocean Services Limited; and Seaboard Marine, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Washington, DC 20036.

Synopsis: The amendment adds a new section authorizing the exchange of certain trade data including economic forecasts; past, present, and future trade conditions; and revenues, costs, and profits and losses.

Agreement No.: 011075–071.

Title: Central America Discussion Agreement.

Parties: APL Co. PTE Ltd.; Crowley Liner Services, Inc.; Dole Ocean Cargo Express; Great White Fleet; King Ocean Services Limited; and Seaboard Marine, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Washington, DC 20036.

Synopsis: The amendment adds authority for the parties to enter into contracts with vendors for services, including the collection of charges.

Agreement No.: 012060.

Title: CSAV/NYK Peru Space Charter Agreement.

Parties: Compania Sud Americana de Vapores S.A. and Nippon Yusen Kaisha.

Filing Party: Michael B. Holt, Esq.; Vice President & General Counsel; NYK Line (North America), Inc.; 300 Lighting Way 5th Floor, Secaucus, NJ 07094.

Synopsis: The agreement authorizes CSAV to charter space vessels to NYK in the trade from Newark, NJ, Baltimore, MD, and Miami, FL to ports in Peru.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Secretary.

[FR Doc. E8–30679 Filed 12–23–08; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Bestway Shipping, Inc., 1123 E. Dominguez Street, Unit F, Carson, CA 90748. Officer: JAJ Won Lee, President. (Qualifying Individual)

Airgroup Corporation dba Airgroup Seafreight, 1227 120th Avenue NE., Bellevue, WA 98005. Officer: Michael Von Loesch, Vice President. (Qualifying Individual)

T&T Express Shipping, LLC, 472 Sutter Avenue, Brooklyn, NY 11207. Officer: Patricia Williams, Member. (Qualifying Individual)

Transmodal Corporation, 48 S. Franklin Tpke, Ste. 204, Ramsey, NJ 07448. Officer: Max Kantzer, President. (Qualifying Individual)

Neptune Shipping Limited dba Novalink Logistics, 240 S. Garfield Ave., Alhambra, CA 91801. Officer: Anthony K. Chien, Vice President. (Qualifying Individual)

Ace Relocation Systems, Inc., 5603 Eastgate Drive, San Diego, CA 92121. Officers: Daniel J. Lammers, Vice President. (Qualifying Individual) Lawrence R. Lammers, President.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Davis Daniels Enterprises, Inc., 2045 John Crosland Dr. Way, Charlotte, NC 28208. Officers: William A. Pottow, Int'l. Manager. (Qualifying Individual) James R. Davis, President.

Trans Andes Cargo Freight Forwarding LLC, 6541 NW 87th Street, Miami, FL 33016. Officer: Mirelys Zayas, General Manager. (Qualifying Individual)

JAP Logistics, Inc. dba JAP Cargo, 8406 NW 17th Street, Miami, FL 33126. Officers: Janette Perdomo, Secretary. (Qualifying Individual) Santiago Montilla, President.

TBS Lolgistics Incorporated and Magnum Lines, 11731 Jones Road, #200, Houston, TX 77079. Officer: Donald Rawlings, President. (Qualifying Individual)

Glodex, Corp., 7235 NW 54th Street, Miami, FL 33166. Officer: Maria L. Brito, Treasurer. (Qualifying Individual)

Barsan International, Inc., 17–09 Zink Place, Unit 5, Fairlawn, NJ 07410. Officer: Ugur Aksu, President. (Qualifying Individual)

Tri-Best Logistics, Inc., 6131 Orange Thorpe Ave., Buena Park, CA 90620. Officer: Fiona M. Hooks, Secretary. (Qualifying Individual)

API International Transportation(USA), Inc. dba Silver Pacific Global Logistics, 41661 Enterprise Circle North, Temecula, CA 92590. Officers: Steven P. Rubin, Dir. U.S. Operations. (Qualifying Individual) Michael J. Helten, President.

Trayma Cargo Corp., 9999 NW 89th Avenue, Suite 9, Medley, FL 33178. Officers: Jenny Salazar, Treasurer. (Qualifying Individual) Christian Umana, President.

American Cargo International, Inc., 1303 NW 78 Avenue, Doral, FL 33126. Officer: Annia De Paz, Vice President. (Qualifying Individual)

Integrity Cargo Freight Corporation, 160 Route 35, Cliffwood Beach, NJ 07735. Officer: Charles Derose, V.P. Sales & Marketing. (Qualifying Individual)

Blue Ocean Shipping, Inc. dba Advanced Shipping, Corp., 1221 Landmeier Road, Elk Grove Village, IL 60007. Officer: Kim Bong Sub, President. (Qualifying Individual)

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

Aspen Forwarder & Customs House Brokers, Inc., 20 W. Lincoln Ave., Ste. #203, Valley Stream, NY 11580. Officer: Richard Pignatelli, Vice President. (Qualifying Individual)

Hansen Shipping Agency, Inc., 4885 Olde Towne Parkway, #50, Marietta, GA 30068. Officer: David Smith, President. (Qualifying Individual)

TSC Logistics LLC, 2500–B Broening Highway, #100, Baltimore, MD 21224. Officers: Muhammad I. Kazi, Vice President. (Qualifying Individual) William Hutton, President.

Galaxy Forwarding, Inc., 407 River Drive South, Jersey City, NJ 07310. Officer: Valerie Cilenti, Secretary. (Qualifying Individual)

Express Shipping Company of Illinois, 670 E. Northwest Hwy., 2nd Floor, Arlington Heights, IL 60004. Officers: Yevgenly Kapelevich, President. (Qualifying Individual) Vladimir Lipkin, Vice President.

Dated: December 19, 2008.

Karen V. Gregory,

Secretary.

[FR Doc. E8–30678 Filed 12–23–08; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Notice of Request for Addditional Information

The Commission gives notice that it has formally requested that the parties to the below listed agreement provide additional information pursuant to 46 U.S.C. 40304(d). This action prevents the agreement from becoming effective as originally scheduled.

Agreement No.: 201199.

Title: Port Fee Services Agreement.

Parties: The members of the West Coast MTO Agreement; The City of Los Angeles, acting by and through its Board of Harbor Commissioners; and the City of Long Beach, acting by and through its Board of Harbor Commissioners.

Interested parties will have fifteen (15) days after publication of the notice to file further comments on the agreement.

By Order of the Federal Maritime Commission.

Dated: December 18, 2008.

Karen V. Gregory,

Secretary.

[FR Doc. E8–30633 Filed 12–23–08; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank

holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 19, 2009.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Community Bank Investors of America, L.P., and FA Capital, LLC, both of Richmond, Virginia, to retain control of 5.81 percent, and to acquire up to 9.90 percent of the voting shares of ICB Financial, and thereby indirectly acquire additional voting shares of Inland Community Bank, National Association, both of Ontario, California.

2. Community Bank Investors of America, L.P., and FA Capital, LLC, both of Richmond, Virginia, to retain control of 6.82 percent, and to acquire up to 7.55 percent of the voting shares of Commonwealth Bankshares, Inc, and thereby indirectly acquire additional voting shares of Bank of Commonwealth, both of Norfolk, Virginia.

B. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Security Bancorp, Inc., to become a bank holding company by acquiring 100 percent of the voting shares of Security Federal Savings Bank of McMinnville, both of McMinnville, Tennessee, upon its conversion to a state chartered bank.

Board of Governors of the Federal Reserve System, December 19, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–30687 Filed 12–23–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

[Docket No. OP–1345]

Policy on Payment System Risk

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Policy statement.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) has adopted revisions to part II of its Policy on Payment System Risk (PSR) that are designed to improve intraday liquidity management and payment flows for the banking system, while also helping to mitigate credit exposures of the Federal Reserve Banks (Reserve Banks) from daylight overdrafts. The adopted changes to the PSR policy are substantially the same as those proposed for comment, including a new approach that explicitly recognizes the role of the central bank in providing intraday balances and credit to healthy depository institutions, a zero fee for collateralized daylight overdrafts, a 50 basis point (annual rate) charge for uncollateralized daylight overdrafts, and a biweekly daylight overdraft fee waiver of $150. The implementation of the changes will take place between the fourth quarter of 2010 and first quarter of 2011. A specific date will be announced by the Board at least 90 days in advance. The Board also approved for foreign banking organizations (FBO) an interim policy change related to the calculation of the deductible amount from daylight overdraft fees under the existing policy and early implementation of the proposed streamlined procedure for maximum daylight overdraft capacity (max cap). The interim policy change for the deductible and streamlined max cap procedure will be effective on March 26, 2009. In addition, the Board endorsed a four-prong strategy, which includes these policy changes, through which the Federal Reserve and industry will address related intraday liquidity, operational, and credit risks in the wholesale payment system.

DATES: *Effective Dates:* The policy will take effect between the fourth quarter of 2010 and first quarter of 2011 with a specific date announced at least 90 days in advance.

The interim policy for the deductible and streamlined max cap procedure will be effective on March 26, 2009.

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

On March 7, 2008, the Board requested comment on a new approach to intraday central bank balances and credit that formally recognizes the role of the central bank in providing such balances and credit to depository institutions and encourages them to collateralize explicitly their daylight overdrafts.[1] The Board proposed a policy of supplying intraday balances to healthy depository institutions predominantly through explicitly collateralized daylight overdrafts. Under this proposal, the Board would allow depository institutions to pledge collateral voluntarily to secure daylight overdrafts, and collateralized daylight overdrafts would be charged a zero fee. To further encourage the voluntary use of collateral, the Board would raise the fee for uncollateralized daylight overdrafts to 50 basis points (annual rate) from the current 36 basis points. The Board also proposed increasing 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. In addition, the Board proposed changes to other elements of the PSR policy dealing with daylight overdrafts, including adjusting net debit caps, streamlining max cap procedures for certain 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.

The Federal Reserve has been reviewing for several years the long-term effects of operational, market, and policy changes by the industry and the Federal Reserve on intraday liquidity, operational, and credit risks in the payment system, including intraday account overdrafts at the Reserve

[1] See 73 FR 12417, March 7, 2008.

Banks.[2] The proposed changes reflect the culmination of this work, along with companion efforts by the banking industry.

Significant changes to U.S. payment 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.

Overall, however, the combined effect of changes at clearing and settlement organizations, depository institutions' intraday liquidity management strategies, 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, waiting to send large payments late in the day increases the potential magnitude of liquidity dislocation and risk in the financial industry if late-in-the-day operational disruptions occur. An increase in such risk is particularly troublesome in an era of heightened concern about operational disruptions generally.

To address the combination of intraday liquidity, operational, and credit risks in the wholesale payment system, the Board considered changes to its PSR policy, which sets out the general public policy objectives of safety and efficiency for payment and settlement systems. The changes to the PSR policy, however, are only one effort under a four-pronged strategy involving the Federal Reserve and the financial industry. The second effort involves the Reserve Banks working with the industry to investigate the potential development of a liquidity-saving mechanism for the Fedwire Funds System.[3] The third and fourth efforts involve The Clearing House Interbank Payment System (CHIPS) and Depository Trust & Clearing Corporation identifying opportunities to improve transaction processing and liquidity use in their systems and processes that relate to large-value funds and securities settlement, respectively.[4]

II. Summary of Comments and Analysis

The Board received nineteen comment letters on its proposed policy. The commenters included thirteen commercial banking organizations, four trade organizations, one private-sector clearing and settlement system, and the Federal Reserve Bank of New York's Payment Risk Committee.[5] Most commenters (seventeen) supported the proposed policy changes. One commenter opposed the proposed policy because it does not believe fees are necessary to encourage the pledging of collateral if net debit caps are in place to control the Reserve Banks' risk. One commenter did not indicate support or opposition.

Comments on Proposed PSR Policy Changes

Several commenters noted that the new approach and specifically the zero fee for collateralized overdrafts would contribute to an increase in intraday liquidity and an overall reduction in operational and credit risks in the payment system. They also believed that the proposed policy would provide an incentive for institutions to reduce payments held in internal queues to manage liquidity use, and that the earlier release of these payments would increase the velocity of overall payment flows and liquidity circulation. Other commenters commended the Board for recognizing explicitly its role in providing intraday balances and credit, for introducing a two-tiered pricing system, and for proposing changes that improve the balance between payment system safety and efficiency objectives.

While commenters acknowledged areas where the proposed changes would likely achieve positive outcomes, such as encouraging the release of more payments from internal liquidity queues, a few commenters indicated that they did not believe the proposed policy changes would address fully the late-day compression of Fedwire funds transfers. As of third quarter 2008, 31 percent of the value of Fedwire payments are sent after 5 p.m., a 41 percent increase from just 10 years ago.[6] This growth is driven by the largest-valued payments (the 99th percentile), which averaged about $1.25 billion through mid-2008. The compression results to a certain extent from payments held in liquidity queues until later in the day but is also importantly driven by processes at clearing and settlement organizations and late-day market activity. For instance, private-sector payment systems have created a structural demand for intraday central bank balances and related credit averaging about $50 billion per day. This credit supports these systems' routine settlement and risk management activities, and the associated balances are released late in the day. On peak days, this demand for balances can exceed $150 billion. A significant proportion of such balances are not currently released to depository institutions until after 4:30 p.m. for general use in the payment system. Overall, from an operational risk perspective, the compression of payments, particularly large payments, sent late in the day increases the potential magnitude of liquidity dislocation and risk in the financial

[2] As part of its review, in June 2006, the Board published for public comment the *Consultation Paper on Intraday Liquidity Management and the Payments System Risk Policy* (71 FR 35679, June 21, 2006) seeking 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. The paper included a list of detailed objectives relating to safety and efficiency that the Board has previously used to conduct payment system risk analysis. An important goal of the consultation process was to identify opportunities to improve the safety/efficiency trade-offs in the payment system over the long run. For a summary of comments on the consultation paper, see 73 FR 12417, March 7, 2008.

[3] The creation of a liquidity-saving mechanism would conserve on account balances or daylight overdrafts and would also reduce the amount of collateral needed to achieve costless daylight overdrafts under the zero fee for collateralized daylight overdrafts. The liquidity-saving mechanism could involve adding new features to the Fedwire Funds Service 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.

[4] CHIPS is a real-time final payment 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. Depository Trust & Clearing Corporation 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.

[5] 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 Mellon, 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 Mellon, Citibank, Deutsche Bank, HSBC, JPMorgan Chase, Key Bank, Mellon Financial, State Street, SunTrust, UBS, US Bank, US Central Credit Union, Wachovia, and Wells Fargo.

[6] All times referenced are eastern time.

industry if late-in-the-day operational disruptions should occur.

Comments on Four-Prong Strategy Involving Federal Reserve and Industry Efforts

Several commenters recognized that additional efforts are needed to address the late-day compression of payments and strongly encouraged continued work on the three other efforts under the four-prong strategy endorsed by the Board. The three other efforts cover the potential development of a liquidity-saving mechanism for the Fedwire Funds Service, improvements in payments processing for CHIPS, and improvements in liquidity usage within the Depository Trust & Clearing Corporation, particularly its Depository Trust Company (DTC) subsidiary.[7] These initiatives have been a collaborative effort by the Federal Reserve and industry and are ongoing.

The Reserve Banks have been exploring with the industry the possibility of developing a liquidity-saving mechanism for the Fedwire Funds Service. Such a mechanism would also potentially economize on the amount of collateral needed to settle a given value of transactions. For example, the creation of the mechanism could further encourage the coordinated release of payments held in the liquidity queues of depository institutions by reducing the total liquidity (and collateral) used to fund those payments. Four comment letters, one of which represented sixteen large depository institutions, strongly supported the development of a liquidity-saving mechanism. One commenter specifically discussed the efficiency gains of moving payments from individual institution queues to a centralized queue that would enable timely matching and offsetting of payments.

As part of industry efforts, CHIPS, working with its members, has pursued ideas to facilitate faster matching and offsetting of large-value payments throughout the day to reduce the number of unresolved payments that need to be settled at the end of the CHIPS operating day. Similarly, DTC has explored possible operational and technical changes that may reduce liquidity used in its systems and processes related to securities settlement. The money market instrument clearing and settlement processes, in particular, currently requires a substantial amount of liquidity to be transferred to and remain at DTC until end-of-day settlement around 4:30 p.m. when the liquidity is released back to DTC's participants. Several comment letters strongly supported ongoing efforts by CHIPS and DTC. Many of these commenters stressed the importance of taking further steps to ease end-of-day liquidity "traps."

The Board fully supports continued progress on the three efforts. The Board agrees that the approved changes to the PSR policy alone are not sufficient to address late-day payment compression and liquidity pressures in the payment system. The Board approved the revised PSR policy based on the expectation that the financial industry will continue to pursue the elements of the four-prong strategy to address the combination of related intraday liquidity, operational, and credit risks in the wholesale payment and settlement system. In addition, further efforts may be needed to review market clearing and settlement practices that help push payments later in the day than may be necessary.

Revised PSR policy

As noted in the Board's Consultation Paper on Intraday Liquidity Management and the Payments System Risk Policy and in its request for comment on proposed changes to the PSR policy, the Board conducted a broad policy review.[8] A key component of this review included assessing anew the role of the central bank in the payment system. Current thinking about the role of central banks in providing intraday balances to the payment system has evolved significantly over the past twenty years and now explicitly recognizes that central banks have an important role in providing intraday (central bank money) balances to foster the smooth operation and settlement of payment systems.[9]

In view of this perspective, the Board proposed adopting a new approach to enhance intraday liquidity and the flow of payments, while controlling risk to the Reserve Banks. The approach would

(1) Explicitly recognize that the Federal Reserve has an important role in providing intraday balances and credit to foster the smooth operation of the payment system.

(2) Provide temporary, intraday balances to healthy depository institutions predominantly through collateralized intraday overdrafts.

(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 payment system or causing other unintended adverse consequences.

Commenters generally supported this new approach and did not recommend changes. Several commenters requested information about how collateral management and monitoring systems would be changed in implementing the approach. One commenter also noted that the complexity of collateral management could introduce a new type of operational risk that would need to be managed. The Board recognizes that under the revised policy depository institutions will have an increased need to manage actively their collateral pledged to the Reserve Banks. In the past, depository institutions have pledged significant amounts of loans as collateral for discount window and PSR purposes, along with smaller amounts of securities. Loan collateral traditionally has had a low opportunity cost. For some institutions and at certain times, however, securities can be an important source of collateral pledged to the Reserve Banks and could play an important role in fine-tuning collateral positions to meet daily PSR needs. In some cases, institutions may also seek to pledge securities on an intraday basis and not keep them on deposit at a Reserve Bank overnight. The Reserve Banks will be implementing changes over both the short and long term to their operational systems and processes in anticipation of depository institutions' changing needs for collateral management. These changes are discussed later in the collateral section.

The Board also received one comment letter that supported the collateralization portion of the new approach but opposed moving to a mandatory collateral regime. The move toward voluntary collateralization under the new approach reflects the Board's sensitivity to sudden and disruptive changes in policy, the possibility of creating unintended intraday liquidity and operational risks for the payment system, and the potential burden on the banking industry. An important aspect of the new approach is the shift to a greater use of collateral in a way that minimizes the cost and administrative burden of the policy on most users of daylight overdrafts.

Overall, the Board believes the new approach significantly improves the tradeoffs between safety and efficiency

[7] 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.

[8] See 71 FR 35679, June 21, 2006, and 73 FR 12417, March 7, 2008.

[9] 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.*

objectives of the PSR policy for the payment system and its participants. In approving this approach, the Board expects institutions to reduce over time their reliance on uncollateralized daylight credit. If this does not occur, the Board may choose, for example, to evaluate the effectiveness of the level of the fee for uncollateralized overdrafts in encouraging the transition to a predominantly collateralized daylight overdraft regime. The Board will also continue to monitor developments over time, and at some future date, may evaluate the costs and benefits of moving further toward a fully collateralized structure.

Specific Changes to Revised PSR policy

To implement the new approach, the Board has approved changes to certain terms and fees for providing daylight overdrafts. The following table summarizes the specific elements of the current and revised PSR policy.

TABLE—SUMMARY OF KEY ELEMENTS OF THE CURRENT AND REVISED PSR POLICY *

	Current policy	Revised policy
Collateral	Required for problem institutions** and institutions with max caps. Collateral eligibility and margins same as for discount window.	Additional provision that explicitly applies collateral pledged by institutions to daylight overdrafts for pricing purposes.
Fee for collateralized daylight overdrafts.	36 basis points	Zero fee.
Fee for uncollateralized daylight overdrafts.	36 basis points	50 basis points.
Deductible	10 percent of an institution's capital measure	Replaced by zero fee for collateralized daylight overdrafts and fee waiver.
Fee waiver	Up to $25 biweekly	$150 biweekly ***.
Net debit cap	Two-week average limit and higher single-day limit. Ex post counseling if exceed limit.	Two-week average limit eliminated; single-day limit retained. Flexibility in ex post counseling if fully collateralized.
Max cap	Additional collateralized capacity above net debit cap for self-assessed institutions.	Streamlined process for certain FBOs up to a limit (effective March 26, 2009). Minor changes apply for all institutions.
Penalty fee for ineligible institutions.	136 bps	150 bps.

* Access to daylight credit would continue to be available only to institutions with regular access to the discount window as is the case today.
** 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.
*** 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 but includes a deductible.

To assist institutions in understanding the effect of the revised policy on their daylight overdraft fees, the Board has made available a simplified fee calculator. The calculator enables institutions to provide daylight overdraft and collateral data to estimate their daylight overdraft fees under the revised PSR policy. The calculator will be available until 30 days after the to-be-announced effective date of the revised policy and is located on the Board's Web site at *https://www.federalreserve.gov/apps/RPFCalc/*.

A. Collateral

The Board proposed supplying intraday balances to healthy depository institutions predominantly through explicitly collateralized daylight overdrafts provided by Reserve Banks. The Board proposed allowing the use of collateral to be voluntary to avoid disrupting the operation of the payment system and increasing the cost burden of the policy on a large number of smaller users of daylight overdrafts. As part of the proposal, collateral eligibility and margins would remain the same for PSR policy purposes as for the discount window.[10] The pledging of in-transit securities would remain a collateral option for PSR purposes at Reserve Banks' discretion.[11]

The comment letters generally supported the application of collateral to daylight overdrafts, specifically with a zero fee. Several commenters noted that, broadly across the industry, institutions will likely increase the amount of collateral pledged to Reserve Banks. Several commenters addressed how their individual institutions may adjust collateral positions or payments activities in response to a zero fee for collateralized overdrafts and higher fee for uncollateralized overdrafts. Three commenters stated they would increase collateral pledged with their Reserve Bank. Two commenters stated that they had enough collateral to cover any potential daylight overdraft and would not pledge additional collateral. In addition, six commenters noted that deciding whether to pledge collateral would depend on the opportunity cost of collateral in relation to the cost of the daylight overdraft.

Commenters overall believed there could be a substantial opportunity cost to pledge collateral depending on market conditions and whether the lowest-cost collateral has already been pledged for discount window purposes by a depository institution. One commenter estimated the cost of collateral at between 26 and 50 basis points for collateral that has already been pledged but potentially much higher for currently unpledged collateral that might be needed to obtain incremental intraday liquidity. Another commenter estimated the cost of additional collateral to exceed 50 basis points. Other commenters discussed the potential high cost to pledge additional collateral but did not provide estimates. Two commenters noted that the cost of collateral would be relatively high in a volatile market when demand for collateral increases and supply is scarce. Another commenter noted that, in order to cover all potential daylight overdrafts, the institution would incur a high monthly expense to

[10] See *http://www.frbdiscountwindow.org/* for information on the discount window and PSR collateral acceptance policy and collateral margins.

[11] 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.

overcollateralize its daylight overdraft balance. For many of these institutions, the decision to pledge higher-cost collateral would depend on the opportunity cost of pledging a particular asset relative to the level of the uncollateralized daylight overdraft fee.

Some commenters also responded to the Board's question on the potential effects of the collateral policy on other financial market activities. Five commenters noted that pledging collateral for daylight overdraft purposes would reduce the pool for funding or investing activities. Conversely, two commenters believed that the policy would not have an effect on market activity because of the wide range of collateral accepted by Reserve Banks.

Two commenters requested that collateral pledged for daylight overdrafts be automatically available to cover unforeseen overnight overdrafts, which in effect creates an overnight discount window loan. Two commenters wanted the ability to pledge collateral through a central cross-border utility accessed by multiple central banks. The cross-border utility would enable global institutions to manage more effectively collateral held in different jurisdictions and to take advantage of differences in time zones. Finally, one commenter asked that deadlines to pledge and withdraw collateral be extended to cover the settlements of DTC and CHIPS and be as late as the close of the Fedwire Funds Service. Today, the Reserve Banks accept pledges of some securities up until 3 p.m. Securities held in the Fedwire Securities Service, however, can be pledged to the Reserve Banks up until 7 p.m. (or a half-hour after the Fedwire Funds Service closes).

While commenters raised several points for the Board's consideration, commenters appeared to have few significant concerns with the proposed voluntary collateralization regime. The most significant concern, which was raised by the majority of commenters, related to system and process enhancements for collateral management and monitoring at the Reserve Banks. For some commenters, support for the proposed policy was contingent on increased efficiency in collateral processing and real-time or near-real-time information on collateral pledged. About half the commenters expressed strong preferences that the Reserve Banks' collateral management systems facilitate the pledging and withdrawal of securities intraday. Five commenters also made suggestions to expand the range of eligible collateral, including additional types of cross-border securities. The Board recognizes that enhancements to collateral management systems and processes are an important aspect of implementing the revised PSR policy, and the Federal Reserve is developing a plan to mitigate the concerns raised as discussed in the next section.

On balance, the Board believes that the proposed voluntary collateralization regime will better meet the needs of the Reserve Banks and industry than the current policy. The Board also believes that unencumbered collateral pledged to Reserve Banks should be available to support the use of intraday credit.[12] In addition, the Board believes that it is important for consistency to maintain for PSR policy purposes the same collateral eligibility and margins as for the discount window.[13]

Collateral management. The Federal Reserve is in the process of assessing its collateral-management systems and processes. It has identified a number of possible improvement opportunities and has begun engaging the industry in dialogue about needed and desired functionality and process improvements.[14]

Based on comment letters and initial industry discussions, the Federal Reserve identified a number of changes that it intends to implement prior to the effective date of the revised policy. This short-term strategy involves several initiatives to improve the pledging and withdrawal of specific types of securities. The strategy also includes increasing information available intraday and interday on pledged collateral through the Reserve Banks' Account Management Information application (AMI).[15] In addition, the Federal Reserve will be publishing general timing guidelines for collateral pledging and withdrawal to help institutions better track when collateral is determined to be pledged to and released by the Reserve Banks.

Following the effective date for the revised PSR policy, the Reserve Banks will continue with initiatives to improve the pledging and withdrawal process for securities collateral. These initiatives will largely be similar to those in the short-term strategy but include enhancements involving sufficient complexity and resource requirements that completion may not be possible before the implementation date of the new policy. Some of these enhancements may take place relatively soon—perhaps within six months—after the implementation date, while others may take somewhat longer. Collectively, these enhancements should enable greater rates of straight-through processing of securities collateral by the Reserve Banks and quicker withdrawal of unencumbered securities, and should provide tools to assist institutions in monitoring intraday their daylight overdraft and collateral positions.

Over the longer term, the Reserve Banks intend to collaborate with the industry to identify additional enhancements that will continue to improve the efficiency and effectiveness of processes for pledging, withdrawing, and monitoring of collateral. The Federal Reserve expects that institutions' needs will evolve and grow as they gain experience with the revised PSR policy and with the collateral-management enhancements the Reserve Banks implement in the short and medium term.

Over time, the Federal Reserve will be providing more-specific information to the industry about upcoming enhancements to collateral and information systems. This communication will help institutions understand the forthcoming changes and will also help them identify any changes they may need to make to their systems.

B. Fees for Collateralized Daylight Overdrafts

The Board proposed lowering the fee for collateralized daylight overdrafts to zero and raising the uncollateralized daylight overdraft fee to 50 basis points to encourage institutions to pledge collateral and to reduce payments held in liquidity-management queues. The commenters strongly supported the proposal of a zero fee for collateralized daylight overdrafts. Most commenters believed that a zero fee for collateralized daylight overdrafts will encourage institutions that queue payments for liquidity purposes to release more of those payments earlier in the day.

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[12] Under some circumstances, rules for determining whether collateral is available may differ for PSR and discount window purposes. For example, under term lending (announced July 30, 2008), institutions requesting an advance of more than 28 days will need to hold an additional 33 percent of collateral in excess of the collateral required for the advance. This additional collateral may not available for discount window purposes but would be considered available (unencumbered) for PSR purposes.

[13] In-transit securities would also remain an eligible collateral option for PSR policy purposes at the Reserve Banks' discretion. Reserve Banks will require detailed information on a minute-by-minute basis to be submitted.

[14] The Federal Reserve is also in dialogue with depository institutions interested in pledging in-transit collateral for pricing purposes to discuss new data requirements and processes.

[15] AMI is an online tool offered by the Reserve Banks that supplies real-time information about an institution's Federal Reserve account balance and provides access to a variety of summary and detail reports.

Commenters acknowledged that institutions may still hold some payments in liquidity queues for reasons including counterparty risk, internal comfort with daylight overdraft levels, and uncollateralized daylight overdraft fee management. One institution noted that it believed the zero fee would help change certain depository institutions' tactical behavior of only sending payments when payments are received in order to reduce daylight overdraft costs. Another commenter believed a zero fee was appropriate because charging for collateralized overdrafts would amount to an unfair tax.

The majority of commenters noted that the zero fee for collateralized daylight overdrafts would also likely lead depository institutions to increase collectively intraday credit use. Five commenters believed that their individual institution's intraday credit use would increase, while three other commenters estimated no change to their institution's use. The credit risk to the Reserve Banks from the predicted increases in daylight overdraft use would be controlled by traditional banking tools used in providing credit (eligibility requirements, collateral, caps, and monitoring). In addition, as institutions release payments earlier from liquidity queues, liquidity should circulate more quickly with a resulting faster flow of payments and thus on net mitigate somewhat the predicted increase in daylight overdraft use. On balance, the Board believes that setting the collateralized daylight overdraft fee at zero will improve tradeoffs among liquidity, operational, and credit risks in the payment system.

The Board requested comment on two possible changes in market practices as a result of the zero fee for collateralized daylight overdrafts. One question covered the possible effect on the market for early return of fed funds loans. Several commenters believed that the practice of returning fed funds loans earlier would be positively affected, at least somewhat, by the proposed two-tiered pricing. Specifically, the fee reduction could increase the incentive to return fed funds loans earlier for institutions that have sufficient collateral to cover any overdraft incurred. One commenter believed a change would not happen automatically without market intervention to encourage the early return. Another commenter was unsure of any changes because of uncertain market dynamics and the historical resistance to return funds early. Some comments suggest that certain institutions may be more willing to return fed funds loans earlier. At the same time, institutions that, under the revised policy, have sufficient collateral to cover their daylight overdrafts may not have a significant incentive to demand the early return of funds. Overall, it is difficult at this stage to predict the net effect on the market for the early return of fed funds loans.

The Board also requested comment on whether collateralized overdrafts at a zero fee would eliminate incentives for depository institutions and their customers to process securities used in repurchase agreements early in the morning. The Board was concerned that a zero overdraft fee could remove the incentive for the early processing of securities, which it has viewed as an important operational success by the banking and securities industry from the time daylight overdraft fees were first implemented. Prior to the introduction of daylight overdraft fees in 1994, U.S. government securities dealers would arrange for and deliver securities designated for repurchase agreements largely after noon, creating a late-day compression of payments and securities deliveries in the Fedwire Securities Service operating day. Consequently, it was not uncommon for the Fedwire Securities Service operating day to be extended until 4 p.m. or later to address the volume of transfers that arrived late in the afternoon.[16] In anticipation of being charged daylight overdraft fees, the U.S. government securities dealers (and their clearing banks) introduced processes and technology that facilitated the arrangement of repurchase agreements and delivery of the securities early in the morning. By arranging trades and delivering securities early in the morning, dealers gained use of the incoming cash from their counterparties in the repurchase agreements, reducing the duration of their daylight overdrafts. On the return leg, counterparties to the repurchase agreements also began sending back the securities to the dealers first thing in the morning. This market movement shifted the peak in daylight overdrafts significantly earlier in the morning and reduced dramatically securities-related daylight overdrafts.

Most commenters believed that practices either would not change or were unsure if practices would change because of well-established current procedures and technology that support the market. One commenter, however, expressed concern that the zero fee for collateralized daylight overdrafts may have unintended consequences on the government securities market. The commenter believed that over time certain participants in the government securities market will revert to pre-1994 behavior without the cost incentive rooted in daylight overdraft fees to deliver securities early.

While it is not possible at this stage to know how U.S. government securities dealers will respond to a zero fee for collateralized daylight overdrafts for depository institutions, the Board does believe that competing business or processing incentives, such as managing securities inventories, may result in some change in behavior to shift later the delivery of securities. The change initially may be limited to certain types of securities or to specific dealers and thus would be of minor consequence. The main concern is that a change will become pervasive, undoing the successes achieved under the initial regime of charging for daylight overdrafts.

Some mitigating factors may influence the magnitude of behavioral changes. The market for early deliveries is well entrenched today and is supported by automation. A significant change in this market may require institutions to make systems changes, which could be costly. In addition, the $50 million limit on the size of securities transfers over Fedwire Securities Service reduces the incentive to build positions. Securities dealers in the past held securities until near the close of the Fedwire Securities Service operating day to ensure they could complete the delivery in full and avoid costly failures to deliver. This practice is said to continue in some cases even today.

While the Board continues to be concerned about the possible effect of a zero fee on the timing of securities transfers, it believes there are significant benefits in reducing the fee to zero for collateralized daylight overdrafts. This view is also strongly supported by the comment letters. The Board believes that a zero fee for collateralized daylight overdrafts provides incentives for institutions to release funds transfers held in internal queues for liquidity reasons, improving liquidity circulation and reducing operational risk in the Fedwire Funds Service. A zero fee also creates incentives to pledge additional collateral to the Reserve Banks, mitigating their credit risk in providing intraday balances. On balance, the Board believes the expected benefits warrant reducing the fee for collateralized daylight overdrafts to zero.

The Board, however, will monitor delivery practices in the securities market to determine if securities transfers shift later in the day. To assist

[16] The Fedwire Securities service operating hours today are 8:30 a.m. to 3:30 p.m.

in this monitoring, the Board will require government securities clearing banks to submit data to the Board before and after the implementation of the revised policy to help identify shifts in behavior by dealers; the data collection requirements will be discussed directly with the clearing banks.[17] If a substantial shift does occur, the Board will take appropriate steps as needed. The Board strongly believes that reverting to pre-1994 behavior of late deliveries of securities poses unacceptable operational risks to the payment system.

C. Fees for Uncollateralized Daylight Overdrafts

The Board proposed raising the fee to 50 from 36 basis points (annual rate) for uncollateralized daylight overdrafts to encourage the collateralization of daylight overdrafts.[18]

While acknowledging the intent of increasing the uncollateralized fee, some commenters raised concerns that the higher fee may introduce liquidity challenges for collateral-constrained institutions. These commenters generally believed that institutions without sufficient collateral to support daylight overdrafts would have an incentive to hold payments for liquidity purposes to avoid daylight overdraft charges. Commenters, including an organization representing sixteen large depository institutions, stated that the collective benefits from speeding up the flow of payments would only be attained if all participants acted for the collective good rather than minimizing individual institutions' own costs and risks. These commenters also indicated that they would not continue to release payments from queues if counterparties did not reciprocate.

To mitigate the risk that institutions do not act for the overall benefit of the industry, several commenters discussed options for monitoring and promoting bilateral payment flows. Two commenters suggested individual institutions monitor counterparties, while two other commenters recommended the Federal Reserve monitor institutions' activities. Two commenters also suggested that the Federal Reserve devise incentives for institutions to release payments queued prior to 2 p.m., including time-of-day pricing.

It will be important for the industry and Federal Reserve to monitor changes in payment activities over time to evaluate whether institutions continue to hold payments for liquidity reasons. It is not fully clear, however, whether the fee increase to 50 basis points would exacerbate this problem for some institutions and whether institutions will queue payments to some degree at any positive fee, including at a zero fee, for reasons of internal liquidity risk management. On balance, the Board believes that the increase to 50 basis points for uncollateralized daylight overdrafts is appropriate in conjunction with the fee reduction to zero for collateralized daylight overdrafts. The changes together balance the overall tradeoffs between safety and efficiency by providing incentives to pledge collateral, which mitigates the Reserve Banks' risks, and incentives to increase the flow of payments, which increases liquidity circulation.

D. Deductible and Fee Waiver

The Board proposed eliminating the deductible as a source of free intraday credit with the intent of providing such credit through collateralized daylight overdrafts charged at a zero fee. The Board also proposed to increase the fee waiver to $150 from $25 to reduce the burden of the PSR policy on institutions that use small amounts of daylight overdrafts. As proposed, the $150 waiver would be subtracted from the gross fees (in a two-week reserve-maintenance period) assessed on any user of daylight overdrafts in contrast to the current waiver that only applies to gross fees of institutions that have charges less than or equal to $25 (in a two-week reserve-maintenance period).[19]

While none of the comment letters explicitly addressed the introduction of a higher fee waiver, two commenters strongly supported the elimination of the deductible. These commenters believed this change would remove a competitive disparity they have identified between FBOs and U.S.-chartered depository institutions. Under the current policy, U.S.-chartered depository institutions receive a net debit cap and deductible based on their worldwide capital, while FBOs receive a net debit cap and deductible based on no more than 35 percent of their worldwide capital. By eliminating the deductible for all depository institutions and providing free collateralized intraday credit to eligible depository institutions, including FBOs, the revised policy will address the concerns that some commenters expressed regarding the negative incentive effects of the deductible calculations.

The Board believes it is still appropriate to provide some amount of free uncollateralized liquidity to depository institutions to reduce the administrative burden on Reserve Banks and on a large number of depository institutions that incur small amounts of uncollateralized daylight overdrafts. The Board believes that the $150 fee waiver will serve those purposes under the revised PSR policy. With the Board adopting these changes, institutions should receive ample free liquidity through zero-priced collateralized daylight overdrafts. In addition, most small users of uncollateralized intraday credit should not observe a change in their daylight overdraft charges between the current and revised PSR policies.

E. Net Debit Caps[20]

The Board proposed eliminating the current two-week average cap on daylight overdrafts for healthy depository institutions while retaining the higher single-day cap. Under the proposal, the single-day cap would apply to the total of collateralized and uncollateralized daylight overdrafts.[21] The Board did not receive specific comments on the removal of the two-week net debit cap or retention of the single-day net debit cap.

The Board also proposed providing Reserve Banks additional flexibility in

[17] While the Board has access to data indicating the timing of transfers by depository institutions over the Fedwire Funds Service and Fedwire Securities Service, these data do not provide sufficiently detailed information to track effectively when dealers are delivering securities designated for repurchase agreements.

[18] In calculating an institution's fees, the value of unencumbered collateral pledged to the Reserve Banks will be subtracted from negative Federal Reserve account balances at the end of each minute to determine the institution's uncollateralized negative Federal Reserve account balance. The uncollateralized negative Federal Reserve account balance per minute will be summed and divided by the number of minutes in the Fedwire Funds Service operating day to arrive at the average daily uncollateralized daylight overdraft, which will be assessed a 50 basis point fee (annual rate). The value of collateral pledged is the same for PSR and discount window purposes.

[19] The waiver would not result in refunds or credits to an institution and cannot be carried to another reserve maintenance period. The waiver would not apply to institutions subject to the penalty fee.

[20] Net debit caps limit the aggregate amount of daylight credit that the Reserve Banks extend. Net debit caps are a function of qualifying capital and a multiplier per cap category. There are four cap categories: (in ascending order) zero, exempt-from-filing, de minimis, and self assessed (which includes high, above-average, and average multipliers).

[21] Under the current policy, net debit caps limit the amount of uncollateralized daylight overdrafts, while max caps limit the amount of approved collateralized capacity in addition to the uncollateralized amount allowed under net debit caps. Under the revised policy, the single-day cap will limit the total of collateralized and uncollateralized daylight overdrafts within the predefined net debit cap amount, and any collateralized portion would not increase the total amount. Institutions needing capacity that exceeds the net debit cap will still need to apply for a max cap.

the administration of net debit caps for fully collateralized daylight overdrafts. The Reserve Bank may forgo ex post counseling for two incidents of fully collateralized overdrafts per two consecutive reserve-maintenance periods (four weeks).[22] The additional flexibility would apply to institutions that have de minimis or self-assessed net debit caps or max caps.[23] Exempt-cap institutions are excluded from this additional flexibility because they already are allowed to exceed their cap limit twice in two consecutive reserve-maintenance periods. Zero cap institutions will not be eligible. The Board did not receive any comments on the proposed additional flexibility for ex post counseling.

The Board continues to believe that it is appropriate and prudent to have limits on intraday credit even when the credit is fully collateralized. Collateral may not always be sufficient to protect against credit risks. While haircuts on collateral help mitigate the risk that the liquidation value of collateral will fall below the credit exposure, they are not designed to eliminate the risk entirely. Thus, limits or caps complement the use of collateral in risk mitigation. Among other things, caps provide a risk management tool for institutions and the Reserve Banks in measuring and managing the size of exposures and take some pressure off the use of haircuts to address credit risks.

The Board also continues to believe that flexibility may be appropriate in counseling an institution if the daylight overdraft is fully collateralized. This flexibility to waive counseling reflects the lower risk of a fully collateralized daylight overdraft relative to an uncollateralized daylight overdraft. The limited number of waivers reflects the fact that collateral may not fully protect a Reserve Bank and that frequent violations of agreed caps may suggest other concerns about a depository institution.

Based on this analysis, the Board adopted the proposed changes to net debit caps. The elimination of the two-week average cap will increase the routine daylight overdraft capacity of institutions with self-assessed caps approximately 50 percent from the current policy. The Board also adopted the proposed additional flexibility in counseling an institution exceeding its cap when its daylight overdrafts are fully collateralized.

F. Maximum Daylight Overdraft Capacity

During its policy review, the Board evaluated potential simplifications to the current process through which institutions may apply for max caps. First, the Board proposed removing the requirement that institutions must have already explored other alternatives to address their increased liquidity needs before considering a max cap. A depository institution interested in obtaining a max cap would contact its administrative Reserve Bank, which would work with the institution to determine an appropriate capacity level based on the business case and would assess relevant financial and supervisory information in making such a credit decision. None of the comment letters addressed this proposed change.

Second, the Board proposed a streamlined max cap procedure that would allow eligible FBOs to acquire additional capacity that in total would provide up to 100 percent of worldwide capital times the self-assessed cap multiple. The streamlined procedure would enable 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 board of directors resolution authorizing the request for a max cap.[24] The Reserve Bank would assess the ability of eligible FBOs to manage the intraday capacity permitted by the max cap as part of its review of relevant financial and supervisory information. The Reserve Bank, in consultation with the home country supervisor, would engage in initial as well as periodic dialogue with the institution that would be analogous to the periodic review of liquidity plans performed with U.S.-chartered institutions to ensure the institution's intraday liquidity risk is managed appropriately. Under this proposal, however, if an FBO requests capacity in excess of 100 percent of worldwide capital times the self-assessed cap multiple, it would be subject to the general max cap procedure applicable to all institutions.

Four commenters supported the proposed streamlined max cap procedure for FBOs that are financial holding companies or SOSA 1-rated institutions. The commenters believed that the streamlined max cap would facilitate institutions' managing their payments activity. Three of these commenters, however, requested that the Board reconsider calculating the net debit cap for financial holding company or SOSA 1-rated FBOs on 100 percent (rather than up to 35 percent) of their worldwide capital without requiring collateral for the additional capacity. The commenters stated that the streamlined max cap would continue to create a competitive disadvantage for FBOs by not allowing them to decide whether to pledge collateral to support daylight overdrafts, while U.S.-chartered depository institutions can make business decisions regarding how much, if at all, to collateralize. One commenter believed that a mandatory collateralized regime would resolve this disparity by requiring all institutions to collateralize 100 percent of their overdrafts. Another commenter representing several FBOs noted that if all institutions collateralized their daylight overdrafts as a result of the proposed policy changes, the streamlined max cap procedure would make any differences largely moot as a practical matter.

The Board continues to view the max cap as an important tool in helping Reserve Banks and depository institutions manage intraday risk in a manner that supports the payment needs of individual institutions and the payment system as a whole. The Board believes the proposed changes will introduce additional flexibility into this program, thereby improving the flow of payments and liquidity in the payment system, and will more effectively reflect the strategic direction of the new policy. The Board also continues to believe the streamlined max cap procedure effectively balances the safety and efficiency objectives of the PSR policy and improves the position of FBOs. The procedure provides a more efficient method for FBOs to gain additional capacity than current procedures while helping to resolve the increased risk

[22] 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 may include an assessment of the causes of the overdrafts, a counseling letter to the institution, a review of the institution's account-management practices, and an assessment of whether a higher net debit cap may be warranted. In situations involving problem institutions, the Reserve Bank may assign the institution a zero cap and impose other account controls, 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.

[23] 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. If an FBO exceeds its cap periodically due to payments, such as securities transactions, that are not covered under a real-time monitor, the Reserve Bank may waive counseling if the daylight overdrafts are fully collateralized.

[24] The FBO would still be required to complete a self-assessment and provide a board of directors resolution for the self-assessed cap.

associated with FBOs because of the timeliness and scope of available supervisory information and other supervisory issues that may arise because of the cross-border nature of the FBO's business (for example, application of different legal regimes).

The Board has adopted the proposed change to remove the requirements to pursue first all other options. The Board has also approved the proposed streamlined max cap procedure. In addition, the Board has approved an early implementation date for the streamlined max cap procedure on March 26, 2009. The early implementation should help FBOs manage their payment activity more effectively, particularly when combined with the deductible changes under the interim policy (discussed later).

G. Penalty Fees

The Board proposed to increase the penalty fee for daylight overdrafts to 150 from 136 basis points. The penalty rate structure has traditionally been the regular daylight overdraft fee plus 100 basis points. The Board did not receive any comments related to the increase in fees.

The Board continues to believe that it is appropriate to maintain a 100 basis point spread between the regular and penalty rates for daylight overdrafts and adopted the proposed penalty fee of 150 basis points. The penalty rate will continue to be applied to institutions that incur daylight overdrafts but do not have regular access to the discount window and thus are not eligible under the PSR policy for intraday credit.

H. Implementation

Along with the general support for the proposed PSR policy changes, the Board received several requests to shorten the time until implementation. The Board proposed that the policy changes could be implemented approximately two years from the announcement of a final rule. Six commenters requested that the Board implement the proposed policy within one year of publication of the final rule so that they may take advantage sooner of the zero fee for collateralized overdrafts. Another commenter believed that institutions should have the ability to take advantage of the proposed policy in six months from the final rule.[25] Most commenters believed that they would only need to make minimal procedural or systems changes to be prepared for the policy change, although two commenters noted that the degree of procedural or systems modifications would depend on changes the Reserve Banks make to their collateral-management and collateral-monitoring systems. One commenter believed that a two-year time frame was appropriate to provide all institutions sufficient time to make the necessary modifications to internal processes and systems.

The Board recognizes the industry's interest in an earlier implementation of the revised policy. Many commenters, however, requested changes to Reserve Banks' systems and processes for enhanced collateral management and monitoring. The Reserve Banks' plan to make several systems changes, discussed in a previous section, related to collateral management and monitoring, and these changes will require time to implement. Given the importance of these and other systems' changes, the Board approved an implementation window from the fourth quarter of 2010 to the first quarter of 2011 with a specific effective date to be announced at least 90 days in advance. The implementation window provides needed flexibility to the Reserve Banks for systems changes not only to enhance collateral management and monitoring but also to implement all aspects of this policy as well as other important policies.

In the near term, the Board approved, effective March 26, 2009, the streamlined max cap procedure that will allow certain FBOs to obtain more quickly additional collateralized capacity up to 100 percent of worldwide capital times the self-assessed cap multiples. Eligible FBOs interested in the streamlined max cap should contact their administrative Reserve Banks.

III. Interim Policy

In addition to the comments on the proposed PSR policy changes, two commenters requested that the Board consider an interim policy change to the calculation of the current deductible for FBOs to reflect 100 percent of worldwide capital rather than the current level of up to 35 percent. These commenters indicated that the current deductible calculation puts FBOs at a competitive disadvantage relative to comparable U.S.-chartered depository institutions, and although the proposed elimination of the deductible addresses this issue, the changes will not take effect for more than a year.

The deductible calculation has prompted some FBOs to delay payment flows. Several commenters to the Consultation Paper on Intraday Liquidity Management and the Payments System Risk Policy stated that FBOs instituted the process of queuing payments for liquidity reasons to respond to the lower deductible that is based on up to 35 percent of worldwide capital.[26] Commenters discussed minimizing fees in some cases by managing payment flows to the level of free credit provided by the deductible. A deductible based on 100 percent of capital, however, would provide additional free credit that should enable the release of payments being held in internal liquidity queues.

The Board considered the concerns raised regarding competitive disparities created by the current deductible calculation as well as the implications for holding payments. The Board also considered the increased risk associated with FBOs related to the timeliness and scope of available supervisory information and other supervisory issues that may arise because of the cross-border nature of the FBO's business (for example, application of different legal regimes). In weighing these factors, the Board approved an interim policy that will use 100 percent of worldwide capital for eligible FBOs rather than up to 35 percent in calculating the deductible amount.[27] An eligible FBO must request and receive Reserve Bank approval for a streamlined max cap and have collateral pledged at all times to its Reserve Bank equal to or greater than the amount of the deductible.[28]

The Board sought to balance efficiency and safety objectives in its interim policy. The increased deductible provides eligible institutions with an increase from potentially 35 percent to 100 percent of worldwide capital, significantly increasing the amount of free credit provided by the Reserve Banks to eligible FBOs. At the same time, the increased deductible is available only to the highest-rated FBOs that would also be eligible for the

[25] The commenter wanted to implement the proposed PSR policy changes in tandem with the proposed posting rule changes affecting ACH debit transfers. The Board had proposed to shift 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. See 73 CFR 12443, March 7, 2008. The Board issued a separate notice today in the **Federal Register** with its decision not to pursue at this time the proposed posting rules changes.

[26] See 71 FR 35679, June 21, 2006.

[27] The deductible calculation involves the fraction of eligible worldwide capital times 10 percent.

[28] If an FBO meets the criteria for the streamlined procedure for max caps but was granted a max cap before implementation of the streamlined procedure (effective March 26, 2009) or is approved for a max cap under the general procedure because the limit being requested is greater than 100 percent of worldwide capital, the FBO would still qualify for the higher deductible if it also met the collateralization requirement.

streamlined max cap and those FBOs that hold collateral up to the amount of the deductible. These requirements help limit the Reserve Banks' exposure from the greater risk associated with FBOs and the likely increase in daylight overdraft use.

The interim policy will be effective on March 26, 2009 and will remain in effect until implementation of the revised PSR policy. The effective date is consistent with the early implementation of the streamlined max cap procedure.

IV. 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 payment systems participants.[29] Under these procedures, the Board assesses whether a change would have a direct and material 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 payment and settlement in systems whether they are operated by the Reserve Banks or private-sector organizations. The demand for intraday balances at the Reserve Banks for processing payments for private-sector clearing and settlement systems can in normal market conditions 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' payment systems. For some large users of intraday credit, the adopted 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 collateralized daylight overdrafts.

[29] These procedures are described in the Board's policy statement "The Federal Reserve in the Payment System," as revised in March 1990. (55 FR 11648, March 29, 1990).

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 policy statement under the authority delegated to the Board by the Office of Management and Budget. The revised policy statement does not contain any new or revised collection of information pursuant to the Paperwork Reduction Act.

VI. Federal Reserve Policy on Payment System Risk (Effective March 26, 2009)

Effective March 26, 2009, the "Federal Reserve Policy on Payment System Risk" is amended to change all references to payments systems or payments system to payment systems or payment system and make other conforming changes. It is also amended as follows.

Introduction [No Change]

Risks in Payment and Settlement Sytems [No Change]

I. Risk Management in Payment and Settlement Systems [No Change]
- A. Scope
- B. General Policy Expectations
- C. Systemically Important Systems
  1. Principles for Systemically Important Payment 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 C.3. and II. D Revised]
- A. Daylight Overdraft Definition and Measurement [No Change]
- B. Pricing [No Change]
- C. Net Debit Caps
  1. Definition [No Change]
  2. Cap Categories [No Change]
    a. Self-Assessed [No Change]
    b. De Minimis [No Change]
    c. Exempt-From-Filing [No Change]
    d. Zero [No Change]
  3. Capital Measure
    a. U.S.-Chartered Institutions [No Change]
    b. U.S. Branches and Agencies of Foreign Banks
- D. Maximum Daylight Overdraft Capacity
  1. General Procedure
  2. Streamlined Procedure for Certain FBOs

E. Special Situations [No Change]
  1. Edge and Agreement Corporations [No Change]
  2. Bankers' Banks [No Change]
  3. Limited-Purpose Trust Companies [No Change]
  4. Government-Sponsored Enterprises and International Organizations [No Change]
  5. Problem Institutions [No Change]

F. Monitoring [No Change]
  1. Ex post [No Change]
  2. Real time [No Change]
  3. Multi-District Institutions [No Change]

G. Transfer-Size Limit on Book-Entry Securities [No Change]

Introduction [No Change]

Risks in Payment and Settlement Systems [No Change]

I. Risk Management in Payment and Settlement Systems [No Change]

II. Federal Reserve Intraday Credit Policies [II C.3. and II D Revised]

A. Daylight Overdraft Definition and Measurement [No Change]

B. Pricing [No Change]

C. Net Debit Caps

1. Definition [No Change]

2. Cap Categories [No Change]

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. [No change]

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.[30] U.S. capital equivalency is equal to the following:

- 35 percent of capital for FBOs that are financial holding companies (FHCs).[31]

[30] 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.

[31] 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

- 25 percent of capital for FBOs that are not FHCs and have a strength of support assessment ranking (SOSA) of 1.[32]
- 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.D.) 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.

For purposes of calculating the deductible for daylight overdraft pricing, eligible FBOs will be granted a capital measure of 100 percent of capital. Eligible FBOs must have requested and been approved for a streamlined max cap and have unencumbered collateral pledged at all times to their Reserve Bank equal to or greater than the amount of the deductible.[33] [34]

D. 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 payment systems may function effectively and efficiently and to remove barriers, as appropriate, to foster risk-reducing payment 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.[35] [36] This policy is intended to provide extra liquidity through the use of unencumbered collateral by the few institutions that might otherwise be constrained from participating in risk-reducing payment system initiatives.[37] The Board believes that providing extra liquidity to these few institutions should help reduce 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. Institutions that request daylight overdraft capacity beyond the net debit cap must have already explored other alternatives to address their increased liquidity needs.[38] The Reserve Bank 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.[39]

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.F.).

Institutions with exempt-from-filing and de minimis net debit caps may *not* obtain additional daylight overdraft 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 to obtain a maximum daylight overdraft capacity. 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 total capacity is 100 percent or less of worldwide capital times a self-assessed

standards that give due regard to the principle of national treatment and equality of competitive opportunity (12 U.S.C. 1843(l)).

[32] 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. 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.

[33] If an FBO meets the criteria for the streamlined procedure for max caps but was granted a max cap before implementation of the streamlined procedure (effective March 26, 2009) or is approved for a max cap under the general procedure because the limit being requested is greater than 100 percent of worldwide capital, the FBO would still qualify for the higher deductible if it also met the collateralization requirement.

[34] Under some circumstances, rules for determining whether collateral is available may differ for PSR and discount window purposes. All collateral must be acceptable to the Reserve Banks.

[35] 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.

[36] 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. Collateral eligibility and margins are the same for PSR policy purposes as for the discount window. See *http://www.frbdiscountwindow.org/* for information.

[37] 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).

[38] Some potential alternatives available to an institution to address increased intraday credit needs include shifting funding patterns, delaying the origination of funds transfers in a way that does not significantly increase operational risks, or transferring some payments processing business to a correspondent bank.

[39] 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.

cap multiple.[40] 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.[41] 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.

E. Special Situations [No Change]

F. Monitoring [No change]

G. Transfer-Size Limit on Book-Entry Securities [No Change]

VII. Federal Reserve Policy on Payment System Risk (Effective When Announced)

The "Federal Reserve Policy on Payment System Risk" is amended as follows when announced in a subsequent **Federal Register** notice.

Introduction [Revised]

Risks in Payment and Settlement Systems [Revised]

I. Risk Management in Payment and Settlement Systems [No Change]
A. Scope
B. General Policy Expectations
C. Systemically Important Systems
1. Principles for Systemically Important Payment 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
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

Payment 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 payment 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 payment 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 payment system; (2) industry and supervisory methods for risk management; and (3) internationally accepted risk-management principles and minimum standards for systemically important payment and settlement systems.[42]

Part I of this policy sets out the Board's views, and related principles and minimum standards, regarding the management of risks in payment and settlement systems, including those operated by the Reserve Banks. In setting out its views, the Board seeks to encourage payment and settlement systems, and their primary regulators, to take the principles and minimum standards in this policy into consideration in the design, operation, 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 payment 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.[43] 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 payment system. The Reserve Banks provide intraday balances by way of supplying temporary, intraday credit to healthy depository institutions, predominantly through collateralized intraday overdrafts.[44] 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 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 payment 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

[40] 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.

[41] The liquidity reviews will be conducted by the administrative Reserve Bank, in consultation with each FBO's home-country supervisor.

[42] For the Board's long-standing objectives in the payment system, see "The Federal Reserve in the Payments System," September 2001, FRRS 9–1550, available at *http://www.federalreserve.gov/paymentsystems/pricing/frpaysys.htm.*

[43] To assist depository institutions in implementing this part of the Board's payment system risk policy, the Federal Reserve has prepared two documents, the *Overview of the Federal Reserve's Payment System Risk Policy* and the *Guide to the Federal Reserve's Payment System Risk Policy*, which are available on line at *http://www.federalreserve.gov/paymentsystems/PSR/relpol.htm.* The *Overview of the Federal Reserve's Payment 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 Payment 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.

[44] 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.

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, payment and settlement systems.

Risks in Payment and Settlement Systems

The basic risks in payment 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.[45]

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.

These risks arise between financial institutions as they settle payments and other financial transactions and must be managed by institutions, both individually and collectively.[46] [47] Multilateral payment 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 payment 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 payment 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 payment system. Likewise, supervisory objectives regarding the safety and soundness of depository institutions must take into account the risks payment 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 Payment and Settlement Systems [No Change]

II. Federal Reserve Intraday Credit Policies [II and II B Through II G Revised]

This part outlines the methods used to provide intraday credit to ensure the smooth functioning of payment 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 Payment System Risk Policy on Intraday Credit* (Overview) and the *Guide to the Federal Reserve's Payment System Risk Policy on Intraday Credit* (Guide).[48] The Overview summarizes the Board's policy on the provision of intraday credit, including net debit caps, daylight overdraft fees, and the fee waiver. This document 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 sets forth this policy whereby the Reserve Banks supply intraday balances and credit predominantly through explicitly collateralized daylight overdrafts to healthy depository institutions.[49] This policy offers pricing incentives to encourage greater collateralization (see section II.C.). To avoid disrupting the operation of the payment system and increasing the cost burden on a large

[45] 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/bcbs96.htm.* Each of these definitions is largely consistent with those included in the Recommendations for Central Counterparties (Recommendations for CCP).

[46] 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.

[47] Several existing regulatory and bank supervision guidelines and policies also are directed at institutions' management of the risks posed by interbank payment 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.

[48] Available at *http://www.federalreserve.gov/paymentsystems/PSR/relpol.htm.*

[49] 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.).

number of institutions using small amounts of daylight overdrafts, the use of collateral is generally voluntary.[50]

Collateral eligibility and margins remain the same for PSR policy purposes as for the discount window.[51] Unencumbered collateral can be used to collateralize daylight overdrafts.[52] In-transit securities are eligible collateral to pledge for PSR purposes at Reserve Banks' discretion.[53] All collateral must be acceptable to the Reserve Banks.

C. Pricing

Under the voluntary collateralization regime, the fee for collateralized overdrafts is 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 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).[54] The effective daily rate is calculated by dividing the effective annual rate by 360.[55] 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. A negative uncollateralized Federal Reserve account balance is calculated by subtracting the unencumbered, net lendable value of collateral pledged from the total negative Federal Reserve account balance at the end of each minute. 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.[56]

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.[57]

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 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. 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. Granting a net debit cap, or any extension of intraday credit, to an institution is at the discretion of the Reserve Bank.

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: Net debit cap = cap multiple × 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[58]	$10 million or 0.20
Zero	0

The cap is applied to the total of collateralized and uncollateralized daylight overdrafts.[59] 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. Consistent with practices for U.S.-chartered depository institutions, the Reserve Banks will advise home-country supervisors of the daylight overdraft capacity of U.S. branches and agencies of FBOs under their jurisdiction, as well as of other pertinent information related to the

[50] The Reserve Banks may require collateral in certain circumstances, such as when institutions breach their net debit caps.

[51] See *http://www.frbdiscountwindow.org/* for information on the discount window and PSR collateral acceptance policy and collateral margins.

[52] Under some circumstances, rules for determining whether collateral is available may differ for PSR and discount window purposes.

[53] 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.

[54] 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.

[55] Under the current 21.5-hour Fedwire operating day, the effective daily daylight-overdraft rate is truncated to 0.0000124.

[56] The waiver shall not result in refunds or credits to an institution and cannot be carried to another reserve maintenance period.

[57] 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.

[58] 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.

[59] Collateral will not increase the net debit cap limit. Institutions seeking capacity that exceeds the net debit cap need to apply for the maximum daylight overdraft capacity (see section II. E).

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.[60] The assessment of creditworthiness is based on the institution's supervisory rating and Prompt Corrective Action (PCA) designation.[61] 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 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 the 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.[62]

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.[63]

As part of its normal examination, the institution's examiners may review the contents of the self-assessment file.[64] 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. If an examiner has concerns, the Reserve Bank would 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 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

[60] 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.

[61] 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).

[62] An FBO should undergo the same self-assessment process as a U.S.-chartered institution 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.

[63] 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.

[64] Between examinations, examiners or Reserve Bank staff may contact an institution about its cap if there is other relevant information, such as statistical or supervisory reports, that suggests there may have been a change in the institution's financial condition.

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.). The Reserve Bank will assign the exempt-from-filing net debit cap.

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. 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.[65] U.S. capital equivalency is equal to the following:

- 35 percent of capital for FBOs that are financial holding companies (FHCs).[66]
- 25 percent of capital for FBOs that are not FHCs and have a strength of support assessment ranking (SOSA) of 1.[67]
- 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 an 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.

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 payment systems may function effectively and efficiently and to remove barriers, as appropriate, to foster risk-reducing payment 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.[68] [69] 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-reducing payment system initiatives.[70] The Board believes that providing extra liquidity to these few institutions should help reduce 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 Bank will work with an institution that requests additional

[65] 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.

[66] 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)).

[67] 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. 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.

[68] 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.

[69] All collateral must be acceptable to the Reserve Banks. The Reserve Banks may accept securities in transit on the Fedwire Securities Service as collateral to support the maximum daylight overdraft capacity level. Collateral eligibility and margins are the same for PSR policy purposes as for the discount window. See *http://www.frbdiscountwindow.org/* for information.

[70] 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).

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.[71]

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 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 an FHC or has an SOSA rating of 1 and has a self-assessed net debit cap may request from its Reserve Bank a streamlined procedure to obtain a maximum daylight overdraft capacity. 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 total capacity is 100 percent or less of worldwide capital times a self-assessed cap multiple.[72] 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.[73] 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. 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 payment system, including risk to the Federal Reserve, with that of minimizing the adverse effects on the payment 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 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.[74] The daylight-overdraft penalty rate applies to the institution's daily average 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 this section.

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. While such institutions may be required to post collateral, they are not eligible for the zero fee associated with collateralized daylight overdrafts.

1. Edge and Agreement Corporations[75]

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

[71] 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.

[72] 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.

[73] The liquidity reviews will be conducted by the administrative Reserve Bank, in consultation with each FBO's home country supervisor.

[74] Under the current 21.5-hour Fedwire operating day, the effective daily daylight-overdraft penalty rate is truncated to 0.0000373.

[75] 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)).

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 service its customers. Edge and agreement corporation subsidiaries of FBOs are treated in the same manner as their domestically owned counterparts.

2. Bankers' Banks [76]

Bankers' banks are exempt from reserve requirements and do not have regular access to the discount window. 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 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 that are eligible to incur daylight overdrafts. The policy set out in this section applies only to those bankers' banks that have not waived their exemption from reserve requirements.

[76] 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)).

3. Limited-Purpose Trust Companies [77]

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 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 [78]

The Reserve Banks act as fiscal agents for certain GSEs and international organizations in accordance with federal statutes. These institutions, however, 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.

[77] 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)).

[78] The GSEs include Federal National Mortgage Association (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.

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.[79] If the overdraft is fully collateralized, the Reserve Bank may choose not to contact the institution for up to two incidents per two consecutive two-week reserve-maintenance periods (the total of four weeks).

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 offline or prohibiting it from using Fedwire.

2. Real Time

A Reserve Bank will 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.[80]

3. Multi-District Institutions

Institutions, such as those maintaining merger-transition accounts and U.S. branches and agencies of a

[79] For monitoring exempt institutions, overdrafts above the exempt cap limit, regardless of whether such overdrafts are collateralized or uncollateralized, should occur no more than twice in two consecutive two-week reserve-maintenance periods (the total of four weeks).

[80] Institutions that are monitored in real time must fund the total amount of their ACH credit originations through the Reserve Banks in order for the transactions to be processed by the Federal Reserve, even if those transactions are processed one or two days before settlement.

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 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 FBO, the administrative Reserve Bank generally is the Reserve Bank that exercises the Federal Reserve's oversight responsibilities under the International Banking Act.[81] 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 this policy.[82]

H. Transfer-Size Limit on Book-Entry Securities [No Change]

By order of the Board of Governors of the Federal Reserve System, dated: December 18, 2008.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E8–30627 Filed 12–23–08; 8:45 am]

BILLING CODE 6210–01–P

[81] 12 U.S.C. 3101–3108.

[82] 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.

FEDERAL RESERVE SYSTEM

[Docket No. OP–1346]

Policy on Payment System Risk; Daylight Overdraft Posting Rules

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board has decided not to pursue at this time its proposal to change the posting time to 8:30 a.m. for commercial and government automated clearinghouse (ACH) debit transfers that are processed by the Federal Reserve Banks' (Reserve Banks) FedACH service. (All times are eastern time.) The proposal would have aligned the posting time for ACH debit transfers with the posting time for ACH credit transfers, which are currently posted at 8:30 a.m. on the settlement date. Commercial and government ACH debit transfers processed by the Reserve Banks' FedACH service will continue to be posted at 11 a.m., while commercial and government ACH credit transfers will continue to be posted at 8:30 a.m. The credit and debit accounting entries associated with ACH credit transfers and ACH debit transfers are posted simultaneously at the appointed posting time. In line with this decision, the Board will not move the posting time for Treasury Tax and Loan (TT&L) investments associated with Electronic Federal Tax Payment System (EFTPS) ACH debit transfers. These transactions will continue to be posted at 11 a.m. The Board will reconsider the proposal in the future.

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

On March 7, 2008, the Board requested comment on changing the posting time for commercial and government ACH debit transfers that are processed by the Reserve Banks' FedACH service to 8:30 a.m. (from 11 a.m.) on the settlement date to coincide with the posting time for commercial and government ACH credit transfers.[1] The Board outlined four potential benefits from shifting earlier the posting time for ACH debit transfers. First, for institutions that originate large values 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.[2] Second, the change could increase liquidity for institutions that originate ACH debit transfers over the Electronic Payments Network (EPN), the other ACH operator, but have transfers delivered to receiving depository institutions over the FedACH network (inter-operator transactions).[3] All ACH debit transfers would settle at 8:30 a.m. (with all ACH credit transfers) regardless of the operator through which the transfer is originated. Third, moving the posting time for ACH debit transfers to 8:30 a.m. would align the Reserve Banks' FedACH settlement times with those of EPN. The Reserve Banks' Retail Payments Office, which has primary responsibility for FedACH, believed that this change would remove competitive disparities between the two ACH operators and their participants that arise from different settlement times for ACH debit transfers. Fourth, the change would conform more closely to the Board's guidelines for measuring daylight overdrafts, specifically the principle that encourages posting times to be as close as possible to the delivery of payments to the receiving institution. Because FedACH payments are processed in the early morning hours, usually between 2 a.m. 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.

In its proposal, the Board also recognized that the simultaneous posting of ACH debit and credit transfers would reduce, on average, the available balances between 8:30 a.m. and 10:59 a.m. for the majority of FedACH participants (approximately 95 percent). The majority of FedACH participants currently gain balances from the posting of ACH credit transfers at 8:30 a.m. If ACH debit transfers are also posted at 8:30 a.m., the gain in balances for these institutions will either diminish or be eliminated. Many institutions would need to fund their Federal Reserve accounts through daylight overdrafts or other funding sources. The vast majority of

[1] See 73 FR 12443, March 7, 2008.

[2] Liquidity refers to balances and intraday credit available in Federal Reserve accounts to make payments.

[3] 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.

institutions that would need to fund their accounts are eligible to incur daylight overdrafts, but the Board estimated that there are at least thirty-five institutions affected that do not have access to intraday credit.

In addition to proposing the change to the posting rules for ACH debit transfers, the Board also intended, 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. The U.S. Treasury uses TT&L accounts to collect taxes and invest excess Treasury balances with depository institutions, including EFTPS tax payments collected through either ACH credit or debit transfers. The TT&L investments 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 of these tax payments and investment of excess tax funds collected is intended to minimize the effect of the daily tax collection on aggregate reserve balances of the banking system. The Board intended to 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.

II. Summary of Comments and Analysis

The Board received twenty-seven comment letters on its proposed policy to change the daylight overdraft posting rules. The commenters included eight commercial banking organizations, nine bankers' banks (including corporate credit unions), one government-sponsored entity (GSE), one Reserve Bank, one private-sector clearing and settlement system, and seven industry organizations. Nine commenters, including commercial banking organizations, the Reserve Banks' Retail Payments Office, and industry organizations, were generally supportive of the proposed changes to help reduce the intraday liquidity needs of certain depository institutions for ACH transfers. While supportive of the proposal, several of these commenters raised concerns about other institutions—particularly smaller institutions, institutions in western time zones, and those that do not have access to intraday credit—that would incur costs associated with the proposed change.

Seventeen commenters, including commercial banking organizations, bankers' banks, industry organizations, and a GSE, opposed the proposed change to posting rules. These commenters stated that the proposed change would increase daylight overdrafts and create significant funding and other costs for their institutions or members. Some of these commenters either do not have or represent those that do not have regular discount window access and thus do not have access to intraday credit under the Board's Policy on Payment System Risk (PSR).[4] These institutions would need to hold higher balances overnight at the Reserve Banks or find alternative sources to supply funding before 8:30 a.m. to avoid incurring daylight overdrafts and thereby avoid violating the PSR policy and incurring daylight overdraft penalty fees.

One commenter, a private-sector clearing and settlement system, indicated that it had no objection to the proposed change but noted that some depository institutions might incur greater daylight overdrafts. This commenter, as well as several others, recommended implementing the posting-rule change simultaneously with the proposed changes to the PSR policy.[5] The proposed PSR policy changes would allow institutions to pledge voluntarily collateral and obtain a zero daylight overdraft fee on the resulting collateralized daylight overdrafts. Institutions that might incur daylight overdrafts from earlier posting of ACH debit transfers would have the opportunity to collateralize all or a portion of their daylight overdrafts to reduce or eliminate daylight overdraft fees associated with the posting-rule change.

In responding to the proposal, the majority of commenters also addressed the questions raised by the Board on competitive disparities, availability of funds to customers of depository institutions, liquidity concerns, cost estimates, and implementation time frames.

The Board asked whether the differences in settlement times caused competitive disparities between the ACH operators or institutions that use one or the other operator. Eight commenters stated that they believed that there are no competitive disparities between ACH operators or their participating depository institutions or that the disparity resulting from the differences in settlement times is negligible. Three of these commenters mentioned that they consider a number of factors, including price and service levels, in choosing an operator and believed others use similar criteria in making a decision about what operator to use. Five commenters, however, believed that FedACH and large originating depository institutions using FedACH would be in a better position if they received credits earlier for the ACH debit transfers they originate. These commenters generally believed that FedACH and its customers are competitively disadvantaged relative to EPN and its customers because of differences in settlement timing.

The Board also requested feedback on whether customers of depository institutions would benefit from earlier availability of funds. Two respondents noted that the posting-rule change could have the opposite effect for the availability of funds for customers of bankers' banks. Such customers would need to hold a higher value of funds overnight and in the morning in order to cover the earlier debit for ACH debit transfers, which would reduce the availability of funds for those customers. Three commenters responded that the proposed change would not have an effect on the availability of funds to their customers and believed that there would be no change for most depository institutions. Some of these commenters and one additional commenter, however, acknowledged that the change could improve the availability of funds to customers at certain depository institutions. To the extent funds would be made available earlier, one commenter stated that businesses would be able to manage their cash positions earlier in the day and use those funds for other purposes.

The Board asked whether the proposed broad PSR policy changes, which include a zero fee for collateralized daylight overdrafts, might mitigate the liquidity concerns of originating institutions of ACH debits without changing the posting rules. The simultaneous posting of ACH credit and debit transfers could reduce the use of intraday liquidity for certain originating depository institutions because they would only need to fund the net amount at 8:30 a.m. Three commenters noted that the broad PSR policy changes alone would be sufficient to alleviate liquidity issues for most originating institutions. While in agreement with these three commenters, another respondent stated that liquidity concerns of large originating institutions could be best mitigated if both the proposed broad PSR policy changes and the proposed posting-rule change were adopted

[4] See the PSR policy at *http://www.federalreserve.gov/paymentsystems/psr/default.htm*.

[5] The Board issued a separate proposal to address broad changes to the PSR policy. See 73 FR 12417, March 7, 2008. The final rule for these broad policy changes is published elsewhere in today's **Federal Register**.

simultaneously. This commenter and the other eight supporters of the proposed change noted that simultaneous posting of ACH debits with ACH credits would reduce the liquidity certain originating depository institutions would need.

In addition, the Board sought feedback on whether the proposed broad PSR changes would mitigate liquidity pressures for receiving institutions if the posting-rule change were adopted. Six commenters stated that the simultaneous adoption of the broad PSR policy and posting-rule changes could mitigate liquidity issues created by the posting-rule change for receiving institutions. Most of these commenters, however, expressed concern about whether institutions, especially large receiving depository institutions, would have sufficient collateral to pledge to offset increases in daylight overdrafts. In addition to these commenters, four other commenters stated that either they or others do not have access to intraday credit and thus the proposed PSR policy changes would not mitigate the effect of the posting-rule change for those institutions. Two commenters requested that the Federal Reserve allow bankers' banks that do not have access to intraday credit to pledge collateral and receive collateralized intraday credit at a zero fee. Under the current eligibility criteria, collateralized credit at a zero fee would be restricted to accountholders that have access to intraday credit.

In response to questions on costs, four commenters stated that the cost of increased daylight overdrafts might not be significant if the broad PSR policy changes were simultaneously implemented, although two of these commenters indicated that some institutions, particularly large receivers of ACH debit transfers, might not have sufficient collateral or might not have access to daylight overdrafts and would incur increased costs. A range of commenters identified interest-related and other costs associated with the proposed posting-rule change. Fifteen commenters believed that institutions without access to intraday credit as well as their customers would be especially likely to suffer lost interest income. Several of these commenters discussed the opportunity cost of needing to fund their accounts the previous night, including over weekends and holidays, rather than investing in the market. Others discussed pursuing arrangements for the early return of fed funds loans. Commenters expressed doubt that counterparties would be willing to return fed funds loans before 8:30 a.m. and stated that reduced rates would be associated with such arrangements, if counterparties were willing.[6] One commenter also raised the option of holding greater contractual clearing balances to increase its earnings credits for Reserve Banks' services but stated the earnings credits would exceed its needs for Reserve Bank-provided priced services and would be at a rate lower than alternative investments.

Eight respondents also highlighted the daily variability that makes it difficult for receivers of ACH debit transfers to predict with certainty their net debit positions before the day of settlement. This variability might require institutions to hold higher overnight balances than actually needed to ensure sufficient funds to cover ACH debit transfers. For some, an alternative to holding overnight balances or obtaining the early return of fed funds loans would be to hold reserves voluntarily (and thus gain access to the discount window and eligibility for intraday credit), but commenters indicated that holding reserves would also entail significant costs.[7] In addition, three commenters noted that depository institutions located outside the eastern time zone, particularly smaller institutions, might incur additional staffing costs in order to manage their accounts before normal business hours.

For implementation, the Board stated that, if adopted, it would specify an effective date at least six months from the announcement of a final rule. In response, six commenters stated that six months or less would be a sufficient lead time for implementation, while two commenters noted that implementation in six months would be a hardship. Eight commenters requested that the Board align the implementation time of the posting-rule changes with the implementation of the broad PSR policy changes, although in citing a preference for simultaneous implementation, two of these commenters requested bankers' banks without access to intraday credit be able to pledge collateral for a zero fee.

Three commenters requested that the Board implement the posting-rule change after the Reserve Banks begin paying interest on Federal Reserve account balances. Paying interest on Federal Reserve account balances would reduce the opportunity cost of holding balances overnight at the Federal Reserve to cover the earlier posting of ACH debit transfers. In some cases, the interest paid by the Federal Reserve may be greater than rates available in the market, which would remove the opportunity cost of holding higher balances.[8] To the extent that the interest paid by the Federal Reserve is less than the interest that could be obtained in the market, however, institutions would still incur opportunity costs of holding balances at the Reserve Banks, but the incremental cost would be greatly reduced through the payment of interest on these balances. Paying interest on Federal Reserve account balances would also reduce the costs for bankers' banks to hold reserves voluntarily (by waiving their exemption from reserve requirements) to gain access to the discount window and eligibility for intraday credit. In holding reserves voluntarily, bankers' banks would have the possibility of using daylight overdrafts to cover the earlier posting of ACH debit transfers. While the original effective date for paying interest on Federal Reserve account balances was October 2011, the Board was granted authority for an earlier implementation in October 2008. The Board issued an interim final rule to outline its initial implementation for paying interest on Federal Reserve account balances, which began on October 9, while also requesting comment on certain aspects of the implementation.[9]

The Board has considered the comments on the proposed posting-rule change and has decided not to pursue the change at this time. Almost all commenters stated that the posting-rule change would place additional costs and liquidity pressures on many institutions, especially those institutions that do not have access to intraday credit at the Reserve Banks, smaller institutions, and West Coast institutions. Most commenters indicated that they do not believe significant competitive disparities between the ACH operators or depository

[6] Today, a typical agreement for the early return of fed funds loans includes a reduced rate and delivery by 9 a.m.

[7] Bankers' banks, including corporate credit unions, are depository institutions that are not required to maintain reserves under the Board's Regulation D (12 CFR 204) because they are organized solely to do business with other financial institutions, are owned primarily by the financial institutions with which they do business, and do not do business with the general public. Such bankers' banks also generally are not eligible for Reserve Bank discount window credit under the Board's Regulation A (12 CFR 201.2(c)(2)) and thus are not eligible for intraday credit under the Board's PSR policy. Bankers' banks may waive their exemption from reserve requirements under Regulation D to gain regular access to the discount window and eligibility for intraday credit.

[8] The rate paid by the Federal Reserve currently exceeds the effective rate for fed funds loans. Institutions have a significant incentive to hold balances, in particular excess balances (balances held in excess of required reserve balances and clearing balances), at the Reserve Banks.

[9] See 73 FR 59482, October 9, 2008.

institutions result from differences in settlement times. It also does not appear that customers of depository institutions would significantly benefit from ACH debit transfers being settled earlier in the day. In addition, the majority of commenters opposed the proposed change and several of those that supported the change raised significant concerns about its effect on other institutions.

The Board, however, believes that over time the payment of interest on Federal Reserve account balances and the broad PSR policy changes, which were announced separately today in the **Federal Register**, will significantly mitigate the concerns raised by commenters. Interest on Federal Reserve account balances will reduce the cost of holding balances overnight to fund earlier posting of ACH debits and may encourage institutions to hold reserves voluntarily, which would make them eligible for intraday credit. The broad PSR policy changes will also mitigate the cost of incurring greater daylight overdrafts through the voluntary pledging of collateral for a zero fee.

While not pursuing the original proposal at this time, the Board believes that the simultaneous posting of ACH credit and debit transfers at 8:30 a.m. would enhance the efficiency of the payment system in the long run. Institutions that originate large values of ACH debit transfers would benefit from the need for less liquidity to settle their ACH transfers. Such a change also would align the settlement times for all ACH transfers so that it would not matter through which operator an institution originated its ACH transfers. In addition, the change would conform more closely to the Board's guidelines for measuring daylight overdrafts. The Board will monitor changes in the environment as the industry adjusts to the initial implementation of paying interest on Federal Reserve account balances and other market events and will reconsider the proposed posting-rule change in the future.

By order of the Board of Governors of the Federal Reserve System, December 18, 2008.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E8–30628 Filed 12–23–08; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0007]

General Services Administration Acquisition Regulation; Information Collection; GSA Form 527, Contractor's Qualifications and Financial Information

AGENCY: Office of the Chief Finance Officer, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currentiy approved information collection requirement regarding GSA Form 527, Contractor's Qualifications and Financial Information.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: February 23, 2009.

FOR FURTHER INFORMATION CONTACT: Norma Tolson, Accountant, Office of the Chief Financial Officer, Office of Finance, at (202) 208–0584 or via e-mail at *norma.tolson@gsa.gov.*

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Regulatory Secretariat (VPR), General Services Administration, Room 4041, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0007, GSA Form 527, Contractor's Qualifications and Financial Information, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration will be requesting the Office of Management and Budget to extend information collection 3090–0007, concerning GSA Form 527, Contractor's Qualifications and Financial Information. This form is used to determine the financial capability of prospective contractors as to whether they meet the financial responsibility standards in accordance with the Federal Acquisition Regulation (FAR) and the General Services Administration Acquisition Manual (GSAM).

B. Annual Reporting Burden

Respondents: 2,940.
Responses Per Respondent: 1.2.
Total Responses: 3,528.
Hours Per Response: 2.5.
Total Burden Hours: 8,820.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–0007, GSA Form 527, Contractor's Qualifications and Financial Information, in all correspondence.

Dated: December 17, 2008.

Casey Coleman,

Chief Information Officer, Office of the Chief Information Officer.

[FR Doc. E8–30567 Filed 12–23–08; 8:45 am]

BILLING CODE 6820–34–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0277]

Office of Citizen Services and Communications; Information Collection; Market Research Collection

AGENCY: Office of Citizen Services and Communications, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding Market Research for the Office of Citizen Services and Communications. The OMB clearance currently expires on April 30, 2009.

This information collection will be used to determine the utility and ease of use of GSA's Web site, *http://www.gsa.gov.* The respondents include individuals and representatives from businesses currently holding GSA contracts.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it

will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: February 23, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Jocelyn Johnson, Office of Citizen Services and Communications, at telephone (202) 208–0043, or via e-mail to *jocelyn.johnson@gsa.gov*.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Regulatory Secretariat (VPR), General Services Administration, Room 4041, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0277, Market Research Collection for the Office of Citizen Services and Communications, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The purpose of this information collection is to inform GSA on how to best provide service and relevance to the American public via GSA's Web site *http://www.gsa.gov*. The information collected from an online survey, focus groups, and Web site usability testing will be used to refine the *http://www.gsa.gov* Web site. The questions to be asked are non-invasive and do not address or probe sensitive issues. It is important for the GSA to gain information from the many diffuse groups it serves; therefore, the GSA will be questioning individuals and households, and businesses and other for-profit groups.

B. Annual Reporting Burden

Respondents: 190.
Responses Per Respondent: 1.
Hours Per Response: 72.6 minutes.
Total Burden Hours: 230.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–0277, Market Research Collection for the Office of Citizen Services and Communications, in all correspondence.

Dated: December 17, 2008.

Casey Coleman,

Chief Information Officer.

[FR Doc. E8–30674 Filed 12–23–08; 8:45 am]

BILLING CODE 6820–CX–P

GENERAL SERVICES ADMINISTRATION

Multiple Award Schedule Advisory Panel; Notification of Public Advisory Panel Meetings

AGENCY: U.S. General Services Administration (GSA).

ACTION: Notice.

SUMMARY: The U.S. General Services Administration (GSA) Multiple Award Schedule Advisory Panel (MAS Panel), a Federal Advisory Committee, will hold public meetings on the following dates: Friday, January 30, 2009 and Monday February 2, 2009. GSA utilizes the MAS program to establish long-term Governmentwide contracts with responsible firms to provide Federal, State, and local government customers with access to a wide variety of commercial supplies (products) and services.

The MAS Panel was established to develop advice and recommendations on MAS program pricing policies, provisions, and procedures in the context of current commercial pricing practices. The Panel will be developing recommendations for MAS program pricing provisions for the acquisition of (1) professional services; (2) products; (3) total solutions which consist of professional services and products; and (4) non professional services. In developing the recommendations, the Panel will, at a minimum, address these 5 questions for each of the 4 types of acquisitions envisioned above: (1) Where does competition take place?; (2) If competition takes place primarily at the task/delivery order level, does a fair and reasonable price determination at the MAS contract level really matter?; (3) If the Panel consensus is that competition is at the task order level, are the methods that GSA uses to determine fair and reasonable prices and maintain the price/discount relationship with the basis of award customer(s) adequate?; (4) If the current policy is not adequate, what are the recommendations to improve the policy/guidance; and (5) If fair and reasonable price determination at the MAS contract level is not beneficial and the fair and reasonable price determination is to be determined only at the task/delivery order level, then what is the GSA role?

To that end, the Panel would like to hear from the many stakeholders of the MAS program. The MAS program stakeholders include, but are not limited to, ordering agency contracting officers, GSA contracting officers, schedule contract holders, Congress, program managers, the General Accountability Office, and Federal agency Inspector General Offices. The panel is particularly interested in stakeholder views as to how the issues discussed above may relate differently to the purchase of goods, services, or goods and services that are configured to propose an integrated solution to an agency's needs. Written comments may be submitted at any time in accordance with the guidance below.

The meeting will be held at U.S. General Services Administration, Federal Acquisition Service, 2200 Crystal Drive, Room L1301, Arlington, VA 22202. The location is within walking distance of the Crystal City metro stop. The meeting start time is 9:00 a.m., and will adjourn no later than 5:00 p.m.

For presentations before the Panel, the following guidance is provided:

Oral comments: The Panel will no longer entertain oral presentations.

Written Comments: Written comments must be received ten (10) business days prior to the meeting date so that the comments may be provided to the Panel for their consideration prior to the meeting. Comments should be supplied to Ms. Brooks at the address/contact information noted below in the following format: one hard copy with original signature and one electronic copy via email in Microsoft Word.

Subsequent meeting dates, locations, and times will be published at least 15 days prior to the meeting date.

FOR FURTHER INFORMATION CONTACT: Information on the Panel meetings, agendas, and other information can be obtained at *www.gsa.gov/masadvisorypanel* or you may contact Ms. Pat Brooks, Designated Federal Officer, Multiple Award Schedule Advisory Panel, U.S. General Services Administration, 2011 Crystal Drive, Suite 911, Arlington, VA 22205; telephone 703 605–3406, Fax 703 605–3454; or via email at *mas.advisorypanel@gsa.gov*.

AVAILABILITY OF MATERIALS: All meeting materials, including meeting agendas, handouts, public comments, and meeting minutes will be posted on the MAS Panel website at *www.gsa.gov/masadvisorypanel* or *www.gsa.gov/masap*.

MEETING ACCESS: Individuals requiring special accommodations at any of these meetings should contact Ms. Brooks at least ten (10) business days prior to the meeting date so that appropriate arrangements can be made.

Dated: December 17, 2008.

David A. Drabkin,

Deputy Chief Acquisition Officer, Office of the Chief Acquisition Officer, General Services Administration.

[FR Doc. E8–30557 Filed 12–23–08; 8:45 am]

BILLING CODE 6820–EP–S

GENERAL SERVICES ADMINISTRATION

Office of Small Business Utilization; Small Business Advisory Committee; Notification of a Public Meeting of the Small Business Advisory Committee, Subcommittee on Service-Disabled Veteran-Owned Small Businesses

AGENCY: Office of Small Business Utilization, GSA.

ACTION: Notice.

SUMMARY: The General Services Administration (GSA) is announcing a public meeting of the GSA Small Business Advisory Committee, Subcommittee on Service-Disabled Veteran-Owned Small Businesses (the Subcommittee).

DATES: The meeting will take place January 13, 2009. The meeting will begin at 1 p.m. and conclude no later than 4 p.m. that day. The Subcommittee will accept oral public comments at this meeting and has reserved a total of thirty minutes for this purpose. Members of the public wishing to reserve speaking time must contact the DFO in writing at: *sbac@gsa.gov* or by fax at (202) 501–2590, no later than one week prior to the meeting. Individuals interested in attending the meeting should contact the DFO prior to the meeting date to expedite security procedures for building admittance.

ADDRESSES: GSA Building, 1800 F Street, NW., Washington, DC 20405

FOR FURTHER INFORMATION CONTACT: Lucy Jenkins or Aaron Collmann, Room 6029, GSA Building, 1800 F Street, NW., Washington, DC 20405 (202) 501–1021 or e-mail at *sbac@gsa.gov*.

SUPPLEMENTARY INFORMATION: This notice is published in accordance with the provisions of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463). The purpose of this meeting is to generate topics for future discussion and to hear from interested members of the public on proposals to improve GSA's SDVOSB contracting performance.

Topics for this meeting will include but are not limited to welcoming the members to the subcommittee, the members annual ethics briefing and discussion of GSA's Veteran Outreach Program (21 Gun Salute) and improvements to the program. Information on the full Small Business Advisory Committee can be found online at *http://www.gsa.gov/sbac*.

Dated: December 18, 2008.

Michael J. Rigas,

Associate Administrator, Office of Small Business Utilization, General Services Administration.

[FR Doc. E8–30634 Filed 12–23–08; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation of Nominations for Membership on the National Vaccine Advisory Committee

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science.

ACTION: Notice.

AUTHORITY: 42 U.S.C. 300aa–5, Section 2105 of the Public Health Service (PHS) Act, as amended. The Committee is governed by the provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

SUMMARY: The National Vaccine Program Office (NVPO), a program office within the Office of Public Health and Science, Department of Health and Human Services (HHS), is soliciting nominations of qualified candidates to be considered for appointment as members to the National Vaccine Advisory Committee (NVAC). The activities of this Committee are governed by the Federal Advisory Committee Act (FACA). Management support for the activities of this Committee is the responsibility of the NVPO.

Consistent with the National Vaccine Plan, the Committee advises and makes recommendations to the Assistant Secretary for Health in his capacity as the Director of the National Vaccine Program, on matters related to the Program's responsibilities. Specifically, the Committee studies and recommends ways to encourage the availability of an adequate supply of safe and effective vaccination products in the United States; recommends research priorities and other measures to enhance the safety and efficacy of vaccines. The Committee also advises the Assistant Secretary for Health in the implementation of Sections 2102 and 2103 of the PHS Act; and identifies annually the most important areas of government and non-government cooperation that should be considered in implementing Sections 2102 and 2103 of the PHS Act.

DATES: All nominations for membership on the Committee must be received no later than 5 p.m. EDT on February 2, 2009, at the address listed below.

ADDRESSES: All nominations should be mailed or delivered to: Bruce Gellin, M.D., M.P.H., Executive Secretary, NVAC, Office of Public Health and Science, Department of Health and Human Services, 200 Independence Avenue, SW., Room 443–H, Hubert H. Humphrey Building; Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Ms. Andrea Krull, Public Health Advisor, National Vaccine Program Office, Department of Health and Human Services, 200 Independence Avenue, SW., Room 443–H, Hubert H. Humphrey Building, Washington, DC 20201; (202) 690–5566; *nvpo@hhs.gov*.

A copy of the Committee charter which includes the Committee's structure and functions as well as a list of the current membership can be obtained by contacting Ms. Krull or by accessing the NVAC Web site at: *http://www.hhs.gov/nvpo/nvac*.

SUPPLEMENTARY INFORMATION: *Committee Function, Qualifications, and Information Required:* As part of an ongoing effort to enhance deliberations and discussions with the public on vaccine and immunization policy, nominations are being sought for interested individuals to serve on the Committee. Individuals selected for appointment to the Committee will serve as voting members. The NVAC consists of 17 voting members. The Committee is composed of 15 public members, including the Chair, and two representative members. Public members shall be selected from individuals who are engaged in vaccine research or the manufacture of vaccines, or who are physicians, members of parent organizations concerned with immunizations, representatives of state or local health agencies or public health organizations. Representative members shall be selected from the vaccine manufacturing industry who are engaged in vaccine research or the manufacture of vaccines. Individuals selected for appointment to the Committee can be invited to serve terms of up to four years.

All NVAC members are authorized to receive the prescribed per diem allowance and reimbursement for travel expenses that are incurred to attend meetings and conduct authorized Committee-related business, in accordance with Standard Government Travel Regulations. Individuals who are

appointed to serve as public members are authorized also to receive honorarium for attending Committee meetings and to carry out other authorized Committee-related business. Individuals who are appointed to serve as representative members for a particular interest group or industry are not authorized to receive honorarium for the performance of these duties.

This announcement is to solicit nominations of qualified candidates to fill positions on the NVAC that are scheduled to be vacated in the public member category. The positions are scheduled to be vacated on March 31, 2009.

Nominations

In accordance with the charter, persons nominated for appointment as members of the NVAC should be among authorities knowledgeable in areas related to vaccine safety, vaccine effectiveness, and vaccine supply. Nominations should be typewritten. The following information should be included in the package of material submitted for each individual being nominated for consideration: (1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (i.e., specific attributes which qualify the nominee for service in this capacity); (2) a statement from the nominee, bearing an original signature, that, if appointed, he or she is willing to serve as a member of the Committee; (3) the nominator's name, address and daytime telephone number, and the home and/or work address, telephone number, and email address of the individual being nominated; and (4) a current copy of the nominee's curriculum vitae.

Individuals can nominate themselves for consideration of appointment to the Committee. All nominations must include the required information. Incomplete nominations will not be processed for consideration. The letter from the nominator and certification of the nominated individual must bear original signatures; reproduced copies of these signatures are not acceptable. Applications cannot be submitted by facsimile. The names of Federal employees should not be nominated for consideration of appointment to this Committee.

The Department makes every effort to ensure that the membership of HHS Federal advisory committees is fairly balanced in terms of points of view represented and the committee's function. Every effort is made that a broad representation of geographic areas, gender, ethnic and minority groups, and the disabled are given consideration for membership on HHS Federal advisory committees. Appointment to this committee shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status.

The Standards of Ethical Conduct for Employees of the Executive Branch are applicable to individuals who are appointed as public members of Federal advisory committees. Individuals appointed to serve as public members of Federal advisory committees are classified as special Government employees (SGEs). SGEs are Government employees for purposes of the conflict of interest laws. Therefore, individuals appointed to serve as public members of NVAC are subject to an ethics review. The ethics review is conducted to determine if the individual has any interests and/or activities in the private sector that may conflict with performance of their official duties as a member of the Committee. Individuals appointed to serve as public members of the Committee will be required to disclose information regarding financial holdings, consultancies, and research grants and/or contracts.

Dated: December 8, 2008.

Bruce Gellin,

Director, National Vaccine Program Office, Executive Secretary, National Vaccine Advisory Committee.

[FR Doc. E8–30614 Filed 12–23–08; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0045] (formerly Docket No. 2004N–0408)

Regulatory Site Visit Training Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration's (FDA's) Center for Biologics Evaluation and Research (CBER) is reannouncing the invitation for participation in its Regulatory Site Visit Training Program (RSVP). This training program is intended to give CBER regulatory review, compliance, and other relevant staff an opportunity to visit biologics facilities. These visits are intended to allow CBER staff to directly observe routine manufacturing practices and to give CBER staff a better understanding of the biologics industry, including its challenges and operations. The purpose of this notice is to invite biologics facilities to contact CBER for more information if they are interested in participating in this program.

DATES: Submit a written or electronic request for participation in this program by January 23, 2009. The request should include a description of your facility relative to products regulated by CBER. Please specify the physical address of the site(s) you are offering.

ADDRESSES: If your biologics facility is interested in offering a site visit or learning more about this training opportunity for CBER staff, or if your biologics facility responded to a previous RSVP notice announced in the **Federal Register**, you should submit a request to participate in the program to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic requests to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Lonnie Warren Myers, Division of Manufacturers Assistance and Training, Center for Biologics Evaluation and Research (HFM–49), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–2000, FAX: 301–827–3079, *email: matt@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

CBER regulates certain biological products including blood and blood products, vaccines, and cellular, tissue, and gene therapies. CBER is committed to advancing the public health through innovative activities that help ensure the safety, effectiveness and timely delivery of biological products to patients. To support this primary goal, CBER has initiated various training and development programs to promote high performance of its compliance staff, regulatory review staff, and other relevant staff. CBER seeks to continuously enhance and update review efficiency and quality, and the quality of its regulatory efforts and interactions, by providing CBER staff with a better understanding of the biologics industry and its operations. Further, CBER seeks to improve: (1) Its understanding of current industry practices, and regulatory impacts and needs; and (2) communication between CBER staff and industry. CBER initiated its RSVP in 2005, and through these annual notices, is requesting those firms that have previously applied and are still interested in participating, to reaffirm their interest, as well as

encouraging new interested parties to apply.

II. RSVP

A. Regulatory Site Visits

In this program, over a period of time to be agreed upon with the facility, small groups of CBER staff may observe operations of biologics establishments, including for example, blood and tissue establishments. The visits may include packaging facilities, quality control and pathology/toxicology laboratories, and regulatory affairs operations. These visits, or any part of the program, are not intended as a mechanism to inspect, assess, judge, or perform a regulatory function, but are meant to improve mutual understanding and to provide an avenue for open dialogue between the biologics industry and CBER.

B. Site Selection

All travel expenses associated with the site visits will be the responsibility of CBER; therefore, selection of potential facilities will be based on the coordination of CBER's priorities for staff training as well as the limited available resources for this program. A key element of site selection is a successful compliance record with CBER or another agency for which we have a memorandum of understanding. Facilities should also be advised that if a site visit involves a separate physical location of another firm under contract to the applicant, then this contract site must be in agreement to participate in the program, as well as have a satisfactory compliance history.

III. Requests for Participation

Requests are to be identified with the docket number found in the brackets in the heading of this document. Received requests are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–30659 Filed 12–23–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer on (301) 443–1129.

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.

Proposed Project: Intervention Trials To Retain HIV-Positive Patients in Medical Care (NEW)

The purpose of this project is to develop, implement, and test the efficacy of an intervention designed to increase client appointment attendance among patients at risk of missing scheduled appointments at HIV clinics. This project is a collaboration between the Centers for Disease Control and Prevention (CDC), the Health Resources and Services Administration (HRSA), and six university-affiliated HIV clinics in the United States. The proposed intervention will be implemented in two phases. Phase 1 is a clinic-wide intervention that includes the following components: a theme slogan for the intervention, brochures, posters with messages to patients, brief verbal retention in care messages from providers to patients, buttons printed with the theme of the intervention worn by providers, and appointment reminder cards with information on how to cancel appointments. All clinic patients will receive the Phase 1 intervention. Phase 2 of the project is a two-arm randomized trial in which 300 patients will be enrolled and randomly assigned to one of two study arms. In Arm 1 (control arm), patients (n=100) will receive the clinic-wide intervention only. Patients (n=200) assigned to Arm 2 (intervention arm) will continue to receive the clinic-wide intervention plus a client-centered intervention from two trained interventionists.

The efficacy of the intervention will be assessed through data collection efforts tailored to each phase of the intervention. Phase 1 uses a pre-post comparison of clinic attendance rates before and during a clinic-wide intervention. Specifically, in Phase 1, the attendance rate for HIV primary care is currently being assessed via electronic medical records during the 12-month period before the clinic-wide intervention begins. This pre-intervention assessment is being collected for all patients who had at least one HIV primary care visit at the clinic during the preceding 12 months. This cohort of patients will be reassessed via electronic medical records during the 12-month intervention period. In addition, provider surveys will be administered quarterly during Phase 1 and semi-annually during Phase 2 to obtain information from primary care providers (MD, DO, nurse practitioner, physician assistant) about whether they talked to their patients about the importance of regular care.

In Phase 2, participants will be enrolled over a period of 4–9-months to allow flexibility for faster or slower enrollment in the clinics. It is anticipated that most clinics will complete their enrollment in approximately 6 months. On a daily basis, clinic staff or the study coordinator will generate a list of patients who meet eligibility criteria based on attendance history. The list will be given to the study coordinator who will approach patients to ask about their interest in being screened for eligibility in the study. When patients agree to be screened for eligibility, the study coordinator will administer an eligibility screener. Patients who are found to be eligible will be enrolled in the project and all enrollees will complete a baseline survey (that will take approximately 30 minutes) before being randomized to the intervention or control arm. No follow-up surveys will be collected. The survey will be

administered in a private setting at the clinic using Audio Computer-Assisted Self-Interview (ACASI) in which respondents can read and listen via earphones to survey questions presented on the computer screen and respond directly into the computer.

Participants randomly assigned into the intervention arm will receive interventional services from two trained interventionists. The intervention will be delivered in face-to-face encounters as well as over the telephone and the first dose of the intervention will be delivered on the day the participant is enrolled into study. During this first face-to-face encounter, an interventionist will administer a retention risk screener. This screener is a clinical tool that will help identify attitudes, barriers, and unmet needs that might prevent a patient from staying in care. The screener contains three sections: (1) Attitudes and beliefs about HIV care and treatment, (2) barriers to consistent clinic attendance (e.g., transportation, child care, housing instability, scheduling problems, and lack of social support), and (3) recent drug/alcohol use and mental health. The information obtained from the risk screener will be used to tailor the intervention to each individual patient's needs. Because a patient's situation or needs may change over time, the screener will be re-administered to intervention arm participants at a minimum every 3–4 months during a clinic visit or other arranged face-to-face meetings outside of the clinic. In addition, the study coordinator will obtain contact/locator information for all participants enrolled in the intervention arm. Contact information will be updated as necessary by the intervention staff.

The response burden for grantees is estimated as:

ESTIMATED ANNUALIZED BURDEN HOURS

Type of form by phase	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden (in hours)
Phase 1 Provider Survey	150	4	600	0.167	100
Phase 2 Provider Survey	150	2	300	0.167	50
Patient Eligibility Screener *	3,000	1	3,000	0.083	249
Patient Baseline Survey *	1,800	1	1,800	0.50	900
Retention Risk Screener	1,200	4	4,800	0.25	1,200
Contact/locator information	1,200	4	4,800	0.083	398
Total Burden	3,150		15,300		2,897

* Only administered one time during the entire project period.

E-mail comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 18, 2008.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E8–30675 Filed 12–23–08; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel. Study of Attitudes and Factors Affecting Infant Care.

Date: January 12, 2009.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Michele C. Hindi-Alexander, PhD, Division of Scientific Review, National Institutes of Health, Eunice Kennedy Shriver, National Institute for Child Health & Development, 6100 Executive Boulevard, Room 5b01, Bethesda, MD 20812–7510, (301) 435–8382, *hindialm@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: December 18, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–30728 Filed 12–23–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Science Education Awards Review.

Date: January 14, 2009.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700 B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Alec Ritchie, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID/DHHS, 6700 B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–435–1614, *aritchie@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 18, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–30709 Filed 12–23–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Neurological Disorders and Stroke, including consideration of personal qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

Date: January 11–13, 2009.

Time: January 11, 2009, 7 p.m. to 10 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Time: January 12, 2009, 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Time: January 12, 2009, 5 p.m. to 7 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Time: January 13, 2009, 8:30 a.m. to 12 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Alan P. Koretsky, PhD, Scientific Director, Division of Intramural Research, National Institute of Neurological Disorders, & Stroke, NIH, 35 Convent Drive, Room 6a 908, Bethesda, MD 20892, 301–435–2232, *koretskya@ninds.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: December 18, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–30726 Filed 12–23–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2008–1217]

Area Maritime Security Committees (AMSCs); Nationwide

AGENCY: Coast Guard, DHS.

ACTION: Solicitation for membership.

SUMMARY: This notice requests individuals interested in serving on an Area Maritime Security Committee in any Captain of the Port Zone, nationwide, to submit their applications for membership to their local Captain of the Port. These committees advise the Secretary of DHS, through the Coast Guard, on matters relating to maritime security in their geographic area.

DATES: Requests for membership should reach the applicable Captain of the Port by January 21, 2009.

ADDRESSES: Applications for membership should be submitted to your local Captain of the Port at the following address(s):

SECTOR ANCHORAGE, 510 L STREET-SUITE 100, ANCHORAGE, AK 99501–1946, POC: Jim Hubbard, Primary Phone: (907) 271–6700.

SECTOR BALTIMORE, 2401 HAWKINS POINT RD, BALTIMORE, MD 21226, POC: Rick Sparacino, Primary Phone: (410) 576–2561.

SECTOR BOSTON, 427 COMMERCIAL ST, BOSTON, MA 02109, POC: Phillip Smith, Primary Phone: (617) 223–3025.

SECTOR BUFFALO, 1 FUHRMANN BLVD, BUFFALO, NY 14203, POC: Timothy Balunis, Primary Phone: (716) 843–9315.

SECTOR CHARLESTON, 196 TRADD ST, CHARLESTON, SC 29401, POC: James Mahney, Primary Phone: (843) 724–7600.

SECTOR CORPUS CHRISTI, 8930 OCEAN DR., CORPUS CHRISTI, TX 78419, POC: John Zarbock, Primary Phone: (361) 939–6393.

SECTOR DELAWARE BAY, 1 WASHINGTON AVE, PHILADELPHIA, PA 19147, POC: Robert Ward, Primary Phone: (215) 271–4800.

SECTOR DETROIT, 110 MOUNT ELLIOTT ST, DETROIT, MI 48207, POC: Matthew Hoppe, Primary Phone: (313) 568–9600.

MARINE SAFETY UNIT DULUTH, 600 S LAKE AVE., DULUTH, MN 55802, POC: Jared Angelle, Primary Phone: (218) 720–5286.

SECTOR GUAM, PSC 455 BOX 176, FPO, GU 96540, POC: LT Amy Wirts, Primary Phone: (671) 355–4900.

CG SECTOR HAMPTON ROADS, 4000 COAST GUARD BOULEVARD, PORTSMOUTH, VA 23703, POC: Rodger Tomlinson, Primary Phone: (757) 668–5555 Ext. 2.

SECTOR HONOLULU, 400 SAND ISLAND PARKWAY, HONOLULU, HI 96819, POC: William Deluca, Primary Phone: (808) 842–2640.

SECTOR HOUSTON-GALVESTON, 9640 CLINTON DRIVE, HOUSTON, TX 77029, POC: John Walker, Primary Phone: (713) 671–5100.

SECTOR JACKSONVILLE, 4200 OCEAN STREET, ALTANTIC BEACH, FL 32233, POC: Thomas Taylor, Primary Phone: (904) 564–7500.

USCG SECTOR JUNEAU, 2760 SHERWOOD LANE, SUITE 2A, JUNEAU, AK 99801–8545, POC: Robert

Edwardson, Primary Phone: (907) 463–2450.

SECTOR KEY WEST, 100 TRUMBO POINT ANNEX, KEY WEST, FL 33040, POC: LTJG Anna Dixon, Primary Phone: (305) 292–8722.

SECTOR LAKE MICHIGAN, 2420 S LINCOLN MEMORIAL DR, MILWAUKEE, WI 53207, POC: Thomas Lake, Primary Phone: (414) 747–7100.

SECTOR LONG ISLAND SOUND, 120 WOODWARD AVE, NEW HAVEN, CT 06512, POC: Scot Graham, Primary Phone: (203) 468–4401.

SECTOR LOS ANGELES-LONG BEACH, 1001 S. SEASIDE AVE., BLDG 20, SAN PEDRO, CA 90731, POC: Chris Hogan, Primary Phone: (310) 521–3600.

SECTOR LOWER MISSISSIPPI RIVER, #2 AUCTION AVE., MEMPHIS, TN 38105, POC: Keith Jones, Primary Phone: (901) 544–3912.

SECTOR MIAMI, 100 MACARTHUR CAUSEWAY, MIAMI BEACH, FL 33139, POC: Frank Cesario, Primary Phone: (305) 535–8700.

SECTOR MOBILE, BLDG 101, BROOKLEY COMPLEX, MOBILE, AL 36615, POC: Louie Atchison, Primary Phone: (251) 441–5720.

MSU MORGAN CITY, 800 DAVID DR RM 232, MORGAN CITY, LA 70380, POC: Joseph Pasqua, Primary Phone: (985) 380–5320.

SECTOR NEW ORLEANS, 1615 POYDRAS ST, NEW ORLEANS, LA 70112, POC: Roy Ford, Primary Phone: (504) 589–6196.

SECTOR NEW YORK, 212 COAST GUARD DR, STATEN ISLAND, NY 10305, POC: Frank Fiumano, Primary Phone: (718) 354–4037.

SECTOR NORTH CAROLINA/MSU WILMINGTON, 2301 E. FORT MACON RD, ATLANTIC BEACH, NC 28512–5633, POC: David Morgan, Primary Phone: (252) 247–4519.

SECTOR NORTHERN NEW ENGLAND, 259 HIGH STREET, SOUTH PORTLAND, ME 04106, POC: Arn Heggers, Primary Phone: (207) 767–0320.

SECTOR OHIO VALLEY, 600 MARTIN LUTHER KING JR PL RM 409–D, LOUISVILLE, KY 40202–2242, POC: David Wuest, Primary Phone: (502)779–5400.

MSU PITTSBURGH, 100 FORBES AVE, STE 1150, PITTSBURGH, PA 15222, POC: ENS Matthew DeFusco, Primary Phone: (412) 644–5808.

MSU PORT ARTHUR /MSU LAKE CHARLES, 2901 TURTLE CREEK DRIVE, PORT ARTHUR, TX 77642, POC: Robert Stegall, Primary Phone: (409) 723–6500.

SECTOR PORTLAND, 6767 N BASIN AVE, PORTLAND, OR 97217, POC: David Maresh, Primary Phone: (503) 240–9310.

SECTOR SAN DIEGO, 2710 NORTH HARBOR DRIVE, SAN DIEGO, CA 92101, POC: Rick Sorrell, Primary Phone: (619) 278–7033.

SECTOR SAN FRANCISCO, 1 YERBA BUENA ISLAND, SAN FRANCISCO, CA 94130, POC: Paul Martin, Primary Phone: (415) 399–3547.

SECTOR SAN JUAN, #5 CALLE LA PUNTILLA, SAN JUAN, PR 00901–1800, POC: Victor Gonzalez, Primary Phone: (787) 289–2041.

SECTOR SAULT STE. MARIE, C/O COAST GUARD SECTOR, SAULT STE MARIE, MI 49783, POC: Lane Putala, Primary Phone: (906) 635–3340.

MSU SAVANNAH, 100 W. OGLETHORPE AVE STE 1017, SAVANNAH, GA 31401, POC: LT Greg Reilly, Primary Phone: (912) 652–4353.

SECTOR SEATTLE, 1519 ALASKAN WAY S, SEATTLE, WA 98134, POC: Joseph Dady, Primary Phone: (206) 217–6200.

SECTOR SOUTHEASTERN NEW ENGLAND, 1 LITTLE HARBOR ROAD, WOODS HOLE, MA 02543–1099, POC: Peter Popko, Primary Phone: (866) 819–9128.

SECTOR ST PETERSBURG, 155 COLUMBIA DR, TAMPA, FL 33606, POC: Edmond Morris, Primary Phone: (813) 228–2191 Ext. 8108.

SECTOR UPPER MISSISSIPPI RIVER, 1222 SPRUCE ST, SUITE 7.103, ST LOUIS, MO 63103, POC: Todd Epperson, Primary Phone: (314) 269–2500.

MSU VALDEZ, PO BOX 486/105 CLIFTON DRIVE, VALDEZ, AK 99686, POC: Jamie Schnider, Primary Phone: (907) 835–7200.

FOR FURTHER INFORMATION CONTACT: For questions about submitting an application or about a specific Area Maritime Security Committee (AMSC), contact the point of contact listed above with that AMSC in the **ADDRESSES** section. For general questions on AMSCs or this notice, contact LT Brian Zekus, Coast Guard, telephone 202–372–1116.

SUPPLEMENTARY INFORMATION:

Authority

Section 102 of the Maritime Transportation Security Act (MTSA) of 2002 (Pub. L. 107–295) added section 70112 to Title 46 of the U.S.Code, and authorized the Secretary of the Department in which the Coast Guard is operating to establish Area Maritime Security Advisory Committees for any port area of the United States. (See 33 U.S.C. 1226; 46 U.S.C.; 33 CFR 1.05–1, 6.01; Department of Homeland Security Delegation No. 0170.1). The MTSA includes a provision exempting these AMSCs from the Federal Advisory Committee Act, Public Law 92–436, 86 Stat. 470 (5 U.S.C. App.).

The AMSCs shall assist the Captain of the Port in the development, review, update, and exercising of the Area Maritime Security (AMS) Plan for their area of responsibility. Such matters may include, but are not limited to: Identifying critical port infrastructure and operations; identifying risks (threats, vulnerabilities, and consequences); determining mitigation strategies and implementation methods; developing strategies to facilitate the recovery of the marine transportation system after a transportation security incident; developing and describing the process to continually evaluate overall port security by considering consequences and vulnerabilities, how they may change over time, and what additional mitigation strategies can be applied; and providing advice to, and assisting the COTP in developing and maintaining the AMS Plan.

AMSC Membership

Members of the AMSC should have at least 5 years of experience related to maritime or port security operations. The local AMSCs have a variance in members due to geographical and local factors. We are seeking to fill vacancies with this solicitation. Applicants will be required to pass an appropriate security background check prior to appointment to the committee. Members' terms of office will be for 5 years; however, a member is eligible to serve additional terms of office. Members will not receive any salary or other compensation for their service on an AMSC. In support of the USCG policy on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

Request for Applications

Those seeking membership are not required to submit formal applications to the local Captain of the Port, however, because we do have an obligation to ensure that a specific number of members have the prerequisite maritime security experience, we encourage the submission of resumes highlighting experience in the maritime and security industries.

Dated: December 18, 2008.

M. P. O'Malley,

Captain, U.S. Coast Guard, Office of Ports & Facility Activities.

[FR Doc. E8–30612 Filed 12–23–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; Revision of a currently approved collection, OMB Number: 1660–0069, National Fire Incident Reporting System (NFIRS) v5.0.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a revised information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the continued use of the National Fire Incident Reporting System (NFIRS) v5.0 database.

SUPPLEMENTARY INFORMATION: The National Commission on Fire Prevention and Control conducted a comprehensive study of the Nation's fire problem and recommended to Congress actions to mitigate the fire problem, reduce loss of life and property, and educate the public on fire protection and prevention. As a result of the study, Congress enacted Public Law 93–498, Federal Fire Prevention and Control Act of 1974, which establishes the U.S. Fire Administration to administer fire prevention and control programs, supplement existing programs of research, training, and education, and encourage new and improved programs and activities by State and local governments.

Section 9(a) of the Act authorizes the Administrator, U.S. Fire Administration (USFA), to operate directly or through contracts or grants, an integrated, comprehensive method to select, analyze, publish, and disseminate information related to prevention, occurrence, control, and results of fires of all types.

Collection of Information

Title: National Fire Incident Reporting System (NFIRS) v5.0.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 1660–0069.

Form Numbers: The National Fire Incident Reporting System (NFIRS) v5.0.

Abstract: NFIRS provides a mechanism using standardized reporting methods to collect and analyze fire incident data at the Federal, State, and local levels. Data analysis helps local fire departments and States to focus on current problems, predict future problems in their communities, and measure whether their programs are working.

Affected Public: State, Local or Tribal Government.

Estimated Total Annual Burden Hours: 10,769,720 burden hours.

Annual Hour Burden

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/form number	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden (in hours)	Average hourly wage rate	Total annual respondent cost ($)
State, Local, or Tribal Government.	NFIRS Version 5.0 Modules 1–12 (Manual).	2,200	950	1.13 hours (68 minutes).	2,361,700	21.22	50,115,274.00
State, Local, or Tribal Government.	NFIRS Version 5.0 Modules 1–12 (Electronic).	19,800	942	27 min (0.45 hr)	8,393,220	21.22	178,104,128.40
State, Local, or Tribal Government.	NFA Program Manager Training.	30	1	48 hours	1,440	21.22	30,556.80
State, Local, or Tribal Government.	NFA Program Manager Orientation.	60	1	16 hours	960	21.22	20,371.20
State, Local, or Tribal Government.	NFIC Training Workshop.	100	1	16 hours	1,600	21.22	33,952.00
State, Local, or Tribal Government.	NFIC CD/on-site Orientation.	200	1	4 hours	800	21.22	16,976.00
State, Local, or Tribal Government.	Introduction to NFRIS Distance Learning.	500	1	20 hours	10,000	21.22	212,200.00
Total	.....	22,890	.....	.....	10,769,720	.....	228,553,458.40

Estimated Cost: The estimated annualized cost to respondents based on wage rate categories is $228,553,458.40. The estimated annual cost to the Federal Government is $13,310,000.

Comments: Written comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments must be submitted on or before February 23, 2009.

ADDRESSES: Interested persons should submit written comments to Office of

Management, Records Management Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Mark Whitney, Fire Program Specialist, United States Fire Administration, National Fire Data Center, (301) 447–1836 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov.*

Dated: December 19, 2008.

Samuel C. Smith,

Acting Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E8–30719 Filed 12–23–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; Revision of a currently approved collection, 1660–0045, No Forms.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a revised information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the collection of information to assure appropriate flood insurance rates being placed on the affected public within Monroe County in Florida.

SUPPLEMENTARY INFORMATION: Title 44 CFR Parts 59 and 61, National Flood Insurance Program (NFIP); Inspection of Insured Structures by Communities implements the inspection procedures in Monroe County, the City of Marathon, and the Village of Islamorada, Florida and any other community that incorporates in Monroe County on or after January 1, 1999. The inspection procedure has two major purposes: (1) To help the communities of Monroe County, the City of Marathon, and the Village of Islamorada, Florida, and any other communities in Monroe County that incorporate after January 1, 1999, verify that structures in their communities (those built after the effective date of the Flood Insurance Rate Map (FIRM)), referred to as post-FIRM, comply with the community's floodplain management ordinance; and (2) to ensure that property owners pay flood insurance premiums commensurate with their flood risk. The inspection procedure requires owners of insured buildings (policyholders) to obtain an inspection from community floodplain management officials and submit a community inspection report as a condition of renewing the Standard Flood Insurance Policy (SFIP) on buildings.

Collection of Information

Title: Inspection of Insured Structures by Communities.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 1660–0045.

Form Numbers: No Forms.

Abstract: The community inspection report is used for the implementation of the inspection procedures to help communities in Monroe County, the City of Marathon and the Village of Islamorada, Florida verify buildings are compliant with their floodplain management ordinance and to help FEMA ensure that policyholders are paying flood insurance premiums that are commensurate with their flood risk.

Affected Public: Individuals and Households, State, local and Tribal governments.

Estimated Total Annual Burden Hours: 1,041 hours.

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/form number	No. of respondents	No. of responses per respondent	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate	Total annual respondent cost
Individuals/Households.	Inspection acquisition/No form.	833	1	.25	208	$19.29	$4,012
State/Local/Tribal Governments.	Inspection results submission/No Form.	833	1	1	833	23.15	19,284
Total					1,041		23,296

Estimated Cost: The estimated annualized cost to respondents based on wage rate categories is $23.296. The estimated annualized cost burden to respondents or recordkeepers is $168,266. The estimated annual cost to the Federal Government is $10,173.

Comments: Written comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments must be submitted on or before February 23, 2009.

ADDRESSES: Interested persons should submit written comments to Office of Management, Records Management Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, Mail Drop Room 301.

FOR FURTHER INFORMATION CONTACT: Contact Jennifer Tylander, Program Specialist, FEMA Mitigation Directorate, (202) 646–2607 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202)

646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov.*

Dated: December 18, 2008.

Samuel C. Smith,

Acting Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E8–30721 Filed 12–23–08; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2008–0017]

Voluntary Private Sector Accreditation and Certification Preparedness Program

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; request for recommendations.

SUMMARY: In the "Implementing the Recommendations of the 9/11 Commission Act of 2007" (the 9/11 Act), Congress authorized the Department of Homeland Security (DHS) to establish a voluntary private sector preparedness accreditation and certification program. This program, now known as "PS-Prep," will assess whether a private sector entity complies with one or more voluntary preparedness standards adopted by DHS, through a system of accreditation and certification set up by DHS in close coordination with the private sector.

PS-Prep will raise the level of private sector preparedness through a number of means, including (i) Establishing a system for DHS to adopt private sector preparedness standards; (ii) encouraging creation of those standards; (iii) developing a method for a private sector entity to obtain a certification of conformity with a particular DHS-adopted private sector standard, and encouraging such certification; and (iv) making preparedness standards adopted by DHS more widely available.

This Notice discusses essential elements of the program, describes the consultation that has taken place and will take place with the private sector, and seeks additional recommendations in a number of areas, including the private sector preparedness standards that DHS should adopt, both initially and over time.

DATES: *Comment period:* Anyone may submit comments on this guidance at any time, and comments will be considered as they are received. We would appreciate any recommendations for adoption of currently-existing private sector preparedness standards by January 23, 2009, though, as made clear below, we will accept submissions of private sector preparedness standards for adoption as well as comments on this notice at any time.

Public Meetings: DHS intends to hold two public meetings in Washington, DC to provide a forum for public comment on the subject of private sector preparedness standards, one in January and another in February, 2009. Meeting details and registration information will be published in the **Federal Register** and posted at *http://www.fema.gov/privatesectorpreparedness.*

ADDRESSES: You may submit comments, identified by Docket ID FEMA–2008–0017, by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. (All government requests for comments—even if, as in this case, they are not for regulatory purposes—are sent to this portal.)

E-mail: FEMA-POLICY@dhs.gov. Include Docket ID FEMA–2008–0017 in the subject line of the message.

Fax: 866–466–5370.

Mail/Hand Delivery/Courier: Office of Chief Counsel, Federal Emergency Management Agency, 500 C Street, SW., Room 845, Washington, DC 20472.

Instructions: All submissions received must include the agency name and docket number (if available). Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov.* Submitted comments may also be inspected at FEMA, Office of Chief Counsel, 500 C Street, SW., Room 840, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Mr. Don Grant, Incident Management Systems Director, National Preparedness Directorate, FEMA, 500 C Street SW., Washington, DC 20472. Phone: (202) 646–8243 or e-mail: *Donald.Grant@dhs.gov.*

SUPPLEMENTARY INFORMATION: This supplementary information section is organized as follows:

Table of Contents

I. Background

A. Preparedness in the Wake of 9/11

Private-sector preparedness is not a luxury; it is a cost of doing business in the post- 9/11 world. It is ignored at a tremendous potential cost in lives, money, and national security.

This conclusion was reached by the National Commission on Terrorist Attacks Upon the United States—the 9/11 Commission—in making a specific finding about private sector preparedness. During the course of its inquiry, the Commission found that the private sector was not prepared for the aftermath of the 9/11 attacks, and that, despite 9/11, the private sector remained largely unprepared at the time of its final report. The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States at 398 (2004) (9/11 Commission Report). The 9/11 Commission's central recommendation in this area was that the Department of Homeland Security (DHS) promote private sector preparedness standards that establish a common set of criteria and terminology for preparedness, disaster management, emergency

management, and business continuity programs.[1] This recommendation was the genesis of the Voluntary Private Sector Preparedness Accreditation and Certification (PS-Prep) program.

It is well known that approximately 85% of that infrastructure which we consider to be "critical" is owned and operated by the private sector. Critical infrastructure and key resources, or CIKR, comprises systems and assets, whether physical or virtual, so vital to the United States that their incapacitation or destruction would have a debilitating impact on national security, national economic security, public health or safety, or any combination of those matters. Terrorist attacks on our CIKR as well as other manmade or natural disasters could significantly disrupt the functioning of government and business alike, and produce cascading effects far beyond the affected CIKR and physical location of the incident.

Since one of DHS's core functions is encouraging preparedness and protection of critical infrastructure, Congress gave DHS a range of specialized tools to carry out its private sector mission. Two of the most prominent of these tools are authorized in the Homeland Security Act: the Supporting Anti-terrorism by Fostering Effective Technologies Act of 2002 (the SAFETY Act),[2] implemented through the department's SAFETY Act program (6 CFR Part 25), and the Critical Infrastructure Information Act of 2002, implemented through the department's Protected Critical Infrastructure Information, or PCII, program (6 CFR Part 29). The SAFETY Act authorizes certain liability mitigation measures for providers of qualified anti-terrorism technologies, if those technologies are alleged to have failed in the course of a terrorist attack. The PCII program allows entities to create assessments of the security of their critical infrastructure and share such assessments with DHS without the risk that such information, once shared, can be used against it in court or be publicly disclosed.

[1] The Commission specifically advocated that DHS promote a specific standard: The American National Standards Institute's (ANSI) standard for private preparedness. That standard is discussed below. The Commission also recommended that conformity with that standard define the standard of care owed by a company and its employees for legal purposes, and that insurance and credit-rating services look closely at a company's conformity with the ANSI standard in assessing its insurability and creditworthiness.

[2] Subtitle G of Title VIII of the Homeland Security Act of 2002, Public Law 107–296 (Nov. 25, 2002); 6 U.S.C. 441–444.

In the 9/11 Act, Congress authorized another tool for DHS to work with the private sector—PS-Prep—through which private sector entities can obtain certification of conformity with one or more voluntary preparedness standards adopted by DHS. Each of these programs has a common thread: that it is not DHS that will regulate preparedness or security in most corners of the private sector, but it is the private sector itself—with tools provided in part by DHS—that should take on that responsibility. In creating these programs, Congress recognized that achieving preparedness in the private sector is often more quickly and efficiently accomplished through incentives and certification processes made available to the to the private sector—since the private sector has greater resources and is generally more nimble than the Federal government—than through Federal regulatory mandates. PS-Prep will work with these other programs to leverage the powerful private sector tools DHS has been authorized to use.

B. Purpose and Structure of the Program

Simply stated, the purpose of PS-Prep is to widely encourage private sector preparedness. The program will do so by providing a mechanism for a private sector entity—a company, facility, not-for-profit corporation, hospital, stadium, university, etc.—to receive a certification from an accredited third party that it is in conformity with one or more private sector preparedness standards adopted by DHS.

Seeking certification will be completely voluntary: no private sector entity is required by DHS to seek or obtain a PS-Prep certification. For the reasons cited by the 9/11 Commission and discussed throughout this notice, however, DHS encourages all private sector entities to seriously consider seeking certification on appropriate standards adopted by DHS, once those standards become available. DHS also encourages private sector entities, including consensus standard development organizations and others, to develop preparedness standards that, if appropriate, may be adopted by DHS and become part of PS-Prep.

In order to accomplish its purpose, PS-Prep has three separate but interrelated components: adoption, accreditation, and certification.

- "Adoption" is DHS's selection of appropriate private sector preparedness standards for the program. Given DHS's goal of broadly encouraging private sector preparedness, we have developed a process, described below, that allows a wide variety of standards to be considered and adopted.
- "Accreditation" is a process managed by a DHS-selected non-governmental entity to confirm that a third party is qualified to certify that a private sector entity complies with a preparedness standard adopted by DHS. Third parties are "accredited" to provide certifications, and may be accredited on one, some, or all of the DHS-adopted standards.
- "Certification" is the process by which an accredited third party determines that a private sector entity is, in fact, in conformity with one of the private sector preparedness standards adopted by DHS.

II. Establishment of PS-Prep

A. Statutory Authorization

President George W. Bush signed the 9/11 Act into law on August 3, 2007. Section 901 of the 9/11 Act adds a new section 524 to the Homeland Security Act, codified at 6 U.S.C.321m, which requires the Secretary of Homeland Security to, among other things:

> develop and promote a program to certify the preparedness of private sector entities that voluntarily choose to seek certification under the program; and implement the program through an[] entity * * * which shall accredit third parties to carry out the certification process under this section.

This program is the PS-Prep program described in this notice.

B. The Designated Officer

In establishing and implementing the PS-Prep program, the Secretary of Homeland Security acts through a designated officer, who may be one of the following departmental officials: (i) The Administrator of the Federal Emergency Management Agency (FEMA); (ii) the Assistant Secretary for Infrastructure Protection; or (iii) the Under Secretary for Science and Technology. 6 U.S.C. 321m(a)(2). On August 31, 2007, the Secretary named the Administrator of FEMA as the designated officer.

C. The PS-Prep Coordinating Council

The designated officer is statutorily required to coordinate with the two other departmental officials named above—the Assistant Secretary for Infrastructure Protection and the Under Secretary for Science and Technology—as well as with the Special Assistant to the Secretary (now Assistant Secretary) for the Private Sector, in carrying out the program. 6 U.S.C. 321m(a)(3). This coordination takes place through the PS-Prep Coordinating Council (the PSPCC), which is described below. Other permanent members of the PSPCC include the DHS General Counsel and

the Assistant Secretary for Policy. The PSPCC will, in consultation with the private sector, adopt the preparedness standards to be certified through PS-Prep as described in this notice.

D. Coordination With the Private Sector and Other Non-DHS Entities

Even before the 9/11 Act became law, DHS encouraged private-sector owners of critical infrastructure to consider, develop and employ sector-specific preparedness best practices. DHS did so through communication with the Sector Coordinating Councils for the now eighteen critical infrastructure/key resources (CIKR) sectors, organizations that coordinate or facilitate the development of private sector preparedness standards, and other private sector parties. The private sector—which is responsible for roughly 85% of the critical infrastructure of the nation—has made substantial strides in this area, and through its and DHS's work, the private sector has become more prepared for disasters.

Since the 9/11 Act's enactment, DHS has continued this engagement, focusing specifically on the development and administration of PS-Prep. Work has already been done with private sector entities and their representatives, including representatives of organizations that coordinate the development and use of voluntary consensus standards and others.

This notice is designed to give all of the entities listed in 6 U.S.C. 321m(b)(1)(B)[3] (which we refer to as the "listed entities"), as well as those who may seek to obtain voluntary certification, those who may seek to perform as certifying bodies, those who plan to develop private sector preparedness standards (including, for example, industry groups assembled for the purpose of developing such standards), and the public in general, additional opportunities to inform and consult with the designated officer on elements of PS-Prep. Anyone may submit comments on this guidance at any time, and comments will be considered as they are received. We would, however, appreciate any recommendations for adoption of currently-existing private sector preparedness standards within the next thirty (30) days, though we will accept submissions of private sector preparedness standards for adoption at any time.

[3] Those are "representatives of appropriate organizations that coordinate or facilitate the development and use of voluntary consensus standards, appropriate voluntary consensus standards development organizations, each private sector advisory council created under section 102(f)(4), appropriate representatives of State and local governments, including emergency management officials, and appropriate private sector advisory groups, such as sector coordinating councils and information sharing and analysis centers."

III. DHS's Adoption of Voluntary Preparedness Standards

A. Call for Recommendations

In consultation with the listed entities, the designated officer is to "adopt one or more appropriate voluntary preparedness standards that promote preparedness, which may be tailored to address the unique nature of various sectors within the private sector, as necessary and appropriate, that shall be used in the accreditation and certification program under this subsection." 6 U.S.C. 321m(b)(2)(B)(i). After initially adopting one or more standards, the designated officer may adopt additional standards or modify or discontinue the use of any adopted standard, as necessary and appropriate to promote preparedness. 6 U.S.C. 321m(b)(2)(B)(ii).

One of the main functions of this notice is to seek recommendations from the listed entities and the public at large regarding the private sector preparedness standards that DHS should adopt, both initially and over time. In order to facilitate those recommendations, we will discuss in the next sections the principles we plan to use in selection, and—in a question and answer format—the meaning of "private sector preparedness standard" and the elements that DHS will seek in such a standard.

We would appreciate any recommendations for adoption of currently-existing private sector preparedness standards within the next thirty (30) days, though we will accept submissions of private sector preparedness standards for adoption at any time. We note that the designated officer will consider adoption of the American National Standards Institute (ANSI) National Fire Protection Association (NFPA) 1600 Standard on Disaster/Emergency Management and Business Continuity Programs (ANSI/NFPA 1600)—the standard specifically mentioned in both the statute and the 9/11 Commission's recommendation—as well as any other private sector preparedness standards submitted for adoption.

B. Principles for Standards Adoption

The main principle informing DHS's adoption of standards is the main goal of the program: to widely encourage private sector preparedness through creation and use of voluntary standards. For this reason, PS-Prep is designed to maximize the number and type of private sector preparedness standards that DHS will consider adopting. While PS-Prep would consider adoption of—and strongly encourages the development and submission of—standards that contain all of the statutory elements of a private sector preparedness standard, and that could be applied generally to all entities in the private sector, PS-Prep will also consider more limited standards, such as those that apply to a particular industry or a subset of an industry, or those that cover a more circumscribed aspect of preparedness, such as business continuity planning.

A second principle is that the program is to be almost entirely driven by the private sector. While the designated officer, through the PSPCC, will adopt appropriate private sector standards, and manage the accreditation process through a non-governmental third party, the standards that are adopted are largely the product of private sector work—whether through voluntary consensus standards organizations, CIKR Sector Coordinating Councils, or other private sector entities. Private sector ingenuity is the lifeblood of the program. Understood this way, PS-Prep is a tool for both DHS and the private sector to give greater visibility—through a certification—to a private sector entity's conformity with a standard, and to more widely proliferate the use of standards in the private sector. It is emphatically not PS-Prep's purpose to impose a single federal preparedness standard on the private sector.

That said, the designated officer may modify or discontinue the use of any adopted standard, as necessary and appropriate to promote preparedness. Generally, the designated officer's review of adopted standards will be part of the annual programmatic review, discussed below.

A third principle—based upon both the scarcity of government resources and the need and wisdom of DHS using a risk-based approach in allocating those resources—is that the designated officer will have discretion to direct the PSPCC's adoption efforts at those private sector standards that meet needs identified by DHS. In other words, not all recommended private sector standards—and perhaps even not all appropriate recommended private sector standards—are guaranteed to be adopted by DHS.

C. Elements to be Considered for DHS Adoption of a Standard

Given these principles, below is more specific guidance on standards that may be recommended to DHS for adoption.

What is a voluntary preparedness standard?

The Homeland Security Act defines a voluntary preparedness standard as "a common set of criteria for preparedness, disaster management, emergency management, and business continuity programs, such as * * * ANSI/NFPA 1600." (6 U.S.C. 101(18)). We discuss our understanding of this definition below.

Will there be only one standard?

While we cannot predict how many standards DHS will ultimately adopt, the program is designed to consider and adopt multiple private sector preparedness standards, and encourage the development of additional standards, as well as the expansion and evolution of existing standards. In deciding which standards to adopt, the designated officer is required to consider standards that have already been created within the private sector, and to take into account the unique nature of various sectors within the private sector.

To use an example: if DHS were to adopt a general preparedness standard like ANSI/NFPA 1600, a facility such as a large shopping mall could seek certification of its preparedness plans and practices against that standard under PS-Prep. DHS might also adopt a more specific private sector preparedness standard covering that sector (commercial facilities) or subsector (shopping malls), if such a standard were created and if DHS determined it to be appropriate. In that case, the facility could seek certification under either standard, or under both.

PS-Prep will consider several types of voluntary private sector preparedness standards, and-though describing them before the private sector creates and proposes such standards would be unduly limiting-they can be broken down into two major divisions. First, DHS will consider adoption of standards that contain all of the statutory elements of a private sector preparedness standard, and that could be applied generally to all entities in the private sector. DHS will likely adopt such standards first, to provide the greatest chance for widespread adoption quickly. Such standards may contain modifications to take into account particular unique aspects of various industries and sectors, as well as currently-existing regulatory regimes that apply to those standards. Second, and importantly, PS-Prep will also consider more limited standards, such as those that apply to a particular industry or a subset of an industry, or those that cover a more circumscribed aspect of preparedness (i.e., an emergency preparedness standard for hospitals over a certain number of beds).

Will DHS only adopt "consensus standards"?

Consensus standards, described in the Office of Management and Budget's Circular A–119, are so named because of the characteristics of their development process: openness, balance of interest, due process, an appeals process, and consensus.[4] We believe that consensus standards- and the consensus standards process-may yield some of the most valuable private sector standards for DHS to consider for adoption. But while the statute requires the designated officer to consult with "voluntary consensus standards development organizations" in managing the program, DHS is not limited in its adoption of standards to those developed in this fashion. In order to promote PS-Prep's goal of maximizing creation and adoption of private sector preparedness standards, standards developed by industry groups, non-profit organizations, and others—in addition to those developed by consensus standards development organizations—will be considered for adoption.

What is the difference between a "standard" and a "plan"?

In discussing PS-Prep, there is sometimes confusion between "plans", which describe the preparedness practices and procedures that a private sector entity has in place, and "standards", which will be considered for adoption under the program. To clarify, practices and procedures are the things a private sector entity actually does to further its preparedness, and plans are an entity's description of what it does generally or what it will do in a particular situation. A certifiable private sector preparedness standard, on the other hand, is the yardstick against which a particular entity's practices, procedures and plans are measured.

Certainly, the boundary between standards and plans is not always well defined, and the PSPCC will review materials submitted for adoption to determine that they are, in fact, standards. Generally, however, PS-Prep will not consider for adoption a private sector entity's plan for preparedness, business continuity, emergency management, etc.—only the standards against which such plans and procedures are measured.

Must there be "common elements" in the standards adopted?

Private sector preparedness standards, according to the statutory definition, contain "a common set of criteria" for preparedness, disaster management, emergency management, and business continuity programs. We understand this to mean that the standard itself should have a common set of criteria for the private sector entities certified under it—not that all private sector standards in the program have the same criteria. Therefore, the designated officer will entertain adoption of private sector preparedness standards that cover one or more of the categories in the definition (i.e., preparedness, disaster management, emergency management, and business continuity programs), while also encouraging the development of standards that comprehensively incorporate disaster management, business management, and business continuity in a single framework.

Will certification be "all or nothing"?

Some comments received to date have indicated that there is a desire for certifications on certain standards to be incremental (grading on a scale of conformance, for example) rather than absolute—sometimes called a "maturity model process improvement approach." While certifications will, at least in the initial stages of the program, determine conformity or non-conformity with a particular standard, we welcome comments on this approach.

What is an "appropriate" standard?

The designated officer must determine that a preparedness standard is "appropriate" prior to adoption. 6 U.S.C. 324m(b)(2)(B)(i). For these purposes, an "appropriate" standard is one that the designated officer determines promotes private sector preparedness.

Included in this notice is a draft list of possible elements that can be included in private sector preparedness standards. It is, of course, not possible to devise uniform criteria that every standard submitted for adoption should meet—because, among other reasons,

[4] According to the circular, consensus is defined as general agreement, but not necessarily unanimity, and includes a process for attempting to resolve objections by interested parties, as long as all comments have been fairly considered, each objector is advised of the disposition of his or her objection(s) and the reasons why, and the consensus body members are given an opportunity to change their votes after reviewing the comments.

there may be industry-specific standards proposed, and standards may seek to address something less than the full range of matters that may be included in a preparedness standard. Even so, the list of possible elements included as Section XII below is a good starting point for parties developing private sector preparedness standards for adoption. A standard need not contain all of these elements to be appropriate and therefore be considered for adoption by DHS. Nonetheless, the list is provided to guide the private sector in developing appropriate standards, and will be modified as necessary.

IV. Accreditation

A. The Selected Entity

The designated officer is to:

> enter into one or more agreements with a highly qualified nongovernmental entity with experience or expertise in coordinating and facilitating the development and use of voluntary consensus standards and in managing or implementing accreditation and certification programs for voluntary consensus standards, or a similarly qualified private sector entity, to carry out accreditations and oversee the certification process under this subsection.

6 U.S.C. 321m(b)(3)(A)(i). On June 12, 2008, the designated officer entered into a contract with the ANSI-ASQ National Accreditation Board, or ANAB, to be the "selected entity" under the statute. As the selected entity, ANAB will develop and oversee the certification process, manage accreditation, and accredit qualified third parties to carry out certifications in accordance with the accepted procedures of the program. ANAB is an internationally recognized national accreditation organization, is an International Accreditation Forum (IAF) charter member, and currently is the only IAF-member accreditation organization for process/management system certifiers based in the United States.

B. Procedures and Requirements for the Accreditation Process

The designated officer is to develop guidelines for accreditation and certification processes (6 U.S.C. 321m(b)(2)(A)(ii)), and ANAB is to manage the accreditation process and oversee the certification in accordance with those procedures (6 U.S.C. 321m(b)(3)(A)(ii)).

Initially, ANAB will offer accreditation in accordance with an existing standard: International Organization for Standardization (ISO)/ International Electrotechnical Commission (IEC) Standard 17011, "Conformity assessment—General requirements for accreditation bodies accrediting conformity assessment bodies." This standard establishes the general requirements for bodies accrediting entities that certify conformity with private sector standards. They are available at *http://www.ansi.org.* The designated officer will determine during the course of the PS-Prep program whether additional guidelines for accreditation beyond ISO/IEC 17011 are necessary, and DHS welcomes comment on this issue.

Application to become a certifying entity—known as a "certifier"—will be voluntary and open to all entities that meet the qualifications of the PS-Prep program. To determine whether an entity is qualified to provide certifications, ANAB will consider whether the entity meets the criteria and agrees to the conditions—listed in 6 U.S.C.321m(b)(3)(F). These include important agreements about conflicts of interest.

C. Review of Certifiers

The designated officer and the selected entity shall regularly review certifiers to determine if they continue to comply with the program's procedures and requirements. 6 U.S.C. 321m(b)(3)(G). DHS will require the selected entity to review certifiers on at least an annual basis. A finding that a certifier is not complying with PS-Prep may result in the revocation of its accreditation. The designated officer will, when necessary and appropriate, review the certifications issued by any entity whose accreditation is revoked.

V. Certification of Qualified Private Sector Entities

Once ANAB accredits entities to provide certifications under the program, those certifiers will determine whether a private sector entity is, in fact, in conformity with one of the private sector preparedness standards adopted by DHS. The designated officer is to develop guidelines for certification (6 U.S.C. 321m(b)(2)(A)(ii)), and ANAB is to oversee the certification process in accordance with those procedures (6 U.S.C. 321m(b)(3)(A)(ii)).

Entities will certify based upon an existing standard: ISO/IEC Standard 17021, "Conformity Assessment-Requirements for bodies providing audit and certification of management systems," available at *http://www.ansi.org.* After adoption of one or more standards, the designated officer and ANAB will work together to determine if there are any additional procedures that a certifier should use.

One important element of certification under any adopted standard is the following: As provided at 6 U.S.C. 321m(b)(3)(E), PS-Prep certifiers will, at the request of an entity seeking certification, consider non-PS Prep certifications. That is, the certifier may consider whether an already-acquired certification satisfies all or part of the PS-Prep certification requirement, and, if it does, the certifier may "give credit" for that pre-existing certification. This will avoid unnecessarily duplicative certification requirements.

VI. Small Business Concerns

Because the certification process may involve expense, and that expense may cause small businesses to avoid seeking certification, the statute calls upon the designated officer and the selected entity to "establish separate classifications and methods of certification for small business concerns * * *." 6 U.S.C. 321m(b)(2)(D). DHS is considering several lower-cost options aside from third-party certification for small businesses. One such option is a self-declaration of conformity: an attestation by the small business that it has complied with one or more DHS-adopted standards. Another option is a second-party attestation, which would involve another entity—perhaps one that uses the small business in its supply chain—attesting that the small business is in conformity with one or more DHS-adopted standards. The DHS Ready-Business Program might be the appropriate portal for these self- and second-party attestations. DHS seeks comment on self-attestations of conformity, second-party attestations, and the employment of Ready-Business in this program, as well as any other proposal for alternatives allowing small business participation in PS-Prep.

Of course, only entities categorized as "small business" would be eligible to self-declare conformity, or for the other options described above. To determine which private sector entities are small businesses, the designated official will use the North American Industrial Classification System, or NAICS, which establishes a size standard for various industrial classifications. Additional information about NAICS is available at the Small Business Administration's Web site, *http://www.sba.gov/services/contractingopportunities/sizestandardstopics/index.html.*

VII. Other Relevant Issues

A. SAFETY Act

As mentioned above, DHS manages the Supporting Anti-terrorism by Fostering Effective Technologies Act of 2002 (SAFETY Act) Program. 6 U.S.C. 441–444; 6 CFR Part 25. The SAFETY Act Program is a liability mitigation

program intended to foster the development and the deployment of anti-terrorism technologies by providing certain liability protections to sellers and downstream purchasers of qualified anti-terrorism technologies, (QATTs).

While the determination of whether a technology should receive SAFETY Act protection is fact-specific, it is the case that private-sector preparedness standards submitted to DHS for adoption into PS-Prep may be determined to be QATTs. Similarly, the services provided by certifying entities may be determined to be QATTs as well. In considering the suitability of a preparedness standard for adoption under the PS-Prep process, DHS may ask questions similar to those asked in submission of a SAFETY Act application. Therefore, PS-Prep will seek to streamline the process for applying for SAFETY Act protection and PS-Prep's adoption of a private-sector preparedness standard, or accreditation as a certifying entity.

B. Access to Sensitive Information

Under PS-Prep, certifiers will be subject to confidentiality restrictions and will agree to use any information made available to them only for purposes of the certification process. 6 U.S.C. 321m(b)(3)(F)(vi). As mentioned above, DHS has a tool—the PCII Program—that may be useful in maintaining the confidentiality of sensitive information in the PS-Prep certification process. If any information that would be helpful to certifiers is Protected Critical Infrastructure Information as defined in 6 CFR Part 29—and if the private-sector entity seeking certification so requests—such information may be shared with the certifier while maintaining the protections of the PCII program. DHS will determine whether additional procedures are necessary for the use of PCII in the PS-Prep program.

C. Availability of Standards

We believe that the goal of encouraging creation and use of voluntary standards is best promoted if once a standard is adopted into PS-Prep it is made public, including through posting on the PS-Prep Web site. DHS welcomes comment on the proposed public availability of PS-Prep standards.

VIII. Public Listing of Certified Private Sector Entities

PS-Prep will maintain a publicly available list of private sector entities that have been certified as complying with one or more PS-Prep standards, and all certified entities that consent will be listed. This list will be posted on the PS-Prep Web site. This public listing will be of assistance to third parties-such as a business that has (or is planning to have) the certified entity in its supply chain-that need to know whether the entity has certain preparedness plans and procedures in place. Businesses that today must audit such entities- and in doing so incur the cost in time and labor of site visits, document review, and the like-may choose to rely on the public listing of PS-Prep certifications. Using PS-Prep in that fashion may reduce the costs associated with determining whether an entity has complied with a standard.

IX. Ongoing and Regular Activities of the PS-Prep Coordinating Council

The PSPCC is PS-Prep's decision-making body. It will, on an ongoing basis, determine DHS's priorities for adoption of private sector standards, recommend which standards should be adopted into the program based upon those priorities and the principles outlined in Section III, above, determine if additional guidelines for accreditation or certification are necessary, and interact with listed entities as required by the statute.

The PSPCC will also assist the designated officer in complying with the statutory requirement of an annual review. The statute requires the designated officer, in consultation with the listed entities, to annually review PS-Prep "to ensure [its] effectiveness * * * and make improvements and adjustments to the program as necessary and appropriate." 6 U.S.C. 321m(b)(4)(A). The annual review is to include "an assessment of the voluntary preparedness standard or standards used in the program under this subsection." 6 U.S.C. 321m(b)(4)(B).

While the annual review will serve as a time to determine whether additional private sector preparedness standards will be adopted into the program, we envision that the PSPCC will make determinations throughout the year as appropriate standards are submitted for consideration.

During the annual review, the PSPCC will also review the performance of the selected entity, and determine whether additional entities should be considered for that role.

XI. Next Steps

This notice is part of the consultation process with the listed entities, potential certifiers, entities that may seek certification, and the public at large. DHS has engaged in consultation prior to the issuance of this notice-including through speaking engagements, discussions in the normal course of business, meetings of the CIKR Sector Coordinating Councils, and the like- and will continue engaging with the public after the program is established.

DHS intends to hold two public meetings in Washington, DC to provide a forum for public comment, one in January and another in February, 2009. Meeting details and registration information will be published in the **Federal Register** and posted at *http://www.fema.gov/privatesectorpreparedness.*

While there may be additional notices related to PS-Prep, either in the **Federal Register** or on the PS-Prep Web site (including notices about the adoption of standards, the accreditation of certain entities, adoption or modification of accreditation or certification procedures, and the like), we do not plan to issue another notice before initial standards are adopted. Instead, we will-after careful review of the comments and recommendations for the adoption of one or more voluntary private sector preparedness standards-announce adopted standard or standards, as well as the logistics (such as whom to contact at DHS or the selected entity) of accreditation and certification. Comments on this guidance as well as recommendations of standards for DHS to adopt into the program may be submitted at any time.

XI. Draft List of Possible Elements To Consider in Standards Development

In order for DHS to adopt a standard to be part of PS-Prep, the designated officer must determine that it is "appropriate." An appropriate standard is one that is determined by the designated officer to promote private sector preparedness.

Below is a draft list of possible elements that can be included in private sector preparedness standards and which may be used by the designated officer in evaluating standards for adoption in the program. The set of elements listed below can define the attributes of a comprehensive preparedness program. It is, of course, not possible to devise uniform criteria that every standard submitted for adoption should meet-because, among other reasons, there may be industry-specific standards proposed, and standards may seek to address something less than the full range of matters that may be included in a preparedness standard.

This list is a good starting point for parties developing private sector preparedness standards for adoption. A standard need not contain all of these elements to be appropriate and therefore

be considered for adoption by DHS, but the list is provided to guide the private sector in developing appropriate standards, and will be modified as necessary.

Possible Elements to Consider		Examples of how to satisfy element
Subject area	Elements and content	
1. Scope and Policy	A scope and/or policy statement that addresses preparedness, disaster management, emergency management, or business continuity. The standard may contain the following: 1. Scope. 1. Policy. 2. Principles. 3. Purpose.	1. Establish preparedness management program, including identification of appropriate resources and authorities. 2. Define scope and boundaries for development and implementation of the program. 3. Establish a framework for setting objectives, direction, and principles for action. 4. Demonstrate top management and the organization's commitment to preparedness management.
2. Requirements	A statement that the organization identifies and conforms to applicable legal, statutory, regulatory and other requirements (e.g., codes of practice and standards of care). The standard may contain the following, as well as a process for identifying and addressing them: 1. Legal. 2. Statutory. 3. Regulatory. 4. Other.	1. Identify, register and evaluate internal and external requirements pertinent to the organization's functions, activities and operations. 2. Understand potential impact of laws, regulations, codes, zoning, standards or practices concerning emergency procedures specific to the location and industry.
3. Objectives and Strategies.	The standard may contain requirements for strategies and/or strategic plans designed to accomplish the organization's objectives in: 1. Risk Management. 2. Incident Prevention. 3. Incident Preparedness. 4. Incident Mitigation. 5. Incident Response. 6. Business Continuity. 7. Incident Recovery. 8. Corrective and Preventive Actions.	1. Develop strategic plans for incident prevention, preparedness, mitigation, response, business continuity, system resiliency, and recovery for short term (less than a month) and long term (up to one year). 2. Identify type and availability of human, infrastructure, processing, and financial resources needed to achieve the organization's objectives. 3. Identify roles, responsibilities, authorities and their interrelationships within the organization required to ensure effective and efficient operations. 4. Plan the operational processes for actions required to achieve the organization's objectives. 5. Consider cyber and human security elements in control strategies and plans. 6. Make arrangements and contingency preparedness plans that should be in place to manage foreseeable emergencies. 7. Develop crisis communication plans with internal personnel (management, staff, response teams, etc.). 8. Ensure the company's Communications Department has identified key resources designated to initiate crisis communications with employees, business partners, vendors, government and external media. 9. Involve appropriate external parties during exercise events.
4. Risk Management	The standard may contain consideration of risk management, including hazard and threat identification, risk assessment, vulnerability analysis, and consequence/business impact analysis. The standard may provide for the conduct of: 1. Hazards and Threats Identification. 2. Risk Assessment. 3. Impact Analysis. 4. Vulnerability Assessment. 5. Consequence/Business Impact Analysis.	1. Establish a process for risk identification, analysis, and evaluation. 2. Identify assets, needs, requirements, and analysis of critical issues related to business disruption risks that are relevant to the organization and stakeholders. 3. Identify hazards and threats, to include cyber and human security elements. These should include loss of IT; telecommunications; key skills; negative publicity; employee or customer health or safety; damage to organization's reputation; loss of access to organization's assets; utility systems; supply chain outage/disruption, and insider threats. 4. Evaluate the probability of a disruptive event, dependencies and interdependencies with other assets and sectors, and consequences on business operations; Prioritize the issues identified as a result of the risk assessment and impact analysis. 5. Set objectives and targets (including time frames) based on the prioritization of issues within the context of an organization's policy and mission. 6. Evaluate and establish recovery time objectives. 7. Assess vulnerability of organization, systems, and processes. 8. Define risk treatment strategy and resources needed to address the organization's risks to business disruption.

Possible Elements to Consider		Examples of how to satisfy element
Subject area	Elements and content	
5. Operations, Control, and Risk Mitigation.	The standard may call for incident management / business continuity strategy, tactics, operational plans and procedures, and/or contingency plans that will be used during emergencies, crises and other events threatening its operation; and the documentation thereof. The standard may contain provisions for the following: 1. Operational Continuity. 2. Incident Management. 3. Coordination with Public Authorities.	1. Establish operational control measures needed to implement the strategic plan(s) and maintain control of activities and functions against defined targets. 2. Develop procedures for controlling key activities, functions, and operations associated with the organization, including possible large extended workforce absences; and alternative work sites or remote working procedures. 3. Establish processes and procedures for operational management and maintenance of infrastructure, plant, facilities, finance, etc. which have an impact on the organization's performance and its stakeholders. 4. Establish processes and procedures for management of documents which are essential to the successful implementation and operation of the preparedness management program or system. 5. Establish operational control measures needed to implement the strategic plan(s) and maintain control of activities and functions. 6. Develop insider threat mitigation measures. 7. Develop action plans for increased threat levels and tools to enhance situational awareness. 8. Formalize arrangements for those who supply and contract their services to the organization which have an impact on the organization's performance, including mutual aid agreements. 9. Determine the local and regional public authorities and their potential impact on your organization's plans including, but not limited to, the U.S. Department of Homeland Security, emergency management, fire, police, public utilities, and local & nationally elected public officials. 10. Work with local Public Information Officers to understand and follow protocol. 11. Document the forms and processes to be used before or during an event or exercise to ensure activities and participants, etc., are captured for review and Plan response and recovery improvements. 12. Collaborate with other organizations on preparedness issues of mutual concern.
6. Communications	The standard may call for plans for communication and warning as they apply to disaster/emergency management and business continuity. The standard may contain provisions for the following: • Warning and Notification. • Event Communication. • Crisis Management Communications. • Information Sharing. • Public Relations.	1. Develop and maintain a system required for communications and warning capability in the event of an incident/disruption. 2. Identify requirements, messages, and content required for communication within the organization. 3. Identify requirements, messages, and content required for external communication. 4. Develop, coordinate, evaluate and exercise plans to communicate information and warnings with internal stakeholders and external stakeholders (including the media) for normal and abnormal conditions. 5. Make arrangements for communications both within the organization and to/from external sources, including local, state and federal law enforcement and first responder organizations. 6. Document procedures and identify tools to manage relationships and communications processes with external partners: business partners, governmental agencies, vendors, etc.
7. Competence and Training.	The standard may call for review of the competence / qualifications and training of organization's personnel, contractors, and other relevant stakeholders involved in emergency management and business continuity management. The standard may contain provisions for the following: 1. Competence. 2. Training.	1. Assess, develop and implement training/education program(s) for the organization's personnel, contractors, and other relevant stakeholders. 2. Identify and establish skills, competency requirements, and qualifications needed by the organization to maintain operations. 3. Develop organizational awareness and establish a culture to support emergency / disaster preparedness and business continuity management. 4. Determine organizational interface protocol, identification and training requirements and assign appropriate internal staff or support representative(s).
8. Resource Management.	The standard may call for management and/or logistics plans, including allocation of human, physical, and financial resources in the event of incidents/emergencies that threaten operations. The standard may contain provisions for the following: 1. Resource Management. 2. Logistics and Business Processes.	1. Identify and assure availability of human, infrastructure, and financial resources in the event of a disruption. 2. Establish and document provisions for adequate finance and administrative resources and procedures to support the management program or system under normal and abnormal conditions. 3. Make arrangements for mutual aid and community assistance.

Possible Elements to Consider		Examples of how to satisfy element
Subject area	Elements and content	
9. Assessment and Evaluation.	The standard may call for assessments, audits and/or evaluation of disaster/emergency management and business continuity programs. The standard may contain provisions for Periodic Assessment and Performance Evaluation.	1. Establish metrics and mechanisms by which the organization assesses its ability to achieve the program's goals and objectives on an ongoing basis. 2. Determine nonconformities and the manner in which these are dealt with. 3. Conduct internal audits of system or programs. 4. Plan, coordinate, and conduct tests or exercises. 5. Evaluate and document exercise results. 6. Review exercise results with management to ensure corrective action is taken. 7. Report audits and verification results to chief executive officer.
10. Continuing Review (ongoing management and maintenance).	The standard may call for a plan for program revision and process improvement, including corrective actions. The standard may contain provisions for the following: 1. Review. 2. Maintenance. 3. Process improvement.	1. Conduct management review of programs and/or system to determine its current performance, to ensure its continuing suitability, adequacy and effectiveness, and to instruct improvements and new directions when found necessary. 2. Make provisions for improvement of programs, systems, and/or operational processes.

Dated: December 18, 2008.

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–30685 Filed 12–23–08; 8:45 am]

BILLING CODE 9110–14–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Renewal From OMB of One Current Public Collection of Information: Department of Homeland Security—Vulnerability Identification Self-Assessment Tool—Transportation (DHS–VISAT–T)

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), OMB control number 1652–0037, abstracted below. TSA plans to submit the renewal request to the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. The collection involves the voluntary submission of information regarding currently deployed security measures, through a self-assessment tool, from transportation sectors so that TSA can prioritize resources.

DATES: Send your comments by February 23, 2009.

ADDRESSES: Comments may be mailed or delivered to Ginger LeMay, Office of Information Technology, TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Giner LeMay at the above address, or by telephone (571) 227–3616 or e-mail *Ginger.LeMay@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control No. 1652–0037; Department of Homeland Security—Vulnerability Identification Self-Assessment Tool—Transportation (DHS–VISAT–T). After its inception TSA faced the challenge of enhancing security in all modes within the transportation sector. A methodology was required to support inter- and intra-modal analysis and decision-making. Millions of assets exist within the transportation sector, ranging from over 500,000 highway-bridges and approximately 4,000 mass transit agencies, to over 19,000 general aviation airports. Given this population of assets, in order to prioritize resources, TSA needs to continue to collect data from the asset owners or operators on security measures deployed and their effectiveness.

In response to this need, TSA's Office of Intelligence/Risk Support Division developed the Department of Homeland Security—Vulnerability Identification Self-Assessment Tool—Transportation (DHS–VISAT–T), formerly called the TSA Self-Assessment Risk Module (TSARM), as a means to gather security-related data and provide a cost-free service to the transportation sector. TSA designed this tool to be flexible to support the unique characteristics of each transportation mode, while still providing a common framework from which analysis can be conducted and trends can be identified. Thus far, TSA has developed modules of the tool for maritime, mass transit, highway bridges, and rail passenger stations, with more in development.

DHS–VISAT–T represents the U.S. Government's first self-assessment tool that guides a user through a series of security-related questions to develop a comprehensive baseline evaluation of a transit agency's current level of security. The tool provides the following features:

- The tool is provided to users at no cost;
- The tool is voluntary (potential users contact TSA to access the tool); and
- The tool is Web-based, easily accessible.

Owners and operators within the transportation sector can access information and use the assessment tool by visiting TSA's Web site: *http://www.tsa.gov*. Select the "Our Approach" link at the top tab area, then the "Risk Management" link on the left listing, followed by the "Risk Assessment Tools" link at the bottom of the page under "Additional Information," and finally select one of the following links to the appropriate tool:

- Transportation Risk Assessment and Vulnerability Evaluation Tool.
- Maritime Vulnerability Identification Self-Assessment Tool.
- Mass Transit Vulnerability Identification Self-Assessment Tool.

Upon completion of the tool assessment, users receive a report that summarizes their inputs. They may then use this report to develop a security plan or to identify areas of potential vulnerability. Users have the option to submit the completed assessment to DHS. If submitted, DHS reviews the assessment for consistency and provides feedback to the users. The submission is treated as Sensitive Security Information pursuant to 49 CFR part 1520 and protected accordingly.

TSA is seeking OMB approval to renew this control number for the maximum three-year period to continue to provide this tool to transportation owners and operators so that owners and operators will have the benefits of using the tool, and TSA will have information useful to identifying the most significant risks.

Based on experience to date, TSA expects that approximately 1,000 persons will use the tool annually. The total estimated annual burden hours will be 8,000 based on an estimated 8 hours per respondent.

Issued in Arlington, Virginia, on December 18, 2008.

Ginger LeMay,

Paperwork Reduction Act Officer, Business Improvements and Communications, Office of Information Technology.

[FR Doc. E8–30569 Filed 12–23–08; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Declaration of Owner for Merchandise Obtained (Otherwise Than) in Pursuance of a Purchase or Agreement to Purchase and Declaration of Consignee When Entry is Made by an Agent

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30–day notice and request for comments; extension of an existing information collection: 1651–0093.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Declaration of Owner for Merchandise Obtained (other than) in Pursuance of a Purchase or Agreement to Purchase and Declaration of Consignee when Entry is Made by an Agent. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (73 FR 63000) on October 22, 2008, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before January 23, 2009.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). Your comments should address one 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/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components 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 collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Declaration of Owner for Merchandise Obtained (otherwise than) in Pursuance of a Purchase or Agreement to Purchase and Declaration of Consignee When Entry is Made by an Agent.

OMB Number: 1651–0093.

Form Number: CBP Forms-3347 and 3347A.

Abstract: CBP Forms–3347 and 3347A allow an agent to submit, subsequent to making the entry, the declaration of the importer of record that is required by statute. These forms also permit a nominal consignee to file the declaration of the actual owner, and to be relieved of statutory liability for the payment of increased duties.

Current Actions: This submission is being made to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 5,700.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 570.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202–344–1429.

Dated: December 16, 2008.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E8–30663 Filed 12–23–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Documents Required on Private Aircraft

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day Notice and request for comments; Extension of an existing information collection: 1651–0058.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Documents Required on Private Aircraft. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (73 FR 63001) on October 22, 2008, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before January 23, 2009.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). Your comments should address one 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/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components 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 collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Documents Required Aboard Private Aircraft.

OMB Number: 1651–0058.

Form Number: None.

Abstract: These documents are required by CBP regulations for private aircraft arriving from foreign countries. They pertain to baggage declarations, and if applicable, to Overflight authorizations. CBP also requires that the pilots present documents required by the FAA.

Current Actions: This submission is being made to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 150,000.

Estimated Time per Respondent: 1 minute.

Estimated Total Annual Burden Hours: 2,490.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.2.C, Washington, DC 20229, at 202–344–1429.

Dated: December 16, 2008.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E8–30660 Filed 12–23–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Dominican Republic-Central America-U.S. Free Trade Agreement (CAFTA)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day Notice and request for comments; Extension of an existing information collection: 1651–0125.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: U.S./Central American Free Trade Agreement (CAFTA). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (73 FR 63001) on October 22, 2008, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before January 23, 2009.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). Your comments should address one 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/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components 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 collections of information on those who

are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: CAFTA.

OMB Number: 1651–0125.

Form Number: None.

Abstract: The collection of data for CAFTA is used to ascertain if claims filed with CBP are eligible for duty refunds.

Current Actions: This submission is being made to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 2,500.

Estimated Total Annual Responses: 10,000.

Annual Number of Responses per Respondent: 4.

Estimated Time Per Response: 24 minutes.

Estimated Total Annual Burden Hours: 4,000.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202–344–1429.

Dated: December 16, 2008.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E8–30661 Filed 12–23–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: NAFTA Regulations and Certificate of Origin

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day Notice and request for comments; Extension of an existing information collection: 1651–0098.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: NAFTA Regulations and Certificate of Origin. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (73 FR 63002) on October 22, 2008, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before January 23, 2009.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). Your comments should address one 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/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components 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 collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: NAFTA Regulations and Certificate of Origin.

OMB Number: 1651–0098.

Form Number: CBP Forms 434 and 446.

Abstract: The objectives of NAFTA are to eliminate barriers to trade in goods and services between the United States, Mexico, and Canada and to facilitate conditions of fair competition within the free trade area. CBP uses these forms to verify eligibility for preferential tariff treatment under NAFTA.

Current Actions: This submission is being made to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 120,050.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 30,037.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202–344–1429.

Dated: December 16, 2008.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E8–30662 Filed 12–23–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. 5191–N–47]

Notice of Submission for Extension of a Currently Approved Information Collection to OMB; Comment Request; Applications for Housing Assistance Payments and Special Claims Processing

AGENCY: Office of Program Systems Management

ACTION: Notice extension of a currently approved information collection.

SUMMARY: The information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for an extension of the currently approved collection, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 23, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within sixty (60) days from the date of this Notice. Comments should refer to the proposal by name/or OMB Control Number and should be sent to: HUD Desk Officer, Office of

Management and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Paperwork Reduction Act Compliance Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; e-mail *Lillian.Deitzer@HUD.gov;* telephone (202) 402–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms Deitzer.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB for processing, an extension of a currently approved collection for submission of Applications for Housing Assistance Payments and Special Claims Processing.

This Notice is soliciting comments from members of the public and affected agencies concerning the extension of the approved collection of information to: (1) Evaluate whether the collection remains necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (2) Evaluate accuracy of the agency's estimate of the burden of the collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Applications for Housing Assistance Payments and Special Claims Processing.

Description of Information Collection: This is an extension of a currently approved collection for submitting Applications for Housing Assistance Payments for Section 8, Rent Supplement, Rental Assistance Payment (RAP), Section 202 Project Assistance Contracts (PACs) and Section 811 and 202 Project Rental Assistance Contracts (PRACS) program units. Special Claims for damages, unpaid rent loss, and vacancy claims are available for the Section 8, Section 202 PACs, and Section 811 and Section 202 PRACS programs.

Each HUD program has an assistance payments contract. These contracts indicate that HUD will make monthly assistance payments to Project Owners/ Management Agents on behalf of the eligible households who reside in the assisted units. Project Owners are required to sign a certification on the Housing Owner's Certifications and Application for Housing Assistance form which states: (1) Each tenant's eligibility and assistance payments was computed in accord with HUD's regulations administrative procedures and the Contract, and are payable under the Contract; (2) The units for which assistance is being billed are decent, safe, sanitary, and occupied or available for occupancy; (3) No amount included on the bill has been previously billed or paid; (4) All facts and data on which the payment request is based are true and accurate; and (5) That no payments have been paid or will be paid from the tenant or any public or private source for units beyond that authorized by the assistance contract, or lease, unless permitted by HUD.

This extended information collection provides a standard for Project Owners/ Management Agents to report Adjustments to Schedule of Tenant Assistance Payments Due, Miscellaneous Accounting Request for Schedule of Tenant Assistance Due and Approved Special Claims for Schedule of Tenant Assistance Payments Due utilizing data already available in their software applications.

OMB Control Number: 2502–0182.

Agency Form Numbers: HUD–52670, HUD–52670–A Part 1, HUD–52670–A Part 2, HUD–52670–A Part 3, HUD–52670–A Part 4, HUD–52670–A Part 5, and HUD–52671–A/B/C/D.

Members of Affected Public: Not-for-profit institutions.

Estimation of the total numbers of hours needed to prepare the information collection (2502–0182) including number of respondents, frequency of responses, and hours of response: An estimation of the annual total number of hours needed to prepare the information collection is 301,951, number of respondents is 21,787, frequency of response is 12 per annum, and the total hours per respondent is 6.65.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 19, 2008.

Ronald Y. Spraker,

Acting General Deputy Assistant, Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. E8–30760 Filed 12–23–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5188–N–14]

Notice of Proposed Information Collection: Comment Request; Community Development Block Grant Entitlement Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 23, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian L. Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4176, Washington, DC 20410; telephone 202–402–8048 (this is not a toll-free number) or e-mail Ms. Deitzer at *Lillian.L.Deitzer@hud.gov* for a copy of the proposed form and other available information.

FOR FURTHER INFORMATION CONTACT: Steve Johnson, Director, Entitlement Communities Division, Office of Block Grant Assistance, 451 7th Street, SW., Room 7282, Washington, DC 20410; telephone (202) 708–1577 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including

through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Community Development Block Grant Entitlement Program.

OMB Control Number, if applicable: 2506–0077.

Description of the need for the information and proposed use: This request identifies the estimated reporting burden associated with information that CDBG entitlement grantees will report in IDIS for CDBG-assisted activities, recordkeeping requirements, and reporting requirements. Grantees are encouraged to update their accomplishments in IDIS on a quarterly basis. In addition, grantees are required to retain records necessary to document compliance with statutory and regulatory requirements, Executive Orders, applicable OMB Circulars, and determinations required to be made by grantees as a determination of eligibility. Grantees are required to prepare and submit their Consolidated Annual Performance and Evaluation Reports, which demonstrate the progress grantees make in carrying out CDBG-assisted activities listed in their consolidated plans. This report is due to HUD 90 days after the end of the grantee's program year. The information required for any particular activity is generally based on the eligibility of the activity and which of the three national objectives (benefit low- and moderate-income persons; eliminate/prevent slums or blight; or meet an urgent need) the grantee has determined that the activity will address.

Agency form numbers, if applicable: Not applicable.

Members of affected public: Grant recipients (metropolitan cities and urban counties) participating in the CDBG Entitlement Program.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 1,145. The proposed frequency of the response to the collection is on an annual basis. The total estimated burden is 533,799 annual hours.

Status of the proposed information collection: This submission is a revision of a currently approved collection. The current OMB approval expires on February 28, 2009.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 16, 2008.

Nelson R. Bregon,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. E8–30606 Filed 12–23–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5188–N–13]

Notice of Proposed Information Collection for Public Comment: Comment Request, Continuum of Care Homelessness Assistance Grant Application

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due date:* February 23, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Lillian L. Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4178, Washington, DC 20410–5000; telephone 202.402.8048, (this is not a toll-free number) or e-mail Ms. Deitzer at *Lillian.L.Deitzer@hud.gov* for a copy of the proposed forms, or other available information.

FOR FURTHER INFORMATION CONTACT: Ann Marie Oliva, Office of Special Needs Assistance Programs, CPD, Department of Housing and Urban Development, 451 7th Street, SW., Room 7262, Washington, DC 20410; telephone 202.402.4497 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Continuum of Care Homeless Assistance Grant Application.

OMB Control Number, if applicable: 2506–0112.

Description of the need for the information and proposed use: Information to be used in the rating, ranking and selection of proposals submitted to HUD by State and local governments, public housing authorities, and nonprofit organizations for awarded funds under the Continuum of Care Homeless Assistance Competition.

Agency form number: HUD–40090–1, HUD–40090–2, SF–424, HUD–SF–424 SUPP, HUD 2880, HUD–96010, HUD–27300, HUD–2991, HUD–2993, HUD–2994.

Members of affected public: Eligible applicants interested in applying for Continuum of Care Homeless Assistance funds.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 10,510 responses, per annum (460 × 1 form), 160 hours to prepare HUD–40090–1, (6,700 × 1 form), 29 hours to prepare HUD–40090–2 (3,350 × 1 form), plus 0.50 hours to prepare SF–424, for total of 138,492 hours reporting.

Status of the proposed information collection: Reinstatement of previously approved collection number expired December 31, 2009.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 16, 2008.

Nelson R. Bregon,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. E8–30607 Filed 12–23–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5191–N–46]

Notice of Submission for Extension of a Currently Approved Information Collection: Comment Request; Owner Certification With HUD's Tenant Eligibility and Rent Procedures

AGENCY: Office of Program Systems Management, HUD.

ACTION: Notice of extension of a currently approved information collection.

SUMMARY: The information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 23, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within 60 days from the date of this Notice. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Paperwork Reduction Act, Compliance Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410: e-mail *Lillian.Deitzer@HUD.gov;* telephone (202) 402–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: The Department is submitting an extension of the currently approved information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the extension of the approved collection of information to: (1) Evaluate whether the collection remains necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (2) Evaluate accuracy of the agency's estimate of the burden of the collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Owner Certification with HUD's Tenant Eligibility and Rent Procedures.

OMB Control Number: 2502–0204.

Description of the need for the information and proposed use: The Department needs to collect this information in order to establish an applicant's eligibility for admittance to subsidized housing, specify which eligible applicants may be given priority over others, and prohibit racial discrimination in conjunction with selection of tenants and unit assignments. The Department must specify tenant eligibility requirements as well as how tenants' incomes, rents and assistance must be verified and computed so as to prevent the Department from making improper payments to owners on behalf of assisted tenants. The Department also must provide annual reports to Congress and the public on the race/ethnicity and gender composition of subsidy program beneficiaries. This information is essential to maintain a standard of fair practices in assigning tenants to HUD Multifamily properties.

Agency form numbers, if applicable: HUD–50059, HUD–50059–A, HUD–9887/9887–A, HUD–27061–H, HUD–90100, HUD–90101, HUD–90102, HUD–90103, HUD–90104, HUD–90105–a, HUD–90105–b, HUD–90105–c, HUD–90105–d, HUD–90106, HUD–91066, and HUD–91067.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: An estimation of the annual total number of hours needed to prepare the information collection is 1,348,679 number of respondents is 2,160,726, frequency response is 1 per annum, and the total hours per respondent is 1.71.

Status of the proposed information collection: This is an extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: December 19, 2008.

Ronald Y. Spraker,

Acting General Deputy, Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. E8–30746 Filed 12–23–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5188–N–15]

Notice of Proposed Information Collection: Comment Request, State Community Development Block Grant (CDBG) Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 23, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to:

Lillian L. Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4176, Washington, DC 20410; telephone, 202–402–8048 (this is not a toll-free number), or e-mail Ms. Deitzer at *Lillian.L.Deitzer@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Eva Fontheim at (202) 402–3461 (this is not a toll free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the

burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: State Community Development Block Grant (CDBG) Program.

OMB Control Number, if applicable: 2506–0085.

Description of the need for the information and proposed use: The Housing and Community Development Act of 1974, as amended, requires grant recipients that receive CDBG funding to retain records necessary to document compliance with statutory and regulatory requirements on an on-going basis. Grantees must also submit an annual performance and evaluation report to demonstrate progress that it has made in carrying out its consolidated plan, and such records as may be necessary to facilitate review and audit by HUD of the grantee's administration of CDBG funds (section 104(e)(1)).

Agency form numbers, if applicable: Not Applicable.

Members of affected public: This information collection applies to all State CDBG Grantees.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 50. The proposed frequency of the response to the collection of information is annual for reporting and on-going for recordkeeping. Annual reporting and recordkeeping is estimated at 112,100 hours for 50 grant recipients.

Status of the proposed information collection: Extension without change of a currently approved collection, and a request for OMB renewal for three years. The current OMB approval will expire in February, 2009.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 16, 2008.

Nelson R. Bregon,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. E8–30605 Filed 12–23–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5186–N–52

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.

DATES: *Effective Date:* December 24, 2008.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, 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 the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: December 18, 2008.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. E8–30601 Filed 12–23–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2008–N0343; 96300–1671–0000–P5]

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species.

DATES: Written data, comments or requests must be received by January 22, 2009.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Phillip E. Allman, Florida Gulf Coast University, Fort Myers, FL. PRT–201963.

The applicant requests a permit to import biological samples of leatherback sea turtles (*Dermochelys coriacea*) from Ghana for the purpose of enhancement of the species through scientific research. This notification covers activities conducted by the applicant for a five-year period.

Applicant: KJC Holdings Inc, Lohn, TX, PRT–200211.

The applicant requests a permit authorizing take, interstate and foreign commerce of swamp deer (*Rucervus duvaucelii*) from their captive herd for the purpose of enhancement of the survival of the species. This notification covers activities conducted by the applicant over a five-year period.

Applicant: Warren A. Sackman, Sands Point, NY, PRT–200696.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: George M. Taylor, Redding, CA, PRT–198716.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Matthew H. Heisser, Muskegon, MI, PRT–199058.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Anthony J. Carter, Staten Island, NY, PRT–162945.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Jock E. Clause, Billings, MT, PRT–199696.

The applicant requests a permit to import the sport-hunted trophy of two male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: James M. Scott, Nederland, TX, PRT–185775.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Dated: December 12, 2008.

Lisa J. Lierheimer,

Senior Permit Biologist. Branch of Permits, Division of Management Authority.

[FR Doc. E8–30676 Filed 12–23–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Agency Information Collection Activities; Submission to OMB

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this notice announces that the Bureau of Indian Affairs is submitting an information collection to the Office of Management and Budget for renewal. The collection concerns Reindeer in Alaska, OMB Control #1076–0047. We are requesting a renewal of clearance and requesting comments on this information collection.

DATES: Written comments must be submitted on or before January 23, 2009.

ADDRESSES: You are requested to send any comments to the Desk Officer for the Department of the Interior at the Office of Management and Budget via facsimile at (202) 395–6566 or by e-mail at *OIRA_DOCKET@omb.eop.gov*. Please send a copy of comments to Warren Eastland, Wildlife Biologist, Bureau of Indian Affairs, P.O. Box 25520, Juneau, AK 99802. If you wish further communication, please send requests or questions via facsimile at (907) 586–7120 rather than via telephone. We cannot accept electronic submissions at this time.

FOR FURTHER INFORMATION CONTACT: Warren Eastland, Wildlife Biologist, Bureau of Indian Affairs, P.O. Box 25520, Juneau, AK 99802. Fax: (907) 586–7120.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information collected under this program is used solely to monitor and regulate the possession and use of Alaskan reindeer by non-Natives in Alaska. The applicant must fill out a permit to get a reindeer for any purpose. The applicants are required to report on the status of the reindeer annually, or when a change occurs if earlier than the date for the annual report.

II. Request for Comments

A notice announcing our intent to renew this collection was published on April 8, 2008 (73 FR 19094). There were no comments received regarding that notice. We again invite comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agencies' estimate of the burden (including the hours and cost) of the proposed collection of information, including the validity of the methodology and assumption used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

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; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Before including your address, phone number, e-mail address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so. All comments from representatives of businesses or organizations will be made public in their entirety.

We may not conduct or sponsor, and you are not required to respond to, a collection of information unless there is a currently valid Office of Management and Budget Control Number.

OMB has up to 60 days to make a decision on the submission for renewal, but may make the decision after 30 days. Therefore, to receive the best consideration of your comments, you should submit them by the date listed in the **DATES** section.

III. Data

Title: Reindeer in Alaska, 25 CFR 243.

OMB control number: 1076–0047.

Type of Request: Extension.

Affected Public: Non-native persons who seek to obtain a reindeer.

Respondent's Obligation: Required to obtain or retain a benefit.

Total Number of Respondents: 21.

Total Number of Annual responses: 21.

Total Annual Burden hours: 3.

Dated: December 17, 2008.

Sanjeev "Sonny" Bhagowalia,

Chief Information Officer—Indian Affairs.

[FR Doc. E8–30556 Filed 12–23–08; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Agency Information Collection Activities; Submission to OMB

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of submission of requests.

SUMMARY: In compliance with the Paperwork Reduction Act, this notice announces the Bureau of Indian Affairs is submitting three information collections to the Office of Management and Budget for renewal. The collections are the Student Transportation Form, 1076–0134; Data Elements for Student Enrollment in Bureau-funded schools, 1076–0122; and Application for Admission to Haskell Indian Nations University (HINU) and Southwestern Indian Polytechnic Institute (SIPI), 1076–0114. We are requesting a renewal of clearance and requesting comments on this information collection. These collections help fulfill the trust responsibility of the Secretary of the Department of the Interior and support the educational efforts for Native American students from elementary through post-secondary.

DATES: Written comments must be submitted on or before January 23, 2009.

ADDRESSES: You may submit comments on the information collection to the Desk Officer for the Department of the Interior at the Office of Management and Budget, by facsimile to (202) 395–6566 or you may send an e-mail to *OIRA_DOCKET@omb.eop.gov*. Please send copies of comments to Kevin Skenandore, Acting Director, Bureau of Indian Education (BIE), 1849 C Street NW., MS–3609/MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Glenn Allison, (202) 208–3628 or Chris Redman, (405) 2605–6051 x305.

SUPPLEMENTARY INFORMATION:

I. Abstract

Student Transportation Form

The student transportation regulations in 25 CFR Part 39, subpart G, contain the program eligibility and criteria that govern the allocation of transportation funds. Information collected from the schools will be used to determine the rate per mile. The information collection is needed to provide transportation mileage for Bureau-funded schools, which will receive an allocation of transportation funds.

Data Elements for Students in Bureau-funded Schools

The information is collected by school registrars to determine the student's eligibility for enrollment in a Bureau-funded school, and if eligible, is shared with appropriate school officials to identify the student's base and supplemental educational and/or residential program needs. The information is compiled into a national database by the Bureau of Indian Education to facilitate budget requests and the allocation of congressionally appropriated funds.

Application for Admission to HINU and SIPI

The BIE provides the admission forms for HINU and SIPI, which are used to determine eligibility of American Indian and Alaska Native students for educational services at these two institutions. These forms are utilized pursuant to the Blood Quantum Act, Public Law 99–228; the Snyder Act, chapter 115, Public Law 67–85; and the Indian Appropriations of the 48th Congress, chapter 180, page 91, For Support of Schools, July 4, 1884.

II. Request for Comments

A 60-day notice requesting comments was published on September 10, 2008 (Vol. 73, FR 52671). There were no comments received regarding that notice. You are invited to comment on the following items to the Desk Officer at OMB at the citation in **ADDRESSES** section.

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden (including the hours and cost) of the proposed collection of information, including the validity of the methodology and assumption used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

We may not conduct or sponsor, and you need not respond to, a collection of information, unless there is a valid Office of Management and Budget control number.

Comments submitted will become a matter of public record. Before including your address, phone number, e-mail address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so. All comments from representatives of businesses or organizations will be made public in their entirety.

The Office of Information and Regulatory Affairs, Office of Management and Budget, has up to 60 days to make a decision but may decide after 30 days. Therefore, in order for your comments to have the greatest impact, they should be sent during the 30-day comment period.

III. Data

1.

Title: Student Transportation Form, Subpart G, 25 CFR 39.

OMB Control Number: 1076–0134.

Type of review: Renewal.

Brief Description of collection: This collection provides pertinent data concerning the schools' bus transportation mileage and related long distance travel mileage to determine funding for school transportation.

Respondents: Contract and Grant Schools; Bureau-operated schools. About 121 tribal school administrators annually gather the necessary information during student count week.

Number of Respondents: 121.

Estimated Time per Response: At an average of 6 hours each 121 reporting schools = 726 hours.

Frequency of Response: Annually.

Total Annual Burden to Respondents: 726 hours.

2.

Title: Data Elements for Student Enrollment in Bureau-funded Schools.

OMB Control Number: 1076–0122.

Type of Review: Extension.

Description: This annual collection provides data about students that impacts placement, special needs assessment, and funding for individuals, and it assists schools in developing a plan for the school year.

Total Number of Respondents: 48,000

Total Number of Annual Responses: 48,000.

Total Annual Burden Hours: 15 minutes for each response = 12,000.

3.

Title: Applications for Admission to Haskell Indian Nations University and to Southwestern Indian Polytechnic Institute.

OMB Control Number: 1076–0114.

Type of Review: Extension.

Description: These eligibility application forms are voluntary for students but are mandatory in determining a student's eligibility for educational services.

Total Number of Respondents: 4,000.

Total Number of Annual Responses: 4,000.

Total Annual Burden Hours: 30 minutes per application × (number of HINU applications) and 30 minutes per application × (number of SIPI applications) = 2000 total burden hours.

Filing fee: $10 per application for HINU; fee for SIPI included in school cost but we have estimated a $10 fee per completed application. We estimate the total filing fee to be $16,500.00. SIPI has a number of applications which are never completed; therefore, their filing fee is not $3,000, as it would be otherwise. Dormitory fees may also apply.

Dated: December 17, 2008

Sanjeev Bhagowalia,

Chief Information Officer—Indian Affairs.

[FR Doc. E8–30615 Filed 12–23–08; 8:45 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Navajo Nation Liquor Regulations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Secretary's certification of the Navajo Nation Liquor Regulations. These Regulations regulate and control the possession, sale and consumption of liquor within the Navajo Nation. The Navajo Nation is located on extensive reservation lands, and these Regulations establish a legal framework for licensing the transportation and sale of alcoholic beverages within the exterior boundaries of the Nation. These regulations will ensure the ability of the tribal government to control the distribution and possession of liquor within the reservation and at the same time will provide an important source of revenue. These Regulations provide solely for civil enforcement (fines) imposed on parties whose actions are subject to the licensing provisions set forth herein. Any violation of these regulations may also result in prosecution under other sections of the Navajo Nation Code, or under relevant State or Federal law.

DATES: *Effective Date:* These Regulations are effective as of December 24, 2008.

FOR FURTHER INFORMATION CONTACT: Irene Herder, Tribal Operations Specialist, Navajo Regional Office, P.O. Box 1060, Gallup, New Mexico 87305; Telephone (505) 863–8207; Fax (505) 863–8292; or Elizabeth Colliflower, Office of Indian Services, 1849 C Street, NW., Mail Stop 4513–MIB, Washington, DC 20240; Telephone (202) 513–7627; Fax (202) 208–5113.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953; Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country.

The Navajo Nation is governed by the Navajo Nation Council, which has developed a comprehensive legal code (the Navajo Nation Code, N.N.C.). Title 17, subchapter 12, of the N.N.C. bars the transportation, sale, and consumption of alcoholic beverages on the Navajo Reservation. Section 412 of Title 17 sets out exceptions to the prohibitions in the title.

In 2001, the Council amended 17 N.N.C. section 412 to permit use of alcohol at the Antelope Point Development Area of the Navajo Nation, and the Glen Canyon National Recreation Area. (Resolution CYJ–62–01). In 2008, the Council again amended 17 N.N.C. section 412, to authorize transportation, sale, delivery and consumption on the Navajo Reservation at authorized casinos. (Resolution CJA–03–08, passed by the Council January 31, 2008, and signed into law by the President of the Navajo Nation on February 11, 2008). By the same resolution, the Council delegated the authority to promulgate liquor regulations to the Navajo Tax Commission.

The following Liquor Regulations were adopted and approved by the Navajo Nation Tax Commission by Resolution TAX–08–208.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that these Liquor Regulations of the Navajo Nation were promulgated by the Navajo Tax Commission pursuant to the authority vested in the Commission by the Navajo Nation Council by Resolution CJA–03–08.

Dated: December 19, 2008.

George T. Skibine

Acting Deputy Assistant Secretary for Policy and Economic Development.

The Navajo Nation's Liquor Regulations read as follows:

Navajo Nation Liquor Regulations

1.101. Title. These Liquor Regulations shall be known as the Navajo Nation Liquor Regulations ("Liquor Regulations").

1.102. Purpose. The purpose of these Liquor Regulations is to ensure the proper transportation, sale, delivery, and consumption of alcoholic beverages within the exterior boundaries of the Navajo Nation and to ensure the health, safety, and welfare of the Navajo people.

1.103. Authority. The Commission enacts these Liquor Regulations pursuant to the authority delegated to the Commission by the Navajo Nation Council in 17 N.N.C. § 412.

1.104. Definitions. Except as otherwise provided herein, the following definitions apply throughout these Liquor Regulations:

A. "Antelope Point" means the area covered by the Antelope Point Resort and Marina Business Site Lease;

B. "Beer" means any beverage obtained by the alcoholic fermentation of an infusion or decoction of barley, malt, and hops or other cereals in drinking water, and includes porter, beer, ale and stout;

C. "Certified Server" means any employee of a Retailer Licensee who is certified to Sell Liquor on the Navajo Nation on behalf of the Retailer Licensee in accordance with these Liquor Regulations, and who has successfully completed a liquor server training program approved by the Office;

D. "Commission" means the Navajo Tax Commission, delegated by the Navajo Nation Council to ensure the proper transportation, sale, delivery, and consumption of alcoholic beverages; or any such commission so delegated by the Navajo Nation;

E. "Enterprise" means a Navajo Nation Enterprise or entity that is engaged in, or wishes to engage in, the business of Selling Liquor within the Navajo Nation;

F. "Liquor" means the product of distillation of any fermented liquid, rectified either once or more often, of whatever the origin, and includes synthetic ethyl alcohol, which is considered potable. "Liquor" includes distilled or rectified spirits, potable alcohol, brandy, whiskey, rum, gin, and aromatic bitters bearing the federal internal revenue strip stamps or any similar alcoholic beverage, including

blended or fermented beverages, dilutions, or mixtures of one or more of the foregoing containing more than one-half percent alcohol, but less than twenty-one percent alcohol by volume, including Beer, Spirits, Wine, and Malt Liquor. Beer, Spirits, Wine, and Malt Liquor and liquors or solids containing in excess of one half of one percent (.05%) of alcohol by volume, but not more than twenty-one percent (21%) shall be considered liquor;

G. "Malt Liquor" means an alcoholic drink made from malt, typically having a higher alcohol content than most Beer or ale;

H. "Minor" means any individual under the age of 21;

I. "Navajo casino facility" means a gaming facility operated by the Navajo Nation, pursuant to the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497, 25 U.S.C. 2701–2721 and U.S.C. 1166–1168), Navajo Gaming Ordinance, (5 N.N.C. §§ 2001–2057) and any gaming compact entered into between the Navajo Nation and a State;

J. "Navajo Nation" means:

1. When referring to the body politic, the same meaning as set forth in 1 N.N.C. § 551 *et seq.*

2. When referring to governmental territory, the same meaning as set forth in 7 N.N.C. § 254;

K. "Navajo Nation Court" means any or all of the courts established by the Navajo Nation;

L. "Office" means the Office of the Navajo Tax Commission, charged by the Commission with the day-to-day administration of these Liquor Regulations; or any such administrative office so charged by the Commission;

M. "Package Sale" means any Sale of Liquor in containers filled or packed by a manufacturer or wine bottler and Sold in an unbroken package for consumption off the premises designated in the Retailer License and not for resale;

N. "Person" means an individual, trust, firm, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever;

O. "Public Place" means commercial or community facilities of every nature that are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access;

P. "Retailer License" means a revocable license granted by the Office authorizing the Licensee named therein and its Certified Servers to Sell Liquor at a specified location within the Navajo Nation;

Q. "Retailer Licensee" means the holder of a valid Retailer License allowing the Sale of Liquor in a designated location, as authorized and granted by the Office;

R. "Sale" or "Sell" means an exchange, transfer, sale, supply, barter, traffic, donation (with or without consideration), serving for consumption, dispensing, delivering, or distributing, by any means whatsoever, of Liquor within the Navajo Nation by any Person;

S. "Spirits" means any beverage that contains alcohol obtained by distillation, mixed with drinkable water and other substances in solution, including brandy, rum, whiskey, and gin;

T. "Wholesaler" means a person whose place of business is located off the Navajo Nation and who Sells, or possesses for the purpose of Sale, any Liquor for resale by a Retailer Licensee;

U. "Wholesaler License" means a revocable license granted by the Office authorizing the Wholesaler named therein to do business within the Navajo Nation with a Retailer Licensee;

V. "Wholesaler Licensee" means the holder of a valid Wholesaler License; and

W. "Wine" means any alcoholic beverage obtained by the fermentation of the natural sugar content of fruits, such as grapes or apples or other agricultural products, containing sugar, including fortified wines such as port, sherry, and champagne.

1.105. Powers of Enforcement.

A. The Commission is empowered by the Navajo Nation Council to regulate the subject matter of these Liquor Regulations, pursuant to 17 N.N.C. § 412. The Commission shall have the following powers and duties:

1. To approve, establish, and publish such rules and regulations as are necessary and appropriate to ensure the proper transportation, sale, delivery and consumption of alcoholic beverages within the Navajo Nation in accordance with 17 N.N.C. § 412;

2. To exercise such other delegated powers as are necessary and appropriate to fulfill the purposes of these Liquor Regulations.

B. The Office is delegated the authority to enforce these Liquor Regulations and shall have the following powers and duties:

1. To adopt policies and procedures as necessary to implement these Liquor Regulations, subject to approval by the Commission;

2. To authorize the Sale of Liquor within the Navajo Nation in accordance with 17 N.N.C. § 412;

3. To bring any necessary action to enforce these Liquor Regulations;

4. To determine penalties and seek damages for violations of these Liquor Regulations;

5. To collect fees levied or set in relation to these Liquor Regulations and keep accurate records, books, and accounts; and

6. To employ managers, accountants, security personnel, inspectors, and other such persons as may be reasonably necessary to administer these Liquor Regulations.

1.106. Limitations.

A. Notwithstanding any other provision of these Liquor Regulations, no penalty may be imposed pursuant or related to these Liquor Regulations in contravention of any limitation imposed by the Indian Civil Rights Act of 1968, 82 Stat. 77, 25 U.S.C. 1301, *et seq.*, or other applicable federal law.

B. Any regulatory action taken by the Office pursuant to these Regulations will be civil in nature and will therefore apply to both Indians and non-Indians.

C. Any alleged activity which would be deemed a criminal act under tribal, state, or federal law involving the transportation, sale, delivery, or consumption of liquor within the Navajo Nation will be referred to the appropriate tribal, state, and/or federal authorities.

D. Nothing in these Liquor Regulations, including but not limited to any penalty imposed by the Office, shall be construed to bar a similar trial or punishment to the full extent of any applicable tribal, state, and/or federal civil or criminal law.

1.107. Inspection Rights.

A. All premises upon which Liquor is sold, stored, or distributed shall be open to inspection by duly authorized tribal officials or their designees for the purposes of ascertaining compliance with these Liquor Regulations and applicable law.

B. Any Person who prevents or hinders, or attempts to prevent or hinder, such inspection shall be in violation of these Liquor Regulations.

1.108. Authorized Liquor Sales and Practices.

A. Generally. Except as otherwise provided herein, Retailer Licensees may Sell Liquor on the Navajo Nation at such places and hours permitted by their Retailer License and allowed by applicable Navajo Nation law.

B. Sales on Sundays and Election Days. Except as otherwise limited by the Navajo Nation Council, the Sale of Liquor shall be allowed on Sunday and on any Navajo Nation, federal, or State election day.

C. Sales Only by Certified Servers. All Liquor Sales within the Navajo Nation

authorized by these Liquor Regulations must be made only by Certified Servers.

D. Liquor Sales at the Navajo Casino Facility. Any Sale of Liquor at a Navajo casino facility must comply with all applicable provisions of any Navajo Nation-State class II gaming compact between the Navajo Nation and any State, as it now exists or hereafter may be amended.

E. Liquor Sales at Antelope Point. Any Sale of Liquor at Antelope Point must comply with all applicable laws and regulations.

F. Wholesale Liquor Transactions. A Retailer Licensee may purchase Liquor for resale at a designated location only from a Wholesaler possessing a valid Wholesaler License issued by the Office. A Wholesaler Licensee may Sell Liquor for resale at a designated location only to holders of valid Retailer Licenses issued by the Office, provided that such Sales are otherwise in conformity with these Liquor Regulations and applicable laws of the State.

1.109. Prohibited Liquor Sales and Practices.

A. No Package Sales; Resale. No Retailer Licensee shall Sell Liquor on the Navajo Nation for resale; all such Sales must be for the personal use and consumption of the purchaser. Any Person who is not licensed pursuant to these Liquor Regulations who purchases Liquor within the Navajo Nation and re-sells it, whether in the original container or not, shall be in violation of these Liquor Regulations and shall be subject to penalties pursuant to these Liquor Regulations.

B. Bringing Liquor onto premises. No Licensee shall allow any Person to bring any Liquor for personal consumption into the premises designated in the Retailer License.

C. Other Prohibitions on Hours and Days of Sales. The Navajo Nation Council may establish other days on which, or times at which, Sales or consumption of Liquor is not permitted within the Navajo Nation. The Office will provide notice of any such enactment to all Wholesaler Licensees and Retailer Licensees doing business within the Navajo Nation.

D. No Sales to Minors. No Licensee, Certified Server, or Person shall Sell Liquor on the Navajo Nation to a Minor; provided, however, that it shall be a defense to an alleged violation of this Section that the Minor presented to the Seller of the Liquor an apparently valid identification document showing the Minor's age to be 21 years or older.

E. No Sales to Intoxicated Persons. No Licensee, Certified Server, or Person shall Sell Liquor on the Navajo Nation to a Person believed by a Certified Server to be intoxicated

F. All Sales Cash. A Retailer Licensee shall not make any Sale of any Liquor without receiving payment therefore by cash, check, or credit card at or about the time the Sale is made; provided that nothing herein shall preclude the Retailer Licensee from receiving a delivery of Liquor from a Wholesaler Licensee if arrangements have been made to pay for such delivery at a different time; and provided further that nothing herein shall preclude the Retailer Licensee from allowing a customer to purchase more than one item in sequence, and to pay for all such purchases at the conclusion thereof, so long as payment is made in full before the customer has left the premises; and provided further that nothing herein shall prevent the Retailer Licensee from distributing Liquor to customers without charge, so long as such distribution is not otherwise in violation any provision of these Liquor Regulations.

G. Open Containers Prohibited. No Person shall have an open container of any Liquor in any automobile, whether moving or standing still, or in a Public Place, other than on the premises designated in a Retailer License.

H. All Designated Premises Posted. A Retailer Licensee shall not make any Sale of Liquor unless signs are prominently posted in all premises designated in the Retail License informing the customers that removing Liquor from the premises is a violation of federal law prohibiting the possession of alcohol on Indian reservations. In the case of outdoor sales, such signage shall be prominently displayed no more than ten (10) feet from the point of sale.

1.110. Reserved.

1.111. Reserved.

1.112. Licensing.

A. Any Person wishing to Sell Liquor as a Wholesaler shall obtain and retain a Wholesaler License for such purpose.

B. Any person wishing to Sell Liquor as a Retailer shall obtain one of the following types of License:

1. Retailer License—Restaurant.
2. Retailer License—Hotel/Motel.
3. Retailer License—Special Events.
4. Retailer License—Other. The Office shall have the authority to issue policies and procedures regarding the issuance of other types of licenses, subject to the Commission's approval of such policies and procedures.

C. The pre-conditions to the issuance of a License include but are not limited to the following:

1. Compliance with Business and Procurement Act—Before any License is issued to an applicant or renewed, the Office shall make a determination that such applicant is not ineligible under the provisions of 12 N.N.C. § 1505(C) of the Navajo Business and Procurement Act. If such applicant is determined to be ineligible, the license application shall be denied.

2. An applicant who has had a License revoked is ineligible to apply for a License within one year of the date of the revocation.

3. An applicant who has had two or more License revocations is ineligible to apply for a License within five years of the date of the last revocation.

4. An applicant who has been convicted of a felony or a misdemeanor involving a crime of moral turpitude is ineligible for a License.

5. Any applicant who has committed any of the violations listed in Section 1.119 below is ineligible for a License.

D. Liabilities of Licensee. The Licensee shall be accountable for all violations of its License and these Liquor Regulations, and for all taxes, fees, and penalties that may be charged against its License.

E. License is Not a Property Right. Notwithstanding any other provision of these Liquor Regulations, a License is a mere permit for a fixed duration of time. A License shall not be deemed a property right or vested right of any kind, nor shall the granting of a License give rise to a presumption of legal entitlement to the granting of such License for a subsequent time period.

F. Licenses Non-transferable. No License issued by the Office shall be assigned or transferred in any manner.

G. Licenses or letter of denial.

1. After considering the information submitted on the application for a License, the Office shall grant and issue a License if it concludes that granting the License will serve the best interests of the Navajo Nation.

2. The Office shall deny the application if it finds that granting a License would be contrary to the best interests of the Navajo Nation, considering such factors as the applicant's compliance history with applicable Navajo Nation and federal law, whether the applicant is currently in violation of any Navajo Nation law, the number and density of locations selling liquor on the Navajo Nation, whether the applicant will operate a new or existing establishment, or any other reason bearing on the health, safety, and welfare of the Navajo Nation community or the economic security of the Navajo Nation.

3. The Office shall send the applicant a final written decision within thirty days after the application is received by the Office, explaining the grounds for its

decision either granting or denying the application for a License.

4. Failure of the Office to issue a License or a letter of denial within thirty days shall be deemed a denial.

H. Appeal. A letter of denial for a License shall be considered an adverse action and may be appealed in accordance with these Liquor Regulations.

1.113. Wholesaler License.

A. Term.

1. A separate License must be secured and maintained for each calendar year or portion thereof, ending on December 31st.

2. Regardless of when the License is issued, it expires at midnight December 31st.

B. Fee.

1. Beer/Wine.

a. The fee for the initial term of a Wholesaler License to Sell Beer and Wine shall be $500.

b. The fee for subsequent renewals of the same License shall be $200 per year.

2. Spirits.

a. The fee for the initial term of a Wholesaler License to Sell Spirits shall be $700.

b. The fee for subsequent renewals of the same License shall be $250 per year.

C. Condition. A copy of the License shall be carried at all times in any vehicle used to transport liquor pursuant to this License.

1.114. Retailer License—Restaurant.

A. Term.

1. A separate License shall be secured and maintained for each calendar year or portion thereof, ending on December 31st.

2. Regardless of when the License is issued, it expires at midnight December 31st.

B. Fee.

1. Beer/Wine.

a. The fee for the initial term of a Retailer License for a restaurant Selling Beer and Wine shall be $1,000.

b. The fee for subsequent renewals of the same License shall be $250 per year.

2. Spirits.

a. The fee for the initial term of a Retailer License for a restaurant selling Spirits shall be $1,500.

b. The fee for subsequent renewals of the same License shall be $500 per year.

C. Conditions.

1. The Retailer License shall be for a specific location. The Licensee may not transfer the License to any other person, even if such person takes over operation of the premises designated in the Retailer License. Nor may the Licensee use the license for any location operated by the Licensee, other than the premises designated in the Retailer License.

2. The Retailer License shall at all times be on public display at the location designated in the Retailer License.

3. The Location where Liquor is sold shall not be closer than 300 feet to any existing church or school.

1.115. Retailer License—Hotel/Motel.

A. Term.

1. A separate License shall be secured and maintained for each calendar year or portion thereof, ending on December 31st.

2. Regardless of when the License is issued, it expires at midnight December 31st.

B. Fee.

1. Beer/Wine.

a. The fee for the initial term of a Retailer License for a Hotel/Motel Selling Beer and Wine shall be $1,000.

b. The fee for subsequent renewals of the same License shall be $250 per year.

2. Spirits.

a. The fee for the initial term of a Retailer License for a Hotel/Motel selling Spirits shall be $1,500.

b. The fee for subsequent renewals of the same License shall be $500 per year.

C. Conditions.

1. The Retailer License shall be for a specific location and may not be transferred or used for any location other than that identified on the face of the License.

2. The Retailer License shall at all times be on public display at the location designated in the Retailer License.

3. The Location where Liquor is sold shall not be closer than 300 feet to any existing church or school.

1.116. Retailer License—Special Event.

A. Term. The term of the License shall be for the term of the special event.

B. Fee.

1. Beer/Wine. The fee for a Retailer License for a Special Event Selling Beer/Wine shall be $300.

2. Spirits. The fee for a Retailer License for a Special Event Selling Spirits shall be $500.

C. Conditions.

1. The Retailer License shall be for a specific location and shall not be transferred or used for any location other than that identified on the face of the License.

2. The Retailer License shall at all times be on public display at the location designated in the Retailer License.

3. The Location where Liquor is sold shall not be closer than 300 feet to any existing church or school.

1.117 License Renewal.

A. If a Wholesaler Licensee or a Retailer Licensee fails to renew a License before December 31st of any year, the Licensee is hereby suspended from Selling Liquor until such Licensee renews the License or obtains a new License.

B. So long as the Licensee renews the License by January 15th, the issuance of the License shall be treated as a renewal, and the fee shall be calculated accordingly; provided, provided, however, that there shall also be a $50 late fee assessed.

C. If the Licensee fails to renew the License by 5:00 p.m. on January 15th, the Licensee must submit a new application for a License and pay the initial License application fee.

D. In order to be eligible for renewal of a License, the Licensee must be in compliance with all terms and conditions of such License and these Liquor Regulations.

1.118. Recordkeeping and Reporting.

The Office shall maintain recordkeeping and reporting requirements for Licensees, in accordance with policies and procedures, including but not limited to, periodic reports of the amount of liquor sold or delivered within the Navajo Nation during a particular period.

1.119. Violations.

These Liquor Regulations apply to all persons licensed to transport or sell Liquor within the Navajo Nation. Violations of these Liquor Regulations include, but are not limited to, the following:

A. Violating any term or condition of the License;

B. Selling Liquor within the Navajo Nation without a License;

C. Buying Liquor within the Navajo Nation from an unlicensed person;

D. Selling Liquor within the Navajo Nation to a minor;

E. Selling Liquor within the Navajo Nation to an intoxicated person;

F. Permitting an uncertified server to sell or serve Liquor within the Navajo Nation;

G. Failing to allow inspection of premises designated in a Retailer License or vehicles used to deliver Liquor within the Navajo Nation;

H. Failure to present documents required by these Regulations upon a request by the Office;

I. Failing to display License;

J. Being convicted of a felony or a misdemeanor involving a crime of moral turpitude;

K. Permitting repeated acts of violence or disorderly conduct on or near the premises designated in the Retailer License;

L. Submitting false or fraudulent information on a License application; and

M. Violating any applicable Navajo Nation or federal law.

1.120. Penalties.

Penalty amounts shall be set for each violation of these Liquor Regulations in accordance with policies and procedures.

1.121. Appeals.

A. A Person may appeal any adverse action taken pursuant to these Regulations, including but not limited to, denial of an application for a License, issuance of a penalty, denial of a request for approval of a Certified Server program, or revocation of a License.

B. Appeals shall follow the following process.

1. Appeals shall be made first to the Office. Upon notice of any adverse action by the Office, a Person may request a conference with the Office.

a. To be entitled to a conference, the Person must make a written request within the time prescribed by the notice of the adverse action.

b. The request for a conference must identify the disputed notice of assessment or notice of denial of refund or notice of other adverse action, state the determination sought, and contain a short and plain statement of the relevant facts and law.

c. After receiving a timely request and within a reasonable period of time, the Office shall confer with the Person filing the appeal. The Office and the Person may agree on a suitable location for the conference or may agree to hold the conference by telephone and to exchange written documentation by mail. The Office and the Person may agree to confer more than once.

d. Within sixty days following the conclusion of the conference, the Office will issue a written conference decision. If the Office denies in whole or in part the relief that the Person requests, then the decision shall state the basis for the denial of relief.

2. Within thirty days after the issuance of the decision of the Office, the Person may appeal the decision to the Office of Hearings and Appeals. If the Person fails to appeal within that time period, then the decision of the Office is final and not subject to review by appeal to a hearing officer or to any court.

a. A request for a hearing before a hearing officer must be in writing and contain a short and plain statement of the facts and law forming the basis for the relief sought. The Person appealing the decision must sign the request for Hearing.

b. The hearing officer has the authority to enter pre-hearing orders. Where necessary, the hearing officer may confer with the parties before entering pre-hearing orders. Such orders may, for example, eliminate or narrow disputes concerning questions of fact or law, establish identities and subject matter of testimony of witnesses, require the identification and disclosure of documents, or provide for the time, place, and duration of hearings. Pre-hearing orders will control the course of the hearing.

c. At the request of the parties, the hearing officer shall issue subpoenas for the attendance of witnesses at hearings and for production of books, records, maps, documents, or physical evidence. Any witness subject to a subpoena may petition the hearing officer to vacate or modify the subpoena served on the witness. The hearing officer shall promptly notify the party who requested the subpoena and proceed to rule on the petition. The hearing officer may investigate the grounds of the petition or, upon the petition itself, may deny or grant the petition, in whole or in part. The hearing officer's rulings on petitions to quash subpoenas are not subject to interlocutory appeal to any court.

d. The hearing officer shall preside over these hearings and shall conduct them according to the following provisions.

i. All documents filed by any party at a hearing shall be served personally or by first-class mail, postage prepaid, at the last known address, on all parties, including the Office, and proof of service must be filed on record.

ii. Oral evidence shall be taken only on oath or affirmation.

iii. Each party may call and examine witnesses, introduce exhibits, cross-examine opposing witnesses, impeach any witness regardless of which party first called the witness to testify, and may rebut any evidence presented. A party, a party's employee, or a party's agent, may be called by the opposing party and be examined as if under cross-examination. The hearing officer may question any witness, may call the appellant as a witness, or may call as a witness any person who is present at the hearing.

iv. Any privileges that apply in civil actions before Navajo courts shall be followed.

v. Any relevant evidence, including affidavits and other forms of hearsay, shall be admitted if such evidence is of the sort upon which responsible persons are accustomed to rely in the conduct of serious affairs. The hearing officer shall be liberal in admitting evidence, but objections to its admission, and comments or observations of its weight, are relevant in weighing the evidence. The hearing officer may deny admission of evidence that is irrelevant, untrustworthy, or unduly repetitious.

vi. All evidence will be offered and made part of the record and the hearing officer shall not consider any other factual information, except for matters officially noticed.

vii. Where after proper notice a Person or its authorized representative fails to appear, the hearing officer may proceed with the hearing, dispose of the issues raised, and enter a final order.

viii. Reasonable continuances may be granted for good cause.

ix. Prior to entering an order, the hearing officer will afford the parties a reasonable time in which to submit any post-hearing memoranda, proposed findings of fact, and proposed conclusions of law.

e. The hearing conducted under this part concludes when the hearing officer enters findings of fact, conclusions of law, and a final order. The final order issued by the hearing officer shall be a matter of public record, and all final orders issued shall be available for public inspection.

f. A party may file a petition for rehearing. Such petition will allege as grounds for rehearing either a mistake of law or fact, or the discovery of new evidence which by due diligence could not have been discovered by the party at the time of the hearing. The petition must set out in some detail the mistake in law or fact claimed, or summarize the new evidence that has become available, specifically mentioning the source of such evidence and what it would tend to establish. The hearing officer will have wide discretion in accepting or rejecting such petitions.

3. The decision of the hearing officer entered under this part may be appealed to the Navajo Supreme Court within 30 days. If not timely appealed, the hearing officer's order is binding on the parties and may not be appealed to any court.

a. The rules of Appellate Procedure of the Navajo Supreme Court shall govern the conduct of appeals from orders of the hearing officer rendered under this section.

b. Appeal to the Navajo Supreme Court shall be limited to the record on appeal.

c. The record on appeal will be based on the findings, conclusions, and order of the hearing officer.

C. In all administrative and judicial proceedings governed by this section, the orders, assessments, factual findings, and legal conclusions of the Office are presumed correct unless the Person filing the appeal demonstrates otherwise. In all factual hearings, the Person filing the appeal has the burden of proving by a preponderance of the

evidence the existence of an asserted fact, except where another standard is provided by statute or these Liquor Regulations.

1.122. Revenue.

All revenue collected pursuant to these Liquor Regulations shall be used to defray the expenses of administering the Liquor Regulations.

1.123. Certified Servers.

A. Every employee of a Retailer Licensee who Sells Liquor must be a Certified Server 21 years of age or older.

B. The Office will adopt policies and procedures regarding the certification of servers.

C. The Office shall have authority to approve certification programs offered by third-party providers and may adopt policies regarding minimum requirements of such programs.

D. The Office may revoke any certification issued under this Section if the Certified Server violates any provision of these Liquor Regulations, the policies and procedures issued pursuant to them, any applicable Navajo Nation law, makes a material misstatement on the application for certification, is convicted of a felony, or for other good cause shown.

E. The denial or revocation of a certification is an appealable action.

1.124. Transportation Through the Navajo Nation.

Nothing in these Liquor Regulations shall apply to the otherwise lawful transportation of Liquor through the Navajo Nation by Persons remaining on public highways or other paved facilities for motor vehicles provided that such Liquor is not Sold, or offered for Sale, within the Navajo Nation.

1.125. Sovereign Immunity.

Nothing in these Liquor Regulations is intended to be, nor shall be construed as, a waiver of the sovereign immunity of the Navajo Nation. No employee, officer, or agent of the Office shall be authorized, nor shall he or she attempt, to waive the immunity of the Navajo Nation.

1.126. Jurisdiction.

Except as otherwise provided in these Liquor Regulations, any and all actions pertaining to alleged violations of these Liquor Regulations, or seeking any relief against the Navajo Nation, its officers, employees, or agents arising under these Liquor Regulations, shall be brought in the Navajo Nation Courts, which courts shall have exclusive jurisdiction consistent with the inherent sovereignty and immunity of the Navajo Nation and applicable federal and Navajo Nation law.

1.127. Severability.

If any provisions of these Liquor Regulations or the application of any provision to any Person or circumstances is held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable the remainder of these Liquor Regulations and its application to any other Person or circumstances, and, to this end, the provisions of these Liquor Regulations are severable.

1.128. Effective Date.

These Liquor Regulations shall be effective on such date as the Secretary of the Interior certifies these Liquor Regulations and publishes the same in the **Federal Register**.

[FR Doc. E8–30688 Filed 12–23–08; 8:45 am]
BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Yakima River Basin Water Storage Feasibility Study; Benton, Yakima, and Kittitas Counties, Washington INT–FES 08–65

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Availability of the Final Planning Report and Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation) has prepared a combined Final Planning Report and Environmental Impact Statement (Final PR/EIS) on the Yakima River Basin Water Storage Feasibility Study (Storage Study). The cooperating agencies on this study are the Washington Department of Ecology (Ecology), Yakima County, the U.S. Department of the Army: Yakima Training Center and the Seattle District of the U.S. Corps of Engineers, and the U.S. Department of Energy: Office of River Protection.

The purpose of the Storage Study is to evaluate alternatives that would create additional water storage for the Yakima River Basin and assess their potential to supply the water needed for ecosystem aquatic habitat, basin-wide agriculture, and municipal demands. The need for the study is based on the existing finite water supply and limited storage capability of the Yakima River Basin in low water years. This finite supply and limited storage capacity do not meet the water supply demands in all years and result in significant adverse impact to the Yakima River Basin's economy, which is agriculture-based, and to the basin's aquatic habitat, specifically, anadromous fisheries. The study seeks to identify means of increasing water storage available, including storage of Columbia River water, for purposes of improving anadromous fish habitat and meeting irrigation and municipal water supply needs.

DATES: Written comments on the Final PR/EIS will be accepted through February 2, 2009.

ADDRESSES: Written comments on the Final PR/EIS should be addressed to the Bureau of Reclamation, Upper Columbia Area Office, Attention: David Kaumheimer, Environmental Programs Manager, 1917 Marsh Road, Yakima, Washington 98901–2058. Comments may also be submitted electronically to *storagestudy@pn.usbr.gov*. Requests for paper or CD copies of the Final PR/EIS may be made to (509) 575–5848, ext. 612.

See the **SUPPLEMENTARY INFORMATION** section on public review for locations where copies of the Final PR/EIS are available for public review. Information on this project can also be found at *http://www.usbr.gov/pn/programs/storage_study/index.html*.

FOR FURTHER INFORMATION: Contact David Kaumheimer, Environmental Programs Manager, Telephone: (509) 575–5848, extension 232.

SUPPLEMENTARY INFORMATION:

Background Information

Reclamation has undertaken this study to explore ways to augment water supplies in the Yakima River Basin for the benefit of anadromous fish, irrigated agriculture, and municipal water supply under the authority of Public Law 108–7, Title II, Section 214 which was passed by Congress on February 20, 2003. Public Law 108–7 states:

> The Secretary of the Interior, acting through the Bureau of Reclamation, shall conduct a feasibility study of options for additional water storage in the Yakima River Basin, Washington, with emphasis on the feasibility of storage of Columbia River water in the potential Black Rock Reservoir and the benefit of additional storage to endangered and threatened fish, irrigated agriculture, and municipal water supply. There are authorized to be appropriated such sums as may be necessary to carry out this Act.

Ecology was a joint lead with Reclamation in the preparation of the Draft PR/EIS, in order to meet compliance under the State Environmental Policy Act (SEPA). However, they elected to become a cooperating agency on the Final PR/EIS as they believe they may not have fulfilled their requirements under Washington State law to identify and evaluate all reasonable water supply

alternatives. Comments received on the Draft PR/EIS suggested that all reasonable water supply alternatives could not be adequately evaluated without considering fish habitat and fish passage needs. Ecology is proceeding with a separate evaluation of water supply and management alternatives. Ecology continues as a cooperating agency in this study which evaluates storage options per Public Law 108–7.

In addition to the No Action Alternative, this jointly prepared Final PR/EIS analyzes three storage alternatives, referred to as the Joint Alternatives, which Reclamation and Ecology are considering as part of the Storage Study. These include Black Rock, Wymer Dam and Reservoir, and Wymer Dam plus Yakima River Pump Exchange Alternatives. The No Action Alternative is identified as the Preferred Alternative in the Final PR/EIS.

Public Review

Because additional information about mitigation of seepage from Black Rock Reservoir is contained in the Final PR/EIS, a 45 day review period is being provided so that this new information can be reviewed. Changes to the Final PR/EIS are highlighted for ease of review. Responses to comments about the new information will be contained in the Record of Decision which will be issued following the review period. If you wish to comment on this Final PR/EIS, mail us your comments by February 2, 2009 as indicated under the **ADDRESSES** section.

Copies of the Final PR/EIS are available for public review at the following locations:

- Bureau of Reclamation, U.S. Department of the Interior, Main Library, Room 1151, 1849 C Street NW., Washington, DC 20240.
- Bureau of Reclamation, Denver Office Library, Denver Federal Center, Building 67, Room 167, Denver, Colorado 80225.
- Bureau of Reclamation, Pacific Northwest Regional Office, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234.
- Bureau of Reclamation, Upper Columbia Area Office, 1917 Marsh Road, Yakima, Washington 98901.
- Kennewick City Library, 1620 S. Union St., Kennewick, Washington 99338.
- Pasco City Library, 1320 W. Hopkins, Pasco, Washington 99301.
- Richland City Library, 955 Northgate Drive, Richland, Washington 99352.
- Yakima Valley Regional Library, 102 N. 3 rd St., Yakima, Washington 98901.
- Washington State Library, 6880 Capitol Blvd. SW., Olympia, Washington 98504.

Public Disclosure

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

J. William McDonald,

Regional Director, Pacific Northwest Region.

[FR Doc. E8–30642 Filed 12–23–08; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0043

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for the title described below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The information collection request describes the nature of the information collection and the expected burden and cost for 30 CFR 800, Bonding and insurance requirements for surface coal mining and reclamation operations under regulatory programs.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by January 23, 2009, in order to be assured of consideration.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, by telefax at (202) 395–6566 or via e-mail to *IRA_Docketomb.eop.gov.* Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 202—SIB, Washington, DC 20240, or electronically at *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request, contact John A. Trelease at (202) 208–2783, or electronically at *jtrelease@osmre.gov.*

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to renew its approval for the collection of information contained in 30 CFR 800, Bonding and insurance requirements for surface coal mining and reclamation operations under regulatory programs. OSM is requesting a 3-year term of approval for each information collection activity.

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 number for this collection of information is 1029–0043 for 30 CFR 800.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments for this collection of information was published on September 3, 2008 (73 FR 51513). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: Bond and insurance requirements for surface coal mining and reclamation operations under regulatory programs, 30 CFR 800.

OMB Control Number: 1029–0043.

Summary: The regulations at 30 CFR Part 800 primarily implement § 509 of the Surface Mining Control and Reclamation Act of 1977, which requires that persons planning to conduct surface coal mining operations first post a performance bond to guarantee fulfillment of all reclamation obligations under the approved permit. The regulations also establish bond release requirements and procedures consistent with § 519 of the Act, liability insurance requirements pursuant to § 507(f) of the Act, and procedures for bond forfeiture should the permittee default on reclamation obligations.

Bureau Form Number: None.
Frequency of Collection: Once.
Description of Respondents: Surface coal mining and reclamation applicants and State regulatory authorities.
Total Annual Responses: 21,947.
Total Annual Burden Hours: 231,246 hours.
Total Annual Cost Burden: $3,715,260.

Send comments on the need for the collections of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collections; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the following addresses. Please refer to the appropriate OMB control numbers in all correspondence.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: December 18, 2008.

John A. Trelease,

Acting Chief, Division of Regulatory Support.

[FR Doc. E8–30650 Filed 12–23–08; 8:45 am]
BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–665]

In the Matter of Certain Semiconductor Integrated Circuits and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 20, 2008, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Qimonda AG of Munich, Germany. A supplement to the complaint was filed on December 11, 2008. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain semiconductor integrated circuits and products containing same that infringe certain claims of U.S. Patent Nos. 5,213,670; 5,646,434; 5,851,899; 6,103,456; 6,495,918; 6,593,240; and 6,714,055. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint and supplement, except for any confidential information contained therein, are 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., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *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.*

FOR FURTHER INFORMATION CONTACT: Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2571.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2008).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on December 17, 2008, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain semiconductor integrated circuits or products containing same that infringe one or more of claims 1–15 and 22–27 of U.S. Patent No. 5,213,670; claims 1–8 and 11 of U.S. Patent No. 5,646,434; claims 1–23 of U.S. Patent No. 5,851,899; claims 1–11 and 14–16 of U.S. Patent No. 6,103,456; claims 1–8 and 11 of U.S. Patent No. 6,495,918; claims 1–18 of U.S. Patent No. 6,593,240; and claims 1–3, 5, and 7–9 of U.S. Patent No. 6,714,055, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Qimonda AG, Gustav-Heinemann-Ring 212, 81739 Munich, Germany.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

LSI Corporation, 1621 Barber Lane, Milpitas, CA 95035.
Seagate Technology, Ugland House, South Church Street, George Town, Grand Cayman KY1–1104, Cayman Islands.
Seagate Technology (US) Holdings Inc., 920 Disc Drive, Scotts Valley, CA 95066.
Seagate Technology LLC, 920 Disc Drive, Scotts Valley, CA 95066.
Seagate Memory Products (US) Corporation, 920 Disc Drive, Scotts Valley, CA 95066.
Seagate Technologies International (Singapore), 7000 Ang Mo Kio Avenue 5, Seagate Technologies International, 569877 Singapore.
Seagate (US) LLC, 920 Disc Drive, Scotts Valley, CA 95066.

(c) The Commission investigative attorney, party to this investigation, is Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of

time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: December 18, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–30620 Filed 12–23–08; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on November 25, 2008, an electronic version of a proposed consent decree was lodged in the United States District Court for the Western District of North Carolina in *State of North Carolina et al.* v. *El Paso Natural Gas Company, et al.*, No. 5:04 CV 38 (Consolidated Cases). The consent decree settles claims by the State of North Carolina and the United States against El Paso Natural Gas Company under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. 9607, in connection with the FCX Site, a facility approximately 1.5 miles west of downtown Statesville, Iredell County, North Carolina (the "Site").

Under the terms of the proposed consent decree, El Paso will pay the United States $1.5 million and will pay the State of North Carolina $110,000 to resolve liability for two operable units at the Site. El Paso will also dismiss with prejudice all counterclaims filed against the United States.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to United States Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. Comments should refer to *State of North Carolina et al.* v. *El Paso Natural Gas Company, et al.*, No. 5:04 CV 38 (Consolidated Cases) and DOJ # 90–11–3–08264.

During the public comment period, the proposed consent decree may also be examined on the following U.S. Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* The consent decree may be examined at the Office of the United States Attorney for the Western District of North Carolina The Carillon Bldg., 227 West Trade St., Suite 1700, Charlotte, North Carolina.

A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation no. (202) 514–1547. In requesting a copy from the Consent Decree Library, please refer to the referenced case and DOJ Reference Number During the public comment period, and please enclose a check in the amount of $6.75 (25 cents per page reproduction cost) payable to the U.S. Treasury, or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Henry Friedman,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–30619 Filed 12–23–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Section 122 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622, the Department of Justice gives notice that a proposed Consent Decree in *United States* v. *Regal-Beloit Corporation,* Civil No. 07–50002 (N.D. Ill.), was lodged with the United States District Court for the Northern District of Illinois on December 18, 2008, pertaining to the Evergreen Manor Groundwater Contamination Superfund Site (the "Site"), located in Roscoe Township, Winnebago County, Illinois. In this action, the United States brought civil claims under Sections 107 and 113(g)(2) of CERCLA, 42 U.S.C. 9607 and 9613(g)(2), against Regal-Beloit Corporation ("Regal-Beloit") for recovery of response costs incurred and to be incurred by the United States at the Site.

Under the proposed Consent Decree, Regal-Beloit would pay $425,000 of the United States' past response costs, and $25,000 toward the United States future response costs, at the Site to resolve the United States cost recovery claims. This is the second settlement at this Site. In the first, lodged on May 29, 2008, and pending with the Court (*United States* v. *Waste Management of Illinois, Inc. et al.*, Civil No. 08–50094 (N.D. Ill.)) ("Waste Management Consent Decree"), three settling parties would implement the remedy selected by the U.S. Environmental Protection Agency ("EPA") in the Record of Decision ("ROD") for the Site, and to pay $550,000 in partial recovery of the United States' past response costs incurred at the Site as well as EPA's future costs of overseeing the implementation of the remedial action. The instant Consent Decree would not require Regal-Beloit to perform response action at the Site, however, its terms parallel, *inter alia,* the covenant for future liability and reopener provisions of the Waste Management Consent Decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to United States Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to *United States* v. *Regal-Beloit Corporation,* Civil No. 07–50002 (N.D. Ill.), and DOJ Reference No. 90–11–3–08952.

The proposed Consent Decree may be examined at: (1) the Office of the United States Attorney for the Northern District of Illinois, Rockford Division, 308 West State Street, Suite 300, Rockford, Illinois 61101 ((815) 987–4444); and (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Blvd., Chicago, IL 60604–3507 (contact: John C. Matson (312) 886–2243).

During the public comment period, the proposed Consent Decree may also be examined on the following U.S. Department of Justice Web site, *http://*

www.usdoj.gov/enrd/Consent_Decrees.html. A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation no. (202) 514–1547. In requesting a copy from the Consent Decree Library, please refer to the referenced case and DOJ Reference Number and enclose a check in the amount of $8.50 for the Consent Decree (34 pages including appendix, at 25 cents per page reproduction costs), made payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–30546 Filed 12–23–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Amended Consent Decree Under the Clean Air Act

Pursuant to 28 CFR 50.7, notice is hereby given that, on December 17, 2008, a proposed Third Amendment Making Material Modifications to Consent Decree ("Third Consent Decree Amendment") was lodged with the United States District Court for the Northern District of Illinois in *United States, et al.* v. *Exxon Mobil Corp. and ExxonMobil Oil Corp.*, Case No. 05 C 5809 (N.D. Ill.). In December 2005, the court approved the original Consent Decree in the case, which governs compliance with certain Clean Air Act requirements at six of ExxonMobil's domestic petroleum refineries. Since 2005, the parties have agreed to two minor changes to the Consent Decree, in accordance with the provision of the Decree governing non-material modifications.

The proposed Third Consent Decree Amendment would make several material changes to the Decree, including: (i) extending deadlines for completion of certain air pollution control projects; and (ii) imposing more stringent emission control requirements for two other projects and accelerating the schedule for completion of another project in order to compensate for emissions in the interim period during the deadline extensions.

The Department of Justice will receive comments relating to the Third Consent Decree Amendment for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and mailed either electronically to *pubcomment-ees.enrd@usdoj.gov* or in hard copy to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. Comments should refer to *United States, et al.* v. *Exxon Mobil Corp. and ExxonMobil Oil Corp.*, Case No. 05 C 5809 (N.D. Ill.) and D.J. Ref. No. 90–5–2–1–07030.

The Third Consent Decree Amendment may be examined at the offices of the United States Attorney, 219 S. Dearborn Street—5th Floor, Chicago, Illinois. During the public comment period, the Third Consent Decree Amendment may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Third Consent Decree Amendment may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, D.C. 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $10.00 (40 pages at 25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–30529 Filed 12–23–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Oil Pollution Act (OPA)

Notice is hereby given that on November 25, 2008, a proposed Consent Decree in the case of *U.S., et al.* v. *Puget Sound Energy, Inc.*, Civil Action No. 08–5710, was lodged with the United States District Court for the Western District of Washington.

The United States, the State of Washington, the Muckleshoot Indian Tribe and the Puyallup Tribe of Indians filed a complaint concurrently with the Consent Decree alleging that on November 3, 2006, the Crystal Mountain Emergency Generation Facility, an electrical generating facility owned and operated by Puget Sound Energy, Inc. ("PSE") in Pierce County, Washington, discharged approximately 429 barrels of diesel fuel into waters of the United States or adjoining shorelines. The complaint seeks natural resource damages pursuant to Section 1002(a) of the Oil Pollution Act, 33 U.S. § 2702(a). Under the Consent Decree, PSE will pay $512,856.59 for natural resource damages and $49,614.47 to reimburse damage assessment costs.

For thirty (30) days after the date of this publication, the Department of Justice will receive comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In either case, the comments should refer to *U.S., et al.* v. *Puget Sound Energy, Inc.*, D.J. Ref. No. 90–5–1–1–09177/1.

During the comment period, the Consent Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $5.00 (25 cents per page reproduction cost) payable to the United States Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–30545 Filed 12–23–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Application Nos. and Proposed Exemptions: D–11336, Camino Medical Group, Inc. Employee Retirement Plan (the Retirement Plan); D–11458, The Bank of New York Mellon Corporation (the Applicant); and D–11465, United States Steel and Carnegie Pension Fund (the Applicant), et al.

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *moffitt.betty@dol.gov*, or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Camino Medical Group, Inc. Employee Retirement Plan (the Retirement Plan)

Located in Sunnyvale, CA

[Application No. D–11336]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[1] If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective July 1, 2003 until December 14, 2007, to (1) the leasing (the 2003 Leases) of a medical facility (the Urgent Care Facility) and a single family residence converted to an office (the Residence) by the Retirement Plan to CMG, the sponsor of the Retirement Plan and a party in interest with respect to such plan; and (2) the exercise, by CMG, of options to renew the 2003 Lease with respect to the Residence for one year and the 2003 Lease with respect to the Urgent Care Facility for three years. provided that the following conditions were or will be met:

(a) The terms and conditions of each 2003 Lease were no less favorable to the Retirement Plan than those obtainable by the Retirement Plan under similar circumstances when negotiated at arm's length with unrelated third parties.

(b) The Retirement Plan was represented for all purposes under the 2003 Leases, and during each renewal term, by a qualified, independent fiduciary.

(c) The independent fiduciary negotiated, reviewed, and approved the terms and conditions of the 2003 Leases and the options to renew such leases on behalf of the Retirement Plan and determined that the transactions were appropriate investments for the Retirement Plan and were in the best interests of the Retirement Plan and its participants and beneficiaries.

(d) The rent paid to the Retirement Plan under each 2003 Lease, and during each renewal term, was no less than the fair market rental value of the Urgent Care Facility and the Residence, as established by a qualified, independent appraiser.

(e) The rent was subject to adjustment at the commencement of the second year of each 2003 Lease and each year thereafter by way of an independent appraisal. A qualified, independent appraiser was selected by the independent fiduciary to conduct the appraisal. If the appraised fair market rent of the Urgent Care Facility or the Residence was greater than that of the current base rent, then the base rent was revised to reflect the appraised increase in fair market rent. If the appraised fair market rent of the Urgent Care Facility or the Residence was less than or equal to the current base rent, then the base rent remained the same.

(f) Each 2003 Lease was triple net, requiring all expenses for maintenance, taxes, utilities and insurance to be paid by CMG, as lessee.

(g) The independent fiduciary —

[1] For purposes of this proposed exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

(1) Monitored CMG's compliance with the terms of each 2003 Lease and the conditions of the exemption throughout the duration of such leases and the renewal terms, and was responsible for legally enforcing the payment of the rent and the proper performance of all other obligations of CMG under the terms of such leases.

(2) Expressly approved the renewals of the 2003 Leases beyond their initial terms.

(3) Determined whether the rent had been paid on a monthly basis and in a timely manner based on documentation provided by CMG.

(4) Determined whether CMG owed the Camino Medical Group, Inc. Matching 401(k) Plan (the 401(k) Plan) or the Retirement Plan [2] additional rent by reason of CMG's leasing of the Urgent Care Facility and/or the Residence from such plans prior to July 1, 2003 and ensured that CMG made such payments to the Plans, including reasonable interest.

(h) At all times throughout the duration of each 2003 Lease and each respective renewal term, the fair market value of the Urgent Care Facility and the Residence did not exceed 25 percent of the value of the total assets of the Retirement Plan.

(i) Within 90 days of the publication of the grant notice in the **Federal Register**, Palo Alto Medical Foundation (PAMF), the successor in interest to CMG, files a Form 5330 with the Internal Revenue Service (the Service) and pays all applicable excise taxes that are due with respect to the leasing of the Urgent Care Facility and the Residence to CMG by the 401(k) Plan and/or the Retirement Plan prior to July 1, 2003.

DATES: *Effective Date:* If granted, this proposed exemption will be effective from July 1, 2003 until December 14, 2007.

Summary of Facts and Representations

CMG

1. CMG, formerly known as the "Sunnyvale Medical Clinic, Inc." (Sunnyvale), was one of northern California's largest physician-governed multi-specialty medical groups, with more than 190 primary care and specialist physicians, nurse practitioners and physician assistants. CMG was a for-profit, community-based organization that contracted with most leading Health Maintenance Organization and Preferred Provider Organization insurance plans. While maintaining 12 California patient care sites in Cupertino, San Jose, Los Altos, Mountain View, Santa Clara and Sunnyvale, CMG was focused on the delivery of health care services, patient education and health care research, and it offered 28 medical specialties.

2. In June 2000, CMG signed an agreement (the Agreement) providing that PAMF, a not-for-profit organization and an unrelated party, would become the legal operating entity of CMG's facilities. Under the Agreement, CMG agreed to provide medical services to patients at these facilities for an amount to be negotiated with PAMF on an annual basis. CMG maintained and operated the facilities as it had prior to the Agreement, including hiring its own medical and non-medical staff and administering its own retirement plans and benefits system. Under this arrangement, PAMF negotiated contracts with insurance companies on behalf of CMG. Because PAMF had a similar arrangement with another medical group, PAMF patients could choose to receive their care from CMG physicians or from physicians in the other group.

The Agreement between CMG and PAMF related to the business relationship between these entities only rather than to an "ownership or control" relationship. In this regard, PAMF had no ownership interest in CMG, which was physician-owned. Similarly, CMG had no ownership interest in PAMF, although several CMG employees were members of PAMF's Board of Directors over the years. The CMG members constituted a small minority and they did not have a controlling vote. Of the 50 members of PAMF's Board of Directors, 8 were CMG representatives. Essentially, CMG and PAMF remained separate and independent entities with separate employee benefit plans. Also, PAMF and CMG were not parties in interest with respect to the other's respective plans.

3. On October 17, 2007, the Executive Committee of the PAMF Board of Directors voted on the issue of purchasing the Residence and the Urgent Care Facility (together, the Buildings) from the Retirement Plan. The Executive Committee had 14 members of which 2 were CMG employees. Both CMG employee/members recused themselves from the vote on the purchase of the Buildings. At no time did PAMF or CMG exercise any indirect or direct control over each other.

On December 14, 2007, the Retirement Plan sold the Residence to PAMF for $725,000 and the Urgent Care Facility for $5,400,000.[3] The fair market value of the Buildings was established on the basis of an independent appraisal of the properties as of October 1, 2007 in an October 2, 2007 appraisal report that was prepared by Walter D. Carney, MAI and Larry W. Hulberg, Certified-General Appraiser. Messrs. Carney and Hulberg are qualified, independent appraisers who are affiliated with real estate appraisal firm Hulberg & Associates of San Jose, California. In addition, Thomas Nault of Northwest Fiduciary Services, Inc. of Redmond, Washington, the independent fiduciary for the Retirement Plan, reviewed the Purchase Agreement, discussed the offering price and valuation with Mr. Hulberg and others, and concluded that it would be in the best interest of the Retirement Plan to sell the Buildings to PAMF in accordance with the Purchase Agreement.[4]

Just prior to the sale, the appraisers indicated that there had been no change in the fair market value of the Buildings. Thus, on the date of the sale, PAMF paid the consideration for the Buildings in cash. The Retirement Plan did not pay any real estate fees or commissions in connection with such transaction. As a result of the sale, the 2003 Leases between the Retirement Plan and CMG were terminated, including the Treatment Center lease between the Retirement Plan and CMG that was covered by PTE 2004–21.

On January 1, 2008, all non-physician employees of CMG became employees of PAMF and CMG physicians joined with two other physician groups to form a new physician entity. The primary reason for the merger was to centralize operations. CMG and PAMF decided that it would be appropriate to have all non-physician employees in one organization and all physicians in another organization. The new physician entity currently negotiates with PAMF for physician services required by PAMF to service its health care contracts, as CMG did in the past. The significant difference is that in the past, CMG provided PAMF with all personnel needed to run the CMG-designated facilities, not just physicians.

[2] The Retirement Plan and the 401(k) Plan are together referred to herein as the "Plans."

[3] PAMF also purchased a medical treatment center (the Treatment Center) from the Retirement Plan for $2,030,000. The Treatment Center was the subject of Prohibited Transaction Exemption (PTE) 2004–21, 69 FR 68401 (November 24, 2004). This exemption permitted the leasing of the Treatment Center by the Retirement Plan to CMG. PTE 2004–21 also allowed CMG to exercise options to renew the lease for two additional terms.

[4] For a further discussion of the appraisal credentials of Messrs. Carney and Hulberg, see Representation 10 of this proposed exemption. For a further discussion of Mr. Nault's independent fiduciary qualifications see Representation 12 of this proposed exemption

Plan History

4. Following the January 2008 merger, CMG ceased to exist. The two defined contribution plans CMG sponsored, the Retirement Plan, a money purchase pension plan, and the 401(k) Plan, a profit sharing plan, are currently in the process of being liquidated. CMG made no contributions to either Plan after December 31, 2007. Once liquidated, the accounts of Plan participants in the Retirement Plan who were hired by PAMF were transferred to a PAMF qualified plan. The remaining physician accounts were transferred to a plan sponsored by a new physician group. With respect to the 401(k) Plan, for those participant accounts that were not distributed, the residual assets in such plan were also rolled into PAMF qualified plans.

5. The history of CMG's Plans is characterized by many mergers and restatements. Originally, in the mid-1970s, CMG established the Sunnyvale Medical Clinic, Inc. Employee Retirement and Profit Sharing Plan (the ERPS Plan), which was a single plan with two trusts. The retirement portion of the ERPS Plan was a money purchase pension plan and the profit sharing portion of the ERPS Plan was a profit sharing plan. Each portion of the ERPS Plan had its own separate trust.

On or about December 31, 1989, the ERPS Plan was restated as two separate plans, the "Sunnyvale Medical Clinic, Inc. Employee Profit Sharing Plan" (the Sunnyvale Profit Sharing Plan) for the profit sharing portion of the ERPS Plan and the "Sunnyvale Medical Clinic, Inc. Retirement Plan" (the Sunnyvale Retirement Plan) for the money purchase pension portion of the ERPS Plan. The Sunnyvale Retirement Plan subsequently became the Retirement Plan that is the subject of this exemption request.

On January 1, 1992, the Sunnyvale Profit Sharing Plan was merged into the Camino Medical Group, Inc. Matching 401(k) Plan (the 401(k) Plan), which had been established effective January 1, 1989 for employees of CMG who were ineligible to participate in the ERPS Plan as well as for certain CMG physicians. As a result of the merger, the 401(k) Plan received the Sunnyvale Profit Sharing Plan's assets and the flow of income deriving from those assets. The Retirement Plan and the 401(k) Plan are not parties in interest with respect to each other.

6. As of November 30, 2007, the Retirement Plan had total assets having a fair market value of $82,099,079. As of December 14, 2007, the Retirement Plan had 1,100 participants. As of December 31, 2007, the 401(k) Plan had net assets totaling $80,656,857 and 1,320 participants. The directed trustee of the Retirement Plan was Wells Fargo Bank, N.A. (Wells Fargo). The directed trustee of the 401(k) Plan was the T. Rowe Price Trust Company (T. Rowe Price), which succeeded Wells Fargo as the directed trustee for this plan in 1999. The administration of the Retirement Plan and the 401(k) Plan was carried out by the Administrative Committee, whose physician members were shareholders of CMG.

Acquisition of the Buildings

7. Formerly included among the assets of the Retirement Plan were the Residence and the Urgent Care Facility.[5] The ERPS Plan purchased these properties in February 1987 for $3.4 million from the Sunnyvale Medical Building Company, Inc. (SMBC), a California corporation and a party in interest with respect to the ERPS Plan under the terms and conditions of PTE 87–13 (52 FR 2630, January 23, 1987. The Urgent Care Facility, which is located at 201 Old San Francisco Road, Sunnyvale, California, was designed as a standalone medical office building with two stories and a finished basement. The Residence is located at 558 South Sunnyvale Avenue, Sunnyvale, California. It was formerly a single-family residence, but presently serves as an office. The Residence is situated on 8,000 square feet of property and has gross building area of approximately 1,230 square feet. The Urgent Care Facility is contiguous to the Residence and the Treatment Center. In addition, the Urgent Care Facility and the Residence are located in close proximity to certain real property that is owned by CMG.

Of the purchase price paid for the Urgent Care Facility and the Residence, 76.5 percent came from the trust established for the profit sharing portion of the ERPS Plan and the other 23.5 percent came from the trust setup for the money purchase pension plan portion of the ERPS Plan.

PTE 87–13 and the Department's Information Letter

8. PTE 87–13 permitted the ERPS Plan to lease the Urgent Care Facility and the Residence to Sunnyvale (including its successors) under the provisions of separate, but identical written triple net leases (the 1987 Leases). Each 1987 Lease was for an initial term of ten years, commencing on February 2, 1987 and ending on December 31, 1996. Each 1987 Lease contained two renewal extensions, both of which were of five years' duration. The 1987 Leases were signed on behalf of the ERPS Plan by Barclays Bank of California (Barclays), in the capacity as directed trustee and landlord.

The combined initial rental under the 1987 Leases, as determined by qualified, independent appraisers, was $28,216 per month. Such rental income from the properties was allocated between the two trusts comprising the ERPS Plan in accordance with the proportions described above.

Moreover, each 1987 Lease provided for an annual rental increase based on the fair market rental value of the Urgent Care Facility and the Residence as determined by an independent real estate appraiser appointed by Barclays. The qualified, independent appraiser was also required to have at least five years full-time commercial real estate experience. To represent the interests of the ERPS Plan with respect to the 1987 Leases, Barclays reviewed, approved, and agreed to monitor such transactions as the independent fiduciary.

In an information letter dated May 29, 1996, the Department concluded that PTE 87–13 was still effective. The letter was requested as a result of (a) the merger of the Sunnyvale Profit Sharing Plan into the 401(k) Plan and the 401(k) Plan's receipt of rent; (b) the renaming of Sunnyvale to CMG; and (c) the substitution of Barclays with Wells Fargo, as the new directed trustee, into which Barclays had merged. Thus, the 401(k) Plan and the Retirement Plan were the owners of proportionate interests in the Urgent Care Facility and the Residence of 76.5 percent and 23.5 percent, respectively.

The 1997 Leases

9. In March 1999, Wells Fargo, the successor directed trustee for the Plans signed new leases for the Urgent Care Facility and the Residence for the period commencing January 1, 1997 and ending December 31, 2006 (the 1997 Leases). Wells Fargo signed the 1997 Leases as directed trustee for both the 401(k) Plan and the Retirement Plan. The base rent for the Urgent Care Facility was established at $32,417 per month and $2,069 for the Residence. At the expiration of the initial term, each 1997 Lease granted CMG the option to extend such lease for two additional five year terms. The 1997 Leases also contained a provision stating that the 401(k) Plan would sell its 76.5 percent interest in the Urgent Care Facility and the Residence to the Retirement Plan

[5] As stated previously, the Treatment Center, which was also included among the Retirement Plan's assets, is described in PTE 2004–21.

and that the same lease terms would continue to apply after the sale.

Like the 1987 Leases, the 1997 Leases continued to provide that the rent for each succeeding year would be determined on the basis of an independent appraisal. However, a new provision was added to each 1997 Lease which stated that if the independent appraiser determined that the fair rental value of the Residence or the Urgent Care Facility was less than the existing annual rent, the rent would not be lowered, but would remain the same as the rent then in effect.

Inter-Plan Sale of Interests in the Buildings and the Treatment Center

10. In 1998, the Administrative Committee decided that it was in the best interests of the 401(k) Plan and its participants and beneficiaries to switch the 401(k) Plan's investment program and plan administration to a family of mutual funds, and to allow the participants and beneficiaries to make their own portfolio selections from a "menu" offered by the mutual fund provider. The Administrative Committee determined that savings would be realized if the same provider provided the investment options, the administrative services and the trustee services. After examination and consideration was given, the Administrative Committee chose T. Rowe Price as the provider for all such services.

11. Because T. Rowe Price would only serve as the trustee of mutual fund assets, the firm decided it would not serve as the trustee for the 401(k) Plan's real estate interests, which included its 76.5 percent interests in the Urgent Care Facility, the Residence, as well as its 100 percent ownership interest in the Treatment Center. In order to maintain the efficiency and cost effectiveness of the "one-stop shop," and thus avoid a second trustee for the 401(k) Plan to hold only the real estate assets, the Administrative Committee determined that the 401(k) Plan should dispose of its interests in the real estate. On the other hand, since the real estate interests had proven to be a good source of income and a good vehicle for investment diversification for the Plans, the Administrative Committee chose to transfer the 401(k) Plan's interests to the Retirement Plan rather than dispose of them entirely.

On the erroneous advice of the Plans' legal counsel, who indicated that the transaction would not be prohibited under the Act, the Administrative Committee determined to cause the 401(k) Plan to sell its 76.5 percent interest in the Urgent Care Facility, its 23.5 percent interest in the Residence, and its 100 percent interest in the Treatment Center to the Retirement Plan.

In advance of the sale, CMG commissioned Messrs. Carney and Hulberg to perform an appraisal of the fair market value and the fair market rental value of the Buildings, including the Treatment Center. Mr. Carney, a Principal and Executive Vice President, who has been associated with Hulberg & Associates since November 1984 and Mr. Hulberg, an appraiser with the firm since 1997, stated that they had extensive experience in conducting commercial, industrial, residential and agricultural appraisals. Both appraisers also certified that they had no present or contemplated future interest in the Buildings and that they had no personal interest or bias with respect to such properties or the parties involved. In addition, the appraisers certified that their compensation was not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event.

In an appraisal report dated December 20, 1998, Messrs. Carney and Hulberg placed the combined fair market value of the Residence, the Urgent Care Facility and the Treatment Center at $4,965,000 as of November 24, 1998. The combined figure represented a fair market value of $3,430,000 for the Urgent Care Facility, $1,210,000 for the Treatment Center and $325,000 for the Residence. Of the combined figure, the 401(k) Plan's ownership interest in the Buildings and the Treatment Center totaled $4,082,575. This amount represented approximately 8.97 percent of the 401(k) Plan's assets and approximately 14.16 percent of the Retirement Plan's assets.

On June 17, 1999, in an all cash transaction, the 401(k) Plan sold its real estate interests to the Retirement Plan for $4,081,471.[6] The 401(k) Plan received $2,622,942 for the Urgent Care Facility, $248,529 for the Residence and $1,210,000 for the Treatment Center. No fees or commissions were paid by either the 401(k) Plan or the Retirement Plan and the expenses associated with the transaction were borne exclusively by CMG.

The Plans' legal counsel also advised the Administrative Committee that PTE 87–13 would continue to apply to any leasing of the Urgent Care Facility and the Residence by the Retirement Plan to CMG. Nevertheless, the Plan's legal counsel informed CMG that a prohibited transaction exemption would be required in connection with any leasing of the Treatment Center to CMG. Therefore, on November 24, 2004, the Department granted PTE 2004–21, which provided retroactive exemptive relief to permit Retirement Plan to lease the Treatment Center to CMG under the provisions of a new lease (the New Lease). PTE 2004–21 also allowed CMG to exercise options to renew the New Lease for two additional five year terms.

Prohibited Transactions

12. In the view of the Department, the leasing arrangements between CMG and the Plans under the 1987 Leases and the 1997 Leases reflected a lack of continuous oversight by qualified, independent fiduciaries with full investment discretion to review, approve and monitor the terms of such leases. In addition, there were no contemporaneous independent appraisals (or other objective means) to establish the fair market value or the fair market rental value of the Residence and the Urgent Care Facility at the inception of each lease, at the time the rent was adjusted annually, or at the time of the sale of the 401(k) Plan's interests in the Residence, the Urgent Care Facility, and the Treatment Center to the Retirement Plan.[7] Because of these failures, the Department is of the opinion that the exemptive relief originally provided under PTE 87–13 would no longer be available. The Department is also not prepared to provide retroactive exemptive relief with respect to such past leases and the June 17, 1999 sale transaction. Therefore, within 90 days of the publication in the **Federal Register** of the notice granting this exemption, PAMF, as successor in interest to CMG, will file a Form 5330 with the Service

[6] The $1,104 difference between the total amount of the 401(k) Plan's interest in the Buildings and the amount paid by the Retirement Plan is due to rounding the 401(k) Plan's ownership percentage interest upward to 76.5%. For example, both the Residence and the Urgent Care Facility represented 76.470461% of the 401(k) Plan's ownership interest before rounding.

[7] According to the exemption application, both the Retirement Plan and the 401(k) Plan had independent fiduciaries in 1998 and 1999 that had full discretion to review, approve and monitor the leasing arrangements between the Plans. The independent fiduciaries selected Messrs. Carney and Hulberg to determine the fair market rental value of the Buildings under the 1997 Leases and the fair market value of the Buildings and the Treatment Center for purposes of the June 17, 1999 sale. However, the appraisal reports were not prepared during the same time period as the 1997 Leases or the sale. The independent fiduciaries were not engaged after 1999.

and pay all applicable excise taxes that are due prior to July 1, 2003.

Independent Fiduciary for the Retirement Plan

13. On March 3, 2003, Mr. Nault was appointed to serve as the Retirement Plan's independent fiduciary. He served in this capacity until his resignation on January 1, 2008. At this time of his appointment, Mr. Nault replaced Wells Fargo, the Retirement Plan's directed trustee, as the independent fiduciary. Mr. Nault represented that he was qualified to act as an independent fiduciary for the Retirement Plan because he had considerable experience in managing assets of all types, including performing settlement work for the Department, intellectual property, limited partnerships, raw land development, joint venture agreements, asset recovery and liquidation, assigning and evaluating asset managers, and ESOP, profit sharing and 401(k) plans. Mr. Nault further represented that he had been acting as a court-appointed trustee of tax-qualified plans since 1994, that he had replaced trustees who were removed in connection with ERISA violations, and that in two recent cases he had been responsible for evaluating and deciding the disposition of real estate assets. In his statement, Mr. Nault confirmed that he had no prior contact or any past or current relationship with any interested party in this matter. Mr. Nault also confirmed that he was never related to CMG or its principals in any way, and that he derived less than 3 percent of his gross annual income (base upon each preceding calendar year) from CMG during the time he served as independent fiduciary for the Retirement Plan. Moreover, Mr. Nault acknowledged and accepted his fiduciary responsibilities and liabilities in acting as an independent fiduciary on behalf of the Retirement Plan.

As the Retirement Plan's independent fiduciary, Mr. Nault agreed, in pertinent part, to (a) determine whether the lease provisions between the 401(k) Plan and CMG were reasonable under the 1997 Leases and whether the 401(k) Plan had received fair market value rent; (b) determine if the 401(k) Plan received fair market value from the Retirement Plan upon the sale of the 401(k) Plan's interests in the Residence and the Urgent Care Facility in 1999; (c) analyze the 1997 Leases of the Urgent Care Facility and the Residence after the transfer of these properties to the Retirement Plan from the 401(k) Plan to determine if the provisions of such leases were reasonable and if the rental was at, or better than, market value; (d) examine the Retirement Plan's investment portfolio and investment policy to determine if the ownership of the Urgent Care Facility and the Residence was prudent and in compliance with such investment policy; and (e) negotiate and/or monitor the 2003 Leases on behalf of the Retirement Plan.

The 2003 Leases/Request for Exemptive Relief

14. On or about July 1, 2003 and after receiving approval from Mr. Nault, Wells Fargo signed separate new leases in order to continue the Retirement Plan's leasing arrangement with CMG for the Urgent Care Facility and the Residence. The Buildings represented 11.83% of the Retirement Plan's assets. Both 2003 Leases were triple net and required CMG to pay all real estate taxes with respect to the Urgent Care Facility and the Residence on behalf of the Retirement Plan, as well as all expenses that were associated with insurance, maintenance and utilities.

The initial term of each 2003 Lease commenced on July 1, 2003 and expired on December 31, 2006. The base rent for the Urgent Care Facility was set at $38,325 per month and was $2,069 per month for the Residence. Although each 2003 Lease allowed CMG the option to extend such lease for two additional five year terms, the renewal provisions were subsequently modified. In this regard, the 2003 Lease of the Residence could be extended by CMG for one year or until December 31, 2007. With respect to leasing of the Urgent Care Facility, that 2003 Lease could be extended for three years or until December 31, 2009. The 2003 Leases also provided that the annual rent would be the greater of the rent provided in the lease or the fair market value rental of the real estate as determined by an independent appraiser and required that CMG provide Mr. Nault with documentation that the rent had been paid on a monthly basis.

15. PAMF requests an administrative exemption from the Department, with respect to the leasing of the Urgent Care Facility and the Residence to CMG from the Retirement Plan under the 2003 Leases. In addition, PAMF requests exemptive relief with respect to the exercise of the renewal options under the 2003 Leases. If granted, the exemption would be effective from July 1, 2003 until December 14, 2007.

Independent Appraisals of the Buildings

16. On October 18, 2002, Messrs. Carney and Hulberg prepared a formal appraisal report of the subject properties. The appraisers used the Income Approach to valuation because of that methodology's reasonable support of rent, overall capitalization data, widespread use and understandability to investors. As of October 15, 2002, the appraisers placed the fair market rental value of the Urgent Care Facility at $28,676 per month and the Residence at $1,845 per month. The appraisers also noted that the rent CMG was paying to the Retirement Plan was well above the market rate.[8] The appraisers further determined that the Urgent Care Facility and the Residence were of no unique or special value to CMG by reason of their proximity to other real property owned by CMG.

17. Because the appraisers did not update the 2002 appraisal until October 1, 2003, there was no contemporaneous appraisal of the Buildings at the inception of the 2003 Leases. So, Mr. Nault stated that he relied on "other objective means" to establish the fair market rental value of the Residence and the Urgent Care Facility and to ensure that adequate independent safeguards were in place when the 2003 Leases became effective. The objective means that were undertaken by Mr. Nault included his having discussions primarily with Mr. Hulberg to ascertain the fair market rental value of the Buildings and conducting due diligence from the time of his independent fiduciary appointment onward. Mr. Nault explained that during his discussions with Mr. Hulberg, he reviewed rental statistics for the Sunnyvale-San Jose area showing that the rent being paid for the Buildings was above market. Further, as part of his due diligence, Mr. Nault stated that he physically inspected the vacancy information he received from Mr. Hulberg, conducted an online analysis of rents and market conditions to determine rental levels in the area, and researched the effect of the 2001 implosion of Dot-Com businesses on the office vacancy rate in the area. Mr. Nault stated that his findings at the time the 2003 Leases were executed indicated that CMG was paying above market rent. He noted that the rental amounts paid by CMG under the 2003 Leases would be changed only if such amounts fell below market value.

With respect to annual adjustments to the rent under the 2003 Leases, each year, as of October 1, Messrs. Carney

[8] The applicant represents that, to the best of its knowledge, to the extent that the rent paid by CMG to the Retirement Plan under the 2003 Leases exceeded fair market rental value, such excess rent (if treated as an employer contribution) did not cause the annual additions to the Retirement Plan to exceed the limitations prescribed by section 415 of the Code.

and Hulberg determined the fair market rental value of the Buildings. Three months later, on January 1, Mr. Nault would determine the fair market rental value of the Buildings for that year.[9] In making his rental determinations, Mr. Nault frequently visited the San Jose, California area and maintained close ties with real estate professionals, besides Mr. Hulberg, who were familiar with real estate values in that area. Each year, he inquired about the fair market rental value of the Buildings with these professionals prior to determining whether the fair market rental value of the Buildings had not increased and whether the rent would remain at the existing level.

Other Determinations Made by the Independent Fiduciary

18. Following his analysis of the transactions, Mr. Nault concluded that the 401(k) Plan had received fair market value on the sale of its interests in the Residence and the Urgent Care Facility to the Retirement Plan. After reviewing the Purchase and Sale Agreement and comparing it to the appraisals between 1998 and 1999, Mr. Nault noted that the selling price appeared to be slightly above market value, but that the difference in value was not significant. Due to the lack of a contemporaneous appraisal at the time of the actual sale, Mr. Nault stated that it was possible that the value was exactly correct on the date of the sale. Further, Mr. Nault advised that it would have been more appropriate to have updated the appraisal to occur much closer to the date of the actual transfer of the interests in the Buildings and if another appraisal had been conducted on the exact date of the sale, the outcome would not be any different.

In addition, Mr. Nault explained that he had reviewed the real estate valuations beginning with the 1998 appraisal of the Buildings by Messrs. Carney and Hulberg. He indicated that this objective was to identify the relative differences from year to year in between the various appraisals to understand the trend and volatility of the market. Mr. Nault stated that he was trying to determine whether the Retirement Plan had been receiving lower than market rental compensation at any time since 1998. He further explained that he checked current rental prices in the Sunnyvale area to see if they were consistent with the appraisals. He said he also compared a list of the rents paid by CMG during May 2003 for sixteen buildings within its medical group that included the subject Buildings, with Collier International Published rates, to see how the Urgent Care Facility (at $2.46 per square foot) and the Residence (at $1.69 per square foot) compared with other rents paid by CMG to unrelated parties. According to Mr. Nault, the analysis of average rents corroborated his previous finding that CMG was paying above average rent for the Urgent Care Facility, while CMG was paying below average rent with respect to the Residence when compared in the same group. Mr. Nault indicated that the Residence was not comparable to other properties on the list because it is a converted residence in somewhat average to below average condition, and is not desirable as a residence. However, when compared to other converted residences, the rental amount paid by CMG for the Residence was above average rent for the market.

19. With respect to the 2003 Leases, Mr. Nault confirmed that the terms and conditions of such leases were more favorable to the Retirement Plan than those obtainable by the Retirement Plan in an arm's length transaction with unrelated third parties.

Mr. Nault attributed this observation to the timing of the 2003 Leases and the decline in the real estate market at the contemplated inception of such leases. In reaching this conclusion, Mr. Nault stated that he considered the terms of similar leases between unrelated parties, the Retirement Plan's overall investment portfolio, the Retirement Plan's liquidity and diversification requirements.

In addition, Mr. Nault certified that the exemption transactions were appropriate investments for the Retirement Plan and were in the best interests of the Retirement Plan and its participants and beneficiaries. Mr. Nault based his statement on all data at his disposal, discussions with Messrs. Carney and Hulberg, as well as reviews of the performance of the Urgent Care Facility and the Residence.

Further, Mr. Nault represented that he monitored, on behalf of the Retirement Plan, compliance with the terms of each 2003 Lease throughout the duration of such lease, and each extension, and, if necessary, he indicated that he would take appropriate actions to enforce the payment of the rent and the proper performance of all other obligations of CMG under the terms of each 2003 Lease.

Finally, Mr. Nault indicated that he expressly approved the renewal of each 2003 Lease beyond the initial term. He explained that he ensured that the rent paid to the Retirement Plan under the 2003 Leases and during each renewal term was no less than the fair market rental value of the Urgent Care Facility and the Residence and that such rentals were adjusted annually according to an annual independent appraisal, if required.

Department's Investigation

20. In a letter to CMG dated March 17, 2005, the San Francisco Regional Office (SFRO) of the Department concluded its investigation of the Retirement Plan and the 401(k) Plan. Based on the facts gathered during the investigation, the SFRO noted that the fiduciaries of the Plans may have violated several provisions of the Act with respect to the leasing of the Treatment Center by the Plans to CMG and the sale of the 401(k) Plan's ownership interests in the Buildings and Treatment Center to the Retirement Plan. Because the fiduciaries of the Plans had obtained exemptive relief from the Department with respect to the leasing of the Treatment Center (PTE 2004–21), the SFRO said it would take no further action with regard to these issues.

21. In summary, it is represented that the transactions satisfied or will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The terms and conditions of each 2003 Lease were no less favorable to the Retirement Plan than those obtainable by the Retirement Plan under similar circumstances when negotiated at arm's length with unrelated third parties.

(b) The Retirement Plan was represented for all purposes under the 2003 Leases, and during each renewal term, by a qualified, independent fiduciary.

(c) The independent fiduciary negotiated, reviewed, and approved the terms and conditions of the 2003 Leases and the options to renew such leases on

[9] The 2003 Leases provided in a Lease Addendum (paragraph 2, Rent Escalation) for an independent appraisal of the Buildings prior to the end of the "lease year." The Lease Addendum further provided that if the appraisal was not completed before the end of the lease year, an upward adjustment in rent would commence immediately upon completion of the appraisal.

Each year, Mr. Nault used three data points to determine the fair market rental value of the Buildings: (1) The independent appraisal in October of the lease year, (2) an analysis in January of that lease year, and (3) the independent appraisal in October of the next lease year. This allowed him to analyze market trends as well as specific valuations on a given date. If the appraisal in October of the lease year or the evaluation in January of the lease year had shown that the market value had increased to equal or greater than the valuations of such properties in 2001 (when such valuations were at their peak), Mr. Nault would have immediately adjusted the rent upward and pro-rated the rent over the lease period to reflect the higher value. The independent appraisal in October of the following lease year was used by Mr. Nault to confirm whether the fair market rental value for the duration of the prior the lease year had exceeded 2001 values. It is represented that neither the market trends nor the valuations ever showed an increase over the 2001 market values for the duration of the 2003 Leases.

behalf of the Retirement Plan and has determined that the transactions were appropriate investments for the Retirement Plan and are in the best interests of the Retirement Plan and its participants and beneficiaries.

(d) The rent paid to the Retirement Plan under each 2003 Lease, and during each renewal term, was no less than the fair market rental value of the Urgent Care Facility and the Residence, as established by a qualified, independent appraiser.

(e) The rent was subject to adjustment at the commencement of the second year of each 2003 Lease and each year thereafter by way of an independent appraisal. A qualified, independent appraiser was selected by the independent fiduciary to conduct the appraisal. If the appraised fair market rent of the Urgent Care Facility or the Residence was greater than that of the current base rent, then the base rent was revised to reflect the appraised increase in fair market rent. If the appraised fair market rent of the Urgent Care Facility or the Residence was less than or equal to the current base rent, then the base rent remained the same.

(f) Each 2003 Lease was triple net, requiring all expenses for maintenance, taxes, utilities and insurance to be paid by CMG, as lessee.

(g) The independent fiduciary (1) monitored CMG's compliance with the terms of each 2003 Lease and the conditions of the exemption throughout the duration of such leases and the renewal terms, and was responsible for legally enforcing the payment of the rent and the proper performance of all other obligations of CMG under the terms of such leases; (2) expressly approved the renewals of the 2003 Leases beyond their initial terms;

(3) determined whether the rent was paid in a timely manner based on documentation provided by CMG; and (4) determined whether CMG owed the 401(k) Plan or the Retirement Plan additional rent by reason of the past leasing of the Urgent Care Facility and/or the Residence, including the payment of reasonable interest.

(h) At all times throughout the duration of each 2003 Lease and each respective renewal term, the fair market value of the Urgent Care Facility and the Residence did not exceed 25 percent of the value of the total assets of the Retirement Plan.

(i) Within 90 days of the publication of the grant notice in the **Federal Register**, PAMF will file a Form 5330 with the Service and pay all applicable excise taxes that are due with respect to the leasing of the Urgent Care Facility and the Residence to CMG by the 401(k) Plan and/or the Retirement Plan prior to July 1, 2003.

Tax Consequences Of The Transactions

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and, therefore, must be examined under applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 693–8556. (This is not a toll-free number.)

The Bank of New York Mellon Corporation (the Applicant), Located in New York, New York [Exemption Application Number: D–11458]

Proposed Exemption

The Department of Labor (the Department) is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA, or the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986 (the Code) and in accordance with the procedures set forth in 29 CFR Part 2570 Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Transactions

If the proposed exemption is granted, effective as of the date of issuance of this proposed exemption, the restrictions of section 406 of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to the purchase of certain securities (the Securities), as defined below in Section III(h), by an asset management affiliate of The Bank of New York Mellon Corporation (BNYMC), as "affiliate" is defined below in Section III(c), from any person other than such asset management affiliate of BNYMC or any affiliate thereof, during the existence of an underwriting or selling syndicate with respect to such Securities, where a broker-dealer affiliated with BNYMC (the Affiliated Broker-Dealer), as defined below in Section III(b), is a manager or member of such syndicate (an "affiliated underwriter transaction" (AUT [10])) and/or where an Affiliated Trustee, as defined below in Section III(m), serves as trustee of a trust that issued the Securities (whether or not debt securities) or serves as indenture trustee of Securities that are debt Securities (an "affiliated trustee transaction" (ATT [11])) and the asset management affiliate of BNYMC, as a fiduciary, purchases such Securities:

(a) On behalf of an employee benefit plan or employee benefit plans (Client Plan(s)), as defined below in Section III(e); or

(b) On behalf of Client Plans, and/or In-House Plans, as defined below in Section III(l), which are invested in a pooled fund or in pooled funds (Pooled Fund(s)), as defined below in Section III(f).

Section II—Conditions

The proposed exemption, if granted, is conditioned upon adherence to the facts and representations described herein and upon satisfaction of the following conditions:

(a)(1) The Securities to be purchased are either—

(i) Part of an issue registered under the Securities Act of 1933 (the 1933 Act) (15 U.S.C. 77a *et seq.*) or, if the Securities to be purchased are part of an issue that is exempt from such registration requirement, such Securities:

(A) Are issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States,

(B) Are issued by a bank,

(C) Are exempt from such registration requirement pursuant to a federal statute other than the 1933 Act, or

(D) Are the subject of a distribution and are of a class which is required to be registered under section 12 of the Securities Exchange Act of 1934 (the 1934 Act) (15 U.S.C. 781), and are issued by an issuer that has been subject to the reporting requirements of section 13 of the 1934 Act (15 U.S.C. 78m) for a period of at least ninety (90) days immediately preceding the sale of such Securities and that has filed all reports required to be filed thereunder with the Securities and Exchange Commission (SEC) during the preceding twelve (12) months; or

(ii) Part of an issue that is an Eligible Rule 144A Offering, as defined in SEC Rule 10f–3 (17 CFR 270.10f–3(a)(4)). Where the Eligible Rule 144A Offering of the Securities is of equity securities,

[10] For purposes of this proposed exemption, an In-House Plan may engage in AUTs only through investment in a Pooled Fund.

[11] For purposes of this proposed exemption, an In-House Plan may engage in ATTs only through investment in a Pooled Fund.

the offering syndicate shall obtain a legal opinion regarding the adequacy of the disclosure in the offering memorandum;

(2) The Securities to be purchased are purchased prior to the end of the first day on which any sales are made, pursuant to that offering, at a price that is not more than the price paid by each other purchaser of the Securities in that offering or in any concurrent offering of the Securities, except that—

(i) If such Securities are offered for subscription upon exercise of rights, they may be purchased on or before the fourth day preceding the day on which the rights offering terminates; or

(ii) If such Securities are debt securities, they may be purchased at a price that is not more than the price paid by each other purchaser of the Securities in that offering or in any concurrent offering of the Securities and may be purchased on a day subsequent to the end of the first day on which any sales are made, pursuant to that offering, provided that the interest rates, as of the date of such purchase, on comparable debt securities offered to the public subsequent to the end of the first day on which any sales are made and prior to the purchase date are less than the interest rate of the debt Securities being purchased; and

(3) The Securities to be purchased are offered pursuant to an underwriting or selling agreement under which the members of the syndicate are committed to purchase all of the Securities being offered, except if—

(i) Such Securities are purchased by others pursuant to a rights offering; or

(ii) Such Securities are offered pursuant to an over-allotment option.

(b) The issuer of the Securities to be purchased pursuant to this proposed exemption must have been in continuous operation for not less than three years, including the operation of any predecessors, unless the Securities to be purchased—

(1) Are non-convertible debt securities rated in one of the four highest rating categories by Standard Poor's Rating Services, Moody's Investors Service, Inc., FitchRatings, Inc., Dominion Bond Rating Service Limited, Dominion Bond Rating Service, Inc., or any successors thereto (collectively, the Rating Organizations), provided that none of the Rating Organizations rates such securities in a category lower than the fourth highest rating category; or

(2) Are debt securities issued or fully guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States; or

(3) Are debt securities which are fully guaranteed by a person (the Guarantor) that has been in continuous operation for not less than three years, including the operation of any predecessors, provided that such Guarantor has issued other securities registered under the 1933 Act; or if such Guarantor has issued other securities which are exempt from such registration requirement, such Guarantor has been in continuous operation for not less than three years, including the operation of any predecessors, and such Guarantor is:

(i) A bank; or

(ii) An issuer of securities which are exempt from such registration requirement, pursuant to a Federal statute other than the 1933 Act; or

(iii) An issuer of securities that are the subject of a distribution and are of a class which is required to be registered under Section 12 of the Securities Exchange Act of 1934 (the 1934 Act) (15 U.S.C. 781), and are issued by an issuer that has been subject to the reporting requirements of section 13 of the 1934 Act (15 U.S.C. 78m) for a period of at least ninety (90) days immediately preceding the sale of such securities and that has filed all reports required to be filed thereunder with the Securities and Exchange Commission (SEC) during the preceding twelve (12) months.

(c) The aggregate amount of Securities of an issue purchased, pursuant to this exemption, by the asset management affiliate of BNYMC with: (i) The assets of all Client Plans; (ii) The assets, calculated on a pro-rata basis, of all Client Plans and In-House Plans investing in Pooled Funds managed by the asset management affiliate of BNYMC; and (iii) The assets of plans to which the asset management affiliate of BNYMC renders investment advice within the meaning of 29 CFR 2510.3–21(c)) does not exceed:

(1) Ten percent (10%) of the total amount of the Securities being offered in an issue, if such Securities are equity securities;

(2) Thirty-five percent (35%) of the total amount of the Securities being offered in an issue, if such Securities are debt securities rated in one of the four highest rating categories by at least one of the Rating Organizations, provided that none of the Rating Organizations rates such Securities in a category lower than the fourth highest rating category; or

(3) Twenty-five percent (25%) of the total amount of the Securities being offered in an issue, if such Securities are debt securities rated in the fifth or sixth highest rating categories by at least one of the Rating Organizations, provided that none of the Rating Organizations rates such Securities in a category lower than the sixth highest rating category; and

(4) The assets of any single Client Plan (and the assets of any Client Plans and any In-House Plans investing in Pooled Funds) may not be used to purchase any debt securities being offered, if such securities are rated lower than the sixth highest rating category by any of the Rating Organizations;

(5) Notwithstanding the percentage of Securities of an issue permitted to be acquired, as set forth in Section II(c)(1), (2), and (3) above of this proposed exemption, the amount of Securities in any issue (whether equity or debt securities) purchased, pursuant to this proposed exemption, by the asset management affiliate of BNYMC on behalf of any single Client Plan, either individually or through investment, calculated on a pro-rata basis, in a Pooled Fund may not exceed three percent (3%) of the total amount of such Securities being offered in such issue; and

(6) If purchased in an Eligible Rule 144A Offering, the total amount of the Securities being offered for purposes of determining the percentages, described above in Section II(c)(1)–(3) and (5), is the total of:

(i) The principal amount of the offering of such class of Securities sold by underwriters or members of the selling syndicate to "qualified institutional buyers" (QIBs), as defined in SEC Rule 144A (17 CFR 230.144A(a)(1)); plus

(ii) The principal amount of the offering of such class of Securities in any concurrent public offering.

(d) The aggregate amount to be paid by any single Client Plan in purchasing any Securities which are the subject of this proposed exemption, including any amounts paid by any Client Plan or In-House Plan in purchasing such Securities through a Pooled Fund, calculated on a pro-rata basis, does not exceed three percent (3%) of the fair market value of the net assets of such Client Plan or In-House Plan, as of the last day of the most recent fiscal quarter of such Client Plan or In-House Plan prior to such transaction.

(e) The covered transactions are not part of an agreement, arrangement, or understanding designed to benefit the asset management affiliate of BNYMC or an affiliate.

(f) If the transaction is an AUT, the Affiliated Broker-Dealer does not receive, either directly, indirectly, or

through designation, any selling concession, or other compensation or consideration that is based upon the amount of Securities purchased by any single Client Plan, or that is based on the amount of Securities purchased by Client Plans or In-House Plans through Pooled Funds, pursuant to this proposed exemption. In this regard, the Affiliated Broker-Dealer may not receive, either directly or indirectly, any compensation or consideration that is attributable to the fixed designations generated by purchases of the Securities by the asset management affiliate of BNYMC on behalf of any single Client Plan or any Client Plan or In-House Plan in Pooled Funds.

(g) If the transaction is an AUT,

(1) The amount the Affiliated Broker-Dealer receives in management, underwriting, or other compensation or consideration is not increased through an agreement, arrangement, or understanding for the purpose of compensating the Affiliated Broker-Dealer for foregoing any selling concessions for those Securities sold pursuant to this proposed exemption. Except as described above, nothing in this Section II(g)(1) shall be construed as precluding the Affiliated Broker-Dealer from receiving management fees for serving as manager of the underwriting or selling syndicate, underwriting fees for assuming the responsibilities of an underwriter in the underwriting or selling syndicate, or other compensation or consideration that is not based upon the amount of Securities purchased by the asset management affiliate of BNYMC on behalf of any single Client Plan, or on behalf of any Client Plan or In-House Plan participating in Pooled Funds, pursuant to this proposed exemption; and

(2) The Affiliated Broker-Dealer shall provide, on a quarterly basis, to the asset management affiliate of BNYMC a written certification, signed by an officer of the Affiliated Broker-Dealer, stating that the amount that the Affiliated Broker-Dealer received in compensation or consideration during the past quarter, in connection with any offerings covered by this exemption, was not adjusted in a manner inconsistent with Section II(e), (f), or (g) of this proposed exemption.

(h) The covered transactions are performed under a written authorization executed in advance by an independent fiduciary of each single Client Plan (the Independent Fiduciary), as defined below in Section III(g).

(i) Prior to the execution by an Independent Fiduciary of a single Client Plan of the written authorization described above in Section II(h), the following information and materials (which may be provided electronically) must be provided by the asset management affiliate of BNYMC to such Independent Fiduciary;

(1) A copy of the Notice of Proposed Exemption (the Notice) and, if the requested exemption is granted, a copy of the final exemption as published in the **Federal Register**; and

(2) Any other reasonable available information regarding the covered transactions that such Independent Fiduciary requests the asset management affiliate of BNYMC to provide.

(j) Subsequent to the initial authorization by an Independent Fiduciary of a single Client Plan permitting the asset management affiliate of BNYMC to engage in the covered transactions on behalf of such single Client Plan, the asset management affiliate of BNYMC will continue to be subject to the requirement to provide within a reasonable period of time any reasonably available information regarding the covered transactions that the Independent Fiduciary requests the asset management affiliate of BNYMC to provide.

(k)(1) In the case of an existing employee benefit plan investor (or existing In-House Plan investor, as the case may be) in a Pooled Fund, such Pooled Fund may not engage in any covered transactions pursuant to this proposed exemption, unless the asset management affiliate of BNYMC provides the written information, as described below and within the time period described below in this Section II(k)(2), to the Independent Fiduciary of each such plan participating in such Pooled Fund (and to the fiduciary of each such In-House Plan participating in such Pooled Fund).

(2) The following information and materials (which may be provided electronically) shall be provided by the asset management affiliate of BNYMC not less than 45 days prior to such asset management affiliate of BNYMC engaging in the covered transactions on behalf of a Pooled Fund, pursuant to this proposed exemption, and provided further that the information described below in this section II(k)(2)(i) and (iii) is supplied simultaneously:

(i) A notice of the intent of such Pooled Fund to purchase Securities pursuant to this exemption, a copy of this Notice, and, if the requested exemption is granted, a copy of the final exemption, as published in the **Federal Register**;

(ii) Any other reasonably available information regarding the covered transaction that the Independent Fiduciary of a plan (or fiduciary of an In-House Plan) participating in a Pooled Fund requests the asset management affiliate of BNYMC to provide; and

(iii) A termination form expressly providing an election for the Independent Fiduciary of a plan (or fiduciary of an In-House Plan) participating in a Pooled Fund to terminate such plan's (or In-House Plan's) investment in such Pooled Fund without penalty to such plan (or In-House Plan). Such form shall include instructions specifying how to use the form. Specifically, the instructions must explain that such plan (or such In-House Plan) has an opportunity to withdraw its assets from a Pooled Fund for a period of no more than 30 days after such plan's (or such In-House Plan's) receipt of the initial notice of intent, described above in Section II(k)(2)(i), and that the failure of the Independent Fiduciary of such plan (or fiduciary of such In-House Plan) to return the termination form to the asset management affiliate of BNYMC in the case of a plan (or In-House Plan) participating in a Pooled Fund by the specified date shall be considered as an approval by such plan (or such In-House Plan) of its participation in the covered transactions as an investor in such Pooled Fund.

Further, the instructions will identify BNYMC, the asset management affiliate of BNYMC, the Affiliated Broker-Dealer and/or Affiliated Trustee and will provide the address of the asset management affiliate of BNYMC. The instructions will state that the exemption will not be available, unless the fiduciary of each plan participating in the covered transactions as an investor in a Pooled Fund is, in fact, independent of BNYMC, the asset management affiliate of BNYMC, the Affiliated Broker-Dealer, and the Affiliated Trustee. The instructions will also state that the fiduciary of each such plan must advise the asset management affiliate of BNYMC, in writing, if it is not an "Independent Fiduciary," as that term is defined below in Section III(g) of this proposed exemption.

For purposes of this Section II(k)(1) and (2), the requirement that the fiduciary responsible for the decision to authorize the transactions described, above, in Section I of this proposed exemption for each plan be independent of the asset management affiliate of BNYMC shall not apply in the case of an In-House Plan.

(3) Notwithstanding the requirement described in Section II(h), the written authorization requirement for an existing single Client Plan shall be

satisfied solely with respect to covered ATT transactions (where the asset management affiliate of BNYMC or any affiliate thereof is not a manager or member of an underwriting or selling syndicate) if the asset management affiliate provides to the Independent Fiduciary of such existing single Client Plan the written information and materials described below in Section II(k)(4), and the Independent Fiduciary does not return the termination form required to be provided by Section II(k)(4)(iii) within the time period specified therein.

(4) The following information and materials (which may be provided electronically) shall be provided by the asset management affiliate of BNYMC not less than 45 days prior to such asset management affiliate of BNYMC engaging in the covered ATT transactions on behalf of such existing single Client Plan pursuant to this proposed exemption:

(i) A notice of the intent of such asset management affiliate to purchase Securities pursuant to this exemption, a copy of this Notice, and, if the requested exemption is granted, a copy of the final exemption, as published in the **Federal Register**;

(ii) Any other reasonably available information regarding the covered ATT transactions that the Independent Fiduciary of such existing single Client Plan requests the asset management affiliate of BNYMC to provide; and

(iii) A termination form expressly providing an election for the Independent Fiduciary of an existing single Client Plan to deny the asset management affiliate of BNYMC from engaging in covered ATT transactions on behalf of such Client Plan. Such form shall include instructions specifying how to use the form. Specifically, the instructions must explain that the existing single Client Plan has an opportunity to deny the asset management affiliate of BNYMC from engaging in covered ATT transactions of behalf of such Client Plan for a period of no more than 30 days after such Client Plan's receipt of the initial notice of intent, described above in Section II(k)(4)(i), and that the failure of the Independent Fiduciary of such existing single Client Plan to return the form to the asset management affiliate of BNYMC by the specified date shall be considered an approval by such Client Plan of its participation in the covered ATT transactions.

Further, the instructions will identify BNYMC, the asset management affiliate of BNYMC, the Affiliated Broker-Dealer and/or Affiliated Trustee and will provide the address of the asset management affiliate of BNYMC. The instructions will state that the exemption will not be available, unless the Independent Fiduciary of such existing single Client Plan is, in fact, independent of BNYMC, the asset management affiliate of BNYMC, the Affiliated Broker-Dealer, and the Affiliated Trustee. The instructions will also state that the fiduciary of each such existing single Client Plan must advise the asset management affiliate of BNYMC, in writing, if it is not an "Independent Fiduciary," as that term is defined, below, in Section III(g).

(l)(1) In the case of each plan (and in the case of each In-House Plan) whose assets are proposed to be invested in a Pooled Fund after such Pooled Fund has satisfied the conditions set forth in this proposed exemption to engage in the covered transactions, the investment by such plan (or by such In-House Plan) in the Pooled Fund is subject to the prior written authorization of an Independent Fiduciary representing such plan (or the prior written authorization by the fiduciary of such In-House Plan, as the case may be); following the receipt by such Independent Fiduciary of such plan (or by the fiduciary of such In-House Plan, as the case may be) of the written information described above in Section II(k)(2)(i) and (ii).

(2) For purposes of this Section II(l), the requirement that the fiduciary responsible for the decision to authorize the transactions described, above, in Section I of this exemption for each plan proposing to invest in a Pooled Fund be independent of BNYMC and its affiliates shall not apply in the case of an In-House Plan.

(m) Subsequent to the initial authorization by an Independent Fiduciary of a plan (or by a fiduciary of an In-House Plan) to invest in a Pooled Fund that engages in the covered transactions, the asset management affiliate of BNYMC will continue to be subject to the requirement to provide within a reasonable period of time any reasonably available information regarding the covered transactions that the Independent Fiduciary of such plan (or the fiduciary of such In-House Plan, as the case may be) request the asset management affiliate of BNYMC to provide.

(n) At least once every three months, and not later than 45 days following the period to which such information relates, the asset management affiliate of BNYMC shall furnish:

(1) In the case of each single Client Plan that engages in the covered transactions, the information described below in this Section II(n)(3)–(7), to the Independent Fiduciary of each such single Client Plan;

(2) In the case of each Pooled Fund in which a Client Plan (or in which an In-House Plan) invests, the information described below in this Section (II)(n)(3)–(6) and (8), to the Independent Fiduciary of each such Client Plan (and to the fiduciary of each such In-House Plan) invested in such Pooled Fund;

(3) A quarterly report (the Quarterly Report) (which may be provided electronically) which discloses all the Securities purchased pursuant to the proposed exemption during the period to which such report relates on behalf of the Client Plan, In-House Plan or Pooled Fund to which such report relates, and which discloses the terms of each of the transactions described in such report, including:

(i) The type of Securities (including the rating of any Securities which are debt securities) involved in each transaction;

(ii) The price at which the Securities were purchased in each transaction;

(iii) The first day on which any sale was made during the offering of the Securities;

(iv) The size of the issue of the Securities involved in each transaction, so that the Independent Fiduciary may verify compliance with section II(c);

(v) The number of Securities purchased by the asset management affiliate of BNYMC for the Client Plan, In-House Plan or Pooled Fund to which the transaction relates;

(vi) The identity of the underwriter from whom the Securities were purchased for each transaction;

(vii) In the case of an AUT, the underwriting spread in each transaction (*i.e.*, the difference between the price at which the underwriter purchases the Securities from the issuer and the price at which the Securities are sold to the public);

(viii) In the case of an ATT, the basis upon which the Affiliated Trustee is compensated in each transaction;

(ix) The price at which any of the Securities purchased during the period to which such report relates were sold; and

(x) The market value at the end of the period to which such report relates of the Securities purchased during such period and not sold;

(4) The Quarterly Report contains:

(i) In the case of AUTs, a representation that the asset management affiliate of BNYMC has received a written certification signed by an officer of the Affiliated Broker-Dealer, as described above in Section II(g)(2), affirming that, as to each AUT covered by this exemption during the

past quarter, the Affiliated Broker-Dealer acted in compliance with Section II(e), (f) and (g) of this proposed exemption;

(ii) In the case of ATTs, a representation by the asset management affiliate of BNYMC affirming that, as to each ATT, the transaction was not part of an agreement, arrangement of understanding designed to benefit the Affiliated Trustee; and

(iii) A statement that copies of such certifications will be provided upon request;

(5) A disclosure in the Quarterly Report that states that any other reasonably available information regarding a covered transaction that an Independent Fiduciary (or fiduciary of an In-House Plan) requests will be provided, including but not limited to:

(i) The date on which the Securities were purchased on behalf of the Client Plan (or the In-House Plan) to which the disclosure relates (including Securities purchased by the Pooled Funds in which such Client Plan (or such In-House Plan) invests);

(ii) The percentage of the offering purchase on behalf of all Client Plans (and the pro-rata percentage purchased on behalf of Client Plans and In-House Plans investing in Pooled Funds); and

(iii) The identity of all members of the underwriting syndicate;

(6) The Quarterly Report discloses any instance during the past quarter where the asset management affiliate of BNYMC was precluded for any period of time from selling Securities purchased under this proposed exemption in that quarter because of its status as an affiliate of an Affiliated Broker-Dealer or an Affiliated Trustee and the reason for this restriction;

(7) Explicit notification, prominently displayed in each Quarterly Report sent to the Independent Fiduciary of each single Client Plan that engages in the covered transactions, that the authorization to engage in such covered transactions may be terminated, without penalty to such single Client Plan, within five (5) days after the date that the Independent Fiduciary of such single Client Plan informs the person identified in such notification that the authorization to engage in the covered transactions is terminated; and

(8) Explicit notification, prominently displayed in each Quarterly Report sent to the Independent Fiduciary of each Client Plan (and to the fiduciary of each In-House Plan) that engages in the covered transactions through a Pooled Fund, that the investment in such Pooled Fund may be terminated without penalty to such Client Plan (or such In-House Plan), within such time as may be necessary to effect the withdrawal in an orderly manner that is equitable to all withdrawing plans and to the non-withdrawing plans, after the date that the Independent Fiduciary of such Client Plan (or the fiduciary of such In-House Plan, as the case may be) informs the person identified in such notification that the investment in such Pooled Fund is terminated.

(o) For purposes of engaging in covered transactions, each Client Plan (and each In-House Plan) shall have total net assets with a value of at least $50 million (the $50 Million Net Asset Requirement). For purposes of engaging in covered transactions involving an Eligible Rule 144A Offering,[12] each Client Plan (and each In-House Plan) shall have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or such In-House Plan, as the case may be) (the $100 Million Net Asset Requirement).

For purposes of a Pooled Fund engaging in covered transactions, each Client Plan (and each In-House Plan) in such Pooled Fund shall have total net assets with a value of at least $50 million. Notwithstanding the foregoing, if each such Client Plan (and each such In-House Plan) in such Pooled Fund does not have total net assets with a value of at least $50 million, the $50 Million Net Asset Requirement will be met if fifty percent (50%) or more of the units of beneficial interest in such Pooled Fund are held by Client Plans (or by In-House Plans) each of which has total net assets with a value of at least $50 million.

For purposes of a Pooled Fund engaging in covered transactions involving an Eligible Rule 144A Offering, each Client Plan (and each In-House Plan) in such Pooled Fund shall have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or such In-House Plan, as the case may be). Notwithstanding the foregoing, if each such Client Plan (and each such In-House Plan) in such Pooled Fund does not have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or In-House Plan, as the case may be), the $100 Million Net Asset Requirement will be met if fifty percent (50%) or more of the units of beneficial interest in such Pooled Fund are held by Client Plans (or by In-House Plans) each of which have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or such In-House Plan, as the case may be), and the Pooled Fund itself qualifies as a QIB, as determined pursuant to SEC Rule 144A (17 CFR 230.144A(a)(F)).

For purposes of the net asset requirements described above in this Section II(o), where a group of Client Plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the $50 Million Net Asset Requirement (or in the case of and Eligible Rule 144A Offering, the $100 Million Net Asset Requirement) may be met by aggregating the assets of such Client Plans, if the assets of such Client Plans are pooled for investment purposes in a single master trust.

(p) The asset management affiliate of BNYMC is a "qualified professional asset manager" (QPAM), as that term is defined under Part V(a) of PTE 84–14, as amended from time to time, or any successor exemption thereto. In addition to satisfying the requirements for a QPAM under Section V(a) of PTE 84–14, the asset management affiliate of BNYMC also must have total client assets under its management and control in excess of $5 billion as of the last day of its most recent fiscal year, and shareholders' or partners' equity in excess of $1 million.

(q) No more than twenty percent (20%) of the assets of a Pooled Fund at the time of a covered transaction are comprised of assets of In-House Plans for which BNYMC, the asset management affiliate of BNYMC, the Affiliated Broker-Dealer, the Affiliated Trustee or an affiliate exercises investment discretion.

(r) The asset management affiliate of BNYMC, the Affiliated Broker-Dealer, and the Affiliated Trustee, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of any covered transaction such records as are necessary to enable the persons, described below in Section II(s), to determine whether the conditions of this exemption have been met, except that—

(1) No party in interest with respect to a plan which engages in the covered

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[12] SEC Rule 10f–3(a)(4), 17 CFR 270.10f–3(a)(4), states that the term "Eligible Rule 144A Offering" means an offering of securities that meets the following conditions:

(i) The securities are offered or sold in transactions exempt from registration under section 4(2) of the Securities Act of 1933 [15 U.S.C. 77d(d)], rule 144A thereunder [Sec. 230.144A of this chapter], or rules 501–508 thereunder [Sec. 230.501–230–508 of this chapter];

(ii) The securities are sold to persons that the seller and any person acting on behalf of the seller reasonable believe to include qualified institutional buyers, as defined in Sec. 230.144A(a)(1) of this chapter; and

(iii) The seller and any person acting on behalf of the seller reasonably believe that the securities are eligible for resale to other qualified institutional buyers pursuant to Sec. 230.144A of this chapter.

transactions, other than BNYMC, the asset management affiliate of BNYMC, the Affiliated Broker-Dealer or the Affiliated Trustee, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required below by Section II(s); and

(2) A separate prohibited transaction shall not be considered to have occurred if, due to circumstances beyond the control of the asset management affiliate of BNYMC, the Affiliated Broker-Dealer, or the Affiliated Trustee, as applicable, such records are lost or destroyed prior to the end of the six-year period.

(s) (1) Except as provided below in Section II(s)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to above in Section II(r) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the SEC; or

(ii) Any fiduciary of any plan that engages in the covered transactions, or any duly authorized employee or representative of such fiduciary; or

(iii) Any employer of participants and beneficiaries and any employee organization whose members are covered by a plan that engages in the covered transactions, or any authorized employee or representative of these entities; or

(iv) Any participant or beneficiary of a plan that engages in the covered transactions, or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described above in Section II(s)(1)(ii)–(iv) shall be authorized to examine trade secrets of the asset management affiliate of BNYMC, the Affiliated Broker-Dealer, or the Affiliated Trustee, or commercial or financial information which is privileged or confidential; and

(3) Should the asset management affiliate of BNYMC, the Affiliated Broker-Dealer, or the Affiliated Trustee refuse to disclose information on the basis that such information is exempt from disclosure, pursuant to Section II(s)(2) above, the asset management affiliate of BNYMC shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

(t) An indenture trustee whose affiliate has, within the prior 12 months, underwritten any Securities for an obligor of the indenture Securities must resign as indenture trustee if a default occurs upon the indenture Securities within a reasonable amount of time of such default.

SECTION III—DEFINITIONS

(a) The term, "the Applicant," means BNYMC and its current and future affiliates.

(b) The term, "Affiliated Broker-Dealer," means any broker-dealer affiliate, as "affiliate" is defined below in Section III(c), of the Applicant, as "Applicant" is defined above in Section III(a), that meets the requirements of this proposed exemption. Such Affiliated Broker-Dealer may participate in an underwriting or selling syndicate as a manager or member. The term, "manager," means any member of an underwriting or selling syndicate who, either alone or together with other members of the syndicate, is authorized to act on behalf of the members of the syndicate in connection with the sale and distribution of the Securities, as defined below in Section III(h), being offered or who receives compensation from the members of the syndicate for its services as a manager of the syndicate.

(c) The term "affiliate" of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such person;

(2) Any officer, director, partner, employee, or relative, as defined in section 3(15) of the Act, of such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(d) The term, "control," means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) The term, "Client Plan(s)," means an employee benefit plan(s) that is subject to the Act and/or the Code, and for which plan(s) an asset management affiliate of BNYMC exercises discretionary authority or discretionary control respecting management or disposition of some or all of the assets of such plan(s), but excludes In-House Plans, as defined below in Section III(l).

(f) The term, "Pooled Fund(s)," means a common of collective trust funds(s) or a pooled investment fund(s): (i) In which employee benefit plan(s) subject to the Act and/or Code invest; (ii) Which is maintained by an asset management affiliate of BNYMC, (as the term, "affiliate" is defined above in Section III(c)); and (iii) For which such asset management affiliate of BNYMC exercises discretionary authority or discretionary control respecting the management or disposition of the assets of such fund(s).

(g) (1) The term, "Independent Fiduciary," means a fiduciary of a plan who is unrelated to, and independent of, BNYMC, the asset management affiliate of BNYMC, the Affiliated Broker-Dealer and the Affiliated Trustee. For purposes of this exemption, a fiduciary of a plan will be deemed to be unrelated to, and independent of, BNYMC, the asset management affiliate of BNYMC, the Affiliated Broker-Dealer and the Affiliated Trustee, if such fiduciary represents in writing that neither such fiduciary, nor any individual responsible for the decision to authorize or terminate authorization for the transactions described above in Section I of this exemption, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of BNYMC, the asset management affiliate of BNYMC, the Affiliated Broker-Dealer or the Affiliated Trustee and represents that such fiduciary shall advise the asset management affiliate of BNYMC within a reasonable period of time after any change in such facts occur.

(2) Notwithstanding anything to the contrary in this Section III(g), a fiduciary of a plan is not independent:

(i) If such fiduciary directly or indirectly controls, is controlled by, or is under common control with BNYMC, the asset management affiliate of BNYMC, the Affiliated Broker-Dealer or the Affiliated Trustee;

(ii) If such fiduciary directly or indirectly receives any compensation or other consideration from BNYMC, the asset management affiliate of BNYMC, the Affiliated Broker-Dealer or the Affiliated Trustee for his or her own personal account in connection with any transaction described in this exemption;

(iii) If any officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the asset management affiliate of BNYMC responsible for the transactions described above in Section I of this exemption, is an officer, director or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the sponsor of the plan or of the fiduciary responsible for the decision to authorize or terminate authorization for the transactions described in Section I. However, if such individual is a director of the sponsor of the plan or of the responsible fiduciary, and if he or she

abstains from participation in: (A) The choice of the plan's investment manager/adviser; and (B) The decision to authorize or terminate authorization for transactions described above in Section I, then Section III(g)(2)(iii) shall not apply.

(3) The term, "officer" means a president, any vice president in charge of a principal business unit, division, or function (such as sales, administration, or finance), or any other officer who performs a policy-making function for BNYMC or any affiliate thereof.

(h) The term, "Securities," shall have the same meaning as defined in section 2(36) of the Investment Company Act of 1940 (the 1940 Act), as amended (15 U.S.C. 80a–2(36)). For purposes of this exemption, mortgage-backed or other asset-backed securities rated by one of the Rating Organizations, as defined, below, in Section III(k), will be treated as debt securities.

(i) The term, "Eligible Rule 144A Offering," shall have the same meaning as defined in SEC Rule 10f–3(a)(4) (17 CFR 270.10f–3(a)(4)) under the 1940 Act.

(j) The term, "qualified institutional buyer," or the term, "QIB," shall have the same meaning as defined in SEC Rule 144A (17 CFR 230.144A(a)(1)) under the 1933 Act.

(k) The term, "Rating Organizations," means Standard & Poor's Rating Services, Moody's Investors Service, Inc., FitchRatings, Inc., Dominion Bond Rating Service Limited, and Dominion Bond Rating Service, Inc.; or any successors thereto.

(l) The term, "In-House Plan(s)," means an employee benefit plan(s) that is subject to the Act and/or the Code, and that is, respectively, sponsored by the Applicant as defined above in Section III(a) or by any affiliate, as defined above in Section III(b), of the Applicant, for its own employees.

(m) The term, "Affiliated Trustee," means the Applicant and any bank or trust company affiliate of the Applicant (as "affiliate" is defined above in Section III(c)(1)), that serves as trustee of a trust that issues Securities which are asset-backed securities or as indenture trustee of Securities which are either asset-backed securities or other debt securities that meet the requirements of this proposed exemption. For purposes of this proposed exemption, other than Section II(t), performing services as custodian, paying agent, registrar or in similar ministerial capacities is, in each case, also considered serving as trustee or indenture trustee.

This proposed exemption is available to BNYMC for as long as the terms and conditions of the exemption are satisfied with respect to each Client Plan.

Summary of Facts and Representations

1. The Applicant is the The Bank of New York Mellon Corporation ("BNYMC", or the "Applicant"), which is headquartered in New York, New York. The Applicant is a bank holding company within the meaning of the Bank Holding Company Act of 1956, as amended (the "BHC Act"), and is incorporated under the laws of the state of Delaware. BNYMC was established as a result of the July 2, 2007 merger of The Bank of New York Company, Inc. and Mellon Financial Corporation. As a bank holding company, the Applicant is subject to regulation and oversight by the Board of Governors of the Federal Reserve System. The Applicant is also a financial holding company within the meaning of the BHC Act.

2. The Applicant has a number of affiliates that are involved in the asset management business and may in the future have additional such affiliates (collectively, the "asset management affiliates"). In some cases, the asset management affiliate is an investment adviser registered under the Investment Advisers Act of 1940 (the "Advisers Act"). Each such registered asset management affiliate would be subject to regulation and oversight by the Securities and Exchange Commission (the "SEC") pursuant to the "Advisers Act". In other cases, the asset management affiliate is a bank, trust company or broker-dealer. Each such other asset management affiliate would be subject to regulation and oversight by the applicable Federal and/or state banking regulator, in the case of a bank or trust company, or the SEC, in the case of a broker-dealer. As of September 30, 2007, the aggregate assets under the management of the asset management affiliates were in excess of $1 trillion, of which more than $400 billion consisted of plan assets subject to the Act.

In addition, the Applicant has a number of affiliates that are broker-dealers involved in the underwriting of securities and may in the future have additional broker-dealer affiliates (collectively, the "Affiliated Broker-Dealers"). Each such Affiliated Broker-Dealer is registered under Section 15 of the Securities Exchange Act of 1934 (the "1934 Act") and is subject to regulation and oversight by the SEC.

The Applicant also has a number of affiliates that are involved in the provision of (i) trustee and indenture trustee services as well as (ii) custodian, paying agent, registrar and similar ministerial services, in each case to issuers of securities and may in the future have additional such affiliates.

3. The Applicant seeks an exemption permitting an asset management affiliate of BNYMC to purchase securities as a fiduciary on behalf of Client Plans and In-House Plans (collectively, "Plans", including those Plans invested in pooled funds maintained by the asset manager or an affiliate) from any person other than the asset manager or an affiliate during the existence of an underwriting or selling syndicate with respect to such securities: (i) Where the asset manager's broker-dealer affiliate participates as a manager or syndicate member of the underwriting syndicate for such securities (AUT transactions); and/or (ii) Where an affiliate of BNYMC serves as trustee (including custodian or similar functionary) of a trust that issued the securities (whether or not debt securities) or serves as indenture trustee (including custodian or similar functionary) of securities that are debt securities (ATT transactions). The Affiliated Broker-Dealer will receive no selling concessions with respect to the securities sold to Plans in connection with the transactions described in this paragraph.

4. The Applicant represents that in accordance with Prohibited Transaction Class Exemption 75–1, 40 FR 50845 (October 31, 1975) (PTE 75–1), an asset management affiliate of BNYMC may purchase underwritten securities for Plans, where an Affiliated Broker-Dealer is a member of an underwriting or selling syndicate. In this regard, Part III of PTE 75–1 provides limited relief from the prohibited transaction provisions of the Act for plan fiduciaries that purchase securities from an underwriting or selling syndicate of which the fiduciary or an affiliate is a member. However, such relief is not available if the Affiliated Broker-Dealer manages the underwriting or selling syndicate.

5. Further, the Applicant notes that PTE 75–1 does not provide relief for the purchase of unregistered securities. This includes those securities purchased by an underwriter for resale to a "qualified institutional buyer" (QIB) pursuant to the SEC's Rule 144A under the Securities Act of 1933 (the "1933 Act"). It is represented that, for example, Rule 144A is commonly utilized in connection with sales of securities issued by foreign corporations to U.S. investors that are QIBs. Notwithstanding the unregistered nature of such shares, it is represented that syndicates selling securities under Rule 144A (Rule 144A Securities) are the functional equivalent of those selling registered securities.

6. The Applicant represents that the Affiliated Broker-Dealer may regularly serve as a manager of underwriting or selling syndicates for registered securities, and as a manager or a member of underwriting or selling syndicates for Rule 144A Securities. Accordingly, the asset management affiliate of BNYMC is currently unable to purchase on behalf of Plans securities sold in a Rule 144A Offering (defined below), resulting in such Plans being unable to participate in significant investment opportunities.

7. The Applicant represents that there has been considerable consolidation in the nation's financial services industry since 1975, resulting in more situations where a plan fiduciary may be affiliated with the manager of an underwriting syndicate. In addition, many plans have expanded their investment portfolios in recent years to include foreign securities. As a result, the exemption provided in PTE 75–1, Part III, is often unavailable for purchases of certain securities that may be appropriate plan investments.

8. The Applicant states that PTE 2000–25, PTE 2000–27, PTE 2007–03 and FAN 2001–19E expanded the relief afforded under PTE 75–1 to, among other things, situations where the Affiliated Broker-Dealer is a manager of the underwriting or selling syndicate. In addition, the Applicant notes that PTE 2003–24 and FAN 05–09E expanded the relief afforded under PTEs 2000–25 and 2000–27 and FAN 2001–19E to those situations where a fiduciary or its affiliate serves as trustee with respect to a trust that is the issuer of the securities. Such trusts are frequently associated with so-called asset-backed securities (ABS). ABS are usually issued as certificates representing an undivided interest in a trust which holds a portfolio of assets (*e.g.*, secured consumer receivables or credit instruments that bear interest). These exemptions generally cover situations where an affiliate of the asset management affiliate also may serve as a (i) trustee or indenture trustee, or (ii) custodian, paying agent, registrar or other similar ministerial capacities.

9. The Applicant represents that the asset management affiliate of BNYMC makes its investment decisions on behalf of, or renders investment advice to, Plans pursuant to the governing document of the particular Plan or Pooled Fund and the investment guidelines and objectives set forth in the management or advisory agreement. Because the Plans are covered by Title I of the Act, such investment decisions are subject to the fiduciary responsibility provisions of the Act.[13]

10. The Applicant states, therefore, that the decision to invest in a particular offering is made on the basis of price, value, and a Plan's investment criteria, not on whether the securities are currently being sold through an underwriting or selling syndicate. The Applicant further states that, because the compensation paid to the asset management affiliate of BNYMC for its services is generally based upon assets under management, the asset management affiliate of BNYMC has little incentive to purchase securities in an offering in which the Affiliated Broker-Dealer is an underwriter unless such a purchase is in the interests of Plans. If the assets under management do not perform well, the asset management affiliate of BNYMC will receive less compensation and could lose clients, costs which far outweigh any gains from the purchase of underwritten securities. The Applicant points out that under the terms of the proposed exemption, the Affiliated Broker-Dealer would receive no compensation or other consideration, direct or indirect, in connection with any transaction that would be permitted under the proposed exemption.

11. The Applicant states that the asset management affiliates generally purchase securities in large blocks because the same investments will be made across several of their Client accounts. If there is a new offering of an equity or fixed income security that an asset management affiliate had otherwise intended to purchase, it may be able to purchase the security through the offering syndicate at a lower price than it would pay in the open market, without transaction costs and with a reduced market impact if it is buying a relatively large quantity. This is because a large purchase in the open market can cause an increase in the market price and, consequently, result in an increase in the cost of the securities. Purchasing from an offering syndicate can thus reduce the costs to the Plans.

12. The Applicant represents that, absent an individual exemption, if an Affiliated Broker-Dealer is a manager of the syndicate underwriting the offering, the asset management affiliates are currently foreclosed from purchasing any securities from that underwriting syndicate. The Applicant maintains that, if an asset management affiliate then purchases the same securities in the secondary market, the Plans may incur greater costs because the market price is often higher than the offering price, and because of transaction and market impact costs. The Applicant also represents that, due to the reluctance of many purchasers of such securities to sell them on the secondary market, the Plans may be foreclosed from purchasing any such securities if those securities are not purchased directly from an underwriting syndicate. Alternatively, the asset management affiliate may have foregone other investment opportunities because of its decision to purchase in the offering, and these opportunities, if still available, may have become more expensive.

13. The Applicant represents that the Affiliated Broker-Dealers may manage and participate in firm commitment underwriting syndicates for registered offerings of both equity and debt securities. While equity and debt underwritings may operate differently with regard to the actual sales process, the basic structures are the same. In a firm commitment underwriting, the underwriting syndicate acquires the securities from the issuer and then sells the securities to investors.

14. The Applicant represents that while, as a legal matter, the syndicate assumes the risk that the securities might not be distributable, as a practical matter, this risk is reduced, in marketed deals, through "building a book" (*i.e.*, taking indications of interest, as further described below at Representation 19) prior to pricing the securities. The Applicant asserts that, consequently, there is little incentive for the underwriters to use their discretionary accounts (or the discretionary accounts of their affiliates) to buy up the securities as a way to avoid underwriting liabilities.

15. The Applicant represents that each syndicate has a "book-running lead manager", who is the principal contact between the syndicate and the issuer and who is responsible for organizing and coordinating the syndicate. The Applicant further represents that the book-running lead manager (also called the managing underwriter or syndicate manager) works with an issuer to prepare a new issue of securities and, if necessary, register that issue with the Securities and Exchange Commission. The book-running lead manager manages all aspects of the transaction,

[13] By proposing this exemption, the Department is not expressing an opinion regarding whether any investment decisions or other actions taken by an asset manager regarding the acquisition or holding of ABS or other securities in an ATT would be consistent with its fiduciary obligations under part 4 of Title I of the Act. In this regard, section 404 of the Act requires, among other things, that a Plan fiduciary act prudently, solely in the interest of the Plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making decisions on behalf of a Plan.

such as pricing, sales distribution, allocation of orders, and other administrative functions, such as making appropriate filings and hiring outside counsel to assist all syndicate members in meeting their due diligence obligations. The book-running lead manager maintains the central record (or "book") of all orders to purchase in the offering. The syndicate may also have co-leads or co-managers, who generally assist the book-running lead manager in working with the issuer to prepare the registration statement to be filed with the SEC and in distributing the underwritten securities.

16. The Applicant represents that where more than one underwriter is involved, the book-running lead manager, who has been selected by the issuer, contacts other underwriters, and the underwriters enter into, or have previously entered into, an Agreement Among Underwriters. Most book-running lead managers have a form of agreement. This document is then supplemented for the particular deal by sending an "invitation telex" setting forth particular terms to the other underwriters.

17. The Applicant represents that the arrangement between the syndicate and the issuer is embodied in an underwriting agreement, which is signed on behalf of the underwriters by one or more of the managers. The underwriting agreement provides, subject to certain closing conditions, that the underwriters are obligated to purchase the underwritten securities from the issuer in accordance with their respective commitments. The Applicant states that this obligation is met by using the proceeds received from the buyers of the securities in the offering, although there is a risk that the underwriters will have to pay for a portion of the securities, in the event that not all of the securities are sold.

18. However, the Applicant represents that, generally, the risk that the securities will not be sold is small because the underwriting agreement is not executed until after the underwriters have obtained indications of interest in purchasing the securities from a sufficient number of investors to acquire all the securities being offered. Once the underwriting agreement is executed, the underwriters immediately begin contacting the investors to confirm the sales, first orally and then by written confirmation, and sales are finalized within hours and sometimes minutes. The Applicant states that the underwriters are anxious to complete the sales as soon as possible because until they "break syndicate," they cannot enter the market. In many cases, the underwriters will act as market-makers for the security. A market-maker holds itself out as willing to buy or sell the security for its own account on a regular basis.

19. The Applicant represents that the process of "building a book" or soliciting interest occurs as follows. In an equity offering, after a registration statement is filed with the SEC and while it is under review by the SEC staff, representatives of the issuer and the managers conduct meetings with potential investors, who learn about the company and the securities and receive a preliminary prospectus. The underwriters cannot make any firm sales until the registration statement is declared effective by the SEC. Prior to the effective date, while the investors cannot become legally obligated to make a purchase, they indicate whether they have an interest in buying, and the managers compile a "book" of investors who are willing to "circle" a particular portion of the issue. These indications of interest are sometimes referred to as a "soft circle" because investors are not legally bound to buy the securities until the registration statement is effective. However, the Applicant represents that investors generally follow through on their indications of interest, and would be expected to do so, barring any sudden adverse developments (in which case it is likely that the offering would be withdrawn), because if they do not follow through, the underwriters will be reluctant to sell to them in future offerings.

20. Assuming that the meetings have produced sufficient indications of interest, the Applicant represents that the issuer and the book-running lead manager together will set the price of the securities and ask the SEC to declare the registration effective. After the registration statement becomes effective and the underwriting agreement is executed, the underwriters contact those investors who have indicated an interest in purchasing securities in the offering to execute the sales. The Applicant represents that offerings are often oversubscribed, and many have an over-allotment option that the underwriters can exercise to acquire additional shares from the issuer. Where an offering is oversubscribed, the underwriters decide how to allocate the securities among the potential purchasers. However, rules administered by the Financial Industry Regulatory Authority (FINRA) [14] mandate that certain IPO shares may not be sold to the personal accounts of those responsible for investing for others, such as officers of banks, insurance companies, mutual funds, and investment advisers.

21. The Applicant represents that debt offerings may be "negotiated" offerings, "competitive bid" offerings, or "bought deals." "Negotiated" offerings are conducted in the same manner as an equity offering with regard to when the underwriting agreement is executed and how the securities are offered. "Competitive bid" offerings are ones in which the issuer determines the price for the securities through competitive bidding rather than negotiating the price with the underwriting syndicate.

22. The Applicant represents that in a competitive bid offering, prospective lead underwriters will bid against one another to purchase debt securities, based upon their determinations of the degree of investor interest in the securities. Depending on the level of investor interest and the size of the offering, the Applicant states that a bidding lead underwriter may bring in co-managers to assist in the sales process. Most of the securities are frequently sold within hours, or sometimes even less than an hour, after the securities are made available for purchase.

23. Occasionally, in highly-rated debt issues, the Applicant represents that underwriters "buy" the entire deal off of a "shelf registration" before obtaining indications of interest. These "bought" deals involve issuers whose securities enjoy a deep and liquid secondary market, such that an underwriter has confidence without pre-marketing that it can identify purchasers for the bonds.

24. The Applicant represents that there are internal policies in place that restrict contact and the flow of information between investment management personnel and non-investment management personnel. These policies are designed to protect against "insider trading," *i.e.*, trading on information not available to the general public that may affect the market price of the securities. Diversified financial services firms are concerned about insider trading problems because one part of the firm—*e.g.*, the mergers and acquisitions group—could come into possession of non-public information regarding an upcoming transaction involving a particular issuer, while another part of the firm—*e.g.*, the investment management group—could

[14] FINRA was created in July, 2007 through the consolidation of the National Association of Securities Dealers (NASD) and the member regulation, enforcement and arbitration functions of the New York Stock Exchange (NYSE). The purpose of FINRA is to promote investor protection and market integrity through effective and efficient regulation and complementary compliance and technology-based services.

be trading in the securities of that issuer for its clients.

25. The Applicant states that its business separation policies and procedures are also designed to restrict the flow of any information to or from the asset management affiliates that could limit their flexibility in managing client assets, and of information obtained or developed by the asset management affiliates that could be used by other parts of the organization, to the detriment of the asset management affiliates' clients.

26. The Applicant states that the asset management affiliates deal on a regular basis with broker-dealers that compete with the Affiliated Broker-Dealers. If special consideration were shown to an affiliate, such conduct would likely adversely affect the relationships of the Affiliated Broker-Dealers and of the asset management affiliates with firms that compete with that affiliate. Therefore, a goal of the Applicant's business separation policy or policies is to avoid any possible perception of improper flows of information between the Affiliated Broker-Dealers and the asset management affiliates, in order to prevent any adverse impact on client and business relationships.

27. The applicant represents that the underwriters are compensated through the "spread," or difference, between the price at which the underwriters buy the securities from the issuer and the price at which the securities are sold to the public. The Applicant represents that this spread is comprised of three components: the management fee, the underwriting fee, and the selling concession.

28. The first component of the spread includes the management fee, which, according to the Applicant, generally represents an agreed upon percentage of the overall spread and is allocated among the book-running lead manager and co-managers. Where there is more than one managing underwriter, they way the management fee will be allocated among the managers is generally agreed upon prior to soliciting indications of interest (the process of "building a book"). Thus, according to the Applicant, such management fee allocations are not reflective of the amount of securities that particular manager sell in an offering.

29. The second component of the spread is the underwriting fee, which, according to the Applicant, represents compensation to the underwriters (including the non-managers, if any) for the risks they assume in connection with the offering and for the use of their capital. This component of the spread is also used to cover the expenses of the underwriting that are not otherwise reimbursed by the issuer. The first and second components are received without regard to how the underwritten securities are allocated for sales purposes or to whom the securities are sold.

30. The third component of the spread is the selling concession, which, according to the Applicant, generally constitutes 60 percent or more of the spread. The selling concession compensates the underwriters for their actual selling efforts. The Applicant represents that the allocation of selling concessions among the underwriters follows the allocation of the securities for sales purposes, except to the extent that buyers designate other broker-dealers (who may be other underwriters as well as broker-dealers outside the syndicate) to receive the selling concessions from the securities they purchase.

31. According to the Applicant, securities are allocated for sales purposes into two categories. The first (and larger) category is the "institutional pot," which is the pool of securities from which sales are made to institutional investors. Selling concessions for securities sold from the institutional pot are generally designated by the purchaser for particular underwriters or broker-dealers. When securities are sold from the institutional pot, the managers sometimes receive a portion of the selling concessions, referred to as a "fixed designation," attributable to securities sold in this category, without regard to who sold the securities or to whom they were sold. For securities covered by this proposed exemption, however, the Affiliated Broker-Dealers may not receive, either directly or indirectly, any compensation that is attributable to the fixed designation generated by purchases of securities by the asset management affiliates on behalf of their Plans.

32. The second category of allocated securities is "retail," which, according to the Applicant, are the securities retained by the underwriters for sale to their retail customers. The Applicant represents that the underwriters receive the selling concessions from their respective retail retention allocations. Securities may be shifted between the two categories based upon whether either category is oversold or undersold during the course of the offering.

33. The Applicant represents that the Affiliated Broker-Dealers' inability to receive any selling concessions, or any compensation attributable to the fixed designations, generated by purchases of securities by the asset management affiliates' Plans, removes the primary economic incentive for the asset management affiliates to make purchases that are not in the interests of their Plans from offerings for which an Affiliated Broker-Dealer is an underwriter. The reason is that the Affiliated Broker-Dealer will not receive any additional fees as a result of such purchases by the asset management affiliates.

34. The Applicant represents that a number of the offerings of Rule 144A Securities in which the Affiliated Broker-Dealers may participate represent good investment opportunities for the asset management affiliates' Plans. Particularly with respect to foreign securities, a Rule 144A offering may provide the least expensive and most accessible means for obtaining the securities. However, as discussed above, PTE 75–1, Part III, does not cover Rule 144A Securities. Therefore, absent an individual exemption, the asset management affiliates are foreclosed from purchasing such securities for their Plans in offerings in which an Affiliated Broker-Dealer participates.

35. The Applicant states that Rule 144A, which was adopted in 1990, acts as a "safe harbor" exemption from the registration provisions of the 1933 Act for sales of certain types of securities to QIBs. QIBs include several types of institutional entities, such as employee benefit plans and commingled trust funds holding assets of such plans, which own and invest on a discretionary basis at least $100 million in securities of unaffiliated issuers.

36. The Applicant represents that any securities may be sold pursuant to Rule 144A except for those of the same class or similar to a class that is publicly traded in the United States, or certain types of investment company securities. This limitation is designed to prevent side-by-side public and private markets developing for the same class of securities.

37. The Applicant states that buyers of Rule 144A Securities must be able to obtain, upon request, basic information concerning the business of the issuer and the issuer's financial statements, much of the same information as would be furnished if the offering were registered. The Applicant represents that this condition does not apply, however, to an issuer filing reports with the SEC under the 1934 Act, for which reports are publicly available. The condition also does not apply to a "foreign private issuer" for whom reports are furnished to the SEC under Rule 12g3–2(b) of the 1934 Act (17 CFR 240.12g3–2(b)), or to issuers who are foreign governments or political

subdivisions thereof and are eligible to use Schedule B under the 1933 Act (which describes the information and documents required to be contained in a registration statement filed by such issuers).

38. The Applicant represents that sales under Rule 144A, like sales in a registered offering, remain subject to the protections of the anti-fraud rules of federal and state securities laws. These rules include Section 10(b) of the 1934 Act and Rule 10b–5 thereunder (17 CFR 240.10b–5) and Section 17(a) of the 1933 Act (15 U.S.C. 77a). Through these and other provisions, the SEC may use its full range of enforcement powers to exercise its regulatory authority over the market for Rule 144A Securities, in the event that it detects improper practices.

39. The Applicant represents that this potential liability for fraud provides a considerable incentive to the issuer and offering syndicate to ensure that the information contained in a Rule 144A offering memorandum is complete and accurate in all material respects. Among other things, the book-running lead manager typically obtains an opinion from a law firm, commonly referred to as a "10b–5" opinion, stating that the law firm has no reason to believe that the offering memorandum contains any untrue statement of material fact or omits any material fact necessary to conclude that, under the circumstances, the statements made are not misleading.

40. The Applicant represents that Rule 144A offerings generally are structured in the same manner as underwritten registered offerings. The major difference is that a Rule 144A offering uses an offering memorandum rather than a prospectus that is filed with the SEC. The marketing process is the same in most respects, except that the selling efforts are generally limited to contacting QIBs and there are no general solicitations for buyers (*e.g.*, no general advertising). While, generally, there are no non-manager members in the syndicate, the Applicant also requests relief for situations where an Affiliated Broker-Dealer acts only as a syndicate member, not as a manager.

41. With respect to ATTs and the types of trustees that would be covered by the proposed exemption, the Applicant states that in asset-backed securities transactions (ABS) there is generally a trustee who is the legal owner of the receivables held by the trust. In more traditional public debt offerings, there is generally only an indenture trustee, who holds the debt obligation of the obligor, holds any assets pledged as collateral to secure payment of the debt obligation, makes required payments and keeps records, and in the event of a default, acts for the note holders. The Applicant represents that the functions and obligations of an indenture trustee are aligned with the interests of the note holders because such a trustee is generally appointed only to perform ministerial functions (*i.e.*, hold collateral, maintain records, and make payments when due). In this regard, the proposed exemption would also cover situations where the affiliate of the asset management affiliate serves as a custodian, paying agent, registrar or other similar ministerial capacities.

42. The Applicant states that the Affiliated Broker-Dealer is frequently involved in underwriting offerings of ABS and other securities where an affiliate of the asset management affiliate serves as a trustee for the trust which issues such securities. The inability of the asset management affiliate to purchase ABS or other securities for its Plans in such cases can be detrimental to those accounts because the accounts can lose important fixed income investment opportunities that are relatively less expensive or qualitatively better than other available opportunities in such securities.

43. The Applicant represents that the frequency of such offerings of ABS or other securities results from consolidation in the bank industry and the attendant reduction in the number of banks participating in the corporate trust business. Many factors that have made participation in the trust business less attractive to banks have contributed to this trend. On the income side, these factors include competitive pressure on pricing corporate trust services and loss of transactional fees and traditional "float" income due to the growth in book entry securities. On the expense side, the Applicant represents that the cost of entry into the corporate trust business and the cost of remaining competitive in the business have dramatically increased. This increase includes both technological and personnel costs which are necessary to remain competitive. The cost increase is particularly acute in the structured finance sector of the corporate trust business, where both systems and staff need to have the capability of supporting increasingly complex transactions.

44. The Applicant states that the trustee in a structured finance transaction for ABS, while involved in complex calculations and reporting, typically does not perform any discretionary functions. Such a trustee operates as a stakeholder and strictly in accordance with the explicit terms of the governing agreements, so that the intent of the crafters of the transaction may be honored. These functions are essentially ministerial and include establishing accounts, receiving funds, making payments, and issuing reports, all in a predetermined manner. Unlike trustees for corporate or municipal debt, trustees in structured finance transactions for ABS need not assume discretionary functions to protect the interests of debt holders in the event of default or bankruptcy because structured finance entities are designed to be bankruptcy remote vehicles. The Applicant represents that there is no "issuer" outside the structured transaction to pursue for repayment of the debt. The trustee's role is defined by a contract-explicit structure that spells out the actions to be taken upon the happening of specified events. The Applicant states that there is no opportunity (or incentive) for the trustee in a structured finance transaction, by reason of its affiliation with an underwriter, asset manager, or otherwise, to take or not to take actions that might benefit the underwriter or asset manager to the detriment of plan investors.

With respect to offerings of more traditional public debt securities that are not part of a structured finance transaction, the Applicant states that an indenture trustee may have more discretion when the issuer of the securities is not bankruptcy remote.[15] In such instances, indenture trustees generally exercise meaningful discretion only in the context of a default, at which time the indenture trustee has the duty to act for the bondholders, in a manner consistent with the interests of investing plans (and other investors) and not with the interests of the issuer. In such situations, an indenture trustee may be an affiliate of an underwriter for the securities. In the event of a default, the duty of an indenture trustee in pursuing the bondholders' rights against the issuer might conflict with the indenture trustee's other business interests. However, the Applicant represents that under the Trust Indenture Act of 1939 (the "Trust Indenture Act"), which applies to many, but not all, trust debt offerings,[16] an indenture trustee whose

[15] The Applicant represents that the amount of discretion possessed by an indenture trustee will depend on the terms of the particular indenture, and factual issues, such as whether a default has occurred.

[16] In connection with the applicability of the Trust Indenture Act to trust debt offerings, the Applicant further represents that market practice with respect to certain types of non-registered securities offerings is to structure the offering to include both an indenture and an indenture trustee, despite the fact that such offerings are not required to use the indenture structure mandated by the Trust Indenture Act. In such instances, the

affiliate has, within the prior 12 months, underwritten any securities for an obligor of the indenture securities generally must resign as indenture trustee if a default occurs upon the indenture securities. Thus, the Applicant maintains that this requirement and other provisions of the Trust Indenture Act are designed to protect bondholders from conflicts of interest to which an indenture trustee may be subject.

45. According to the Applicant, the role of the underwriter in a structured financing for a series of ABS involves, among other things, assisting the sponsor or originator of the applicable receivables or other assets in structuring the contemplated transaction. The trustee becomes involved later in the process, after the principal parties have agreed on the essential components, to review the proposed transaction from the limited standpoints of technical workability and potential trustee liability. After the issuance of securities to plan investors in a structured financing, while the trustee performs its role as trustee over the life of the transaction, the underwriter of the securities has no further role in the transaction (unless it is a continuous offering, such as for a commercial paper conduit).[17] In addition, the trustee has no opportunity to take or not take action, or to use information in ways that might advantage the underwriter to the detriment of plan investors. The Applicant states that an underwriter, in order to protect its reputation, clearly wants the transaction to succeed as it was structured, which includes the trustee performing in a manner independent of the underwriter.

46. The Applicant represents that, in many offerings of ABS or other securities, the trustee's fee is a fixed dollar amount that does not depend on the size of the offering. In such cases, the asset management affiliate has no conflict of interest because it cannot increase the trustee's fee by causing Plans to participate in the offering. Where the trustee's fee is a portion of the principal amount of outstanding securities to be offered, the asset management affiliate could conceivably cause Plans to participate to affect the size of the offering and thus the trustee's fee.[18] The Applicant further represents that the protective conditions of the requested exemption (*e.g.*, the requirement of advance approval by an independent fiduciary and reporting of the basis for the trustee's fee) render this possibility remote.

In this regard, the Applicant states that the conditions of the proposed exemption, which are based on the prior individual exemptions granted by the Department for an "AUT", impose adequate safeguards as well for an "ATT" in order to prevent possible abuse. First, there are significant limitations on the quantity of securities that an asset management affiliate may acquire for Plans, meaning not only that there will be significant limitations on the ability of the asset management affiliate to affect the fees of its affiliate, but also insuring that significant numbers of independent investors also decided that the securities were an appropriate purchase. Second, the asset management affiliate must obtain the consent of an independent fiduciary to engage in these transactions. Third, regular reporting of the subject transactions to an independent fiduciary will take place. Fourth, an independent fiduciary must be provided information on how securities purchased actually performed. Finally, the consent of the independent fiduciary may be revoked if, for example, it suspects that purchases by the asset management affiliate have been motivated by a desire to generate fees for its affiliate.

47. In summary, the Applicant represents that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Plans will gain access to desirable investment opportunities;

(b) In each offering, the asset management affiliate(s) will purchase the securities for its Plans from an underwriter or broker-dealer other than an Affiliated Broker-Dealer;

(c) Conditions similar to those of PTE 75–1, part III, will restrict the types of securities that my be purchased, the types of underwriting or selling syndicates and issuers involved, and the price and timing of the purchases;

(d) The amount of securities that the asset management affiliates may purchase on behalf of Plans will be subject to percentage limitations;

(e) The Affiliated Broker-Dealers will not be permitted to receive, either directly or indirectly, any compensation attributable to fixed designation, or through any selling concessions with respect to the securities sold to the Plans;

(f) Prior to engaging in any of the covered transactions, an Independent Fiduciary of each of the Plans (or the fiduciary of each In-House Plan) will receive certain disclosures and will be given an opportunity to consent to the covered transactions, either through affirmative or negative consent;

(g) The asset management affiliate will provide regular reporting to an Independent Fiduciary of each Plan with respect to all securities purchased pursuant to the exemption, if granted;

(h) Each Plan participating in these transactions will be subject to a minimum size requirement of at least $50 million ($100 million for "Eligible Rule 144A Offerings"), with certain exceptions for Pooled Funds;

(i) The asset management affiliate must have total assets under management in excess of $5 billion and shareholders' or partners' equity in excess of $1 million; and

(j) The Affiliated Trustee will be unable to subordinate the interests of the Client Plans to those of the asset manager or its affiliates.

Notice To Interested Persons: The Applicant represents that the class of persons interested in this exemption is comprised of the relevant independent fiduciaries of the existing Client Plans (including those Client Plans that are invested solely in Pooled Funds) that are served by those asset management affiliates of BNYMC that currently intend to rely upon the exemption. Accordingly, the Applicant represents that it shall ensure that the foregoing asset management affiliates provide such interested persons with a copy of this Notice of Proposed Exemption (the Notice), accompanied by a copy of the supplemental statement (the Supplemental Statement) required pursuant to 29 CFR 2570.43(b)(2), within fifteen (15) days of the date of the publication of the Notice in the **Federal Register**.

In this connection, the relevant independent fiduciaries of the existing

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Applicant represents, it is typically the case that the various requirements of the Trust Indenture Act (including the default provision references in Representation 44) will be incorporated (either expressly or by reference) in the trust indenture.

[17] The Applicant further represents that, in a limited number of situations where the offering of the security is ongoing or continuous, the underwriter will have a continuing role in selling the additional securities that are sold over time.

[18] The Applicant represents that this theoretical conflict is directly addressed by the protective conditions in the so-called "Underwriter Exemption" listed in PTE 2002–41 and in this proposed exemption. In this regard, the Applicant states that the exemption (if granted) will apply only to firm commitment underwritings, where, by definition, the entire issue of securities will be purchased, either by the public or the underwriters. Thus, where the trustee's fee would be a fixed percentage of the total dollar amount of the securities issued in the offering, the amount of the trustee's fee would be, in fact, a fixed dollar amount that would be known to plan investors as part of disclosures made relating to the offering (*e.g.*, the prospectus or private placement memorandum). In this connection, the Department notes that plan fiduciaries would have a duty to adequately review, and effectively monitor, all fees paid to service providers, including those paid to parties affiliated with an asset management affiliate.

Client Plans shall receive copies of the Notice and the Supplemental Statement from the following asset management affiliates of BNYMC: (1) Alcentra Inc.; (2) Mellon Capital Management Corporation; (3) Newton Capital Management Limited; (4) Standish Mellon Asset Management Company LLC; and (5) The Bank of New York Mellon. The Department must receive all written comments and requests for a hearing no later than forty-five (45) days after publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Judge of the Department, telephone (202) 693–8339. (This is not a toll-free number).

United States Steel and Carnegie Pension Fund (the Applicant)

Located in New York, NY

[Exemption Application No. D–11465]

Proposed Exemption

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[19]

I. Retroactive Relief

If the exemption is granted, the restrictions of section 406(a)(1)(A) through (D) and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D), shall not apply, for the period beginning February 15, 2003 through December 31, 2007, to a transaction between a party in interest with respect to the Former U.S. Steel Related Plans, as defined in Section IV(e), below, and an investment fund in which such plans have an interest (the Investment Fund), as defined in Section IV(l), below, provided that United States Steel and Carnegie Pension Fund or its successor (collectively, UCF) has discretionary authority or control with respect to the plan assets involved in the transaction, and the following conditions are satisfied:

(a) UCF is an investment adviser registered under the Investment Advisers Act of 1940 that has, as of the last day of its most recent fiscal year, total client assets, including in-house assets (In-house Plan Assets), as defined in Section IV(h), below, under its management and control in excess of $100,000,000 and equity, as defined in Section IV(k), below, in excess of $750,000;

(b) At the time of the transaction, as defined in Section IV(n), below, the party in interest or its affiliate, as defined in Section IV(a), below, does not have, and during the immediately preceding one (1) year has not exercised, the authority to—

(1) Appoint or terminate UCF as a manager of any of the Former U.S. Steel Related Plans' assets, or

(2) Negotiate the terms of the management agreement with UCF (including renewals or modifications thereof) on behalf of the Former U.S. Steel Related Plans;

(c) The transaction is not described in—

(1) Prohibited Transaction Exemption 81–6 (PTE 81–6)[20], relating to securities lending arrangements, (as amended or superseded);

(2) Prohibited Transaction Exemption 83–1 (PTE 83–1)[21], relating to acquisitions by plans of interests in mortgage pools, (as amended or superseded), or

(3) Prohibited Transaction Exemption 88–59 (PTE 88–59)[22], relating to certain mortgage financing arrangements, (as amended or superseded);

(d) The terms of the transaction are negotiated on behalf of the Investment Fund by, or under the authority and general direction of UCF, and either UCF, or (so long as UCF retains full fiduciary responsibility with respect to the transaction) a property manager acting in accordance with written guidelines established and administered by UCF, makes the decision on behalf of the Investment Fund to enter into the transaction;

(e) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of UCF, the terms of the transaction are at least as favorable to the Investment Fund as the terms generally available in arm's-length transactions between unrelated parties;

(f) Neither UCF nor any affiliate thereof, as defined in Section IV(b), below, nor any owner, direct or indirect, of a 5 percent (5%) or more interest in UCF is a person who, within the ten (10) years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of:

(1) Any felony involving abuse or misuse of such person's employee benefit plan position or employment, or position or employment with a labor organization;

(2) any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company, or fiduciary;

(3) income tax evasion;

(4) any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element; or

(5) any other crimes described in section 411 of the Act.

For purposes of this Section I(f), a person shall be deemed to have been "convicted" from the date of the judgment of the trial court, regardless of whether the judgment remains under appeal;

(g) The transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest;

(h) The party in interest dealing with the Investment Fund:

(1) Is a party in interest with respect to the Former U.S. Steel Related Plans (including a fiduciary) solely by reason of providing services to the Former U.S. Steel Related Plans, or solely by reason of a relationship to a service provider described in section 3(14)(F),(G),(H), or (I) of the Act;

(2) Does not have discretionary authority or control with respect to the investment of plan assets involved in the transaction and does not render investment advice (within the meaning of 29 CFR § 2510.3–21(c)) with respect to those assets; and

(3) Is neither UCF nor a person related to UCF, as defined in Section IV(j), below;

(i) UCF adopts written policies and procedures that are designed to assure compliance with the conditions of the proposed exemption;

(j) An independent auditor, who has appropriate technical training or experience and proficiency with the fiduciary responsibility provisions of the Act and who so represents in writing, conducts an exemption audit, as defined in Section IV(f), below, on an annual basis. Following completion of the exemption audit, the auditor shall issue a written report to the Former U.S. Steel Related Plans presenting its specific findings regarding the level of

[19] For purposes of this exemption, references to specific provisions of Title I of the Act unless otherwise specified, refer to the corresponding provisions of the Code.

[20] FR 7527, January 23, 1981. PTE 81–6 was amended and replaced by PTE 2006–16 (71 FR 63786, October 31, 2006). The effective date of PTE 2006–16 was January 2, 2007, and PTE 81–6 was revoked as of that date.

[21] FR 895, January 7, 1983.

[22] FR 24811, June 30, 1988.

compliance: (1) with the policies and procedures adopted by UCF in accordance with Section I(i), above, of this proposed exemption; and (2) with the objective requirements of this proposed exemption.

(k)(1) UCF or an affiliate maintains or causes to be maintained within the United States, for a period of six (6) years from the date of each transaction, the records necessary to enable the persons described in Section I(k)(2) to determine whether the conditions of this proposed exemption have been met, except that (A) a separate prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of UCF and/or its affiliates, the records are lost or destroyed prior to the end of the six (6) year period, and (B) no party in interest or disqualified person other than UCF shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records have not been maintained or are not maintained, or have not been available or are not available for examination as required by Section I(k)(2), below, of this proposed exemption.

(2) Except as provided in Section I(k)(3),below, and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in Section I(k)(1), above, of this proposed exemption are unconditionally available for examination at their customary location during normal business hours by:

(A) any duly authorized employee or representative of the Department or of the Internal Revenue Service;

(B) any fiduciary of any of the Former U.S. Steel Related Plans investing in the Investment Fund or any duly authorized representative of such fiduciary;

(C) any contributing employer to any of the Former U.S. Steel Related Plans investing in the Investment Fund or any duly authorized employee representative of such employer;

(D) any participant or beneficiary of any of the Former U.S. Steel Related Plans investing in the Investment Fund, or any duly authorized representative of such participant or beneficiary; and,

(E) any employee organization whose members are covered by such Former U.S. Steel Related Plans;

(3) None of the persons described in Section I(k)(2)(B) through (E), above, of this proposed exemption shall be authorized to examine trade secrets of UCF or its affiliates or commercial or financial information which is privileged or confidential; and

(l) With respect to the transactions described in Section II and Section III of this proposed exemption, the conditions contained in those Sections are satisfied.

II. Interim Relief

If the exemption is granted, the restrictions of section 406(a)(1)(A) through (D) and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D), shall not apply, for the period beginning January 1, 2008 through the date of the publication of this proposed exemption in the **Federal Register**, to a transaction between a party in interest with respect to the Former U.S. Steel Related Plans, as defined in Section IV(e), below, and the Investment Fund, as defined in Section IV(l), below, provided that UCF has discretionary authority or control with respect to the plan assets involved in the transaction, and the following conditions are satisfied:

(a) Each of the conditions contained in paragraphs (a) through (l) of Section I are met; and

(b) With respect to the exemption audit and written report by the independent auditor described in Section I(j), the independent auditor must complete each such exemption audit and must issue such written report to the administrators, or other appropriate fiduciary of the Former U.S. Steel Related Plans within six (6) months following the end of the year to which each such exemption audit and report relates.

III. Prospective Relief

If the exemption is granted, the restrictions of section 406(a)(1)(A) through (D) and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D), shall not apply, for the period beginning with the date of the publication of the final exemption in the **Federal Register**, and expiring five years from that date, to a transaction between a party in interest with respect to the Former U.S. Steel Related Plans, as defined in Section IV(e), below, and the Investment Fund, as defined in Section IV(l), below, provided that UCF has discretionary authority or control with respect to the plan assets involved in the transaction, and the following conditions are satisfied:

(a) UCF is an investment adviser registered under the Investment Advisers Act of 1940 that has, as of the last day of its most recent fiscal year, total client assets, including In-house Plan Assets, under its management and control in excess of $100,000,000 and equity, as defined in Section IV(k), below, in excess of $1,000,000 (as measured yearly on UCF's most recent balance sheet prepared in accordance with generally accepted accounting principles);

(b) Each of the conditions contained in paragraphs (b) through (i), and (k) of Section I are met; and

(c) An independent auditor, who has appropriate technical training, or experience and proficiency with the fiduciary responsibility provisions of the Act, and who so represents in writing, conducts an exemption audit, as defined, below, in Section IV(g) of this proposed exemption, on an annual basis. In conjunction with the completion of each such exemption audit, the independent auditor must issue a written report to the Former U.S. Steel Related Plans that engaged in such transactions, presenting its specific findings with respect to the audited sample regarding the level of compliance with the policies and procedures adopted by UCF, pursuant to Section I(i) of this proposed exemption, and with the objective requirements of the proposed exemption. The written report also shall contain the auditor's overall opinion regarding whether UCF's program as a whole complied with the policies and procedures adopted by UCF and with the objective requirements of this proposed exemption. The independent auditor must complete each such exemption audit and must issue such written report to the administrators, or other appropriate fiduciary of the Former U.S. Steel Related Plans within six (6) months following the end of the year to which each such exemption audit and report relates.

IV. Definitions

(a) For purposes of Section I(b) of this proposed exemption, an "affiliate" of a person means—

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, 5 percent (5%) or more partner, or employee (but only if the employer of such employee is the plan sponsor), and

(3) Any director of the person or any employee of the person who is highly compensated employee, as defined in section 4975(e)(2)(H) of the Code, or who has direct or indirect authority, responsibility, or control regarding the

custody, management, or disposition of plan assets.

A named fiduciary (within the meaning of section 402(a)(2) of the Act) of a plan, and an employer any of whose employees are covered by the plan will also be considered affiliates with respect to each other for purposes of Section I(b), above, if such employer or an affiliate of such employer has the authority, alone or shared with others, to appoint or terminate the named fiduciary or otherwise negotiate the terms of the named fiduciary's employment agreement.

(b) For purposes of Section I(f), above, of this proposed exemption, an "affiliate" of a person means—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any director of, relative of, or partner in, any such person,

(3) Any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, or a 5 percent (5%) or more partner or owner, and

(4) Any employee or officer of the person who—

(A) Is a highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) or officer (earning 10 percent (10%) or more of the yearly wages of such person) or

(B) Has direct or indirect authority, responsibility or control regarding the custody, management, or disposition of plan assets.

(c) For purposes of Section IV(e) and (h), below, of this proposed exemption, an "affiliate" of UCF includes a member of either:

(1) a controlled group of corporations, as defined in section 414(b) of the Code, of which United States Steel Corporation or its successor (collectively, U.S. Steel) is a member, or

(2) a group of trades or businesses under common control, as defined in section 414(c) of the Code, of which U.S. Steel is a member; provided that "50 percent" shall be substituted for "80 percent" wherever "80 percent" appears in section 414(b) or 414(c) of the rules thereunder.

(d) The term, "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) "Former U.S. Steel Related Plans" mean:

(1) Retirement Plan of Marathon Oil Company, Marathon Petroleum LLC Retirement Plan and the Speedway SuperAmerica LLC Retirement Plan (the Marathon Plans);

(2) Pension Plan of RMI Titanium Company (RMI), Pension Plan of Eligible Employees of RMI Titanium Company, Pension Plan for Eligible Salaried Employees of RMI Titanium Company, and Tradco Pension Plan (the RTI Plans);

(3) Any plan the assets of which include or have included assets that were managed by UCF as an in-house asset manager (INHAM) pursuant to Prohibited Transaction Class Exemption 96–23 (PTE 96–23) [23] but as to which PTE 96–23 is no longer available because such assets are not held under a plan maintained by an affiliate of UCF (as defined in Section IV(c) of this proposed exemption); and

(4) Any plan (an Add-On Plan) that is sponsored or becomes sponsored by an entity that was, but has ceased to be, an affiliate of UCF, (as defined in Section IV(c), above, of this proposed exemption); provided that:

(A) the assets of the Add-On Plan are invested in a commingled fund (the Commingled Fund), as defined in Section IV(o) of this proposed exemption, with the assets of a plan or plans (the Commingled Plans), described in Section IV(e)(1)–(3), above; and

(B) the assets of the Add-On Plan in the Commingled Fund do not comprise more than 25 percent (25%) of the value of the aggregate assets of such fund, as measured on the day immediately following the initial commingling of their assets (the 25% Test).

For purposes of the 25% Test, as set forth in Section IV(e)(4):

(i) in the event that less than all of the assets of an Add-On Plan are invested in a Commingled Fund on the date of the initial transfer of such Add-On Plan's assets to such fund, and if such Add-On Plan subsequently transfers to such Commingled Fund some or all of the assets that remain in such plan, then for purposes of compliance with the 25% Test, the sum of the value of the initial and each additional transfer of assets of such Add-On Plan shall not exceed 25 percent (25%) of the value of the aggregate assets in such Commingled Fund, as measured on the day immediately following the addition of each subsequent transfer of such Add-On Plan's assets to such Commingled Fund;

(ii) where the assets of more than one Add-On Plan are invested in a Commingled Fund with the assets of plans described in Section IV(e)(1)–(3), above, of the proposed exemption, the 25% Test will be satisfied, if the aggregate amount of the assets of such Add-On Plans invested in such Commingled Fund do not represent more than 25 percent (25%) of the value of all of the assets of such Commingled Fund, as measured on the day immediately following each addition of Add-On Plan assets to such Commingled Fund;

(iii) if the 25% Test is satisfied at the time of the initial and any subsequent transfer of an Add-On Plan's assets to a Commingled Fund, as provided in Section IV(e), above, this requirement shall continue to be satisfied notwithstanding that the assets of such Add-On Plan in the Commingled Fund exceed 25 percent (25%) of the value of the aggregate assets of such fund solely as a result of:

(AA) a distribution to a participant in a Former U.S. Steel Related Plan;

(BB) periodic employer or employee contributions made in accordance with the terms of the governing plan documents;

(CC) the exercise of discretion by a Former U.S. Steel Related Plan participant to re-allocate an existing account balance in a Commingled Fund managed by UCF or to withdraw assets from a Commingled Fund; or

(DD) an increase in the value of the assets of the Add-On Plan held in such Commingled Fund due to investment earnings or appreciation;

(iv) if, as a result of a decision by an employer or a sponsor of a plan described in Section IV(e)(1)–(3) of the proposed exemption to withdraw some or all of the assets of such plan from a Commingled Fund, the 25% Test is no longer satisfied with respect to any Add-On Plan in such Commingled Fund, then the proposed exemption will immediately cease to apply to all of the Add-On Plans invested in such Commingled Fund; and

(v) where the assets of a Commingled Fund include assets of plans other than Former U.S. Steel Related Plans, as defined in Section IV(e), above, of this proposed exemption, the 25% Test will be determined without regard to the assets of such other plans in such Commingled Fund.

(f) For purposes of Sections I and II of this proposed exemption, "Exemption Audit" of any of the Former U.S. Steel Related Plans must consist of the following:

(1) A review by an independent auditor of the written policies and procedures adopted by UCF, pursuant to Section I(i) of this proposed exemption, for consistency with each of the objective requirements of this proposed exemption, as described, below, in Section IV(f)(5) of this proposed exemption; and

[23] 61 FR 15975, April 10, 1996.

(2)(i) A test by an independent auditor of a representative sample of the Plan's transactions in order to make findings regarding whether UCF is in compliance with:

(I) the written policies and procedures adopted by UCF pursuant to Section I(i) of this proposed exemption, and

(II) the objective requirements described in Section I of this proposed exemption;

(3) A determination as to whether UCF has satisfied the requirements of Section I(a), above, of this proposed exemption;

(4) The issuance by an independent auditor of a written report describing the steps performed by such independent auditor during the course of its review and such independent auditor's findings.

(5) For purposes of Section IV(f) of this proposed exemption, the written policies and procedures must describe the following objective requirements of the exemption and the steps adopted by UCF to assure compliance with each of these requirements:

(A) The requirements of Section I(a), above, of this proposed exemption regarding registration under the Investment Advisers Act of 1940, total assets under management, and equity;

(B) The requirements of Section I of this proposed exemption, regarding the discretionary authority or control of UCF with respect to the assets of the Former U.S. Steel Related Plans involved in the transaction, in negotiating the terms of the transaction, and with regard to the decision on behalf of the Former U.S. Steel Related Plans to enter into the transaction;

(C) The transaction is not entered into with any person who is excluded from relief under Section I(h)(1), above, of this proposed exemption, or Section I(h)(2) to the extent that such person has discretionary authority or control over the plan assets involved in the transaction, or Section I(h)(3); and

(D) The transaction is not described in any of the class exemptions listed in Section I(c), above, of this proposed exemption.

(g) For purposes of Section III of this proposed exemption, "Exemption Audit" of any of the Former U.S. Steel Related Plans must consist of the following:

(1) A review by an independent auditor of the written policies and procedures adopted by UCF pursuant to section I(i) for consistency with each of the objective requirements of this proposed exemption (as described in section IV(f)(5)(A)–(D).

(2) A test of a sample of UCF's transactions during the audit period that is sufficient in size and nature to afford the auditor a reasonable basis: (A) to make specific findings regarding whether UCF is in compliance with (i) the written policies and procedures adopted by UCF pursuant to section I(i) of the proposed exemption and (ii) the objective requirements of the exemption; and (B) to render an overall opinion regarding the level of compliance of UCF's program with this section IV(g)(2)(A)(i) and (ii) of the proposed exemption;

(3) A determination as to whether UCF has satisfied the requirements of Section III(a), above, of this proposed exemption;

(4) Issuance of a written report describing the steps performed by the auditor during the course of its review and the auditor's findings; and

(5) For purposes of this section IV(g), the written policies and procedures must describe the following objective requirements of the exemption and the steps adopted by UCF to assure compliance with each of these requirements:

(A) The requirements of Section III(a), above, of this proposed exemption regarding registration under the Investment Advisers Act of 1940, total assets under management, and equity;

(B) The requirements of Section I(d) of this proposed exemption, regarding the discretionary authority or control of UCF with respect to the assets of the Former U.S. Steel Related Plans involved in the transaction, in negotiating the terms of the transaction, and with regard to the decision on behalf of the Former U.S. Steel Related Plans to enter into the transaction;

(C) The transaction is not entered into with any person who is excluded from relief under Section I(h)(1), above, of this proposed exemption, or Section I(h)(2) to the extent that such person has discretionary authority or control over the plan assets involved in the transaction, or Section I(h)(3); and

(D) The transaction is not described in any of the class exemptions listed in Section I(c), above, of this proposed exemption.

(h) "In-house Plan Assets" means the assets of any plan maintained by an affiliate of UCF, as defined in Section IV(c), above, of this proposed exemption and with respect to which UCF has discretionary authority or control.

(i) The term, "party in interest," means a person described in section 3(14) of the Act and includes a "disqualified person," as defined in section 4975(e)(2) of the Code.

(j) UCF is "related" to a party in interest for purposes of Section I(h)(3) of this proposed exemption, if the party in interest (or a person controlling, or controlled by, the party in interest) owns a 5 percent (5%) or more interest in U.S. Steel, or if UCF (or a person controlling, or controlled by UCF) owns a 5 percent (5%) or more interest in the party in interest. For purposes of this definition:

(1) the term, "interest," means with respect to ownership of an entity—

(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation,

(B) The capital interest or the profits interest of the entity if the entity is a partnership; or

(C) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and

(2) A person is considered to own an interest held in any capacity if the person has or shares the authority—

(A) To exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose or to direct the disposition of such interest.

(k) For purposes of Section I(a) of this proposed exemption, the term, "equity" means the equity shown on the most recent balance sheet prepared within the two (2) years immediately preceding a transaction undertaken pursuant to this proposed exemption, in accordance with generally accepted accounting principles.

(l) "Investment Fund" includes single customer and pooled separate accounts maintained by an insurance company, individual trust and common collective or group trusts maintained by a bank, and any other account or fund to the extent that the disposition of its assets (whether or not in the custody of UCF) is subject to the discretionary authority of UCF.

(m) The term, "relative," means a relative as that term is defined in section 3(15) of the Act, or a brother, sister, or a spouse of a brother or sister.

(n) The "time" as of which any transaction occurs is the date upon which the transaction is entered into. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into on or after the date when the grant of this proposed exemption is published in the **Federal Register** or a renewal that requires the consent of UCF occurs on or after such publication date and the requirements of this proposed exemption are satisfied at the time the transaction is entered into or renewed, respectively, the requirements will continue to be satisfied thereafter with

respect to the transaction. Nothing in this subsection shall be construed as exempting a transaction entered into by an Investment Fund which becomes a transaction described in section 406(a) of the Act or section 4975(c)(1)(A) through (D) of the Code while the transaction is continuing, unless the conditions of this proposed exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this proposed exemption. In determining compliance with the conditions of the exemption at the time that the transaction was entered into for purposes of the preceding sentence, Section I(h) of this proposed exemption will be deemed satisfied if the transaction was entered into between a plan and a person who was not then a party in interest.

(o) "Commingled Fund" means a trust fund managed by UCF containing assets of some or all of the plans described in Section IV(e)(1)–(3) of this proposed exemption, plans other than Former U.S. Steel Related Plans, and if applicable, any Add-On Plan, as to which the 25% Test provided in Section IV(e)(4) of this proposed exemption have been satisfied; provided that:

(1) where UCF manages a single sub-fund or investment portfolio within such trust, the sub-fund or portfolio will be treated as a single Commingled Fund; and

(2) where UCF manages more than one sub-fund or investment portfolio within such trust, the aggregate value of the assets of such sub-funds or portfolios managed by UCF within such trust will be treated as though such aggregate assets were invested in a single Commingled Fund.

If granted, the proposed exemption is applicable to a particular transaction only if the transaction satisfies the conditions specified herein.

Temporary Nature of Exemption

The Department has determined that the relief provided by this proposed exemption is temporary in nature. The exemption, if granted, will be effective February 15, 2003, and will expire on the day which is five (5) years from the date of the publication of the final exemption in the **Federal Register**. Accordingly, the relief provided by this proposed exemption will not be available upon the expiration of such five-year period for any new or additional transactions, as described herein, after such date, but would continue to apply beyond the expiration of such five-year period for continuing transactions entered into before the expiration of the five-year period. Should the Applicant wish to extend, beyond the expiration of such five-year period, the relief provided by this proposed exemption to new or additional transactions, the Applicant may submit another application for exemption.

Summary of Facts and Representations

1. UCF is a Pennsylvania non-profit, non-stock membership corporation created in 1914 to manage the pension plan of the United States Steel Corporation (US Steel) and an endowment fund created by Andrew Carnegie for the benefit of that company's employees.[24] Because UCF is a non-stock membership corporation, UCF has no shareholders and is governed by its members a majority of whom are employees of U.S. Steel. Currently, UCF has 12 members with any vacancy in the membership being filled by the vote of the majority of the remaining members. Its principal office is in New York, New York. UCF currently serves as the plan administrator and trustee of several employee benefit plans sponsored by U.S. Steel, the successor to the original United States Steel Corporation (which for many years was USX Corporation (USX)), and by U.S. Steel affiliates and joint ventures, as well as certain former affiliates of U.S. Steel. It is registered as an investment adviser under the Investment Advisers Act of 1940.

2. As of December 31, 2006, UCF had total assets under its management with an aggregate market value of approximately $10 billion. The majority of these assets, $7.5 billion, was held in a group trust for the defined benefit plan for the employees of the steel business of U.S. Steel, and another $594 million was managed for funds used to provide the steelworkers with welfare benefits. UCF also managed $1.9 million for the U.S. Steel Foundation, a tax-exempt organization not subject to the Act; $97 million for pension plans of RMI; and $1.7 billion for pension plans of Marathon Oil. Investments managed by UCF include domestic and international equities, fixed-income securities, real estate, mortgage-backed loans and options and futures.

3. The current U.S. Steel reflects the remaining businesses after a series of spin-offs and divestitures by USX of several of its business lines. The major divestitures related to this proposed exemption are:

(a) *RTI International Metals, Inc.*

RMI is a leading U.S. producer of titanium mill and, through its affiliates, fabricated metal products for the global market. RMI is a subsidiary of RTI International Metals, Inc. (RTI), a publicly-traded holding company formed in 1998.

Prior to 1990, RMI was owned by USX and Millennium Petrochemicals, Inc. (Millennium). That year, Millennium's shares of RMI stock were sold to the public, while USX retained an approximately 50% interest. During the period from 1994 through 2000, USX took steps towards disposing of its holdings of RMI stock, publicly offering a series of notes in 1996 that were exchangeable in February 2000 for its remaining RMI shares. RMI reorganized into the current RTI holding company structure in 1998. In 1999, USX terminated its ownership interest in RTI by irrevocably depositing its shares of RTI stock with an independent trust company, in full satisfaction of its obligations under the exchangeable notes; the note holders received the shares in exchange for their notes in February 2000.

UCF began managing the assets of the RTI Plans in 1994. Despite USX's divestment of its equity interest in RTI, UCF continued to manage the assets of the RTI Plans through a group trust.

(b) *Marathon Oil Company*

Prior to its 2001 reorganization, USX had two principal lines of business, divided into two business units. The first was the U.S. Steel Group, which was primarily engaged in the production and sale of steel mill products, coke and taconite pellets. The second was the Marathon Group, which was primarily engaged in the exploration for, and the production, transportation and marketing of, crude oil and natural gas and the refining transportation and marketing of petroleum products. Parallel to this structure, USX had outstanding two classes of common stock, each tracking one of its business units.

The U.S. Steel Group was spun off from USX on December 31, 2001. Following the spin-off, the business of the U.S. Steel Group has been owned and operated by the new U.S. Steel, which is an independent, publicly traded company. The business of the Marathon Group remained owned and operated by USX, which changed its name to Marathon Oil Corporation (Marathon Oil).

UCF took over management of the assets of the Marathon Plans in 1986. Following the December 2001 spin-off, the affiliation that UCF had with USX, in the form of majority ownership on the UCF Board, was continued through U.S. Steel rather than Marathon Oil. Nevertheless, UCF has continued to

[24] UCF is not itself a pension fund. It is an entity that manages pension funds.

manage the assets of the Marathon Plans.

4. The assets of both the RTI and Marathon Plans had been managed by UCF for several years preceding their respective sponsors' separation from the former USX corporate group. Based on their past experience with UCF, both companies were familiar and comfortable with UCF's management style, and believed it prudent to continue to have their plans' assets invested in that manner. In addition, because UCF is a non-profit organization, it is able to provide its services at relatively low cost. Except with respect to the RTI Plans, UCF charges only for the amount of the costs and expenses it incurs in providing its services, allocated based on proportionate assets, or where appropriate, the direct out-of-pocket costs that relate to the particular plan. In the case of the RTI Plans, an additional fee is charged to reflect the higher administrative expense of managing the assets of a smaller plan.

5. PTE 96–23 provides an exemption from certain of the prohibited transaction rules for transactions involving plans whose assets are managed by an INHAM. Section IV(a) of PTE 96–23 specifically contemplates that an INHAM may be a membership nonprofit corporation a majority of whose members are officers or directors of * * * an employer or parent organization [of an employer]. Because a majority of the members of UCF were officers or directors of USX, UCF relied upon PTE 96–23 in connection with the management of the assets of the plans of USX and USX affiliates.

6. As noted above, following the spin-off of the U.S. Steel Group from USX at the end of 2001, the majority of the UCF members are employees of U.S. Steel, and not Marathon Oil. Therefore, as Marathon Oil is no longer an affiliate of the parent organization whose officers and directors constitute a majority of UCF's members, UCF no longer qualifies as an INHAM with respect to the Marathon Plans. UCF has not been able to qualify as an INHAM with respect to the RTI Plans for the same reason.

7. Prohibited Transaction Exemption 84–14 (PTE 84–14, 70 FR 49305, August 23, 2005), as restated to reflect various amendments, provides an exemption from transactions involving plan assets, if among other conditions, the assets are managed by a qualified professional asset manager (QPAM) who is independent of the parties in interest engaging in the transactions. The exemptive relief provided by PTE 96–23 for transactions involving assets of plans managed by in-house managers is similar to the exemptive relief provided by the Department for QPAMs under PTE 84–14.

Except for the diverse clientele standard referred to in Facts and Representations No. 8 in this proposed exemption, UCF met all the requirements to qualify as a QPAM for certain of its clients through December 30, 2006. In this regard, UCF met the capitalization requirement, which required an investment adviser seeking to qualify as a QPAM to have either (i) equity in excess of $750,000 or (ii) payment of all its liabilities unconditionally guaranteed by an affiliate if the investment adviser and affiliate together have equity in excess of $750,000.[25] UCF otherwise continues to qualify as a QPAM for certain of its clients. It is registered as an investment adviser under the Investment Advisers Act of 1940. UCF also meets the assets-under-management test in Section V(a) of PTE 84–14, which requires an investment adviser to have (as of the last day of its most recent fiscal year) total client assets under its management and control in excess of $85 million. UCF currently manages assets of the Marathon and RTI Plans with a value in excess of $1.7 billion, which are in addition to the assets of the U.S. Steel-sponsored plans that exceed $7.5 billion.

8. The Applicant has requested the relief proposed herein because UCF did not satisfy the diverse clientele test found in Section I(e) of PTE 84–14 with respect to the Marathon and the RTI Plans. The diverse clientele test provides that a QPAM may not enter into a transaction with a party in interest with respect to any plan whose assets managed by the QPAM, when combined with the assets of other plans maintained by the same employer (or its affiliates), represent more than 20% of the total client assets managed by the QPAM at the time of the transaction. Although the assets of the Marathon and the RTI Plans managed by UCF comprise less than 20% of the assets under its management, the vast majority of the remaining assets consist of plan assets for which UCF acts as an INHAM. Under the Department's interpretation that the assets of U.S. Steel-sponsored plans (the U.S. Steel Assets) are not "client assets" for purposes of PTE 84–14, the diverse clientele test would be based solely on non-US Steel Assets, even though the assets of such plans were insignificant in relation to the total assets managed by UCF.

9. Accordingly, UCF requested and received an authorization in 2003 (Final Authorization Number (FAN) 2003–03E, February 15, 2003) that afforded it the relief provided under Part I of PTE 84–14 for transactions involving the assets of (i) the Marathon and RTI Plans and (ii) any other plan that fails to meet the conditions of Section I(e) of PTE 84–14 solely because U.S. Steel Assets are not included as client assets under management for the purpose of that section. The authorization in FAN 2003–03E was for a five-year period.

10. FAN 2003–03E required that an exemption audit be conducted on an "annual basis." The report for the exemption audit for the year 2003 was not completed until November 15, 2007, more than three and a half years after the period being audited, and because a similar question has been raised for the years 2004–2006, the Applicant has requested relief retroactive to February 15, 2003. The Applicant represents that the exemption audit report for the year 2007 was completed and issued on June 27, 2008.

11. The Applicant represents that it complied with all the conditions of FAN 2003–03E, except for the exemption audit condition as described above. The Applicant represents that the reason for the delay in conducting the audits was the failure of the internal procedure for tracking this task, and the failure of the then-current auditor (also its independent auditor for reviewing its financial statements) to identify the oversight. The Applicant represents that it has now implemented additional procedures to assure that the exemption audit is conducted in the year after the end of the audit period. For example, the Applicant has added the exemption audit requirement to its automated reminder system. In early January of

[25] The QPAM capitalization requirement discussed herein was amended and was made effective as of the last day of the first fiscal year beginning after August 23, 2005. The amendment increased the shareholders' or partners' equity requirement from $750,000 to $1,000,000. UCF currently has equity above $750,000 but below $1,000,000. For purposes of the Applicant's prohibited transaction exemption request, the Department is proposing to require that UCF meet the $1,000,000 capitalization requirement effective with the date of publication of the final exemption in the **Federal Register**.

The proposed exemption uses the term "equity" rather than the term "shareholders' or partners' equity" as defined in PTE 84–14, because UCF is a non-stock corporation with no shareholders or partners. Like shareholders' or partners' equity as defined in Section V(m) of PTE 84–14, UCF's equity will be the equity shown on its most recent balance sheet, as prepared within the two immediately preceding years in accordance with generally accepted accounting principles. UCF's equity is held in an account designated as Capital-Equity.

UCF's status as a non-stock corporation also affects the definition of "affiliate" to the extent it involves ownership relationships. The term has been modified herein to be based on percentage ownership of U.S. Steel, the corporation whose officers and/or directors constitute a majority of the members of UCF, rather than of UCF itself.

each year, the system will automatically send an e-mail to the person responsible for initiating the audit process and to other individuals who work with that person on these audits, indicating the tasks that need to be completed as well as their required completion date. After the initial reminder to start the process in January, periodic reminders are sent to the work group for this task to monitor the progress, until the system is informed that the task is complete.

12. The Applicant has requested an effective date for the exemption proposed herein retroactive to February 15, 2003, the effective date of FAN 2003–03E. It is noted that the independent auditors, in their audit reports for the years 2003 through 2007 did not find any non-compliance with the Applicant's policies and procedures or with the objective conditions of FAN 2003–03E. Because the Applicant has agreed to meet a higher standard with regard to future audit reports, and because no incidents of non-compliance for past years were found, the Department is proposing that the relief contained in Section I of this proposed exemption retroactively apply to the effective date of FAN 2003–03E.

13. Given the large number of service providers (particularly financial institutions) engaged by the Former U.S. Steel Related Plans, the breadth of the definition of "party in interest" under 3(14) of the Act, and the wide array of investment and related services offered by UCF, it would not be uncommon for UCF, as investment manager, to recommend transactions that involve parties in interest to one or more Former U.S. Steel Related Plans.[26] In this regard, the transactions for which the Applicant seeks an exemption include, but are not limited to, sale and exchange transactions, leasing and other real estate transactions, and foreign currency trading transactions. Without the requested relief, UCF would be unable to offer the full range of investment opportunities offered to the Former U.S. Steel Related Plans by such transactions, which could substantially reduce UCF's overall effectiveness and adversely affect the Former U.S. Steel Related Plans' investment returns. In the absence of the exemption, it would be necessary to examine each transaction to determine whether it might involve a party in interest. Such examinations could prove burdensome for UCF, because of the myriad of persons that may be parties in interest as service providers to large plans, such as the Marathon and RTI Plans.

14. UCF represents that the proposed exemption incorporates safeguards that the Department has previously found to be protective of the rights of the participants and beneficiaries of affected plans, because the Applicant would be subject to the requirements of PTE 84–14 and certain procedural requirements of PTE 96–23. As under PTE 96–23, the Applicant would be required to maintain written policies and procedures designed to ensure compliance with the exemption proposed herein and to retain an independent auditor which would evaluate the Applicant's compliance with such policies and procedures and the objective requirements of the exemption, and would report its findings on an annual basis.

In addition, the Applicant has agreed to meet a higher standard with regard to future audit reports due after the publication in the **Federal Register** of the grant of the exemption proposed herein. It is the Department's understanding that the representative sample analyzed by the independent auditor will be based on an objective, comprehensive, and consistent methodology. The written report issued by such independent auditor for each exemption audit will include the following items:

(i) A description of the universe of the Plan's transactions (expressed in numbers);

(ii) A description of the process, methodology, and criteria used to select the Plan's transactions which comprise the sample selected for review by the independent auditor and an explanation how the sample was objectively determined and representative of the Plan's transactions consummated during the year;

(iii) The resultant number of the Plan's transactions which comprise the representative sample;

(iv) A detailed description of the results of the independent auditor's findings, without condition, qualification, caveat or limitation, identifying each instance where there is a specific finding of noncompliance with any of the objective requirements contained in Section IV(f)(5) of this proposed exemption;

(v) An explanation, why the number of transactions comprising the sample selected for review by the independent auditor was appropriate, taking into account, among other things, each instance where there was a specific finding of noncompliance with any of the objective requirements of the proposed exemption;

(vi) An explanation, to the extent that there is any finding of non-compliance, of the independent auditor's determination whether there is a general failure by UCF to satisfy the requirements of this proposed exemption, and a determination on the adequacy of the Plan's written policies and procedures, described in Section I(i), and their administration by UCF;

(vii) Where there is any finding of non-compliance, an identification of the specific policies, procedures or exemption conditions that were not satisfied, as well as the steps taken by UCF, if any, to remedy the transactions that did not comply with the objective requirements of the proposed exemption; and

(viii) An explanation how the requirements of Section I(c) are satisfied.

15. Except for the Diverse Clientele Test, UCF represents that it will comply with the remaining conditions, as set forth in Part I of PTE 84–14. Moreover, UCF, although no longer considered to be an INHAM with respect to the assets of the Former U.S. Steel Related Plans, will remain subject to the procedural requirements of the INHAM class exemption, as set forth in PTE 96–23. In this regard, UCF will be required to maintain written policies and procedures designed to ensure compliance with the objective requirements of the exemption and to retain an independent auditor experienced and proficient with the fiduciary provisions of the Act to conduct an exemption audit. It is the responsibility of the independent auditor to evaluate UCF's compliance with such policies and procedures and to report annually its findings to each of the Former U.S. Steel Related Plans.

16. Furthermore, the proposed exemption contains conditions which are designed to ensure the presence of adequate safeguards for the Former U.S. Steel Related Plans and their participants and beneficiaries. First, the transactions which are the subject of this exemption cannot be part of an agreement, arrangement, or understanding designed to benefit a party in interest. Second, neither UCF nor a person related to UCF may engage in transactions with the Investment Fund. Further, a party in interest (including a fiduciary) which deals with the Investment Fund, may only be a party in interest by reason of providing services to the Former U.S. Steel Related Plans, or by having a relationship to a service provider, and such party in interest may not have discretionary

[26] The Applicant represents that the applicability of the statutory exemption contained in section 408(b)(17) of the Act to the transactions described in this proposed exemption is problematic because there is uncertainty how to value assets other than publicly-traded securities or securities not traded on an exchange.

authority or control with respect to the investment of plan assets involved in the transaction nor render investment advice with respect to those assets.

17. In summary, the Applicant represents that the transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act and section 4975(c)2) of the Code for the following reasons:

With respect to the retroactive relief provided in this proposed exemption,

(a) UCF is an investment adviser registered under the Investment Advisers Act of 1940 that had under its management and control total client assets in excess of $100,000,000, and had equity in excess of $750,000;

(b) The independent auditors, in their audit reports for the years 2003 through 2007, did not find any non-compliance with the Applicant's policies and procedures or with the objective conditions of FAN 2003–03E; and

(c) The Applicant represents that the only reason it needed retroactive relief was the lack of timeliness of the independent auditor reports. The Applicant has agreed to meet a higher standard with regard to future audit reports, and such audit reports will be completed and issued within six months following the end of the year to which each such exemption audit and report relates. The audit report for the year 2007 was completed and issued within six months following the end of the year.

With respect to the prospective relief provided in this proposed exemption,

(a) UCF is an investment adviser registered under the Investment Advisers Act of 1940 that has, as of the last day of its most recent fiscal year, total client assets, including In-house Plan Assets, under its management and control in excess of $100,000,000 and equity, as defined in Section IV(i), above, in excess of $1,000,000;

(b) At the time of the transaction and during the year preceding, the party in interest or its affiliate dealing with the Investment Fund, does not have and has not exercised, the authority to appoint or terminate UCF as a manager of any of the Former U.S. Steel Related Plans' assets, or to negotiate the terms on behalf of the Former U.S. Steel Related Plans (including renewals or modifications) of the management agreement with UCF;

(c) The transactions that are the subject of the proposed exemption are not described in PTE 81–6 (as amended or superseded); PTE 83–1 (as amended or superseded); or PTE 88–59 (as amended or superseded);

(d) The terms of the transaction are negotiated on behalf of the Investment Fund by, or under the authority and general direction of, UCF, and either UCF, or a property manager acting in accordance with written guidelines established and administered by UCF, makes the decision on behalf of the Investment Fund to enter into the transaction;

(e) The transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest;

(f) At the time the transaction is entered into, renewed, or modified, the terms of the transaction are at least as favorable to the Investment Fund as the terms generally available in arm's-length transactions between unrelated parties;

(g) Neither UCF nor any affiliate, nor any owner, direct or indirect, of a 5 percent (5%) or more interest in UCF is a person who, within the ten (10) years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of any felony, as set forth in Section I(f) of this proposed exemption;

(h) The party in interest with respect to the Former U.S. Steel Related Plans that deals with the Investment Fund is a party in interest (including a fiduciary) solely by reason of being a service provider to the Former U.S. Steel Related Plans, or having a relationship to a service provider and such party in interest does not have discretionary authority or control with respect to the investment of plan assets involved in the transaction and does not render investment advice with respect to those assets;

(i) Neither UCF nor a person related to UCF engages in the transactions which are the subject of this exemption;

(j) UCF adopts written policies and procedures that are designed to assure compliance with the conditions of the exemption;

(k) An independent auditor, who has appropriate technical training or experience and proficiency with the fiduciary responsibility provisions of the Act and who so represents in writing, conducts an exemption audit on an annual basis and issues a written report to the Former U.S. Steel Related Plans presenting specific findings regarding compliance with the policies and procedures adopted by UCF within six (6) months following the end of the year to which the audit relates;

(l) UCF or an affiliate maintains or causes to be maintained within the United States, for a period of six (6) years from the date of each transaction, the records necessary to enable the Department, the IRS, and other persons to determine whether the conditions of this exemption have been met.

Notice To Interested Persons

UCF will furnish a copy of the Notice of Proposed Exemption (the Notice) along with the supplemental statement described at 29 CFR § 2570.43(b)(2) to the investment committee or trustees of each of the Former U.S. Steel Related Plans to inform them of the pendency of the exemption, by hand delivery or first class mailing, within fifteen (15) days of the publication of the Notice in the **Federal Register**. Comments and requests for a hearing are due on or before 45 days from the date of publication of the Notice in the **Federal Register**. A copy of the final exemption, if granted, will also be provided to the Former U.S. Steel Related Plans. Further, UCF will furnish a copy of the final exemption to any other Former U.S. Steel Related Plans at the time the exemption becomes applicable to the management of the assets of such plans.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 693–8546 (this is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative

exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 18th day of December, 2008.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. E8–30513 Filed 12–23–08; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Extension of the Approval of Information Collection Requirements

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning its proposal to extend the Office of Management and Budget (OMB) approval of the Information Collection: Request for Earnings Information (LS–426). A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before February 23, 2009.

ADDRESSES: Mr. Steven D. Lawrence, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0292, fax (202) 693–1451, E-mail *Lawrence.Steven@dol.gov*. Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. *Background:* The Office of Workers' Compensation Programs (OWCP) administers the Longshore and Harbor Workers' Compensation Act (LHWCA) (33 U.S.C. 901 et seq), and its extensions the Nonappropriated Fund Instrumentalities Act, the Outer Continental Shelf Lands Act and the Defense Base Act. These Acts provide compensation benefits to injured workers. The Secretary of Labor is authorized, under the Act, to make rules and regulations to administer the Act and its extensions. Pursuant to the LHWCA, injured employees shall receive compensation in an amount equal to 66–2/3 per centum of their average weekly wage. Form LS–426, Request for Earnings Information is used by district offices to collect wage information from injured workers to assure payment of compensation benefits to injured workers at the proper rate. This information is needed for determination of compensation benefits in accordance with Section 10 of the LHWCA. This information collection is currently approved for use through June 30, 2009.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

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

III. *Current Actions:* The Department of Labor seeks the approval of the extension of this information collection in order to carry out its responsibility to assure payment of compensation benefits to injured workers at the proper rate.

Type of Review: Extension.

Agency: Employment Standards Administration.

Titles: Request for Earnings Information.

OMB Number: 1215–0112.

Agency Numbers: LS–426.

Affected Public: Individuals or households.

Total Respondents: 1,600.

Total Annual Responses: 1,600.

Estimated Total Burden Hours: 400.

Estimated Time per Response: 15 minutes.

Frequency: On Occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $720.00.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 18, 2008.

Hazel Bell,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E8–30524 Filed 12–23–08; 8:45 am]

BILLING CODE 4510–CF–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Extension to the Approval of Information Collection Requirements

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning its

proposal to extend OMB approval of the information collection: Statement of Recovery Forms (CA/EN–1108, SOL/EN–1108, and CA/EN–1122). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before February 23, 2009.

ADDRESSES: Mr. Steven D. Lawrence, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0292, fax (202) 693–1451, E-mail *Lawrence.Steven@dol.gov.* Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. *Background:* Under section 8131 a Federal employee can sustain a work-related injury, for which he or she is eligible for compensation under the Federal Employees' Compensation Act (FECA), under circumstance that create a legal liability in some third party to pay damages for the same injury. When this occurs, section 8131 of the FECA (5 U.S.C. 8131) authorizes the Secretary of Labor to either require the employee to assign his or her right of action to the United States or to prosecute the action. When the employee receives a payment for his or her damages, whether from a final court judgment on or a settlement of the action, section 8132 of the FECA (5 U.S.C. 8132) provides that the employee "shall refund to the United States the amount of compensation paid by the United States * * *." To enforce the United States' statutory right to this refund, the Office of Workers' Compensation Programs (OWCP) has promulgated regulations that require both the reporting of these types of payments (20 CFR 10.710) and the submission of the type of detailed information necessary to calculate the amount of the required refund (20 CRF 10.707(e)). The information collected by Form CA/EN–1122 is requested from the claimant if he or she received a payment for damages without hiring an attorney. Form CA/EN–1108 requests this information from the attorney if one was hired to bring suit against the third party. Form SOL/EN–1108 request the same information as the CA/EN–1108 if the claimant's attorney contacts the Office of the Solicitor (SOL) directly. This information collection is currently approved for use through June 30, 2009.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

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

III. *Current Actions:* The Department of Labor seeks the approval for the extension of this currently approved information collection in order to exercise its responsibility to enforce the United States' right to this refund. These forms will be used to obtain information about amounts received as the result of a final judgment in litigation, or a settlement of the litigation, brought against a third party who is liable for damages due to compensable work-related injury.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Statement of Recovery Forms.

OMB Number: 1215–0200.

Agency Number: CA/EN–1108, SOL/EN–1108, and CA/EN–1122.

Affected Public: Business or other for-profit, Individuals or households.

Form/Requirement	Responses	Respondents/ response (min.)	Time per burden hours
CA/EN–1108	2,550	30	1,275
SOL/EN–1108	150	30	75
CA/EN–1122	300	15	75

Total Respondents/Responses: 3,000.

Frequency: As needed.

Estimated Total Burden Hours: 1,425.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $1,350.00.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 18, 2008.

Hazel Bell,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E8–30525 Filed 12–23–08; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Fee Adjustment for Testing, Evaluation, and Approval of Mining Products

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of fee adjustment.

SUMMARY: This notice describes MSHA's revised fee schedule for testing, evaluating, and approving mining products as permitted by 30 CFR 5.50. MSHA charges applicants a fee to cover its costs associated with testing and evaluating equipment and materials manufactured for use in the mining industry. The new fee schedule, effective January 1, 2009, is based on MSHA's direct and indirect costs for providing services during fiscal year (FY) 2008.

DATES: This fee schedule is effective January 1, 2009.

FOR FURTHER INFORMATION CONTACT: John P. Faini, Chief, Approval and Certification Center, 304–547–2029 or 304–547–0400.

SUPPLEMENTARY INFORMATION:

I. Background

Under 30 CFR 5.50, MSHA may revise the fee schedule for testing, evaluation, and approval of mining products at least once every three years although the fee schedule must remain in effect for at least one year. MSHA's existing fee schedule, revised December 27, 2007 (72 FR 73380), became effective January 1, 2008.

Under 30 CFR 5.30(a), the new fee adjustment does not apply to the 30 CFR part 15 testing (explosives and sheathed explosive units). In addition, under 30 CFR 5.40, it does not apply to travel expenses incurred under this Part. When the nature of the product requires MSHA to test and evaluate the product at a location other than on MSHA premises, MSHA must be reimbursed for the travel, subsistence, and incidental expenses of its representative according to Federal government travel regulations. This reimbursement is separate from, and in addition to, the fees charged for evaluation and testing.

II. Fee Computation

MSHA computed the 2009 fees using FY 2008 costs for baseline data. MSHA calculated a weighted-average based on the direct and indirect costs to applicants for testing, evaluation, and approval services rendered during FY 2008. From this average, MSHA computed a single hourly rate, which applies uniformly to all applications.

As a result of this process, MSHA has determined that as of January 1, 2009, the fee will be $90 per hour of services rendered.

III. Applicable Fee

- *Applications postmarked before January 1, 2009:* MSHA will process these applications under the 2008 hourly rate of $84.
- *Applications postmarked on or after January 1, 2009:* MSHA will process these applications under the 2009 hourly rate of $90. This information is available on MSHA's Web site at *http://www.msha.gov.*

Richard E. Stickler,

Acting Assistant Secretary for Mine Safety and Health.

[FR Doc. E8–30623 Filed 12–23–08; 8:45 am]

BILLING CODE 4510–43–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–027–COL and 52–028–COL; ASLBP No. 09–875–03–COL–BD01]

South Carolina Electric & Gas Company, Acting for Itself and as Agent for the South Carolina Public Service Authority (also Referred to as Santee Cooper); Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and the Commission's regulations, *see* 10 CFR 2.104, 2.300, 2.303, 2.309, 2.311, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding:

South Carolina Electric & Gas Company, Acting for Itself and as Agent for the South Carolina Public Service Authority (also Referred to as Santee Cooper) (Virgil C. Summer Nuclear Station, Units 2 and 3)

This proceeding concerns Petitions to Intervene from (1) Joseph Wojcicki, and (2) the Sierra Club and Friends of the Earth, which were submitted in response to an October 10, 2008 Notice of Order, Hearing, and Opportunity to Petition for Leave to Intervene regarding an application seeking approval of a combined license for the Virgil C. Summer Nuclear Station, Units 2 and 3, to be located in Fairfield County, South Carolina (73 FR 60,362). The South Carolina Office of Regulatory Staff also filed a request to participate in any hearing as an interested State.

The Board is comprised of the following administrative judges: Paul B. Abramson, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Michael F. Kennedy, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Jeffrey D. E. Jeffries, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007 (72 FR 49,139).

Issued at Rockville, Maryland, this 18th day of December 2008.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. E8–30665 Filed 12–23–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–017]

Virginia Electric and Power Company, D/B/A Dominion Virginia Power, and Old Dominion Electric Cooperative; Notice of Availability of the Draft Supplemental Environmental Impact Statement and Public Meeting for North Anna Power Station Unit 3 Combined License Application

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC, Commission) has published a draft Supplemental Environmental Impact Statement (SEIS), NUREG–1917, for the North Anna Unit 3 Combined License (COL) and is making it available for comment. This document is a supplement to the Environmental Impact Statement for an Early Site Permit (ESP) at the North Anna ESP site, NUREG–1811, dated December 2006. The North Anna site is located near the Town of Mineral in Louisa County, Virginia on the southern shore of Lake Anna.

Virginia Electric and Power Company, doing business as Dominion Virginia Power, and Old Dominion Electric Cooperative, collectively referred to as Dominion, submitted an application on November 27, 2007, for a COL at its North Anna Power Station (North Anna). A COL is an authorization to construct and (with specified conditions) operate a nuclear power plant at a specific site, in accordance with established laws and regulations. In November 2007, the NRC issued ESP–003 to Dominion Nuclear North Anna, LLC, for the North Anna ESP Site (the site of proposed Unit 3). An ESP is an NRC approval of a site as suitable for construction and operation of one or more new nuclear units. The application for a COL for North Anna Unit 3 submitted by Dominion references the ESP for the North Anna ESP site, ESP–003.

Pursuant to NRC regulations in 10 CFR 51.50(c)(1), a COL applicant referencing an ESP need not submit information or analyses regarding environmental issues that were resolved in the ESP EIS, except to the extent the COL applicant has identified new and significant information regarding such

issues; pursuant to 10 CFR 52.39, matters resolved in the ESP proceedings are considered to be resolved in any subsequent proceedings, absent identification of new and significant information. Upon receipt of a COL application that references an ESP, the NRC staff, pursuant to 10 CFR 51.75(c), prepares a supplement to the ESP EIS in accordance with 10 CFR 51.92(e). Accordingly, this notice is to inform the public that the NRC staff has prepared a supplement to NUREG–1811, the ESP EIS (NUREG–1917), which is in support of the review of the COL application for North Anna Unit 3 at the North Anna ESP site described in ESP–003 referenced in the COL application, and to provide the public an opportunity to comment..

The draft SEIS, NUREG–1917, for the North Anna, Unit 3 COL is available for public inspection at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records component of the NRC's Agency-wide Documents Access and Management System (ADAMS). ADAMS is accessible at *http://www.nrc.gov/reading-rm/adams.html*, which provides access through the NRC's Electronic Reading Room link. The accession number in ADAMS for the draft SEIS, NUREG–1917, is ML083380360.

Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR Reference staff at 1–800–397–4209 or 301–415–4737, or by sending an e-mail to *pdr.resource@nrc.gov*. The draft SEIS may also be viewed on the Internet at: *http://www.nrc.gov/reactors/new-reactors/col/north-anna.html*. In addition, the Jefferson-Madison Regional Library in Mineral, Virginia; Hanover Branch Library in Hanover, Virginia; Orange County Library in Orange, Virginia; Salem Church Library in Fredericksburg, Virginia; and C. Melvin Snow Memorial Branch Library in Spotsylvania, Virginia have agreed to make the draft SEIS available for public inspection.

The staff will hold a public meeting to present an overview of the draft SEIS, NUREG–1917, and to accept public comments. The public meeting will be held in the Auditorium at the Louisa County High School, 757 Davis Highway, Mineral, Virginia, on Tuesday, February 3, 2009. The meeting will convene at 6 p.m. and will continue until 10 p.m., as necessary. The meeting will be transcribed and will include: (1) A presentation of the contents of the draft SEIS, and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft report. Additionally, the NRC will host informal discussions one hour before the start of the meeting. No formal comments on the draft SEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meeting or in writing. Persons may register to attend or present oral comments at the meeting by contacting Ms. Alicia Williamson, by telephone at 1–800–368–5642, extension 1878, or by Internet to the NRC at: *NORTHANNA.COLAEIS@nrc.gov*, no later than January 28, 2009.

Members of the public may also register to speak at the meeting within 15 minutes of the start of the meeting. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Ms. Williamson will need to be contacted, if special equipment or accommodations are needed to attend or present information at the public meeting, no later than January 23, 2009 so that the NRC staff can determine whether the request can be accommodated.

Any interested party may submit comments on the draft SEIS for consideration by the NRC staff. Comments may be accompanied by additional relevant information or supporting data. This draft report is being issued with a 75-day comment period. The comment period begins on the date that the U.S. Environmental Protection Agency publishes a Notice of Filing in the **Federal Register** which is expected to be December 29, 2008; such Notices are published every Friday. The Notice will identify end dates of the comment period.

Members of the public may send written comments on the draft SEIS for the North Anna COL, Unit 3 to the Chief, Rulemaking Directives and Editing Branch, Division of Administrative Services, Office of Administration, Mailstop TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 and should cite the publication date and page number of this **Federal Register** Notice. Electronic comments may be sent via the Internet to the NRC at *NORTHANNA.COLAEIS@nrc.gov*. To ensure that comments will be considered, comments should be received by the end of the comment period, which is March 16, 2009. Written comments should be postmarked by March 16, 2009. Electronic Submissions should be sent no later than March 16, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Alicia Williamson, Environmental Project Manager, at U.S. Nuclear Regulatory Commission, Mailstop T6–D32, Washington, DC 20555–0001, or by phone at (301) 415–1878 or via e-mail at Alicia.Williamson@nrc.gov.

Dated at Rockville, Maryland, this 16th day of December 2008.

For the U.S. Nuclear Regulatory Commission.

Scott Flanders,

Director, Division of Site and Environmental Reviews Office of New Reactors.

[FR Doc. E8–30643 Filed 12–23–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of Meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission will convene a teleconference meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on January 22, 2009, to discuss a subcommittee recommendation for individuals to achieve Authorized User status via a board certification pathway when a gap exists between the completion of training and experience and issuance of the board certificate. A copy of the agenda for the meeting will be available at *http://www.nrc.gov/reading-rm/doc-collections/acmui/agenda* or by contacting Ms. Ashley Tull using the information below.

DATES: The teleconference meeting will be held on Thursday, January 22, 2009, from 1 p.m. to 3 p.m. Eastern Standard Time.

Public Participation: Any member of the public who wishes to participate in the teleconference discussion should contact Ms. Tull using the contact information below.

Contact Information: Ashley M. Tull, e-mail: *ashley.tull@nrc.gov*, telephone: (240) 888–7129.

Conduct of the Meeting

Leon S. Malmud, M.D., will chair the meeting. Dr. Malmud will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit an electronic copy to Ms. Tull at the contact information listed above. All submittals must be received by January 19, 2009, and must pertain to the topic on the agenda for the meeting.

2. Questions and comments from members of the public will be permitted during the meeting, at the discretion of the Chairman.

3. The transcript will be available on the ACMUI's Web site (*http://www.nrc.gov/reading-rm/doc-collections/acmui/tr/*) on or about February 23, 2009. A meeting summary will be available on or about March 6, 2009.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in Title 10, *U.S. Code of Federal Regulations*, Part 7.

Dated: December 19, 2008.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E8–30658 Filed 12–23–08; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. PI2009–1, Order No. 152]

Universal Postal Service

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document provides notice that the Commission has issued a report on universal postal service and the postal monopoly. It describes how copies of the report and related material can be accessed. It also establishes a new docket for submission of comments addressing the report.

DATES: Initial comments due February 17, 2009; reply comments due March 19, 2009.

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

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

SUPPLEMENTARY INFORMATION: *Regulatory History*, 73 FR 23507, (April 30, 2008).

I. Introduction

On December 19, 2008, the Commission transmitted to Congress and to the President a *Report on Universal Postal Service and the Postal Monopoly* (Report) as required by section 702 of the Postal Accountability and Enhancement Act (PAEA), Public Law 109–435, 120 Stat. 3218 (2006). The Report is the product of over 8 months of review and analysis of information, comments, and testimony submitted in Docket No. PI2008–3 [1] by the United States Postal Service (Postal Service),[2] other Federal agencies, a member of Congress, representatives of Postal Service employee unions, postmaster associations, users of the mails, enterprises in the private sector engaged in the delivery of the mail, and the general public.[3] In addition to its solicitation of written comments, the Commission scheduled three field hearings,[4] a hearing in Washington, DC,[5] and a public workshop.[6]

II. The Commission's Report

The extensive Commission Report is available at *http://www.prc.gov*. It addresses all of the matters identified in section 702 of the PAEA, including:

—A comprehensive review of the history and development of universal service and the postal monopolies;
—The current legal scope of the universal service obligation and the postal letter and mailbox monopolies;
—The scope and standards of universal service and the postal monopolies likely to be required in the future to meet the needs and expectations of the United States public.

The report recommends no immediate changes in universal service, the universal service obligation, the letter monopoly, or the mailbox monopoly. However, it recognizes that the Postal Service is faced with many difficult challenges stemming both from technological and social trends, and volume declines caused by the current economic downturn, and offers recommendations identifying areas where additional information should assist decision makers if future action becomes necessary.

Primary Commission findings are:

—The universal service obligation has seven attributes: (1) Geographic scope; (2) range of products; (3) access to postal facilities; (4) delivery frequency; (5) prices/affordability; (6) quality of service; and (7) users' rights.
—The current obligation to provide service to all persons in all parts of the Nation, its territories, and possessions, is paramount, and should not be altered.
—Current law makes the universal service obligation applicable to both market dominant and competitive products.
—A first estimate of the annual cost of the universal service obligation, based on FY 2007, is $4.4 billion.
—A first estimate of the annual value of the combined letter mail and mailbox monopolies, based on FY 2007, is $3.5 billion, although this estimate is subject to substantial variation.

Accompanying the Report is a CD that contains the extensive body of material underlying the Report that was developed for the Commission under a contract with the George Mason University School of Public Policy. All of this material can be accessed on the Commission Web site. For the USO Report: *http://www.prc.gov/docs/61/6128/USO Report.pdf*. For the USO Appendices and Workpapers: *http://www.prc.gov/prc-pages/library/USOAppendices.aspx*.

III. Public Comments

The Commission's Report is a further step in the ongoing evolution of postal services. The information and analyses contained in the Report will form an important part of the basis for future discussions and action on issues facing the Postal Service. While the PAEA does not specifically require the Commission to solicit comments on its Report, the Commission believes that further discussion would be facilitated and the record further enhanced by establishing a new docket that gives the public an opportunity to comment. Following the receipt of additional comments, the Commission may decide to issue a supplemental report. The Commission urges those persons and entities that participated in the proceedings in Docket No. PI2008–3, as well as any other interested persons, to review the Report carefully and provide their comments in this new docket.

IV. Public Representative

Section 505 of title 39 requires the designation of an officer of the Commission in all public proceedings to

[1] The proceedings in Docket No. PI2008–3 were instituted by PRC Order No. 71, Notice and Order Providing an Opportunity to Comment, April 18, 2008.

[2] In addition to the data, testimony, and other related materials submitted in Docket No. PI2008–3, the Postal Service also commissioned analyses which it has made available at *http://www.usps.com/postallaw/universalpostalservice.htm*.

[3] The Commission was assisted in this undertaking by a team of experts assembled by the School of Public Policy at George Mason University (GMU) and by GMU's Center for Social Science Research.

[4] Hearings were held in Flagstaff, Arizona on May 21, 2008; St. Paul, Minnesota on June 5, 2008; and Portsmouth, New Hampshire on June 19, 2008.

[5] The Washington, DC hearing was held on July 10, 2008.

[6] The workshop was held in Washington, DC on June 12, 2008.

represent the interests of the general public. The Commission hereby designates E. Rand Costich as that Public Representative in this proceeding. Pursuant to this designation, he will direct the activities of Commission personnel assigned to assist him and will, upon request, provide their names for the record. Neither he nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

V. Ordering Paragraphs

It is Ordered:

1. As set forth in the body of this Notice, Docket No. PI2009–1 is established for the purpose of receiving comments regarding the Commission's December 19, 2008 Report to Congress and the President on Universal Postal Service and the Postal Monopoly.
2. Interested persons may submit comments no later than February 17, 2009.
3. Reply comments may be filed no later than March 19, 2009.
4. E. Rand Costich is designated as the Public Representative representing the interests of the general public in this proceeding.
5. The Secretary shall cause this Notice to be published in the **Federal Register**.

By the Commission.

Steven W. Williams,

Secretary.

[FR Doc. E8–30758 Filed 12–23–08; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Express Mail & Priority Mail Contract 1 Negotiated Service Agreements

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: Postal Service notice of filing a request with the Postal Regulatory Commission to add Express Mail & Priority Mail Contract 1 to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List pursuant to 39 U.S.C. 3642 and 3632(b)(3).

DATES: December 24, 2008.

FOR FURTHER INFORMATION CONTACT: Scott Reiter, 202–268–2999.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that on October 24, 2008, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Express Mail & Priority Mail Contract 1 to Competitive Product List and Notice of Establishment of Rates and Class Not Of General Applicability.* Documents are available at *http://www.prc.gov*, Docket Nos. MC2009–6, CP2009–7.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E8–30573 Filed 12–23–08; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Express Mail Contract 2 Negotiated Service Agreements

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: Postal Service notice of filing a request with the Postal Regulatory Commission to add Express Mail Contract 2 to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List pursuant to 39 U.S.C. 3642 and 3632(b)(3).

DATES: December 24, 2008.

FOR FURTHER INFORMATION CONTACT: Scott Reiter, 202–268–2999.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that on October 24, 2008, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service To Add Express Mail Contract 2 to Competitive Product List and Notice of Establishment of Rates and Class Not Of General Applicability.* Documents are available at *http://www.prc.gov*, Docket Nos. MC2009–3, CP2009–4.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E8–30576 Filed 12–23–08; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Parcel Return Service Contract 1 Negotiated Service Agreements

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: Postal Service notice of filing a request with the Postal Regulatory Commission to add Parcel Return Service Contract 1 to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List pursuant to 39 U.S.C. 3642 and 3632(b)(3).

DATES: December 24, 2008.

FOR FURTHER INFORMATION CONTACT: Scott Reiter, 202–268–2999.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that on October 15, 2008, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Parcel Return Service Contract to Competitive Product List and Notice of Establishment of Rates and Class Not Of General Applicability.* Documents are available at *http://www.prc.gov*, Docket Nos. MC2009–1, CP2009–2.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E8–30609 Filed 12–23–08; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Contract 2 Negotiated Service Agreements

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: Postal Service notice of filing a request with the Postal Regulatory Commission to add Priority Mail Contract 2 to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List pursuant to 39 U.S.C. 3642 and 3632(b)(3).

DATES: December 24, 2008.

FOR FURTHER INFORMATION CONTACT: Scott Reiter, 202–268–2999.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that on October 24, 2008, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 2 to Competitive Product List and Notice of Establishment of Rates and Class Not Of General Applicability.* Documents are available at *http://www.prc.gov*, Docket Nos. MC2009–2, CP2009–3.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E8–30610 Filed 12–23–08; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Contract 3 Negotiated Service Agreements

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: Postal Service notice of filing a request with the Postal Regulatory Commission to add Priority Mail Contract 3 to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List pursuant to 39 U.S.C. 3642 and 3632(b)(3).

DATES: December 24, 2008.

FOR FURTHER INFORMATION CONTACT: Scott Reiter, 202–268–2999.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that on October 27, 2008, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 3 to Competitive Product List and Notice of Establishment of Rates and Class Not Of General Applicability*. Documents are available at *http://www.prc.gov*, Docket Nos. MC2009–4, CP2009–5.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E8–30572 Filed 12–23–08; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Contract 4 Negotiated Service Agreements

AGENCY: Postal Service ™.

ACTION: Notice.

SUMMARY: Postal Service notice of filing a request with the Postal Regulatory Commission to add Priority Mail Contract 4 to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List pursuant to 39 U.S.C. 3642 and 3632(b)(3).

DATES: December 24, 2008.

FOR FURTHER INFORMATION CONTACT: Scott Reiter, 202–268–2999.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that on October 27, 2008, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 4 to Competitive Product List and Notice of Establishment of Rates and Class Not Of General Applicability*. Documents are available at *http://www.prc.gov*, Docket Nos. MC2009–5, CP2009–6.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E8–30611 Filed 12–23–08; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Government/Industry Air Traffic Management Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Government/Industry Air Traffic Management Advisory Committee.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Government/Industry Air Traffic Management Advisory Committee.

DATES: The meeting will be held January 23, 2009, from 1 p.m. to 4 p.m.

ADDRESSES: The meeting will be held at FAA Headquarters, 800 Independence Avenue, SW., Bessie Coleman Conference Center (2nd Floor), Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org. METRO: L'Enfant Plaza Station (Use 7th & Maryland Exit).*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the Air Traffic Management Advisory Committee meeting. The agenda will include:

- Opening Plenary (Welcome and Introductions).
- ATMAC Requirements & Planning Work Group (R&P WG), Review of NextGen Implementation Plan: January 2009 Edition.
- Planning for RTCA NextGen Task Force.
- Closing Plenary (Other Business, Member Discussion, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FUTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 17, 2008.

Meredith Gibbs,

Staff Specialist, RTCA Advisory Committee.

[FR Doc. E8–30645 Filed 12–23–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Seventh Meeting, RTCA Special Committee 216: Aeronautical System Security

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 216 meeting Aeronautical Systems Security.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 216: Aeronautical Systems Security.

DATES: The meeting will be held on January 14–16, 2009. January 14–15, from 9 a.m. to 5 p.m., and January 16, from 9 a.m. to 12 p.m.

ADDRESSES: John A. Volpe National Transportation Systems Center, U.S. DOT/Research and Innovative Technology Administration, 55 Broadway, Cambridge, MA 02142–1093. Our host is Kevin Harnett, 617–699–7086 (cell), 617–494–2604 (work). Directions: *http://www.volpe.dot.gov/about/visiting.html*. Suggest a cab from Logan Airport to Cambridge. Map *http://maps.google.com/maps?f=q&hl=en&geocode=&q=55+Broadway,+Cambridge,+MA&sll=37.0625,-95.677068&sspn=34.945679,69.697266&ie=UTF8&ll=42.36506,-71.085727&spn=0.00937,0.017016&z=16*, Volpe Web site: *http://www.volpe.dot.gov/*. All visitors will need to go through security screening. Once through the screening, you will be directed to the meeting which is Room 120 and located on the first floor.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036–5133; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 216 meeting.

Note: The change in meeting location to Cambridge, MA. was made due anticipated travel and housing difficulties in the Washington, DC, area just prior to the Presidential Inauguration. The agenda will include:

- Opening Session (Welcome, Introductions and Administrative Remarks, Agenda Overview).
- Approval of Summary of the Sixth meeting held on 5–7 November 2008, RTCA Paper No. 307–08/SC216–013.

- Subgroup and Action Item Reports.
- EUROCAE WG–72 Report.
- Other Industry Activities Related to Security—Reports and presentations.
- Subgroup Breakout Sessions.
- Subgroups Report on Breakouts.
- Establish Dates, Location and Agenda for Next Meeting.
- Any Other Business.
- Closing Session (Any Other Business, Assignment/Review of Future Work, Establish Agenda, Date and Place of Next Meeting, Closing Remarks, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 17, 2008.

Meredith Gibbs,

Staff Specialist, RTCA Advisory Committee.

[FR Doc. E8–30644 Filed 12–23–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2006–25755]

Operating Limitations at New York Laguardia Airport; Proposed Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed Amendments and Request for Comments.

SUMMARY: The Federal Aviation Administration (FAA) has tentatively determined that it is necessary to amend further its December 12, 2006 Order that temporarily caps scheduled operations at New York's LaGuardia Airport (LaGuardia), pending the implementation of a longer-term regulation to manage congestion at the airport. In particular, we now propose to accept from air carriers voluntary reductions in scheduled operations at the airport to a targeted average of 71 hourly scheduled operations for the duration of the Order. This proposed reduction in flight operations at LaGuardia would not affect the number of unscheduled operations at the airport. The FAA is separately extending the Order's expiration until 11:59 p.m., Eastern Time, on October 24, 2009.

DATE: Send your comments on this proposed amendment to the Order on or before January 5, 2009.

ADDRESSES: You may submit comments, identified by docket number FAA–2006–25755, using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments by mail to Docket Operations, U.S. Department of Transportation, M–30, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Persons wishing to receive confirmation of receipt of their written submission should include a self-addressed stamped postcard.
- *Hand Delivery:* Deliver comments to Docket Operations in Room W12–140 on the ground floor of the West Building at 1200 New Jersey Avenue, SE., Washington DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Facsimile:* Fax comments to the docket operations personnel at 202–493–2251.

Privacy: We will post all comments that we receive, without change, at *http://www.regulations.gov*, including any personal information that you provide. Using the search function of the docket website, anyone can find and read the electronic form of all comments in any of our dockets, including the name of the individual sending the comment or signing the comment on behalf of an association, business, labor union, or other entity or organization. You may review the DOT's complete Privacy Act Statement in the **Federal Register** at 65 FR 19477–78 (April 11, 2000), or you may find it at *http://docketsinfo.dot.gov.*

Reviewing the docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time and follow the online instructions for accessing the docket; or go to Docket Operations in Room W12–140 on the ground floor of the West Building 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: Gerry Shakley, System Operations Services, Air Traffic Organization; telephone—(202) 267–9424; e-mail—*gerry.shakley@faa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

As a result of the limited capacity of LaGuardia's two-runway configuration, the airport cannot accommodate the number of scheduled flights that airlines would like to operate there without causing significant congestion-related delays. This circumstance long ago led the FAA to limit the number of scheduled arrivals and departures at LaGuardia during the peak hours of demand.[1] The FAA ultimately relied on the High Density Rule[2]—its initial mechanism to control congestion at LaGuardia—for nearly 40 years. The High Density Rule limited the number of scheduled operations at the airport to 62 per hour.

In a statute enacted in April 2000, Congress began to phase out the High Density Rule at LaGuardia and other airports.[3] Before fully extinguishing the High Density Rule at LaGuardia on January 1, 2007, the statute immediately authorized a number of exemptions from the High Density Rule for specific types of scheduled operations.[4] Demand for exemptions to operate scheduled service at LaGuardia soared. By November 2000, the debilitating delays that resulted from the surging demand required the FAA to roll back and cap the number of scheduled operations at LaGuardia.[5] The FAA did not roll back the scheduled operations to the number that airlines conducted before the surge, instead capping the operations at a more elevated total of 75 hourly departures and arrivals.

In the ensuing years, the FAA examined and proposed various alternatives to the High Density Rule in an effort to control congestion at LaGuardia.[6] When it became apparent that the FAA would not have a replacement rule in place before the High Density Rule expired at LaGuardia, and recognizing that LaGuardia is prone to overscheduling, the FAA proposed and finalized an interim Order that capped the number of operations at the airport until the FAA could finalize a rule.[7] The interim Order, which is the subject of this proposed amendment, retained the cap of 75 hourly scheduled

[1] 33 FR 17896, 17898 (Dec. 3, 1968); 34 FR 2603 (Feb. 26, 1969).

[2] 14 CFR part 93, subpart K.

[3] 49 U.S.C. 41715(a)(2).

[4] 49 U.S.C. 41716.

[5] 65 FR 69126, 69127–28 (Nov. 15, 2000).

[6] 71 FR 51,360 (Aug. 29, 2006) (Notice of Proposed Rulemaking); 73 FR 20,846 (April 17, 2008) (Supplemental Notice of Proposed Rulemaking).

[7] 71 FR 77,854 (Dec. 27, 2006). The FAA previously amended the original order in November 2007 (72 FR 63,224) and August 2008 (73 FR 48,428).

operations that originally took effect in November 2000.

The FAA published a final rule with respect to LaGuardia on October 10, 2008.[8] As a result of the continued and aggravated congestion-related delays at LaGuardia, the rule, in part, reduced the hourly cap on scheduled operations at LaGuardia. In this respect, the rule specifically identified a reduced cap of 71 hourly scheduled operations at LaGuardia from 6 a.m. until 9:59 p.m., Eastern Time, effective March 8, 2009.[9] This number is substantially higher than the 62 hourly scheduled operations permitted under the High Density Rule.

On December 8, 2008, the United States Court of Appeals for the District of Columbia Circuit issued an order staying the effectiveness of the LaGuardia final rule, pending the outcome of litigation over disputed elements of the final rule.[10] The FAA is now proposing this amendment to the LaGuardia Order to reduce scheduled operations to an average of 71 hourly departures and arrivals should carriers currently allocated operating authorizations under the Order choose to voluntarily reduce operations.

II. Proposed Amendment

A. Authority

The FAA's authority to limit the number of operations at congested airports is an essential component of the FAA's statutory responsibilities. The FAA holds broad authority under 49 U.S.C. 40103(b) to regulate the use of the navigable airspace of the United States. This provision authorizes the FAA to develop plans and policy for the use of the navigable airspace and, by order or rule, to regulate the use of the airspace as necessary to ensure its efficient use.

The FAA originally issued the Order to take effect on the expiration of the High Density Rule on January 1, 2007. The FAA intended the Order to serve as a temporary bridge to a final rule that would manage congestion at the airport over a longer term. As a result, the Order initially grandfathered the previously conducted operations at the previous hourly rate with few changes and few administrative constraints.

As the FAA continued to work toward a final rule to replace the Order, it became apparent at various junctures that amendments to the order were necessary in the interest of operational efficiency. The FAA has amended the Order, for example, to facilitate the transfer of operating authority among affiliated and regional carriers for operational need and to align the number of unscheduled operations with such operators' historical usage of LaGuardia.[11]

B. Proposal

The FAA believes that the Order's present hourly cap on scheduled operations at LaGuardia is too high. According to the Bureau of Transportation Statistics, through October 31 of calendar year 2008, LaGuardia ranked last among the 32 major U.S. airports in on-time arrival performance, with an on-time arrival rate of 61.64%. LaGuardia also ranked last in this category over the same period in calendar year 2007. The airport fared little better in the category of on-time departure performance, in which LaGuardia, at 74.37 %, ranked 28th out of 32 over the first ten months of calendar year 2008.

In relation to the final rule that is currently stayed, MITRE Corporation's Center for Advanced Aviation System Development modeled the effect of reducing the hourly cap on scheduled operations at LaGuardia from 75 to 71. The MITRE queuing model reflected that the reduction could generate an average delay savings of 41%.[12] The FAA calculated the resulting annual benefit from this delay reduction at LaGuardia to be $178 million.[13]

In order to capture some or all of these delay reduction and economic benefits while the Order remains in effect, the FAA now proposes to accept, on a strictly voluntary basis, a limited number of targeted flight reductions from the carriers now conducting scheduled service at LaGuardia. We anticipate that any voluntary flight reductions under this proposal would take effect no later than April 19, 2009, although we will entertain offers to reduce scheduled operations after that date.

The FAA intends to amend the Order to change the hourly cap for scheduled operations at the airport to 71 during the peak hours of 6 a.m. until 9:59 p.m., Eastern Time. If the flight reductions help the FAA in attaining its hourly target, the FAA intends to retire those operating authorizations for the balance of the Order.[14] If the final rule published on October 10, 2008, and currently stayed pending the outcome of on-going litigation ultimately goes into effect, then consistent with that rule, the FAA will use the carriers' base of operations during the week of September 28, 2008, as the basis for any flight reductions called for in the rule.

Although carriers can voluntarily relinquish more operating authorizations than are necessary to achieve an average of 71 hourly operations, the FAA intends to treat these returns in the same manner as operating authorizations returned to the FAA under the usage provisions of the Order. Accordingly, the FAA may elect to reallocate any operating authorization that a carrier relinquishes in excess of the number needed to achieve the average hourly target of 71. The FAA will notify a carrier if any operating authorization it is offering to relinquish could be subject to reallocation under this principle. A carrier's identification of operating authorizations for voluntary reduction may not be contingent on specific flight reductions made by other carriers.

The Order will continue to contain a minimum usage requirement and the associated principles for reallocation in paragraphs six and seven. This minimum usage requirement will continue to apply to all operating authorizations that are not retired under this proposal.

This proposal to amend the hourly cap on scheduled operations at LaGuardia to 71 would result in a cap that exceeds the cap that existed under the High Density Rule. Just recently, the FAA issued a Letter of Intent to provide AIP funding for port surface improvements at JFK International Airport. In addition, the FAA has aggressively pursued implementing 77 recommended operational improvements at the three New York City Metropolitan area airports. The FAA intends to continue its aggressive pursuit of operational improvements at LaGuardia and at the other New York-area airports, with a goal of increasing operational efficiency across the region.

If a carrier wishes to offer a voluntary reduction in scheduled operations under this proposal, an authorized representative of the carrier should contact the individual identified in the "For More Information Contact" section of this document. Please initiate such contact on or before January 2, 2009.

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[8] 73 FR 60,574.

[9] *Id.* at 60,576, 60,599 (to be codified at 14 CFR 93.37(b)).

[10] Order Granting Motions for Stay at 1, *Port Auth. of New York & New Jersey v. Fed. Aviation Admin.*, No. 08–1329 (D.C. Cir. Dec. 8, 2008) (per curiam).

[11] 72 FR 63,224 (Nov. 8, 2007); 73 FR 48,428 (Aug. 19, 2008).

[12] Congestion Management Rule for New York LaGuardia Airport, Docket FAA–2006–25709, Document 161 at 29 (Sept. 10, 2008) (Final Regulatory Evaluation).

[13] *Id.* at 30 & n.9.

[14] In a separate action, the FAA is extending the Order's expiration until 11:59 p.m., Eastern Time, on October 24, 2009. Further extensions or revisions to the Order may prove necessary.

III. Request for Comments

The FAA invites all interested persons to submit written comments on this proposal by filing their written views in Docket FAA–2006–25755 on or before January 5, 2009.

Issued in Washington, DC, on December 19, 2008.

Rebecca B. Macpherson,

Assistant Chief Counsel for Regulations, Federal Aviation Administration.

[FR Doc. E8–30703 Filed 12–22–08; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Personnel Parachute Assemblies TSO–C23d

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of re-activation.

SUMMARY: The Minimum Performance Standard for Personnel Parachute Assemblies and Components contained in technical standard order (TSO)–C23d, dated June 1, 1994, is re-activated.

DATES: TSO–C23d is re-activated as of December 24, 2008.

ADDRESSES: Send all inquiries pertaining to the re-activation of TSO–23d to: Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, 5th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, ATTN: Hal Jensen, AIR 120. You may deliver your inquiries to: Federal Aviation Administration, 5th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. Include in the subject line of your electronic message the following: Inquiries, FAA TSO–23d, Personnel Parachute Assemblies.

FOR FURTHER INFORMATION CONTACT: Hal Jensen, Aerospace Engineer, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Technical Programs and Continued Airworthiness Branch, AIR–120, 5th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. Telephone (202) 385–6334, FAX (202) 385–6475, or e-mail at: *hal.jensen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Technical Standard Order (TSO)–C23d is being reinstated to allow for new models of personnel parachute assemblies to continue to be manufactured while we correct the issues associated with the now cancelled "e" version of TSO–C23. You may get a copy of TSO–C23d by logging onto: *http://rgl.faa.gov/*, select Technical Standard Orders and Index, and then select Active Historical.

Issued in Washington, DC, on December 17, 2008.

Susan J.M. Cabler,

Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. E8–30638 Filed 12–23–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice To Rescind a Notice of Intent To Prepare an Environmental Impact Statement: State Route 374, From State Route 13 to State Route 76 in Clarksville, Montgomery County, TN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice to rescind a Notice of Intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Federal Highway Administration (FHWA) is issuing this notice to advise the public that the Notice of Intent published on November 12, 1996, at 61 FR 58094, to prepare an Environmental Impact Statement (EIS) for the proposed State Route 374, from State Route 13 to State Route 76 in Clarksville, Montgomery County, Tennessee, is being rescinded.

FOR FURTHER INFORMATION CONTACT: Mr. Charles J. O'Neill, Planning and Program Management Team Leader, FHWA–Tennessee Division Office, 640 Grassmere Park Road, Suite 112, Nashville, TN 37211. Phone: (615) 781–5772.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Tennessee Department of Transportation is rescinding the Notice of Intent (NOI) to prepare an EIS for State Route 374, from State Route 13 to State Route 76 in Clarksville, Montgomery County, Tennessee. The proposed project called for the construction of a four-lane divided partial access-controlled facility from State Route 13 to State Route 76 in Clarksville, Tennessee.

A Draft Environmental Impact Statement (DEIS) was approved on March 27, 2000. Due to the age of the DEIS and the desire to assess any potential changes in the impacts to the human and natural environment, a new EIS will be prepared. The new EIS will fully evaluate the human and natural environmental impacts and will evaluate all reasonable alternatives. The original NOI is being rescinded and a new NOI will be published subsequent to this NOI.

To ensure that the full range of issues related to this proposed action are identified and taken into account, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA contact person identified above at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed program.)

Issued on: December 17, 2008.

Charles J. O'Neill,

Planning and Program Mgmt. Team Leader, Nashville, TN.

[FR Doc. E8–30577 Filed 12–23–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice To Rescind a Notice of Intent To Prepare an Environmental Impact Statement: North Second Street Connector Improvement, From Interstate 40 at North Second Street to U.S. 51/State Route 300, in Memphis, Shelby County, TN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice to Rescind a Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The Federal Highway Administration (FHWA) is issuing this notice to advise the public that the Notice of Intent published on November 7, 2002, at 67 FR 67893, to prepare a Environmental Impact Statement (EIS) for the proposed North Second Street Connector in Memphis, Shelby County, Tennessee, is being rescinded.

FOR FURTHER INFORMATION CONTACT: Mr. Charles J. O'Neill, Planning and Program Management Team Leader, FHWA—Tennessee Division Office, 640 Grassmere Park Road, Suite 112, Nashville, TN 37211. Phone: (615) 781–5772.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Tennessee Department of Transportation, is rescinding the Notice of Intent (NOI) to prepare an EIS for North Second Street Connector in Memphis, Shelby County, Tennessee.

The proposed project called for improving North Second Street and North Third Street to form a one-way pair from Interstate 40 to Chelsea Avenue and constructing a six-lane facility from Chelsea Avenue to the U.S. 51/State Route 300 Interchange in Memphis, Shelby County, Tennessee.

An EIS has not been completed for this proposal since the original NOI to prepare an EIS was published in the **Federal Register** on November 7, 2002. An EIS will be prepared and will evaluate all reasonable alternatives. The original NOI is being rescinded and a new NOI will be published subsequent to this NOI.

To ensure that the full range of issues related to this proposed action are identified and taken into account, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA contact person identified above at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed program.)

Issued on: December 17, 2008.

Charles J. O'Neill,

Planning and Program Mgmt. Team Leader. Nashville, TN.

[FR Doc. E8–30570 Filed 12–23–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Petition for Preemption of California Regulations on Meal Breaks and Rest Breaks for Commercial Motor Vehicle Drivers; Rejection for Failure To Meet Threshold Requirement

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

ACTION: Notice of rejection of petition for preemption.

SUMMARY: FMCSA announces the rejection of a petition for preemption of California laws and regulations requiring employers to provide employees with meal and rest breaks. The petition does not satisfy the threshold requirement for preemption under 49 U.S.C. 31141(c) because the provisions at issue are not "laws and regulations on commercial motor vehicle safety," but rather laws and regulations applied generally to California employers.

DATES: *Effective Date:* This decision is effective December 23, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Medalen, Attorney-Advisor, FMCSA Office of Chief Counsel. Telephone (202) 493–0349.

Background

On July 3, 2008, James H. Hanson, Esq., Scopelitis, Garvin, Light, Hanson & Feary, P.C., petitioned the Federal Motor Carrier Safety Administration (FMCSA) on behalf of a group of motor carriers [1] to preempt the California statutes and rules requiring transportation industry employers to give their employees meal and rest breaks during the work day, as applied to drivers of commercial motor vehicles (CMVs) subject to the FMCSA hours-of-service (HOS) regulations. For the reasons set forth below, FMCSA rejects the petition.

California Law

Section 512, Meal periods, of the California Labor Code reads in part as follows:

"(a) An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

"(b) Notwithstanding subdivision (a), the Industrial Welfare Commission may adopt a working condition order permitting a meal period to commence after six hours of work if the commission determines that the order is consistent with the health and welfare of the affected employees."

Section 11090 of Article 9 (Transport Industry) of Group 2 (Industry and Occupation Orders) of Chapter 5 (Industrial Welfare Commission) of Division 1 (Department of Industrial Relations) of Title 8 (Industrial Relations) of the California Code of Regulations, is entitled "Order Regulating Wages, Hours, and Working Conditions in the Transportation Industry" [hereafter: "8 CCR § 11090," "Section 11090". or "§ 11090" [2]].

Section 11090(11). Meal Periods, reads as follows:

"(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and employee.

"(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and employee only if the first meal period was not waived.

"(C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked. An 'on duty' meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

"(D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

"(E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated."

Section 11090(12). Rest Periods, reads as follows:

"(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hour worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

"(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hours of pay at the employer's regular rate of compensation for each workday that the rest period is not provided."

[1] Affinity Logistics Corp.; Cardinal Logistics Management Corp.; C.R. England, Inc.; Diakon Logistics (Delaware), Inc.; Estenson Logistics, LLC; McLane Company, Inc.; McLane/Suneast, Inc.; Penske Logistics, LLC; Penske Truck Leasing Co., L.P.; Trimac Transportation Services (Western), Inc.; and Velocity Express, Inc.

[2] California Industrial Welfare Commission Order No. 9–2001 is identical to 8 CCR § 11090.

Although § 11090(3)(L) provides that "[t]he provisions of this section are not applicable to employees whose hours of service are regulated by: (1) The United States Department of Transportation, Code of Federal Regulations, Title 49, sections 395.1 to 395.13, Hours of Service of Drivers," the California courts have interpreted the word "section" to refer only to § 11090(3), which regulates "hours and days of work," not to all of § 11090, including meal and rest breaks in § 11090(11) and (12). *Cicairos* v. *Summit Logistics, Inc.*, 133 Cal App.4th 949 (2006).

Federal Law

FMCSA is authorized by 49 U.S.C. 31141 to preempt State law. For purposes of this petition, the relevant portions of that statute read as follows:

"(a) Preemption after decision.—A State may not enforce a State law or regulation on commercial motor vehicle safety that the Secretary of Transportation decides under this section may not be enforced. * * *

"(c) Review and decisions by the secretary.—

"(1) Review.—The Secretary shall review State laws and regulations on commercial motor vehicle safety. The Secretary shall decide whether the State law or regulation—

"(A) Has the same effect as a regulation prescribed by the Secretary under section 31136;

"(B) Is less stringent than such regulation; or

"(C) Is additional to or more stringent than such regulation. * * *

"(4) Additional or more stringent regulations.—If the Secretary decides a State law or regulation is additional to or more stringent than a regulation prescribed by the Secretary under section 31136 of this title, the State law or regulation may be enforced unless the Secretary also decides that—

"(A) The State law or regulation has no safety benefit;

"(B) The State law or regulation is incompatible with the regulation prescribed by the Secretary; or

"(C) Enforcement of the State law or regulation would cause an unreasonable burden on interstate commerce."

Petitioners' Argument

Petitioners summarized the effect of the California meal and rest break rules as follows:

"Motor carrier operations are carefully timed to take advantage of the flexibility available under the HOS Regulations and, in some instances, to take advantage of the full complement of driving hours provided as well. Some carriers schedule driver meals to take place at carrier facilities once the driver has delivered a load so that unloading, sorting, and loading of outbound shipments can take place during the break. The Meal and Rest Break Rules, by mandating when meals breaks must be taken, interfere with such arrangements, meaning that the driver will miss the inbound appointment, which in turn has the domino effect of delaying outbound operations. * * * [A]s a practical matter, since the driver must be fully relieved of duty during the break, breaks will take much longer as the driver will be required to find a place to pull over and must actually park and shut down the equipment before the break can start. Of course, this will require that the driver return to the equipment, start it, and get back on the road as well. Thus, as a practical matter, the Meal and Rest Break Rules impose a much greater burden on the driver than a simple reading of the rules * * * would at first suggest, and the burden is exacerbated in congested areas" [pages 10–11].

"In the absence of the Meal and Rest Break Rules, a driver could spend three non-driving hours engaged in [other] activities and could still drive for 11 hours under the HOS Regulations. In California, due to the Meal and Rest Break Rules, however, the driver loses 1½ hours (two 30-minute meal breaks and three 10-minute rest breaks) over the course of the permitted 14-hour on-duty period in which the driver can neither drive nor perform on-duty driving tasks. The practical effect is that a driver in California has only 12½ hours of on-duty time after initially coming on duty during which he/she can accumulate his/her 11 hours of driving time, leaving only 1½ hours to perform any other duty non-driving tasks that might naturally occur during the day" [page 10].

"Applying the Meal and Rest Break Rules to drivers subject to the HOS Regulations imposes limitations on a driver's time that are different from and more stringent than the HOS Regulations because the Meal and Rest Break Rules limit the amount of hours available to a driver to complete driving duties after initially coming on-duty to less than the 14 hours permitted by the HOS Regulations. Moreover, the Meal and Rest Break Rules do not allow for the flexibility provided by the HOS Regulations, further exacerbating the effect of the limitations imposed by the Meal and Rest Break Rules. This lack of flexibility not only hinders operations from a scheduling standpoint, it also creates serious safety concerns. Specifically, by imposing meal and rest breaks at set times, the Meal and Rest Break Rules limit a driver's ability to take breaks when they are actually needed. A driver subject only to the HOS Regulations, on the other hand, is not subject to externally imposed limitations and is instead able to take breaks when he or she deems necessary" [page 6].

In a supplement filed with FMCSA on October 2, 2008, petitioners reiterated their position even more bluntly:

"Petitioners * * * argue * * * that they should be free to schedule drivers to work and that drivers should be free to choose to work as much as they desire in accordance with the HOS Regulations, without regard for individual state requirements, as long as the driver is otherwise able to operate the equipment safely. The Meal and Rest Break Rules are inconsistent with the HOS Regulations" [page 4].

The July petition states that:

"The threshold for review under 49 U.S.C. 31141 is that the state law or regulation be 'on commercial motor vehicle safety.' * * * Thus, the only logical/consistent interpretation of 'on commercial motor vehicle safety' under 49 U.S.C. 31141 is to interpret it as applying to state laws or regulations that regulate or affect subject matter within the FMCSA's authority under 49 U.S.C. 31136, i.e., any state law or regulation that regulates subject matter within the FMCSA's authority under 49 U.S.C. 31136 is 'on commercial motor vehicle safety' for purposes of 49 U.S.C. 31141.

"Conceivably, it could be argued that the Meal and Rest Break rules are not 'on commercial motor vehicle safety' because they are rules of general applicability and their application is not limited to CMVs. When considered from a practical perspective, however, there can be no question that the Meal and Rest Break Rules are exactly the type of rules that fall within the scope of 49 U.S.C. 31141. As a practical matter, interpreting the statute to apply only to state laws or rules applicable solely to CMVs would open the door to state regulation of CMV safety under the guise of generally applicable state laws or rules" [page 21].

Decision

Petitioners themselves acknowledge the decisive argument against their own position. The California meal break statute [Cal. Labor Code § 512] and the corresponding rules in § 11090(11)–(12) are not regulations "on commercial motor vehicle safety" and thus do not meet the threshold requirement for consideration under 49 U.S.C. 31141.[3] The State rules apply to the entire "transportation industry," which § 11090(2)(N) defines as "any industry, business, or establishment operated for the purpose of conveying persons or property from one place to another whether by rail, highway, air, or water, and all operations and services in connection therewith; and also includes storing or warehousing of goods or property, and the repairing, parking, rental, maintenance, or cleaning of vehicles." The meal and rest break rules thus cover far more than the trucking industry.

In fact, the meal and rest break rules are not even unique to transportation. California imposes virtually the same rules on the "manufacturing industry" [8 CCR § 11010(11)–(12)]; the "personal service industry" [8 CCR § 11020(11)–(12)]; the "canning, freezing and

[3] Petitioners claim that by "imposing meal and rest breaks at set times," the California rules create safety concerns by interfering with a driver's ability to take breaks when actually needed [page 6]. In fact, the State rules allow the first meal break at any point during the first five hours on duty, and the second within the next five hours. Five-hour windows hardly constitute "set times." Petitioners provide no evidence that these breaks undermine safety.

preserving industry" [8 CCR § 11030(11)–(12)]; the "professional, technical, clerical, and similar occupations" [8 CCR § 11040(11)–(12)]; the "public housekeeping industry" [8 CCR § 11050(11)–(12)]; the "laundry, linen supply, dry cleaning, and dyeing industry" [8 CCR § 11060(11)–(12)]; the "mercantile industry" [8 CCR § 11070(11)–(12)]; "industries handling products after harvest" [8 CCR § 11080(11)–(12)]; the "amusement and recreation industry" [8 CCR § 11100(11)–(12)]; the "broadcasting industry" [8 CCR § 11110(11)–(12)]; the "motion picture industry" [8 CCR § 11120(11)–(12)]; "industries preparing agricultural products for market, on the farm" [8 CCR § 11130(11)–(12)]; "agricultural occupations" [8 CCR § 11140(11)–(12)]; "household occupations" [8 CCR § 11150(11)–(12)]; "certain on-site occupations in the construction, drilling, logging and mining industries" [8 CCR § 11160(10)–(11)]; and "miscellaneous employees" [8 CCR § 11170(9)]. The meal and rest break rules for CMV drivers are simply one part of California's comprehensive regulations governing wages, hours and working conditions. Because these rules are in no sense regulations "on commercial motor vehicle safety," they are not subject to preemption under 49 U.S.C. 31141.

Recognizing this problem, petitioners expanded their argument to claim that "the FMCSA has power to preempt any state law or regulation that regulates or affects any matters within the agency's broad Congressional grant of authority" (page 22). There is nothing in the statutory language or legislative history of 49 U.S.C. 31141 that would justify reading into it the authority to preempt State laws "affecting" CMV safety. Further, if the Agency were to take such a position, any number of State laws would be subject to challenge. For example, it is conceivable that high State taxes and emission controls could affect a motor carrier's financial ability to maintain compliance with the Federal Motor Carrier Safety Regulations (FMCSRs); however, it is doubtful that the Agency would be viewed as thus having the authority to preempt State tax or environmental laws.

Yet petitioners make the equally far-reaching argument that FMCSA can and should preempt the California statutes and rules on wages, hours, and working conditions which prevent carriers from maximizing their employees' driving and on-duty time. In fact, the FMCSRs have for decades required carriers and drivers to comply with all of the laws, ordinances, and regulations of the jurisdiction where they operate [49 CFR 392.2].

FMCSA cannot entertain this petition. Because the California meal and rest break rules are not "regulations on commercial motor vehicle safety," the Agency has no authority to preempt them under 49 U.S.C. 31141. Furthermore, that statute does not allow the preemption of other State or local regulations merely because they have some effect on CMV operations.

Issued on: December 18, 2008.

David A. Hugel,

Deputy Administrator.

[FR Doc. E8–30646 Filed 12–23–08; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2006–26555]

Consumer Information; New Car Assessment Program (NCAP)

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of postponement of the implementation of enhancements to the New Car Assessment Program (NCAP).

SUMMARY: On July 11, 2008, NHTSA published in the **Federal Register** (73 FR 40016) a notice announcing changes to the agency's New Car Assessment Program (NCAP) and stated that these changes would be implemented beginning with model year 2010 vehicles tested as part of the NCAP. This notice announces that implementation of the changes discussed in the July 2008 notice is postponed for one model year. The agency will begin applying the new NCAP testing and safety rating criteria to model year 2011 vehicles, not model year 2010 vehicles as indicated in the July 2008 notice. The agency will continue to utilize the existing NCAP testing and safety rating criteria for the 2010 model year.

DATES: The new NCAP testing and safety rating criteria described in the July 11, 2008 notice will be used for vehicles tested as part of the NCAP beginning with model year 2011 vehicles.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may contact Ms. Jennifer N. Dang, Office of Crashworthiness Standards (Telephone: 202–493–0598). For legal issues, you may contact Mr. Ed Glancy, Office of the Chief Counsel (Telephone: 202–366–2992). You may send mail to both of these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., West Building, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

The National Highway Traffic Safety Administration (NHTSA) established the New Car Assessment Program (NCAP) in 1978 in response to Title II of the Motor Vehicle Information and Cost Savings Act of 1972. Beginning with the 1979 model year, NCAP began rating passenger vehicles for frontal impact safety. Ratings for side impact safety were added beginning with the 1997 model year and for rollover resistance beginning with the 2001 model year. None of the testing or safety rating criteria for frontal crash, side crash, and rollover resistance have been substantially revised since they were first established. On January 25, 2007, NHTSA published a notice announcing a public hearing and requesting comments on an agency report titled, "The New Car Assessment Program (NCAP) Suggested Approaches for Future Enhancements." Following the receipt of written comments and testimony at a March 7, 2007 public hearing, on July 11, 2008 NHTSA published in the **Federal Register** (73 FR 40016) a notice announcing its final decision as to the specific changes the agency is making in the NCAP testing and safety rating criteria, and stating that these changes would be implemented beginning with model year 2010 vehicles tested as part of NCAP.

II. Rationale for Postponing NCAP Enhancements for One Model Year

NHTSA has decided to postpone implementation of the Department's new 5-star Government safety rating program for one year to begin with Model Year 2011. This delay will give manufacturers another year to prepare for what are the most significant changes since the rating program began in 1979 and provide consumers with an additional year to become familiar with the new rating system.

The agency will, at a later date, issue a notice of proposed rulemaking concerning changes to the vehicle safety rating portion of the Monroney label that will need to be made to reflect the changes to the NCAP announced on July 11, 2008.

Authority: 49 U.S.C. 32302, 30111, 30115, 30117, 30166, and 30168, and Pub. L. 106–414, 114 Stat. 1800; delegation of authority at 49 CFR 1.50.

Issued on: December 19, 2008.

David Kelly,

Acting Administrator.

[FR Doc. E8–30701 Filed 12–19–08; 4:15 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2008–0113 Notice 2]

Recommended Best Importer Practices To Enhance the Safety of Imported Motor Vehicles and Motor Vehicle Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final Notice.

SUMMARY: This notice provides guidance concerning best practices to be followed by importers of motor vehicles and motor vehicle equipment to reduce the likelihood of importing products that contain defects related to motor vehicle safety or do not comply with applicable Federal motor vehicle safety standards.

FOR FURTHER INFORMATION CONTACT: Clint Lindsay, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202–366–5288).

SUPPLEMENTARY INFORMATION:

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I. Background

a. National Highway Traffic Safety Administration

The National Highway Traffic Safety Administration (NHTSA) administers the National Traffic and Motor Vehicle Safety Act of 1966, as amended, 49 U.S.C. chapter 301 (the Vehicle Safety Act). Under that authority, NHTSA issues and enforces Federal motor vehicle safety standards (FMVSS) that apply to motor vehicles and to certain items of motor vehicle equipment. NHTSA also monitors motor vehicles and items of motor vehicle equipment that are imported into the United States for compliance with applicable FMVSS. In recent years, an ever-increasing number of motor vehicles and motor vehicle equipment items sold in the United States have been imported. For example, in 1996 imported tires comprised just 19 percent of the 282 million tires sold that year in the United States. By 2006, imported tires rose to 46 percent of all tire sales, with 140 million tires being imported. Nearly all motorcycle helmets are now imported, as is the case for a large percentage of vehicle lighting equipment and child safety seats sold in this country.

Under the Vehicle Safety Act, fabricating manufacturers (i.e., the actual assemblers) and importers of motor vehicles and motor vehicle equipment are responsible for the safety of their products that they manufacture for sale in or import into the United States. NHTSA has a standard setting and oversight/enforcement role and may issue guidance that provides valuable information to affected industries. U.S. consumers provide valuable feedback to manufacturers and to NHTSA, which has a hotline, 1–888-DASH–2-DOT (1–888–327–4236), for consumers to report safety-related problems with motor vehicles and motor vehicle equipment.[1]

NHTSA's enforcement program has two major elements, compliance testing and defects investigation. As the volume of motor vehicle and equipment imports has increased, NHTSA's scrutiny of those imports through both compliance testing and defect investigations has also grown. However, recent experience has demonstrated that companies importing products regulated by NHTSA, particularly motor vehicle equipment, play an especially important role in ensuring that those items comply with the FMVSS and are not likely to be defective. At the same time, both NHTSA's recent experience and that of other agencies with regulatory authority over the safety of imported goods indicate that the entire importing community could benefit by following best practices that help ensure the safety of imported products and reduce the likelihood of unsafe products entering the United States.

b. The Interagency Working Group Report—Strategic Framework

On July 18, 2007, the President issued Executive Order 13439 to establish the Interagency Working Group on Import Safety (the "Working Group"). The Department of Transportation (DOT), including NHTSA, participated in the Working Group. As part of its mission, the Working Group identified strategies that could be pursued within existing resources to promote the safety of imported products. To begin identifying best practices for import safety, the Working Group held consultations with the private sector, reviewed current import safety procedures and methods, surveyed the authorities and practices of Federal agencies, and worked with the importing community. The Working Group recognized that U.S. importers are responsible for ensuring the safety of regulated products they import into the United States and should follow best practices to assure safety through methods that include: (1) Selecting foreign manufacturers to produce their products; (2) inspecting foreign manufacturing facilities; (3) inspecting goods produced on their behalf either before export or before distribution in the United States; (4) identifying the product's country of origin; and (5) safeguarding the supply chain.

In September 2007, the Working Group published a report entitled *"Protecting American Consumers Every Step of the Way: A Strategic Framework for Continual Improvement in Import Safety"* (the "Strategic Framework"), which inaugurated the process of identifying action steps needed to enhance the safety of imported products.[2] The Strategic Framework promotes a cost-effective, risk-based

[1] Consumers may also file an online complaint concerning a motor vehicle, child seat, tire, or motor vehicle equipment item. See *http://www.safercar.gov.*

[2] Interagency Working Group on Import Safety, *"Protecting American Consumers Every Step of the Way: A strategic framework for continual improvement in import safety"* (Washington, DC, September 2007) *http://www.importsafety.gov/report/report.pdf.*

approach to achieve this objective, and contains the following key principles:

(i) Prevention—Prevent harm in the first place. The Strategic Framework recognizes that the Federal government must work with the private sector and with foreign governments to adopt an approach to import safety that builds safety into the manufacturing and distribution processes;

(ii) Intervention—Intervene when risks are identified. The Strategic Framework encourages Federal, state, local, and foreign governments, along with foreign manufacturers and the importing community, to adopt more effective techniques for identifying potential noncompliant and/or defective products. When problems are identified, the Strategic Framework recognizes that government officials must act swiftly, and in a coordinated manner, to seize, destroy or otherwise prevent noncompliant and/or defective products from advancing beyond the point-of-entry; and

(iii) Response—Respond rapidly after harm has occurred. In the event that an unsafe imported product makes its way into domestic commerce, the Strategic Framework recommends swift action to limit potential exposure and harm to the American public.

c. Working Group—Action Plan

The Working Group promised to solicit extensive comments and recommendations from the public, and to provide an action plan by mid-November. On November 6, 2007, the Working Group submitted its report entitled *"Action Plan for Import Safety: A roadmap for continual improvement"* (the "Action Plan").[3] The Action Plan represents the culmination of thousands of hours of research and analysis, as well as public comment received from hundreds of stakeholders. In the Action Plan, the Working Group presented 14 broad recommendations and 50 specific action steps based on the key principles described above—Prevention, Intervention, and Response. For each of these key principles, the Action Plan identified the cross-cutting building blocks that departments and agencies should use to guide their import safety programs. Building Block Number 2, with the subject heading *Increase Accountability, Enforcement, and Deterrence*, acknowledges that while it is important to remember that industry has a financial interest to sell safe products to consumers, all stakeholders involved in the production, distribution, and sale of imports must be held accountable to ensure that imported products meet Federal safety standards in the United States. The Action Plan recommended that Federal agencies "work with the importing community and other members of the public to develop Good Importer Practices and issue guidance with respect to particular product categories."[4] Although some members of the importing community have established best practices on their own, the majority of importers do not have available best practices that are focused on ensuring product safety. The Working Group believes that by developing best importer practices, the entire importing community may benefit from taking appropriate steps to ensure the safety of imported products and to reduce the likelihood of unsafe products entering the United States.

[3] Interagency Working Group on Import Safety, "Action Plan for Import Safety: A roadmap for continual improvement" (Washington, DC, November 2007) *http://www.importsafety.gov/report/actionplan.pdf.*

II. NHTSA's Implementation of the Working Group's Recommendation on Best Importer Practices

The Action Plan encourages Federal agencies to work with the importing community to develop best importer practices that will provide strategies for evaluating foreign manufacturers and imported products. The Food and Drug Administration (FDA) is in the process of issuing a set of Good Importer Practice recommendations on behalf of select Federal agencies and departments that are members of the Interagency Working Group on Import Safety. Those departments and agencies include the Consumer Product Safety Commission, the Environmental Protection Agency, the U.S. Department of Agriculture, the U.S. Department of Commerce, the U.S. Department of Health and Human Services, the U.S. Department of Homeland Security, and DOT. As the DOT representative to this working group, NHTSA has participated in the development of the Good Importer Practice recommendations that are awaiting issuance by the FDA. Those recommendations are intended to be generic in nature, and not specific to the products that are regulated by any particular Federal agency. In contrast, the recommended best importer practices that are the subject of this notice are specifically intended for importers of a particular product category, i.e., motor vehicles and motor vehicle equipment, the products that are regulated by NHTSA.

NHTSA published in the **Federal Register** on July 8, 2008 (73 FR 39078) a notice requesting public comments on the agency's recommended best importer practices. In today's notice, NHTSA issues in final form, with some changes, the suggested best practices for importers of motor vehicles and motor vehicle equipment that were the subject of the July 8 notice. As stated by the agency in the July 8 notice, NHTSA is not establishing a binding set of rules on best practices or even suggesting that a single set of best practices would apply in all situations. The agency fully realizes that best practices may vary widely depending on the item being imported and the scope of an importer's operations. We also recognize that such practices must remain fluid to account for changes in safety regulations and the global economic environment. Importers remain free to choose the practices that best fit their needs in ensuring compliant and defect-free products. Moreover, these recommended practices do not establish any defenses to any violations of the statutes and regulations that NHTSA administers.

Consistent with the approach identified in the July 8 notice, we are issuing this final notice for informative purposes. We will also post these best importer practices on the agency's Web site for easy reference.

[4] *The Action Plan*, Recommendation 3.1, pp. 20–21.

III. Comments and Recommendations Requested

The agency specifically asked in the July 8 notice for members of the public, the importing community, and both foreign and domestic fabricating manufacturers of motor vehicles and motor vehicle equipment to provide comments and recommendations addressing the agency's initial thoughts on the suggested guidance regarding best importer practices. The comments that the agency received are described below, along with the action the agency has taken in response to each one.

IV. Comments Received

NHTSA received comments from North American Lighting, Inc. (NAL) of Farmington Hills, Michigan; the Motor and Equipment Manufacturers Association (MEMA) of Research Triangle Park, North Carolina[5]; the Truck-Lite Company, Inc. (TLC) of

[5] MEMA states that it represents almost 700 companies that manufacture motor vehicle parts for use in the light vehicle and heavy duty original equipment and aftermarket industries. MEMA represents its members through three market segment associations: Automotive Aftermarket Suppliers Association (AASA), Heavy Duty Manufacturers Association (HDMA), and Original Equipment Suppliers Association (OESA). MEMA states its comments are also submitted on behalf of the Transportation Safety Equipment Institute (TSEI) and the Motor Vehicle Lighting Council (MVLC)—both independent groups managed by MEMA.

Falconer, New York; the Specialty Equipment Market Association (SEMA) of Washington, DC [6]; and the Ford Motor Company (Ford) of Dearborn, Michigan.

(a) Support for NHTSA Guidance

The five commenters expressed support for NHTSA's efforts to draft guidance and recommended best importer practices to enhance the safety of imported motor vehicles and motor vehicle equipment. NAL stated, "[w]e support the efforts of [NHTSA] in designing a set of Best Importer Practices to ensure the quality of imported lighting products brought into the United States." [7] MEMA wrote that the proposed guidance, "[i]s a significant and positive step toward improving the safety of imported products" and the "[g]uidance is well-crafted and covers many elements that our industry agrees are integral to a comprehensive and understandable set of best practices for importers." MEMA added that it "[s]upports the action by NHTSA to issue this proposed guidance" and believes that "[i]ssuing guidance on best practices sends the right message to the automotive and equipment industry—to practice due diligence, be responsible, and be compliant." [8] The TLC stated, "[w]e appreciate the agency's efforts to provide best practices guidance on imported products." [9] SEMA stated that it "[s]upports the coordinated initiative by [NHTSA] and other federal government agencies to recommend 'best practices' for importers." [10] Ford stated the company, "[a]pplauds the agency for its initiative to enhance the safety of imported motor vehicles and motor vehicle equipment by providing guidance to importers and supports the recommendations contained in the notice." [11]

(b) Voluntary Product Marking

The five commenters addressed common themes, one of which is that safety is enhanced when those who manufacture and import motor vehicles and items of motor vehicle equipment are accountable. However, accountability cannot be assured when products have no markings that identify their fabricating manufacturers or importers. The commenters observed that when unmarked products are noncompliant, or have a safety-related defect, it becomes difficult for NHTSA to trace the products' origins or identify the party responsible for remedying those conditions.

The commenters suggested that accountability would be enhanced if manufacturers voluntarily marked their products with certain information. For example, MEMA stated that it "[b]elieves that voluntary product marking should be widely encouraged for all imported aftermarket equipment—particularly products critical to safety." MEMA stated that markings should include the name or trademark of the fabricating manufacturer or importer, the date or date range of manufacture, and any marks specified in industry recommended practices or standards. [12]

SEMA furnished with its comments an article entitled "Sourcing Your Products from China without Losing Your Shirt, Your Intellectual Property, or Your Customers." The article was written by Merritt R. Blakeslee and published as a two-part series in the December 2007 and February 2008 editions of the "SEMA News" magazine. [13] To emphasize the need for voluntarily marking products, Mr. Blakeslee provides what he describes as a "Nightmare Scenario" in which a company that imports wheels from an overseas manufacturer is sued for product liability following a fatal crash that was caused by a defective wheel. The company suspects that the wheel involved in the crash was produced without its authorization, but cannot prove this because the company does not mark its products in a way that would permit it to identify counterfeits. The company ultimately must defend against a product liability suit and conduct an expensive product recall, prompting the author to assert: "It is essential that you ensure that your products are carefully marked—by individual serial number or at least by lot number—so that when you find suspect products in the marketplace, you can immediately determine whether they are products whose manufacture you authorized." [14]

TLC commented that accountability is "[t]he start of any good product and the finish of any good product." The company stated that without "[a] manufacturer identification system, any of the changes offered [by NHTSA's guidance] will not be effective in improving the overall safety of imported product." TLC notes that to allow for traceability and accountability of its own products, the company voluntarily labels its lighting products in accordance with the Society of Automotive Engineers (SAE) Recommended Practice J759 "Lighting Identification Code," which the company states "[p]rovides guidelines on identifying product function, manufacturer's identification, model number (or part number), class designation, application and even ampere load rating (where required)." TLC contends that manufacturer identification is one of the most important features in assuring the ongoing quality of the product and that with such identification, "[f]ewer risks will be taken by importers on questionable products if they know that they can be caught." [15]

MEMA also endorses the voluntary labeling of products in accordance with SAE J759. The organization notes that most lighting and conspicuity product manufacturers that belong to MEMA, the Transportation Safety Equipment Institute, and the Motor Vehicle Lighting Council already voluntarily mark such products with the manufacturer's name and a date. [16]

The agency agrees with the commenters that traceability is enhanced when fabricating manufacturers and/or importers voluntarily mark their products with their companies' names, date or lot codes, and industry recommended information such as that listed in SAE J759, which applies to lighting equipment. The described markings

[6] SEMA states it represents the $38.1 billion specialty equipment automotive industry. SEMA describes itself as a nonprofit trade association comprising nearly 7,500 companies, including manufacturers, distributors, installers and retailers.

[7] North American Lighting, Inc. (NAL) "Comments on Guidance and Recommended Best Importer Practices to Enhance the Safety of Imported Motor Vehicles and Motor Vehicle Equipment" Docket No. NHTSA 2008–0113, (August 2008), p. 1.

[8] Motor and Equipment Manufacturers Association (MEMA) "Comments on Guidance and Recommended Best Importer Practices to Enhance the Safety of Imported Motor Vehicles and Motor Vehicle Equipment" Docket No. NHTSA 2008–0113, (August 2008), pp. 1–2 and 8.

[9] Truck-Lite Co., Inc. (TLC), "Comments on Guidance and Recommended Best Importer Practices to Enhance the Safety of Imported Motor Vehicles and Motor Vehicle Equipment" Docket No. NHTSA 2008–0113, (August 2008), p. 2.

[10] Specialty Equipment Market Association (SEMA), "Comments on Guidance and Recommended Best Importer Practices to Enhance the Safety of Imported Motor Vehicles and Motor Vehicle Equipment" Docket No. NHTSA 2008–0113, (August 2008), p. 1.

[11] Ford Motor Company (Ford), "Comments on Guidance and Recommended Best Importer Practices to Enhance the Safety of Imported Motor Vehicles and Motor Vehicle Equipment" Docket No. NHTSA 2008–0113, (August 2008), p. 1.

[12] MEMA Comments, pp. 4–5.

[13] *http://sema.org/main/semaorghome.aspx?id=58637.*

[14] Merritt R. Blakeslee, "Sourcing Your Products from China without Losing Your Shirt, Your Intellectual Property, or Your Customers—Parts I and II" (Washington, DC, December 2007 and February 2008), p. 1, *http://semo.org/moin/semaorghome.aspx?id=58637.*

[15] TLC Comments, p. 2.

[16] MEMA Comments, p. 4.

would enhance the ability of a fabricating manufacturer or importer to ensure that product recalls are initiated when noncompliances or safety defects are identified. Such markings that are voluntarily applied would also benefit fabricating manufacturers and importers by allowing them to accurately identify their products and limit the scope of recalls to only those products that contain the noncompliance or safety-related defect. For these reasons, we have included a recommendation for voluntary markings in our final guidance document under a new heading entitled "Identify the Product," which replaces "Product's Country of Origin."

(c) Records Maintenance

Several commenters observed that an essential element of accountability is the maintenance of records. Ford commented that NHTSA should include as part of its recommended guidance document a reference to 49 CFR part 576, an agency regulation that requires manufacturers to retain for a period of five years reports and other materials and documents that contain information concerning malfunctions that may be related to motor vehicle safety.[17] MEMA stated that documentation of a product's design, its testing, and the process used to manufacture the product should be diligently maintained. The organization contends that this documentation allows a fabricating manufacturer to readily produce, if necessary, the appropriate records to demonstrate compliance with mandated FMVSS performance requirements, or with voluntary industry standards and recommended practices. MEMA observes that such records can become particularly important in the event of changes to a product—whether the change be in material components, the manufacturing process, or test procedures.[18] NAL stated that importers should have to prove they can meet the necessary requirements for their products in a way that is similar to what U.S. manufacturers have to do when they build products for the European or Chinese markets.[19] NAL stated that in order to manufacture for other markets, the company has had to perform witness testing and demonstrate process checks. NAL also stated that the company has allowed government officials to inspect its manufacturing plants and has shipped its products to outside test houses to verify compliance with applicable standards. NAL contends that all manufacturers of lighting equipment destined for the United States likewise should be required to have documented proof that the manufacturing plants have passed inspection and that their products comply with the FMVSS.[20]

The agency generally agrees with many of the points these commenters have raised. However, to the extent the comments recommend that NHTSA require certain records to be kept, those comments are beyond the scope of this notice, which is intended only to offer recommendations. If the agency sought to impose any new requirements, it would only do so by initiating rulemaking to establish appropriate regulations on the subject. In the July 8 notice, we stated why we believe it is important to create and/or maintain, at a minimum, records of a product's: (1) Certification data; (2) design changes or changes in the production process; (3) supporting technical documentation; (4) test reports; (5) serial number, model, and date of manufacture; (6) location while in the distribution system; (7) retail purchasers; (8) accompanying instructions; and 9) manufacturing process including work orders, operation sheets, inspection logs, repair logs, and test procedure checklists. The final recommended best practices include under the heading "Record Keeping for Manufacturers," a discussion of certain records that manufacturers must maintain under 49 CFR part 576, as well as parts 574 and 588. The final notice also encourages importers to inquire whether their manufacturing partners comply with these regulations.

(d) Methodologies for Product Management and Development

In its comments, MEMA suggests that NHTSA add to its guidance document a reference to ISO/TS16949, which MEMA describes as a quality management system that provides for continual improvement, and that emphasizes defect prevention and the reduction of variation and waste in the supply chain. MEMA recommends that the approach be used to review records regarding the development of products, the quality planning methodology, and the method to improve the ongoing quality and performance of the products being manufactured.[21] The agency is aware that ISO/TS16949 is an internationally recognized Quality Management System specification for the Automotive Industry that was jointly developed by the International Automotive Task Force (IATF). As such, we believe it is important to include a reference to ISO/TS16949 in our guidance under the heading, "Inspect Foreign Manufacturing Facilities."

MEMA commented that it supports a "design to conform" methodology for product development, which the organization describes as including a number of steps necessary to originate, plan, create, develop, verify, and manufacture products that, in good faith, consistently meet established requirements when properly installed and applied. Essentially, this methodology serves as a "process map" from design to production and from certification to application. Under product design, MEMA states it is wise to consider: (1) the technical description of the product's function; (2) the tolerances of parts; (3) material specifications; (4) test requirements and test reports; and (5) certification reports including clear documentation and summaries of test results. For manufacturing specifications, MEMA states that the following factors should be considered: (1) Process sheets showing complete details; (2) process control plans detailing statistical process controls (i.e., part selection criteria, test requirements, and plans to address nonconformances); and (3) recovery plans (i.e., the steps to be taken once nonconforming product is identified).[22] Although the "design to conform" methodology, as described by MEMA, appears to have merit, the agency has not incorporated the methodology into this final guidance document because its level of specificity far exceeds the scope of the general recommendations contained in the document.

In the July 8 notice, the agency observed that fabricating manufacturers use systematic analysis tools such as Failure Modes and Effects Analysis (FMEA) to identify potential safety hazards and to improve their products over time by reducing or eliminating failures. TLC commented that there are related product development and control systems that can be used to verify product compliance and consistency, including Design Failure Mode and Effect Analysis (DFMEA),

[17] Ford Comments, p. 1.

[18] MEMA Comments, p. 7.

[19] NAL describes the type approval process that is required by most European countries, but is not required for motor vehicles and motor vehicle equipment offered for sale or sold in the United States. NHTSA does not issue type approval certifications and does not certify any motor vehicles or motor vehicle equipment as complying with applicable FMVSS. Instead, we have a "self-certification" process, which places responsibility on the fabricating manufacturer to certify the vehicle or equipment item as complying with the applicable FMVSS.

[20] NAL Comments, pp. 1–2.

[21] MEMA Comments, p. 7.

[22] Ibid, p. 7.

Design Verification Plan and Report (DVP&R), Process Failure Mode and Effect Analysis (PFMEA), Manufacturing Process Plan, and Control Plans. Because FMEA was cited in the July 8 notice, for illustrative purposes alone, as one example of the systematic analysis tools that are used to identify potential safety hazards, little purpose could be served by including the many other examples that TLC has identified.

(e) Report Submitted

MEMA also appended to its comments a special report published by the Automotive Aftermarket Suppliers Association entitled "Direct Importing: Do the Risks Outweigh the Reward?" [23] MEMA states that this report was published in October 2007 to educate association members on the costs and risks associated with direct importing as a result of a growing concern about the safety of imported products.[24] While the agency recognizes that much of the information in the special report (such as that pertaining to profit erosion, industry image, and product liability) is of value to importers, we believe the report either corroborates information we are already presenting or offers new information on issues unrelated to the agency's jurisdiction.

V. Executive Order 12866 on "Significant Guidance"

On January 18, 2007, the President issued Executive Order (E.O.) 13422, "Further Amendment to Executive Order 12866 on Regulatory Planning and Review." On the same day, in connection with E.O. 13422, the Director of the Office of Management and Budget (OMB) issued OMB Bulletin No. 07–02 on "Agency Good Guidance Practices." The primary focus of E.O. 13422 and OMB Bulletin No. 07–02 is to improve the way the Federal government does business with respect to guidance documents—by increasing their quality, transparency, accountability, and coordination.

Both Executive Order 13422 and OMB Bulletin No. 07–02 define "guidance documents" as "an agency statement of general applicability and future effect, other than a regulatory action, that sets forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statutory or regulatory issue." Guidance documents that are not "significant" are not covered by E.O.s 13422 and 12866, and by Bulletin No. 07–02.

A "significant" guidance document is one disseminated to regulated entities or the general public that may reasonably be anticipated to:

(1) Lead to an annual effect of $100 million or more or adversely effect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impacts of entitlements, grants, user fees or loan programs or the rights or obligations of recipients thereof; or,

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in one of the cited Executive Orders.

The document the agency is publishing today contains no guidance that meets any of the four stated criteria to be deemed "significant." Therefore, this document is not subject to E.O. 13422, E.O. 12866, or to OMB Bulletin 07–02. Nevertheless, because we anticipated some level of public interest and were eager to obtain input from other sources, we solicited public comments in our July 8 notice.

In consideration of the foregoing, NHTSA offers the following recommended best practices for importers of motor vehicles and motor vehicle equipment:

VI. Recommended Best Practices for Importers of Motor Vehicles and Motor Vehicle Equipment

The National Highway Traffic Safety Administration (NHTSA) is the U.S. government agency responsible for implementing and enforcing the National Traffic and Motor Vehicle Safety Act of 1966, as amended, 49 U.S.C. chapter 301 (the Vehicle Safety Act), and certain other laws relating to motor vehicle safety. Fabricating manufacturers (i.e., the actual assemblers) and importers of motor vehicles and motor vehicle equipment have duties as manufacturers under the Vehicle Safety Act. Companies that import these products must ensure that the products comply with applicable Federal motor vehicle safety standards (FMVSS). If a product does not comply with an applicable FMVSS or contains a defect related to motor vehicle safety, including a defect that manifests itself after considerable operation in the field, the manufacturer, which, by statute, includes the importer, must furnish owners with notification of, and a remedy for, the noncompliance or defect. Obviously, it is best if the motor vehicle or equipment complies with applicable FMVSS and does not manifest defects. To reduce the likelihood of noncompliances and defects, we recommend that fabricating manufacturers and importers [25] become familiar with the best practices suggested here and adapt them to their specific needs. NHTSA is also willing to work with fabricating manufacturers and importers to explain our standards, reporting requirements, regulatory program, and enforcement process.

In the paragraphs below, we present the recommended best importer practices first in outline form, and then provide a more detailed discussion of those recommendations.

Outline

[23] Ibid, Attachment to MEMA Comments. Also see: *http://www.mema.org/publications/index.php.*

[24] The October 2007 Report examines the trend for off-shore opportunities and direct importing and takes a closer look at possible pitfalls and additional costs that may offset the savings on acquisition process. Topics include: quality control, product liability, intellectual property protection, recall responsibility, etc. The publication's conclusion states that the only real solution is to weigh all the associated costs and then decide whether direct importing is cost effective.

[25] Our recommended best importer practices are not intended to address importers specially registered with NHTSA to import motor vehicles not originally manufactured to comply with all applicable FMVSS and to perform the necessary modifications on those vehicles so that they conform to all applicable FMVSS. Instead, NHTSA has established regulations under 49 CFR Parts 591–594 covering the registration, duties, and responsibilities of these importers, who are referred to as "Registered Importers."

(iv) Reaching Agreement on Whether Products are Substandard, Nonconforming, or Defective
(v) Contract Considerations
(vi) Monitoring Compliance with Contract Requirements
(d) Inspect Goods Either Before They Are Exported to or Distributed in the United States
(i) Monitoring Production Outputs
(ii) Sampling, Inspecting, and Testing Products
(iii) Post Production Quality Control
(e) Identify the Product
(i) Identify the Product's Country of Origin
(ii) Identify the Product's Manufacturer
(iii) Identify the Product's Date or Lot Codes
(iv) Industry Recommended Practices or Standards for Product Markings
(f) Establish a Consumer Service Program
(i) Consumer Education
(ii) Product Service
(iii) Recordkeeping
(iv) Safety Recall Plan
(v) Intervention
(vi) Notification
(vii) Business Process Monitoring
(g) Contact NHTSA Concerning Manufacturer/Importer Reporting Requirements, Safety Compliance, Defect Issues, and Regulations
(h) Know How To Obtain General Assistance With Other Federal Regulations

Recommended Best Practices

(a) Fully Understand the Importer's Obligations Under Motor Vehicle Safety Statutes and Regulations

Before importing motor vehicles or motor vehicle equipment into the United States, it is essential that the importer understand its obligations under Federal statutes and regulations governing vehicle safety. This section summarizes those obligations stemming from the Vehicle Safety Act, which NHTSA administers.[26]

(i) Certification of Motor Vehicles and Equipment to the Federal Motor Vehicle Safety Standards

The Safety Act authorizes NHTSA to issue the FMVSS, which set minimum performance requirements for motor vehicles and for certain items of motor vehicle equipment. See 49 CFR part 571. In general, motor vehicles are vehicles driven or drawn by mechanical power and manufactured primarily for use on public roads. Typically, motor vehicles have the following type classifications:

- Passenger cars;
- Multipurpose passenger vehicles;
- Trucks;
- Buses;
- Motorcycles;
- Trailers; and
- Low speed vehicles.

The following motor vehicle equipment items are also subject to the FMVSS:

- Tires;
- Rims;
- Brake hoses;
- Brake fluid;
- Seat belt assemblies;
- Lamps, reflective devices, and associated equipment;
- Glazing (automotive glass and plastics);
- Motorcycle helmets;
- Child restraint systems (child safety seats);
- Platform lift systems for the mobility impaired;
- Rear impact guards for trailers;
- Triangular reflective warning devices, and;
- Compressed natural gas containers.

The Vehicle Safety Act requires that motor vehicles and regulated items of motor vehicle equipment produced for sale in the United States be certified to comply with all applicable FMVSS. See 49 U.S.C. 30115. Motor vehicle equipment items that are not subject to the FMVSS do not require certification; however, such items may be found (by either NHTSA or the manufacturer) to have a safety-related defect, and if so, the manufacturer will have an obligation to furnish owners of the equipment with notification of, and a remedy for, the defect, usually at no charge to the consumer.

Type approval[27] is not required for motor vehicles and motor vehicle equipment sold in the United States. NHTSA does not issue type approval certifications and does not certify any motor vehicles or motor vehicle equipment as complying with applicable FMVSS. Instead, in accordance with 49 U.S.C. 30115, we have in place a "self-certification" process, which imposes responsibility on the manufacturer to certify the vehicle or equipment item as complying with the applicable FMVSS. Self-certification reduces the cost and time associated with lengthy, government-mandated testing that is required under type approval. Self-certification also reduces regulatory costs and facilitates international trade because it allows manufacturers to quickly bring to market vehicles and equipment items that incorporate safety and technology advancements.

The Vehicle Safety Act requires the exercise of "reasonable care" in issuing a certification of compliance with safety standards. See 49 U.S.C. 30115. To this end, NHTSA encourages manufacturers to conduct tests as specified in certain of the FMVSS. See 49 CFR part 571.

(ii) NHTSA Compliance Program

NHTSA's primary mission is to save lives, prevent injuries, and reduce economic costs due to road traffic crashes. The agency's enforcement activities, which are directed at vehicles and equipment items, are structured so that they will have the greatest impact on safety. Consistent with this approach, each year the agency purchases more than 100 vehicles and conducts more than 500 crashworthiness and crash avoidance performance tests on those vehicles, and more than 1,200 performance tests on regulated equipment items to assure compliance with all applicable standards. As part of its enforcement program, NHTSA's Office of Vehicle Safety Compliance (OVSC) also inspects regulated equipment items at industry trade shows and conducts "spot checks" of vehicles and equipment items at retailers to assure compliance with all applicable FMVSS. In the event of a test failure, OVSC conducts an investigation to determine whether a noncompliance exists. NHTSA will ask the fabricating manufacturer and/or importer to provide the basis for the certification that the vehicle or equipment item complies with applicable FMVSS, and the agency may perform additional testing. If NHTSA concludes that a product does not comply with an applicable FMVSS the fabricating manufacturer and/or importer must furnish owners or dealers with notification of, and a remedy for, the noncompliance, usually without charge.

(iii) NHTSA Defect Investigations

In addition to conducting tests and inspections to determine whether

[26] It is wise for manufacturers and importers to become familiar with other laws not administered by NHTSA, such as the pertinent environmental laws administered by the Environmental Protection Agency, which could impact the decision to sell products in the United States.

[27] In many countries, before motor vehicles or motor vehicle equipment items may be sold to consumers, the fabricating manufacturer must prove that these items comply with safety regulations and receive pre-approval from a government agency. This approach is commonly referred to as "type approval." For example, the Vehicle Certification Agency, an Executive Agency of the United Kingdom Department for Transport, administers type approval in the U.K. See: *http://www.vca.gov.uk/index.asp*. Under type approval, a manufacturer submits production samples and specifications to an approved laboratory and if the product complies with the standards, the government issues a type approval certificate of compliance. Because this can take many months, the manufacturer begins the process of obtaining type approval well in advance of bringing the product to market. After type approval is granted, the manufacturer ensures that each vehicle or equipment item is produced in conformance with the specifications that were submitted for approval. If countries enter into international agreements covering vehicle safety regulations, one country's type approval may be valid for another member country.

selected motor vehicles and motor vehicle equipment comply with the FMVSS, NHTSA through its Office of Defects Investigation, investigates potential safety-related defects in motor vehicles and motor vehicle equipment items. NHTSA has authority to investigate possible safety-related defects in a motor vehicle equipment item regardless of whether the item is subject to the FMVSS. When an item is subject to an FMVSS, compliance with the standard does not ensure that the item is free of a safety-related defect. NHTSA investigates numerous vehicles and items of equipment each year for possible defects.

Before initiating an investigation of a suspected safety-related defect, NHTSA reviews information and data from several sources, including consumers and manufacturers to determine whether a defect trend may exist. Consumers submit complaints related to issues or problems in particular makes and models of vehicles and equipment. Manufacturers submit quarterly reports to NHTSA pursuant to the agency's Early Warning Reporting (EWR) regulations that implement the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of 2000. These regulations require manufacturers, including by definition, importers, to submit information that could assist the agency in determining whether a safety-related defect exists in a vehicle or equipment item used in the United States. See 49 CFR part 579, subpart C. The regulations divide manufacturers of motor vehicles and motor vehicle equipment into two groups with different responsibilities for reporting information that could indicate the existence of potential safety-related defects.

The first group comprises larger volume manufacturers of motor vehicles, and all manufacturers of child restraint systems and tires. In general, the larger volume vehicle manufacturers must report separately on four categories of vehicles (if they produced, imported, offered for sale, or sold 500 or more of a category annually in the United States): (1) Light vehicles, (2) medium-heavy vehicles and all buses, (3) trailers, and (4) motorcycles. These larger volume vehicle, child restraint, and tire manufacturers must generally report to NHTSA production-related information, incidents related to a death or injury, consumer complaints, warranty claims (warranty adjustments for tires), property damage claims, and field reports.

The second group of manufacturers comprises all other manufacturers of motor vehicles and motor vehicle equipment, *i.e.*, vehicle manufacturers that produce, import, or sell in the United States fewer than 500 light vehicles, medium-heavy vehicles (including buses), motorcycles, or trailers annually; manufacturers of original motor vehicle equipment; and manufacturers of replacement motor vehicle equipment other than child restraint systems and tires. These manufacturers must submit a report if they receive a claim or notice related to an incident involving a death, but are not required to report any other information under the EWR rule. Manufacturers and importers are encouraged to review the agency's Web site for more comprehensive EWR information. See *http://www-odi.nhtsa.dot.gov*.

Under other NHTSA regulations at 49 CFR 579.5 and 579.6, all vehicle and equipment manufacturers in both groups must provide copies of all documents sent or made available to more than one dealer, distributor, owner, purchaser, lessor or lessee, in the United States concerning customer satisfaction campaigns, consumer advisories, recalls, or other activities involving the repair or replacement of vehicles or equipment. A manufacturer must also report safety recalls and other safety campaigns it conducts in a foreign country that cover a motor vehicle, an item of motor vehicle equipment, or a tire that is identical or substantially similar to such a product offered for sale or sold in the United States. See 49 CFR part 579, subpart B.

After reviewing all the relevant information, the agency may open an investigation to determine the existence of a safety-related defect. At the conclusion of the agency's investigation, if the agency determines that a safety-related defect exists, but the manufacturer refuses to conduct a recall, the agency will hold a public hearing. After the public hearing, NHTSA may order the manufacturer to conduct a recall.[28] If the manufacturer fails to obey such an order, NHTSA may bring an action in Federal court to compel the recall.

NHTSA, through its Recall Management Division, maintains the administrative records for all safety recalls, and monitors these recalls to ensure that the scope is appropriate, and that the recall completion rate and remedy are adequate. NHTSA's monitoring of recall performance may lead to the opening of a recall investigation if the facts appear to indicate a problem with the adequacy or execution of the recall. A recall investigation may result in expanding the scope of a previously announced recall or in the adjustment of an existing recall remedy.

(iv) Duty To Notify NHTSA of a Noncompliance With an FMVSS or a Safety-Related Defect

Notwithstanding its certification of a product, a manufacturer may subsequently determine that a noncompliance with an FMVSS or a safety-related defect exists in a motor vehicle or a motor vehicle equipment item it has produced. Manufacturers have a duty to notify NHTSA if they learn the vehicle or equipment contains a defect and in good faith they decide that the defect is related to motor vehicle safety, or in good faith they decide that the vehicle or equipment does not comply with an applicable FMVSS. See 49 U.S.C. 30118(c). The manufacturer must notify NHTSA within five working days after determining the existence of a noncompliance or a safety-related defect. See 49 CFR 573.6. Alternately, as discussed above, NHTSA may determine the existence of a noncompliance or a safety-related defect in a particular motor vehicle or motor vehicle equipment item and order the responsible manufacturer to recall the product. See 49 U.S.C. 30118(b).

(v) Duty to Notify Owners and Dealers and Provide a Remedy for a Noncompliance or a Safety-Related Defect

Regardless of whether the noncompliance with an FMVSS or a safety-related defect is determined to exist by the manufacturer or by NHTSA, the manufacturer must provide owners and dealers of the affected products with notification of the noncompliance or defect and must remedy the noncompliance or defect, usually without charge. See 49 CFR part 577. There is a limited exception under which a manufacturer that has reported a noncompliance or safety-related defect to NHTSA may petition the agency for a determination that the noncompliance or defect is inconsequential as it relates to motor vehicle safety.[29] See 49 CFR part 556. The notification and remedy process is commonly referred to as a "safety recall campaign" or more simply

[28] See 49 U.S.C. 30118(b) and 49 CFR part 554.

[29] The Vehicle Safety Act gives NHTSA the authority to exempt manufacturers from the requirement to provide notification and remedy for noncompliances or safety-related defects if the agency determines that the noncompliance or defect is inconsequential as it relates to motor vehicle safety. See 49 U.S.C. 30118, 30120. The procedures for implementing this statutory authority are set forth in 49 CFR part 556, Exemption for Inconsequential Defect or Noncompliance.

as a "recall." NHTSA monitors the remedy program to ensure its successful completion. The agency is not authorized to expend its funds on recalls; the expense of notifying owners and providing a remedy must be borne by the fabricating manufacturer and/or importer of the products found to contain the noncompliance or defect. See 49 U.S.C. 30118–30120.

(vi) Importer's Recall Obligations

An importer's primary obligation is to assure that the motor vehicle or item of motor vehicle equipment subject to the FMVSS that it imports into the United States contains the required certification of compliance with those standards. If a fabricating manufacturer is not located in the United States and does not conduct business operations in this country, including through a subsidiary or other controlled entity, the U.S. judicial system likely will not be able to effectively compel the foreign manufacturer to conduct a recall. In that case, the burden of providing notification to owners and dealers and a free remedy will fall solely upon the importer, unless the fabricating manufacturer voluntarily supports the recall. This is because under the Vehicle Safety Act, importers of motor vehicles and motor vehicle equipment for resale are considered "manufacturers" for the purposes of notification and remedy. See 49 U.S.C. 30102(a)(5). Where the fabricating manufacturer or importer finds a noncompliance or safety defect in a motor vehicle or equipment item imported into the United States, compliance with notification and recall responsibilities by either the manufacturer or the importer of the vehicle or equipment item is considered to be compliance by both. See 49 CFR 573.3(b).

Importers must therefore recognize that they have obligations under the Vehicle Safety Act, which continue after motor vehicles or items of motor vehicle equipment are sold to consumers within the United States. If an importer becomes aware that a vehicle or equipment item it has imported does not comply with an applicable FMVSS or contains a defect related to motor vehicle safety, it must provide NHTSA, as well as owners and dealers of the affected vehicles or equipment, with notification of the noncompliance or defect and must remedy the noncompliance or defect, usually without charge to the consumer. An importer also has notification and remedy responsibility if NHTSA determines the existence of the noncompliance or defect and orders it to undertake a notification and remedy campaign. Importers should be fully familiar with all of the recall-related provisions of 49 CFR parts 573 and 577.

(vii) Compliance Needed To Import Motor Vehicles and Equipment

As part of its safety mandate, NHTSA monitors motor vehicles and items of motor vehicle equipment that are imported into the United States for compliance with applicable FMVSS and regulations. To be imported free of restriction, a motor vehicle less than 25 years old must be manufactured to comply with all applicable FMVSS and bear a label certifying such compliance that is permanently affixed by the vehicle's manufacturer. To be lawfully imported, a new or used item of motor vehicle equipment that is subject to an FMVSS must, as originally manufactured, conform to the standard and be so certified. In most instances, certification of compliance with the applicable FMVSS for regulated safety equipment is evidenced by the symbol "DOT" either inscribed on the equipment item in a prescribed location, or placed on the outside of the container in which the equipment item is shipped. See 49 U.S.C. 30112 and 30115.

(viii) Procedural Requirements for Fabricating Manufacturers

Before offering a vehicle or motor vehicle equipment item for sale in the United States, the fabricating manufacturer must: (1) Comply with the requirements to designate a permanent resident of the United States as its agent for service of process if the fabricating manufacturer is not located in the United States (49 CFR part 551, subpart D *Service of Process on Foreign Manufacturers and Importers*) and (2) submit to NHTSA identifying information on itself and the products it manufactures to comply with the FMVSS, not later than 30 days after the manufacturing process begins (49 CFR part 566 *Manufacturer Identification*).[30] The fabricating manufacturer of a motor vehicle must also submit to NHTSA information the agency will need to decipher the manufacturer's vehicle identification number (VIN) format not later than 60 days prior to offering the first vehicle for sale in the United States (49 CFR part 565 *Vehicle Identification Number Requirements*). The fabricating manufacturer of certain regulated equipment items such as brake hoses, glazing (automotive glass and plastics), and tires must label its products with identification numbers assigned to the manufacturer by NHTSA.[31]

(ix) Recordkeeping for Manufacturers

A new tire manufacturer is required by NHTSA regulations to permanently mold into each tire intended for use on a motor vehicle a "tire identification number" or "TIN." See 49 CFR 574.5. Tire distributors and dealers that are owned or controlled by tire manufacturers are required to send to the tire manufacturers, records of any new tires they sell, including the TINs of the tires and the name and address of the tire purchasers. Independent tire distributors or dealers are required to furnish tire registration forms that identify the TIN and the tire distributor or dealer's name and address to the purchasers of new tires, who may then mail the forms to the tire manufacturer. Instead of furnishing the tire purchaser with a registration form, independent tire distributors or dealers may electronically transmit tire purchaser and tire registration information to the tire manufacturer by secure means, as identified or authorized by the manufacturer.[32]

Tire manufacturers must maintain information from the registration forms for a period of not less than 5 years from the date on which the information is recorded. Motor vehicle manufacturers are required to maintain records of the TINs for the tires installed on their vehicles and the name and address of the first purchasers of their vehicles for 5 years from the date that the vehicles are sold. These requirements are intended to ensure that purchasers receive proper notification in the event that a tire is recalled to remedy a noncompliance or safety-related defect. See 49 CFR part 574.

In like manner, the manufacturer of a child restraint system (i.e., a child safety seat), other than one installed on a vehicle as newly manufactured, must furnish a registration form to be completed by the owners of those seats and retain information from the form for a period of not less than 6 years to ensure that the owners receive proper notification during a recall campaign. See 49 CFR part 588.

[30] NHTSA maintains a list of these manufacturers on its Web site. See *http://www.nhtsa.dot/cars/rules/manufacture.*

[31] See 49 CFR 571.106, paragraph S5.2.2(b), relating to brake hoses; 49 CFR 571.205, paragraph S6.2, relating to glazing; and 49 CFR 574.5, relating to tires.

[32] NHTSA amended regulations at 49 CFR part 574 to accommodate and facilitate Internet and other electronic registration of tires, including voluntary registration of tires by independent dealers. The amendments are effective January 27, 2009; however, optional compliance with these amendments was permitted as of November 28, 2008. See 73 FR 72358.

NHTSA regulations also require manufacturers of motor vehicles and motor vehicle equipment to retain claims, complaints, reports, and other records concerning alleged and proven defects and malfunctions that may be related to motor vehicle safety for a period of five calendar years from the date on which they were generated or acquired by the manufacturer.[33] See 49 CFR part 576. Under section 576.8 of this regulation, "malfunctions that may be related to motor vehicle safety" are defined as including any failure or malfunction beyond normal deterioration in use, or any failure of performance, or any flaw or unintended deviation from design specifications, that could in any reasonably foreseeable manner be a causative factor in, or aggravate, a crash or an injury to a person. Section 576.6 describes the records that manufacturers must maintain, including all documentary materials, films, tapes, and other information-storing media that contain information concerning malfunctions that may be related to motor vehicle safety. The section describes such records as including, but not being limited to, reports and other documents, including material generated or communicated by computer, telefax or other electronic means, that are related to work performed under warranties; and any lists, compilations, analyses, or discussions of such malfunctions contained in internal or external correspondence of the manufacturer, including communications transmitted electronically. Importers may wish to consider purchasing products from fabricating manufacturers that comply with this regulation.

(x) Penalties

Fabricating manufacturers and importers may be subject to substantial civil penalties for failure to meet the requirements of the statutes and regulations that NHTSA administers. See 49 U.S.C. 30165. Currently, those penalties can be as high as $6,000 for each violation with a maximum of $16,375,000 for a related series of violations. See 49 CFR part 578. For example, the failure of a fabricating manufacturer or importer to furnish notification of a noncompliance or defect to owners or to NHTSA may subject the fabricating manufacturer or importer to substantial civil penalties.

(b) Exercise Great Care in Selecting Foreign Fabricating Manufacturers

(i) Establishing a Business Plan

International trade presents unique risks. A company engaged in importing foreign manufactured goods or considering becoming an importer should have a complete and detailed business plan. The plan should reflect careful consideration of the following questions:

- Who will determine the specifications for the product?
- On what basis will the product specifications be developed?
- Who will design the product?
- Who will verify the product's design?
- What laboratory and field tests will be undertaken?
- Who will test product prototypes?
- What entity will fabricate various parts?
- What manufacturing quality control will be undertaken?
- How will manufacturing quality control be maintained?
- How often will products be tested to ensure continued compliance with the FMVSS?
- What documentation will be generated?
- What documentation will be maintained?
- Who will maintain the documentation?
- Who will check the documentation?

Compliance with FMVSS at the time of manufacture is only a part of these considerations. Motor vehicles and equipment operate in harsh conditions over many miles and some abuse must be assumed; therefore, avoidance of safety-related defects that may develop during use of the product is critical.

(ii) Minimizing Risks

Selecting a capable and responsible overseas business partner is one of the best ways to minimize risks. Before selecting a business partner in another country, it is wise to investigate the fabricating manufacturer's reputation using readily available public source information (such as the Internet) or, if possible, by interviewing other customers of the fabricating manufacturer. It is advisable for a prospective importer to check many references and not to limit its inquiries to references that the prospective manufacturer identifies. If the country in which a fabricating manufacturer is located has an established government agency to oversee product safety, that agency's public records may contain useful information on the company's history of recalls and regulatory compliance. Importers may also wish to consider requesting the potential fabricating manufacturer's catalogs and sample products for evaluation.

It may be wise to look for a fabricating manufacturer that has prior experience with exporting to the United States. By selecting such a fabricating manufacturer, the importer has some assurance that the manufacturer understands the supply-chain and logistics issues associated with supplying a foreign purchaser and that it has some experience in meeting the demands of a U.S. customer.[34]

The U.S. Department of Commerce also offers an *International Company Profile Report* that may assist importers in evaluating potential foreign partners. This report summarizes the financial strength of a company and provides useful information gleaned from the local press, industry contacts, and other sources. More information about this service is available on the Department of Commerce Web site. See *http://www.export.gov/salesandmarketing/ICP.asp.* When considering doing business in China, it may be advisable to know that organizations such as the U.S.-China Business Council, the American Chambers of Commerce in China, and the Department of Commerce's Foreign Commercial Service assist U.S. companies and they may be a good starting point for selecting a reliable Chinese fabricating manufacturer.[35]

Importers may wish to consider selecting more than one foreign fabricating manufacturer to manufacture their products. By doing so, an importer's operations may remain viable when one of its fabricating manufacturer's products is found to contain a noncompliance or safety defect and a recall becomes necessary.[36]

At a minimum, it is prudent for importers to use existing sources of information to ensure that they will purchase, import, distribute, and sell motor vehicles and motor vehicle equipment items subject to the FMVSS that are produced by foreign fabricating manufacturers who:

1. Properly identify themselves and their products to NHTSA (49 CFR part 566);

[33] Under 49 CFR 576.5(c), manufacturers need not retain copies of documents transmitted to NHTSA pursuant to 49 CFR part 573 (notification to NHTSA of safety-related defects and noncompliances with FMVSS); 49 CFR part 577 (notifications of defects or noncompliances with FMVSS made to owners, dealers, and distributors); and 49 CFR part 579 (EWR reporting to NHTSA).

[34] Merritt R. Blakeslee, "Sourcing Your Products from China without Losing Your Shirt, Your Intellectual Property, or Your Customers—Parts I and II" (Washington, DC, December 2007 and February 2008), p. 5, *http://sema.org/main/semaorghome.aspx?id=58637.*

[35] Ibid, p. 5.

[36] Ibid, p. 7.

2. Comply with the requirements to designate a permanent resident of the United States as its agent for service of process if the fabricating manufacturer is not located in the United States (49 CFR part 551, subpart D);

3. Furnish NHTSA with VIN-deciphering information (if they manufacture "motor vehicles") (49 CFR part 565); and

4. Certify their products as complying with all applicable FMVSS and so label their products (49 U.S.C. 30115).

(iii) Product Design Considerations

It would be advisable for the importer to focus on the specifications for, and design of, the product and the requirements of all applicable FMVSS covering the product that it wishes to import before beginning negotiations with a prospective overseas business partner. The importer should be well informed about U.S. import regulations and any FMVSS requirements that cover the products the importer intends to import. Before discussions take place with a prospective fabricating manufacturer, it may be worthwhile for the importer to have translated into the language used by that manufacturer the FMVSS that are applicable to the product and the agency regulations pertaining to manufacturers located outside the United States. It is reasonable to discuss with the prospective fabricating manufacturer at the outset the need for incorporating the requirements of the applicable FMVSS into the product's design because it is far less expensive to change the product's design in the planning stage than after the product is manufactured, when tooling must be changed or an expensive safety recall conducted. If the importer intends to have the manufacturer produce a replacement part for a motor vehicle, the part installed as original equipment may be used as a reference, keeping in mind the need to avoid infringing on any applicable patent.

The importer and fabricating manufacturer may wish to consider conducting a review of the product's design (a "design review") that involves examining the product's configuration, the materials used in its fabrication, and its labeling and packaging.[37] Importers without staff expertise and experience in design review may consider hiring a qualified consultant. It may be worthwhile for the design review to include a foreseeable use analysis,[38] which involves integrating safety into the product's design. An effective foreseeable use analysis may reveal substantial safety hazards that involve risks of injury or impairment of health that are related to the product's characteristics or deficiencies.

Because products may contain safety defects even if they comply with all applicable FMVSS, or when no FMVSS applies, the importer may wish to measure the product's design against a known set of objectives for the product and compare the product's design to that of similar products produced by other manufacturers. When no FMVSS apply, it may also be sensible to measure the product's design against accepted product standards such as a set of voluntary industry standards, should one exist.[39] To find applicable standards, importers and fabricating manufacturers may wish to check the Web sites of standard-setting bodies for products of the type at issue, such as the Underwriters Laboratories Inc. (UL), American National Standards Institute (ANSI), American Welding Society (AWS), ASTM International (originally the American Society for Testing and Materials or ASTM), and the Society of Automotive Engineers, International. See: *http://www.sae.org*. Manufacturers of certain automotive replacement parts such as lighting equipment may wish to visit the Web site of the Certified Automotive Parts Association (CAPA) for more information about that organization's certification program. See *http://www.capacertified.org/home.asp*. These examples are not intended to be all-inclusive. It may be desirable for an importer to contact other standard-setting and certification organizations associated with the type of products it wishes to have manufactured, should such organizations exist.

Some fabricating manufacturers use other systematic analysis tools such as a Failure Modes and Effects Analysis (FMEA)[40] to identify potential safety hazards and to improve their products over time by reducing or eliminating failures. Using FMEA, failures can be prioritized according to how serious their consequences are, how frequently they may occur, and how easily they can be detected.[41]

It may be advisable to have parties with expertise in standards and regulations compliance, in-use durability, quality assurance, and customer service examine the results of the importer's product design review. Importers and fabricating manufacturers that do not have in-house expertise may consider using an accredited test laboratory to evaluate the safety of a product.[42]

(iv) Product Design Records and Traceability

Importers should consider creating records that identify changes in the product's design or in the production process and to incorporate changes that affect the product's use into the documents that accompany the product when sold. When changes are made to the product's design or to the production process, importers should obtain additional test data to assure the product continues to comply with stated technical specifications and with all applicable FMVSS. For traceability[43] or recall reasons, changed products can be identified by being marked or stamped with "date" or "lot" codes, or in another manner that distinguishes new products from old. It makes good sense to use current versions of the supporting technical documentation such as drawings; replacement parts data; instructions for the product's production, inspection, testing, and repair; as well as operating handbooks, and to remove from use obsolete documents and data.[44]

(c) Inspect Foreign Manufacturing Facilities

(i) Evaluating the Manufacturer's Company, Factory, and Staff

Before entering into a written contract, we believe it is prudent for the importer to personally visit the fabricating manufacturer's facility and to determine whether the manufacturer is properly licensed by the appropriate government agencies. It may also be reasonable to hire a consultant if the importer has limited knowledge of, or experience with, the culture and trade practices of a foreign country. Several trips may be necessary to conduct an objective evaluation of the company, its factory, and its management. To reduce the potential for fraud, it is preferable to deal directly with the fabricating manufacturer and to avoid dealing with

[37] U.S. Consumer Product Safety Commission (CPSC), "Handbook For Manufacturing Safer Consumer Products" (Washington, DC, July 2006), p. 9 *http://www.cpsc.gov/businfo/intl/hondbookenglishoug05.pdf*. Note: many of our suggestions are based on CPSC's Handbook, which provides a wealth of helpful ideas that are generally applicable to various types of manufacturing processes.

[38] Ibid, p. 10.

[39] Ibid, p. 26.

[40] The FMEA process was originally developed by the U.S. military in the 1940s. See: American Society for Quality, *http://www.asq.org/learn-about-quality/process-analysis-tools/overview/fmea.html*.

[41] CPSC Handbook, p. 10.

[42] Ibid, p. 10.

[43] Ibid, p. 25.

[44] Ibid, p. 24.

representatives (such as trade groups) that claim to represent a manufacturer. When dealing with a business partner of the fabricating manufacturer, it is generally advisable to determine whether the partner is a subsidiary of a larger company [45] and whether the importer has recourse against the parent company if the subsidiary defaults on its obligations.

(ii) Assuring Quality Control

While visiting a fabricating manufacturer's foreign facilities, the importer may consider asking the manufacturer's production managers to identify the quality control mechanisms that are in place (e.g., ISO 9000 series quality assurance compliance) and it may be helpful to observe whether there is evidence of good quality workmanship. The importer should also be aware that other quality management systems are used such as ISO/TS16949, which was jointly developed by the International Automotive Task Force (IATF) [46] and submitted to the ISO for approval and publication. [47] ISO/TS16949 applies to the design and development, production, and, as relevant, the installation and servicing of automotive-related products.

(iii) Protecting Intellectual Property, Trademarks, Copyrights, Patents, and Trade Secrets

During the on-site visit, the importer should look for counterfeit commodities or evidence of trademark or copyright violations such as fraudulent seals made to look like those produced by certification organizations. We believe that it is in the best interest of an importer to consider protecting its intellectual property, trademarks, copyrights, patents, and trade secrets. While NHTSA does not have authority to enforce statutes that prohibit counterfeit products from being imported and the agency is aware that in some situations counterfeit products may, in fact, comply with applicable FMVSS, we believe it is prudent for importers to avoid business dealings with known or suspected counterfeiters because evidence of counterfeiting activities demonstrates the company's disdain for compliance with accepted norms, which may extend to safety standards. [48] Importers should be aware that many Federal departments and agencies are working with industry to stop the proliferation of counterfeit products. [49] For example, importers should be aware that the International Trade Administration of the U.S. Department of Commerce, has posted on its Web site an "IPR Toolkit—Intellectual Property Rights in China" that describes how to develop an intellectual property strategy plan, including what is involved in registering intellectual property in China. [50] Also assisting in these efforts are many independent organizations such as the U.S. Chamber of Commerce, which represents more than three million businesses. [51]

(iv) Reaching Agreement on Whether Products are Substandard, Nonconforming, or Defective

It is advisable to reach agreement with a prospective fabricating manufacturer on what constitutes substandard or defective products, and on who will be responsible for conducting recalls of products that have a noncompliance with an FMVSS or safety-related defect. Of particular importance in this context are the importer's obligations under the Vehicle Safety Act to make determinations as to whether a product does not comply with an FMVSS or contains a safety-related defect. The importer should make clear to the foreign fabricating manufacturer that the importer makes the determination of a noncompliance or safety-related defect under U.S. law regardless of the fabricating manufacturer's views. The importer must recognize that its legal duty to conduct a recall when the facts so warrant under the Vehicle Safety Act is not affected by the willingness of the foreign fabricating manufacturer to pay for all or some of the costs of the recall. Accordingly, the importer may wish to include provisions in the contract with the foreign fabricating manufacturer that covers contingencies, including recalls.

(v) Contract Considerations

All aspects of the product's design and the production process may be considered for inclusion in the written contract, such as inspection and testing procedures and any documentation the importer requires, including work orders, operation sheets, inspection logs, repair logs, and test procedure checklists. [52] The contract may also specify under what circumstances the product's design may be changed (if at all), what equipment must be used for particular manufacturing operations, product traceability measures to be employed, and the types of forms to be used for recording quantitative data such as test readings. It is useful for the contract to specify exact terms of payment, performance standards, and timelines for deliveries and payments. Other arrangements that are reached between the importer and fabricating manufacturer should also be made in writing, such as those covering the importer's rights to visit the production facility in order to provide guidance and conduct product inspections.

An agency's enforcement activities and the importer's legal duties may be complicated when the overseas fabricating manufacturer begins selling the importer's product to customers that have previously been buying directly from the importer. In the event of a product noncompliance, the agency must investigate the product importations by many, rather than just one importer. We therefore believe it is prudent for an importer to consider having contract language that prohibits the fabricating manufacturer from selling the importer's product (either with or without the importer's markings) to anyone except the importer. Without such assurances from the fabricating manufacturer, an importer may find that the manufacturer is performing the unauthorized manufacture (so-called "midnight runs") of the importer's products after business hours, which the manufacturer subsequently sells in the gray market. The importer may also consider not disclosing its customer lists to the manufacturer and not having the manufacturer drop-ship the importer's products to its customers because this provides an opportunity for the

[45] For example, see U.S. Department of Commerce (DOC), "Essential China Advice" (Washington, DC, 2001–2008) *http://www.buyusa.gov/china/en/chinabiztips.html* (February 22, 2008).

[46] IATF members include the following vehicle manufacturers: BMW Group, Chrysler LLC, Daimler AG, Fiat Group Automobiles, Ford Motor Company, General Motors Corporation (including Opel Vauxhall), PSA Peugeot-Citroen, Renault, Volkswagen AG and the vehicle manufacturers' respective trade associations—AIAG (U.S.), ANFIA (Italy), FIEV (France), SMMT (U.K.) and VDA (Germany).

[47] See: *http://www.iso.org/iso/catalogue_detail?csnumber=36155.*

[48] Importers should be aware that the U.S. Department of Homeland Security recently announced The National Intellectual Property Rights Coordination Center (IPR Center) to keep unsafe products out of the United States. See "DHS Announces New Center to Target Unsafe Products" (Washington, DC, July 11, 2008) *http://www.cbp.gov/xp/cgov/newsroom/highlights/target_center.xml.*

[49] The Office of the U.S. Trade Representative and the Departments of Commerce, State, Justice, and Homeland Security lead a government-wide initiative, the Strategy Targeting Organized Piracy (STOP!), to fight billions of dollars in global trade in pirated and counterfeit goods that cheat American innovators and manufacturers, hurt the U.S. economy and endanger consumers worldwide. See: *http://www.stopfakes.gov* or call 1–866–999–HALT.

[50] Ibid, p. 12. See also: *http://www.stopfakes.gov.*

[51] The U.S. Chamber of Commerce sponsors the Coalition Against Counterfeiting and Piracy. See: *http://www.thetruecosts.org/.*

[52] CPSC Handhook, p. 28.

manufacturer to deal directly with the importer's customers.[53]

The importer should obtain sound legal guidance before entering into an agreement. Following execution of the contract, it is wise to adhere to the contract provisions or risk the costs of a legal dispute in a foreign country. The importer should obey all laws and regulations of the foreign country and be wary of any offer by the partner to ignore or avoid those laws. Also, the importer may wish to become familiar with U.S. Department of Commerce, Bureau of Industry and Security (BIS) regulations relating to the transfer of dual use technology to certain foreign countries. U.S. statutes prohibit transfer of some sensitive technologies without a license. See *http://www.bis.doc.gov/2.*

While the contract between the importer and the fabricating manufacturer may clarify responsibilities between these entities, it does not modify the Vehicle Safety Act and has no bearing on NHTSA. The importer retains the obligations of a manufacturer for notification and recall under the Vehicle Safety Act and NHTSA regulations.

(vi) Monitoring Compliance With Contract Requirements

It may be imprudent to assume that the overseas operations will run by themselves. Visits to the foreign fabricating manufacturer on a frequent basis may be needed to evaluate the state of affairs. During these visits, the importer should, if possible, talk to employees to learn of any substitutions of materials, modifications of the product's design, and manufacturing problems that were encountered. The importer should verify that the fabricating manufacturer is complying with contractual requirements by inspecting the facilities, production operations, inspection and test records, supplies, and audit results. The importer should also ensure the product's continued compliance with the standards by having performed ongoing FMVSS compliance tests. This inspection and testing will provide feedback into the nature of the operation and is part of the importer's oversight of the operation and its quality assurance/quality control. The importer should not delay taking corrective action with the fabricating manufacturer when circumstances necessitate such action.[54]

(d) Inspect Goods Either Before They Are Exported to or Distributed in the United States

(i) Monitoring Production Outputs

Different products, designs, and fabrication processes will require various levels of precision and accuracy of manufacturing equipment and tooling.[55] In all manufacturing processes, there is a need to monitor how well the products meet given specifications because products will deviate from specifications for reasons such as new tooling, aging machinery, and human error. Fabricating manufacturers of quality products use mathematical models for calibrating production equipment, controlling the output of the manufacturing process, and auditing production processes to attain improvements. Therefore, importers may wish to carefully consider instituting a quality control program at the outset.

(ii) Sampling, Inspecting, and Testing Products

It would be wise for an importer to bear in mind that even though a product appears to be well manufactured, this does not necessarily mean that it also complies with applicable FMVSS and will not prove to be defective in actual use. While it is important to produce quality products, it is crucial that manufacturers test, on a continuing basis, their products to verify compliance with the FMVSS. To better shoulder the costs of any testing needed to assure compliance, smaller importers may wish to consider consortium purchasing, which would allow them to pool their resources.

To ensure that product requirements are within tolerances, it is sensible to collect product samples at predetermined intervals and inspect them for compliance with any specifications that are identified in advance. The purpose of the inspection is to assure that the products safely perform their intended functions. Inspection procedures may include a visual examination, testing with appropriate instruments, measuring, or other forms of evaluation.[56] Fabricating manufacturers collect production samples for inspection based on mathematical models, which are beyond the scope of this notice, but that are critical to ensuring the quality of the end products. More information relating to statistically valid sampling plans is available on Web sites such as that of the American Society for Quality. See *http://www.asq.org/index.html.* Test programs that are based on statistically valid sampling techniques will increase the probability that problems will be quickly identified and remedied before the products are shipped. Obviously, it is preferable from a cost perspective for nonconforming or substandard products to be discovered by the fabricating manufacturer before shipping costs are incurred.

It is generally expected that quality control issues will be greater within the first batch of products made by the new fabricating manufacturer. After the initial production run, the importer and fabricating manufacturer may want to conduct an inspection to determine whether the initial products function as intended, whether their dimensions are within tolerances, and whether their appearance is satisfactory. The importer and fabricating manufacturer may consider conducting comprehensive tests of representative products to ensure compliance with design specifications.

It is desirable to have an inspection plan to specify exactly what is to be inspected, how an inspection will be conducted and how often, and the types of gauges, tools, or instruments that will be used. If inspections are particularly critical to product safety, the inspection plan may require that they be performed by designated specialized or certified personnel.[57]

It would be advisable to include inspection procedures in the contract and any changes should be mutually agreed upon so that a record of changes is maintained. We also suggest that the contract clearly state how the costs of quality control inspection and any need to redesign a product or process based on such inspections will be apportioned.

(iii) Post-Production Quality Control

From the moment products leave the fabricating manufacturer until they are acquired by consumers, they are exposed to numerous contingencies that can affect their safety or usability. For these reasons, it is best not to terminate quality control measures at the port and the prudent importer might consider instituting quality control measures at storage locations and throughout the domestic distribution process. Distribution practices directly influence the safety of consumer products so it is wise to exercise control over packaging and shipping operations. This control includes the selection of adequate packaging materials, design of methods of packaging that preclude damage in

[53] Blakeslee Sourcing Your Products, pp. 6–9.
[54] CPSC Handbook, p. 10.
[55] Ibid, p. 28.
[56] Ibid, p. 35.
[57] Ibid, p. 36.

shipment, and selection of shipping methods consistent with the physical properties of the product. Packaging and shipping techniques may need to be revised as experience dictates. In those instances where distributors are involved in assembly or test operations before delivery to the consumer it is wise to provide them with current and adequate assembly and test instructions and the importer may wish to ensure that these instructions are followed.[58]

When quality control problems are encountered, it may be useful to determine what has caused the problem and to collaborate with the fabricating manufacturer and participants in the distribution process to remediate the cause and prevent similar future problems. We believe it is wise to keep in mind that reputable fabricating manufacturers want to be apprised of problems and will work for compliance with the importer's requirements and applicable government standards.

To prevent potentially dangerous products from being delivered to consumers, it may be desirable for importers and fabricating manufacturers to discuss the need for prompt corrective actions and to agree on those in advance. These actions may include determining what caused the problem, how to prevent future problems, and the removal of problem products from the production and distribution channels before they reach consumers.[59] Locating products within the production and distribution system is crucial to preventing hazardous products from being delivered to consumers after safety defects become apparent.

The importer may consider providing the overseas partner with training and technical assistance to assure product quality.[60] This commitment to quality control may minimize defect costs and maintain profits by ensuring the end user's satisfaction, thereby enhancing the prospect for repeat business. On the other hand, neglecting oversight may result in compromised product quality and could possibly lead to legal consequences at home and abroad. It is worth noting that the foreign country's court system may not be relied on to offer a legal settlement consistent with U.S. practice.[61]

(e) Identify the Product

(i) Identify the Product's Country of Origin

It is generally required that an imported product be properly marked with its country of origin. The pertinent statute, which is administered by CBP, requires that, unless excepted, every article of foreign origin (or its container) imported into the United States must be marked with the article's country of origin. See Section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304). The purpose of the marking requirement is to inform the ultimate purchaser in the United States of the country in which the imported article was produced.

Articles that are not marked at the time of importation with the English name of their country of origin may be subject to additional duties unless they are properly marked after importation, or are exported or destroyed under CBP supervision. CBP allows importers, where administratively practicable, to mark goods that are not marked at the time of importation, prior to their release from CBP's control or custody. This rule does not apply to an importer that has repeatedly violated the country of origin marking requirements after receiving written notification from CBP that the goods are required to be marked prior to importation.

It is also important to keep in mind that any person who removes, destroys, alters, covers, or obliterates, with the intent of concealing, the country of origin marking on an imported article could be subject to criminal prosecution.[62]

(ii) Identify the Product's Manufacturer

As noted above, items of motor vehicle equipment that are subject to the FMVSS must, as originally manufactured, conform to the applicable standard and be so certified. In most instances, certification of compliance with the applicable FMVSS for regulated safety equipment is evidenced by the symbol "DOT" either inscribed on the equipment item in a prescribed location, or placed on the outside of the container in which the equipment item is shipped. See 49 U.S.C. 30112 and 30115. The manufacturer of certain regulated equipment items such as brake hoses, glazing (automotive glass and plastics), and tires must label its products with identification numbers assigned to the manufacturer by NHTSA.

However, motor vehicle equipment items that are not covered by an equipment standard are not required by NHTSA regulations to be marked. NHTSA's enforcement efforts are complicated when unmarked products are noncompliant or have safety-related defects because it becomes more difficult to trace the products' origins and to request or order the fabricating manufacturer or importer to conduct a safety recall campaign. It is generally assumed that safety is enhanced when those who manufacture and import motor vehicles and items of motor vehicle equipment are accountable and that accountability may be compromised when products have no markings that identify their fabricating manufacturers or importers.

The agency is aware that many fabricating manufacturers voluntarily mark their products with information that identifies the manufacturer. When a fabricating manufacturer does not mark its products, it becomes difficult to discern whether those products were produced by the manufacturer in accordance with a legitimate business relationship or were counterfeited by an unscrupulous manufacturer. An all-too-real possibility is that the fabricating manufacturer or importer may have to initiate a recall for the counterfeit products and incur costs that it otherwise would not have had to pay if the legitimate products were easily identifiable with their markings.

The agency therefore believes it is in the best interests of importers and fabricating manufacturers to ensure that the legitimate manufacturer (and where feasible, the importer) is clearly identified on the product or its packaging. Readily apparent markings on the item itself are preferable, because after the item is in service, its packaging will usually not be available for reference purposes. It is important to keep in mind that such identification may limit a fabricating manufacturer or importer's recall liability to only those products that were actually manufactured or imported by those entities.

(iii) Identify the Product's Date or Lot Codes

The agency also believes it is reasonable for importers and fabricating manufacturers to consider marking products with "production date codes" or "lot codes." As noted above, by doing so items that do not comply with standards or that contain safety defects can be traced back to the point at which the manufacturing process was changed or to other changes that were made, such as purchases of raw materials from different suppliers. By doing so, a recall may be limited to an identified "lot" of products or to products manufactured in a specific date range, thereby reducing the overall cost of the recall.

[58] Ibid, p. 40.
[59] Ibid, p. 45.
[60] U.S. DOC Essential Advice.
[61] Ibid.
[62] U.S. Customs and Border Protection (CBP), "Marking of Country of Origin" (Washington, DC, December 2004) Publication # 0000–0539 *http://www.cbp.gov/xp/cgov/toolbox/publications/trade/* (February 22, 2008).

(iv) Industry Recommended Practices or Standards for Product Markings

The agency is aware that many fabricating manufacturers also voluntarily mark their products in accordance with industry guidance to show that the products conform to established standards or recommended practices. Industry guidance is typically derived from broadly accepted specifications for a product. As an example, SAE Recommended Practice J759 entitled "Lighting Identification Code," provides guidelines to manufacturers of lighting products that specify permanent markings that identify the product's manufacturer, the function for which it was designed, the model or part number, the class designation, and the product's application.[63] When such guidance is available, the agency believes that importers and fabricating manufacturers should give it serious consideration.

(f) Establish a Consumer Service Program

It is wise for importers to establish and maintain an effective consumer service program because good service leads to satisfied customers and repeat business. An effective consumer service program may also assist the importer in quickly identifying quality control and safety-related problems and allow the importer to remedy those problems before they become widespread. Importers should consider establishing a consumer service program that includes the following elements:

(i) Consumer Education

An effective consumer service program will inform consumers through product manuals or instructions on how products are to be assembled, installed, and operated to prevent safety hazards. For example, NHTSA recommends that consumers read the instruction manual provided with a newly purchased child safety seat as well as the seat belt and child seat installation section of their vehicle owner's manual before attempting to install and use a child safety seat.

(ii) Product Service

An effective consumer service program will make it easy for consumers to obtain replacement parts and will inform consumers how and where to take the product for servicing, particularly for deficiencies or malfunctions that are potential causes of safety hazards. Importers may consider providing a U.S. telephone number with the product for consumers to call if they have questions regarding the product.

(iii) Recordkeeping

An effective consumer service program will include a records system that identifies a product by serial number, model, and date of manufacture and that identifies its location in the distribution system and after sale to a consumer. Importers should be aware that recordkeeping becomes very important for notifying consumers, dealers, and distributors of products when a safety recall is announced.

(iv) Safety Recall Plan

An effective consumer service program will include a plan for the rapid recall of imported products from consumers, distributors, and dealers. The plan should include procedures to inform consumers how the importer will respond to noncompliances with the FMVSS or safety defects that are determined to exist in a product.[64] The recall plan should also establish procedures for notifying NHTSA about noncompliances with the FMVSS or safety-related defects as required by agency regulations. The recall plan should be periodically evaluated and amended as necessary.

(v) Intervention

If a noncompliance or safety-related defect becomes apparent, an effective consumer service program will assist an importer in locating products within the production and distribution system and help to prevent problem products from being delivered to consumers.

(vi) Notification

In the event of a recall, the most important factor is the ability to inform as many owners, dealers, retailers, and distributors of the product as possible. Notifying owners ordinarily will be the importer's responsibility. While it may be impractical to maintain records identifying all retail purchasers of a particular consumer product, the importer may wish to make a reasonable effort in that direction by requesting distributors, dealers or retailers to maintain such records or by including with products self-addressed mailing cards for consumers to use, if they so choose, to register their ownership of the product.[65] Where it is a requirement to maintain records identifying retail purchasers of a product, such as is the case for tires, child restraint systems, and motor vehicles, the importer must ensure that distributors, dealers, and retailers understand their obligations under existing regulations. For example, see 49 CFR part 574 *Tire Identification and Recordkeeping* and 49 CFR part 588 *Child Restraint Systems Recordkeeping Requirements.*

(vii) Business Process Monitoring

Other than complaints received directly from the importer's consumer service program, information that could assist in identifying noncompliances with the FMVSS or safety-related defects includes insurance claims, lawsuits, product return data from business partners, the results of ongoing quality assurance testing, and information about products that share common parts or platforms. The importer should also pay close attention to the EWR data it submits to NHTSA because that information may be very useful in identifying safety-related problems early in the product's history.

(g) Contact NHTSA Concerning Manufacturer/Importer Reporting Requirements, Safety Compliance, Defect Issues, and Regulations

Enhanced product safety for imported motor vehicles and equipment will result from a collaborative effort between the importer community, fabricating manufacturers, and NHTSA. To this end, we offer the following agency contact numbers and Internet resources to help answer questions about these recommended best importer practices.

OFFICE OF VEHICLE SAFETY COMPLIANCE

Topic	NHTSA Office/Internet	Telephone No.
General questions about importing vehicles and equipment items	Import and Certification Division.	(202) 366–5291
General Importation Information:	*http://www.nhtsa.dot.gov/cars/rules/import/*	

[63] See: www.sae.org/standardsdev/.

[64] CPSC Handbook, p. 42.

[65] Ibid, p. 45.

OFFICE OF VEHICLE SAFETY COMPLIANCE—Continued

Topic	NHTSA Office/Internet	Telephone No.
Questions about how a manufacturer informs NHTSA about its company and the products it manufactures.	Import and Certification Division.	(202) 366–5291
Questions about how to provide NHTSA with the manufacturer's vehicle identification number deciphering information.	Import and Certification Division.	(202) 366–5291
Questions about NHTSA ID numbers that are assigned to equipment manufacturers of brake hoses, glazing (glass), and tires.	Equipment Division	(202) 366–5322
Information to Assist New Manufacturers:	*http://www.nhtsa.dot.gov/cars/rules/maninfo/*	
Questions about FMVSS as they relate to equipment items (i.e., tires, rims, brake hoses, brake fluid, seat belt assemblies, lighting equipment, glazing (automotive glass and plastics), motorcycle helmets, child restraint systems (child safety seats), platform lift systems for the mobility impaired, rear impact guards for trailers, triangular reflective warning devices, and compressed natural gas containers).	Equipment Division	(202) 366–5322
Federal motor vehicle safety standards (FMVSS):	*http://www.nhtsa.dot.gov/cars/rules/*	
NHTSA's Manufacturer Databases:	*http://www.nhtsa.dot.gov/cars/rules/manufacture*	
Government Vehicle Safety Information:	*http://www.safercar.gov/*	

OFFICE OF DEFECTS INVESTIGATION

Topic	NHTSA Office/Internet	Telephone No./ Link
Questions about Early Warning Reporting (EWR)	Early Warning Division ..	(202) 366–4238
Early Warning Reporting:	*http://www-odi.nhtsa.dot.gov/ewr/ewr.cfm*	
Questions about Defects and Recalls	Office of Defects Investigation.	(202) 366–5210
Defects Investigations:	*http://www-odi.nhtsa.dot.gov/*	

OFFICE OF CHIEF COUNSEL

Topic	NHTSA Office/Internet	Telephone No.
Questions about how the statutes and regulations administered by NHTSA are interpreted	Office of Chief Counsel.	Requests for interpretations should be made in writing.
NHTSA Chief Counsel interpretive letters:	*http://isearch.nhtsa.gov/*	
NHTSA Statutory Authorities:	*http://www.nhtsa.dot.gov/nhtsa/Cfc_title49/index.html*	
NHTSA Regulations:	*http://www.nhtsa.dot.gov/cars/rules/*	
Questions about how to designate a U.S. resident as an agent for service of process	Office of Chief Counsel.	(202) 366–1834
Suggested Designation of Agent for Service of Process 49 CFR Part 551, Subpart D:	*http://www.nhtsa.dot.gov/cars/rules/manufacture/agent/customer.html*	

(h) Know How To Obtain General Assistance With Other Federal Regulations

The Office of Management and Budget, in conjunction with the U.S. Small Business Administration, publishes a one-stop Internet resource to make it easier for fabricating manufacturers and importers to understand Federal regulations, including those administered by NHTSA. This Web site provides a point of contact at each agency to answer specific questions.[66] See: *http://www.business.gov/contacts/federal/.* U.S. Customs and Border Protection (CBP), an agency of the U.S. Department of Homeland Security, has also published "*Importing into the United States: A Guide for Commercial Importers,*" which provides wide-ranging information about the importing process and import requirements. See: *http://www.cbp.gov/xp/cgov/toolbox/publications/trade/.*

Authority: E.O. 13439, 72 FR 40051.

David Kelly,

Acting Administrator.

[FR Doc. E8–30603 Filed 12–23–08; 8:45 am]

BILLING CODE 4910–59–P

[66] The Small Business Paperwork Relief Act of 2002 (SBPRA) requires each Federal agency to establish a point of contact to act as a liaison between the agency and small businesses. In addition, SBPRA requires the Office of Management and Budget (OMB), in conjunction with the Small Business Administration, to publish on the Internet a list of compliance assistance resources available at Federal agencies for small businesses.

DEPARTMENT OF TRANSPORTATION

Research & Innovative Technology Administration

Agency Information Collection; Activity Under OMB Review; Submission of Audit Reports—Part 248

AGENCY: Research & Innovative Technology Administration (RITA), Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved

collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 7, 2008 (73 FR 58708).

DATES: Written comments should be submitted by January 23, 2009.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, RTS–42, Room 4125, RITA, BTS, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, Telephone Number (202) 366–4387, Fax Number (202) 366–3383 or e-mail *bernard.stankus@dot.gov.*

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2138–0004.

Title: Submission of Audit Reports—Part 248.

Form No.: None.

Type of Review: Extension of a currently approved collection.

Respondents: Large certificated air carriers.

Number of Respondents: 77.

Number of Responses: 77.

Total Annual Burden: 20 hours.

Needs and Uses: BTS collects independent audited financial reports from U.S. certificated air carriers. Carriers not having an annual audit must file a statement that no such audit has been performed. In lieu of the audit report, BTS will accept the annual report submitted to the stockholders. The audited reports are needed by the Department of Transportation as (1) A means to monitor an air carrier's continuing fitness to operate, (2) reference material used by analysts in examining foreign route cases (3) reference material used by analysts in examining proposed mergers, acquisitions and consolidations, (4) a means whereby BTS sends a copy of the report to the International Civil Aviation Organization (ICAO) in fulfillment of a United States treaty obligation, and (5) corroboration of a carrier's Form 41 filings.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention BTS Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department concerning consumer protection. Comments should address whether the information will have practical utility; the accuracy of the Department'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.

Anne Suissa,

Director, Office of Airline Information.

[FR Doc. E8–30667 Filed 12–23–08; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Research & Innovative Technology Administration

Agency Information Collection; Activity Under OMB Review; Reporting Required for International Civil Aviation Organization (ICAO)

AGENCY: Research & Innovative Technology Administration (RITA), Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 7, 2008 (73 FR 58709).

DATES: Written comments should be submitted by January 23, 2009.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, RTS–42, Room 4125, RITA, BTS, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, Telephone Number (202) 366–4387, Fax Number (202) 366–3383 or e-mail *bernard.stankus@dot.gov.*

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2138–0039.

Title: Reporting Required for International Civil Aviation Organization (ICAO).

Form No.: BTS Form EF.

Type of Review: Extension of a currently approved collection.

Respondents: Large certificated air carriers.

Number of Respondents: 40.

Number of Responses: 40.

Total Annual Burden: 26 hours.

Needs and Uses: As a party to the Convention on International Civil Aviation (Treaty), the United States is obligated to provide ICAO with financial and statistical data on operations of U.S. carriers. Over 99% of the data filled with ICAO is extracted from the air carriers' Form 41 submissions to BTS. BTS Form EF is the means by which BTS supplies the remaining 1% of the air carrier data to ICAO.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, transmission of both respondent's identity and its data to the International Civil Aeronautics Organization.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention BTS Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department concerning consumer protection. Comments should address whether the information will have practical utility; the accuracy of the Department'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.

Anne Suissa,

Director, Office of Airline Information.

[FR Doc. E8–30666 Filed 12–23–08; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub-No. 5) (2009–1)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the first quarter 2009 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The first quarter 2009 RCAF (Unadjusted) is 1.022. The first quarter 2009 RCAF (Adjusted) is 0.467. The first quarter 2009 RCAF–5 is 0.442.

DATES: *Effective Date:* January 1, 2009.

FOR FURTHER INFORMATION CONTACT: Pedro Ramirez, (202) 245–0333. (Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available on our Web site *http://www.stb.dot.gov.*

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: December 18, 2008.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E8–30651 Filed 12–23–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35208]

Winamac Southern Railway Company—Trackage Rights Exemption—A. & R. Line, Inc.

Pursuant to a written trackage rights agreement,[1] A. & R. Line, Inc. (A&R) has agreed to grant overhead trackage rights to Winamac Southern Railway Company (WSRY) between milepost 71.5 at or near Van and milepost 74.5 at or near Logansport, a distance of approximately 3.0 miles in Cass County, IN.[2]

The earliest this transaction may be consummated is January 10, 2009, the effective date of the exemption (30 days after the exemption was filed).

The purpose of the trackage rights is to achieve operating economies and to improve rail service by making operations by WSRY more efficient.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by January 2, 2009 (at least 7 days before the exemption becomes effective).

[1] A redacted version of the trackage rights agreement was filed with the notice of exemption.

[2] The involved line was acquired by A&R from WSRY in *A. & R. Line, Inc.—Acquisition Exemption—Winomac Southern Railway Company*, Finance Docket No. 32694 (ICC served July 6, 1995). However, WSRY continued to operate the line, as well as its connecting lines. Although WSRY and A&R entered into a trackage rights agreement for WSRY to conduct operations over the line, through oversight no Interstate Commerce Commission or Surface Transportation Board approval of the trackage rights was ever sought. According to WSRY, WSRY's operations under the trackage rights agreement have continued for 13 years and, in the interim, Central Railroad Company of Indianapolis took over the operations of WSRY, as WSRY's agent, and A&R was taken over by Toledo, Peoria & Western Railway Corporation. WSRY states that this filing was made to remedy the prior oversight.

In a revised notice of exemption filed on December 17, 2008 in STB Finance Docket No. 35205, *US Rail Corporation—Lease and Operation Exemption—Winamac Southern Railway Company and Kokomo Grain Co., Inc.*, US Rail Corporation seeks to acquire the trackage rights involved in this transaction.

Pursuant to the Consolidated Appropriations Act, 2008, Pub. L. 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting and shredding). The term "solid waste" is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35208, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas F. McFarland, 208 South LaSalle Street, Suite 1890, Chicago, IL 60604.

Board decisions and notices are available on our Web site at "*http://www.stb.dot.gov.*"

Decided: December 18, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E8–30664 Filed 12–23–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Open Meeting of the Financial Literacy and Education Commission

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of open meeting.

SUMMARY: This notice announces the sixteenth meeting of the Financial Literacy and Education Commission, established by the Financial Literacy and Education Improvement Act (Title V of the Fair and Accurate Credit Transactions Act of 2003).

DATES: The sixteenth meeting of the Financial Literacy and Education Commission will be held on Tuesday, January 15, 2009, beginning at 10 a.m.

ADDRESSES: The Financial Literacy and Education Commission meeting will be held in the Cash Room at the Department of the Treasury, located at 1500 Pennsylvania Avenue, NW., Washington, DC 20220. To be cleared for admittance to the Treasury building, attendees must RSVP with their name as shown on a government-issued ID, organization represented (if any), phone number, date of birth, Social Security number and country of citizenship. This information can be provided in an e-mail to the Treasury Department at *FLECrsvp@do.treas.gov* or by a

telephone voice message at (202) 622–1783 (not a toll-free number) no later than 12 noon (EST) Thursday, January 8, 2009. For admittance to the Treasury building on the day of the meeting, attendees must present a government-issued ID, such as a driver's license or passport, which includes a photo and date of birth.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Tom Kurek by e-mail at *thomas.kurek@do.treas.gov* or by telephone at (202) 622–0204 (not a toll free number). Additional information regarding the Financial Literacy and Education Commission and the Department of the Treasury's Office of Financial Education may be obtained through the Office of Financial Education's Web site at *http://www.treas.gov/financialeducation.*

SUPPLEMENTARY INFORMATION: The Financial Literacy and Education Improvement Act, which is Title V of the Fair and Accurate Credit Transactions Act of 2003 (the "FACT Act") (Pub. L. 108–159), established the Financial Literacy and Education Commission (the "Commission") to improve the financial literacy and education of persons in the United States. The Commission is composed of the Secretary of the Treasury and the heads of the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Reserve, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Securities and Exchange Commission, the Departments of Education, Agriculture, Defense, Health and Human Services, Housing and Urban Development, Labor, and Veterans Affairs, the Federal Trade Commission, the General Services Administration, the Small Business Administration, the Social Security Administration, the Commodity Futures Trading Commission, and the Office of Personnel Management. The Commission is required to hold meetings that are open to the public every four months. The FACT Act was enacted on December 4, 2003.

The sixteenth meeting of the Commission, which will be open to the public, will be held in the Cash Room at the Department of the Treasury, located at 1500 Pennsylvania Avenue, NW., Washington, DC 20220. The room will accommodate 80 members of the public. Seating is available on a first-come, first-seated basis. Participation in the discussion at the meeting will be limited to Commission members, their staffs, and special guest presenters.

Dated: December 18, 2008.

Lindsay Valdeon,

Deputy Executive Secretary.

[FR Doc. E8–30653 Filed 12–23–08; 8:45 am]

BILLING CODE 4810–25–P

Federal Register

Wednesday,
December 24, 2008

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Listing Three Foreign Bird Species From Latin America and the Caribbean as Endangered Throughout Their Range; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R9–IA–2008–0117; 96100–1671–0000–B6]

RIN 1018–AV76

Endangered and Threatened Wildlife and Plants; Listing Three Foreign Bird Species From Latin America and the Caribbean as Endangered Throughout Their Range

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list three species of birds from Latin America and the Caribbean—the Andean flamingo (*Phoenicoparrus andinus*), the Chilean woodstar (*Eulidia yarrellii*), and the St. Lucia forest thrush (*Cichlherminia lherminieri sanctaeluciae*)—as endangered under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). This proposal, if made final, would extend the Act's protection to these species. The Service seeks data and comments from the public on this proposed rule.

DATES: We will accept comments received or postmarked on or before February 23, 2009. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by February 9, 2009.

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

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS–R9–IA–2008–0117; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

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

FOR FURTHER INFORMATION CONTACT: Rosemarie Gnam, Division of Scientific Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 110, Arlington, VA 22203; telephone 703–358–1708; facsimile 703–358–2276. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we request comments or suggestions on this proposed rule. We particularly seek comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to these species and regulations that may be addressing those threats.

(2) Additional information concerning the taxonomy, range, distribution, and population size of these species, including the locations of any additional populations of these species.

(3) Any information on the biological or ecological requirements of these species.

(4) Current or planned activities in the areas occupied by these species and possible impacts of these activities on these species.

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

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

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Division of Scientific Authority, 4401 N. Fairfax Drive, Room 110, Arlington, VA 22203; telephone 703–358–1708.

Background

Section 4(b)(3)(A) of the Act requires us to make a finding (known as a "90-day finding") on whether a petition to add a species to, remove a species from, or reclassify a species on the Federal Lists of Endangered and Threatened Wildlife and Plants has presented substantial information indicating that the requested action may be warranted. To the maximum extent practicable, the finding must be made within 90 days following receipt of the petition and published promptly in the **Federal Register**. If we find that the petition has presented substantial information indicating that the requested action may be warranted (a positive finding), section 4(b)(3)(A) of the Act requires us to commence a status review of the species if one has not already been initiated under our internal candidate assessment process. In addition, section 4(b)(3)(B) of the Act requires us to make a finding within 12 months following receipt of the petition on whether the requested action is warranted, not warranted, or warranted but precluded by higher priority listing actions (this finding is referred to as the "12-month finding"). Section 4(b)(3)(C) of the Act requires that a finding of warranted but precluded for petitioned species should be treated as having been resubmitted on the date of the warranted but precluded finding, and is, therefore, subject to a new finding within 1 year and subsequently thereafter until we publish a proposal to list or a finding that the petitioned action is not warranted. The Service publishes an annual notice of resubmitted petition findings (annual notice) for all foreign species for which listings were previously found to be warranted but precluded.

Previous Federal Actions

On November 24, 1980, we received a petition (1980 petition) from Dr. Warren B. King, Chairman of the International Council for Bird Preservation (ICBP), to add 60 foreign bird species to the List of Threatened and Endangered Wildlife (50 CFR 17.11(h)), including two species (the Chilean woodstar and the St. Lucia forest thrush) that are the subject of this proposed rule. In response to the 1980 petition, we published a positive 90-day finding on May 12, 1981 (46 FR 26464), for 58 foreign species, noting that 2 of the foreign species identified in the petition were already listed under the Act, and initiated a status review. On January 20, 1984 (49 FR 2485), we published a 12-month finding within an annual review on pending petitions and description of progress on all species petition findings addressed therein. In that notice, we found that all 58 foreign bird species from the 1980 petition were warranted but precluded by higher priority listing actions. On May 10, 1985, we published the first annual notice (50 FR 19761), in which we continued to find that listing all 58 foreign bird species from the 1980

petition was warranted but precluded. In our next annual notice, published on January 9, 1986 (51 FR 996), we found that listing 54 species from the 1980 petition, including the 2 species that are the subject of this proposed rule, continued to be warranted but precluded, whereas new information caused us to find that listing 4 other species in the 1980 petition was no longer warranted. We published additional annual notices on the remaining 54 species included in the 1980 petition on July 7, 1988 (53 FR 25511); December 29, 1988 (53 FR 52746); and November 21, 1991 (56 FR 58664), in which we indicated that the Chilean woodstar and the St. Lucia forest thrush, along with the remaining species in the 1980 petition, continued to be warranted but precluded.

On May 6, 1991, we received a petition (hereafter referred to as the 1991 petition) from ICBP, to add 53 species of foreign birds to the List of Endangered and Threatened Wildlife, including the Andean flamingo, also the subject of this proposed rule. In response to the 1991 petition, we published a positive 90-day finding on December 16, 1991 (56 FR 65207), for all 53 species, and announced the initiation of a status review. On March 28, 1994 (59 FR 14496), we published a 12-month finding on the 1991 petition, along with a proposed rule to list 30 African birds under the Act (15 each from the 1980 petition and 1991 petition). In that document, we announced our finding that listing the remaining 38 species from the 1991 petition, including Andean flamingo, was warranted but precluded by higher priority listing actions. On January 12, 1995 (60 FR 2899), we published the final rule to list the 30 African birds and reiterated the warranted-but-precluded status of the remaining species from the 1991 petition. We made subsequent warranted-but-precluded findings for all outstanding foreign species from the 1980 and 1991 petitions, including the three species that are the subject of this proposed rule, as published in our annual notice of review (ANOR) on May 21, 2004 (69 FR 29354), and April 23, 2007 (72 FR 20184).

Per the Service's listing priority guidelines (September 21, 1983; 48 FR 43098), our 2007 ANOR identified the listing priority numbers (LPNs) (ranging from 1 to 12) for all outstanding foreign species. The LPNs for the three species of birds in this proposed rule are as follows: Andean flamingo (LPN 2), Chilean woodstar (LPN 4), and St. Lucia forest thrush (LPN 3).

On January 23, 2008, the United States District Court for the Northern District of California ordered the Service to issue proposed listing rules for five foreign bird species, actions which had been previously determined to be warranted but precluded: Andean flamingo (*Phoenicoparrus andinus*), black-breasted puffleg (*Eriocnemis nigrivestis*), Chilean woodstar (*Eulidia yarrellii*), medium tree finch (*Camarhynchus pauper*), and St. Lucia forest thrush (*Cichlherminia lherminieri sanctaeluciae*). The court ordered the Service to issue proposed listing rules for these species by the end of 2008.

On July 29, 2008 (73 FR 44062), we published in the **Federal Register** a notice announcing our annual petition findings for foreign species. In that notice, we announced listing to be warranted for 30 foreign bird species, including the 5 species that are subject to the January 23, 2008, court order and the 3 species which are the subject of this proposed rule. The medium tree finch and black-breasted puffleg are the subject of separate proposed rules, which published in the **Federal Register** on December 8, 2008 (73 FR 74434 and 73 FR 74427, respectively).

Species Information and Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. The five factors are: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence.

Below is a species-by-species analysis of these five factors. The species are considered in alphabetical order, beginning with the Andean flamingo, and followed by the Chilean woodstar and the St. Lucia forest thrush.

I. Andean flamingo (Phoenicoparrus andinus)

Species Description

Flamingos (Phoenicopteridae) are gregarious, long-lived birds that inhabit saline wetlands and breed in colonies (del Hoyo 1992, pp. 509–519; Caziani *et al.* 2007, pp. 277). The Andean flamingo is the largest member of the Phoenicopteridae family in South America, reaching an adult height of 3.5 feet (ft) (110 centimeters (cm)) (Fjeldså and Krabbe 1990, p. 86). This waterbird is native to low-, medium-, and high-altitude wetlands in the Andean regions of Argentina, Bolivia, Chile, and Peru (BirdLife International (BLI) 2008, p. 1; del Hoyo 1992, p. 526), where it is locally known as "*flamenco andino*," "*parina grande*," "*pariguana*," "*pariwana*," and "*chururu*" (BLI 2006, p. 1; Castro and Varela 1992, p. 26; Davison 2007, p. 2; del Hoyo 1992, p. 526; Sáenz 2006, p. 185).

An adult Andean flamingo has a pale yellow face and pale pink coloring overall. Its upper plumage is brighter pink, with a deeper pink to wine red-colored neck, breast, and wing-coverts (feathers on the upper wing), and prominent black tertial feathers (feathers on the posterior portion of the wing). The bill is pale yellow with a black tip, and the legs and feet are yellow (BLI 2008, p. 1; del Hoyo 1992, p. 526). Young Andean flamingos are grayish in color and achieve full adult plumage in their third year (del Hoyo 1992, p. 526).

Andean flamingo is one of three flamingo species that is endemic to the high Andes of South America (Johnson *et al.* 1958, p. 299; Johnson 1967, p. 404; del Hoyo *et al.* 1992, p. 508; Line 2004, pp. 1–2; Caziani *et al.* 2007, p. 277; Arengo in litt. 2007, p. 2). All flamingos have pink plumage to varying degrees (del Hoyo 1992, p. 508). The Andean flamingo is distinguished from other South American flamingos by its size (being the largest in the area), leg coloring (being the only flamingo with yellow legs), and wing coloring (having prominent black tertial feathers that form a "V" when the flamingo is not in flight) (BLI 2008, p. 1; del Hoyo 1992, p. 526). Andean flamingos are long-lived (see Habitat and Life History) (BLI 2008, p. 2; del Hoyo *et al.* 1992, p. 517).

Taxonomy

The Andean flamingo was first taxonomically described as *Phoenicopterus andinus* (Phoenicopteridae family), by Rodulfo Philippi in 1854 (Philippi 1860, p. 164; Hellmayr 1932, p. 448). In 1856, Bonaparte split the genus *Phoenicopterus*, placing the Andean flamingo in a separate genus, as *Phoenicoparrus andinus*, along with the sympatric (species inhabiting the same or overlapping geographical areas) James' flamingos (*P. jamesi*) (Hellmayr and Conover 1948, pp. 273–278; Jenkin 1957, p. 405). In 1990, Sibley and Monroe (1990, p. 311) suggested the Andean flamingo should be returned to the genus *Phoenicopterus*, based on the

close genetic relatedness among all flamingo species (Sibley and Ahlquist 1989, as cited in Ramsen *et al.* 2007, p. 18). However, many contemporary researchers maintain that the Andean flamingo should remain within the genus *Phoenicoparrus*, based on bill morphology and the lack of a hind toe (BLI 2008, p. 1; Caziani *et al.* 2007, p. 276; del Hoyo *et al.* 1992, pp. 508–509; Fjeldså and Krabbe 1990, p. 86; Mascitti and Kravetz 2002, pp. 73–83; Valqui *et al.* 2000, p. 110). Therefore, we accept the species as *Phoenicoparrus andinus*, which is also consistent with the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) species database (UNEP–WCMC 2008b, p. 1).

Habitat and Life History

Andean flamingos are native to the Andes Mountains, from southern Peru and southwestern Bolivia to northern Chile and northwestern Argentina. They occupy shallow wetlands, collectively called salars, that are characterized as shallow, often saline, lakes (known locally as "*lagos*" or "*lagunas*") with exposed salt-flats or mudflats (Boyle *et al.* 2004, pp. 563–564; Caziani *et al.* 2007, pp. 277; Hurlbert and Keith 1979, pp. 328). Andean flamingos also inhabit "bofedales," which are described as wet, marshy, perennial meadowlands (de la Fuente 2002, p. 1; Ducks Unlimited 2007c, p. 1). These wetlands are found at various elevations, including: (1) The high Andes, referred to as "*altiplanos*" (Spanish for "high plains"), generally above 13,123 ft (4,000 meters (m)); (2) the "*puna*" (Spanish for "highlands"), between 9,843 and 13,123 ft (3,000 and 4,000 m); and (3) the lowlands, below 9,843 ft (3,000 m) (Caziani *et al.* 2001, p. 103; Caziani *et al.* 2007, p. 278). Andean flamingos generally occupy wetlands that are less than 3 ft (1 m) deep (Fjeldså and Krabbe 1990, p. 86; Mascitti and Casteñera 2006, p. 331).

Most of the wetlands in which Andean flamingos are found are "endoreic," "endorheic," or closed. This refers to internally-draining water networks prevalent in the Andes that are characterized by rivers or bodies of water that do not drain into the sea, but either dry up or terminate in a basin (Caziani *et al.* 2001, p. 103; Hurlbert and Keith 1979, p. 328). The water levels at these basins expand and contract seasonally and depend in large part on summer rains to "recharge" or refill them (Bucher 1992, p. 182; Caziani and Derlindati 2000, pp. 124–125; Caziani *et al.* 2001, p. 110; Mascitti and Caziani 1997, p. 328).

Andean flamingos are altitudinal and opportunistic migrants (Goldfeder and Blanco 2007, p. 190). During the summer (December to January), Andean flamingos generally reside in the puna and altiplano regions of the Andes, at elevations between 11,483 and 14,764 ft (3,500 and 4,500 m). In the winter, they may move to lower elevations—down to 210 ft (64 m) above sea level—along the Peruvian coast and inland to the central plains of Argentina and Bolivia (Blake 1977, p. 207; BLI 2008, pp. 1 and 6; Boyle *et al.* 2004, pp. 563–564, 570–571; Bucher 1992, p. 182; Bucher *et al.* 2000, p. 119; Caziani *et al.* 2006. p. 17; Caziani *et al.* 2007, pp. 277, 279, 281; del Hoyo 1992, p. 514, 519; Fjeldså and Krabbe 1990, p. 85; Hurlbert and Keith 1979, pp. 330; Kahl 1975, pp. 99–101; Mascitti and Bonaventura 2002, p. 360; Mascitti and Castañera 2006, p. 328).

They disperse widely, even while nesting, and can travel long distances, flying from 249 mi (400 km) to 715 mi (1,150 km) daily (Caziani *et al.* 2003, p. 11; Caziani *et al.* 2007, p. 277; Conway 2000, p. 212; del Hoyo 1992, pp. 509–519; Fjeldså and Krabbe 1990, p. 85). Their movements are unpredictable and appear to be influenced by varying environmental conditions affecting the availability of wetlands (Bucher *et al.* 2000, p. 119; del Hoyo 1992, p. 514 and 516; Fjeldså and Krabbe 1990, p. 85). When climatic conditions are favorable, breeding takes place, and when climatic conditions are unfavorable, breeding is abandoned, very limited, or takes place at alternative, less-productive breeding grounds (*e.g.*, Bucher *et al.* 2000. pp. 119–120).

All flamingos are believed to be monogamous, with a strong pair-bonding tendency that may be maintained from one breeding season to the next (del Hoyo 1992, p. 514). Andean flamingos nest at high densities, with breeding colonies consisting of up to thousands of pairs (del Hoyo 1992, p. 526). Andean flamingos reach sexual maturity between 3 and 5 years of age (Bucher 1992, p. 183). Breeding season for the Andean flamingo occurs in the summer, generally from December through February (BLI 2008, p. 2; del Hoyo *et al.* 1992. p. 516; Fjeldså and Krabbe 1990, p. 85; Hurlbert and Keith 1979, pp. 328), although the breeding season may begin as early as October and continue through April (Goldfeder and Blanco 2007, p. 190). Both sexes share in nest-building and nesting (Bucher 1992, p. 182). Nests are built on the miry clay or transient islands of shallow lakes (del Hoyo 1992, pp. 514, 516). Each nest consists of a clay mound, up to 16 inches (in) (40 cm) high, with a small depression on top (del Hoyo *et al.* 1992, p. 516; Fjeldså and Krabbe 1990, p. 85). Flamingos lay a single white egg, usually in December or January, and incubation lasts about 28 days (del Hoyo *et al.* 1992, p. 526). If the egg is destroyed from flooding or predation, the pair may re-clutch (lay a replacement egg), but only if the loss occurs within a few days of the first egg being laid (del Hoyo *et al.* 1992, p. 516).

Chicks remain in the nest 5–12 days, during which time both the parents feed the chick with "milk" secretions formed by glands in their upper digestive tracts (Fjeldså and Krabbe 1990, p. 85; del Hoyo *et al.* 1992, p. 513). Feeding is shared by parents, in approximately 24-hour shifts (Bucher 1992, p. 182). When flamingo chicks leave the nest, they form large nursery crèches (groups) of hundreds or thousands of birds that are tended by a few adults (del Hoyo *et al.* 1992, p. 516).

Flamingo breeding habits can vary widely from year to year. Flamingos may breed in large numbers for 2 or more successive years, followed by other years in which there is no known breeding. Not all sexually mature adults breed every year and, even in years of breeding, not all sexually mature adults will participate (Bucher 1992, p. 183). Flamingos are generally considered to have poor breeding success (Fjeldså and Krabbe 1990, p. 85) and Andean flamingos, in particular, have experienced periods of very low breeding success over the past twenty years (Arengo in litt. 2007, p. 2) (See Population Estimates, below). Juvenile mortality rates during dispersal are unknown (Caziani *et al.* 2007, p. 284), and adult survival is considered to be "very high" (Fjeldså and Krabbe 1990, p. 85). Andean flamingos are long-lived, with an average lifespan of 20 to 30 years. Some wild adults live up to 50 years (BLI 2008, p. 2; del Hoyo *et al.* 1992, p. 517). Recent trends in breeding success are further discussed under Population Estimates, below.

Andean flamingos are wading filter-feeders, often forming large feeding flocks at wetlands alongside sympatric flamingos, Chilean flamingos (*Phoenicopterus chilensis*), and James' flamingos (del Hoyo 1992, p. 512; Mascitti and Castañera 2006, pp. 328–329). Andean flamingos feed principally on diatoms (microscopic one-celled or colonial algae) (Mascitti and Kravetz 2002, p. 78), especially those in the genus *Surirella* (no common name), which is a dominant component of surface sediments at the bottom of many altiplano lakes in the Andes (Fjeldså and Krabbe 1990, p. 86; Hurlbert and Chang 1983, p. 4768).

Historical Range and Distribution

The Andean flamingo type specimen (the specimen that was first described by Philippi in 1854) was collected from Salar de Atacama, in Antofagasta Province (Chile) (Hellmayr 1932, p. 312). Salar de Atacama is, therefore, referred to as the "type locality." The species was subsequently reported in Argentina in 1872 (Provinces of Jujuy and Tucumán) (Burmeister 1872, p. 364; Hellmayr and Conover 1948, p. 277), Peru (Departments of Salinas and Arequipa) in 1886 (Hellmayr 1932, p 312; Hellmayr and Conover 1948, p. 277; Weberbauer 1911, p. 27), and Bolivia in 1902 (Department of Oruru) (Hellmayr and Conover 1948, p. 277; Johnson *et al.* 1958, p. 289).

The species' movements and distribution within its range were not understood throughout much of the 20th century. Early researchers considered the Andean flamingo to be relatively sedentary (Jenkin 1957, p. 405; Johnson *et al.* 1958, pp. 297–298), with a distribution that did not extend below 10,000 ft (3,048 m) (Hellmayr 1932, p. 25; Johnson 1967, p. 405). Later researchers remarked on the nomadic nature of the species (McFarlane 1975, p. 88) and reported lower limits to the species' distribution (i.e., 8,200 ft (2,500 m)) (Kahl 1975; pp. 99–100). Hurlbert and Keith (1979, pp. 334, 336) noted a seasonal variance in the species' altitudinal distribution, and Bucher (1992, p. 182) noted that migration might take place between Chilean breeding grounds and Argentinian wetlands.

Current Range and Distribution

The current range of the Andean flamingo extends from Peru, through Chile and Bolivia, to Argentina, in wetlands at elevations ranging from 210 to 14,764 ft (64 to 4,500 m) (BLI 2008, pp. 1, 6; Bucher 1992, p. 192; Bucher *et al.* 2000, p. 119; del Hoyo 1992, pp. 514; Fjeldså and Krabbe 1990, p. 85). In 1989, an immature Andean flamingo—that had been banded in Chile earlier that year—was captured in Brazil (Sick 1993, p. 154). There were additional sightings of the Andean flamingo in Brazil in the 1990s (Bornschein and Reinert 1996, p. 807–808). However, the species is considered a non-breeding "vagrant" in Brazil (BLI 2008, p. 5).

Its total extent of occurrence (including sites where breeding does not occur) is estimated as 124,711 square miles (mi^2) (323,000 square kilometers (km^2)). The estimated area in which the species is known to breed and reside year-round is 72,973 square miles (mi^2) (189,000 square kilometers (km^2)) (BLI 2008, p. 4).

Their seemingly erratic movements and ability to disperse widely, combined with the harsh climatic conditions and the inaccessibility of their habitat, have made it difficult for researchers to fully understand their seasonal movements and breeding habits (Bucher *et al.* 2000, p. 119; del Hoyo 1992, pp. 514; Fjeldså and Krabbe 1990, p. 85) (see also Habitat and Life History, above). Researchers have long considered Chilean wetlands to be the primary breeding grounds for the species (Bucher *et al.* 2000, p. 119; Ducks Unlimited 2007c, pp. 1–4; Fjeldså and Krabbe 1990, p. 86; Johnson *et al.* 1958, p. 296; Kahl 1975 p. 100). Researchers have only recently confirmed that the species is an altitudinal and opportunistic migrant (Goldfeder and Blanco 2007, p. 190). Simultaneous censuses undertaken since 1997 confirmed that Andean flamingos migrate altitudinally. In the summer, most of the population is concentrated primarily in Chile, and to a lesser extent in Argentina and Bolivia. In winter, the species may converge in certain Chilean and Peruvian wetlands (Valqui *et al.* 2000, p. 111), with relatively large numbers of birds overwintering in Bolivia and Argentina in some years (Caziani *et al.* 2007, pp. 279, 281). Recent banding studies confirmed that Andean flamingos at high-altitude wetlands move to lower altitude lakes, where weather conditions are less severe (Rocha and Rodriguez 2006, p. 12).

Andean flamingos occupy some wetlands year round (where they may or may not breed), some wetlands only during the summer breeding season, and other wetlands only in winter (see Table 1). Recent research established that there is an important, complementary link between breeding and non-breeding wetlands frequented by Andean flamingos (Derlandati 2008, p. 10). Research in Argentina at highland (breeding) and lowland (non-breeding) sites indicated that, regardless of season, Andean flamingos spend the majority of their time eating (Derlandati 2008, p. 10). They will travel to different wetlands to feed, even while nesting (Bucher 1992, p. 182; Caziani *et al.* 2007, p. 277; Conway 2000, p. 212; del Hoyo 1992, pp. 509–519). Research in Argentina at high-elevation breeding sites and low-elevation non-breeding sites indicated that breeding displays at lowland sites were important precursors to successful breeding at high altitude sites (Derlandati 2008, p. 10).

Several Andean flamingo localities in each range country are described below and in Table 1, organized in alphabetical order by country and name of wetland. This is not an exhaustive accounting of all known wetlands occupied by the species, but includes sites that are frequented by the species or are otherwise notable, such as recently discovered breeding sites. In Table 1, "Type" indicates whether the site is known as a breeding (B) or non-breeding (NB) wetland. In most cases, NB indicates that the species overwinters at the wetland. However, in some cases, Andean flamingos occupy a wetland year-round, but no breeding occurs there. Habitat information was obtained primarily from Ducks Unlimited (2007a–d) and BirdLife International (2008).

TABLE 1—SELECTED ANDEAN FLAMINGO NESTING AND OVERWINTERING WETLANDS IN ARGENTINA, BOLIVIA, CHILE, AND PERU

Country	Wetland	Department	Elevation in feet/meters	Area in acres/hectares	Type	Description/comments
Argentina	Laguna Brava	La Rioja	13,780 ft/4,200 m.	1,977 ac/800 ha	B/NB	Large lake associated with an endoreic (closed) river basin that includes Laguna de Mulas Muertas.
Argentina	Laguna de Melincué.	Santa Fe	276–295 ft/84–90 m.	29,653 ac/12,000 ha.	NB	One of two lowest-elevation endoreic wetlands frequented by Andean flamingos.
Argentina	Lagunas de los Aparejos.	Catamarca	13,911 ft/4,240 m.	343 ac/139 ha	B/NB	Shallow lagoon in a larger lagoon system that is lacking in aquatic vegetation.

TABLE 1—SELECTED ANDEAN FLAMINGO NESTING AND OVERWINTERING WETLANDS IN ARGENTINA, BOLIVIA, CHILE, AND PERU—Continued

Country	Wetland	Department	Elevation in feet/ meters	Area in acres/ hectares	Type	Description/comments
Argentina	Laguna de Mar Chiquita.	Córdoba	210–230 ft/64–70 m.	494,211 ac/ 200,000 ha.	B/NB	This large, permanent, hypersaline, seasonally fluctuating lake is the lowest-elevation locality.
Argentina	Laguna de Mulas Muertas.	La Rioja	13,123 ft/4,000 m.	1730 ac/700 ha	NB	Located near and part of the same endoreic river basin as Laguna Brava.
Argentina	Laguna de Pozuelos.	Jujuy	11,483 ft/3,500 m.	24,710 ac/10,000 ha.	B/NB	Central lake within endoreic basin with lower water levels and extensive mudflats in winter.
Argentina	Laguna Guayatayoc.	Jujuy	12,008 ft/3,660 m.	247,104 ac/ 100,000 ha.	NB	Part of large salt basin where endoreic waters form shallow, brackish to hypersaline lakes.
Argentina	Laguna Vilama ..	Jujuy	14,436 ft/4,400 m.	19,768 ac/8,000 ha.	B/NB	Large, permanent endoreic lake, prone to wide water fluctuations and winter freezes.
Bolivia	Lago Poopó	Oruru	12,090 ft/3,685 m.	330,380 ac/ 133,700 ha.	NB	Large, shallow saline lake in same ancient endoreic river basin as Lago Uru Uru.
Bolivia	Lago Uru Uru	Oruru	12,126 ft/3,696 m.	69,190 ac/28,000 ha.	NB	Along with Lago Poopó, experiences wide fluctuations in water level.
Bolivia	Laguna Colorada	Potosí	13,944 ft/4,250 m.	12,948 ac/ 5,240 ha.	B/NB	Hypersaline endoreic lake fed by streams and thermal springs, with shores that freeze at night.
Bolivia	Laguna Kalina or Busch.	Potosí	14,862 ft/4,530 m.	3,954 ac/1,600 ha.	B/NB	Hypersaline lake associated with the same endoreic water basin as Laguna Colorada.
Bolivia	Laguna de Pastos Grandes.	Oruru	13–15,000 ft/4–4,500 m.	37,066 ac/15,000 ha.	B/NB	Group of small, permanent saline lakes in an ancient caldera fed by underground sources.
Bolivia	Salar de Chalviri	Potosí	14,396 ft/4,388 m.	28,417 ac/11,500 ha.	NB	Basin of many small lakes separated by saltflats; fed by small streams and thermal springs.
Bolivia	Salar de Coipasa	Oruru	12,112 ft/3,692 ..	548,077 ac/ 221,800 ha.	B/NB	Large salt basin and shallow hypersaline lake, receiving water from Río Lauca.
Chile	Lago del Negro Francisco.	Atacama	13,123 ft/4,000 m.	6,919 ac/2,800 ha.	B/NB	Large high-altitude permanent lake surrounded by bofedales.
Chile	Salar de Ascotán	Antofagasta	12,211 ft/ 3,722 m.	93,406 ac/37,800 ha.	B/NB	High-altitude salt basin with many saline lakes on perimeter, fed by several freshwater springs.
Chile	Salar de Atacama.	Antofagasta	7,546 ft/2,300 m	691,895 ac/ 280,000 ha.	B/NB	Endoreic salt basin with fluctuating water levels from summer storms and snowmelt.
Chile	Salar de Coposa	Tarapacá	12,376 ft/3,730 m.	21,003 ac/8,500 ha.	B/NB	Endoreic salt with small lagoon that fluctuates greatly in size.
Chile	Salar de Huasco	Tarapacá	13,123 ft/4,000 m.	14,826 ac/ 6,000 ha.	B/NB	Salt basin receiving summer rains and fed by snow melt bogs and bofedales.
Chile	Salar de Surire ..	Tarapacá	13,583 ft/4,140 m.	61,776 ac/25,000 ha.	B/NB	Permanent saline lake.
Peru	Lago Parinacochas.	Ayacucho	10,738 ft/3,273 m.	16,556 ac/6,700 ha.	NB	Shallow, large brackish endoreic lake and marshes with exposed salt flats in dry season.
Peru	Laguna de Loriscota.	Puno	15,299 ft/4,663 m.	8525 ac/3,450 ha.	NB	Permanent, shallow hypersaline lake surrounded by bofedales.
Peru	Laguna Salinas	Arequipa	14,091 ft/4,295 m.	17,544 ac/7,100 ha.	NB	Semi-permanent, shallow hypersaline lake with freshwater springs and bofedales on perimeter.

Argentina: Several wetlands in Argentina provide year-round habitat for the Andean flamingo (see Table 1). The species breeds and overwinters regularly at Laguna de Pozuelos and Lagunas de Vilama (Caziani & Derlandati 2000, p. 121; Caziani *et al.* 2001, p. 113; Caziani *et al.* 2006, p. 13; Caziani *et al.* 2007, p. 279; Ducks Unlimited 2007a, pp. 1–4). The Vilama wetlands system (Lagunas de Vilama) is comprised of nine lakes: Arenal, Caiti, Catal, Cerro Negro, Colpayoc, Isla Grande, Palar, Pululos, and Vilama (Caziani and Derlindati 2000, p. 122;

Caziani *et al.* 2001, p. 103). During a 3-year study, Andean flamingos occupied 8 of the 9 lakes, but were especially concentrated on Laguna Vilama and Laguna Catal (Caziani and Derlindati 2000, p. 125). Caziani *et al.* 2001 (p. 104) determined that the Vilama wetland system provided a variety of spatial and seasonal ecological conditions on the landscape level, such that a range of options existed from which Andean flamingos could select habitat at any given time during the year. They further suggest that similar landscape-level relationships between wetlands exist, even when the wetlands are not located within the same basin (Caziani *et al.* 2001, p. 110). The Lagunas de Vilama wetland has harbored up to 30 percent of Andean flamingos during the breeding season (Caziani & Derlandati 2000, p. 121; Caziani *et al.* 2006, p. 13).

In recent decades, the species has nested or overwintered in locations not previously recorded. In January 1998, the first account of Andean flamingos nesting was reported at Laguna Brava (Bucher *et al.* 2000, p. 119). Long known as an overwintering site for the species (Caziani *et al.* 2007, p. 279), Laguna Brava has continued to provide isolated nesting sites (de la Fuente 2002, p. 6). Also in January 1998, large numbers of non-breeding birds were reported at Laguna de Mulas Muertas, just 4 mi (7 km) from Laguna Brava (Bucher *et al.* 2000, p. 120). Researchers attribute both the large number of breeding birds at Laguna Brava and the large number of non-breeding birds at Laguna de Mulas Muertas to unusual rainfall patterns that year (Bucher *et al.* 2000, p. 120). In March 2001, chicks were observed at Lagunas de los Aparejos (Caziani *et al.* 2007, pp. 279, 283), part of a lagoon system with Laguna Azul and Laguna Negra (BLI 2008, p. 50). Normally known as a nesting site for the James' flamingo (Childress 2005, p. 6), this may now be a nesting site for the Andean flamingo as well (BLI 2008, p. 50).

Andean flamingos overwinter at both high- and low-elevation wetlands in Argentina. Laguna Guayatayoc is a high-elevation overwintering site for Andean flamingos (Ducks Unlimited 2007a, pp. 1–4), where the species has sometimes been reported in relatively large numbers (Caziani *et al.* 2001, p. 116; Caziani *et al.* 2007, p. 279). Laguna de Mar Chiquita is the lowest-elevation wetland frequented by the Andean flamingo (Bucher et al 1992, p. 119; Caziani *et al.* 2007, p. 279; Derlindati 2008, pp. 6–7). Long known as an overwintering site, researchers report that a small group of Andean flamingos (about 100 individuals) may reside there year round (BLI 2008, p. 1; Bucher 1992, pp. 179, 182), and breeding has recently been reported there (Childress *et al.* 2005, p. 6). Laguna de Melincué is another low-elevation overwintering site for Andean flamingos (Caziani *et al.* 2007, p. 279). Although breeding has not been reported there (Childress *et al.* 2005, p. 6), the species engages in nuptial displays vital to reproductive success in the breeding colonies (Derlindati 2008, p. 9). Researchers estimated that 17 percent of the world population of Andean flamingos overwintered at Laguna de Melincué in winter 2005 and 2006 (Romano et al 2006, p. 17).

Bolivia: There are at least 10 flamingo nesting sites in Bolivia (Caziani *et al.* 2006, p. 13). Laguna Colorada is a high-altitude wetland where Andean flamingos remain year-round and where they have recently nested with greater frequency (see Factor B) (BLI 2008, p. 1; Caziani *et al.* 2006, p. 13; Caziani *et al.* 2007, p. 279; Davison 2007, p. 1; Ducks Unlimited 2007b, pp. 14; Kahl 1979, p. 100). Laguna Kalina (also known as Laguna Calina and Laguna Busch) has recently figured prominently as a nesting location. Chicks were first reported there in 1997 (Valqui *et al.* 2000, p. 112), and nesting has been reported there, at small but consistent rates, in 2004, 2005 and 2006 (Childress *et al.* 2005, p. 6; Childress *et al.* 2006, p. 5; Childress *et al.* 2007a, p. 7).

Laguna de Pastos Grandes is another lake system that includes Salar de Pastos Grandes, Laguna Ramaditas, Laguna Hedionda, Laguna Cañapa, Laguna Cachi, Laguna Khara, Laguna Chulluncani, and Laguna Khar Khota (Ducks Unlimited 2007b, p. 13). This wetland complex provides breeding and non-breeding habitat.

Non-breeding year-round wetlands in Bolivia include: Lago Uru Uru (Ducks Unlimited 2007b, p. 5–8; Kahl 1975, p. 100; Mølgaard *et al.* 1999; Rocha *et al.* 2006, p. 18); Salar de Chalviri (Ducks Unlimited 2007b, pp. 17–20; Hurlbert & Keith 1979, p. 331); Lago Poopó, a known locality since 1921 (Caziani *et al.* 2007, p. 279; Hellmayr & Conover 1948, p. 277; Johnson 1967, p. 404); and Salar de Coipasa, a wintering site of known importance for all three South American flamingo species since the mid-20th century (Johnson 1967, p. 404; Ducks Unlimited 2007c, p. 9). These lakes are hydrologically connected through the Titicaca-Desaguadero-Poopó-Salar de Coipasa (TDPS) basin, a large endoreic (closed) basin shared between Peru, Bolivia, and Chile (Jellison *et al.* 2004, p. 11). Several Andean flamingo wetlands are connected to this hydrological basin through rivers, including: Lago Poopó (Bolivia), which is connected to Lago Titicaca (Peru) through Río Desaguadero; Salar de Coipasa (Bolivia), which is connected to Lago Poopó through Río Laca Jahuira River (Jellison *et al.* 2004, p. 11); and Lago Uru Uru, which is fed by Río Desaguadero (Ducks Unlimited 2007b, p. 5). In 2000, more than 50 percent of the known population of Andean flamingos overwintered at Lagos Uru Uru and Poopó (Caziani *et al.* 2007, p. 279).

Chile: There are at least a dozen Andean flamingo breeding sites in Chile (Childress *et al.* 2006, p. 7). Salar de Atacama, where the Andean flamingo type specimen was obtained in 1854 (Hellmayr 1932, p. 312: Philippi 1860, p. 164), has been a consistent and primary breeding ground (Bucher *et al.* 2000, p. 119; Childress *et al.* 2007a, p. 7; Ducks Unlimited 2007c, pp. 1–4; Johnson *et al.* 1958, p. 296). Several other sites have figured consistently and prominently over the years, including Salar de Surire, Salar de Huasco, and Salar de Ascotán (Fjeldså and Krabbe 1990, p. 86; Johnson *et al.* 1958, p. 296; Kahl 1975 p. 100). Andean flamingos were first observed at Salar de Surire in the early 1970s (McFarlane 1975, p. 88). The first report of breeding (observation of chicks) there occurred in 1997 (Valqui *et al.* 2000, p. 112), and breeding has continued there at increasing numbers (Caziani *et al.* 2007, p. 283). Laguna Ascotán differs from most other Andean flamingo wetlands, as it is fed by 13 fresh-water springs as well as several brackish lagoons (Vilina and Martínez 1998, p. 28). Salar de Coposa has long served as breeding and overwintering habitat for the Andean flamingo (Caziani *et al.* 2007, p. 279; Johnson 1958, p. 297; Kahl 1975 p. 100).

Salar de Atacama, Salar de Coposa, Salar de Huasco, Salar de Negro Francisco, and Salar de Surire also provide year-round habitat for the Andean flamingo (Caziani *et al.* 2006, p. 13; Caziani *et al.* 2007, p. 279; Ducks Unlimited 2007c, pp. 5–8; Johnson 1958, p. 296). In 1998 and 2000, between 3,500 and 4,500 birds overwintered at these sites (Caziani *et al.* 2007, p. 279).

Peru: Andean flamingos frequent several wetlands in Peru (BLI 2008, pp. 5, 72, 74–75, 78; Ducks Unlimited 2007d, pp. 21, 25, 29; Jameison and Bingham 1912, p. 14; Ricalde 2003, p. 91). Although BirdLife International reports breeding sites in Peru (2008, p. 2), the Flamingo Specialist Group reported no known nesting sites or evidence of breeding at Peruvian wetlands in 2005, 2006, or 2007 (M. Vlaui Munn, in litt., as cited in

Childress *et al.* 2005, p. 6; Arengo in litt., as cited in Childress *et al.* 2006, p. 6; Arengo in litt., as cited in Childress *et al.* 2007a, p. 7). The species frequently overwinters at Laguna Salinas, Laguna de Loriscota, and Lago Parinacochas, among other locations (Caziani *et al.* 2007, p. 279; Ducks Unlimited 2007d, p. 21, 25, 29–30; Jameison and Bingham 1912, p. 14). It is estimated that nearly 20 percent of the global population overwinters in Peru (Ricalde 2003, p. 91).

Recent Trends in Distribution: In 1997, 50 percent of the breeding population was distributed among three sites in Chile (Salar de Surire, Laguna Maricunga, and Laguna Negro Francisco) and two sites in Argentina (Pozuelos, and Vilama) (Caziani *et al.* 2007, p. 279). In the summer of 2005, 50 percent of the breeding population was located in 5 separate wetlands-Negro Francisco (Chile), Salar de Surire (Chile), Lagunas de Vilama (Argentina), Laguna Colorada (Bolivia) and Salar de Atacama (Chile) (Caziani *et al.* 2006, p. 13).

Population Estimates

Between 1965 and 1968, Charles Cordier's estimate of the Andean flamingo population varied by an order of magnitude, from 50,000 to 500,000 (as cited in Johnson 1967, p. 404; as cited in Kahl 1975, p. 100). In 1975, Kahl (1975, p. 100) estimated the total population to be 150,000 individuals. This estimate was based on (1) previous estimates; (2) the fact that the largest number of individuals Kahl had seen in one place (Lago Uru Uru, Bolivia) was 18,000 individuals; and (3) that, at most sites, he observed the Andean flamingo to be less numerous than the Chilean flamingo and James' flamingo. In 1986, the population was estimated to be less than 50,000 individuals and declining (Johnson 2000, p. 203). However, the accuracy of earlier population estimates has never been confirmed. According to Arengo (in litt. 2007, p. 2), member of the Altoandino Flamingo Conservation Group (Grupo de Conservación Flamencos Altoandinos), previous historical population estimates were based on extrapolations of data that are not considered to be reliable. Experts consider the figure of between 50,000 to 100,000 individuals may have been accurate until the mid-1980s (BLI 2008, p. 1). Although the figure of 150,000 (e.g., Fjeldså and Krabbe 1990, p. 86) was still being reported in the 1990s, an estimate of 50,000 is considered a more accurate figure (Arengo in litt. 2007, p. 2; BLI 2008 p. 1; del Hoyo *et al.* 1992, p. 526), and experts believe that the species underwent a severe reduction from the mid-1980s to the late 1990s (BLI 2008, pp. 1, 5).

The first simultaneous census of Andean flamingos was conducted in 1997 (Valqui *et al.* 2000, p. 110). Using a comprehensive sampling design and conducting simultaneous surveys at over 200 wetlands in Peru, Bolivia, Chile, and Argentina, researchers counted 33,918 Andean flamingos in January 1997; 27,913 in January 1998; 14,722 in June 1998; and, 24,442 in July 2000 (Caziani *et al.* 2007, p. 279). In the summer of 2005, a total of 31,617 Andean flamingos were counted (Caziani *et al.* 2006, p. 13). Recent censuses estimate the global population at around 34,000 individuals (Caziani *et al.* 2006, pp. 276–287; Caziani *et al.* 2007, pp. 13–17).

According to Arengo (in litt. 2007, p. 2), long-term population trends have been difficult to establish, given the unreliability of previous population estimates. However, given that the global population sizes of all other flamingo species are estimated above 100,000 individuals, experts consider the Andean flamingo to be the rarest of the 6 flamingo species (Arengo in litt. 2007, p. 2).

Nesting sites: In the last decade, small groups of Andean flamingos have been reported intermittently nesting at a greater variety of sites, including: Laguna Brava and Lagunas de Vilama (Argentina) (Bucher *et al.* 2000, p. 119; Caziani *et al.* 2006, p. 13; Derlindati 2008, pp. 6–7); Laguna Colorada and Laguna Kalina (Bolivia) (Caziani *et al.* 2007, p. 279; Childress *et al.* 2005, p. 6; Childress *et al.* 2006, p. 5; Childress *et al.* 2007a, p. 7; Rodriguez Ramirez 2006, as cited in Arengo in litt. 2007, p. 2); and Salar de Punta Negra and Salar de Huasco (Chile) (Bucher *et al.* 2000, p. 119; Caziani *et al.* 2007, p. 279; Valqui *et al.* 2000, p. 112). In recent years, Andean flamingos have been recorded from 25 wetlands complexes, but there were fewer than 100 individuals at many of these sites (Caziani *et al.* 2007, p. 281). Only 12 wetlands contained more than 100 Andean flamingos at any one of the four sampling periods from 1997 to 2000, and breeding has been consistently reported at only 2 of these sites (Arengo in litt. 2007, pp. 2–3; Bucher *et al.* 2000, p. 119; Caziani *et al.* 2007, pp. 279–281; Valqui *et al.* 2000, p. 112).

Breeding success: Productivity estimates from intensive studies of breeding sites in Chile indicate marked fluctuations over the past 20 years, with periods of very low breeding success (Arengo in litt. 2007, p. 2). In 1987, a high of around 15,000 chicks fledged, followed by 10 years of relatively low productivity (fewer than 800 chicks fledged per year on average), and a recent increase to an average of 3,000 chicks fledged since 2000 (Rodriguez Ramirez 2006, Amado *et al.* 2007, as cited in Arengo in litt. 2007, pp. 1–3). Between 1997 and 2001, successful breeding (based on the observation of 2–3-month-old chicks) was documented only at three wetlands and, in those wetlands, a total of only 12,801 chicks were produced—Salar de Surire (Chile; 9,200 chicks), Salar de Atacama (Chile; 3,378 chicks), and Aparejos (Argentina; 223 chicks) (Caziani *et al.* 2007, p. 283).

The most recent simultaneous census data indicates that a total of 2,338 chicks survived at breeding colonies located in Argentina, Bolivia, and Chile during the 2006–2007 breeding season (December to February) (Childress *et al.* 2007a, p. 7). In Argentina, eight sites were surveyed, six of which are known Andean flamingo breeding sites. Of these, breeding was attempted at one site, but was unsuccessful. No breeding was reported in Peru during the 2006–2007 breeding season. Of 4 sites surveyed in Bolivia, 3 of which are known Andean flamingo nesting grounds, breeding occurred at two sites (Laguna Colorada and Kalina) producing total of 1,800 chicks. In Chile, breeding was attempted at four sites in Salar de Atacama. A total of 2,900 pairs of Andean flamingos laid eggs but only 538 chicks survived.

Conservation Status

The Andean flamingo is the rarest of six flamingo species worldwide (family Phoenicopteridae). The IUCN considers the Andean flamingo to be "Vulnerable" because (1) it has undergone a rapid population decline, (2) it is exposed to ongoing exploitation and declines in habitat quality, (3) and, although exploitation may decrease, the longevity and slow breeding of flamingos suggest that the legacy of past threats may persist through generations to come (BLI 2008, p. 1). Long-lived species with slow rates of reproduction and ongoing poor breeding success, such as that being experienced by the Andean flamingo, can quickly decline towards extinction when reproduction does not keep pace with mortality (BLI 2008, p. 2; Bucher 1992, p. 183; del Hoyo *et al.* 1992, p. 517) (see Population Estimates, above).

Summary of Factors Affecting the Andean Flamingo

A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Andean flamingos occupy shallow, saline wetlands in the lowland, puna, and altoandino regions of the Andes (see Table 1) (BLI 2008, pp. 1, 6; Bucher 1992, p. 192; Bucher *et al.* 2000, p. 119; del Hoyo 1992, pp. 514; Fjeldså and Krabbe 1990, p. 85). Andean flamingos are altitudinal migrants and alternate between wetlands based largely on environmental conditions and especially the availability of water (Bucher 1992, p. 182; Bucher *et al.* 2000, p. 119; del Hoyo 1992, pp. 514; Fjeldså and Krabbe 1990, p. 85; Goldfeder and Blanco 2007, p. 190; Hurlbert and Keith 1979, pp. 334, 336; Rocha and Rodriguez 2006, p. 12). During the summer breeding season (December to January), Andean flamingos occupy high-elevation wetlands in Chile, Argentina, and Bolivia. During the winter, they may stay at the high-elevation wetlands, or move to lower elevations in Argentina, Bolivia, and Peru (Blake 1977, p. 207; BLI 2008, pp. 1 and 6; Boyle *et al.* 2004, pp. 563–564, 570–571; Bucher 1992, p. 182; Bucher *et al.* 2000, p. 119; Caziani *et al.* 2006. p. 17; Caziani *et al.* 2007, pp. 277, 279, 281; del Hoyo 1992, p. 514, 519; Fjeldså and Krabbe 1990, p. 85; Hurlbert and Keith 1979, pp. 330; Kahl 1975, pp. 99–101; Mascitti and Bonaventura 2002, p. 360; Mascitti and Castañera 2006, p. 328).

The wetlands occupied by Andean flamingos are utilized on a landscape level (Derlandati 2008, p. 10). Andean flamingos prefer water that is less than 3 ft (1m) deep (Fjeldså and Krabbe 1990, p. 86; Mascitti and Casteñera 2006, p. 331) and rely on the variety of habitat options at wetland complexes throughout the species' range to select optimal nesting and feeding sites. Beginning in 2002, researchers conducted a multi-year Andean flamingo dispersal study, to determine overwintering sites and spatial and temporal movements (Caziani *et al.* 2003, p. 11; Johnson and Arengo 2004, pp. 9, 15). Andean flamingos in Argentina were tracked using satellite transmitters, and results were highly variable. One bird stayed at the origination site (the actual location of which was undisclosed) another bird traveled 715 mi (1,150 km) over a 4-day period, using more than four sites in the process (Caziani *et al.* 2003, p. 11). The habitats visited included salar lakes, rivers and flooded areas. Flamingos were more mobile during summer to autumn (January-May), moving between sites often, and less mobile in winter. The birds in this study overwintered at Laguna de Mar Chiquita (Argentina), Lago Poopó (Bolivia), and Salar de Atacama (Chile) (Caziani *et al.* 2003, p. 11).

Between 1997 and 2001, 98 percent of Andean flamingo chicks were produced in two Chilean wetlands—Surire (9,200 chicks) and Atacama (3,378 chicks) (Caziani *et al.* 2007, p. 283). In the 2006–2007 breeding season, 75 percent of the surviving chicks were produced at Laguna Kalina and Laguna Colorada (1,800 chicks) (Bolivia), and the other 25 percent at Salar de Atacama (538 chicks) (Chile). Sites where breeding does not occur serve as important staging areas for pre-reproduction mating displays and as feeding locations for non-breeding flamingos and even breeding flamingos at nearby sites (Derlandati 2008, p. 10). Andean flamingos travel to different wetlands to feed, even while nesting (Bucher 1992, p. 182; Caziani *et al.* 2007, p. 277; Conway 2000, p. 212; del Hoyo 1992, pp. 509–519).

The Andean region where the Andean flamingo occurs is characterized by an extensive series of endoreic (closed) water systems that drain internally, that are recharged primarily by summer rains, that contract seasonally, and that may occasionally dry out completely (see Factor E) (Bucher 1992, p. 182; Caziani and Derlindati 2000, pp. 124–125; Caziani *et al.* 2001, p. 110; Mascitti and Caziani 1997, p. 328).

Mineral extraction, water contamination, water extraction, and water diversion from mining, agriculture, urban development, and increasing tourism are ongoing activities that negatively impact wetland habitats that support Andean flamingos throughout the species' range (Arengo in litt. 2007, p. 2; Childress *et al.* 2007a, p. 5; Goldfeder and Blanco 2007, p. 193).

Mineral extraction: There are ongoing mining operations to extract salt, borax, ulexite, sulphur, sodium carbonate, lithium, and several other minerals at many of the wetlands occupied by the Andean flamingo. Mineral extraction and prospecting are ongoing at these wetlands, including: Salars de Atacama and Surire (Chile) (Corporación Nacional Forestal 1996a, p. 9; Rundel and Palma 2000, pp. 270–271)—the two breeding sites that accounted for 98 percent of the chick production during the period 1997–2001 (Caziani *et al.* 2007, p. 283)—and Lago Uru Uru (Bolivia) (Soto 1996, p. 7; Ugarte-Nunez and Mosaurieta-Echegaray 2000, p. 135)—the site that had the largest number of Andean flamingos ever recorded in one wetland (Kahl 1975, p. 100). Prospecting and digging for minerals and underground water—involving road building which makes it possible for people to reach places that were formerly inaccessible—are ongoing at Laguna Negra (Corporación Nacional Forestal 1996c, pp. 10–11).

Argentinean wetlands—including Laguna Brava, Laguna Pozuelos, and Lagunas de Vilama, where Andean flamingos breed and live year-round—are also under mining pressure (BLI 2008, p. 553; Caziani *et al.* 2001, p. 106; de la Fuente 2002, p. 8; Ducks Unlimited 2007a, p. 4; Goldfeder and Blanco 2007, p. 193).

In Bolivia, there are proposals to exploit lithium, potassium, and borium from Salar de Coipasa (Ducks Unlimited 2007b, p. 11) and Pastos Grande (New World Resource Corp 2008, p. 1)—both known breeding and overwintering sites for the Andean flamingo. Bolivia contains an estimated 50 percent of the world's supply of the lithium that is used to make batteries for portable electronic equipment. The largest known lithium deposit in the world is located in the Bolivian altiplano—the Pastos Grandes concession (New World Resource Corp 2008, p. 2). Lithium can be extracted directly from the saline water in the alitplano salars; this water is referred to by the mining industry as "brine." The brine is pumped through a series of evaporation ponds to concentrate the lithium (New World Resource Corp 2008, p. 4). Obtaining lithium from brine is considered more cost-effective in the mining industry than the other alternative, extracting lithium from hard rock (New World Resource Corp 2008, p. 4). Nearly all the world's supply of brine-derived lithium comes from the Chilean and Argentinean altiplanos (New World Resource Corp 2008, p. 4).

Intensive exploitation of natural resources has degraded the soil and ecology of the region, resulting in extensive erosion, river sedimentation, soil salinization, silting up of lakes, and water imbalances in watersheds that contribute to extreme fluctuations in water flows (Jellison *et al.* 2004, p. 14). In the past, Andean flamingos have abandoned breeding sites undergoing alteration from mining. Laguna Ascotán was once considered a breeding site for the species (Johnson *et al.* 1958, p. 296; Kahl 1975 p. 100). The birds abandoned the site in the mid-20th century, which Johnson (1958, p. 296) attributed to the resumption of borax extraction. Today, Andean flamingos continue to feed at the site (Vilina and Martínez 1998, p. 28) but there are no reports of nesting.

Water Contamination: Water resources at many salars have been contaminated, largely as the result of chemical pollution produced by the mining and metallurgical industries. The waters of the Titicaca-Desaguadero-Poopó-Salar de Coipasa (TDPS) hydrological system have been polluted by mining and metal foundry activities (Jellison *et al.* 2004, p. 11; Ricalde 2003, p. 91). This water system includes the important Bolivian overwintering sites, Lagos Poopó and Uru Uru—where more than 50 percent of the known population of Andean flamingos overwintered in 2000 (Caziani *et al.* 2007, p. 279). The area has been mined for silver, lead, zinc, copper limestone, antimony, iron, gold, tin, and uranium (Rocha 2002, p. 10). Lago Poopó, Lago Uru Uru, and the lower Río Desaguadero have concentrations of heavy metals above the limits permitted for human consumption (Apaza *et al.* 1996, Organization of American States/United Nations Environment Programme (OAS/UNEP) and the Bi-national Authority of Lago Titicaca (Autoridad Nacional del Lago Titicaca (ALT)) 1999, Van Ryckeghem 1997—as cited in Rocha 2002, p. 10). Because Lago Poopó is located at the terminal end of the endoreic (closed) TDPS drainage system, pollutants are more likely to concentrate there (Jellison *et al.* 2004, p. 120; Ronteltap *et al.* 2005, p. 3) and the lake has been contaminated by mining activities for a long time (Adamek *et al.* 1998). Mine pollution has led to lake water lead concentrations that are 300 times higher in Lago Poopó than the average concentrations detected in other lakes in the world and fish in the lake test positive for heavy metal residues (Cardoza *et al.* 2004, as cited in Jellison *et al.* 2004, p. 120). Water contamination in Lago Poopó was further exacerbated in year 2000, when 39,000 barrels of crude oil spilled in the lake. The native community Uru Morato, which has lived along the lake for 5,000 years, reported that the flamingoes did not lay eggs there that year "for the first time in thousands of years" (Jellison *et al.* 2004, p. 13).

Tourism and increasing human population to support the mining industry has destroyed habitat and further contaminated water supplies. Ecotourism is prevalent at many wetlands inhabited by the Andean flamingo, most of which are exceptional sites for viewing biodiversity and wildlife, including Argentina—at Laguna de Mar Chiquita (Ducks Unlimited 2007a, p. 22); Laguna Brava, where tourism includes the use off-road vehicles (BLI 2008, p. 40); and Lagunas de Vilama (Caziani *et al.* 2001, p. 106). Increasing amounts of pollution from surrounding towns that support ecotourism and the mining industry wash into wetlands during the rainy season and are carried into the lake by wind. Ugarte-Nunez and Mosaurieta-Echegaray 2000 (p. 139) noted an absence of flamingos in areas where refuse enters the Laguna Salinas (Peru). Inadequate sewage systems at growing urban centers pollute the salars (Jellison *et al.* 2004, p. 11). Pollution of the water in the TDPS system is problematic where towns are concentrated on the shores of the lakes (Ronteltap *et al.* 2005, p. 5). As of 2004, the TDPS water system, of which Lagos Poopó and Uru Uru are a part, supported a population of nearly 3 million people (Jellison *et al.* 2004, p. 14). At Lago Titicaca, wastewater is causing eutrophication—whereby excessive nutrients stimulate excessive plant growth, reducing the dissolved oxygen in the water as the plants decompose, causing other organisms to die—over approximately 3,954 acres (ac) (1,600 hectares (ha)) in the Puno Bay, and in another portion of the lake, leakage from former oil wells continues to degrade wildlife habitat (IRENA 1996, p. 9). Sewage from the city of Oruro and the neighboring towns of Challapata, Huari, and Poopó empties into Lagos Poopó and Uru Uru, causing organic and bacteriological pollution (Ducks Unlimited 2007b, p. 7; Liberman *et al.* 1991, OAS/UNEP and ALT 1999—as cited in Rocha 2002, p. 10).

In addition, illegal dumping of agrochemicals has severely impacted wetlands and the species that depend on them. In 2000, at Mar Chiquita (Argentina), Bucher reported that 30 tons of Lindane, an insecticide, was illegally dumped at the northern end of the lake, jeopardizing the entire closed lake system (Johnson and Arengo 2001, p. 38). Industrial pollutants and pesticides have caused large-scale die-off of flamingos. Childress *et al.* (2007b, p. 30) reported that tens of thousands of lesser flamingos (*Phoenicopterus minor*) were killed in July 2004 by industrial heavy metals and pesticides at feeding lakes in Kenya and Tanzania. A massive bird die-off of unspecified species of birds at Miramar in February 2004 (located in Córdoba, where Laguna de Mar Chiquita is located) may have been caused by the dumping of excess agrochemicals into the water, which penetrated the soil (BLI 2008, pp. 36–37).

Given that pollutants and pesticides have been known to cause die-offs of other species of flamingos and other bird species, it is likely that such contamination could have lethal effects on Andean flamingos. For instance, although in 1997 Laguna de Pozuelos was among 5 wetlands that harbored 50 percent of the breeding population of Andean flamingos, the number of Andean flamingos on Laguna de Pozuelos has diminished greatly since 1993 (Caziani and Derlindati 2000, p. 122). Pollution from mining wastes and erosion due to overgrazing, combined with desiccation of the lake (see Factor E), is negatively affecting the wetland at Laguna de Pozuelos (Argentina), where Andean flamingos breed and reside year-round (Laredo 1990, as cited in Adminstration de Parques Nacionales 1994, p. 2). In the 2006–2007 breeding season, no breeding was detected at this lake (Childress *et al.* 2007a, p. 7).

Water Extraction and Diversion: Water is extracted from wetlands for use by the mining industry, to facilitate lakebed resource exploitation, and to meet increasing human demand. Mining companies hold water concessions at Laguna Negra (Chile) (Corporación Nacional Forestal 1996c, pp. 10–11). Water extraction is an intrinsic part of lithium mining in Argentina, Bolivia and Chile (New World Resource Corp 2008, p. 4) (see Mineral Extraction). Underground water has been pumped from Salar de Punta Negra (Chile) for use in a large copper mining operation (Line 2004, p. 4). In the past decade, Andean flamingos have bred intermittently at Salar de Punta Negra (Caziani *et al.* 2006, p. 13; Caziani *et al.* 2007, p. 279, 283; Johnson *et al.* 1958, p. 296; Kahl 1975 p. 100). The shallow wetlands preferred by Andean flamingos are subject to high rates of evapotranspiration (Caziani and Derlindati 2000, p. 122), and water extraction hastens desiccation of these wetlands. In these arid closed-basin systems, groundwater extraction is unsustainable (Messerli *et al.* 1997, p. 233; Research and Resources for Sustainable Development (Recursos e Investigación para el Desarrollo Sustentable (RIDES)) 2005, p. 14).

Wetlands have been drained to facilitate excavation on the lakebed surface (Ugarte-Nunez and Mosaurieta-Echegaray 2000, p. 135). Excavation can drastically alter the water levels of these shallow lakes, creating areas that are unsuitable for foraging and nesting and allowing human access to areas that were once inaccessible (Corporación Nacional Forestal 1996c, p. 11). Furthermore, there have been reports of flamingos dying when they became stuck in the mud brought up from the bottom of the lake by mining operations (Ugarte-Nunez and Mosaurieta-Echegaray 2000, p. 137).

Urbanization and tourism have intensified groundwater use (Jellison *et al.* 2004, p. 11), as hotels and restaurants have been established in the villages and towns surrounding the salars and lagunas (RIDES 2005, p. 21). An influx of tourists at Laguna Colorada (Bolivia) has resulted in noticeable increased water consumption (Rocha and Eyzaguirre 1998, p. 8). At Salar de Atacama, the maximum volume available for extraction from the basin is estimated by the average annual recharge rate of 177 cubic feet per second (ft^3/s) (5 cubic meters per second (m^3/s)), yet the rights to 219 ft^3/s (6.2 m^3/s) of water have been allocated (RIDES 2005, pp. 15–16). The number of people visiting remote Salar de Surire (Chile), a primary Andean flamingo breeding site, was under 1,000 as of 1995, and is increasing (Soto and Silvestre 1996, p. 7). Recent estimates indicate that over 50,000 people visit Salar de Atacama (Chile) and surrounding areas each year. Based on the recharge estimates, continued increases in water use levels commensurate with increasing tourism would not be sustainable (RIDES 2005, p. 21).

The gradual loss of water from the basin reduces the surface area of the lake and the total amount of habitat available to the Andean flamingo. Ugarte-Nunez and Mosaurieta-Echegaray (2000, p. 135) found that the number of flamingos at Laguna Salinas (Peru) was strongly correlated to the proportion of the lake covered with water (1997: r^2=0.73; 1998: r^2=0.72), indicating that loss of surface area influences flamingo abundance. Lago Parinacochas (Peru), long known as an important overwintering site for Andean flamingos, is being drained as part of a water development project in Peru (Ducks Unlimited 2007d, p. 31). The TDPS in Bolivia and Peru, which Lagos Poopó and Uru Uru belong to, provides drinking water and cleaning water, transportation, industry and irrigation-in addition to providing habitat for flora and fauna (Ronteltap *et al.* 2005, p. 5).

The extraction of water for human consumption has exacerbated ongoing drought conditions throughout Andean flamingo habitat since the early 1990s (see Factor E) (Caziani and Derlindati 2000, pp. 124–125; Caziani *et al.* 2001, p. 110; Mascitti and Caziani 1997, p. 328). In Chile, where Andean flamingo breeding colonies are found and where mineral and hydrocarbon exploration and exploitation have increased in the last two decades, both the number of successful breeding colonies and the total production of chicks of Andean flamingos have declined since the 1980s (Parada 1992, Rodríguez and Contreras 1998—as cited in Caziani *et al.* 2007, p. 284). Of 2,900 pairs of Andean flamingos that attempted to breed in Chilean wetlands in the 2006–2007 season, only 538 chicks were produced (Childress *et al.* 2007a, p. 7).

Water from salars has been diverted to support agriculture. Rio Lauca, which feeds Salar de Coipasa (Bolivia), has been diverted near its source in Chile for irrigation purposes (Ducks Unlimited 2007c, pp. 9–11). This has resulted in a considerable reduction in the flow of water into Salar de Coipasa and is contributing to the desiccation of the Salar (Ducks Unlimited 2007b, p. 11).

Rio Desaguadero is a 230 mi-long (370 km) river that once flowed from Lago Titicaca to Lago Poopó but recently changed direction and now flows into Lago Uru Uru (Ducks Unlimited 2007b, p. 5). This is attributed to water level reductions caused by an ongoing drought since the early 1990s (see Factor E) and by diversion for irrigation (Jellison *et al.* 2004, p. 14). In 2004, Rio Mauri, a major tributary of the Rio Desaguadero was diverted to Peru (Armando *et al.* 2004, as cited in Jellison *et al.* 2004, p. 14). These water shortages exacerbate the contamination and extraction problems for Lagos Poopó and Uru Uru, mentioned above.

Research has shown that drastic water level changes can significantly alter the seasonal altitudinal movements of the Andean flamingo (Mascitti and Caziani 1997, pp. 324–326). In January 1996, Caziani & Derlindati (2000, p. 124) reported that a colony of unidentified flamingo nests at Lagunas Vilama, where Andean and James' flamingo are known to breed, were found on dry land—probably due to an unexpected retraction of the lake—leaving 1,500 abandoned nests, some of which had eggs from that season.

Increased urbanization and mining have increased infrastructure development. At Lagunas Brava and Mulas Muertas (breeding and overwintering sites, respectively), in Argentina, an international road to connect Argentina with Chile has been under construction. This road passes near the shores of Lagunas Brava and Mulas Muertas and through the bofedales that feed the two lakes, decreasing the available area suitable for Andean flamingo nesting and foraging and disrupting hydrological recharge system by altering the wet meadows that feed the two lakes (de la Fuente 2002, p. 8). At Laguna Salinas (Peru), which provides habitat for all three Andean flamingo species (Ducks Unlimited 2007d, p. 26), a mining road bisects the lake and construction excavations have reduced flamingo habitat availability (Ugarte-Nunez and Mosaurieta-Echegaray 2000, pp. 137–138). Increased road construction to support mining and tourism also facilitates predator access to nesting grounds (Corporación Nacional Forestal 1996a, pp. 12) (Factor C).

Agriculture and Grazing: Lowland wetlands that serve as important overwintering sites for the Andean flamingo are subject to agricultural pressures (Derlindati 2008, pp. 1, 7). Laguna Melincué (Argentina), for instance, lies in the heart of Argentina's agricultural zone (Romano *et al.* 2006, p. 17). The forested lands are being cleared and pastures have been and continue to be planted with cash crops in the areas surrounding Mar Chiquita (Argentina) (BLI 2008, p. 36).

Cattle grazing occurs adjacent to Andean flamingo habitat in Argentina, where the species breeds and overwinters, including Laguna Brava (de la Fuente 2002, p. 8) and Laguna Pozuelos (Adminstration de Parques Nacionales 1994, p. 1). At Laguna Brava, ranching activities are considered small-scale (comprising 300 heads of cattle), in part, because the area surrounding the lake is uninhabited (de la Fuente 2002, p. 8). At Laguna Pozeulos, grazing has resulted in severe soil erosion, especially along the shore and increased siltation of the lake (Adminstración de Parques Nacionales 1994, p. 1; Ducks Unlimited 2007a, p. 4). In Bolivia, livestock management (llamas and alpacas) continues to be a problem in the bofedales surrounding Laguna Colorada (Ducks Unlimited 2007b, p. 14; Flores 2004, pp. 25–26).

These activities have contributed to the alteration and degradation of vital Andean flamingo habitat. Long-lived species with slow rates of reproduction, such as the Andean flamingo, can appear to have robust populations, but can quickly decline towards extinction if reproduction does not keep pace with mortality (BLI 2008, p. 2; Bucher 1992, p. 183; del Hoyo *et al.* 1992, p. 517). Andean flamingos have temporally sporadic and spatially concentrated breeding patterns, and their breeding success and recruitment are low (Caziani *et al.* 2007; Childress *et al.* 2005, p. 7; Childress *et al.* 2006, p. 7; Childress *et al.* 2007a, p. 7). Successful reproduction is spatially concentrated in just a few wetlands (Childress *et al.* 2005, p. 7; Childress *et al.* 2006, p. 7; Childress *et al.* 2007a, p. 7; Valqui *et al.* 2000, p. 112). In the case of Andean flamingos, Conway (W. Conway, as cited in Valqui *et al.* 2000, p. 112) suggests that a stable population can be

maintained if the species' breeding success is good every 5–10 years. Recent productivity estimates indicate that the species has experienced very low breeding success over prolonged periods (Arengo in litt. 2007, p. 2; Amado *et al.* 2007, Rodriguez Ramirez 2006—as cited in Arengo in litt. 2007, pp. 1–3). An examination of the species' nesting sites and breeding success (see Population Estimates, above) indicates that, despite an increased number of nesting sites, the species' breeding success remains low (Arengo in litt. 2007, p. 2; Caziani *et al.* 2007; Childress *et al.* 2005, p. 7; Childress *et al.* 2006, p. 7; Childress *et al.* 2007a, p. 7). Valqui *et al.* 2000 (pp. 111–112) postulated that reproduction in the Andean flamingo, a species which prefers to nest at high densities and once nested in huge colonies at Salar de Atacama (Fjeldså and Krabbe 1990, p. 86; Johnson *et al.* 1958, p. 296; Kahl 1975 p. 100), is being inhibited by the more dispersed nature of the population and occupation of smaller lakes.

Summary of Factor A

Salar habitat throughout the Andean flamingo's range has been and continues to be altered as a result of natural resource exploitation. Andean flamingos require a variety of available habitats over large areas in order to find optimal foraging and nesting sites, given unpredictable seasonal fluctuations. Mining has resulted in direct loss of habitat due to excavations of lakebeds, has increased water extraction, and has caused water pollution. Wetlands throughout Andean flamingo habitat have been drastically altered by water extraction for mining, agriculture, and human consumption. Flamingos are sensitive to fluctuating water levels, and intentional diversion of water from these endoreic (closed) wetlands exacerbates natural seasonal fluctuations and reduces habitat options. Wetlands are contaminated from mining spoils, sewage and agriculture pollution. Wetland complexes occupied by Andean flamingos that are hydrologically connected become affected by pollutants and by diminished water levels on a landscape level. Resource extraction and water contamination have had and continue to have significant impacts on the water quality and the availability of wetlands that are critical to the lifecycle of the Andean flamingo. Andean flamingo breeding patterns are temporally sporadic, successful reproduction is spatially concentrated, and their breeding success and recruitment are low. Continued and pervasive habitat destruction throughout the species' range in recent decades coincides with the species' drastic population reduction, as noted by experts (See Population Estimates, above). The negative impacts of habitat destruction on Andean flamingos on the reduction of the species' range and population numbers are intensified by an ongoing drought (Factor E). Lowered water levels could lead to disease outbreaks and can increase the flamingo's susceptibility to predation (Factor C). Therefore, we find that destruction and modification of habitat are threats to the continued existence of the Andean flamingo throughout its range.

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

Hunting for local consumption: Andean flamingos are hunted throughout their range for use as food or medicine and in rituals. Johnson (1967, p. 405) described flamingo hunting activities by the Montaro Indians at Lago Poopó (Bolivia) and by the Chipayas at Laguna Coipasa (Bolivia), who hunted the species for food and for its feathers, which were sold as dance ornaments). In the late summer, the Chipayas also rounded up groups of young flamingos and slaughtered them for their fat, which was boiled down and sold as a remedy for tuberculosis (Johnson 1967, p. 405).

Flamingo hunting continues today throughout the species' range (Valqui *et al.* 2000, p. 112). Quantities of wild birds, including flamingos, are still sold in the markets in Argentina, Bolivia, and Chile (Barbarán 2004, p. 6; Sáenz 2006, p. 103). In 2006, birds sold for between 25–50 Bolivianos (Bs) ($3–6 U.S. Dollars (US$)) (Sáenz 2006, p. 89).

On the Argentinean (Departments of Salta and Jujuy)/Bolivian border (Potosí)—where several Andean flamingo wetlands are found, including Laguna Pozuelos (Argentina), Laguna Colorada, and Salar de Chalviri (both in Bolivia)—locals use flamingo feathers as medicinal incense and for costumes; they eat flamingo meat and use the fat for medicine (Barbarán 2004, p. 11). Hunting is also ongoing at Lagunas de Vilama (Argentina), where the species breeds and overwinters (BLI 2008, p. 553).

At Salar de Atacama (an Andean flamingo breeding site in Chile), flamingos are hunted for their feathers (Corporación Nacional Forestal 1996a, pp. 8–9). Flamingos are used in local rituals associated with rain, birth, death, and illnesses by indigenous cultures that have long inhabited the Salar de Atacama region (Castro and Varela 1992, p. 22).

At Laguna Salinas (an overwintering site in Peru), hunters have killed flamingos for target practice or just "to get a close look at one" (Ugarte-Nunez and Mosaurieta-Echegaray 2000, p. 137). Increased road construction to support mining and tourism (Factor A) also facilitates hunting access to nesting grounds (Corporación Nacional Forestal 1996a, p. 12). At Lago Titicaca (Peru), localized hunting may occur (Ducks Unlimited 2007d, p. 27). Excessive hunting is also a problem at Lago Parinacochas (an overwintering site in Peru) (Ducks Unlimited 2007d, p. 23). Hunting pressure on flamingos has been described as "intense" at Negro Francisco (Chile) and poaching is a problem at Mar Chiquita (Argentina); both are Andean flamingo breeding grounds (Bucher 1992, p. 183, Corporación Nacional Forestal 1996c, p. 11; Goldfeder and Blanco 2007, p. 193).

Indiscriminant hunting of Andean flamingos continues at Lago Poopó (an Andean flamingo overwintering site in Bolivia) (Rocha 2002, p. 10). Around Lagos Poopó and Uru Uru, flamingos are still trapped using traditional techniques—a slip-knot rope strung across the shores of the lake (Sáenz 2006, pp. 88–89). Locals, such as the Urus, who live near Lagos Poopó and Uru Uru, prefer Andean flamingos above all other waterfowl, presumably for their fat content (Sáenz 2006, p. 185). Flamingo blood might be used medicinally and feathers for adornment (Sáenz 2006, pp. 88–89). Locals at Lagos Poopó and Uru Uru hunt flamingos to sell to miners, who make oil from the bird to cure tuberculosis (Morrison 1975, p. 81). One trapper noted that "long ago" it was possible to trap up to 15 flamingos per day at Lago Poopó, but that this was no longer the case (Sáenz 2006, p. 89).

Direct removal through hunting of Andean flamingo juveniles and adults has immediate and direct consequences on the already small size of the Andean flamingo population. The Andean flamingo experienced a severe population reduction since the 1980s (BLI 2008, pp. 1, 5), with the number of birds decreasing from 50,000 to 100,000 individuals (BLI 2008, p. 1) to the current estimate of 34,000 (Caziani *et al.* 2006, pp. 276–287; Caziani *et al.* 2007, pp. 13–17). Hunting further reduces the number of individuals. All flamingos are believed to be monogamous, with a strong pair-bonding tendency that may be maintained from one breeding season to the next (del Hoyo 1992, p. 514). Hunting can destroy pair bonds and disrupt mating from one season to the

next. Because not all sexually mature adults breed every year and, even in years of breeding, not all sexually mature adults will participate (Bucher 1992, p. 183), removal of those adults that are nesting greatly reduced their already poor breeding success (Fjeldså and Krabbe 1990, p. 85). Andean flamingos are long-lived, with slow rates of reproduction and poor breeding success (BLI 2008, p. 2; Bucher 1992, p. 183; del Hoyo *et al.* 1992, p. 517). Stable populations can be maintained only if the species' breeding success is good every 5–10 years (William Conway, Wildlife Conservation Society, Bronx, New York, as cited in Valqui *et al.* 2000, p. 112). Removal of juveniles from the population contributes to the already low rate of chick production (as further discussed under Egg Collection, below). Experts believe that ongoing exploitation, coupled with habitat decline, and the species' rapid population decline and slow breeding render this species vulnerable to extinction in the wild (BLI 2008, p. 1). Finally, given the species' sensitivity to human disturbance (see Factor E), Andean flamingos are negatively affected by disturbance from hunting-related activities, even when they are not directly targeted (CONAF, Region II, as cited in Instituto Nacional de Recursos Naturales (INRENA) 1996, p. 11; de la Fuente 2002, p. 8; Valqui *et al.* 2000, p. 112).

Hunting for international trade: In 1975, the Andean flamingo was listed in Appendix II of CITES (UNEP–WCMC 2008b, p. 1). Appendix II includes species that are not necessarily threatened with extinction, but may become so unless trade is subject to strict regulation to avoid utilization incompatible with the species' survival. International trade in specimens of Appendix-II species is authorized through permits or certificates under certain circumstances, including verification that trade will not be detrimental to the survival of the species in the wild and that specimens in trade were legally acquired (UNEP–WCMC 2008a, p. 1). For information on how CITES functions to regulate trade, see Factor D.

Bucher (1992, p. 183) described a smuggling operation that involved trade in live Andean flamingos with birds captured at Laguna de Mar Chiquita (a breeding site in Argentina) and transported out of the country as captive-bred specimens (specimens that were not taken out of the wild) forged CITES documents. Based on CITES documentation, trade records indicate that a total of 77 Andean flamingo specimens have been traded internationally since the species was listed in 1975 (United Nations Environment Programme-World Conservation Monitoring Centre (UNEP–WCMC) 2008c, pp. 1–2). Thirty-six specimens were traded as non-living specimens—all were exchanged for scientific purposes and involved trade with Chile and Argentina—3 specimens from Chile (in 1985) and 25 specimens from Argentina (in 2004); 1 shipment of 250 grams of specimens from Chile (possibly blood samples, in 1997); 1 body (probably a museum specimen, in 1989); and 2 feathers (which appear to be the same specimen—imported to the U.S. from Chile in 2000 and returned to Chile in 2001) (UNEP–WCMC 2008c, pp. 1–2).

Forty-one of the 77 specimens were live shipments. Eighteen of the specimens originated from one Andean flamingo range country (Bolivia) and were exported in three shipments—in 1977, 1978, and 1981. Sixteen of the birds were traded for scientific purposes; trade for scientific purposes generally indicates a transaction involving a zoo, where primary research on captive breeding is undertaken. There is no indication as to the origin of the remaining 23 live specimens (i.e., the country from which the specimens originated), so that we are unable to determine unequivocally whether live specimens were exported from Argentina under false CITES documentation. Of these 23, only 3 specimens were traded for commercial purposes: In 1979, when France exported a single live individual to Great Britain; in 1980, when the United States exported 4 live individuals to Great Britain; and, in 1982, when Great Britain exported 27 birds to Germany. There has been no trade in live specimens since 1982 (UNEP–WCMC 2008c, pp. 1–2).

Since 1997, the Andean flamingo has been protected throughout Europe by the European Commission (EC) Regulation 338/97 (Eur-Lex 2008, p. 24). For species listed under Annex B, imports from a non-European Union country must be accompanied by a permit that is only issued if the Scientific Authority has determined that trade in the species will not be detrimental to its survival in the wild. According to Dr. Ute Grimm (German Scientific Authority to CITES (Fauna), Bonn, Germany, in litt. 2008, p. 1), there have been no imports of Andean flamingos since this legislation went into effect (Grimm in litt. 2008, p.1). Thus, we cannot conclude that CITES trade documents were used to smuggle live birds from Argentina, and the trade data does not suggest that this is the case.

Egg collection: There is a long history of collecting flamingo eggs in the altiplano region. Eggs are harvested for subsistence use and for sale in local markets (Barbarán 2004, p. 6; BLI 2008, p. 56; Rocha 2002, p. 10; Sáenz 2006, p. 89). Walcott (1925, pp. 354–357) provided a detailed account of egg collecting at Laguna Colorada (Bolivia), as described by a local Puna Indian. According to this account, the locals knew when the Andean flamingos began nesting for the season and a group of 8 to 10 villagers would camp at the lake long enough to gather the eggs. They gathered nearly every egg, burying the ones that they could not carry, so that the birds would not incubate them, and returning later to retrieve the buried eggs. The eggs were baked in clay ovens on site before being transported back to their village. Another early 20th century account noted that flamingo eggs were sold as far back as 1903 in a market at San Pedro de Atacama (Chile) (Walcott 1925, pp. 354, 360)—this is the nearest town to Salar de Atacama, the type locality of the Andean flamingo (Hellmayr 1932, p. 312). Eggs were harvested once, twice, or several times a season (Johnson *et al.* 1958 pp. 291, 298; Walcott 1925, pp. 354–356). Accounts describe the annual practice of harvesting eggs, with entire families journeying to the lake to set up camp from December to February (Barfield 1961, p. 96; Johnson *et al.* 1958 pp. 291–292).

Egg collecting has become an established part of the local culture (Barbarán 2004, p. 6; Rocha 2002, p. 10). Egg collecting has been reported at several wetlands throughout the Andes that are critical to the Andean flamingo's life cycle, including: Laguna de Pozuelos (Argentina) (Administration de Parques Nacionales 1994, p. 2); Lagunas de Vilama (Argentina) (BLI 2008, p. 553; Caziani *et al.* 2001, p. 106); Lago Poopó (Bolivia); Lago Uru Uru (Bolivia) (Sáenz 2006, p. 89); Laguna Colorada (Bolivia) (Hurlbert and Keith 1979, p. 332; Johnson *et al.* 1958, p. 292; Rocha and Eyzaguirre 1998, p. 1); and Salar de Atacama (Chile) (Hurlbert and Keith 1979, pp. 332–333; Johnson *et al.* 1958, p. 298). Egg collection may also occur at Lago Titicaca (Peru) (Ducks Unlimited 2007d, p. 27).

Collecting is facilitated by the fact that the birds nest in large colonies. Large nesting sites are targeted for egg collection, as collectors can quickly gather a large numher of eggs at these sites (Caziani *et al.* 2001, p. 111; Sáenz 2006, p. 89).

Egg collection has an immediate negative impact on the Andean flamingo's already poor breeding success (see Population Estimates-Breeding Success) (Arengo in litt. 2007, pp. 1–3; del Hoyo *et al.* 1992, p. 521). Because flamingos are long-lived with slow rates of reproduction (Bucher 1992, p. 183), stable populations can be maintained if the species' breeding success is good every 5–10 years (William Conway, Wildlife Conservation Society, Bronx, New York, as cited in Valqui *et al.* 2000, p. 112). However, the numbers of nesting birds being reported are lower in the past decade when compared to the 1980s (Parada 1992, Rodríguez and Contreras 1998—as cited in Caziani *et al.* 2007, p. 284). Chick production has been very low for the past 20 years, averaging 800 per year from 1987 to 1997 (Rodriguez Ramirez 2006, Amado *et al.* 2007, as cited in Arengo in litt. 2007, pp. 1–3), and 3,000 chicks per year from between 1997 to 2001 (Caziani *et al.* 2007, p. 283). As discussed in Factor E, disturbance caused by collection activities further compounds the adverse effects of egg collection (see Factor E).

Increasing demand for eggs and increased access to habitats further exacerbates the species' already poor breeding success. In 1975, Morrison (1975, p. 81) reported that flamingo eggs were in great demand and that traders visited nesting areas, including Lagos Poopó and Uru Uru, to buy eggs from local Indians, transporting eggs away "by the truckload." As towns grow and mining operations expand, demand for eggs increases to satisfy the miners (del Hoyo *et al.* 1992, p. 521). Mining operations have infiltrated once isolated wetlands. In 1925, birds nesting at Laguna Cachi (part of Pastos Grandes, Bolivia) were considered secure from egg collecting due to the remote and inhospitable terrain (Walcott 1925, pp. 354–356). Today, Pastos Grandes, which is an important breeding ground in Bolivia, is the site of intense mineral prospecting (see Factor A).

Tourism and Ecotourism: As described in Factor A, ecotourism is prevalent at many wetlands inhabited by the Andean flamingo, including: Laguna Negra (Argentina), Laguna de Colorada (Bolivia), Salar de Atacama, and the TDPS wetland complex, which includes Lagos Poopó and Uru Uru (the latter three wetlands in Chile). According to the Corporación Nacional Forestal (1996c, pp. 10–11), uncontrolled tourism, especially the use of four wheeled all-terrain vehicles, has become a problem at Laguna Negra.

The Eduardo Avaroa National Reserve (Reserve) in Bolivia encompasses Laguna Colorada, Laguna Kalina, and Salar de Chalviri (Ducks Unlimited 2007b, p. 43). The Reserve began collecting tourism data in 1999 (González 2006, p. 1). Since 2000, tourism has increased annually by about 5 percent per year, from 26,066 visitors in 2000 to 51,271 visitors in 2005 (González 2006, p. 2). Over the 6-year period, a total of 142,968 tourists visited the Reserve, primarily in the Bolivian winter months of July (24,629 visitors) and August (32,230 visitors). During the Andean flamingo breeding season (November to February), an average of 18,000 people visited the Reserve each month (Gonzalez 2006, p. 2). In 2005, ticket sales indicated that 65 percent of the tourists came to see the flamingos (González 2006, p. 2). Within the Reserve, problems associated with tourism include increased car traffic and trash, especially disposable bottles and other non-biodegradable waste (Embassy of Bolivia 2008, pp. 7–8).

At Lago Titicaca (Peru), the large number of visitors and the noise of motorized vehicles has decreased the number of birds on the lake (INRENA 1996, p. 6). At Laguna Salinas (Peru), which provides habitat to all three South American flamingo species, excavation activities near the lake had a profound effect on the flamingos. Flamingos were driven away from areas where there was noise caused by excavating machinery, disrupting feeding and breeding activities. Flamingos fled nesting sites during disturbance activities (such as excavation), and some never returned, abandoning their nests (Ugarte-Nunez and Mosaurieta-Echegaray 2000, p. 137).

Summary of Factor B

Hunting for local consumption, egg collection, and tourism have a negative impact on Andean flamingo populations throughout their range. Hunting removes juveniles and adults from the population, which has already experienced a severe population decline within the past 30 years and is considered the rarest of all flamingo species in the world. Removal of adults from the population decreases the number of sexually mature specimens available for reproduction, may break pair bonds, and jeopardizes their already inconsistent breeding habits. Although egg-collecting has been carried out for years, and perhaps centuries, increased demand has intensified collection pressures. Egg collection is facilitated by the flamingo's colonial nesting practices and from increased access to once-remote wetlands from mining operations (Factor A). Disturbance from hunting, egg collection, and tourism exacerbates the species' poor breeding success (Factor E). Therefore, we find that hunting for local consumption, egg collection, and tourism are threats to the continued existence of the Andean flamingo throughout its range.

With regard to hunting for international trade, we believe that the small number of live specimens that were traded and the near lack of trade for commercial purposes, combined with the fact that there have been no shipments of live Andean flamingos since 1982, indicate that the level of international trade, controlled via valid CITES permits, is small. Therefore, we find that harvest of flamingos for international trade is not a threat to the continued existence of the Andean flamingo.

C. Disease or Predation

Disease: Flamingos are nomadic species with the potential to disperse pathogenic microorganisms and horizontally transmit disease agents due to their flocking behavior (Uhart *et al.* 2006, p. 32). Uhart *et al.* (2006, p. 32) found 13 antibodies for various infectious diseases (indicating exposure) in a study of all 3 altiplano flamingos. Changes in water availability and habitat quality may favor the emergence of pathogens, which could affect the health of flamingos (Uhart *et al.* 2006, p. 32). However, we are not aware of any pathogenic diseases that are currently affecting Andean flamingos in the wild.

A massive mortality of flamingos and other aquatic birds (on the order of several thousands) was recorded in January 1975 around the mouth of the Segundo River in Mar Chiquita (Argentina). Bucher (1992, p. 183) believed the observed mortality was caused by an outbreak of avian botulism. The affected birds showed typical field signs of the disease (Locke and Friend 1987, as cited in Bucher 1992, p. 183), including: Paralysis of voluntary muscles, inability to walk or fly, and a tendency to congregate along vegetated peninsulas and islands, where lines of carcasses were seen at the water's edge. Avian botulism outbreaks are associated with receding water conditions in areas of flooded vegetation during periods of high temperatures (Bucher 1992, p. 183). Thus, activities that decrease water levels at the lakes, as outlined in Factor A, could cause disease outbreaks and result in flamingo mortality.

In 2002, Fabry and Hilliard (2006, p. 49) began a flamingo monitoring program in the Atacama Desert to

explore the declining flamingo populations in the region, test for linkages between human activity and declining flamingo populations, and evaluate flamingo health. The team has marked and released over 80 flamingos and has identified several pathogens, including Newcastle's disease, Avian influenza, and West Nile virus, as possible causes for increasing flamingo mortality. This research is ongoing.

Predation: Walcott (1925, p. 354) noted that fresh-water gulls (*Larus serranus*) at Laguna Colorada (Bolivia) were likely predating flamingo eggs. Other potential predators include the Andean wolf (*Dusicyon cuplaeus*), pampas fox (*Dusicyon griseus*), variable hawk (*Buteo poecilochrous*), and Andean caracara (*Phalcobaenus albogularis*). Johnson *et al.* (1958, p. 299) concluded predation by land-bound predators was not a significant threat to this species, given the difficulty of access to nesting sites. However, nesting sites are no longer as inaccessible as they were in the mid-20th century. Human activities (such as mining, urbanization, tourism, and concomitant infrastructure development) have infiltrated wetlands previously considered inaccessible (Factor A). This situation has been compounded by the ongoing drought conditions throughout a large portion of the Andean flamingo's range (Factor E). In January 1996, Caziani & Derlindati (2000, p. 124) reported that a colony of unidentified flamingo nests at Lagunas Vilama, where Andean and James' flamingo are known to breed, were found on dry land—probably due to an unexpected retraction of the lake—leaving 1,500 abandoned nests, some of which had eggs from that season. Because this species nests in the open, laying eggs directly on the ground, many nesting sites can be more easily accessed by humans and non-human predators. In the 2006–2007 breeding season, Childress *et al.* (2007, p. 7) noted that an entire colony of 600 unidentified flamingo nests at Laguna Brava (Argentina, where Andean flamingos are known to nest) had been decimated by foxes (species not identified). The Corporación Nacional Forestal (1996a, p. 12) reported that foxes ate flamingo eggs and chicks at Los Flamingos National Reserve (Chile) but did not document the extent of this predation.

Summary of Factor C

Several diseases have been identified in the flamingo population and are being monitored. Potential for disease outbreaks warrants continued monitoring and may become a more significant threat factor in the future, especially if habitat alteration combined with the ongoing drought continue to decrease water levels at the lakes (Factors A and E). Disease has been identified and has at least in one case likely caused mortality (botulism). Therefore, we find that disease in flamingos is a threat to the continued existence of the Andean flamingo.

Predation by foxes, gulls, and other predators results in direct removal of eggs, juveniles, and adults from the population. Predation can have devastating consequences for the species, especially given the colonial nature of the species and its tendency to nest in only a few wetlands each year. Predation removes potentially reproductive adults from the breeding pool, disrupts mating pairs, and exacerbates the species' already poor breeding success (these effects are discussed in detail under Factor B). Therefore, we find that predation is a threat to the continued existence of the Andean flamingo throughout its range.

D. Inadequacy of Existing Regulatory Mechanisms

Two regulatory issues can be discussed on a regional level: Protections under CITES, and Ramsar designations.

CITES: The Andean flamingo is listed in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES is an international treaty among 173 nations, including all four Andean flamingo countries and the United States, that entered into force in 1975 (UNEP–WCMC 2008a, p. 1). In the United States, CITES is implemented through the U.S. Endangered Species Act (Act). The Act designates the Secretary of the Interior as the Scientific and Management Authorities to implement the treaty with all functions carried out by the Service. Under this treaty, countries work together to ensure that international trade in animal and plant species is not detrimental to the survival of wild populations, by regulating the import, export, re-export, and introduction from the sea of CITES-listed animal and plant species (USFWS 2008, p. 1). As discussed under Factor B, we do not consider international trade to be a threat impacting the Andean flamingo and consider that this international treaty has minimized the potential threat to the species from international trade.

Ramsar: The Ramsar Convention, signed in Ramsar, Iran, in 1971, is an intergovernmental treaty which provides the framework for national action and international cooperation for the conservation and wise use of wetlands and their resources. There are presently 157 Contracting Parties to the Convention (including all of the countries where the Andean flamingo occurs), with 1,702 wetland sites, totaling 153 million hectares, designated for inclusion in the Ramsar List of Wetlands of International Importance. Many wetlands of importance to the Andean flamingo's life cycle are designated as wetlands of international importance under the Ramsar Convention. In Argentina, these include: Laguna de Mar Chiquita (Bárbaro 2002, pp. 1–12), Lagunas de Vilama (de la Zerda *et al.* 2000, pp. 1–6), Laguna Brava (de la Fuente 2002, pp. 1–10), and Laguna de Pozuelos (Administration de Parques Nacionales 1994, pp. 1–3). In Bolivia, Lagos Poopó and Uru Uru (Rocha 2002, pp. 1–13) and Laguna Colorada (Rocha and Eyzaguirre 1998, pp. 1–11) are Ramsar wetlands. Chilean Ramsar wetlands include Laguna del Negro Francisco and Laguna Santa Rosa (Corporación Nacional Forestal 1996c, pp. 1–12); Salar de Huasco (Corporación Nacional Forestal 1996b, pp. 1–5); and Salar de Surire (Soto 1996, pp. 1–9). In Peru, Lago Titicaca (INRENA 1996, pp. 1–14) and Laguna Salinas (Jefatura de la Reserva Nacional de Salinas y Aguada Blanca 2003, pp. 1–14) are Ramsar wetlands. Experts consider Ramsar to provide only nominal protection of wetlands, although they also note that such a designation may increase international awareness of its ecological value (Jellison *et al.* 2004, p. 19). However, as described below, activities that negatively impact the Andean flamingo are ongoing within Ramsar wetlands, including the curtailment and destruction of Andean flamingo habitat (Factor A), and hunting and overutilization of Andean flamingos (Factor B). As such, this designation has not mitigated the impact of threats on the Andean flamingo.

Due to the wide range of Andean flamingos in four countries along the Andes, the remaining analysis of existing regulatory mechanisms will be presented on a country-by-country basis, in alphabetical order.

Argentina: The Andean flamingo is considered vulnerable in Argentina (Goldfeder & Blanco 2007, p. 191). The Law of Provincial Game No. 3,014/73 (Law No. 3,014 1973, pp. 1–5) was established in Argentina in 1973. Article 7 of this law strictly prohibits hunting, possession, or transportation of wild animals, their parts, offspring, nests, or eggs, except as permitted by regulation (Law No. 3014, p. 7). Resolution No. 513/2007 (2007, pp. 1–7) and Resolution No. 1,089/98 (1998, pp. 1–4) prohibit

hunting, trapping, interprovincial transport, or international trade in certain species of wildlife, including the Andean flamingo. Despite this law, hunting for local consumption of Andean flamingo individuals and eggs continues at wetlands of known importance in Argentina, including Laguna Pozuelos and Mar Chiquita (Barbarán 2004, p. 11; Bucher 1992, p. 183; Senz 2006, p. 103) (see Factor B). Therefore, these laws are inadequate to mitigate the threat of Andean flamingo hunting for local consumption.

Protected areas have been established by regulation at several sites occupied by the Andean flamingo in Argentina, including: (a) Laguna Brava and Laguna de Mulas Muertas, (b) Laguna de Mar Chiquita, (c) Laguna de Pozuelos, and (d) Lagunas de Vilama. As described below, the regulatory mechanisms behind these designations are inadequate to address or mitigate ongoing activities that are negatively impacting the Andean flamingo within these protected areas, including the curtailment and destruction of Andean flamingo habitat (Factor A), and hunting and overutilization of Andean flamingos (Factor B).

(a) Laguna Brava and Laguna de Mulas Muertas: Provincial Law No. 3944 declared the creation of the Reserva de Vicuñas y Protección del Ecosistema Laguna Brava, establishing Laguna Brava as a protected reserve in La Rioja Province (BLI 2008, p. 40). Laguna Mulas Muertas, where the Andean flamingo has overwintered, is also included within this reserve (BLI 2008, p. 40; Bucher *et al.* 2000, p. 120). This law also established the designated managing authorities and provided for the formulation of regulations for the operation of the Reserve, under the Provincial System of Protected Areas. There is an outpost for park rangers in the town of Alto Jague that is equipped with a 4x4 vehicle and a permanent staff of four park rangers assigned to the protected area. Despite this designation, the habitat within the reserve continues to be curtailed and disrupted by human activities. Recent road construction (de la Fuente 2002, p. 8) (see Factor A) and increased tourism, including the use of off-road vehicles (BLI 2008, p. 40) (see Factors A and B), are ongoing. Multinational mining companies have undertaken prospecting activities within the Reserve, indicating the potential that mineral extraction could occur there (de la Fuente 2002, p. 8) (see Factor A).

(b) Laguna de Mar Chiquita: Laguna de Mar Chiquita is an important wintering site for Andean flamingos and was included in the System of Protected Nature Areas of the Province of Córdoba in 1966 (BLI 2008, pp. 34–37). In 1994, the area was declared a multiple-use reserve (Reserva de Bañados del Río Dulce y Laguna de Mar Chiquita) (BLI 2008, p. 36; Ducks Unlimited 2007a, p. 22). In accordance with existing legislation, environmental protection is achieved through the regulated use of natural resources, respecting its characteristics, ecological status, wildlife and potential resources. In 2000, a group of provincial park wardens was formed to patrol the reserve. In 2001, there were four new park wardens, one expert and a technician to implement environmental legislation in the reserve (Bárbaro 2002, p. 10). Activities that cause habitat destruction are ongoing around Mar Chiquita, including pollution from agriculture, water contamination from agrochemicals (BLI 2008, pp. 36–37; Johnson and Arengo 2001, p. 38) (see Factor A), and disturbance from ecotourism activities (Ducks Unlimited 2007a, p. 22) (see Factor B).

(c) Laguna de Pozuelos: Located in Jujuy Province, Laguna de Pozuelos was designated a Natural Monument in 1981 and a UNESCO Biosphere Reserve in 1990 (BLI 2008, p. 31; Ducks Unlimited 2007a, p. 2). It is managed by the National Parks Administration of Argentina and is subject to the regulation of Law No. 22,351 (1980, pp. 1–11) concerning National Parks, Natural Monuments, and National Reserves (Administration de Parques Nacionales 1994, pp. 1–2). Under Law No. 22,351 (1980, p. 2), an area that has been declared a Natural Monument is conferred "absolute" protection, such that the land, things, and species of animals and plants thereon are inviolable. Despite this protection, mining and resultant water contamination continue (de la Fuente 2002, p. 8; Ducks Unlimited 2007a, p. 4; Goldfeder and Blanco 2007, p. 193) (see Factor A). According to the National Park Administration, a "trained" warden is posted at the site (Administration de Parques Nacionales 1994, pp. 1–2). Despite this, hunting continues to threaten the Andean flamingo at Laguna Pozuelos, where individuals and their eggs are hunted for subsistence and local commerce (Administration de Parques Nacionales 1994, p. 2; BLI 2008, p. 31) (see Factor B).

(d) Lagunas de Vilama: The lakes that form Lagunas de Vilama are located within the Reserva Altoandina de la Chinchilla, under the jurisdiction of the province of Jujuy in accordance with Provincial Decree No. 2,213E–92 (BLI 2008, pp. 52–53; de la Zerda *et al.* 2000, p. 5; Provincial Decree No. 2,213E 1992, pp. 1–5). This Reserve, along the Argentinean/Chilean border, was created in 1992 specifically to protect the chinchilla (*Eriomis brevicaudata*), the vicuña (*Vicugna vicugna*), and numerous birds (Provincial Decree No. 2,213 E 1992, p. 1). Despite this regulation, habitat destruction caused by prospecting for minerals and tourism (Factor A) and egg collection (Factor B) are factors that continue to threaten the Andean flamingo within the Lagunas de Vilama wetland system (BLI 2008, p. 553; Caziani *et al.* 2001, p. 106).

Bolivia: The 1975 Law on Wildlife, National Parks, Hunting and Fishing (Decree Law No. 12,301 1975, pp. 1–34) has the fundamental objective of protecting the country's natural resources. This law governs the protection, management utilization, transportation, and selling of wildlife and their products; the protection of endangered species; habitat conservation of fauna and flora; and the declaration of national parks, biological reserves, refuges, and wildlife sanctuaries, tending to the preservation, promotion, and rational use of these resources. However, hunting of flamingos continues to be a threat at Lake Poopó (Rocha 2002, p. 10; Sáenz 2006, pp. 88–89) (Factor B).

Wetlands frequented by the Andean flamingo in Bolivia that have some level of protected status include: (a) Lago Poopó and (b) Laguna Colorada, Laguna Kalina, and Salar de Chalviri. However, the regulations are ineffective at reducing the threat of habitat destruction (Factor A), hunting and egg collection (Factor B) and human disturbance (Factor E) within these protected areas.

(a) Lago Poopó: In 2000, Lago Poopó, an overwintering site for the Andean flamingo (see Current Range), was declared a natural heritage site and ecological reserve under Law No. 2,097 (2000, pp. 7–8) (Declaration of National Patrimony and Ecological Reserve of Oruru, for Lake Poopó in the Department of Oruru). Law No. 2,097 (2000, p. 7) allowed for international cooperation on the conservation and rehabilitation of the lake. However, as of 2002, Rocha (2002, p. 11) noted that little had been done to ensure the lake's conservation. In their review of the conservation and management challenges of saline lakes, Jellison *et al.* (2004, p. 14) concluded that because Lago Poopó is not part of the national system of protected areas there has been little attention to its conservation and "wise use" (Jellison *et al.* 2004, p. 14).

Lago Poopó is on the terminal end of the TDPS (Titicaca-Desaguadero-Poopó-Salar de Coipasa) hydrological system

along the border with Peru (Jellison *et al.* 2004, p. 11, 120), with Lago Titicaca straddling the border between the two countries (Ronteltap *et al.* 2005, p. 1) (see Current Range: Bolivia). Water contamination from mining and metallurgical industries has contaminated the TDPS water system for many years (Adamek *et al.* 1998, Cardoza *et al.* 2004—as cited in Jellison *et al.* 2004, p. 12; Jellison *et al.* 2004, p. 11; Ricalde 2003, pp. 10, 91). Because Lago Poopó is located at the terminal end of the endoreic (closed) TDPS drainage system, pollutants are more likely to concentrate there (Jellison *et al.* 2004, p. 120) (Factor A). In addition to water contamination, Andean flamingos at Lago Poopó are exposed to threats from indiscriminant hunting (Rocha 2002, p. 10; Sáenz 2006, pp. 88–89) (Factor B).

(b) Laguna Colorada, Laguna Kalina, and Salar de Chalviri: Lagunas Colorada and Kalina are important breeding sites that belong to the same hydrological water basin (Ducks Unlimited 2007b, p. 13). Salar de Chalviri is a wetland complex that provides habitat for the Andean flamingo during the winter. Laguna Colorada was one of five wetlands, and the only wetland in Bolivia that, in 2005, harbored 50 percent of the breeding population (Caziani *et al.* 2006, p. 13). In the most recent simultaneous census, for 2006–2007, breeding in Bolivia occurred only at two wetlands, Laguna Colorada and Kalina (see Current Range). Therefore, the effects of habitat reduction (Factor A), hunting, and tourism (Factor B) at these wetlands greatly diminish the numbers of reproductive adults and juvenile offspring, and the overall breeding success of the species.

The Eduardo Avaroa National Reserve (La Reserva Nacional de Fauna Andina Eduardo Avaroa) (Reserve) was established in 1973 (Supreme Decree 11,231 1973, pp. 1–2), expressly to protect Laguna Colorada for its role in supporting a large diversity of wildlife, including rare species such as the Andean flamingo, and to counter a growing commerce in these species, which were being harvested from the area. The Decree established the boundaries of the Reserve, declared hunting within the park illegal, established a guard post within the park, and empowered the Minister of Agriculture and Cattle to conduct the necessary biological and ecological studies to manage the park. The area of the Reserve was defined as Laguna Colorada itself (which covers approximately 12,948 ac (5,240 ha)) (Ducks Unlimited 2007b, p. 13), plus a 6-mi (10-km) radial area surrounding the lake (Supreme Decree No. 11,239 1973, p. 1). Under Supreme Decree No. 18,431 (1981, pp. 1–2) the limits of the Reserve were extended to 1,764,515 acres (714,074 ha). With this expansion, Laguna Kalina and Salar de Chalviri were thus incorporated within the Reserve (Ducks Unlimited 2007b, pp. 13–16). In 1992, the Reserve was added to the Protected Area System (Sistema Nacional de Areas Protegidas (SNAP)) (FUNDESNAP 2008, p. 1; Rocha and Eyzaguirre 1998, pp. 8–9).

As of 1998, the Reserve had a management plan, but it was not being implemented. However, efforts were being made to manage tourism with the objective of wetland conservation and to patrol the area in order to avoid pilferage of flamingo eggs during the breeding season (Rocha and Eyzaguirre 1998, pp. 8–9). As of 2004, the following ongoing problems were identified within the Reserve: Uncontrolled and badly managed tourism; high concentrations of activities within the lagoons, including Laguna Colorada; lack of environmental controls for the mining industry; implementation of a geothermal project; uncertain financing to support activities to manage the protected area; unregulated use of archeological and natural resources; and weak management of the protected area (Flores 2004, p. 5). At Laguna Colorada, water contamination from tourism (RIDES 2005, p. 21; Rocha and Eyzaguirre 1998, p. 8) and livestock grazing are ongoing (Ducks Unlimited 2007b, p. 14; Flores 2004, pp. 35–36) (Factor A). Egg collecting has been reported at Laguna Colorada for many years (Hurlbert and Keith 1979, p. 332; Johnson *et al.* 1958, p. 292; Rocha and Eyzaguirre 1998, p. 1) and continues to be a problem within the Reserve (Ducks Unlimited 2007b, p. 17) (Factor B). Disturbance caused by collection activities further compounds the adverse effects of egg collection (see Factor E).

Supreme Decree No. 28,591 (2006, pp. 2–17) regulated the management of tourism within the protected areas that make up the National System of Protected Areas. It established a framework of regulatory provisions related to tourism so that each protected area could develop rules specific to the reserve, to ensure the conservation and protection of natural and cultural heritage. The Eduardo Avaroa National Reserve (Reserve) has been working toward a tourism management program for some time, including the collection and examination of tourism data for the Reserve in order to better understand how the Reserve is used and how to adjust their management of activities (González 2006, p. 1). However, tourism continues to increase within the Reserve (González 2006, p. 2), with concomitant stress on and contamination of the water resources (RIDES 2005, p. 21; Rocha and Eyzaguirre 1998, p. 8) (Factor A), along with the deleterious effect of human disturbance on the species (CONAF, Region II, as cited in INRENA 1996, p. 11) (Factor E).

Chile: Chile outlined the methods by which they classify various wild species as threatened or endangered species under Supreme Decree No. 75 (2006, pp. 1–6)—Reglamento para la Clasificación de Especies Silvestres—and has just initiated the process of classifying species with the publication of two proposed lists of species (Exenta No. 1,579 2006, pp. 1–4) (Da Inicio a Proceso de Clasificación de Especies e Indica Listado de Especies a Clasificar), but the Andean flamingo has not been listed nor has it been proposed for listing as threatened or endangered (see *http://www.conama.cl/clasificacionespecies/*). Therefore, there is no regulatory mechanism that specifically protects the Andean flamingo on a national level.

The Chilean National Commission on the Environment (Comisión Nacional del Medio Ambiente (CONAMA)) was established in 1990 and, in March 1994, the General Environmental Law (Ley de Bases Generales del Medio Ambiente) went into effect. The General Environmental Law restructured CONAMA and introduced new instruments of environmental management that had not previously existed: Environmental education and research; public participation; environmental quality standards to preserve nature and environmental heritage; emission standards; plans for management, prevention, and cleanup; responsibility for environmental damage; and the system of environmental impact assessment. Under the General Environmental Law, several new regulations have been established over more than twenty areas, including atmospheric, water, noise, and light pollution (Embassy of Chile 2007, pp. 1–2). However, water contamination from mineral extraction, agricultural pursuits, sewage and trash (Factor A) and disturbance from noise (Factor E) are ongoing at Chilean wetlands of importance to Andean flamingo life cycle, including: (a) Laguna Ascotán and (b) Salar de Atacama. Therefore, this regulatory mechanism is not being effectively implemented to reduce the threats to the Andean flamingo.

(a) Laguna Ascotán was once considered a breeding site for the

species (Johnson *et al.* 1958, p. 296; Kahl 1975 p. 100). While the species continues to to feed at the site (Vilina and Martínez 1998, p. 28), there are no recent reports of nesting there. This may be attributed to mineral extraction (including borax) (Johnson 1958, p. 296) (Factor A) and concomitant disturbance activities (Factor E).

(b) Salar de Atacama has been a consistent and primary breeding ground (Bucher *et al.* 2000, p. 119; Childress *et al.* 2007a, p. 7; Ducks Unlimited 2007c, pp. 1–4; Johnson *et al.* 1958, p. 296). Mining activities and increased human presence and tourism has disturbed foraging and nesting birds there (Corporación Nacional Forestal 1996a, p. 9). Over 50,000 people visit Salar de Atacama (Chile) and surrounding areas each year (RIDES 2005, p. 21). These activities lead to water pollution, increased water usage, and disturbance of the flamingo life cycle. The breeding success of the species has been steadily decreasing at Salar de Atacama (Fabry and Hilliard 2006, p. 1). In Chile, breeding was attempted at four sites in Salar de Atacama. A total of 2,900 pairs of Andean flamingos laid eggs, but only 538 chicks survived (Childress *et al.* 2007a, p. 7).

Protected areas have been established by regulation at four sites occupied by the Andean flamingo in Chile: (a) Laguna del Negro Francisco, (b) Salar de Surire, and (c) Lagunas Atacama and Pujsa. These wetlands have figured as consistent breeding and overwintering habitats for many years (Bucher *et al.* 2000, p. 119; Childress *et al.* 2007a, p. 7; Ducks Unlimited 2007c, pp. 1–4; Fjeldså and Krabbe 1990, p. 86; Hellmayr 1932, p. 312; Johnson *et al.* 1958, p. 296; Kahl 1975 p. 100). However, as described below, the regulations are ineffective at reducing the threats of habitat destruction (Factor A), hunting and egg collection (Factor B), and human disturbance (Factor E) within these protected areas.

(a) Laguna del Negro: Salar de Negro Francisco provides year-round habitat for the Andean flamingo (Caziani *et al.* 2007, p. 279; Ducks Unlimited 2007c, p. 6; Valqui *et al.* 2000, p. 112). Laguna del Negro Francisco was included in the Parque Nacional Nevado Tres Cruces that forms part of the national system of protected wildlife areas (SNASPE) (Corporación Nacional Forestal 1996c, p. 11). Despite this designation, the Corporación Nacional Forestal (1996c, pp. 10–11) reported several persistent threats, including: (1) Concessions for water use held by the mining companies that work on the altiplano; (2) prospecting and digging for minerals and underground water, which involves road building that makes it possible for people to reach places that were formerly inaccessible; (3) intense illegal bird hunting (Bucher 1992, p. 183, Corporación Nacional Forestal 1996c, p. 11); and (4) uncontrolled tourism, especially the use of four-wheeled all-terrain vehicles (Corporación Nacional Forestal 1996c, pp. 10–11).

(b) Salar de Surire: Andean flamingos breed and overwinter at this wetland (Caziani *et al.* 2006, p. 13; Caziani *et al.* 2007, p. 279; McFarlane 1975, p. 88; Valqui *et al.* 2000, p. 112). In 2001, Salar de Surire, along with Salar de Atacama, was the most successful Andean flamingo breeding site in Chile (Caziani *et al.* 2007, p. 279). The Parque Nacional Lauca was created in 1970, incorporating approximately 1,285,000 acres (520,000 ha), including the Salar de Surire. In 1983, the limits of the national park were redefined, and three administrative units for protected nature areas were created: The present Parque Nacional Lauca, the National Nature Reserve Las Vicuñas, and the Salar de Surire Nature Reserve, including part of the salt marsh of 27,906 acres (11,298 ha) (Soto 1996, p. 8). Lauca Biosphere Reserve (including all three administrative units) was designated a UNESCO Biosphere reserve in 1983 (Rundel and Palma 2000, p. 262). Despite this designation, the threat of mining in the park continues (Rundel and Palma 2000, pp. 270–271). The number of people visiting remote Salar de Surire (Chile), a primary Andean flamingo breeding site, was under 1,000 as of 1995, but increasing (Soto 1996, p. 7). One travel Web site advertises the availability of a campsite, (*http://www.chilecontact.com/en/conozca/surire.php*), noting that no public transportation is available and recommending the use of four-wheel drive vehicles to access and tour the area. The impact of tourism is discussed under Factor B.

(c) Salars de Pujsa and Atacama: As mentioned above, Salar de Atacama provides year-round flamingo habitat and nesting sites. Salar de Pujsa was reported as a nesting site in 1997 (Valqui *et al.* 2000, p. 112), although no nesting was reported there in the 2004, 2005, or 2006 breeding seasons (Childress *et al.* 2005, p. 7; Childress *et al.* 2006, p. 7; Childress *et al.* 2007a, p. 7). These Salars are among the wetlands that were included in the Los Flamencos National Reserve (Reserve), designated in April 1990 by Decree No. 50 of the Ministry of Agriculture, although only part of Salar de Atacama is included. These wetlands form an important area for the biological stability of flamingo populations (Corporación Nacional Forestal 1996a, pp. 12–13).

In addition to the Reserve management plan, there is a proposed strategy for the sustainable management and regulation of activities in the salt marshes and for their conservation. The most recent reports available deem the management at this site insufficient, due to the limited number of staff and the large area of the reserve (Corporación Nacional Forestal 1996a, pp. 12–13). Locals at Salar de Atacama hunt the Andean flamingo for its feathers and for ritualistic use (Castro and Varela 1992, p. 22) (Factor B). Road building has increased access to nesting areas and facilitated hunting and egg collection (Corporación Nacional Forestal 1996a, pp. 11–12; Ducks Unlimited 2007c, p. 3) (Factor A). Water extraction in this endoreic (closed) basin, which is fed only by summer storms and winter snowmelts, is ongoing (Corporación Nacional Forestal 1996a, pp. 8–9). The rights to 13,137 ft^3/s (6.2 m^3/s) of water have been allocated; however, the water recharge in the basin is only about 10,594 ft^3/s (5 m^3/s) (RIDES 2005, p. 16) (Factor A).

Peru: The Andean flamingo is considered vulnerable by the Peruvian government under Supreme Decree No. 034–2004–AG (2004, p. 276855), which prohibits hunting, taking, transport, or trade of endangered species, except as permitted by regulation. At Laguna Salinas (an overwintering site in Peru), hunters have killed flamingos for target practice or just "to get a close look at one." The extent of this persecution at Laguna Salinas is unclear, but may have abated since installation of a watch post in mid-1998 (Ugarte-Nunez and Mosaurieta-Echegaray 2000, p. 137). At Lago Titicaca (Peru), localized hunting and the collection of birds' eggs may be ongoing (Ducks Unlimited 2007d, p. 27). Excessive hunting is a problem at Lago Parinacochas (an overwintering site in Peru) (Ducks Unlimited 2007d, p. 23). Therefore, this regulatory mechanism is ineffective at protecting the Andean flamingo or mitigating the threat of hunting (Factor B).

Protected areas have been established through regulation at two sites occupied by the Andean flamingo in Peru: (a) Laguna Salinas and (b) Lago Titicaca. Lagunas Salinas has long provided overwintering habitat for the Andean flamingo (Caziani *et al.* 2007, p. 279; Hellmayr & Conover 1948, p. 277; Kahl 1975, pp. 99–100). Fourteen percent of the population overwintered there in 2003 (Ricalde 2003, p. 91). Lago Titicaca is part of the TDPS wetland system, to which Lagos Poopó and Uru Uru (Bolivia) belong. This wetlands complex

provides an important variety of overwintering habitat for the Andean flamingo, where more than 50 percent of the known population of Andean flamingos overwintered in 2000 (Caziani *et al.* 2007, p. 279; Mascitti and Bonaventura 2002, p. 62). However, as described below, the regulations are ineffective at reducing the threat of habitat destruction (Factor A), hunting and egg collection (Factor B), predation (Factor C), and human disturbance (Factor E) within these protected areas.

(a) Laguna Salinas: Laguna Salinas is part of the Reserve National Salinas and Aguada Blanca (Reserve), established by Supreme Decree No. 070–79–AA in 1979 (1979, pp. 260–262). A master plan for the Reserve was adopted in 2001 (Jefatura de la Reserva Nacional de Salinas y Aguada Blanca 2003, pp. 6–7). However, at Laguna Salinas, which provides habitat for all three Andean flamingo species (Ducks Unlimited 2007d, p. 26), the habitat is being destroyed or modified by mining, fires, agriculture, and drainage for drinking water (Ricalde 2003, p. 91; Ugarte-Nunez and Mosaurieta-Echegaray 2000, p. 135) (Factor A). Flamingos are absent from polluted areas of the lake (Factor A); Andean flamingos are sensitive to reduced water levels (Factor A); and disturbance activities disrupt flamingo nesting and eating habits on the lake (Factor E) (Ugarte-Nunez and Mosaurieta-Echegaray 2000, pp. 135, 137, 139). In addition to reducing flamingo habitat availability, increased road construction to support mining and tourism (Factor A) facilitates hunting and predator access to nesting grounds (Corporación Nacional Forestal 1996a, pp. 12) (Factors B and C).

(b) Lago Titicaca: The Titicaca National Reserve (Reserva Nacional del Titicaca) (Reserve) (89,364 acres (36,180 ha)) encompasses approximately 8 percent of the Peruvian portion of Lago Titicaca (Supreme Decree No. 185–78–AA 1978, p. 257). The Reserve was created in 1978 (Chief Resolution No. 311–2001–INRENA 2001, pp. 413–415) to guarantee the conservation of its natural resources because of the existence of exceptional characteristics of wild fauna and flora, scenic beauty, and traditional use of natural resources in harmony with the environment. In addition, it was created to promote the socioeconomic development of the neighboring populations through the wise use of natural resources and the promotion of tourism. The Peruvian Navy controls navigation on all of the lakes in Peru, including boats that visit the reserve. It also patrols and monitors the border, and ensures compliance with regulations on hunting and the use of wildlife resources from the lake (INRENA 1996, pp. 9–10). The Institute of Natural Resources (Instituto Nacional de Recursos Naturales—INRENA), noted that the large number of visitors and noise disturbance from motorized vehicles negatively impacted the number of birds on the lake (Factor E) (INRENA 1996, p. 6). The waters of Lago Titicaca are polluted from boat traffic and domestic sewage, and localized hunting and egg collection may be occurring there (Ducks Unlimited 2007d, p. 27; Jellison *et al.* 2004, p. 11; Ricalde 2003, p. 91).

Summary of Factor D

The existing regulatory mechanisms or enforcement of these mechanisms throughout the species' range are inadequate to protect the Antlean flamingo or mitigate the factors that are negatively impacting the species and its habitat, including habitat destruction (Factor A), hunting and tourism (Factor B), predation (Factor C), and disturbance (Factor E). Therefore, we find that the existing regulatory mechanisms are inadequate to mitigate the threats to the continued existence of the Andean flamingo throughout its range.

E. Other Natural or Manmade Factors Affecting the Continued Existence of the Species

Two additional factors are having a negative impact on the Andean flamingo population: human disturbance and ongoing drought.

Human disturbance: Walcott (1925, pp. 355–356) noted that the birds are shy and, when eggs are collected by humans, Andean flamingos do not return to lay a second egg. Jameison and Bingham (1912, pp. 12, 14) noted that extensive sheep and cattle pastures existed around Lago Parinacochas and that flamingos no longer nested there. Many human-induced disturbances exist throughout the Andean flamingos' range. Mining, population growth, tourism, and associated road construction and maintenance generally increase disturbance and noise and can make nesting and foraging areas unsuitable for the Andean flamingo. These disturbances have led to decreased numbers of birds foraging and nesting at several sites that are important for the Andean flamingo reproductive cycle, including: Salar de Atacama (Chile) (Corporación Nacional Forestal 1996a, p. 9), Laguna Colorada (Bolivia) (Rocha and Eyzaguirre 1998, p. 8), and the TDPS wetland system (INRENA 1996, p. 6). Flamingos that are disturbed during nesting season have been known to abandon their nests (Ugarte-Nunez and Mosaurieta-Echegaray 2000, p. 137). Road construction has increased access to wetlands, facilitating additional disturbances from foot traffic and motorized vehicles at lakes, such as Laguna Salinas (Peru) (Ugarte-Nunez and Mosaurieta-Echegaray 2000, p. 137), Lago Loriscota (Peru) (Valqui *et al.* 2000, p. 112), Laguna Brava (Argentina) (BLI 2008, p. 40; de la Fuente 2002, p. 8), and Lago Titicaca (Peru) (INRENA 1996, p. 6). Disturbance has increased with the increase in tourism and human encroachment into Andean flamingo wetlands, including: Laguna de Mar Chiquita (Argentina) (Ducks Unlimited 2007a, p. 22), Laguna Brava (Argentina) (BLI 2008, p. 40), Lagunas de Vilama (Argentina) (Caziani *et al.* 2001, p. 106), Laguna Negra (Argentina) (Corporación Nacional Forestal 1996c, pp. 10–11), Laguna de Colorada (Bolivia) (Embassy of Bolivia 2008, pp. 7–8), Salar de Atacama (Chile), and the TDPS wetland complex, which includes Lagos Poopó and Uru Uru (Chile) (INRENA 1996, p. 6).

Long-lived species with slow rates of reproduction, such as the Andean flamingo, can appear to have robust populations, but can quickly decline towards extinction if reproduction does not keep pace with mortality (BLI 2008, p. 2; Bucher 1992, p. 183; del Hoyo *et al.* 1992, p. 517). In the case of Andean flamingos, Conway (W. Conway, as cited in Valqui *et al.* 2000, p. 112) suggests that a stable population can be maintained if the species' breeding success is good every 5–10 years. Andean flamingos have temporally sporadic and spatially concentrated breeding patterns, and their breeding success and recruitment are low (Caziani *et al.* 2007; Childress *et al.* 2005, p. 7; Childress *et al.* 2006, p. 7; Childress *et al.* 2007a, p. 7). Productivity estimates from intensive studies of breeding sites in Chile indicate marked fluctuations over the past 20 years, with periods of very low breeding success (Arengo in litt. 2007, p. 2). Reproduction is spatially concentrated in just a few wetlands (Childress *et al.* 2005, p. 7; Childress *et al.* 2006, p. 7; Childress *et al.* 2007a, p. 7; Valqui *et al.* 2000, p. 112).

Ongoing Drought: The altiplano region has been undergoing a drought since the early 1990s. The water levels of the salars and lagunas occupied by the Andean flamingo normally expand and contract seasonally, depending in large part on summer rains to "recharge" or refill them (Bucher 1992, p. 182; Caziani and Derlindati 2000, pp. 124–125; Caziani *et al.* 2001, p. 110; Mascitti and Caziani 1997, p. 328).

Laguna de Mar Chiquita (Argentina) fluctuates by up to 20 in. (50 cm) in the dry season (Ducks Unlimited 2007a, p. 21). It is estimated that up to 95 percent of the total water input in the TDPS water system evaporates (Ronteltap *et al.* 2005, p. 2). In addition to the seasonal cycle of expansion and contraction, there are longer-term cycles in which lakes experience extended periods of expansion or contraction (Caziani and Derlindati 2000, p. 122). For instance, Laguna Pozuelos occasionally dries completely—on about a 100-year cycle. The last time it dried out completely was in 1958 (Mascitti & Caziani 1997, p. 321). According to researchers, wetlands have been drying out on a regional scale since the early 1990s due to extensive drought conditions (Caziani and Derlindati 2000, pp. 124–125; Caziani *et al.* 2001, p. 110; Mascitti and Caziani 1997, p. 328). The shallow wetlands preferred by Andean flamingos are subject to high rates of evapotranspiration, and drought conditions accelerate this process (Caziani and Derlindati 2000, p. 122).

Andean flamingos are sensitive to reduced water levels (Ugarte-Nunez and Mosaurieta-Echegaray 2000, pp. 135). The flamingo population at Laguna Pozuelos, which has shrunk to an estimated 66 percent of its usual size, has strongly diminished since the winter of 1993, which researchers consider a result of extensive lake desiccation (Mascitti and Caziani 1997, p. 328). Other wetlands are in the process of drying out or shrinking as a result of the drought, including Salar de Chalviri (Bolivia) (Ducks Unlimited 2007b, pp. 17–20); Lago Poopó (Bolivia) (Ducks Unlimited 2007b, p. 5); Lagunas Vilama (Argentina) (Caziani and Derlindati 2000, p. 122); and the TDPS wetland system (Bolivia, Chile, and Peru) (Jellison *et al.* 2004, p. 11). Lago Uru Uru (Bolivia) nearly dried out in 1983 but "recharged" in 1984 after flooding (Ducks Unlimited 2007b, p. 5). Laguna Salinas (Peru) nearly dried out in 1982–1983, but refilled during heavy rains in 1984. Currently, the water fluctuates widely each year, nearly drying out from September through January (Ducks Unlimited 2007d, p. 25).

Andean flamingos are equally sensitive to increasing water levels. Recall that Andean flamingos generally occupy wetlands that are less than 3 ft (1 m) deep (Fjeldså and Krabbe 1990, p. 86; Mascitti and Casteñera 2006, p. 331). In 1998, breeding was reported for the first time at Laguna Brava. The same year, more than 7,000 non-breeding birds were reported 4 mi (7 km) away at Laguna de Mulas Muertas, which was not a normal feeding habitat. Bucher *et al.* (2000, p. 120) believe this shift in habitat use was prompted by El Niño, which caused increased water levels at their usual nesting and feeding sites across the border in Chile. Laguna de Mar Chiquita (Argentina) experienced a period of "exceptional flooding" beginning in 1977, such that nesting sites were inundated and the salinity of the water decreased (Ducks Unlimited 2007a, p. 21). Long known only as an overwintering site, breeding was recently reported at Mar Chiquita (Childress *et al.* 2005, p. 6).

When winter brings increased aridity and lower temperatures, higher-altitude wetlands may dry out or freeze over. Under these conditions, Andean flamingos may move to lower altitudes (Blake 1977, p. 207; Boyle *et al.* 2004, pp. 570–571; Bucher 1992, p. 182; Caziani *et al.* 2006. p. 17; Caziani *et al.* 2007, pp. 279, 281; del Hoyo 1992, p. 519; Fjeldså and Krabbe 1990, p. 85; Hurlbert and Keith 1979, pp. 330; Mascitti and Bonaventura 2002, p. 360; Mascitti and Castañera 2006, p. 328). Research has recently shown that Andean flamingos use their habitat on a landscape level—beyond the Salar or Laguna in which they feed or breed—using wetland systems that provide a variety of habitat options from which to select optimal nesting and feeding sites (Caziani and Derlindati 2000, p. 122; Caziani *et al.* 2001, pp. 104, 110; Derlandati 2008, p. 10). Flamingo productivity is affected by climatic variability and its influence on water availability during the breeding season (Caziani *et al.* 2007, p. 284). Although the Andean flamingo can move between wetlands in response to annual climatic variability (Bucher *et al.* 2000, pp. 119–120; Mascitti 2001, p. 20; Mascitti and Bonaventura 2002, pp. 362–364), drastic water level changes can significantly alter the seasonal altitudinal movements of the Andean flamingo (Mascitti and Caziani 1997, pp. 324–326).

Summary of Factor E

The extent to which human disturbance has infiltrated Andean flamingo habitat and the ongoing activities that contribute to this disturbance could have long-lasting consequences on the population size and age structure, especially considering the species' unique life-history, breeding patterns, and recent years of low productivity (see Population Estimates: Breeding Success). Therefore, we find that human disturbance activities are threats to the continued existence of the Andean flamingo throughout its range.

Andean flamingo habitat throughout the Andes is in the midst of an ongoing drought. The species' reliance upon shallow wetlands during their entire lifecycle makes them particularly vulnerable to threats that influence the amount and distribution of precipitation, runoff, or evapotranspiration. The drought is causing the shallow wetlands upon which they depend for their entire life cycle to dry out or to fluctuate widely from year to year, which disrupt the species' breeding and feeding cycles, and can strand entire nesting colonies when waters retract unexpectedly. These drought conditions are being exacerbated by water extraction and pollution occurring throughout the species' habitat (Factor A). Reduced water levels can increase access to nesting sites, facilitating predation and hunting (Factors B and C). Therefore, we find the ongoing drought to be a threat to the continued existence of the Andean flamingo throughout its range.

Status Determination for the Andean Flamingo

The Andean flamingo is colonial, feeding and breeding in flocks, and is the rarest of all six flamingo species worldwide. Experts consider that the more dispersed nature of the species at smaller nesting sites has inhibited reproduction in the species. The Andean flamingo underwent a severe population decline in the last few decades, from a conservative estimate of 50,000 to 100,000 in the early 1980s to a current estimate of 34,000. This population decline coincides with increased habitat alteration (Factor A), overutilization (Factor B), disease and predation (Factor C), as well as increased human disturbance and an ongoing drought (Factor E). The Andean flamingo's entire life cycle relies on the availability of networks of shallow saline wetlands (salars and lagunas) at low, medium, and high altitudes that are characteristic throughout its range in Argentina, Bolivia, Chile, and Peru. Several man-made and natural factors are having a negative impact on the flamingo's persistence in the wild. These factors include mining activities and resultant pollution, increasing human population and water usage, hunting and egg collection, tourism, predation, human disturbance, and drought conditions. Mining occurs at many of the wetlands that the Andean flamingo depends upon for habitat. The threats from mining include direct habitat destruction, water pollution, water extraction, and disturbance (Factors A and E). Hunting and egg collecting reduce the number of individuals in the population and exacerbate the species' poor breeding

success, and low recruitment rate (Factor B). In combination with these habitat threats, the altiplano region is undergoing a long-term drought, which is impacting the availability and quality of wetlands for feeding, breeding, and overwintering (Factor E). Increased tourism at the wetlands is taxing limited water supplies, causing further water contamination from trash and sewage, and increasing habitat disturbance from human presence (Factors A and B). Infrastructure to support mining and tourism destroys and increases access to Andean flamingo habitats, facilitating hunting, egg collecting, and human influx, along with increased pollution, water use, and disturbance (Factors A, B, and E). Predation removes potentially reproductive adults from the breeding pool, disrupts mating pairs, and exacerbates the species' already poor breeding success and is facilitated by increased access to wetlands and the ongoing drought (Factors A, B, and E). Many wetlands within protected areas continue to undergo activities that destroy habitat or remove individuals from the population (including hunting and egg collecting), such that the regulatory mechanisms are inadequate to mitigate the threats to the species and its habitat (Factor D). The magnitude of the threats is exacerbated by the species' recent and drastic reduction in numbers, poor breeding success and recruitment, and the species' reliance on only a few wetlands for the majority of its reproductive output.

Section 3 of the Act defines an "endangered species" as "any species which is in danger of extinction throughout all or a significant portion of its range" and a "threatened species" as "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." Based on the immediate and ongoing significant threats to the Andean flamingo throughout its entire range, as described above, we determine that the Andean flamingo is in danger of extinction throughout all of its range. Therefore, on the basis of the best available scientific and commercial information, we are proposing to list the Andean flamingo as an endangered species throughout all of its range.

II. Chilean woodstar (*Eulidia yarrellii*)

Species Description

The Chilean woodstar, endemic to Chile and Peru, is a small hummingbird in the Trochilidae family (BLI 2008). No larger than the size of a moth (Johnson 1967, p. 121), the Chilean woodstar is approximately 3 inches (in) (8 centimeters (cm)) in length and has a short black bill (BLI 2008; del Hoyo *et al.* 1999, p. 674). Males have iridescent olive-green upperparts, white underparts, and a bright violet-red throat (del Hoyo *et al.* 1999, p. 674; Fjeldså and Krabbe 1990, p. 296). Females also have iridescent olive-green upperparts; however, their underparts are buff (pale yellow-brown) and they do not have a brightly colored throat (Fjeldså and Krabbe 1990, p. 296). The male Chilean woodstar has a strongly forked tail, which is green in the center and blackish-brown on the ends, while the female's tail is unforked and has broad white tips (BLI 2008). It is also known as Yarrell's woodstar (del Hoyo *et al.* 1999, p. 647) and Picaflor Chico de Arica (Johnson 1967, p. 121). The species is locally known as "*Picaflor*" or "*Colibrí*" (Johnson 1967, p. 121).

Taxonomy

The species was first taxonomically described by Bourcier in 1847 and placed in Trochilidae as *Eulidia yarrellii* (BLI 2008). According to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) species database, the Chilean woodstar is also known by the synonyms *Myrtis yarrellii* and *Trochilus yarrellii* (UNEP–WCMC 2008b). Both CITES and BirdLife International recognize the species as *Eulidia yarrellii* (BLI 2008). Therefore, we accept the species as *Eulidia yarrellii*, which follows the Integrated Taxonomic Information System (ITIS 2008).

Habitat and Life History

Hummingbird habitat requirements are poorly understood (del Hoyo *et al.* 1999, p. 490). Many species are highly adaptable, adjusting to human-induced changes or expanding their ranges if food conditions are favorable. Others rapidly decline or are in danger of extinction due to environmental disturbances (del Hoyo *et al.* 1999, p. 490). The Chilean woodstar has generally been described as inhabiting riparian thickets, secondary growth, desert river valleys, arid scrub, agricultural lands, and gardens (Stattersfield *et al.* 1998, p. 233). Estades *et al.* (2007, p. 169) looked at a variety of habitat variables in relation to Chilean woodstar numbers and found that tree cover in September was the only variable that significantly affected their abundance. In areas with higher tree cover, more Chilean woodstars were observed (Estades *et al.* 2007, p. 169). During the rainy season, when woodstars have more resources to exploit at higher elevations, the population is more dispersed and vegetation variables do not appear to limit the abundance of the species (Estades *et al.* 2007, p. 170).

As with all hummingbird species, the Chilean woodstar relies on nectar-producing flowers for food but also relies on insects as a source of protein (del Hoyo *et al.* 1999, p. 482; Estades *et al.* 2007, p. 169). The Chilean woodstar drinks nectar from the flowers of a variety of native trees such as *Geoffroea decorticans* (chañar) and *Schinus molle* (pimento), and ornamental plants such as *Lantana camara*, *Pelargonium* spp., and *Bougainvillea* sp. (Estades *et al.* 2007, p. 169). In addition, the species has been seen feeding from the flowers of several crops, including alfalfa, garlic, onion, and tomato (Estades *et al.* 2007, p. 169). Its small beak and body size enable it to exploit flowers with very small corollas (collective term for the petals of a flower) (Estades *et al.* 2007, p. 172).

Breeding activity likely takes place between August and September (del Hoyo *et al.* 1999, p. 674), although occasionally active nests have been found at other times of the year, suggesting that there may be some temporal variability (Estades *et al.* 2007, p. 169). Most nests have been located in olive trees (*Olea europaea*) at an average height of 7.5 ± 1.3 ft (2.3 ± 0.4 m), but a few nests were found in native shrubs and ornamental trees (Estades *et al.* 2007, p. 169).

A 2006 study by Estades and Aguirre (2006, p. 6) found Chilean woodstars nesting in only one location, a site in the Chaca area of the Vitor Valley that is less than 2.5 ac (1 ha) in size. The breeding site is an old olive grove that is lightly managed and is not sprayed with pesticides (Estades and Aguirre 2006, p. 6). The grove is surrounded by *Geoffroea decorticans* (chañares; Chilean Palo Verde) and citrus trees, which both flower in September (Estades and Aguirre 2006, p. 6). The location of the observed nests suggest to Estades and Aguirre (2006, p. 6) that the Chilean woodstar does not place its nest at the minimum distance from the food source, as would be expected according to the optimal foraging theory. Instead, it appears that Chilean woodstars build their nest at an intermediate distance of 164 ft (50 m) from nectar sources (flowers) (Estades and Aguirre 2006, p. 6). Estades and Aguirre (2006, p. 6) indicate that this may be a strategy the Chilean woodstar employs to avoid the presence of other hummingbirds around their nest. In addition, Estades and Aguirre (2006, p. 6) report that it appears the quality of this particular olive grove is enhanced by the nearby

presence of sheep, whose wool is used by the Chilean woodstar to build its nest. As a result of this study, Estades and Aguirre (2006, p. 6) state that the reproductive habitat of the Chilean woodstar requires an adequate combination of nesting sites (olive and mango trees) and food sources (small flowers).

Historical Range and Distribution

Historical evidence suggests that although the Chilean woodstar has a limited distribution, it was locally abundant (Estades and Aguirre 2006, p. 2). However, beginning in the 1970s, the frequency of observations of this species appears to have declined, recently to levels considered alarming by some ornithologists (Estades and Aguirre 2006, p. 2).

Current Range and Distribution

The Chilean woodstar is endemic to a few river valleys near the Pacific coast from Tacna, Peru, to northern Antofagasta, Chile (Collar *et al.* 1992, p. 530; del Hoyo *et al.* 1999, p. 674; Johnson 1967, p. 121). This area lies at the northern edge of the Atacama Desert, one of the driest places on Earth (Collar *et al.* 1992, p. 530). Current populations are only known to occur in the Vitor and Azapa valleys, in the Arica Department in extreme northern Chile (Estades *et al.* 2007, p. 168). There have been a few observations of this species in the town of Tacna, Peru (near the border of Chile), but these observations have been infrequent (Collar *et al.* 1992, p. 530) and there have been no records of the species there in the last 20 years (Jaramillo 2003, as cited in Estades *et al.* 2007, p. 164). At least some individuals appear to move seasonally to higher elevations to exploit seasonal food resources (Fjeldså and Krabbe 1990, p. 296). Estades *et al.* (2007, p. 170) hypothesize that these higher elevation valleys may provide some connectivity between the lower elevation valleys, otherwise isolated by the unvegetated expanses of the Atacama Desert.

In 1967, Johnson (1967, p. 121) described the Chilean woodstar as a "species of extremely limited range and very small total population." However, Johnson (1967, p. 121) also stated that it was the most abundant hummingbird in the Azapa Valley, where he and others counted "over a hundred hovering like a swarm of bees." In September 2003, using fixed-radius point counts and sampling an area larger than the presumed range, Estades *et al.* (2007, pp. 168–169) found the Chilean woodstar to be restricted to the Azapa and Vitor valleys of northern Chile, and to be the rarest hummingbird in the Azapa Valley (Estades *et al.* 2007, p. 170). Despite repeated searches, it was not found in the Lluta Valley (Estades *et al.* 2007, p. 168), where it was previously reported to breed (Fjeldså and Krabbe 1990, p. 296). A further study in the Azapa and Vitor valleys in 2006 found Chilean woodstars nesting in only one location, a site in the Chaca area of the Vitor Valley that is less than 2.5 ac (1 ha) in size (Estades and Aguirre 2006, p. 6).

Population Estimates

In September 2003, the Chilean woodstar population was estimated to be 1,539 individuals (929–2,287; 90 percent confidence interval (CI)) with over 70 percent of the population found in the Azapa Valley (Estades *et al.* 2007, p. 168). In April 2004, the population was estimated to be 758 individuals (399–1,173; 90 percent CI), again with over 70 percent of the population found in the Azapa Valley (Estades *et al.* 2007, p. 168). Estades *et al.* (2007, p. 170) warn against interpreting their results as a population crash from 2003 to 2004, because the 2004 surveys were conducted in April, when food resources and populations were more dispersed (Estades *et al.* 2007, p. 170).

Further population estimates were conducted by Estades (2007, in litt.) in 2006 and 2007. In 2007, the population of Chilean woodstars was estimated to be 1,256 individuals (694 in the Azapa Valley and 562 in the Vitor Valley) (Estades 2007, in litt.). Estades (2007, in litt.) reports that, overall, the species declined between 2003 and 2007, even though the Chilean woodstar population did increase between 2006 and 2007. Estades (2007, in litt.) attributes the increase in the population of the species between 2006 and 2007 to an increase in the number of individuals in the Vitor Valley, while the number of Chilean woodstars in the Azapa Valley declined.

Conservation Status

The Chilean woodstar is listed as an "endangered and rare" species in Chile under Decree No. 151—Classification of Wild Species According to Their Conservation Status (ECOLEX 2007). The species is considered to be "Endangered" by IUCN, due to its very small range, with all viable populations apparently confined to remnant habitat patches in two desert river valleys (BLI 2008). These valleys are heavily cultivated, and the extent, area, and quality of suitable habitat are likely declining (BLI 2008).

Summary of Factors Affecting the Chilean Woodstar

A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

The historical range of the Chilean woodstar has been severely altered with extensive planting of olive and citrus groves in the valleys of northern Chile and southern Peru (del Hoyo *et al.* 1999, p. 674). The native food plants of the species may have been drastically reduced when habitat for the species was converted to agriculture; now the species depends largely on introduced garden flowers as nectar sources (del Hoyo *et al.* 1999, p. 674). Although the Chilean woodstar is able to incorporate introduced plant species into its diet, the loss of some native species likely continues to be a limiting factor for the species (Estades *et al.* 2007, p. 172). As an example, Estades *et al.* (2007, p. 172) report that one of the most likely reasons for the disappearance of the Chilean woodstar from the Lluta Valley is the cutting of almost all the chañares (*Geoffroea decorticans*), which is considered one of the most important food sources for the species. Chañares are cleared by farmers who consider it an undesirable plant and an attractant to mice (Estades *et al.* 2007, p. 172).

In a study to estimate the population of the Chilean woodstar, Estades (2007, in litt.) found a decrease in the population of the Chilean woodstar in the Azapa Valley between 2006 and 2007. Estades (2007, in litt.) associates this decline with the substantial increase in agricultural development, related to the cultivation of tomatoes in the Azapa Valley in recent years.

Chilean woodstars appear to rely primarily on introduced olive trees for nesting (Estades *et al.* 2007, p. 172). The species has most likely been forced to use orchards as nesting sites due to the paucity of native trees (Estades *et al.* 2007, p. 172). Although olive trees are not exposed to as many pesticides as other fruit trees in the region, the use of high-pressure spraying (of water) to control mold threatens the viability of nests and their contents (Estades *et al.* 2007, p. 172). Because of the small size of the remaining population (see Factor E), the loss of even a few nests annually is a threat to the continued existence of the species.

Summary of Factor A

As a result of extensive agriculture in the river valleys where the Chilean woodstar occurs, most of its natural habitat is disappearing, requiring the species to rely mainly on artificial

sources for feeding and nesting. Although the species is able to use introduced plants, the loss of important native food plants, such as chañares, is most likely a limiting factor for the Chilean woodstar. Due to the scarcity of native trees, the species seems to rely heavily on introduced olive trees for nesting. However, management practices currently used in olive groves adversely impact the species and its nests. Therefore, we find that habitat destruction is a threat to the continued existence of the Chilean woodstar throughout its range.

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

In 1987, the Chilean woodstar was listed in CITES Appendix II, which includes species that are not necessarily threatened with extinction, but may become so unless trade is subject to strict regulation to avoid utilization incompatible with the species' survival. International trade in specimens of Appendix II species is authorized through permits or certificates under certain circumstances, including verification that trade will not be detrimental to the survival of the species in the wild and that the material was legally acquired (UNEP–WCMC 2008a).

Since its listing in 1987, there have been no CITES-permitted international transactions in the Chilean woodstar (Caldwell 2008, in litt.). Therefore, we believe that international trade is not a factor influencing the species' status in the wild. In addition, we are unaware of any other information currently available that indicates that hunting or overutilization of the Chilean woodstar for commercial, recreation, scientific, or education purposes has ever occurred. As such, we do not consider this factor to be a threat to the species.

C. Disease or Predation

We are not aware of any scientific or commercial information that indicate disease or predation poses a threat to this species. As a result, we are not considering disease or predation to be a contributing factor to the continued existence of the Chilean woodstar.

D. Inadequacy of Existing Regulatory Mechanisms

The Chilean woodstar is listed as an "endangered and rare" species in Chile under Decree No. 151—Classification of Wild Species According to Their Conservation Status (ECOLEX 2007). In 2006, it was also designated as a national monument under Decree No. 2—Declaring National Monuments of the Wild Fauna Huemul, Long-tailed Chinchilla, Short-tailed Chinchilla, Andean Condor, Chilean Woodstar, and Juan Fernandez Firecrown, which prohibits all hunting and capture of these species (ECOLEX 2006). However, this regulation is not necessary to reduce an existing threat to the Chilean woodstar because we do not consider hunting or collection (Factor B) to be a threat to the species.

The Chilean woodstar is listed in Appendix II of CITES (UNEP–WCMC 2008b). CITES is an international treaty among 173 nations, including Chile, Peru, and the United States, that entered into force in 1975 (UNEP–WCMC 2008a). In the United States, CITES is implemented through the U.S. Endangered Species Act (Act). The Act designates the Secretary of the Interior as the Scientific and Management Authorities to implement the treaty with all functions carried out by the Service. Under this treaty, countries work together to ensure that international trade in animal and plant species is not detrimental to the survival of wild populations by regulating the import, export, re-export, and introduction from the sea of CITES-listed animal and plant species (USFWS 2008). As discussed under Factor B, we do not consider international trade to be a threat to the Chilean woodstar. Therefore, this international treaty does not reduce any current threats to the species. Any international trade that occurs in the future would be effectively regulated under CITES.

We are not aware of any regulatory mechanisms that effectively limit or restrict habitat destruction, or high-pressure spraying of olive trees with water to reduce mold, two of the threats to the Chilean woodstar (see Factor A).

As discussed under Factor E, pesticides are also a threat to the Chilean woodstar, and there are some regulations that limit or ban certain pesticides. For example, current regulations in Chile prohibit the importation, production, and application of DDT, Aldrin, Dieldrin, Chlordane and Heptachlor (Altieri and Rojas 1999, p. 64). Despite such regulations, large-scale use of pesticides such as Parathion, Paraquat, Lindane, and pentachlorophenol—all severely restricted or even banned in Europe, Japan, and the United States—continues in Chile (Rozas 1995, as cited in Altieri and Rojas 1999, p. 64). Furthermore, international standards and quarantine requirements, imposed by countries importing Chilean fruits to limit quarantined insects, have acted to increase pesticide use in Chile (see Factor E) (Altieri and Rojas 1999, p. 63).

Summary of Factor D

We are not aware of any regulatory mechanisms that effectively limit or restrict habitat destruction, or high-pressure spraying of olive trees with water to reduce mold, two of the threats to the Chilean woodstar. Although there are some regulations in Chile that limit or ban certain pesticides, other kinds of pesticides are still widely used in Chile, especially by fruit growers. Therefore, we find that the existing regulatory mechanisms are inadequate to mitigate the current threats to the Chilean woodstar throughout its range.

E. Other Natural or Manmade Factors Affecting the Continued Existence of the Species

Pesticides: The use of Malathion, Dimethoate, and other chemicals to control the Mediterranean fruit fly (*Ceratitis capitata*) in the 1960s and early 1970s correlates with declines in Chilean woodstar abundance (Estades *et al.* 2007, pp. 171–172). Although Malathion is only slightly to moderately toxic to wild birds (Pascual 1994 and George *et al.* 1995, as cited in Estades *et al.* 2007, p. 171), the systemic insecticide Dimethoate is very toxic and is known to contaminate the nectar of flowers (Baker *et al.* 1980, as cited in Estades *et al.* 2007, p. 171). The Chilean government program to eradicate the Mediterranean fruit fly in the Arica-Azapa area has been reduced since the 1970s (Olalquiaga and Lobos 1993, as cited in Estades *et al.* 2007, p. 171), which likely has reduced this threat to Chilean woodstar (Estades *et al.* 2007, p. 171). Although the governmental pesticide applications for the eradication of the Mediterranean fruit fly may be declining, private farmers still rely on a heavy use of highly toxic chemicals to keep their crops pest-free (Salazar and Araya 2001, as cited in Estades *et al.* 2007, p. 171), and their use shows no signs of decline (Estades *et al.* 2007, p. 172).

As a result of international standards and quarantine requirements imposed by countries importing Chilean fruits, there is an overwhelming incentive for farmers to continue to extensively use chemical pest control (Altieri and Rojas 1999, p. 63). If the inspection of a shipment of Chilean fruits detects just one specimen of a quarantined insect pest, the result is the automatic rejection of the entire shipment of fruit (Altieri and Rojas 1999, p. 63). Therefore, Chilean fruit growers intensively spray their crops to completely eliminate all pests in order to avoid the risk of shipment rejection and its associated

economic losses (Altieri and Rojas 1999, p. 63).

Estades *et al.* (2007, p. 170) found that significant amounts of pesticides are still being used, particularly in the Azapa Valley, and there is at least one recent case where the application of insecticides at a plant nursery resulted in the death of a female Chilean woodstar. Furthermore, in a study to estimate the population of the Chilean woodstar, Estades (2007, in litt.) found a decrease in the population of the species in the Azapa Valley between 2006 and 2007. Estades (2007, in litt.) associates this decline with the substantial increase in agricultural development, related to the cultivation of tomatoes, in the Azapa Valley in recent years. The cultivation of tomatoes in this area of Chile requires a high demand of pesticides, and thus represents a growing threat to the Chilean woodstar (Estades 2007, in litt.).

Competition from the Peruvian sheartail: Estades *et al.* (2007, p. 172) hypothesized that the Peruvian sheartail (*Thaumastura cora*), which has experienced rapid population increases within the range of the Chilean woodstar, is a strong competitor for food or space because: (1) These species have morphological similarities which, in hummingbirds, indicates they may require similar food resources; (2) there appears to be spatial segregation between the species; and (3) antagonistic interactions have been documented (Estades *et al.* 2007, p. 169). Because the sheartail is more aggressive than the Chilean woodstar, it is believed to displace the woodstar within its range (Estades *et al.* 2007, pp. 169, 172). In Azapa, Peruvian sheartails have occupied the lower parts of the valley where there is a large supply of flowers in residential areas year-round (Estades *et al.* 2007, p. 172). Chilean woodstars, on the other hand, are primarily located in the middle part of the valley where the dominant land use is agriculture (Estades *et al.* 2007, p. 172). As a result, the Chilean woodstar has a much higher risk of exposure to pesticides (Estades *et al.* 2007, p. 172). Because certain pesticides used within the range of the Chilean woodstar are known to cause mortality, increased exposure to these pesticides increases the species' risk of population decline and extinction.

In a study to estimate the population of the Chilean woodstar, Estades (2007, in litt.) found an increase in the population of the species in the Vitor Valley (Chaca-Codpa area) between 2006 and 2007. Estades (2007, in litt.) suggests that one of the reasons for the population increase in the Vitor Valley during this time period was due to the fact that no Peruvian sheartails were observed in Chaca. This observation supports the theory that Peruvian sheartails are a competitor of the Chilean woodstar (Estades *et al.* 2007, pp. 163, 172). In addition, the abundance of Chilean woodstar nests observed in the species' only breeding site (in the Chaca area of the Vitor Valley) appears to be related to the absence of Peruvian sheartails in this location (Estades and Aguirre 2006, p. 6). Furthermore, the high abundance of Peruvian sheartails at Azapa could explain the absence of nesting by the Chilean woodstar at otherwise appropriate sites, such as the Azapa Valley (Estades and Aguirre 2006, p. 6).

Reproduction: Another study in the Azapa and Vitor valleys in 2006 found Chilean woodstars nesting in only one location, a site in the Chaca area of the Vitor Valley that is less than 2.5 ac (1 ha) in size (Estades and Aguirre 2006, p. 6). Of the 19 nests that were monitored, 12 failed; the cause of these nest failures is unknown (Estades and Aguirre 2006, p. 8). The daily nest failure rate was 3.21 percent, which is higher than has been observed in other hummingbird species (Estades and Aguirre 2006, p. 8). The probability of nest success was 23.8 percent, which is also higher than has been observed for other hummingbird species (Estades and Aguirre 2006, p. 8). Estades and Aguirre (2006, p. 8) note that the method used to calculate both of these values for other hummingbirds (by Baltosser 1986, as cited in Estades and Aguirre 2006, p. 8) is not exactly the same as the method used in this study. Although the values of reproductive success are within normal range, the high percentage of nest failures is troubling for a species that has such a small population size (Estades and Aguirre 2006, p. 8).

The loss of hatchlings, probably due to a lack of space in the nest itself, also indicates that recruitment of the Chilean woodstar is low (Estades and Aguirre 2006, pp. 8, 10). If you take into account that the flowering period for chañares and citrus is relatively short (a maximum of two months), the possibility of Chilean woodstars producing a second clutch in the spring is almost zero (Estades and Aguirre 2006, p. 10). Without a second nesting period, the Chilean woodstar is not able to compensate for a loss of its first, and most likely only, clutch (Estades and Aguirre 2006, p. 10). All data suggest that the recruitment capability of the Chilean woodstar is low and that, currently, the majority of reproduction is taking place only in the Vitor Valley (Estades and Aguirre 2006, p. 10).

Small Population Size and Restricted Range: The Chilean woodstar has experienced a population decline since the 1960s and now consists of less than 2,000 individuals distributed within two valleys (Estades *et al.* 2007, p. 170). Species tend to have a higher risk of extinction if they occupy a small geographic range, occur at low density, occupy a high trophic level and exhibit low reproductive rates (Purvis *et al.* 2000, p. 1949). Small populations are more affected by demographic stochasticity, local catastrophes, and inbreeding (Pimm *et al.* 1988, pp. 757, 773–775). The small, declining population makes the species vulnerable to loss of genetic variation due to inbreeding depression and genetic drift. This, in turn, compromises a species' ability to adapt genetically to changing environments (Frankham 1996, p. 1507) and reduces fitness, and increases extinction risk (Reed and Frankham 2003, pp. 233–234).

Summary of Factor E

Other natural or manmade factors affecting the continued existence of the Chilean woodstar include extensive use of pesticides by farmers and competition from the Peruvian sheartail. These threats have been associated with the decline in the population of the species and the lack of nest sites in the Azapa Valley. Because the Chilean woodstar is currently breeding in only one site (in the Chaca area of the Vitor Valley) and has a low recruitment rate, restricted range, and a small population size, any threats to the species are further magnified. Therefore, we find that other natural or manmade factors are a threat to the continued existence of the Chilean woodstar throughout its range.

Status Determination for the Chilean Woodstar

We have carefully assessed the best available scientific and commercial information regarding the past, present, and potential future threats faced by the Chilean woodstar. The species is currently at risk throughout all of its range due to a number of immediate and ongoing threats. The Chilean woodstar is restricted to two river valleys, where there has been extensive modification of its primary habitat. It is threatened by agricultural practices, in particular the use of pesticides and high-pressure spraying of olive trees to remove mold, as well as competition from the more aggressive Peruvian sheartail. The magnitude of these threats is exacerbated by the species' restricted range, only one breeding site, low recruitment rate, and extremely small

population size. An insect outbreak causing increased use of toxic pesticides in agricultural fields, a series of catastrophic events, or other detrimental interactions between environmental and demographic factors could result in the rapid extinction of the Chilean woodstar.

Section 3 of the Act defines an "endangered species" as "any species which is in danger of extinction throughout all or a significant portion of its range" and a "threatened species" as "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." Based on the immediate and ongoing significant threats to the Chilean woodstar throughout its entire range, as described above, we determine that the Chilean woodstar is in danger of extinction throughout all of its range. Therefore, on the basis of the best available scientific and commercial information, we are proposing to list the Chilean woodstar as an endangered species throughout all of its range.

III. St. Lucia Forest Thrush (*Cichlhermina lherminieri sanctaeluciae*)

Species Description

The St. Lucia forest thrush (*Cichlhermina lherminieri sanctaeluciae*) (hereafter referred to as "thrush") is a subspecies of the forest thrush (*C. lherminieri*) in the family Turdidae. It is a medium-sized bird, approximately 10 inches (in) (25 to 27 centimeters (cm)) in length (BLI 2000). This subspecies has all dark upperparts, is brownish below with white spots on the breast, flanks and upper belly, and white lower belly. It has yellow legs and bill, and bare skin around the eye (BLI 2000).

Taxonomy

This subspecies was first taxonomically described by P. L. Sclater in 1880 (del Hoyo *et al.* 2005, p. 681).

Habitat and Life History

The St. Lucia forest thrush occupies mid- and high-altitude primary and secondary moist forest habitat (Keith 1997, p. 105). The thrush feeds on insects and berries from ground level to the forest canopy (del Hoyo *et al.* 2005, p. 681; Raffaelle 1998, p. 381). It previously gathered in large numbers in autumn to feed on berries (del Hoyo *et al.* 2005, p. 681). The thrush breeds in April and May and builds a cup-shaped nest placed not far above the ground in a bush or tree (del Hoyo *et al.* 2005, p. 681; Raffaelle 1998, p. 381). Clutch size ranges from two to three eggs, and the eggs are blue-green in color (del Hoyo *et al.* 2005, p. 681).

Historical Range and Distribution

Although we are unaware of any specific information on the historical range and distribution of the St. Lucia forest thrush, we assume that this subspecies has always been found only on the island of St. Lucia.

Current Range and Distribution

The entire species of forest thrush is known from Montserrat, Guadeloupe, Dominica, and St. Lucia. The St. Lucia forest thrush is endemic to the island of St. Lucia in the West Indies (del Hoyo *et al.* 2005, p. 681). St. Lucia is an island in the Caribbean, between the Caribbean Sea and the North Atlantic Ocean, and is 238 square miles (mi^2) (616 square kilometers (km^2)) in area (CIA World Factbook 2008).

Population Estimates

This subspecies was considered numerous in the late 1800s (Semper 1872, as cited in Keith 1997, p. 105). We could find no historical accounts of population size of this subspecies. The current population status of the thrush is unknown, but recent sightings of this subspecies are rare, with only six confirmed sightings on the island over the last few years (Dornelly 2007, in litt.). These sightings consist of one bird in the St. Lucia Nature Reserve, one near the town of De Chassin in the north part of the island, and four individuals along the De Cartiers Trail in the Quilesse Forest Reserve on the south part of the island (Dornelly 2007, in litt.). A survey was conducted in 2007 to try to estimate the populations of various rare birds on the island of St. Lucia including the thrush (Dornelly 2007, in litt.). However, no thrushes were observed during the study period (Dornelly 2007, in litt.).

Conservation Status

The entire species of forest thrush (*Cichlhermina lherminieri*) is classified as "Vulnerable" by IUCN, due to human-induced deforestation and introduced predators (BLI 2008b).

Summary of Factors Affecting the St. Lucia Forest Thrush

A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

The habitat of the St. Lucia forest thrush consists of mid- and high-altitude primary and secondary moist forests (Keith 1997, p. 105). Consistent with previous accounts, the most recent sightings of the thrush were within this mid- to high-elevation moist forest habitat, where in June and August of 2007, respectively, St. Lucia Forestry Department staff sighted four birds in one location along the Des Cartiers Trail in the south of the island, and one bird in De Chassin in the north of the island (Dornelly 2007, in litt.).

As of 2004, natural forest occupied approximately 29,870 ac (12,088 ha) on the island of St. Lucia, 56 percent of which (16,727 ac (6,769 ha)) was within forest reserves and 43 percent (12,845 ac (5,198 ha)) was on private lands (Joint Annual Report (JAR) 2004, p. 42). The St. Lucia Department of Forestry considers habitat quality within the Forest Reserves to be high, but considers the habitat quality on private lands to be "less," since the Department has little control over management of these private lands (Dornelly 2007, in litt.). In 2004, 633 ac (256 ha) of plantation forest existed within the forest reserves consisting of three main timber tree species, and an additional 615 ac (249 ha) of plantation forest existed on private lands (JAR 2004, p. 42), but there is no information to suggest that the thrush utilizes plantation forest habitat.

Historically, St. Lucia's policy that allowed open access to "Common Property resources," combined with the country's high demand for agricultural land, led to large-scale deforestation (GOSL 1993, as cited in John 2000, p. 3), which reduced the thrush's habitat, resulting in a rapid population decline of this subspecies (IUCN 2008). The widespread deforestation that continues to this day suggests that population numbers continue to decline as a result of this impact. A potential impact of habitat destruction is exemplified by the Grand Cayman thrush (*Turdus ravidus*), a species closely related to the St. Lucia forest thrush, which went extinct as its habitat on the island was progressively cleared (Johnston 1969, as cited in BLI 2008a).

In the 1980's, deforestation on St. Lucia was estimated at 1.9 percent per year due to banana cultivation. Although the banana industry has faltered since that time, (GOSL 1993, as cited in John 2000, p. 3), according to the World Bank (2005, p. 1), farmers in St. Lucia have continued to clear forests for cultivation, moving to higher and steeper land. The government has encouraged this deforestation by constructing roads into these remote areas, which further reduces forest lands. Degradation of the hillside environment puts the more productive lowlands at risk, and hurricanes and tropical storms accelerate the

degradation process (World Bank 2005, p. 1).

As of 2004, 28.5 percent of the land on St. Lucia was used for "intensive farming," and 26.3 percent was for "mixed" use purposes (JAR 2004, p. 41). According to St. Lucia's 2007 Economic and Social Review (p. 3), although the banana industry was negatively impacted by the passage of Hurricane Dean in August, the overall outturn in agriculture more than compensated for the banana decline, with a 7.6 percent increase in "non-traditional crops." This is a strong indication that increasing agriculture continues to put pressure on St. Lucia's forest resources. Aside from agriculture, in the 21st century, construction activities and development of the access road network has been a leading cause of deforestation on St. Lucia (John 2000, pp. 3, 4).

Even within St. Lucia's Forest Reserves, the land is not protected to such an extent that it is preserved in its natural condition. According to St. Lucia's "Forest, Soil, and Water Conservation Ordinance 1946/1983," with permission of the Forestry Department, one may "injure, cut, fell, convert, remove, or harvest any tree or parts thereof." Although it is illegal to occupy Forest Reserves for the purposes of cultivation, squatting, or pasturing livestock (St. Lucia Forestry Department n.d.), enforcement of these activities is questionable, given that as of the year 2000, squatters occupied 247 ac (100 ha) of area within forest reserves (John 2000, p. 3). As of the year 2000, 4.5 miles (7.2 km) of roads existed within the forest reserves, providing access to forest resources within the reserves. Typical uses of forest resources include fuelwood collection for heating and cooking purposes, as well as traditional use of non-wood forest products. Certain species of forest trees are used for production of brooms, canoes, and incense, while the bark of other tree species are used to produce fermented drinks, and liannes are used in the craft industry (John 2000, pp. 6, 7). Removal of these forest products either reduces the quality or the availability of nesting, feeding, and breeding habitat of the thrush, thereby potentially reducing population numbers and the reproductive success of breeding birds.

Summary of Factor A

Both historical and current information suggests that this species is restricted to natural forests on the island, which, based on recent data, have been reduced to approximately 29,870 ac (12,088 ha) on the island. A large percentage of the remaining natural forest that occurs on private lands in St. Lucia (43 percent) is subject to ongoing loss from timber harvest, conversion of forest lands to agriculture, construction activities, and road development. These ongoing activities result in destruction of the limited habitat available for the thrush, which has historically been attributed to a rapid decline in this subspecies' population numbers. Although to a lesser extent than on private lands, the forests within St. Lucia's forest reserves (56 percent of the remaining forest) are also subject to destruction and modification from activities such as timber removal, fuelwood gathering, and removal of non-wood forest products for traditional use, activities which destroy and degrade the thrush's habitat. Therefore, we find that the ongoing destruction and modification of the thrush's habitat is a threat to the continued existence of the St. Lucia forest thrush throughout its range.

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

We are not aware of any scientific or commercial information that indicates overutilization of the St. Lucia forest thrush for commercial, recreational, scientific, or educational purposes currently poses a threat to this subspecies. As a result, we are not considering overutilization to be a contributing factor to the continued existence of the St. Lucia forest thrush.

C. Disease or Predation

Disease: We are not aware of any scientific or commercial information that indicates that disease poses a threat to this subspecies. As a result, we are not considering disease to be a contributing factor to the continued existence of the St. Lucia forest thrush.

Predation: The St. Lucia forest thrush is suspected to be impacted by predation from an introduced mongoose (Raffaelle *et al.* 1998, p. 381). The Asian mongoose (*Herpestes javanicus*) was introduced to the island of St. Lucia in the early 1900s (Hoagland *et al.* 1989, p. 624) and is considered an invasive species. Mongoose have been introduced to many island chains for the purpose of controlling small rodents, however their diet is not restricted to rodents; mongoose are known to eat birds as well. Morley and Winder (2007, p. 1) found that in the Fiji islands, some bird species were primarily associated with those islands that were free of mongoose. Any effects of mongoose introduction detected, however, were 'historical,' as mongoose had been on these islands for at least 20 years prior to their study. Bird assemblages on islands where mongoose had been introduced were (1) dominated by introduced bird species that are relatively unaffected by predation, or (2) native arboreal species that avoid predation, as mongoose rarely venture up into the forest canopy. Some researchers have suggested that ground-nesting bird populations have established a predator-prey equilibrium with mongooses in the Caribbean (Westermann 1953, as cited in Hays and Conant 2006, p. 7). Although the thrush is not known as a ground-nesting bird, it is reported to nest in shrubs and trees near the forest floor. On St. Lucia, the mongoose and other introduced predators, such as birds and cats, have contributed to the decline of another native bird species, the White-breasted thrasher (*Ramphocinclus brachurus*), adding to the pressures of habitat destruction (Collar *et al.* 1992, p. 824). The degree to which mongoose are responsible for the decline of bird species is often hard to assess, because of exacerbating factors such as the introduction of other species, such as rats and cats, which often have impacts to bird populations as well. Therefore, we do not have enough information to assess whether predation by an introduced mongoose is a significant threat to the St. Lucia forest thrush. In addition, we are not aware of any information on the potential impacts of predation from other predators (native or nonnative) on this subspecies.

Summary of Factor C

We are not aware of any scientific or commercial information that indicate that disease or predation currently poses a threat to this subspecies. Although the St. Lucia forest thrush is thought to be impacted by predation from an introduced mongoose, we do not have any data to show that mongoose predation is a current threat to the thrush. As a result, we are not considering disease or predation to be a contributing factor to the continued existence of the St. Lucia forest thrush.

D. Inadequacy of Existing Regulatory Mechanisms

The St. Lucia forest thrush is a "protected wildlife" species under Schedule 1 of the Wildlife Protection Act (WPA) of 1980, which has prohibited hunting of this subspecies since 1980 (ECOLEX n.d.(b)). In addition, the WPA prohibits taking, damaging or destroying of eggs or young, or the damage of a nest of "protected wildlife" species (ECOLEX n.d.(b)). Where habitat for this species occurs within Forest Reserves or

Protected Forests, it is protected from harvest without approval by the Forestry Department under the Forest, Soil and Water Conservation Ordinance Act of 1946, amended in 1983 (ECOLEX n.d.(a)). However, we do not consider overutilization (Factor B) to be a current threat to the St. Lucia forest thrush, so these laws do not address any of the threats to this subspecies.

The Forest, Soil and Water Conservation Ordinance Act of 1946, amended in 1983, authorizes the St. Lucia Minister of Agriculture to establish Forest Reserves on government land and Protected Forests on private lands (John 2000, p. 7). Habitat in Forest Reserves and Protected Forests is conserved primarily for the purpose of protecting watershed processes and preventing soil erosion. No legal commercial timber harvest occurs on these lands. However, fuelwood collecting, removal of non-wood forest products for traditional use, and timber removal (with permission of the Forestry Department) still occur in some Forest Reserves. Where suitable habitat for the thrush exists in Forest Reserves, it is assumed to be of high quality (Dornelly 2007, in litt.). However, small illegal homesteads occur on approximately 247 ac (100 ha) of the Forest Reserves, and residents of these homesteads utilize the timber and other forest resources, such as fuelwood, in the surrounding areas (John 2000, p. 3).

Timber harvest on private lands other than Protected Forests is not regulated in St. Lucia. As discussed above under Factor A, deforestation on private lands as a result of timber harvest, conversion of forest lands to agriculture, construction activities, and road development is ongoing. It is not known how much of the private natural forest habitat on the island is occupied by the St. Lucia forest thrush. However, based on the localities of the few recent confirmed sightings of this subspecies, and the proportion (43 percent) of natural forest that occurs on private lands, the St. Lucia forest thrush likely inhabits at least some of the private lands on the island.

Summary of Factor D

St. Lucia has developed numerous laws and regulations to manage wildlife and forest resources on the island. However, these laws do not adequately protect the habitat of the St. Lucia forest thrush from destruction or modification. Suitable thrush habitat within Forest Reserves is provided some level of protection from existing laws designed to protect watershed processes and prevent soil erosion. However, these laws do not adequately protect the habitat of this subspecies because they allow non-commercial uses of forest resources (including nest trees) to continue. Natural forest habitat on private lands is unregulated, and although the rate of habitat destruction and modification has likely decreased since the 1980s, conversion of forest land to agriculture and timber harvest still continues. As a result of the lack of regulatory protection of the natural forest habitats on private lands and the limited protection of Forest Reserves, we find that the existing regulatory mechanisms are inadequate to mitigate the current threats to the St. Lucia forest thrush throughout its range.

E. Other Natural or Manmade Factors Affecting the Continued Existence of the Species

Bare-Eyed Robin: Competition with the bare-eyed robin (*Turdus nudigenis*), which colonized the island in the 1950s, has been identified as a factor impacting this subspecies (Raffaelle *et al.* 1998, p. 381). However, we do not have enough information to assess whether competition with the bare-eyed robin is a significant threat to the St. Lucia forest thrush.

Shiny Cowbird: Brood parasitism by the shiny cowbird (*Molothrus bonarientsis*) which colonized the island in 1931, is also suspected as a factor impacting this subspecies (Raffaelle *et al.* 1998, p. 381). The shiny cowbird is a known "brood parasite" (i.e., they lay their eggs in the nests of other birds and do not provide any parental care for their own offspring). When the eggs of the brood parasite hatch, these chicks often push out the eggs or chicks of the host birds and are raised by the host species. Parental care that the host birds provide to the young parasites is care denied to their own young. This often has a detrimental effect on the reproductive success of the hosts, reducing population growth. The shiny cowbird is an extreme host generalist; its eggs have been found in the nests of over 200 species of birds (Friedmann and Kiff 1985 and Mason 1986, as cited in Cruz *et al.* 1989, p. 524). Shiny cowbirds are known to parasitize other bird species nests on St. Lucia (Cruz *et al.* 1989, p. 527). Many of the documented host species have not evolved effective defense or counter-defense mechanisms during the 70+ years the cowbird has occupied the island (Post *et al.* 1990, p. 461). Although brood parasitism by the shiny cowbird has the potential to impact the thrush, we could find no documented cases of brood parasitism on the St. Lucia forest thrush.

Small Population Size: The presumed small size of the St. Lucia forest thrush population, based on only six confirmed sightings of the subspecies in the last few years (Dornelly 2007, in litt.), makes this subspecies vulnerable to any of several risks, including inbreeding depression, loss of genetic variation, and accumulation of new mutations. Inbreeding can have individual or population-level consequences either by increasing the phenotypic expression (the outward appearance or observable structure, function or behavior of a living organism) of recessive, deleterious alleles or by reducing the overall fitness of individuals in the population (Charlesworth and Charlesworth 1987, p. 231; Shaffer 1981, p. 131). Small, isolated populations of wildlife species are also susceptible to demographic problems (Shaffer 1981, p. 131), which may include reduced reproductive success of individuals and chance disequilibrium of sex ratios. Once a population is reduced below a certain number of individuals, it tends to rapidly decline towards extinction (Franklin 1980, pp. 147–148; Gilpin and Soulé 1986, p. 25; Holsinger 2000, pp. 64–65; Soulé 1987, p. 181).

A general approximation of minimum viable population size is the 50/500 rule (Shaffer 1981, p. 133; Soulé 1980, pp. 160–162). This rule states that an effective population (N_e) of 50 individuals is the minimum size required to avoid imminent risks from inbreeding. N_e represents the number of animals in a population that actually contribute to reproduction, and is often much smaller than the census, or total number of individuals in the population (N). Furthermore, the rule states that the long-term fitness of a population requires an N_e of at least 500 individuals, so that it will not lose its genetic diversity over time and will maintain an enhanced capacity to adapt to changing conditions. Therefore, an analysis of the fitness of this population would be a good indicator of the subspecies' overall survivability.

Although the current population status of the St. Lucia forest thrush is unknown, we presume the population of the thrush is small, since recent sightings of this subspecies are rare, with only six confirmed sightings on the island over the last few years (Dornelly 2007, in litt.). Even though a survey was conducted in 2007 to try to estimate the populations of various rare birds on the island of St. Lucia including the thrush, no thrushes were observed during the study period (Dornelly 2007, in litt.). As a result, we presume the size of the St. Lucia forest thrush population falls below the minimum effective

population size required to avoid risks from inbreeding (N_e = 50 individuals). We also presume the population size of this subspecies falls below the upper threshold (N_e = 500 individuals) required for long-term fitness of a population that will not lose its genetic diversity over time and will maintain an enhanced capacity to adapt to changing conditions. As such, we currently consider the St. Lucia forest thrush to be at risk due to lack of near- and long-term viability.

Stochastic Events: The St. Lucia forest thrush's small population size makes this subspecies particularly vulnerable to the threat of adverse random, naturally occurring events (*e.g.*, volcanic activity, tropical storms and hurricanes) that could destroy individuals and their habitat. St. Lucia is a geologically active area, resulting in a significant risk of catastrophic natural events. It is subject to volcanic activity and hurricanes (CIA World Factbook 2008).

St. Lucia is a volcanic island (University of the West Indies Seismic Research Centre n.d.(a)). Historically, there have been no magmatic eruptions on St. Lucia (i.e., eruptions involving the explosive ejection of magma) (University of the West Indies Seismic Research Centre n.d.(b)). However, there have been several minor phreatic (steam) explosions in the Sulphur Springs area of St. Lucia (University of the West Indies Seismic Research Centre n.d.(b)), "which spread a thin layer of cinders (ash) far and wide" (Lefort de Latour 1787, as cited in University of the West Indies Seismic Research Centre n.d.(b)). The occurrence of occasional swarms (a sequence of many earthquakes striking in a relatively short period of time and may last for days, weeks, or even months) of shallow earthquakes together with the vigorous hot spring activity in southern St. Lucia indicate that this area is still potentially active and the island can therefore expect volcanic eruptions in the future (University of the West Indies Seismic Research Centre n.d.(b)). On Montserrat, where another subspecies of the forest thrush (*Cichlherminia lherminieri lawrencii*) is found, volcanic activity caused a reduction in the range of the subspecies by two-thirds (in 1995–1997) (G. Hilton in litt., as cited in BLI 2008b), and in 2001, heavy ash falls resulted in loss of habitat (Continga 2002, as cited in BLI 2008b). Because of the similarity in ecology, taxonomy, and habitat requirements between the subspecies on Monserrat and the St. Lucia forest thrush, volcanic activity on St. Lucia could have similar effects on the St. Lucia forest thrush population.

Tropical storms and hurricanes occur in the Caribbean, and can have severe impacts on terrestrial ecosystems on small islands. A primary impact of forest habitats is the damage caused to trees by high winds. Trees are often blown over or sustain damage to trunks and limbs. These types of impacts can result in a major habitat loss to the St. Lucia forest thrush. In addition, there is often damage to soil productivity due to landslides and excess soil erosion (John 2000, p. 19). St. Lucia has experienced an increase in the number of hurricanes and severe tropical storms over the last 30 years. After hurricane Allen in 1980, at least 55 percent of all dominant tree species on the island had broken branches and many had lost large portions of their crowns (Whitman 1980, as cited in John 2000, p. 18). The indirect effects occur in the aftermath of the storm when species experience loss of food supplies and foraging substrates, loss of nests, loss of nest sites (trees) and roost sites (John 2000, p. 20). Moreover, these indirect effects are likely to increase their vulnerability to predation. With hurricanes and tropical storms, species are also exposed to the strong winds which can displace individuals off of the island into the surrounding open ocean environment (John 2000, p. 20). Some of these displaced birds are likely blown far out to sea, and may not be able to make it back to land in their weakened state. In general, the most vulnerable terrestrial wildlife populations have a diet of nectar, fruit, or seeds; nest, roost or forage on large old trees; require a closed canopy forest; have special microclimate requirements; or live in habitat where the vegetation has a slow recovery rate (John 2000, p. 20). Small populations with these traits are at a greater risk to hurricane induced extinction, particularly if they exist in small isolated habitat fragments (John 2000, p. 20).

Summary of Factor E

We presume the population of the St. Lucia forest thrush is small since there have only been six confirmed sightings of the subspecies in the last few years. The thrush's small population size makes this subspecies particularly vulnerable to the threat of adverse random, naturally occurring events (e.g., volcanic activity, tropical storms, and hurricanes) that could destroy individuals and their habitat. The occurrence of occasional swarms of shallow earthquakes, along with vigorous hot spring activity, indicates that St. Lucia could still be volcanically active, and future volcanic eruptions are expected. Tropical storms and hurricanes are naturally occurring events in the Caribbean; however, the frequency of these events has increased over the last 30 years. These high-intensity events damage forest habitats, which are currently very restricted (approximately 29,870 ac (12,088 ha)) on the island due to timber harvest and agricultural conversions. It can take many years for forested areas to fully recover from the damage caused by tropical storms and hurricanes. Therefore, we find that the subspecies' presumed small population size and restricted range due to deforestation, and the increase in naturally occurring events that damage the thrush's habitat, are a threat to the continued existence of the St. Lucia forest thrush throughout its range.

Status Determination for the St. Lucia Forest Thrush

We have carefully assessed the best available scientific and commercial information regarding the past, present and potential future threats faced by the St. Lucia forest thrush. The subspecies is currently at risk throughout all of its range due to ongoing threats of habitat destruction and modification (Factor A), lack of near- and long-term viability associated with the thrush's presumed small population size (Factor E), and random, naturally occurring events such as volcanic activity, tropical storms, and hurricanes (Factor E).

The St. Lucia forest thrush is presumed to be rare based on the limited availability of suitable habitat and the fact that there have been only a few confirmed sightings of this subspecies over the last several years. The primary factor impacting the continued existence of the thrush is habitat loss and degradation, as a result of deforestation from timber harvest and agricultural conversions. Although 56 percent of the natural forests remaining on St. Lucia (as of 2004) is partially protected through establishment of a network of Forest Reserves, these forests are still subject to destruction and modification from activities such as timber removal, fuelwood collecting, and removal of non-wood forest products for traditional use. Approximately 43 percent of the natural forest habitats on which this subspecies depends occur on private lands. Deforestation on private lands is an ongoing threat to the St. Lucia forest thrush, due to the lack of regulatory protection of natural forests on private lands and the continued loss of these forests through timber harvest, conversions to agriculture, construction activities, and road development.

The island of St. Lucia is a geologically active area, resulting in a

significant risk of catastrophic natural events. The thrush's presumed small population size makes this subspecies particularly vulnerable to the threat of adverse random, naturally occurring events such as volcanic activity, tropical storms, and hurricanes that could destroy individuals and their habitat.

Section 3 of the Act defines an "endangered species" as "any species which is in danger of extinction throughout all or a significant portion of its range" and a "threatened species" as "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." Based on the immediate and ongoing significant threats to the St. Lucia forest thrush throughout its entire range, as described above, we determine that the St. Lucia forest thrush is in danger of extinction throughout all of its range. Therefore, on the basis of the best available scientific and commercial information, we are proposing to list St. Lucia forest thrush as an endangered species throughout all of its range.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and encourages and results in conservation actions by Federal governments, private agencies and groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions within the United States or on the high seas with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. However, given that the Andean flamingo, Chilean woodstar, and St. Lucia forest thrush are not native to the United States, no critical habitat is being proposed for designation in this rule.

Section 8(a) of the Act authorizes limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered and threatened species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered species and to provide assistance for such programs in the form of personnel and the training of personnel.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. As such, these prohibitions would be applicable to the Andean flamingo, Chilean woodstar, and St. Lucia forest thrush. These prohibitions, under 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to "take" (take includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt any of these) within the United States or upon the high seas, import or export, deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of a commercial activity or to sell or offer for sale in interstate or foreign commerce, any endangered wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species, and at 17.32 for threatened species. With regard to endangered wildlife, a permit must be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

Peer Review

In accordance with our joint policy with National Marine Fisheries Service, "Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities," published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our final determination is based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to the peer reviewers immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment during the public comment period on our specific assumptions and conclusions regarding the proposal to list the Andean flamingo, the Chilean woodstar, and the St. Lucia forest thrush as endangered.

We will consider all comments and information we receive during the comment period on this proposed rule during our preparation of a final determination. Accordingly, our final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if we receive any requests for hearings. We must receive your request for a public hearing within 45 days after the date of this **Federal Register** publication (see **DATES**). Such requests must be made in writing and be addressed to the Chief of the Division of Scientific Authority at the address shown in the **FOR FURTHER INFORMATION CONTACT** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** at least 15 days before the first hearing.

Required Determinations

National Environmental Policy Act (NEPA)

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

Clarity of the Rule

We are required by Executive Orders 12866 and 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

References Cited

A complete list of all references cited in this proposed rule is available on the Internet at *http://www.regulations.gov* or upon request from the Division of Scientific Authority, U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary author(s) of this proposed rule is staff of the Division of Scientific Authority, U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

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

2. Amend § 17.11(h) by adding a new entry for "Flamingo, Andean," "Thrush, St. Lucia forest," and "Woodstar, Chilean" in alphabetical order under "BIRDS" to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	*
BIRDS							
*	*	*	*	*	*	*	*
Flamingo, Andean ...	*Phoenicoparrus andinus.*	Argentina, Bolivia, Chile, and Peru.	Entire	E	.....	NA	NA
*	*	*	*	*	*	*	*
Thrush, St. Lucia forest.	*Cichlherminia lherminieri sanctaeluciae.*	West Indies—St. Lucia.	Entire	E	.....	NA	NA
*	*	*	*	*	*	*	*
Woodstar, Chilean ...	*Eulidia yarrellii*	Chile and Peru	Entire	E	.....	NA	NA
*	*	*	*	*	*	*	*

* * * * *

Dated: December 16, 2008.

Kenneth Stansell,

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

[FR Doc. E8–30464 Filed 12–23–08; 8:45 am]

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Federal Register

Wednesday,
December 24, 2008

Part III

Postal Regulatory Commission

39 CFR Part 3060
Accounting and Periodic Reporting Rules; Final Rule

POSTAL REGULATORY COMMISSION

39 CFR Part 3060

[Docket No. RM2008–5; Order No. 151]

Accounting and Periodic Reporting Rules

AGENCY: Postal Regulatory Commission.
ACTION: Final rule.

SUMMARY: The Commission is adopting final rules on accounting practices, an assumed Federal income tax, and periodic reporting for the Postal Service's theoretical competitive products enterprise. The rules incorporate several changes based on consideration of comments filed in response to an earlier proposal. Adoption of the rules will promote several statutory goals, including transparency and accountability.

DATES: Effective January 23, 2009.

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

SUPPLEMENTARY INFORMATION: Regulatory History, 73 FR 6081 (February 1, 2008) and 73 FR 54468 (September 19, 2008).

I. Introduction and Summary

This order establishes financial accounting practices and tax rules for competitive products. The Postal Accountability and Enhancement Act (PAEA), Public Law 109–435, 120 Stat. 3218 (2006), requires the Commission to prescribe rules applicable to competitive products for the establishment and application of (a) the accounting practices and principles to be followed by the Postal Service, and (b) the substantive and procedural rules for determining the assumed Federal income tax on competitive products income. *See* 39 U.S.C. 2011(h)(2)(B). In addition, such rules shall provide for the submission by the Postal Service of annual and other periodic reports setting forth such information as the Commission may require. 39 U.S.C. 2011(h)(2)(B)(i)(III).

Aided by recommendations contained in a report submitted by the Secretary of the U.S. Department of Treasury (Treasury) pursuant to the PAEA, as well as comments on that report provided by interested persons, including the Postal Service, the Commission issued Order No. 106 which proposed rules for implementing section 2011(h)(2)(B).[1] The proposed rules attempted to give effect to section 2011 in the context of the PAEA as a whole, while recognizing the realities and complexities of the Postal Service's operations and the legitimate expectations of stakeholders. Interested persons were invited to comment on the proposed rules. The Postal Service and the Public Representative filed initial comments on October 20, 2008, and reply comments on November 3, 2008. The final rules in this order differ from the rules proposed in Order No. 106 in minor ways designed to clarify the rules in response to the comments received. Principal differences between the proposed and final rules are:

—Treatment of group specific costs when calculating net income for competitive products has been changed to be consistent with PRC Order No. 115;
—The title for the Pro Forma Balance Sheet has been changed to Statement of Allocated Assets and Liabilities for Competitive Products;
—The due dates for all financial reports will be within 90 days of the close of the fiscal year, with the exception of the first year in which certain reports are due by January 15, 2009;
—The first Statement of Allocated Assets and Liabilities for Competitive Products is due within 90 days of the close of FY 2010;
—The definition of assumed taxable income from competitive products has been changed to include an adjustment for permanent items;
—The refund of a prior year's assumed tax payment resulting from the carry back of a net operating loss (NOL) will be the lesser of (1) the tax payment in the prior two years, or (2) the hypothetical tax computed on the amount of the loss;
—An opportunity for public comment on the Postal Service's assumed annual Federal income tax calculation is provided.

Among the goals of the PAEA are the following: (1) Increase the transparency of Postal Service operations; (2) prohibit cross-subsidies of competitive products by market dominant products; and (3) reduce administrative burdens. In developing the proposed rules and in establishing the final rules, the Commission has been guided by these goals.

The final rules, like the proposed rules, are based on a theoretical, on-paper-only enterprise, do not require new accounting or data collection systems, maintain the Commission's existing definition of attributable cost, and provide the Postal Service optional means for calculating an assumed Federal income tax on competitive products income. They are, in short, intended to promote the goals of transparency and accountability without imposing undue burdens on the Postal Service.

The assumed Federal income tax is an intra-agency transfer designed to foster fair competition, a goal also served by the PAEA's pricing provisions applicable to competitive products. See 39 U.S.C. 3633(a)(1)–(3). The statute requires the annual "payment" of an assumed Federal income tax from the competitive products fund to the general postal fund, and these rules implement that requirement. *See* 39 U.S.C. 3634(b).

II. Comments Regarding the Proposed Rules

Two parties—the Postal Service and the Public Representative—filed initial and reply comments in response to Order No. 106. In addition to suggesting clarification in language and deadlines, the Postal Service requests a change in the way group specific costs are to be treated in the calculation of net income for competitive products. The Postal Service also proposes a new source for an effective tax rate to be used in the simplified approach to calculating an assumed Federal income tax on competitive products. Finally, the Postal Service questions the value of the proposed Pro Forma Balance Sheet and requests the name of this report be changed.

The Public Representative suggests that the Commission open a docket each year to provide notice of receipt of the required periodic reports and to solicit public comment on those reports. The Public Representative also proposes language changes to clarify, and in one instance to correct, the proposed tax rules. The Postal Service agrees with the proposed correction.

III. Accounting Practices and Reporting Requirements

The Commission's proposed rules regarding accounting practices and procedures associated with providing competitive products focus on the costing methodology to be used by the Postal Service; methods for valuing assets and liabilities; and the financial reporting requirements for the competitive products enterprise. In this section, the Commission addresses the parties' comments concerning the accounting principles and reporting requirements embodied in the proposed rules.

A. Treatment of Group Specific Costs

The treatment of group specific costs has been changed in the final rules to make it consistent with Order No. 115.[2] Order No. 115 was issued subsequent to the drafting of the proposed accounting

[1] PRC Order No. 106, Order Proposing Accounting Practices and Tax Rules for Competitive Products, September 11, 2008.

[2] Docket No. RM2008–2, Order No. 115, Order Accepting Certain Analytical Principles for Use in the Postal Service's Periodic Reports, Ocober 10, 2008, at 9–19.

rules and addressed group specific costs in a much broader context than proposed rule 3060.21. The Commission noted in Order No. 115 that treatment of group specific costs for accounting purposes would have to be revisited in the final accounting rules.

The Postal Service notes that proposed rule 3060.21, which sets out the format for the Competitive Products Income Report, is inconsistent with the treatment of group specific costs in Order No. 115. Group specific costs are costs that are related to a specific line of business, such as competitive products, but which cannot be attributed to one product. Costs related to a manager that oversees all competitive products and does not work on market dominant products at all is an example.

In the proposed rule, Net Income is defined as Total Revenue minus Total Competitive Products Attributable Costs minus Required Institutional Cost Contribution. Total Competitive Products Attributable Costs, as used in proposed rule 3060.21, include Group Specific Costs. Order No. 115 set forth the Commission's rationale for not removing group specific costs from institutional costs until such time as a comprehensive and thorough analysis of group specific costs has been completed. The Postal Service points out that if rule 3060.21 treats institutional costs in the same manner as Order No. 115, there will be a duplicate expense deduction for group specific costs.

Order No. 115 was concerned with the rationale for group specific costs in an economic rather than an accounting sense. In that order, the Commission concluded that the use of group specific costs was acceptable as an interim tool for applying the incremental cost test to the revenues of the competitive products enterprise. However, their use was not acceptable as a means of calculating an economically meaningful measure of institutional costs, particularly since the Postal Service has yet to complete a comprehensive analysis of group specific costs for both competitive and market dominant products and was proposing to identify and isolate group specific costs in an evolutionary manner.

For pricing, marginal costs (*i.e.*, volume variable costs) are needed and when testing for cross-subsidy, incremental costs are the generally accepted basis. Calculating the cost of a firm for tax purposes is fundamentally different from calculating costs for pricing or for testing for cross-subsidization. For tax purposes, the total cost of the firm is required.

In proposed rule 3060.21, the Commission suggests that the total cost of the Postal Service's competitive products enterprise equals the sum of volume variable costs, product specific costs, group specific costs, and the appropriate share of institutional costs. The Commission agrees with the Postal Service that the group specific costs should be removed from the institutional costs before applying the appropriate percent. *See* Docket No. PI2008–2, Initial Comments of the United States Postal Service in Response to Order No. 56 and the Treasury Report, April 1, 2008, at 12–15.

In an accounting sense, costs which cannot be allocated specifically to one segment of a business are referred to as joint production costs. In the case of the Postal Service, these costs would necessarily exclude group specific costs for both competitive and market dominant product groups since these costs have been identified as being causally related to a specific line of business. Because a comprehensive analysis of group specific costs has not yet been completed, the Commission believes that institutional costs are the best available proxy for joint production costs. In the future, the appropriate percent of joint production costs that are allocated to competitive products may be greater or less than the 5.5 percent currently applied to total institutional costs, which was based on historical cost coverages rather than the concept of causation.[3] An appropriate share of joint production costs may be developed using market-based data such as revenue or physical measures such as volume or weight.[4]

To be consistent with Order No. 115, final rule 3060.21 is changed. Net income is calculated as competitive products revenue less attributable costs less the appropriate share of institutional costs. Proposed rule 3060.10 will also be changed to be consistent with rule 3060.21. The Commission recognizes that this treatment may need to be revised in the future.

B. Pro Forma Balance Sheet

The Postal Service does not believe that there is a statutory requirement for a balance sheet and that requiring the report would detract from the goal of transparency. It contends that, while it would be able to produce the report as contemplated in rule 3060.30, the report would provide no meaningful information, as it is based on mathematical calculations. Additionally, it notes that it is unrealistic to produce a balance sheet based on an enterprise whose "revenues and expenses are derived from statistical estimates and economic costing rather than Generally Accepted Accounting Principles (GAAP).[5] The Postal Service suggests that if the Commission still requires the production of this report that the title be changed from a "Pro Forma Balance Sheet" to a "Statement of Allocated Assets and Liabilities for Competitive Products."[6] On reply, the Public Representative points out that "[t]he absence of specific statutory language addressing a balance sheet requirement does not appear to foreclose the Commission from mandating this type of report, given the Commission's broad oversight authority."[7] She states that further Commission discussion of the rationale for such a report would be useful.

The need for the report derives from several sections of the PAEA. The PAEA requires that obligations of the Postal Service issued to support competitive products be supported and serviced by the revenues and receipts from the assets related to the provision of competitive products. 39 U.S.C. 2011(e)(1)(B)(i). It also provides that the competitive products enterprise assets be the greater of the assets related to the provision of competitive products or the percentage of competitive products revenue times total assets of the Postal Service. This implies that the Postal Service must determine the assets used in provision of competitive products. 39 U.S.C. 2011(e)(5). Furthermore, it states that one objective of the accounting practices and principles for competitive products is "identifying and valuing the assets and liabilities" associated with providing competitive products. 39 U.S.C. 2011(h)(1)(A)(i)(I).

The Commission recognizes that the Balance Sheet will not be in conformance with GAAP. However, final rules 3060.12 and 3060.13 require the Postal Service to identify any asset or liability account that is used strictly for either competitive or market dominant products. Thus, only assets and liabilities used jointly will be

[3] Docket No. RM2007–1, Order No. 43, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, October 29, 2007, at 90–92.

[4] *See* Horngren *et al.*, Cost Accounting, A Managerial Emphasis, at 575.

[5] Initial Comments of the United States Postal Service in Response to Order No. 106, October 20, 2008, at 4 (Postal Service Comments).

[6] *Id.* at 5.

[7] Public Representative's Reply Comments, November 3, 2008, at 2.

allocated by mathematical formula.[8] As long as the allocations are done on a reasonable basis, such as percentage of revenue, volume, or other cost driver, they should provide some measure of the resources used in providing competitive products. The Commission believes that this will enhance, rather than detract from, transparency. The Postal Service is encouraged to provide the most relevant and meaningful allocations that it can. If it still believes that the information in the report is not representative, the report should be accompanied by a disclaimer, stating in detail why the Postal Service believes this to be the case.

Further, if the Postal Service decides to calculate the assumed Federal income tax using deductions available under the Internal Revenue Code (IRC), such as depreciation, the report will provide a basis for calculating these deductions.

The Postal Service's objection to calling the combined report of assets and liabilities a "Balance Sheet" is that it is not a true balance sheet according to GAAP. A formal balance sheet would contain sections for capital and equity. The Postal Service argues that a reader could be confused by a report that uses the name "Balance Sheet" but does not contain all the information an accountant would expect to find. The Postal Service will be providing a measure of retained earnings in the financial status report filed pursuant to rule 3060.22. Consequently, a measure of equity could be derived since the Postal Service has no shareholders. If the retained earnings and equity were added to the required report, it would closely approximate the data an accountant would expect to find. However, because the Pro Forma Balance Sheet is not in conformance with GAAP, the Commission will, as the Postal Service suggests, change the name of the report to Statement of Allocated Assets and Liabilities for Competitive Products. While the likelihood of misunderstanding or confusion is slight, changing the name of the report will eliminate any such possibility.

C. Annual Docket

The Public Representative has requested a rule stating that the Commission will initiate a formal docket each year to receive the reports required by the proposed rules and soliciting comment from the public on the reports. The Public Representative included proposed language for a new rule 3060.2 that would implement her proposal.[9]

The Postal Service opposes such a rule as unnecessary. The Postal Service notes that there is no such rule with respect to the Annual Compliance Report, yet the Commission did solicit comments from the public after the FY2007 report was filed and always has the option to do so with respect to Competitive Products Reporting.[10]

The Public Representative's comments appear focused on the assumed Federal income tax aspects of the financial reports, although her proposed language includes all aspects of the competitive products enterprise reporting and review. She states that "an order the Commission is required to issue under proposed rule 3060.42 provides an unstated opportunity for the Commission to seek public input."[11] The Postal Service's reply comments seem to view the Public Representative's proposal as referring exclusively to the competitive product reports.[12] The Postal Service seems to expect the Commission to give notice and opportunity to comment on these reports in the same manner as the Annual Compliance Review (ACR).

Final rule 3060.20(c) requires the data underlying the competitive products enterprise reports to come from the data underlying the ACR. Under final rule 3060.24, these reports will be due (with the exception of the report for FY2008) at the same time as the ACR. Thus, the Commission will be able to incorporate notice of the competitive products reports into the statutorily required notice and opportunity to comment for the ACR.

The Commission agrees with the Public Representative regarding notice and opportunity for comment on the assumed Federal income tax calculation and final rule 3060.42 incorporates language to this effect.

D. Due Dates

In its comments the Postal Service identifies an inconsistency with respect to the due date for the first Pro Forma Balance Sheet (renamed Statement of Allocated Assets and Liabilities for Competitive Products in the final rules). The due date for the first report in proposed rule 3060.14 is 2011, while it is 2010 in proposed rule 3060.31. The Commission intended that the first Balance Sheet reflect results for FY 2010, and the final rules reflect this intent.

The Postal Service also requests that the Competitive Products Fund Report (CPFR) be due after or concurrently with the filing of the Income Report and the Statement of Allocated Assets and Liabilities for Competitive Products. The Postal Service reasons that the latter reports would provide input for the CPFR and would need to be completed prior to the filing of the CPFR. It therefore requests that the due dates for financial reports be no later than for the CPFR. The Postal Service proposed that the CPFR be due January 15 and that the financial reports be due in late December.

In setting the deadlines in the proposed rules, the Commission had sought to shift some work of the Postal Service away from the period when the Postal Service is preparing its Annual Compliance Report. The PAEA, however, sets the date for filing "the most recent" CPFR at 90 days from the close of a fiscal year.[13] Accordingly, the CPFR and the other reports required by these rules will be due 90 days after the close of the fiscal year, with an extension to January 15, 2009 for all FY 2008 reports except the CPFR. This extension is intended to allow the Postal Service some additional time to prepare the initial reports. If the Postal Service's experience shows that it can produce the CPFR without having to complete the other financial reports, the due date for those reports can be reexamined in a future rulemaking.

IV. Calculation of an Assumed Federal Income Tax

39 U.S.C. 3634 outlines the basis for calculating an assumed Federal income tax. First, it defines the term "assumed Federal income tax on competitive products income" to mean "the net income tax that would be imposed by chapter 1 of the Internal Revenue Code of 1986 on the Postal Service's assumed taxable income from competitive products for the year[.]" 39 U.S.C. 3634(a)(1). Second, it defines the term "assumed taxable income from competitive products" to mean:

> The amount representing what would be the taxable income of a corporation under the Internal Revenue Code of 1986 for the year, if—
>
> (A) The only activities of such corporation were the activities of the Postal Service

[8] The Commission understands that this may be the majority of accounts at the present time. However, this may change if the competitive products enterprise grows substantially. The Postal Service suggests, and the Commission has incorporated into the rules, isolation of assets, obligations, and investments used exclusively for competitive products.

[9] Public Representative's Comments on Proposed Rules, Attachment A, October 20, 2008.

[10] Reply Comments of the United States Postal Service in Response to Order No. 106, November 3, 2008, at 3 ("Postal Service Reply Comments").

[11] Public Representative's Comments at 4.

[12] Postal Service Reply Comments at 2.

[13] *See* 39 U.S.C. 2011(i)(2) and 3652(a).

allocable under section 2011(h) to competitive products; and

(B) The only assets held by such corporation were the assets of the Postal Service allocable under section 2011(h) to such activities.

Id. 3634(a)(2).

Finally, it requires the assumed tax be "paid," *i.e.*, transferred from the Competitive Products Fund to the Postal Service Fund, on or before January 15 of the next subsequent year. *Id.* 3634(b)–(c).

What follows is a discussion of the concepts the Commission believes are pertinent to the substantive and procedural rules governing the assumed Federal income tax for the theoretical competitive products enterprise.

In Order No. 106, the Commission states that a simplified approach to calculating the tax is desirable but must comply with section 3634(a). That is, the method used to compute the tax must be allowable under chapter 1 of the Internal Revenue Code.[14] The Commission summarizes the Treasury's report on this topic. Treasury endorsed a simplified approach that applied an average effective tax rate for C corporations or the maximum statutory tax rate to the Postal Service's net book income. It cautioned, however, that this approach "would require some level of PAEA intent interpretation and scope determination by the appropriate governance bodies." *Id.*

The Postal Service states that the calculation of Federal taxable income and subsequently Federal income tax in accordance with IRC chapter 1 would be administratively onerous and the results may be inaccurate. It advocates using Line 10 "Net Income (Loss) Before Tax" from the Annual Income Report as assumed taxable income and multiplying the unadjusted amount by an effective tax rate, similar to the rate published by the Statistics of Income (SOI) Corporation Report. Postal Service Comments at 8, Attachment 2. It notes that the effective tax rate would include adjustments to taxable income for permanent items and credits of comparable corporations within the broad sector of Transportation and Warehousing. It also notes that the SOI data, though not current, is readily accessible and updated with a time lag. Alternatively, it suggests that the statutory C corporation tax rate could be applied.

The Commission, while recognizing the benefits of a simplified approach, notes that differences between book income and taxable income can arise from either temporary or permanent differences. Temporary differences are the result of differences in the timing of income recognition for book and tax purposes and will eventually reverse over time resulting in no impact to total pretax net income. Permanent differences are due to differences in the definition of income for book and tax purposes. The exclusion of OSHA Fines and Penalties from taxable income but not book income in accordance with 26 U.S.C. 162(f) is such an example. Permanent differences have a permanent impact on total pretax net income. Under strict compliance with IRC chapter 1, both permanent and temporary differences must be recognized.

However, given that the assumed income tax is an intra-agency transfer, and has neither attached penalties nor the incentive to shift income between years, the Commission finds that temporary timing differences do not need to be recognized for purposes of calculating the assumed Federal income tax. In contrast, pretax book income should be adjusted for permanent differences. The calculation of taxable income for competitive products income is: Pretax Net Income as reported on the Annual Income Report less permanent differences related to competitive products. Given the intent of the PAEA to compute taxable income pursuant to IRC chapter 1, the Commission concludes that this alternative approach to computing taxable income is consistent with section 3634 and offers the Postal Service a simplified, cost-effective means for calculating the assumed Federal income tax.

The Commission concurs with Treasury's recommendation of the simplified method of computing the assumed Federal income tax using the highest marginal statutory tax rate, currently set at 35%. The Commission notes that because corporate tax law allows for certain deductions, exclusions, and credits, corporations are unlikely to pay tax at the statutory tax rate. However, the Postal Service also will be allowed under the final rules to avail itself of applicable deductions, exclusions, and credits if it so chooses.

The Postal Service's proposed alternative of applying the SOI tax rate is flawed. First and foremost, the companies identified in the SOI are not representative of the Postal Service. The effective tax rates of the sample corporations may result from unique tax positions, credits, foreign taxes, IRS audit adjustments and historical net operating losses that would not be comparable to the rate applicable to the Postal Service. In fact, the Commission believes that there are very few, if any, C corporations that would be comparable to the Postal Service, given its status as an independent establishment of the executive branch of the United States Government. Secondly, the referenced rates are not current.

The Commission's simplified approach applies the statutory C corporation Federal income tax rate to the competitive products enterprise's pretax net income less permanent differences related to competitive products. *See* rule 3060.40.

In lieu of simply applying the statutory C corporations' tax rate to the theoretical competitive products enterprise pretax income adjusted for permanent differences, the Postal Service may elect, under the proposed rules, to avail itself of various deductions and/or credits under chapter 1 of the IRC. *See* rule 3060.40. This option is available to the extent the Postal Service wishes to use it to reduce the competitive products enterprise's assumed Federal income tax.

The Commission does not want to impose unnecessary burdens on the Postal Service, and it finds that using either of these approaches to calculate the assumed Federal income tax will be neither burdensome nor costly. The complexity of computing the appropriate tax rate and income tax due for the theoretical competitive products enterprise under chapter 1 of the IRC is largely determined by the specific tax treatments the Postal Service chooses to apply. The Postal Service may choose to take any or all appropriate deductions and/or credits; however, the costs of attempting to reduce the transfer payment must be weighed against the benefits.[15]

NOL. The Public Representative recommends that the mechanics of the NOL provision be revised to align it closer to IRC chapter 1. The Postal Service agrees, and both parties submitted suggested revisions. The Commission's final rules reflect these suggestions.

The carry back and carry forward provisions of a NOL smooth the disparity in fluctuating incomes caused by the use of an annual accounting period. A carry back of a competitive products NOL resulting in the refund of previously transferred tax remittances to the Postal Service Fund should not be viewed as a prohibited cross-subsidy by market dominant products of competitive products since the refund

[14] Order No. 106 at 23.

[15] *See* Docket No. PI2008–2, Reply Comments of the Parcel Shippers Association on Treasury Report, May 1, 2008, at 3, suggesting that any expenditure to reduce the assumed tax payment would represent a net loss to the Postal Service.

cannot exceed the tax paid for the prior two years. The competitive products enterprise would not be receiving any funds in excess of what it has paid to the market dominant products. The NOL provision should be viewed as the same type of tax treatment any Postal Service competitor would be permitted to claim under chapter 1 of the IRC.[16] 26 U.S.C. 172.

Statute of limitations. The Public Representative requests expansion of certain provisions relating to the statute of limitations for addressing errors in the assumed Federal income tax calculation on competitive products. The Commission adopts the 3-year statute of limitations under 26 U.S.C. 6501(a). The Commission is aware that longer statutes of limitations are available under IRC chapter 1. The Commission reasons that there will be only one annual filing, with potentially complicated issues addressed in advance of filing, and as such, it does not see any need to extend the proposed period.

Investment income. Under section 2011, funds from Competitive Products in excess of current needs may be invested in Treasury obligations, or in any other investment choice with the consent of the Secretary of the Treasury. Income generated from the investment of excess monies from competitive products would be reported as a separate line item on the Income Report and could be netted with the related cost, if any, for the generation of such income. The Public Representative requests clarification of the tax treatment of this income.

Income derived from the investment in corporate stock would be subject to taxation pursuant to 26 U.S.C. 243 and a deduction for dividends received would be allowed. The dividends received deduction (DRD) is generally 70% (but can be 80% or 100% depending on the ownership percentage) of dividends received from U.S. taxable corporations. The 70% and 80% DRD is limited to 70% and 80%, respectively, of taxable income computed without the DRD, net operating loss carryovers, and capital loss carry backs. The limitation is disregarded if a net operating loss results after deducting the general rule DRD.

Income derived from the investment in entities exempt from tax under section 501 or 521 of the IRC would not be reduced or offset by expenses incurred in the generation of such income, including the dividends received deduction.

V. Section-by-Section Analysis

Below, the Commission provides a concise description of each rule designed to assist readers in understanding the scope and nature of the rules.

Rule 3060.1 Scope. This provision sets forth the scope of the Postal Service's obligation with regard to the assumed Federal income tax due on competitive products income. On an annual basis, the Postal Service must calculate the assumed Federal income tax on competitive products income and transfer any tax due from the Competitive Products Fund to the Postal Service Fund.

Rule 3060.10 Costing. This rule defines income subject to tax as competitive products revenue minus competitive products costs. Competitive products costs are defined as volume-variable costs plus product-specific costs plus assigned share of institutional costs. All costs are to be calculated using the methodologies most recently approved by the Commission.

Rule 3060.11 Valuation of Assets. This rule sets forth the basis for assigning assets to the theoretical competitive products enterprise.

Rule 3060.12 Asset Allocation. This rule requires the Postal Service to allocate all assets between competitive and market dominant products within 6 months of the effective date of the rule and to use these allocations to prepare the allocated assets and liabilities report required by rule 3060.30. The Commission must approve the methods of allocation.

Rule 3060.13 Valuation of Liabilities. This rule requires the Postal Service to allocate all liabilities between competitive and market dominant products within 6 months of the effective date of the rule and to use these allocations to prepare the allocated assets and liabilities report required by rule 3060.30. The Commission must approve the methods of allocation.

Rule 3060.14 Statement of Allocated Assets and Liabilities for Competitive Products. This rule directs the Postal Service to prepare and submit a Statement of Allocated Assets and Liabilities for Competitive Products no later than 90 days after the close of FY 2010.

Rule 3060.20 Reports. This rule sets forth the accounting procedures to be used for reporting on the theoretical competitive products enterprise. It sets the deadline for filing the reports at 90 days after the close of the fiscal year (with the exception of FY 2008); requires that each report include workpapers citing all numbers to primary sources and notes that provide summary descriptions of computations used, assumptions made, and other relevant information; specifies the books of accounts and data collection systems to be used; and requires the Postal Service to use the same accounting practices for future reports as approved by the Commission in its review of the FY 2008 reports, including changes adopted by the Commission. The rule also specifies the procedures which the Postal Service must use for any proposed changes in accounting practices.

Rule 3060.21 Income Report. This rule requires the Postal Service to file an income report for the theoretical competitive products enterprise and specifies the form and content of the report.

Rule 3060.22 Financial Status Report. This rule requires the Postal Service to file a report showing changes in net income, financial obligations, and financial investments for the theoretical competitive products enterprise and specifies the form and content of the report.

Rule 3060.23 Identified Property and Equipment Assets Report. This rule requires the Postal Service to file a report showing net book value for assets devoted to the theoretical competitive products enterprise and specifies the form and content of the report.

Rule 3060.24 Competitive Products Fund Report. This rule requires the Postal Service to file with the Commission a copy of the report filed within 90 days of the end of the previous fiscal year with the Secretary of the Treasury pursuant to 39 U.S.C. 2011(i)(1).

Rule 3060.30 Statement of Allocated Assets and Liabilities for Competitive Products. This rule requires the Postal Service to file a report showing how total assets and liabilities of the Postal Service are allocated to the theoretical

[16] The following example is illustrative of the possible use of NOLs for the theoretical competitive products enterprise tax liability computation: In fiscal years 2008 and 2009, the competitive products enterprise earned $150,000,000 in assumed taxable income and transferred $52,500,000 ($150,000,000 × 35%) in assumed Federal income tax from the Competitive Products Fund to the Postal Service Fund. Then in year 2010 the competitive products enterprise reported a loss of $60,000,000, resulting in a refund of assumed Federal income taxes transferred in prior years of $21,000,000 ($60,000,000 × 35%). The refund resulting from the NOL carry back is appropriate as it would not exceed the total assumed Federal income taxes paid in the prior two years and as such should not be viewed as a cross-subsidy of competitive products by market dominant products. This would be the same tax treatment that would be available to any regular domestic corporation under section 172 of chapter 1 of the Internal Revenue Code.

competitive products enterprise and specifies the form and content of the report.

Rule 3060.31 Initial Filing. This rule sets the date for filing the first Statement of Allocated Assets and Liabilities at 90 days after the close of FY 2010, two years later than for other reports.

Rule 3060.40 Calculation of the Assumed Federal Income Tax. This rule addresses how the assumed Federal income tax must be calculated and discusses the timing of such calculations. The rule states that the assumed Federal income tax on competitive products income must be calculated in compliance with chapter 1 of the IRC. A calculation under chapter 1 of the IRC requires the computation of the competitive products enterprise's assumed tax liability at either the section 11 (regular) or section 55(b)(1)(B) (AMT) tax rates, as applicable. The provision further provides that no estimated Federal income taxes need to be calculated or paid and also states that no state, local, or foreign income taxes need to be calculated or paid.

With regard to the timing of the calculation of the assumed Federal income tax, the rule provides that the end of the fiscal year for the calculation of the tax shall be September 30 (which coincides with the Postal Service's regular fiscal year end). The provision further requires that the assumed Federal income tax must be calculated by January 15 of the following year.

Rule 3060.41 Supporting Documentation. This rule specifies the underlying details that the Postal Service must provide to support its calculation of tax liability under rule 3060.40.

Rule 3060.42 Commission Review. This rule states that the Commission will solicit public comments on and review the documentation submitted under rule 3060.41 and issue an order on its findings by July 15. The proposed rule also states that the Commission may order the Postal Service to cure or explain any errors, omissions, or other deficiencies discovered within 3 years of a filing pursuant to rule 3060.40.

Rule 3060.43 One-Time Extension. This rule allows for a one-time extension of 6 months, until July 15, 2009, for the calculation of the assumed Federal income tax due for the fiscal year ending September 30, 2008.

Rule 3060.44 Annual Transfer from Competitive Products Fund to the Postal Service Fund. This rule provides a "payment" method for the assumed Federal income tax due on competitive products' income. On an annual basis, the Postal Service must transfer the assumed Federal income tax due on competitive products income from the Competitive Products Fund to the Postal Service Fund. As long as a tax is actually due, it must be transferred to the Postal Service Fund no later than January 15 of the year following the close of the fiscal year. As with the calculation in rules 3060.40 and 3060.43, a one-time 6-month extension, until July 15, 2009, is granted for the transfer of the assumed Federal income tax due for fiscal year end September 30, 2008.

Under this rule, if competitive products enterprise's assumed taxable income for a given fiscal year is negative, the Postal Service is not required to pay a tax for that year, but may be entitled to claim a loss. If a payment was made to the Postal Service Fund in the previous year, the Postal Service may transfer the lesser of (1) the amount paid into the Postal Service Fund in the past 2 years, or (2) the amount of the hypothetical tax on the loss. The hypothetical tax on the loss should be computed as the statutory tax rate multiplied by the amount of the loss. This transfer must also be made no later than January 15 of the year following the end of the fiscal year. If, however, no payment was made into the Postal Service Fund in the previous 2 years, the loss may only be carried forward and offset against any calculated assumed Federal taxable income on competitive products income for the following 20 years.

It is Ordered:

1. The Commission hereby adopts final rules on accounting practices and tax rules for Competitive Products for incorporation into the Commission's Rules of Practice and Procedure at 39 CFR 3060.

2. The rules referred to in ordering paragraph 1 will take effect 30 days after publication in the **Federal Register**.

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

List of Subjects in 39 CFR Part 3060

Administrative practice and procedure, Postal Service, Reporting and recordkeeping requirements.

By the Commission.

Steven W. Williams,

Secretary.

■ For the reasons stated in the preamble, the Postal Regulatory Commission amends 39 CFR chapter III by adding part 3060 to read as follows:

PART 3060—ACCOUNTING PRACTICES AND TAX RULES FOR THE THEORETICAL COMPETITIVE PRODUCTS ENTERPRISE

Sec.

Authority: 39 U.S.C. 503, 2011, 3633, 3634.

§ 3060.1 Scope.

The rules in this part are applicable to the Postal Service's theoretical competitive products enterprise developed pursuant to 39 U.S.C. 2011 and 3634 and to the Postal Service's obligation to calculate annually an assumed Federal income tax on competitive products income and transfer annually any such assumed Federal income tax due from the Competitive Products Fund to the Postal Service Fund.

§ 3060.10 Costing.

(a) The assumed taxable income from competitive products for the Postal Service's theoretical competitive products enterprise for a fiscal year shall be based on total revenues generated by competitive products during that year less the costs identified in paragraph (b) of this section calculated using the methodology most recently approved by the Commission.

(b) The net income for the Postal Service's theoretical competitive products enterprise shall reflect the following costs:

(1) Attributable costs, including volume variable and product specific costs; and

(2) The appropriate share of institutional costs assigned to competitive products by the Commission pursuant to 39 U.S.C. 3633(a)(3).

§ 3060.11 Valuation of assets.

For the purposes of 39 U.S.C. 2011, the total assets of the Postal Service

theoretical competitive products enterprise are the greater of:

(a) The percentage of total Postal Service revenues and receipts from competitive products times the total net assets of the Postal Service, or

(b) The net assets related to the provision of competitive products as determined pursuant to § 3060.12.

§ 3060.12 Asset allocation.

Within 6 months of January 23, 2009, and for each fiscal year thereafter, the Postal Service will develop the net assets of the theoretical competitive products enterprise as follows:

(a) Identify all asset accounts within the Postal Service's Chart of Accounts used solely for the provision of competitive products.

(b) Identify all asset accounts within the Postal Service's Chart of Accounts used solely for the provision of market dominant products.

(c) The portion of asset accounts in the Postal Service's Chart of Accounts that are not identified in either paragraph (a) or paragraph (b) of this section shall be assigned to the Postal Service theoretical competitive products enterprise using a method of allocation based on appropriate revenue or cost drivers approved by the Commission.

(d) Within 6 months of January 23, 2009, the Postal Service shall submit to the Commission for approval a proposed methodology detailing how each asset account identified in the Chart of Accounts shall be allocated to the theoretical competitive products enterprise and provide an explanation in support of each allocation.

(e) If the Postal Service desires to change the methodologies outlined above, it shall utilize the procedures provided in § 3050.11 of this chapter.

§ 3060.13 Valuation of liabilities.

Within 6 months of January 23, 2009, and for each fiscal year thereafter, the Postal Service will develop the liabilities of the theoretical competitive products enterprise as follows:

(a) Identify all liability accounts within the Postal Service's Chart of Accounts used solely for the provision of competitive products.

(b) Identify all liability accounts within the Postal Service's Chart of Accounts used solely for the provision of market dominant products.

(c) The portion of liability accounts in the Postal Service's Chart of Accounts that are not identified in either paragraph (a) or paragraph (b) of this section shall be assigned to the theoretical competitive products enterprise using a method of allocation based on appropriate revenue or cost drivers approved by the Commission.

(d) Within 6 months of the effective date of these rules, the Postal Service shall submit to the Commission for approval a proposed methodology detailing how each liability account identified in the Chart of Accounts shall be allocated to the theoretical competitive products enterprise and provide an explanation in support of each allocation.

(e) If the Postal Service desires to change the methodologies outlined above, it shall utilize the procedures provided in § 3050.11 of this chapter.

§ 3060.14 Competitive products enterprise statement of allocated assets and liabilities.

The Postal Service will report the assets and liabilities of the theoretical competitive products enterprise as computed under §§ 3060.12 and 3060.13 in the format as prescribed under § 3060.30 for each fiscal year starting with FY 2010.

§ 3060.20 Reports.

(a) Beginning with reports for FY 2009, the Postal Service shall file with the Commission each of the reports required by this part by no later than 90 days after the close of each fiscal year. For FY 2008, the Postal Service may file these reports by January 15, 2009, with the exception of the report required by § 3060.24.

(b) Each report shall include workpapers that cite all numbers to primary sources and such other information needed to present complete and accurate financial information concerning the provision of competitive products.

(c) Each report shall utilize the same books of accounts and data collection systems used to produce the report required by part 3050 of this chapter.

(d) Each report shall include summary descriptions of computations used, assumptions made, and other relevant information in the form of notes to the financial statements.

(e) A one-time extension until January 15, 2009, shall be permitted for the submission of the reports due for fiscal year ending September 30, 2008.

(f) The accounting practices used by the Postal Service in the reports filed for FY 2008, as approved by the Commission, shall be used for all future reports until such time as they may be changed by the Commission. If the Postal Service desires to change such practices, it shall utilize the procedures provided in § 3050.11 of this chapter.

§ 3060.21 Income report.

The Postal Service shall file an Income Report in the form and content of Table 1, below.

TABLE 1—COMPETITIVE PRODUCTS INCOME STATEMENT—PRC FORM CP–01

[$ in 000s]

	FY 20xx	FY 20xx–1	Percent change from SPLY	Percent change from SPLY
Revenue:	$x,xxx	$x,xxx	xxx	xx.x
(1) Mail and Services Revenues	xxx	xxx	xx	xx.x
(2) Investment Income	x,xx	x,xxx	xxx	xx.x
(3) Total Competitive Products Revenue.				
Expenses:				
(4) Volume-Variable Costs	x,xxx	x,xxx	xxx	xx.x
(5) Product Specific Costs	x,xxx	x,xxx	xxx	xx.x
(6) Total Competitive Products Attributable Costs	x,xxx	x,xxx	xxx	xx.x
(7) Net Income Before Institutional Cost Contribution	x,xxx	x,xxx	xxx	
(8) Required Institutional Cost Contribution	x,xxx	x,xxx	$xxx	x.x.x
(9) Net Income (Loss) Before Tax	x,xxx	x,xxx	$xxx	xx.x
(10) Assumed Federal Income Tax	x,xxx	x,xxx	$xxx	xx.x
(11) Net Income (Loss) After Tax	x,xxx	x,xxx	$xxx	xx.x

Line (1): Total revenues from Competitive Products volumes and Ancillary Services.

TABLE 1—COMPETITIVE PRODUCTS INCOME STATEMENT—PRC FORM CP–01—Continued

[$ in 000s]

	FY 20xx	FY 20xx–1	Percent change from SPLY	Percent change from SPLY

Line (2): Income provided from investment of surplus Competitive Products revenues.
Line (3): Sum total of revenues from Competitive Products volumes, services, and investments.
Line (4): Total Competitive Products volume variable costs as shown in the Cost and Revenue Analysis (CRA) report.
Line (5): Total Competitive Products product specific costs as shown in the CRA report.
Line (6): Sum total of Competitive Products costs (sum of lines 4 and 5).
Line (7): Difference between Competitive Products total revenues and attributable costs (line 3 less line 6).
Line (8): Minimum amount of Institutional Cost contribution required under 39 CFR 3015.7 of this chapter.
Line (9): Line 7 less line 8.
Line (10): Total assumed Federal income tax as calculated under 39 CFR 3060.40.
Line (11): Line 9 less line 10.

§ 3060.22 Financial status report.

The Postal Service shall file a Financial Status Report in the form and content of Table 2, below.

TABLE 2—ANNUAL SUMMARY OF COMPETITIVE PRODUCTS FINANCIALS—PRC FORM CP–02

[$ in 000s]

	Beginning value	Change from prior year	Ending value
(1) Cumulative Net Income (Loss) After Assumed Federal Income Tax.			
(2) Total Financial Obligations (List of Financial Obligations).			
(3) Total Financial Investments (List of Financial Investments).			

Line 1: Beginning Value: Sum total of Net Income (Loss) as of October 1 of Reportable Fiscal Year.
Change from Prior Year: Amount of Net Income (Loss) of Reportable Fiscal Year.
Ending Value: Sum of Beginning Value and the Change from Prior Year.
Line 2: Beginning Value: Sum total of Financial Obligations as of October 1 of Reportable Fiscal Year.
Change from Prior Year: Amount of Net Financial Obligations of Reportable Fiscal Year.
Ending Value: Sum of Beginning Value and the Change from Prior Year.
Line 3: Beginning Value: Sum total of Financial Investments as of October 1 of Reportable Fiscal Year.
Change from Prior Year: Amount of Net Financial Investments of Reportable Fiscal Year.
Ending Value: Sum of Beginning Value and the Change from Prior Year.

§ 3060.23 Identified property and equipment assets report.

The Postal Service shall file an Identified Property and Equipment Assets Report in the form and content of Table 3, below.

TABLE 3—COMPETITIVE PRODUCTS PROPERTY AND EQUIPMENT ASSETS—PRC FORM CP–03

[$ in 000s]

Finance No.	Finance location	Asset identifier	Asset description	Cost	Accumulated depreciation	Net book value
Total				$x,xxx	$x,xxx	$x,xxx

§ 3060.24 Competitive products fund report.

Within 90 days of the close of each fiscal year the Postal Service will provide the most recent report of the activity of the Competitive Products Fund as provided to the Secretary of the Treasury under 39 U.S.C. 2011(i)(1).

§ 3060. 30 Statement of allocated assets and liabilities for competitive products.

(a) The Postal Service shall file a Statement of Allocated Assets and Liabilities for Competitive Products in the form and content of Table 4, below.

TABLE 4—STATEMENT OF ALLOCATED ASSETS AND LIABILITIES FOR COMPETITIVE PRODUCTS—PRC FORM CP–04

[$ in millions]

	USPS annual report	FY20XX competitive products	FY 20XX–1 competitive products	Distributed on basis of:
Total net assets				
Cash and Cash Equivalents	$x,xxx	$x,xxx	$x,xxx	
Net Accounts Receivable	x,xxx	x,xxx	x,xxx	
Supplies, Advances and Prepayments	x,xxx	x,xxx	x,xxx	
Appropriations Receivable—Revenue Forgone	x,xxx	x,xxx	x,xxx	
Total Current Assets	x,xxx	x,xxx	x,xxx	
Property and Equipment:				
Buildings	x,xxx	x,xxx	x,xxx	
Leasehold Improvements	x,xxx	x,xxx	x,xxx	
Equipment	x,xxx	x,xxx	x,xxx	
Land	x,xxx	x,xxx	x,xxx	
Accumulated Depreciation	x,xxx	x,xxx	x,xxx	
Construction in Progress	x,xxx	x,xxx	x,xxx	
Total Property and Equipment, Net	x,xxx	x,xxx	x,xxx	
Total Assets	$x,xxx	$x,xxx	$x,xxx	
Total Assets Determined from 39 U.S.C. 2011(e)(5)	$x,xxx	$x,xxx	$x,xxx	
Total net liabilities				
Liabilities				
Current Liabilities:				
Compensation and Benefits	x,xxx	x,xxx	x,xxx	
Payables and Accrued Expenses	x,xxx	x,xxx	x,xxx	
Customer Deposit Accounts	x,xxx	x,xxx	x,xxx	
Deferred Revenue-Prepaid Postage	x,xxx	x,xxx	x,xxx	
Outstanding Postal Money Orders	x,xxx	x,xxx	x,xxx	
Prepaid Box Rent and Other Deferred Revenue	x,xxx	x,xxx	x,xxx	
Debt	x,xxx	x,xxx	x,xxx	
Non-Current Liabilities:	x,xxx	x,xxx	x,xxx	
Workers' Compensation	x,xxx	x,xxx	x,xxx	
Employees Accumulated Leave	x,xxx	x,xxx	x,xxx	
Deferred Appropriation and Other Revenue				
Long-Term Portion of Capital Lease Obligations	x,xxx	x,xxx	x,xxx	
Deferred Gains on Sales of Property	x,xxx	x,xxx	x,xxx	
Contingent Liabilities and Other	x,xxx	x,xxx	x,xxx	
Total Liabilities	x,xxx	x,xxx	x,xxx	

(b) The Statement of Allocated Assets and Liabilities for Competitive Products shall detail the analysis and selection of methods of allocation of total assets and liabilities to the competitive products.

§ 3060.31 Initial filing.

The due date for filing the initial Statement of Allocated Assets and Liabilities for Competitive Products is 90 days after the close of FY 2010.

§ 3060.40 Calculation of the assumed Federal income tax.

(a) The assumed Federal income tax on competitive products income shall be based on the Postal Service theoretical competitive products enterprise income statement for the relevant year and must be calculated in compliance with chapter 1 of the Internal Revenue Code by computing the tax liability on the taxable income from the competitive products of the Postal Service theoretical competitive products enterprise at the section 11 (regular) or section 55(b)(1)(B) (Alternative Minimum Tax) tax rates, as applicable.

(b) The end of the fiscal year for the annual calculation of the assumed Federal income tax on competitive products income shall be September 30.

(c) The calculation of the assumed Federal income tax due shall be submitted to the Commission no later than the January 15 following the close of the fiscal year referenced in paragraph (b) of this section, except that a one-time extension of 6 months, until July 15, 2009, shall be permitted for the calculation of the assumed Federal income tax due for fiscal year end September 30, 2008.

(d) No estimated Federal income taxes need to be calculated or paid.

(e) No state, local, or foreign income taxes need to be calculated or paid.

§ 3060.41 Supporting documentation.

(a) In support of its calculation of the assumed Federal income tax, the Postal Service shall file detailed schedules reporting the Postal Service theoretical competitive products enterprise assumed taxable income, effective tax rate, and tax due.

(b) Adjustments made to book income, if any, to arrive at the assumed taxable income for any year shall be submitted to the Commission no later than January 15 of the following year.

§ 3060.42 Commission review.

(a) Interested persons shall be provided an opportunity to comment on the filing of the calculation of the assumed Federal income tax and supporting documentation.

(b) The Commission will review the calculation of the assumed Federal income tax submitted pursuant to § 3060.40, the supporting documentation submitted pursuant to § 3060.41, and any comments. The Commission then will issue an order either approving the calculation of the assumed Federal income tax for that tax year or take such other action as the Commission deems appropriate, including, but not limited to, directing the Postal Service to file additional supporting materials.

(c) The Commission will issue such order no later than 6 months after the Postal Service's filing pursuant to § 3060.40.

(d) Notwithstanding paragraph (b) of this section, if the Commission determines within 3 years of its submission that the Postal Service's calculation of an assumed Federal income tax is incomplete, inaccurate, or otherwise deficient, the Commission will notify the Postal Service in writing and provide it with an opportunity to cure or otherwise explain the deficiency. Upon receipt of the Postal Service's responsive pleading, the Commission may order such action as it deems appropriate.

§ 3060.43 Annual transfer from competitive products fund to Postal Service fund.

(a) The Postal Service must on an annual basis transfer the assumed Federal income tax due on competitive products income from the Competitive Products Fund to the Postal Service Fund.

(b) If the assumed taxable income from competitive products for a given fiscal year is positive, the assumed Federal income tax due, calculated pursuant to § 3060.40, shall be transferred to the Postal Service Fund no later than the January 15 following the close of the relevant fiscal year.

(c) A one-time extension of 6 months, until July 15, 2009, shall be permitted for the transfer of the assumed Federal income tax due for fiscal year ending September 30, 2008.

(d) If assumed taxable income from competitive products for a given fiscal year is negative, and:

(1) A payment was made to the Postal Service Fund for the previous tax year, a transfer equaling the lesser of the amount paid into the Postal Service Fund for the past 2 tax years or the amount of the hypothetical tax on the loss shall be made from the Postal Service Fund to the Competitive Products Fund no later than the January 15 following the close of the relevant fiscal year; or

(2) No payment has been made into the Postal Service Fund for the previous 2 tax years, the loss may be carried forward and offset against any calculated assumed Federal taxable income on competitive products income for 20 years.

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Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, will no longer appear in the Reader Aids section of the Federal Register. This information can be found online at http://www.regulations.gov.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 24, 2008

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fisheries of the Northeastern United States:

Atlantic Herring Fishery; Total Allowable Catch Harvested for Management Area 1B; published 12-30-08

ENVIRONMENTAL PROTECTION AGENCY

Extension of Cross-Media Electronic Reporting Rule Deadline for Authorized Programs; published 12-24-08

National Volatile Organic Compound Emission Standards for Aerosol Coatings; Withdrawal; published 12-24-08

FEDERAL COMMUNICATIONS COMMISSION

Satellite Licensing Procedures; published 11-24-08

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food Additives Permitted in Feed and Drinking Water of Animals; CFR correction; published 12-24-08

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

West Virginia Regulatory Program; published 12-24-08

POSTAL SERVICE

Bylaws of the Board of Governors; published 12-24-08

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Aviation Insurance; CFR correction; published 12-24-08

TREASURY DEPARTMENT

Internal Revenue Service

Creditor Continuity of Interest; Correction; published 12-24-08

RULES GOING INTO EFFECT DECEMBER 26, 2008

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and Threatened Species;

Critical Habitat for Threatened Elkhorn and Staghorn Corals; published 11-26-08

DEFENSE DEPARTMENT

TRICARE Program:

Overpayments Recovery; published 11-25-08

ENVIRONMENTAL PROTECTION AGENCY

Standards of Performance for Petroleum Refineries:

Standards of Performance for Which Construction, Reconstruction, or Modification (Commenced After May 14, 2007); published 12-22-08

FEDERAL COMMUNICATIONS COMMISSION

Television Broadcasting Services:

Bryan, TX; published 11-25-08

Madison, WI; published 11-25-08

HOMELAND SECURITY DEPARTMENT

Transportation Security Administration

Rail Transportation Security; published 11-26-08

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Public Access to HUD Records under the Freedom of Information Act (FOIA) and Production of Material or Provision of Testimony by HUD Employees:

Revisions to Policies and Practices Regarding Subpoenas and Other Demands for Testimony; published 11-26-08

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness Directives:

Airbus Model A319, A320, and A321 Series Airplanes Equipped with International Aero Engines (IAE) Model V2500-A1 Engines or Model V25xx-A5 Series Engines; published 12-11-08

BAE Systems (Operations) Limited Model BAe 146 and Avro 146 RJ Airplanes; published 11-20-08

Boeing Model 767 200, 300, and 400ER Series Airplanes; published 11-20-08

Fokker Model F.28 Mark 0100 Airplanes; published 11-20-08

Gulfstream Aerospace LP Model Galaxy Airplanes and Gulfstream 200 Airplanes; published 11-20-08

TRANSPORTATION DEPARTMENT

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Enhancing Rail Transportation Safety and Security for Hazardous Materials Shipments; published 11-26-08

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Addition of Russia and Azerbaijan to the List of Regions Where African Swine Fever Exists; comments due by 1-2-09; published 11-3-08 [FR E8-26140]

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

Technical Assistance for Specialty Crops; comments due by 1-2-09; published 12-3-08 [FR E8-28613]

AGRICULTURE DEPARTMENT

Food and Nutrition Service

WIC Farmers' Market Nutrition Program (FMNP):

Nondiscretionary Provisions of P.L. 108-265, the Child Nutrition and WIC Reauthorization Act (2004); comments due by 1-2-09; published 11-3-08 [FR E8-26099]

AGRICULTURE DEPARTMENT

Forest Service

Sale and Disposal of National Forest System Timber; Downpayment and Periodic Payments; comments due by 12-29-08; published 10-29-08 [FR E8-25799]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic:

Reef Fish Fishery of the Gulf of Mexico; Amendment 30B; comments due by 1-2-09; published 11-18-08 [FR E8-27335]

Reef Fish Fishery of the Gulf of Mexico; Gulf of Mexico Gag Grouper Management Measures; comments due by 1-2-09; published 12-2-08 [FR E8-28616]

Fisheries of the Exclusive Economic Zone Off Alaska:

Greenland Turbot and Rougheye Rockfish in the Bering Sea and Aleutian Islands Management Area; comments due by 12-31-08; published 12-19-08 [FR E8-30202]

Gulf of Alaska; Proposed 2009 and 2010 Harvest Specifications for Groundfish; comments due by 1-2-09; published 12-2-08 [FR E8-28617]

Fisheries Off West Coast States:

Modifications of the West Coast Commercial and Recreational Salmon Fisheries; Inseason Actions; comments due by 12-30-08; published 12-15-08 [FR E8-29680]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Adjustment to Exempted Fishing Permit; comments due by 12-29-08; published 12-12-08 [FR E8-29441]

DEFENSE DEPARTMENT

National Security Personnel System; comments due by 1-2-09; published 12-3-08 [FR E8-28672]

ENERGY DEPARTMENT

Conduct of Employees and Former Employees;

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current

session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html.*

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html.* Some laws may not yet be available.

H.R. 6859/P.L. 110–454

To designate the facility of the United States Postal Service located at 1501 South Slappey Boulevard in Albany, Georgia, as the "Dr. Walter Carl Gordon, Jr. Post Office Building". (Dec. 19, 2008; 122 Stat. 5035)

S.J. Res. 46/P.L. 110–455

Ensuring that the compensation and other emoluments attached to the office of Secretary of State are those which were in effect on January 1, 2007. (Dec. 19, 2008; 122 Stat. 5036)

Last List December 4, 2008

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Public Laws

110th Congress

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Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.gpoaccess.gov/plaws/index.html

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